

**WSR 07-16-101****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed July 31, 2007, 9:11 a.m., effective September 1, 2007]

Effective Date of Rule: September 1, 2007.

Purpose: The purpose of the new alternative living chapter is to consolidate information governing the operation of alternative living services for ease of reference by the user. The alternative living services chapter consolidates existing standards in chapters 388-825, 388-845, and 388-101 WAC, and existing requirements found in policy and contract into one chapter for easier reference.

There is a new requirement for providers to attend DDD specialty training within ninety days of serving a client and obtain and maintain CPR/first aid training and bloodborne pathogens training with HIV/AIDS information that was proposed as WSR 07-11-133 but was inadvertently left off the CR-102 form. This rule is being adopted as chapter 388-829A WAC and has been separated from the rules for companion home residential services rules which will be adopted under chapter 388-829C WAC. These changes will make finding alternative living rules easier for the user.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 07-11-133 on May 22, 2007.

A final cost-benefit analysis is available by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 34, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 34, Amended 0, Repealed 0.

Date Adopted: July 31, 2007.

Robin Arnold-Williams  
Secretary

**Chapter 388-829A WAC****Alternative Living****PURPOSE**NEW SECTION

**WAC 388-829A-005 What is the purpose of this chapter?** This chapter establishes rules governing the division of developmental disabilities alternative living services program per chapter 71A.12 RCW for eligible clients of the division.

**DEFINITIONS**NEW SECTION

**WAC 388-829A-010 What definitions apply to this chapter?** The following definitions apply to this chapter:

"ADSA" means the aging and disability services administration within DSHS and its employees and authorized agents.

"Adult Protective Services" or "APS" means the investigative body designated by ADSA to investigate suspected cases of abandonment, abuse, financial exploitation and neglect as defined in 74.34 RCW.

"Alternative Living provider" means an independent contractor with a current contract with the division of developmental disabilities to provide alternative living services.

"Assistance" means help provided to a client for the purpose of training the client in the performance of tasks the task being trained. Assistance does not include personal care as defined in chapter 388-106 WAC or protective supervision.

"Calendar year" means the twelve month period that runs from January 1 through December 31.

"Case Manager" means the division of developmental disabilities case resource manager or social worker assigned to a client.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"Competence" means the capacity to do what one needs and wants to do. There are two ways to be competent. A person may be self-reliant and able to do things for themselves or may have the power to identify and obtain the help needed from others.

"DDD" or "the division" means the division of developmental disabilities (DDD) within the DSHS aging and disabilities services administration of the department of social and health services.

"DDD Specialty Training" means department approved curriculum to provide information and instruction to meet the special needs of people with developmental disabilities.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Health and Safety" means clients living safely in environments common to other citizens with reasonable supports

offered to simultaneously protect their health and safety while promoting community inclusion.

"Individual Support Plan" or "ISP" is a document that authorizes and identifies the DDD Paid services to meet a client's assessed needs.

"Integration" means clients being present and actively participating in the community using the same resources and doing the same activities as other citizens.

"Mandatory reporter" means any person working with vulnerable adults required by law to report incidents of abandonment, abuse, neglect, financial exploitation, etc per chapter 74.34 RCW.

"Positive recognition by self and others" means a client being offered assistance in ways which promote the client's status and creditability. Providers offer assistance in ways that are appropriate to the age of the client, typical to other members of the community and contribute to the client's feelings of self worth and positive regard by others.

"Positive Relationships" means clients having friends and family that offer essential support and protection. Friends and family lend continuity and meaning through life and open the way to new opportunities and experiences.

"Power and Choice" means clients experiencing power, control, and ownership of their personal affairs. Expression of personal power and choice are essential elements in the lives of people. Such expressions help people gain autonomy, become self-governing and pursue their own interests and goals.

"Regulation" means any federal, state, or local law, rule, ordinance or policy.

"RCW" means the Revised Code of Washington, which contains all laws governing the state of Washington.

"Service Episode Record" or "SER" means documentation by DDD of all client related contacts including contacts during the assessment, service plan, coordination and monitoring of care and termination of services.

"Support" means provider activities done on the client's behalf such as balancing the checkbook.

"Unusual Incidents" means a change in circumstances or events that concern a client's safety or well being. Examples may include, an increased frequency, intensity, or duration of any medical conditions; adverse reactions to medication, hospitalization, death, severe behavioral incidents that are unlike the client's ordinary behavior, severe injury, running away, physical or verbal abuse to themselves or others, etc

"WAC" means the Washington Administrative Code, which are the rules for administering the state laws (RCW).

## ALTERNATIVE LIVING SERVICES

### NEW SECTION

**WAC 388-829A-020 What are alternative living services?** Alternative living services provide community-based, individualized client training, assistance, and support. These services enable a client to live as independently as possible.

### NEW SECTION

**WAC 388-829A-030 What type of training and support may the alternative living service provider offer?** The alternative living service provider may provide training, assistance, and/or support in the following areas, as identified in the client's individual support plan (ISP):

- (1) Establishing a residence.
- (2) Home living including:
  - (a) Personal hygiene;
  - (b) Food and nutrition; and
  - (c) Home management.
- (3) Community living including:
  - (a) Accessing public and private community services;
  - (b) Essential shopping; and
  - (c) Transportation.
- (4) Health and safety including:
  - (a) Understanding personal safety and emergency procedures;
  - (b) Physical, mental and dental health; and
  - (c) Developing and practicing an emergency response plan to address natural and other disasters.
- (5) Social activities including:
  - (a) Community integration; and
  - (b) Building relationships.
- (6) Protection and advocacy including:
  - (a) Money management and budgeting;
  - (b) Protecting self from exploitation;
  - (c) Making choices and decisions; and
  - (d) Asserting rights and finding advocacy.
- (7) Other training and support to assist a client to live independently.

### NEW SECTION

**WAC 388-829A-040 Who is eligible to receive alternative living services?** Clients who receive alternative living services must:

- (1) Be at least eighteen years of age;
- (2) Live outside of their parent's home or plan to move out of their parent's home in the next six months;
- (3) Have an assessed need for alternative living services;
- (4) Be authorized by DDD to receive alternative living services; and
- (5) Be able to afford and maintain their own home with their personal financial resources.

### NEW SECTION

**WAC 388-829A-050 Who is eligible to contract with DDD to provide alternative living services?** Before DDD may issue an alternative living contract, the prospective provider must:

- (1) Be twenty-one years of age or older;
- (2) Have a high school diploma or GED;
- (3) Clear a background check conducted by DSHS, as required by RCW 43.20A.710;
- (4) Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;

(5) Have a business ID number, as an independent contractor; and

(6) Meet the minimum skills and abilities described in WAC 388-829A-110.

#### NEW SECTION

**WAC 388-829A-060 Who may not be contracted to provide alternative living services?** DDD may not contract with the following to provide alternative living services:

- (1) The client's spouse.
- (2) The client's natural, stepparent or adoptive parents.
- (3) The court-appointed legal representative.

#### NEW SECTION

**WAC 388-829A-070 Where must alternative living services be provided?** (1) Alternative living services must be provided in a community setting.

(2) Clients receiving alternative living services must live independently in a home that is owned, rented or leased by the client or the client's legal representative.

(3) Alternative living services may be provided in the parent's home for no more than six months, to support a client's transition from the parent's home into the client's own home.

(4) Alternative living services may not be offered in the provider's home.

#### NEW SECTION

**WAC 388-829A-080 How many hours of alternative living services may a client receive?** Alternative living services may be authorized up to forty hours per month.

#### NEW SECTION

**WAC 388-829A-090 May an alternative living provider claim reimbursement for more than one client at a time?** An alternative living provider must not claim reimbursement for more than one client per service hour.

#### NEW SECTION

**WAC 388-829A-100 May an alternative living provider offer personal care or respite services?** An alternative living provider must not offer personal care or respite under their alternative living contract. The alternative living provider must have a separate contract to provide respite and/or personal care services.

### **PROVIDER QUALIFICATIONS AND RESPONSIBILITIES**

#### NEW SECTION

**WAC 388-829A-110 What minimum skills and abilities must alternative living procedures demonstrate?** Alternative living providers must:

(1) Be able to read, understand, and provide services as outlined in the ISP;

(2) Participate in the development of the client's ISP;

(3) Communicate in a language of the client served;

(4) Accommodate the client's individual preferences;

(5) Know the community resources such as medical facilities, emergency resources, recreational opportunities;

(6) Protect the client's financial interests;

(7) Fulfill reporting requirements as required in this chapter and the alternative living contract;

(8) Know how and when to contact the client's representative and the client's case manager;

(9) Maintain all necessary license, and certification as required by law. (see WAC 388-829A-140, WAC 388-829A-160, and WAC 388-829A-270);

(10) Successfully complete the training required in this chapter; and

(11) Comply with all applicable laws, regulations, policy, and contract requirements.

#### NEW SECTION

**WAC 388-829A-120 What values must alternative living providers focus on when implementing the ISP?**

The alternative living provider must focus on the following values when implementing the ISP:

(1) Health and safety;

(2) Personal power and choice;

(3) Competence and self-reliance;

(4) Positive recognition by self and others;

(5) Positive relationships; and

(6) Integration in the physical and social life of the community.

#### NEW SECTION

**WAC 388-829A-130 What rights do clients of DDD have?** Clients of DDD have:

(1) The same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution and federal and state law;

(2) The right to be free from discrimination because of race, color, national origin, gender, age, religion, creed, marital status, disabled or veteran status, use of a trained service animal or the presence of any physical, mental or sensory handicap.

(3) The right to treatment and habilitation services to foster developmental potential and protect personal liberty in the least restrictive environment;

(4) The right to dignity, privacy, and humane care;

(5) The right to participate in an appropriate program of publicly supported education;

(6) The right to prompt medical care and treatment;

(7) The right to social interaction and participation in community activities;

(8) The right to physical exercise and recreational opportunities;

(9) The right to work and be paid for the work one does;

(10) The right to be free from harm, including unnecessary physical restraint, isolation, excessive medication, abuse, neglect, or financial exploitation;

(11) The right to be free from hazardous or experimental procedures;

(12) The right to freedom of expression and to make decisions about one's life;

(13) The right to complain, disagree with, and appeal decisions made by the provider or DDD; and

(14) The right to be informed of these rights in a language that he or she understands.

### PROVIDER TRAINING

#### NEW SECTION

#### **WAC 388-829A-140 What training must be completed before becoming an alternative living provider?**

Before DDD may issue an alternative living contract, the prospective provider must:

- (1) Obtain CPR/first aid certification;
- (2) Successfully complete Blood-Borne Pathogens training with HIV/Aids information; and
- (3) Receive contract orientation and client specific training from DDD.

#### NEW SECTION

#### **WAC 388-829A-150 What training must an alternative living provider complete within the first ninety days of serving the client?**

The alternative living provider must successfully complete the approved DDD specialty training within the first ninety days of serving the client (see WAC 388-112-0120). (Note: DDD will reimburse the provider for training time for DDD specialty training only when the provider is currently offering alternative living services to a client.)

#### NEW SECTION

#### **WAC 388-829A-160 What training must an alternative living provider complete after the first year of service?**

(1) After the first year of service, the alternative living provider must:

- (a) Maintain current CPR/first aid certification;
- (b) Receive Blood Borne Pathogens training with HIV/Aids information at least annually and within one year of the previous training; and
- (c) Complete at least ten hours of continuing education each calendar year after the calendar year in which they successfully complete DDD approved specialty training.
  - (i) The continuing education must be on topics relevant to supporting individuals with developmental disabilities.
  - (ii) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education.

(2) Documentation of training attendance must be kept in the provider's files and submitted to DDD upon completion of the training.

### PROVIDER RECORDS

#### NEW SECTION

#### **WAC 388-829A-170 What information must alternative living providers keep in their records?**

ing providers must keep the following information in their records:

- (1) Client information:
  - (a) The client's name, address, and telephone number;
  - (b) The name, address, and telephone number of the client's legal representative, health care provider and any of the client's relatives that the client chooses to include;
  - (c) A copy of the client's most recent ISP;
  - (d) Copies of any positive behavior support plan or cross systems crisis plan, if applicable; and
  - (e) A copy of the current plan for alternative living services.
- (2) Provider Information:
  - (a) Provider training records (see WAC 388-829A-140 through WAC 388-829A-160);
  - (b) All written reports submitted to DDD (see WAC 388-829A-180);
  - (c) Copies of the department approved service verification records, as specified in the provider's alternative living contract;
  - (d) Signed DDD policy on residential reporting requirements as specified in the alternative living contract; and
  - (e) Payment records.

#### NEW SECTION

#### **WAC 388-829A-180 What written reports must be submitted to DDD?**

The alternative living provider must submit the following written reports to DDD:

- (1) Reports on unusual incidents and emergencies as specified in the alternative living contract; and
- (2) Quarterly reports providing information about the type and extent of services performed as identified in the ISP.
  - (a) The information in the reports must reflect the reporting period.
  - (b) These reports must be submitted at least quarterly or more often as required by the ISP and alternative living plan; and
  - (3) Service verification records at least quarterly or more often if required by DDD.

#### NEW SECTION

#### **WAC 388-829A-190 What are the requirements for entries in the client record maintained by the alternative living provider?**

(1) When making entries to the client record, the alternative living provider must:

- (a) Note all record entries in ink or electronically;
  - (b) Make entries at the time of or immediately following the occurrence of the event recorded;
  - (c) Make entries in legible writing; and
  - (d) Sign and date entries in ink.
- (2) If a provider makes a mistake on the record, they must keep both the original and corrected entries.

#### NEW SECTION

#### **WAC 388-829A-200 How long must an alternative living provider keep client records?**

An alternative living provider must keep a client's records for a period of six years.

NEW SECTION

**WAC 388-829A-210 Are clients' records considered confidential?** Alternative living providers must consider all client record information privileged and confidential.

(1) Any transfer or inspection of records, to anyone but DDD, must be authorized by a release of information form that:

- (a) Specifically gives information about the transfer or inspection; and
  - (b) Is signed by the client or legal representative.
- (2) A signed release of information is valid for up to one year and must be renewed annually from the signature date.

**ABUSE AND NEGLECT**NEW SECTION

**WAC 388-829A-220 Are alternative living providers mandatory reporters?** (1) Alternative living providers are mandatory reporters. They must report instances of suspected abandonment, abuse, neglect, or financial exploitation of vulnerable adults as defined in chapter 74.34 RCW.

(2) Each alternative living provider must comply with DDD residential reporting requirements as specified in their alternative living contract.

(3) Providers must retain a signed copy of the DDD policy on residential reporting requirements specified in the alternative living contract and submit a signed copy of the policy to DDD.

NEW SECTION

**WAC 388-829A-230 How must alternative living providers report abuse and neglect?** Alternative living providers must immediately report suspected abandonment, abuse, neglect or financial exploitation of vulnerable adults to:

- (1) Adult protective services using the DSHS toll free telephone number, provided by the department. 1-866-END-HARM or 1-866-363-4276.
- (2) DDD in compliance with the DDD residential reporting requirements specified in their alternative living contract; and
- (3) Law enforcement agencies, as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

**EMERGENCY PLANNING**NEW SECTION

**WAC 388-829A-240 What must alternative living providers do in an emergency?** In an emergency, the alternative living provider must:

- (1) Immediately call 911, in a life threatening emergency;
- (2) Provide emergency services, then notify:
  - (a) The client's legal representative; and
  - (b) The division of developmental disabilities.

(3) Submit a written report to DDD, as required by DDD residential reporting requirements specified in the alternative living contract.

**INDIVIDUAL SUPPORT PLAN**NEW SECTION

**WAC 388-829A-250 What is an individual support plan (ISP)?** (1) The individual support plan (ISP) is the primary tool DDD uses to:

- (a) Determine and document the client's needs; and
  - (b) Identify the services to meet those needs.
- (2) The existing plan of care (POC) for the client remains in effect until a new ISP is developed.
- (3) The ISP must include (see chapter 388-828 WAC):
- (a) The client's identified health and welfare needs;
  - (b) Both paid and unpaid services approved to meet the identified health and welfare needs;
  - (c) How often the client will receive each service;
  - (d) How long the client will need each service; and
  - (e) Who will provide each service.

**TRANSPORTATION**NEW SECTION

**WAC 388-829A-260 Are alternative living providers responsible to transport a client?** Alternative living providers may provide transportation if specified in the client's ISP.

NEW SECTION

**WAC 388-829A-270 What requirements must be met before an alternative living provider transports a client?** Before transporting a client, alternative living providers must:

- (1) Carry auto insurance as required by chapters 46.29 and 46.30 RCW; and
- (2) Have a valid driver's license as required by chapter 46.20 RCW.

**OVERSIGHT AND MONITORING OF ALTERNATIVE LIVING SERVICES**NEW SECTION

**WAC 388-829A-280 How will DDD monitor alternative living services?** (1) DDD must use the following monitoring process to oversee alternative living services and providers:

- (a) Conduct an in-home visit every twelve months;
  - (b) Review all written reports from the provider for compliance with the instruction and support goals specified in the client's ISP; and
  - (c) Initial and file all written reports submitted by the provider and document in the service episode record.
- (2) DDD must conduct an annual evaluation of the alternative living program with a sample of alternative living providers and clients who receive services. If the evaluation

indicates concerns, a corrective action plan will be developed. The corrective action plan will:

- (a) Outline methods for the provider to comply with the requirements; and
  - (b) Provide a time-frame for completion of the corrective actions.
- (3) DDD may stop the authorization for payment or terminate the contract if the corrective actions are not completed with the specified timeline.

### **TERMINATION AND DENIAL OF AN ALTERNATIVE LIVING CONTRACT**

#### NEW SECTION

**WAC 388-829A-290 When may DDD not authorize payment or terminate a contract for alternative living services?** DDD may not authorize payment or may terminate a contract for the services of an alternative living provider, when that provider:

- (1) Is no longer the client's choice of provider.
- (2) Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. DDD may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy.
- (3) Is unable to clear a background check required by RCW 43.20A.710.
- (4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830.
- (5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW.
- (6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations.
- (7) Does not successfully complete the training requirements within the time limits required in this chapter.
- (8) Does not complete the corrective action within the agreed upon time frame.
- (9) Fails to comply with the requirements of this chapter, or the DDD alternative living contract.

#### NEW SECTION

**WAC 388-829A-300 When must DDD deny the client's choice of an alternative living provider?** DDD must deny a client's request to have a certain provider and must not enter into a contract with the person when any of the following exist:

- (1) The person is the client's spouse, under 42 CFR 441.360(g).
- (2) The person is the client's natural/step/adoptive parent.
- (3) The person is the client's court-appointed legal representative.
- (4) DDD has a reasonable, good faith belief that the provider will be unable to meet the client's needs. Examples of a provider's inability to meet the client's needs may include:

- (a) Evidence of alcohol or drug abuse;
- (b) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 and 43.43.842);
- (c) A report from the client's health care provider or another knowledgeable person that the requested provider lacks the ability or willingness to provide adequate support;
- (d) Other employment or responsibilities that prevent or interfere with the provision of required services;
- (e) A reported history of mismanagement of client funds or DSHS contract violations; or
- (f) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's ISP.

#### NEW SECTION

**WAC 388-829A-310 What if the alternative living provider no longer wants to provide services to a client?** When an alternative living provider no longer wants to provide services to a client, the provider must:

- (1) Give at least two weeks notice to:
  - (a) The client;
  - (b) The client's legal representative; and
  - (c) DDD.
- (2) If an emergency occurs and services must be terminated immediately, the provider must give immediate notice to DDD, the client and the client's representative.

### **APPEAL RIGHTS**

#### NEW SECTION

**WAC 388-829A-320 What are the client's rights if DDD denies, or terminates an alternative living services contract?** If DDD denies, or terminates an alternative living services contract, the client has the right to an administrative hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120.

#### NEW SECTION

**WAC 388-829A-330 Does the provider of alternative living services have a right to an administrative hearing?** The alternative living provider does not have a right to an administrative hearing.

### **WSR 07-16-102**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed July 31, 2007, 9:14 a.m., effective September 1, 2007]

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This rule is being adopted as chapter 388-829C WAC and has been separated from the rules for alternative living services which will be adopted under chapter 388-829A WAC. These changes will make finding companion home residential services rules easier for the user.

Reasons support proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 07-11-132 on May 22, 2007.

A final cost-benefit analysis is available by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@dshs.wa.gov.

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Date Adopted: July 31, 2007.

Robin Arnold-Williams  
Secretary

## Chapter 388-829C WAC

### Companion Homes

#### PURPOSE

#### NEW SECTION

**WAC 388-829C-005 What is the purpose of this chapter?** This chapter establishes rules governing the division of developmental disabilities (DDD) companion home residential services program per chapter 71A.12 RCW for eligible clients of the division.

#### DEFINITIONS

#### NEW SECTION

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"Power and Choice" means clients experiencing power, control and ownership of personal affairs. Expression of per-

sonal power and choice are essential elements in the lives of people. Such expressions help people gain autonomy, become self-governing and pursue their own interests and goals.

"Registered Nurse Delegation" means the process by which a registered nurse transfers the performance of selected nursing tasks to a registered or certified nursing assistant in selected situations. (For detailed information, please refer to chapter 18.79 RCW and WAC 388-840-910 through 388-840-970.)

"Regulation" means any federal, state, or local law, rule, ordinance or policy.

"Respite" means care that is intended to provide short-term intermittent relief for persons providing care for Companion Home clients.

"RCW" means the Revised Code of Washington, which contains all laws governing the state of Washington.

"Service Episode Record" or "SER" means documentation by DDD of all client related contacts including contacts during the assessment, service plan, coordination and monitoring of care and termination of services.

"Unusual Incidents" means a change in circumstances or events that concern a client's safety or well being. Examples include, an increased frequency, intensity, or duration of any medical conditions, adverse reactions to medication, hospitalization, death, severe behavioral incidents, severe injury, running away, physical or verbal abuse to themselves or others.

"WAC" means the Washington Administrative Code, which contains the rules for administering the state laws (RCW).

## COMPANION HOME SERVICES

### NEW SECTION

**WAC 388-829C-020 What are companion home residential services?** (1) A companion home is a DDD residential service offered in the provider's home to no more than one client.

(2) Companion home residential services provide twenty-four hour instruction and support services.

(3) Companion home residential services are based on the client's ISP.

(4) Companion home residential services are provided by an independent contractor.

### NEW SECTION

**WAC 388-829C-030 Who may receive companion home residential services?** Clients who may receive companion home residential services must:

(1) Be at least eighteen years old;  
(2) Have an assessed need for companion home services;  
and

(3) Meet one of the following conditions:  
(a) Be authorized by DDD to receive companion home residential services, as outlined in this chapter; or  
(b) Have a written agreement with the provider to purchase companion home residential services using the client's own personal financial resources.

### NEW SECTION

**WAC 388-829C-040 Who is eligible to contract with DDD to provide companion home residential services?** To be eligible to contract with DDD to provide companion home residential services, a person must:

- (1) Be twenty-one years of age or older;
- (2) Have a high school diploma or GED;
- (3) Clear a background check conducted by DSHS as required by RCW 43.20A.710;
- (4) Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;
- (5) Have a business ID number, as an independent contractor; and
- (6) Meet the minimum skills and abilities described in WAC 388-829C-080.

### NEW SECTION

**WAC 388-829C-050 Who may not provide companion home residential services?** DDD may not contract with any of the following to provide companion home residential services:

- (1) The client's spouse.
- (2) The client's natural, step, or adoptive parents.
- (3) The client's court-appointed legal representative.
- (4) Any person providing department paid services to any other DSHS client.

### NEW SECTION

**WAC 388-829C-060 Where are companion home residential services provided?** (1) Companion home residential services are offered to clients living in the provider's home.

(2) The provider's home must be approved by DDD, to assure client health, safety, and well-being consistent with the requirements in this chapter.

## PROVIDER QUALIFICATIONS AND RESPONSIBILITIES

### NEW SECTION

**WAC 388-829C-070 Who must have a background check in the companion home?** (1) All individuals living in the household, except the client, must have a current DSHS background check if they:

- (a) Are at least sixteen years old; and
  - (b) Reside in the companion home.
- (2) Household residents who have not lived in Washington continuously for the previous three years must also have an FBI fingerprint-based background check as required by RCW 43.20A.710.
- (3) Background checks must be completed every two years or more frequently when requested by the department.

NEW SECTION

**WAC 388-829C-080 What minimum skills and abilities must companion home providers demonstrate?** Companion Home providers must:

- (1) Be able to read, understand, and provide services outlined in the ISP;
- (2) Participate in the development of the ISP;
- (3) Communicate in the language of the client served;
- (4) Accommodate the client's individual preferences;
- (5) Know the community resources, such as: medical facilities, emergency resources, and recreational opportunities;
- (6) Enable the client to keep in touch with family and friends in a way preferred by the client;
- (7) Protect the client's financial interests;
- (8) Fulfill reporting requirements as required in this chapter and the companion home contract;
- (9) Know how and when to contact the client's representative and the client's case manager;
- (10) Successfully complete the training required in this chapter;
- (11) Maintain all necessary license, registration and certification required under this chapter, (see WAC 388-829C-110, 388-829C-130, 388-829C-190, and 388-829C-260); and
- (12) Comply with all applicable laws, regulations and contract requirements.

NEW SECTION

**WAC 388-829C-090 What values must companion home providers focus on when implementing the ISP?** The companion home provider must focus on the following values when implementing the individual support plan (ISP):

- (1) Health and safety;
- (2) Personal power and choice;
- (3) Competence and self-reliance;
- (4) Positive recognition by self and others;
- (5) Positive relationships; and
- (6) Integration in the physical and social life of the community.

NEW SECTION

**WAC 388-829C-100 What rights do clients of DDD have?** Clients of DDD have:

- (1) The same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution and federal and state law;
- (2) The right to be free from discrimination because of race, color, national origin, gender, age, religion, creed, marital status, disabled or veteran status, use of a trained service animal or the presence of any physical, mental or sensory handicap;
- (3) The right to treatment and habilitation services to foster developmental potential and protect personal liberty in the least restrictive environment;
- (4) The right to dignity, privacy, and humane care;
- (5) The right to participate in an appropriate program of publicly supported education;
- (6) The right to prompt medical care and treatment;

(7) The right to social interaction and participation in community activities;

(8) The right to physical exercise and recreational opportunities;

(9) The right to work and be paid for the work one does;

(10) The right to be free from harm, including unnecessary physical restraint, isolation, excessive medication, abuse, neglect, or financial exploitation;

(11) The right to be free from hazardous or experimental procedures;

(12) The right to freedom of expression and to make decisions about one's life;

(13) The right to complain, disagree with, and appeal decisions made by the provider or DDD; and

(14) The right to be informed of these rights in a language that he or she understands.

**PROVIDER TRAINING**NEW SECTION

**WAC 388-829C-110 What training must a person have before becoming a contracted companion home provider?** Before DDD may issue a companion home contract, the prospective provider must:

- (1) Obtain CPR and first aid certification;
- (2) Successfully complete Blood-Borne Pathogens training with HIV/AIDS information; and
- (3) Receive contract orientation and client specific training from DDD.

NEW SECTION

**WAC 388-829C-120 What training must a companion home provider complete within the first ninety days of serving the client?** The companion home provider must successfully complete the DDD specialty training within the first ninety days of serving the client. (See WAC 388-112-0120.)

NEW SECTION

**WAC 388-829C-130 What training must a companion home provider complete after the first year of service?** After the first year of service, the companion home provider must:

- (1) Maintain current CPR and First Aid Certification;
- (2) Receive Blood Borne Pathogens training with HIV/AIDS information at least annually and within one year of the previous training; and
- (3) Complete at least ten hours of continuing education each calendar year after the calendar year in which they successfully complete DDD approved specialty training.
  - (a) The continuing education must be on topics that will directly benefit the client being served.
  - (b) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education.
- (4) Documentation of training attendance must be kept in the provider's files and submitted to DDD upon completion of the training.

**ABUSE AND NEGLECT REPORTING**

NEW SECTION

**WAC 388-829C-140 Are companion home providers mandatory reporters?** (1) Companion home providers are mandatory reporters. They must report all instances of suspected abandonment, abuse, financial exploitation or neglect of vulnerable adults as defined in chapter 74.34 RCW.

(2) Companion home providers must comply with DDD's residential reporting requirements specified in the companion home contract.

(3) Providers must retain a signed copy of the DDD policy on residential reporting requirements specified in the companion home contract and submit a signed copy of the policy to DDD.

NEW SECTION

**WAC 388-829C-150 How must companion home providers report abuse and neglect?** Companion home providers must immediately report suspected abandonment, abuse, financial exploitation or neglect of vulnerable adults to:

(1) Adult protective services using the DSHS toll free telephone number, provided by the department. 1-866-END-HARM or 1-866-363-4276;

(2) DDD in compliance with the DDD residential reporting requirements as specified in the companion home contract; and

(3) Law enforcement agencies, as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

**HEALTH CARE AND MEDICATIONS**

NEW SECTION

**WAC 388-829C-160 What health care assistance must a companion home provide a client?** The companion home provider must provide the client necessary health care assistance by:

(1) Arranging appointments and accessing health, mental health, and dental services;

(2) Ensuring the client receives an annual physical and dental examination, unless the physician or dentist gives a written exemption. For client refusal of services, see WAC 388-829C-310;

(3) Observing the client for changes(s) in health, taking appropriate action and responding to emergencies;

(4) Managing medication assistance per chapter 246-888 WAC and administration per WAC 246-840-910 to 970 and per the DDD residential medication management requirements specified in the companion home contract;

(5) Maintaining health records (see WAC 388-829C-280);

(6) Assisting client with any medical treatment prescribed by health professionals that does not require registered nurse delegation or professionally licensed services;

(7) Communicating directly with health professionals when needed; and

(8) Providing a balanced, nutritional diet.

NEW SECTION

**WAC 388-829C-170 How may a companion home provider assist a client with medications?** (1) A companion home provider may provide medication assistance per chapter 246-888 WAC, if the client:

(a) Is able to put the medication into his or her mouth or apply or instill the medication; and

(b) Is aware that they are receiving medication.

(2) Some tasks that may be provided under the Medication Assistance, chapter 246-888 WAC, are listed in the following chart. Medication assistance may only be provided if the client meets both criteria in (a) and (b) of this section.

Medication Assistance Task	May a companion home provider complete this task if the client meets both criteria in (a) and (b) of this section?
Remind or coach the client to take their medication.	Yes
Open the medication container.	Yes
Hand client the medication container.	Yes
Place medication in the client's hand;	Yes
Transfer medication from a container to another for the purpose of an individual dose (e.g., pouring liquid medication from a container to a calibrated spoon, medication cup or adaptive device).	Yes
Alter a medication by crushing, mixing, etc.	Yes, if the client is aware that the medication is being altered or added to food or beverage. A pharmacist or other qualified practitioner must determine it is safe to alter a medication and this must be documented on the prescription container or in the client's record.
Handing the client a pre-filled insulin syringe.	Yes, but the client must be able to inject the insulin by him or herself.
Guide or assist client to apply or instill skin, nose, eye and ear preparations.	Yes, but hand-over-hand administration is not allowed.
Assistance with injectable or IV medications.	No, this is not allowed.

Medication Assistance Task	May a companion home provider complete this task if the client meets both criteria in (a) and (b) of this section?
Hand-over-hand assistance with medication.	No, may only be done under registered nurse delegation.
Assistance with medication beyond the examples provided above.	No, may only be done under registered nurse delegation.

NEW SECTION

**WAC 388-829C-180 What is required for a companion home provider to administer medications and provide delegated nursing tasks?** Companion home providers must meet the following requirements before administering medications and providing nursing tasks for their clients. The companion home provider must either:

- (1) Be a registered nurse (RN) or licensed practical nurse (LPN); or
- (2) Be delegated to perform nursing care tasks by a registered nurse as described in WAC 388-829C-190.

NEW SECTION

**WAC 388-829C-190 What is required for a companion home provider to perform nursing tasks under the registered nurse delegation program?** In order to be delegated to perform nursing tasks, a companion home provider must:

- (1) Verify with the delegating registered nurse that they have complied with chapter 18.79 RCW and 18.88 RCW and WAC 246-840-910 through 246-840-990 by presenting:
  - (a) A current NA-R or NA-C registration without restriction;
  - (b) Certification showing completion of the "Nurse Delegation for Nursing Assistants" class; and
  - (c) Certification showing completion of "Fundamentals of Caregiving" if the Companion Home provider is an NA-R.
- (2) Receive client-specific training from the delegating registered nurse; and
- (3) Renew nursing assistant registration/certification annually.

NEW SECTION

**WAC 388-829C-200 When must a companion home provider become delegated to perform nursing tasks?** (1) If a client needs registered nurse delegation, the companion home provider must comply with the requirements necessary to perform delegated nursing tasks before offering services to the client. (Note: A companion home provider may not offer support to a client whose needs they are unable to meet.)

- (2) If the companion home provider is not eligible to perform nursing tasks, the task must be provided by a person legally authorized to do so such as an RN or LPN.

- (3) The companion home provider must become eligible to perform nursing tasks within thirty days of the client being assessed to need medication administration.

NEW SECTION

**WAC 388-829C-210 What records must the companion home provider keep regarding registered nurse delegation?** (1) The companion home provider must keep the following records when participating in registered nurse delegation:

- (a) Written instructions for performing the delegated task from the delegating RN;
  - (b) The most recent six months of documentation showing that the task was performed; and
  - (c) Validation of their current nursing assistant registration or certification.
- (2) These records must be kept in the companion home and be accessible to the delegating nurse at all times.

**INDIVIDUAL SUPPORT PLAN**NEW SECTION

**WAC 388-829C-220 What is an individual support plan (ISP)?** (1) The individual support plan (ISP) is the primary tool DDD uses to:

- (a) Determine and document the client's needs; and
  - (b) Identify the services to meet those needs.
- (2) The existing plan of care (POC) for the client remains in effect until a new ISP is developed.
- (3) The ISP must include (see chapter 388-828 WAC):
- (a) The client's identified health and welfare needs;
  - (b) Both paid and unpaid services approved to meet the identified health and welfare needs;
  - (c) How often the client will receive each service;
  - (d) How long the client will need each service; and
  - (e) Who will provide each service.

**RESPIRE**NEW SECTION

**WAC 388-829C-230 Are companion home clients eligible to receive respite?** Companion home clients are eligible to receive respite care to provide intermittent relief to the companion home provider. The level of respite available to the companion home must be identified in the companion home contract.

NEW SECTION

**WAC 388-829C-240 Where may respite care be provided?** Respite care may be provided in the following location(s):

- (1) The companion home where the client resides;
- (2) Other places as designated in WAC 388-845-1610.

## TRANSPORTATION

### NEW SECTION

**WAC 388-829C-250 Are companion home providers responsible to transport a client?** The companion home provider must ensure that all of the client's transportation needs are met, as identified in the client's ISP.

### NEW SECTION

**WAC 388-829C-260 What requirements must be met before a companion home provider transports a client?** Before transporting a client, companion home providers must:

- (1) Carry automobile insurance per chapters 46.29 and 46.30 RCW; and
- (2) Have a valid driver's license per chapter 46.20 RCW.

## MANAGEMENT OF CLIENT FUNDS

### NEW SECTION

**WAC 388-829C-270 May a companion home provider manage a client's funds?** A companion home provider may manage, disperse, and limit access to a client's funds if:

- (1) There is written consent from the client, when the client has no court appointed legal representative; or
- (2) There is written consent from the client's court appointed legal representative for making financial decisions for the client; or
- (3) The companion home provider is the designated payee for the client's earned and unearned income.

### NEW SECTION

**WAC 388-829C-280 What are the companion home provider's responsibilities when managing client funds?** When managing the client's funds, the companion home provider must:

- (1) Keep the client's accounts current by maintaining a running balance;
- (2) Reconcile the client's accounts, including cash accounts, on a monthly basis;
- (3) Prevent the client's account from becoming overdrawn;
- (4) Keep receipts for purchases over twenty-five dollars;
- (5) Assist the client with any checks, if applicable;
- (6) Protect the client's financial interests; and
- (7) Ensure that the client is informed regarding how his or her money is being spent and that the client participates to the maximum extent possible in the decision making regarding his or her funds, consistent with responsible management of funds.

### NEW SECTION

**WAC 388-829C-290 What happens if a companion home provider mismanages a client's funds?** (1) The companion home provider must reimburse the client, when responsible for mismanagement of client funds. The reim-

bursement includes any fees incurred as a result of the mismanagement, such as fees due to late payments.

(2) DDD may terminate the companion home contract if the provider has mismanaged client funds.

(3) Suspected exploitation of client finances must be reported to law enforcement and adult protective services.

### NEW SECTION

**WAC 388-829C-300 What documents must companion home providers keep to protect a client's financial interests?** To protect the client's financial interests, companion home providers must keep documents for the funds they manage for clients.

- (1) All accounts must include the following documents:
  - (a) Monthly bank statements and reconciliations initialed by the provider;
  - (b) Checkbook registers and bankbooks;
  - (c) Deposit receipts; and
  - (d) Receipts for purchases over twenty-five dollars.
- (2) If the companion home provider manages the client's funds or is the payee, they must notify DDD when they are aware that the client's funds reach one-thousand seven hundred dollars.

### NEW SECTION

**WAC 388-829C-310 Must clients pay for room and board in the companion home?** (1) Clients who receive companion home residential services must pay monthly room and board directly to the companion home provider from their personal financial resources.

(2) The monthly room and board the client pays to the provider is specified in a room and board agreement and includes rent, utilities, and food.

- (3) The room and board agreement must be:
  - (a) Developed by the client and the provider before the client moves into the companion home;
  - (b) Signed by the client, the client's legal representative and the provider; and
  - (c) Submitted to DDD for approval.
- (4) Changes to the room and board agreement must be submitted to DDD for approval.

## SAFETY

### NEW SECTION

**WAC 388-829C-320 What physical and safety requirements exist for companion homes?** (1) Companion Home providers must ensure that the following physical and safety requirements are met for the client:

- (a) A safe and healthy environment;
- (b) A separate bedroom;
- (c) Accessible telephone equipment with local 911 access;
- (d) A list of emergency contact numbers accessible to the client;
- (e) An evacuation plan developed, posted, and practiced monthly with the client;

- (f) An entrance and/or exit that does not rely solely upon windows, ladders, folding stairs, or trap doors;
- (g) A safe storage area for flammable and combustible materials;
- (h) Unblocked exits;
- (i) Working smoke detectors which are located close to the client's room and meet the specific needs of the client;
- (j) A flashlight or other non electrical light source in working condition;
- (k) Fire extinguisher meeting the fire department standards; and
- (l) Basic first-aid supplies.
- (2) The companion home must be accessible to meet the client's needs.

#### NEW SECTION

**WAC 388-829C-330 How must companion home providers regulate the water temperature at their residence?** Companion home providers must regulate the water temperature at their residence.

- (1) The water temperature in the household must be kept between 105 degrees and 120 degrees Fahrenheit.
- (2) The provider must check the water temperature when the client first moves into the household and at least every six months from then on. (Note: The water temperature is best measured two hours after substantial hot water usage.)
- (3) The companion home provider must document compliance with this requirement.

#### **PROVIDER RECORDS**

#### NEW SECTION

**WAC 388-829C-340 What information must companion home providers keep in their records?** Companion home providers must keep the following information in their records:

- (1) Client information:
  - (a) The client's name, address, and social security number;
  - (b) The name, address, and telephone number of the client's legal representative and any of the client's relatives that the client chooses to include;
  - (c) Client health records, including:
    - (i) The name, address, and telephone number of the client's physician, dentist, mental health service provider, and any other health care service provider;
    - (ii) Instructions from health care service providers about necessary health care, including appointment dates;
    - (iii) Written documentation that the instructions from health care service providers have been followed;
    - (iv) Medication, health, and surgery records; and
    - (v) A record of known surgeries and major health events;
    - (d) Copies of legal guardianship papers;
    - (e) A copy of the client's most recent ISP;
    - (f) Copies of any positive behavior support plan or cross systems crisis plan, if applicable;
    - (g) Financial records, if managing client funds (see WAC 388-829C-300);
    - (h) Client property records (see WAC 388-829C-380);

- (i) Signed release of information forms; and
- (j) Burial plans and wills.
- (2) Provider information:
  - (a) Water temperature monitoring records (see WAC 388-829C-330);
  - (b) Provider training records (see WAC 388-829C-110 through 388-829C-130);
  - (c) Evacuation plan and practice records;
  - (d) Emergency response plan (see WAC 388-829C-410);
  - (e) All written reports submitted to DDD (see WAC 388-829C-350);
  - (f) Signed DDD policy on residential reporting requirements (see WAC 388-829C-140);
  - (g) Nurse delegation records (see WAC 388-829C-210); and
  - (h) Payment records.

#### NEW SECTION

**WAC 388-829C-350 What written reports must be submitted to DDD?** The companion home provider must submit the following written reports to DDD:

- (a) Reports that describe the instruction and support activities performed as identified in the ISP. These reports must be submitted every six months or more frequently upon request of DDD.
- (b) Reports on unusual incidents and emergencies as required in the DDD residential reporting requirements specified in the companion home contract.
- (c) Reports on client refusal of services as described in this chapter (WAC 388-829C-370).

#### NEW SECTION

**WAC 388-829C-360 What are the requirements for record entries?** (1) The companion home provider must

- (a) Note all record entries in ink or electronically;
- (b) Make entries at the time of or immediately following the occurrence of the event recorded;
- (c) Make entries in legible writing; and
- (d) Initial and date entries in ink.
- (2) If a provider makes a mistake on the record, the provider must show both the original and corrected entries.

#### NEW SECTION

**WAC 388-829C-370 Must a companion home provider document a client's refusal to participate in services?** (1) A companion home provider must document a client's refusal to participate in:

- (a) Physical and safety requirements as outlined in WAC 388-829C-320; and
- (b) Health services as outlined in WAC 388-829C-160.
- (2) When a client refuses to participate in these services, companion home providers must:
  - (a) Record a description of events relating to the client's refusal to participate in these services;
  - (b) Inform the client of the benefits of these services; and
  - (c) Provide the client or the client's legal representative and DDD with:

(i) A description of the service provider's efforts to give the services to the client; and

(ii) Any health or safety concerns that the refusal may pose.

(3) Companion home providers must submit this information to DDD in a written report as soon as possible following the client's refusal.

#### NEW SECTION

**WAC 388-829C-380 Must companion home providers keep client's property records?** The companion home provider must assist clients in maintaining current, written property records. The record must include:

(1) A list of items including a description, and serial numbers of items that are valued at seventy-five dollars or over; and were owned by the client when moving into the program.

(2) A list of items including a description, date of purchase and cost of items that are valued at seventy-five dollars or over and have been acquired by the client while living with the companion home provider.

(3) The record must contain dates and reasons for all items removed from the client's property record.

#### NEW SECTION

**WAC 388-829C-390 Are clients' records considered confidential?** The companion home provider must consider all client record information privileged and confidential.

(1) Any transfer or inspection of records, to parties other than DSHS, must be authorized by a release of information form that:

(a) Specifically gives information about the transfer or inspection; and

(b) Is signed by the client or the client's legal representative.

(2) A signed release of information is valid for up to one year and must be renewed annually from the signature date.

#### NEW SECTION

**WAC 388-829C-400 How long must a companion home provider keep client records?** A companion home provider must keep a client's records for a period of six years.

### EMERGENCY PLANNING

#### NEW SECTION

**WAC 388-829C-410 What must companion home providers do when emergencies occur?** (1) The companion home provider must develop an emergency response plan to address natural and other disasters and practice it with the client.

(2) In an emergency, the companion home provider must:

(a) Immediately call 911, in a life threatening emergency;

(b) Provide emergency services, then notify:

(i) The client's legal representative; and

(ii) The division of developmental disabilities.

(c) Submit a written report to DDD, as required by the DDD residential reporting requirements specified in the companion home contract.

### EVALUATION OF COMPANION HOMES

#### NEW SECTION

**WAC 388-829C-420 How must DDD monitor and provide oversight for companion home services?** DDD must provide oversight and monitoring of the companion home provider through an annual review and evaluation, to ensure that the client's needs are being met. The evaluation will be conducted in the home where the client and provider live.

#### NEW SECTION

**WAC 388-829C-430 How often must the companion home be evaluated?** (1) An initial evaluation must be completed with the first ninety days after the companion home provider begins serving the client.

(2) Following the initial evaluation, the companion home provider must be evaluated at least every twelve months.

(3) DDD may conduct additional reviews at its discretion.

#### NEW SECTION

**WAC 388-829C-440 How must the companion home provider participate in the evaluation process?** The companion home provider must participate in the evaluation process by:

(1) Allowing scheduled and unscheduled home visits by DDD staff and the DDD contracted evaluators;

(2) Providing information and documentation as requested by the DDD and the DDD contracted evaluators; and

(3) Cooperating in setting up appointments with DDD and the DDD contracted evaluators.

#### NEW SECTION

**WAC 388-829C-445 What occurs during the review and evaluation process?** During the review and evaluation process, DDD contracted evaluators will review compliance with this chapter, and the DDD companion home contract.

#### NEW SECTION

**WAC 388-829C-450 What happens if the companion home provider is found to be out of compliance?** If an evaluation finds the companion home provider out of compliance with any part of this chapter or the DDD contract, the provider and DDD must develop a corrective action plan.

(1) The corrective action plan must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time-frame for the provider to complete the corrective actions.

## TERMINATION AND DENIAL OF A COMPANION HOME CONTRACT

### NEW SECTION

**WAC 388-829C-460 When may DDD stop the authorization for payment or terminate a contract for companion home services?** DDD may stop the authorization for payment or terminate a contract for the services of a companion home provider, when that provider:

- (1) Is no longer the client's choice of provider.
- (2) Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. DDD may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy.
- (3) Is unable to clear a background check or other individuals living in the companion home are unable to clear a background check required by RCW 43.20A.710.
- (4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830.
- (5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW.
- (6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations.
- (7) Does not successfully complete the training requirements within the time limits required in this chapter.
- (8) Does not complete the corrective actions within the agreed upon time frame.
- (9) Fails to comply with the requirements of this chapter or the companion home contract.

### NEW SECTION

**WAC 388-829C-470 When may DDD deny the client's choice of a companion home provider?** DDD must deny a client's request to have a certain provider and must not enter into a contract with the person when any of the following exist:

- (1) The person is the client's spouse, under 42 C.F.R. 441.360(g).
- (2) The person is the client's natural/step/adoptive parent.
- (3) The person is the client's court-appointed legal representative, unless the provider was contracted and paid to provide companion home services before February 2005.
- (4) DDD has a reasonable, good faith belief that the provider will be unable to meet the client's needs. Examples of a provider's inability to meet the client's needs may include:
  - (a) Evidence of alcohol or drug abuse;
  - (b) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 and 43.43.842);
  - (c) A report from the client's health care provider or another knowledgeable person that the requested provider lacks the ability or willingness to provide adequate support;

(d) Other employment or responsibilities that prevent or interfere with the provision of required services; or

(e) A reported history of mismanagement of client funds or DSHS contract violations.

### NEW SECTION

**WAC 388-829C-480 What if the companion home provider no longer wants to provide services to a client?**

(1) When a companion home provider no longer wants to provide services to a client, they must:

(a) Give at least thirty days written notice to:

- (i) The client;
- (ii) The client's legal representative; and
- (iii) DDD.

(2) If an emergency occurs and services must be terminated immediately, the provider must give immediate notice to DDD, the client, and the client's representative.

(3) The companion home provider will be expected to continue working for thirty days unless otherwise determined by DDD.

## APPEAL RIGHTS

### NEW SECTION

**WAC 388-829C-490 What are the client's appeal rights if DDD denies, or terminates a companion home services contract?** If DDD denies, or terminates a companion home services contract, the client has the right to an administrative hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120.

### NEW SECTION

**WAC 388-829C-500 Does the provider of companion home services have a right to an administrative hearing?** The provider of companion home services does not have a right to an administrative hearing.

## WSR 07-17-005

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 2, 2007, 1:59 p.m., effective September 2, 2007]

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

Purpose: The department is adopting new WAC 388-513-1367 Hardship waivers for long-term care (LTC) services, to explain the process of hardship waivers for long-term care services, including notice, time frames, and the process of appeal for adverse action.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Other Authority: Section 1917 (c)(2)(D) of the Social Security Act (42 U.S.C. 1396p (c)(2)(D)); Section 6011(d) of the federal Deficit Reduction Act of 2005.

Adopted under notice filed as WSR 07-13-099 on June 20, 2007.

Changes Other than Editing from Proposed to Adopted Version: Amended WAC 388-513-1367 (3)(a)(v): With the consent of the client or their guardian, a medical facility institution, as defined in WAC 388-500-0005, in which an institutionalized client resides.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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 1, Amended 0, Repealed 0.

Date Adopted: July 31, 2007.

Stephanie E. Schiller  
Rules Coordinator

#### NEW SECTION

**WAC 388-513-1367 Hardship waivers for long-term care (LTC) services.** Clients who are denied or terminated from LTC services due to a transfer of asset penalty (described in WAC 388-513-1363, 388-513-1364 and 388-513-1365), or having excess home equity (described in WAC 388-513-1350) may apply for an undue hardship waiver. Notice of the right to apply for an undue hardship waiver will be given whenever there is a denial or termination based on an asset transfer or excess home equity. This section:

- Defines undue hardship;
- Specifies the approval criteria for an undue hardship request;
- Establishes the process the department follows for determining undue hardship; and
- Establishes the appeal process for a client whose request for an undue hardship is denied.

(1) When does undue hardship exist?

(a) Undue hardship may exist:

(i) When a client who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian or attorney-in-fact, has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period; and

(ii) The client provides sufficient documentation to support their efforts to recover the assets or income; or

(iii) The client is unable to access home equity in excess of five hundred thousand dollars due to a lien or legal impediment; and

(iv) When, without LTC benefits, the client is unable to obtain:

(A) Medical care to the extent that his or her health or life is endangered; or

(B) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.

(2) Undue hardship does not exist:

(a) When the transfer of asset penalty period or excess home equity provision inconveniences a client or restricts their lifestyle but does not seriously deprive him or her as defined in subsection (1)(a)(iii) of this section;

(b) When the resource is transferred to a person who is handling the financial affairs of the client; or

(c) When the resource is transferred to another person by the individual that handles the financial affairs of the client.

(d) Undue hardship may exist under (b) and (c) if DSHS has found evidence of financial exploitation.

(3) How is an undue hardship waiver requested?

(a) An undue hardship waiver may be requested by:

(i) The client;

(ii) The client's spouse;

(iii) The client's authorized representative;

(iv) The client's power of attorney; or

(v) With the consent of the client or their guardian, a medical institution, as defined in WAC 388-500-0005, in which an institutionalized client resides.

(b) Request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address and telephone number. If the request is being made on behalf of a client, then the client's name, address and telephone number must be included;

(iv) Be made within thirty days of the date of denial or termination of LTC services; and

(v) Returned to the originating address on the denial/termination letter.

(4) What if additional information is needed to determine a hardship waiver?

(a) A written notice to the client is sent requesting additional information within fifteen days of the request for an undue hardship waiver. Additional time to provide the information can be requested by the client.

(5) What happens if my hardship waiver is approved?

(a) The department sends a notice within fifteen days of receiving all information needed to determine a hardship waiver. The approval notice specifies a time period the undue hardship waiver is approved.

(b) Any changes in a client's situation that led to the approval of a hardship must be reported to the department by the tenth of the month following the change per WAC 388-418-0007.

(6) What happens if my hardship waiver is denied?

(a) The department sends a denial notice within fifteen days of receiving the requested information. The letter will state the reason it was not approved.

(b) The denial notice will have instructions on how to request an administrative hearing. The department must

receive an administrative hearing request within ninety days of the date of the adverse action or denial.

(7) What statute or rules govern administrative hearings?

(a) An administrative hearing held under this section is governed by chapters 34.05 RCW and chapter 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

(8) Can the department revoke an approved undue hardship waiver?

(a) The department may revoke approval of an undue hardship waiver if any of the following occur:

(i) A client, or his or her authorized representative, fails to provide timely information and/or resource verifications as it applies to the hardship waiver when requested by the department per WAC 388-490-0005 and 388-418-0007;

(ii) The lien or legal impediment that restricted access to home equity in excess of five hundred thousand dollars is removed; or

(iii) Circumstances for which the undue hardship was approved have changed.

#### WSR 07-17-007

#### PERMANENT RULES

#### DEPARTMENT OF ECOLOGY

[Order 04-08—Filed August 2, 2007, 3:40 p.m., effective September 5, 2007]

Effective Date of Rule: September 5, 2007.

Purpose: The adoption of these rule amendments is needed to protect instream values within the Walla Walla River basin and to avoid injury of existing water rights from future appropriations of water. The amendment establishes instream flow water rights; modifies seasonal surface waters closures; closes the gravel aquifers, which are directly connected to surface waters; limits future withdrawals during high-flow periods to projects resulting in net environmental benefits; manages future permit-exempt groundwater withdrawals from the gravel aquifer in "high density" areas; and limits stockwatering based on parcel sizes. Outside of high density areas and in the basalt aquifer, permit-exempt wells are allowed in accordance with RCW 90.44.050.

Citation of Existing Rules Affected by this Order: Amending chapter 173-532 WAC.

Statutory Authority for Adoption: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW.

Adopted under notice filed as WSR 07-04-114 on February 7, 2007.

Changes Other than Editing from Proposed to Adopted Version: There are a number of changes from the proposed rule amendment published with the CR-102, and the rule amendment adopted and published with the CR-103. The changes were made in response to comments, as well as upon ecology's initiative. All changes made are for rule clarity to more precisely identify the rule amendment or requirement. The changes made do not change the substance or the intent of the rule as proposed.

**WAC 173-532-010 Authority and purpose.** No rule language changes were made.

**WAC 173-532-020 Definitions.** Language was added to the definitions of "consumptive use" and "nonconsumptive use" in order to clarify that if a use resulted in the diminishment of either "amount or quality of the water source," such use would be considered consumptive.

The definition of "domestic use" was modified to clarify that watering for gardens under RCW 90.44.050 is permissible only for "noncommercial" gardening. Clarification was made for consistency with the Court of Appeals Decision, *Kim v. Pollution Control Hearings Bd.*

The definition of "withdrawal" was modified for clarity and simplification. The words "for a beneficial use" were added for consistency with RCW 90.03.290, and the words "or use" were deleted for simplification. This change was also made in accordance to suggestions made in comments.

**WAC 173-532-025 Establishment of stream management units.** The stream management unit descriptions were changed for better accuracy. The description of Mill Creek MP 1 was changed to clarify that MP 1 covers segments of Mill Creek that are upstream from the Oregon portion of stream, rather than only being inclusive of the portion up to the state line. The revised description of MP 1 is consistent with the original intent.

**WAC 173-532-030 Establishment of instream flows.** Grammatical changes were made in this section to correct capitalization errors.

In subsection (2), language was modified to acknowledge that the instream flow recommendations submitted by the planning unit received a unanimous vote. This change was also made in accordance to suggestions made in comments.

**WAC 173-532-040 Surface and ground water closed to further consumptive appropriations.** In subsection (2), the reference to RCW 90.44.100 (2) and (3) was changed to refer only to RCW 90.44.100 and not to specific subsections. The change was made to more accurately reference the statute.

New subsection (4) was added to clarify that any unappropriated surface water and ground water from the gravel aquifer is unavailable for consumptive uses. New subsection (4) clarifies the original intent of the rule, which is to appropriate such water for instream purposes only.

**WAC 173-532-045 Future permitting actions.** Language added to clarify that future permitting decisions must also be consistent with existing statutes and other applicable requirements of law. This change was also made in accordance with suggestions made in comments. Other language was added for clarity and better readability.

In subsection (2), the words "is" and "and" were added for clarity and better readability. In subsection (2)(b), "or" was deleted and was replaced with "and" to correct previous error. This change was also made in accordance with suggestions made in comments.

In subsection (3), "only" was added to stress that this condition is not open to uses other than those intended for environmental enhancement projects. This change is consistent with changes made in WAC 173-532-040 and within original intent.

**WAC 173-532-050 Protection of surface water rights from future permit-exempt ground water appropriations from the gravel aquifer.** Overall, the structure of this section was modified for better readability and clarity. The numbering of subsections was changed to accommodate structural modifications.

New section WAC 173-532-050 now begins with a threshold sentence, which provides that all exemptions described herein will only be applicable when connection to an existing municipal water supplier is not possible. This language was originally included in subsection (1)(a) and has been moved to the front for clarity.

New subsection (1) addresses the area that drains to the Snake and Columbia rivers (Burbank area). As stated in the CR-102 draft language, permit-exempt withdrawals may occur in these areas as long as they are consistent with the requirements set in RCW 90.44.050. The CR-102 draft language addressed the same subject in numerous subsections. The provision addressing the Burbank area was moved to the front for added clarity and in accordance with suggestions from comments.

New subsection (2) addresses the limitations of withdrawals from the gravel aquifer in the high density areas. The substance is the same as previously included in subsection (1)(a). Examples of "outdoor uses" were added for clarity, and stockwatering was specifically mentioned as a use that is not included as an "outdoor use" under this subsection. These changes are consistent with original intent.

New subsection (3) addresses withdrawals in areas outside of the high density areas. The substance is the same as previously included in subsection (1)(b). The new language now refers to withdrawals for purposes "other than stockwatering." This language was added for clarity and consistency with the body of WAC 173-532-050. Rules on stockwatering are addressed in new subsection (4).

New subsection (4) addresses withdrawals for stockwatering. The substance is the same as previously included in subsection (1)(c). The new language now clarifies that feedlots "are not considered stockwatering for the purpose of this chapter." The language was changed to clear up any possible inference that watering for feedlots may otherwise be established without a permit. The term "tax parcel" was replaced with the term "legal lot of record." These changes were made in accordance with suggestions from comments.

New subsection (5) addresses metering requirements. The substance is the same as what was previously included in subsection (1)(d). After mention of "all future appropriation" the new rule version adds "from the gravel aquifer" in order to remind readers that this section applies only to withdrawals made from the gravel.

New subsection (6) addresses mitigation requirements. The CR-102 version of the proposed rule addressed mitigation in subsection (2). Both the final and CR-102 version require water-for-water mitigation for any outdoor water use from May 1 to November 30. In response to comments, the new version has added details on how the mitigation requirement will be implemented and enforced. The final rule provides that the mitigation requirement shall be delayed until May 1, 2008, and that the department may order illegal water users to cease and desist immediately.

New subsection (7) addresses record keeping of all future permit-exempt ground water appropriations. This subsection is identical to subsection (3) of the CR-102 version of the proposed rule.

New subsection (8) addresses how ecology will assist future permit-exempt users in identifying means to offset impacts. The substance is the same as that previously included in subsection (4). The new language adds that ecology will "develop a mitigation plan" to identify "methods and means" to offset impacts of proposed water use. This language was added to further clarify how ecology and other entities will provide assistance.

New subsection (9) addresses enforcement actions in the event that ecology and other entities determine that the impacts of outdoor water use are not fully mitigated. The substance is the same as previously included in subsection (5). New subsection (9) was modified only to clarify that full mitigation refers to what is required in WAC 173-532-050(6).

New subsection (10) addresses issues related to what does and does not fall under the rule (grandfathering) and beneficial use of permit-exempt wells. This subsection was added to clarify how the rule will be implemented, and is in accordance with comments requesting clarity on these issues. The new subsection provides that the priority date of a permit-exempt withdrawal is the date that water is first put to actual beneficial use. The language also clarifies that "beneficial use shall not be considered to occur until water is used within a residential structure."

**WAC 173-532-055 Future surface water withdrawals for environmental enhancement projects.** Subsection (4) addresses how a short-term permit for an environmental enhancement project (EEP) may become a permanent water right. The new language now references RCW 90.03.290 to stress that EEP must also be consistent with statutory requirements for new appropriations. This new language was added to recognize existing law.

Subsection (10) addresses maximum allocations for EEP. The word "allowable" was deleted before the words "allocation for EEP." The deletion was made for added clarity and consistency with the body of this section of the rule. This change is also in accordance with suggestions made in comments.

The title and subtitles of Table III were modified for consistency with the changes made in subsection (10) (see above).

**WAC 173-532-090 Compliance and enforcement.** No changes made.

**WAC 173-532-120 Map.** No changes made.

A final cost-benefit analysis is available by contacting Tryg Hoff, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6631, fax (360) 407-6574, e-mail THOF461@ecy.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 6, Amended 4, Repealed 5.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 6, Amended 4, Repealed 5.

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 4, Repealed 5.

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: August 2, 2007.

Jay J. Manning  
Director

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

**WAC 173-532-010 Authority and purpose.** (1) This ~~((regulation))~~ chapter is adopted in accordance with the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Regulation of public ground waters (chapter 90.44 RCW), Water code (chapter 90.03 RCW), and the water resources management regulation, chapter 173-500 WAC, which was ~~((promulgated))~~ adopted under the authority of the Water Resources Act of 1971, chapter 90.54 RCW.

(2) This chapter ~~((, including any amendments,))~~ applies to the management of all waters ~~((that lie))~~ within ~~((or contribute to))~~ the Walla Walla River drainage basin located in Washington state.

~~((This chapter sets forth the department's policies to manage the basin's water resources.))~~ (3) This chapter shall not affect existing water rights, unless otherwise provided for in the conditions of the water right in question. It shall also not affect federal Indian and non-Indian reserved rights.

(4) The department shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

**WAC 173-532-020 Definitions.** For purposes of this chapter, the following definitions shall be used.

(1) "Allocation" means the designating of specific amounts of the water resource for specific beneficial uses.

(2) ~~((("Base flow" means a level of stream flow established in accordance with provisions of chapter 90.54 RCW required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values.))~~ "Appropriation" means the process of legally acquiring the right to specific amounts of the public water resource for application to beneficial uses.

(3) "Consumptive use" means use of water whereby there is ~~((discernible))~~ diminishment of the amount or quality of the water source.

(4) "Department" means the Washington state department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Domestic use" means use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, ~~((irrigation of not over one-half acre of lawn and garden per dwelling,))~~ and other incidental household uses. Irrigation of lawn and noncommercial garden under the permit exemption in RCW 90.44.050 shall not exceed one-half acre.

(7) ~~((("In-house domestic use" means use of water for drinking, cleaning, sanitation, and other uses in a residence, excluding irrigation of lawn and garden.))~~ "Environmental enhancement project" means a water storage project, above or below ground, that would provide net environmental benefits, with particular emphasis on enhancing salmonids production. Projects that enhance instream flows directly or indirectly qualify under the definition. Projects proposed as mitigation for new consumptive water rights do not qualify under this definition.

(8) "Gravel aquifer" means any geologic formation generally under unconfined, or water table, conditions which consist of sand and gravel and may contain interbedded layers of silt and clay.

(9) "Instream flow" means a level of stream flow, established under chapters 90.54, 90.03, 90.22, and 90.82 RCW, required in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term means "base flow" under chapter 90.54 RCW, a "minimum flow" under chapters 90.03 and 90.22 RCW, and "minimum instream flow" under chapter 90.82 RCW. In the Walla Walla Watershed Plan, adopted in June 2005 by Walla Walla and Columbia counties, the term "new appropriation flows" has the same meaning as instream flows under this chapter.

(10) "Municipal water ~~((supply system))~~ supplier" ~~((means a set of facilities including source, treatment, storage, transmission and distribution facilities whereby water is furnished for commercial and/or industrial uses, and public water supplies with 10 or more connections))~~ and "municipal water supply purposes" are defined in RCW 90.03.015.

~~((9))~~ (11) "Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source ~~((body)),~~ or where there is no ~~((discernible))~~ diminishment of the amount or quality of the water source.

~~((10))~~ (12) "Perennial stream" means a stream ~~((with a natural flow which is normally continuous at any given location))~~ that normally flows year-round.

~~((11))~~ "Public water supply" means any water supply intended or used for human consumption and community uses.

~~((12))~~ (13) "Planning unit" means the Walla Walla watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Walla Walla watershed planning initiating governments. The initiating governments are Columbia and Walla Walla counties, city of Walla Walla, and Gardena Farms Irrigation District No. 13.

(14) "Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes.

~~((13))~~ "Zone of direct hydraulic continuity" means that zone of interaction between the surface water stream and the

adjacent ground water whereby a pumping well can effectively reduce the flow in the stream to the detriment of surface water users, as determined by the department.) (15) "Withdrawal" means the extraction of ground water, or the diversion of surface water for a beneficial use.

NEW SECTION

**WAC 173-532-025 Establishment of stream management units.** The department hereby establishes the following stream management units (Table I). The boundaries of the management units are shown in WAC 173-532-120.

**Table I  
Stream Management Unit Information**

<b>Stream Management Unit Name; Management Point (MP) No.; Control Station Gage No.</b>	<b>Control Station by River Mile (RM); Section; Township and Range; Latitude (Lat.) and Longitude (Long.)</b>	<b>Stream Management Reach Description</b>
Mill Creek MP 1 (Mill Creek at Kooskooskie) USGS Gage No. 14013000	RM 21.2; Section 12; T6N, R37E; 46°00'29"N, 118°07'03"W	Mill Creek at confluence with Walla Walla River (Walla Walla River, RM 33) to headwaters, including tributaries.
Walla Walla River MP 5a (Walla Walla River at Detour Road) Department Gage No. 32A100	RM 32.4; Section 31; T7N, R35E; 46°02'36"N, 118°29'24"W	Walla Walla River, RM 32.4 (below confluence of Walla Walla River and Mill Creek) to state line at Walla Walla, including tributaries.
North Fork Touchet River MP 6a (North Fork Touchet above Dayton) Department Gage No. 32E050	RM 0.5; Section 32; T10N, R39E; 46°17'50"N, 117°57'04"W	Mouth of North Fork Touchet River to headwaters, including tributaries.
Touchet River MP 11 (Touchet River at Bolles) Department Gage No. 32B100	RM 40.4; Section 7; T9N, R37E; 46°16'27"N, 118°13'12"W	Touchet River, RM 40.1 to RM 54.9 (confluence of North Fork Touchet River and South Fork Touchet River), including tributaries, excluding North Fork Touchet River and its tributaries.

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

**WAC 173-532-030 ((Base)) Establishment of instream flows.** ((The establishment of base flows for surface streams will be deferred until such time as storage project or projects become a reality. At present, all surface streams are totally appropriated during the irrigation season and water is not available for protection of instream values. With the advent of future storage projects, the department may establish base flows which can be included as project benefits and maintained by storage releases.)) (1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the departments of fish and wildlife, agriculture, and community, trade, and economic development; the Confederated Tribes of the Umatilla Indian Reservation; and public input received during the rule-making process.

(2) Instream flows established here are water rights, which protect stream flows from future consumptive appro-

priations. The instream flow recommendations submitted by the planning unit received the unanimous vote of the planning unit. In accordance with RCW 90.82.080 (2)(a), and unanimous vote of the planning unit, the priority date of the instream flows is the effective date of this chapter.

(3) Instream flow rights shall be protected from impairment by junior water rights and by all future changes and transfers of senior and junior water rights.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the management points identified in WAC 173-532-025. For reaches that do not have management points, the flows established for the nearest management point or points (where a tributary with a management point contributes to such flow) apply to those reaches.

(5) Instream flows are established for the stream management units in WAC 173-532-025, as indicated in Table II.

**Table II**  
**Instream Flows in the Walla Walla River Basin**  
**(cubic feet per second)**

Month	Stream Management Unit			
	Mill Creek MP 1 (Mill Creek at Kooskooskie).USGS Gage No. 14013000	Walla Walla River MP 5a (Walla Walla River at Detour Road). Depart- ment Gage No. 32A100	North Fork Touchet River MP 6a (North Fork Touchet above Dayton). Department Gage No. 32E050	Touchet River MP 11 (Touchet River at Bolles). Department Gage No. 32B100
January	110	250	95	150
February	125	250	95	150
March	150	350	125	200
April	150	350	125	200
May	125	250	125 Closure	200 Closure
June	100 Closure	Closure	95 Closure	125 Closure
July	53 Closure	Closure	65 Closure	74 Closure
August	41 Closure	Closure	53 Closure	48 Closure
September	41 Closure	Closure	51 Closure	56 Closure
October	48 Closure	Closure	63 Closure	82 Closure
November	100 Closure	Closure	95 Closure	150 Closure
December	110	250	95	150

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

**WAC 173-532-040 ((Streams)) Surface and ground water closed to further consumptive appropriations.** ((The department has determined that no waters are available for consumptive appropriation through the establishment of water rights for the following streams for the periods indicated:

TABLE II-1  
SURFACE WATER CLOSURES\*

STREAM NAME	AFFECTED REACH	EFFECTIVE DATE OF CLOSURE	PERIOD OF CLOSURE
Blue Creek	Mouth to Headwaters	Date of Adoption	June 1 — Oct. 31
Mill Creek	Mouth to State Line	2-6-1957	May 1 — Oct. 1
Walla-Walla River	Mouth to State Line	Date of Adoption	May 1 — Nov. 30
Dry Creek	Mouth to Headwaters	Date of Adoption	April 15 — Nov. 15- or whenever Walla-Walla at USGS Gage 14.0185 drops below 91.0 cfs.
Touchet River	Mouth to Headwaters	Date of Adoption	June 1 — Oct. 31
Coppei Creek	Mouth to Headwaters	Date of Adoption	April 1 — Nov. 10

STREAM NAME	AFFECTED REACH	EFFECTIVE DATE OF CLOSURE	PERIOD OF CLOSURE
Doan Creek	Mouth to Headwaters	Date of Adoption	June 1 — Oct. 1
Mud Creek	Mouth to Headwaters	Date of Adoption	May 1 — Oct. 31- or whenever Walla-Walla below confluence with Mud-Creek falls below 50 cfs.
Pine Creek	Mouth to Headwaters	Date of Adoption	May 1 — Oct. 31- or whenever Walla-Walla River at confluence with Pine-Creek or below Touchet River drops below 50 cfs.
Stone Creek	Mouth to Headwaters	Date of Adoption	May 1 — Oct. 31

\*Exception for single-domestic and stock water where no other practical source is available.)

(1) Based on historical and current low flows and water withdrawals by existing water right holders, the department has determined that no waters are available for new consumptive uses during periods of low surface water flows. Therefore, all rivers and streams in the basin are seasonally closed to any further consumptive appropriation from May 1 to November 30 with the exception that the Walla Walla River and all of its tributaries between Stateline and Detour Road at MP 5a, and Mill Creek and all of its tributaries from the con-

fluence with the Walla Walla to the headwaters shall be closed from June 1 to November 30.

(2) Based on the hydrogeology of the basin, the department finds that gravel aquifers in the basin are hydraulically connected to surface waters in the basin. Therefore, the gravel aquifers are closed. Exception to this closure is provided for future permit-exempt ground water withdrawals as prescribed in WAC 173-532-050 and for nonconsumptive ground water use as prescribed in WAC 173-532-045. The closure does not affect the construction of a replacement well or new additional well or wells consistent with the conditions set in RCW 90.44.100.

(3) Future permits to withdraw surface water during non-closure periods, shall be limited to environmental enhancement projects as described in WAC 173-532-055.

(4) All unappropriated surface waters and ground water from the gravel aquifer for which an exception to the closure does not apply, are hereby appropriated during the above periods of closure for purposes of protecting and preserving fish and wildlife and other instream values.

#### NEW SECTION

**WAC 173-532-045 Future permitting actions.** Surface and ground water permits may be issued only if consistent with the requirements of the surface and ground water statutes and other applicable requirements of law and if any one of the following conditions apply:

- (1) The proposed water use is nonconsumptive.
- (2) The proposed ground water use is from the basalt aquifer and will not:
  - (a) Impair existing water rights;
  - (b) Affect any closed surface source where instream flows have not been established; and
  - (c) Affect any closed gravel aquifer.
- (3) The proposed surface water use would occur only during nonclosure periods and is intended for an environmental enhancement project, as defined in WAC 173-532-020(6) and meeting the criteria listed in WAC 173-532-055.

AMENDATORY SECTION (Amending Order DE 77-30, filed 12/14/77)

**WAC 173-532-050 Protection of surface water rights from ~~((new appropriators of ground water))~~ future permit-exempt ground water appropriations from the gravel aquifer.** ~~((New appropriators of ground water will be required to locate wells outside of the zone of direct hydraulic continuity between the surface water stream and the ground water aquifer. The actual limits of the zone of direct hydraulic continuity at a specific location will be determined by the department after an individual ground water application is received. The department will use accepted engineering methods for its determination.))~~ Where connection to an existing municipal water supply cannot be provided in a timely and reasonable manner, the following exceptions to the gravel aquifer closures in WAC 173-532-040 shall apply:

(1) Permit exempt withdrawals for purposes other than stockwatering may occur in the area that drains to the Snake and Columbia rivers (Burbank area), consistent with the requirements set in RCW 90.44.050.

(2) Permit exempt withdrawals may occur in areas with a zoned density equal to or more dense than one residence per ten acres (high density areas). However, future withdrawals from the gravel aquifer in the high density areas shall be limited to only domestic uses and outdoor uses, such as irrigation of lawn and noncommercial garden, outdoor washing, etc. Outdoor uses for the purposes of this subsection do not include stockwatering. The total amount of water that may be withdrawn shall not exceed the amounts specified in (a) and (b) of this subsection.

(a) For any one residence, one thousand two hundred fifty gallons a day (1,250 gpd).

(b) For multiple residences that are part of a group use in addition to the limitations in (a) of this subsection, the combined maximum water withdrawal for the development shall not exceed five thousand gallons per day (5,000 gpd).

(3) Permit exempt withdrawals for purposes other than stockwatering may occur in areas where the zoned density is less than one residence per ten acres, but must be consistent with the requirements set in RCW 90.44.050.

(4) Permit exempt withdrawals for stockwatering may occur as long as the water use from an exempt well in the gravel aquifer does not exceed: Seven hundred gallons per day (700 gpd) on a legal lot of record size of ten acres or less; two thousand five hundred gallons per day (2,500 gpd) on a legal lot of record size between ten and twenty acres; or five thousand gallons per day (5,000 gpd) on a legal lot of record size twenty acres and greater. Feedlots or other activities not related to normal grazing land uses are not considered stockwatering for the purpose of this chapter.

(5) All future appropriation from the gravel aquifer in the high density areas, including for stockwatering, shall be required to install and maintain a water measuring device (water source meters) meeting specifications provided by the department. The user must report to the department, by December 31 of each year, monthly water use from May 1 to November 30.

(6) To avoid and/or mitigate cumulative impacts on existing water rights (which for purposes of this chapter are considered to include the instream flows established herein and the seasonally closed water sources), new permit-exempt users from the gravel aquifer in the high density areas must provide water-for-water mitigation, meaning equivalent quantities of water, for any outdoor water use from May 1 to November 30. The effect of this mitigation requirement shall be delayed until May 1, 2008; however, if the ecology director finds that despite diligent and committed efforts, mitigation arrangements for new users cannot be reasonably obtained by that date, the director may grant an extension of up to one year. After May 1, 2008, any such withdrawal for outdoor uses commenced after the effective date of this rule must have mitigation in place during all times that the withdrawal occurs. This means that even if a withdrawal for outdoor uses commenced before May 1, 2008, that withdrawal is subject to the outdoor mitigation requirement after that date. Any such outdoor water use that occurs prior to mitigation being in place is deemed illegal and the department may order the water user to cease and desist outdoor water use immediately as well as seek any other available administrative or judicial remedies.

(7) The department will keep records of all future permit-exempt ground water appropriations from the gravel and basalt aquifers.

(8) In consultation with Walla Walla and Columbia counties, the planning unit and the Confederated Tribes of the Umatilla Indian Reservation, the department will develop a mitigation plan identifying methods and means, such as the use of the trust water right program under chapter 90.42 RCW, to assist future permit-exempt users to offset the impacts of their proposed water use, either individually or jointly.

(9) If the department determines, in consultation with Walla Walla and Columbia counties, the planning unit and the Confederated Tribes of the Umatilla Indian Reservation, that the impacts of outdoor water use from new permit-exempt wells in the gravel aquifer are not fully mitigated as required in WAC 173-532-050(6) and may impair existing rights, the department shall issue an order and public notice stopping all such use. The order and notice shall define the area for which the stoppage applies. The order shall continue until such time that adequate and reliable mitigation is in place.

(10) For purposes of this chapter the priority date of a withdrawal under the permit exemption in RCW 90.44.050, shall be the date upon which water is put to actual beneficial use on the subject property for the purpose of use in question. For domestic use, actual beneficial use shall not be considered to occur until water is used within a residential structure.

#### NEW SECTION

**WAC 173-532-055 Future surface water withdrawals for environmental enhancement projects.** The department finds there may be water available above existing water rights and instream flows that could be captured for environmental enhancement projects. This water is only available at specific locations where instream flows are established and during the nonclosure periods, as specified in Table III. A surface water withdrawal for an environmental enhancement project ("EEP") may be approved if it meets all of the following:

- (1) EEP may be sponsored only by:
  - (a) The Confederated Tribes of the Umatilla Indian Reservation;
  - (b) A municipal governments located within Walla Walla or Columbia counties;
  - (c) An irrigation district or ditch company within the watershed;
  - (d) The Washington department of fish and wildlife;
  - (e) A conservation district within the watershed;
  - (f) A quasi-governmental organization within the watershed; or
  - (g) A nonprofit organization within the watershed.
  - (h) Individual landowners may qualify as a sponsor only when the said landowner is a participant in a project sponsored by one or more of the aforementioned qualifying sponsors.
- (2) A proposed project may only qualify as an EEP after the project has received a consensus recommendation from the Confederated Tribes of the Umatilla Indian Reservation,

the Planning Unit, Washington department of fish and wildlife, and planning unit initiating governments.

(a) The consensus recommendation shall occur after receiving technical advice and recommendations from the technical advisory group with representatives from:

- (i) The Confederated Tribes of the Umatilla Indian Reservation;
- (ii) The governor's salmon recovery office;
- (iii) The Walla Walla basin watershed council;
- (iv) The Washington department of fish and wildlife; and
- (v) The department of ecology.
- (vi) The United States Army Corps of Engineers, United States Forest Service, United States Fish and Wildlife Service, and National Marine Fisheries Service may be invited to participate in the technical review.

(b) Technical evaluation shall consider:

- (i) The specific management objectives for the stream management reaches affected by the EEP;
- (ii) Effects of the project on inward and outward migration of salmonids and ecological function provided by high stream flows; and
- (iii) Cumulative effects of all environmental enhancement projects.

(c) The technical evaluation shall also weigh any detriment caused by storing some seasonal stream flows (e.g., high winter flows and flood flows) against any benefit the stored water would provide.

(3) An application for EEP must include a monitoring and adaptive management program and show ability to implement such a program. Applicants will define how they will measure and evaluate the project's effectiveness in achieving environmental enhancement goals. The technical advisory group may assist in developing the criteria for evaluating project effectiveness.

(4) Initial water use authorization for EEP will be for short-term. No appropriative right shall develop out of this authorization. The department may only issue a permanent water right if the project's intended benefits are being realized, on the advice of the technical group and if consistent with the requirements for new appropriations under RCW 90.03.290.

(5) All other applicable permits must be obtained from the department, Washington department of fish and wildlife, and other agencies, prior to construction or water use.

(6) Water right permits for EEP shall be subject to existing water rights and instream flows as established under this chapter.

(7) In consideration of the recommendations of the technical advisory group, the withdrawals shall be managed consistent with salmonid migration needs and with the protection of high flow functions.

(8) Monitoring and sampling shall be consistent with the monitoring plan developed and approved for the project. Daily records shall be kept of the quantity of water diverted to the project. Such records shall be made available to the department upon request.

(9) The department will maintain a record of all diversion for EEP approved in each stream management unit.

(10) The maximum allocation for EEP within a stream management unit shall not exceed the values indicated in Table III.

**Table III**  
**Maximum Allocation for**  
**Environmental Enhancement Projects**  
**(cubic feet per second)**

Stream Location	EEP Diversion Period	Maximum Allocation*
Mill Creek at confluence with Walla Walla River (Walla Walla River, RM 33) to headwaters.	Dec. 1 to May 31	125
Walla Walla River below confluence of Walla Walla River and Mill Creek (RM 32.4) to state line.	Dec. 1 to May 31	300
North Fork Touchet at mouth of North Fork Touchet River to headwaters.	Dec. 1 to April 30	110
Touchet River at Bolles to headwaters, excluding North Fork Touchet.	Dec. 1 to April 30	175

\*The total allocation on the Touchet River and North Fork Touchet River shall not exceed 175 cfs. The total maximum allocation on the Walla Walla River and Mill Creek shall not exceed 300 cfs. Due to concerns over potential impacts on inward and outward migration of salmonids and ecological function of high flows the maximum allocation may be considerably less.

AMENDATORY SECTION (Amending Order 88-11, filed 6/9/88)

**WAC 173-532-090 Compliance and enforcement.** ~~((In enforcement of this chapter, the department of ecology may impose such sanctions as are appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.))~~ (1) The department shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

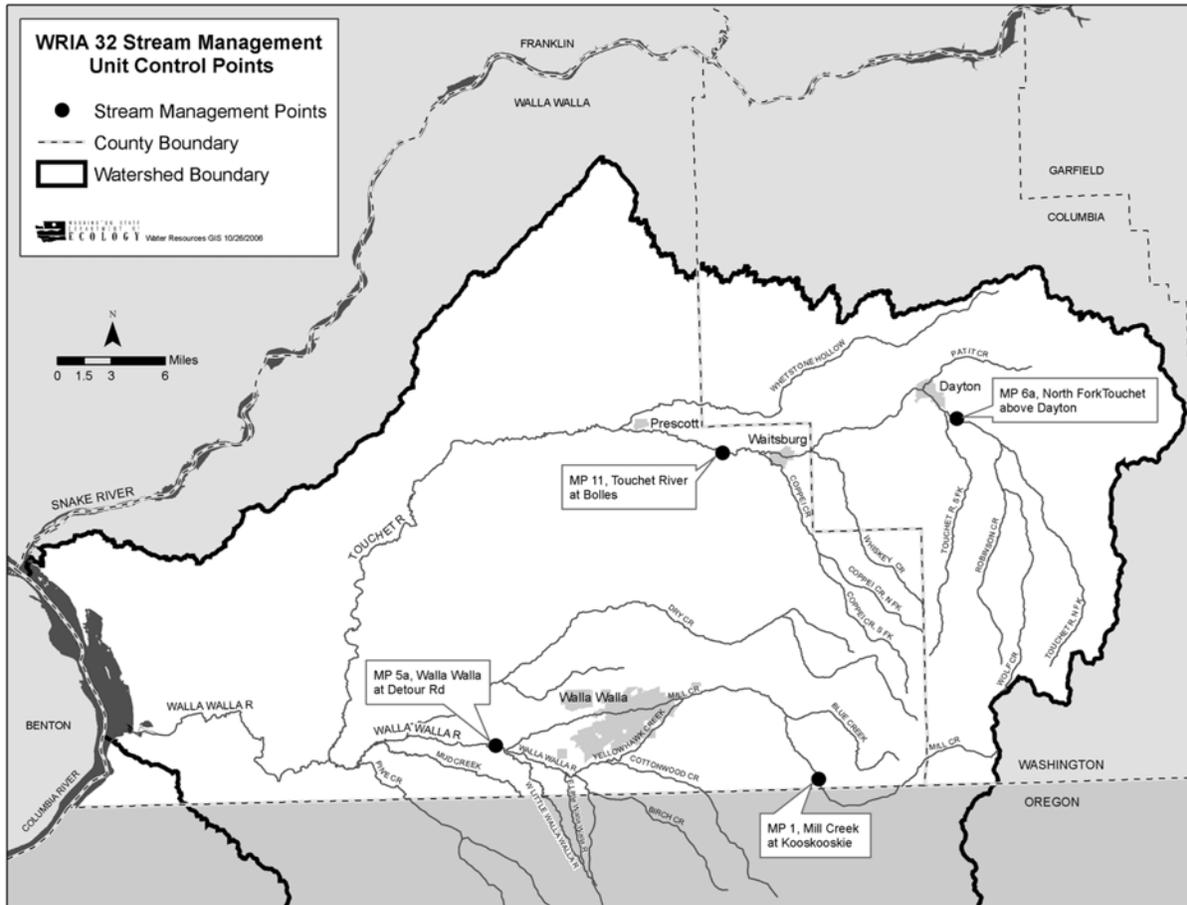
(2) When the department determines that a violation of this chapter has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in appropriate cases involving potential harm to other water rights or the environment. An approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, the department has the authority to issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

NEW SECTION

**WAC 173-532-120 Map.** For the purpose of administering this chapter, the boundaries of the Walla Walla River basin identified in the figure below are presumed to accurately reflect the basin located within Washington state.



**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 173-532-060 Designation of ground water areas for specific uses.
- WAC 173-532-070 Closure of ground water aquifer to further appropriation.
- WAC 173-532-080 Evaluation of ground water applications.
- WAC 173-532-110 Regulation review.

**WSR 07-17-010  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed August 3, 2007, 11:49 a.m., effective September 3, 2007]

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

Purpose: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Grays Harbor and Willapa Bay while protecting species of fish listed as endangered.

Citation of Existing Rules Affected by this Order: Amending WAC 220-36-023 (Amending Order 05-167, filed 8/3/05, effective 9/3/05) and 220-40-027 (Amending Order 05-167, filed 8/3/05, effective 9/3/05).

Statutory Authority for Adoption: RCW 77.04.020, 77.12.047, and 77.65.200.

Adopted under notice filed as WSR 07-11-167 on May 23, 2007.

Changes Other than Editing from Proposed to Adopted Version: None. A CR-102 was filed on July 18, 2007, after the department received an objection on June 11, 2007, to the CR-105. However, the party who made the objection withdrew the objection on July 24, 2007. The department will withdraw the CR-102 today.

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 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 0, Repealed 0.

Date Adopted: August 3, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

AMENDATORY SECTION (Amending Order 05-167, filed 8/3/05, effective 9/3/05)

**WAC 220-36-023 Grays Harbor salmon—Fall fishery.** August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes, except that:

**Fishing periods**

~~((H))~~ Gill net gear may be used to fish for salmon and sturgeon according to the chart below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury and must be released immediately:

Time	Areas
<del>((7:30 a.m. October 8 through 6:30 p.m. October 8, 2005))</del> <del>5:30 p.m. through 1:30 a.m. October 8, 2007;</del> <del>9:00 p.m. through 5:00 a.m. October 15, 2007.</del>	2C
<del>((9:30 a.m. October 13 through 5:30 p.m. October 13, 2005, and 10:30 a.m. October 14 through 6:30 p.m. October 14, 2005))</del> <del>6:00 a.m. through 6:00 p.m. October 11, 2007;</del> <del>6:00 a.m. through 6:00 p.m. October 12, 2007;</del> <del>6:00 a.m. through 6:00 p.m. October 13, 2007.</del>	That portion of Area 2A upstream from the Highway 101 Bridge at Aberdeen, to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore. AND That portion of Area 2D north and east of a line projected due south from the 28th street boat launch to Renney Island, then southeasterly to Range Marker G, then to the eastern boundary of Area 2D at the Highway 101 Bridge.

~~((A))~~ (1) Drift gill net gear only. It is unlawful to use set net gear.

~~((B-6))~~ (2) Six-inch maximum mesh restriction, no more than 55 meshes deep.

~~((E))~~ (3) Soak time shall not exceed ~~((45 minutes))~~ one hour. Soak time, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed ~~((45 minutes))~~ one hour.

~~((D))~~ Each boat will be required to have two operable recovery boxes or one box with two chambers, on board. Each box shall be operating during any time that the net is being retrieved or picked. The flow in the recover box will be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches. Each chamber of the recover box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

~~((E))~~ (4) All ~~((chinook,))~~ nonlegal sturgeon~~((;))~~ and non-legal steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box.

~~((F))~~ Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

~~((G))~~ All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

~~((H))~~ (5) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing or within 3 hours of the close of that particular fishery, whichever happens first.

~~((I))~~ (6) Fishers must take department observers if requested by department staff, when participating in these openings~~((, and provide notice of intent to participate by contact to the quick reporting phone, fax or e-mail, WAC 220-69-240, prior to 10:00 a.m. the day preceding each opening)).~~

~~((2))~~ Gill net gear may be used to fish for salmon and sturgeon:

Time	Areas
<del>7:30 a.m. October 15 through 6:30 p.m. October 15, 2005</del>	Area 2B
<del>7:30 a.m. October 16 through 6:30 p.m. October 16, 2005</del>	



Time	Area
<u>Noon, November 5, 2007, through noon, November 30, 2007.</u>	Areas 2G, 2H, 2J and 2M.

(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Record Area (SMCRA) 2G, described in this section. The Tokeland Boat basin means ~~((that))~~ the portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

#### Gear

(3) Gill net gear restrictions - All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear.

(b) September 1 through October ~~((3, 2005-6))~~ 7, 2007: Six-inch maximum mesh, no more than 55 meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure break-away panels.

(c) October ~~((4))~~ 8 through October 31, ~~((2005-6 1/2))~~ 2007: Six and one-half inch maximum mesh.

(d) November 1 through November 30, ~~((2005-9))~~ 2007: Nine-inch minimum mesh; except that from 6:00 p.m. November 12 through 6:00 p.m. November 16, 2007 (coho directed), use either 6-inch maximum mesh or 9-inch maximum mesh (choose only one), no more than 55 meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure breakaway panels.

#### Other

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing or within 3 hours of the close of that particular fishery, whichever happens first.

(5) The southern population of green sturgeon has been listed by NOAA Fisheries as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.

### WSR 07-17-017

#### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed August 6, 2007, 1:28 p.m., effective September 6, 2007]

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

Purpose: Chapter 16-160 WAC sets requirements for registration of brand name materials for organic food production. New fees are established, selected fees are increased, and a new logo will be used for registered materials. The increase in fees will allow for additional staff required to

maintain the program, and the new logo will ensure that we maintain compliance with accreditation requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 16-160-030 through 16-160-110.

Statutory Authority for Adoption: Chapters 15.86 and 34.05 RCW.

Adopted under notice filed as WSR 07-13-065 on June 18, 2007.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, 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: August 6, 2007.

Valoria Loveland

Director

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

**WAC 16-160-030 Do I need to register my brand name material with the organic food program?** ~~((Every material which is manufactured within this state and/or distributed within this state for use))~~ Materials used in organic food production, processing or handling may ((be registered)) submit an application for registration with the department. Registration is not required, but is necessary for a product to appear on the brand name materials list or to label or advertise itself as approved for use in organic food production, processing or handling.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

**WAC 16-160-035 Brand name materials list.** The department maintains a list of registered materials that are approved for use in organic food production, processing or handling. The list is provided to all producers, processors and handlers of organic food ~~((who apply for certification with the department))~~. Operations certified by any agency other than the department should refer to their certification agency prior to the use of any registered material as other certification agencies may not recognize the department brand name materials list. A registered material that appears on the brand name materials list has been reviewed by the department to verify that all of its ingredients comply with organic standards under WAC 16-160-060.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

**WAC 16-160-040 How do I apply for registration?**

Applications for brand name material registration must be made on a form designated by the department. Applications, must be accompanied by the appropriate fee, and must be postmarked by October 31 of each year. ~~((Applications made after the set deadline may be processed as the department can review the application.))~~ Applications received after October 31 may appear on the annual brand name materials list if received in time to complete the registration prior to the publication of the list. The application form shall include:

- (1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants;
- (2) The name of the material;
- (3) A copy of the labeling accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use;
- (4) The complete formula of the material including the active and inert ingredients;
- (5) A description of the manufacturing process including all materials used for the extraction and synthesis of the material, if appropriate;
- (6) The intended uses of the product;
- (7) The source or supplier of all ingredients; and
- (8) Any additional information deemed necessary.

Changes to the information above must be submitted to the department for review.

The director may require a full description of the tests made and the results thereof upon which the claims are based. The director may require production records that demonstrate adequate input materials to reconcile the registrant's production of the final product. Trade secrets are confidential and exempt from public disclosure under the Uniform Trade Secrets Act, chapter 19.108 RCW ~~((RCW 42.17.260(1)))~~ and RCW 42.56.070(1). Applicants should mark the information in the application they consider to be confidential under the Trade Secrets Act or other law. The department will treat this information in accordance with chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

**WAC 16-160-060 What criteria are used to determine if a brand name material is approved? (1) United States Department of Agriculture (USDA) National Organic Program.**

The director reviews the information provided under WAC 16-160-040. A brand name material that meets the requirements under the ~~((2004))~~ National Organic Program final rule, section 205.105 and sections 205.600 through 205.606 will be registered.

**(2) Foreign or additional organic standards.**

The director may review materials approved under the USDA National Organic Program for compliance with foreign or additional organic standards. The director reviews the information provided under WAC 16-160-040. A brand name material that complies with a specific foreign or addi-

tional organic standard may be registered as approved under that specific organic standard.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

**WAC 16-160-070 Application fees.** ~~((Whenever the department receives an application for registration of materials under this chapter, the department may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials, and any other information deemed necessary to the requirements of this chapter.))~~ (1) New product registration.

The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is ~~((three))~~ five hundred dollars per material. The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure~~((;))~~ or crop production aid ~~((; or livestock production aid))~~ is ~~((two))~~ four hundred dollars per material.

(2) Renewal registration.

The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is ~~((two))~~ three hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure~~((;))~~ or crop production aid ~~((; or livestock production aid))~~ is ~~((one))~~ two hundred dollars per material.

~~((Renewal registrations postmarked after October 31 pay a late fee of thirty dollars.))~~ (3) Late fees:

Renewal applications postmarked after October 31 must include a late fee in addition to the renewal fee.

<b><u>If your application is post-marked after October 31 but before:</u></b>	<b><u>Then the late fee is:</u></b>
<u>December 1</u>	<u>\$100.00</u>
<u>January 1</u>	<u>\$200.00</u>
<u>February 1</u>	<u>\$300.00</u>

(4) Inspections.

Inspections, if required, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management.

(5) Samples.

Samples, if required for registration, or requested by the applicant, will be charged to the applicant at a rate established by the laboratory services division of the department of agriculture. If an additional visit must be arranged, it shall be at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management.

(6) Expedited evaluation fees.

Requests for expedited reviews may be submitted and, if approved, are billed at a rate of \$40.00 per hour.

(7) Foreign or additional standards.

Upon request, the department may assess compliance with foreign or additional organic standards beyond the National Organic Program. Requests for additional assessments of materials approved under the USDA National Organic Program are billed at a rate of \$100.00 per product for each standard.

NEW SECTION

**WAC 16-160-080 Inspections.** Whenever the department receives an application for registration of materials under this chapter, the department may conduct an inspection. This inspection may entail a survey of required records, examination of facilities, testing representative samples for prohibited materials and any other information deemed necessary to the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

**WAC 16-160-090 ((Refusing or canceling)) Denial or revocation of a registration.** Initial registration.

(1) If it does not appear to the director that the brand name material is such as to warrant the proposed claims for it or if the brand name material and its labeling do not comply with the provisions of this chapter, the director shall notify the registrant of the manner in which the brand name material and its labeling fails to comply with the provisions of this chapter so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make corrections, the director shall deny registration of the material in accordance with chapter 34.05 RCW.

Renewal registration.

(2) When the director determines that a material or its labeling does not comply with the provisions of this chapter, or that false or inaccurate information was provided by the registrant, the director shall cancel the registration of a material in accordance with chapter 34.05 RCW.

Revoking registration.

(3) When the director determines that a material or its labeling does not comply with the provisions of this chapter, or if false or inaccurate information was provided by the registrant, the director shall cancel the registration of such material in accordance with chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

**WAC 16-160-100 Labeling of registered brand name materials and use of organic logo.** A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in WAC 16-160-110 in the labeling of the material. Approved materials may not make claims indicating products are "certified organic" or similar term. Approved generic materials that are not registered under this chapter must not use the statement nor the logo in the labeling of the material. Regis-

tration by no means implies the Washington department of agriculture endorses the use of the product.

AMENDATORY SECTION (Amending WSR 99-16-054, filed 7/30/99, effective 8/30/99)

**WAC 16-160-110 Organic material registration logo.**

~~((STRICKEN GRAPHIC~~



~~STRICKEN GRAPHIC))~~



**WSR 07-17-020**  
**PERMANENT RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**

[Filed August 6, 2007, 3:10 p.m., effective September 6, 2007]

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

Purpose: Amendments change the maximum RATA contribution in the northwest region and changes the percentage from 80% to 90% for projects approved by the CRA-Board in the northwest region.

Citation of Existing Rules Affected by this Order: Amending WAC 136-130-040, 136-161-080, 136-161-090, and 136-161-110.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Adopted under notice filed as WSR 07-11-119 on May 21, 2007.

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 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 0, Repealed 0.

Date Adopted: July 26, 2007.

Jay P. Weber  
Executive Director

AMENDATORY SECTION (Amending WSR 04-05-001, filed 2/4/04, effective 3/6/04)

**WAC 136-130-040 Project prioritization in northwest region (NWR).** Each county in the NWR may submit projects requesting RATA funds not to exceed five hundred thousand dollars per project, except that on one project for each county there is a maximum RATA contribution of ~~((seven hundred fifty thousand))~~ one million dollars; and forty percent of the forecasted regional apportionment. No bridge replacement projects will be funded. Each project shall be rated in accordance with the NWR RAP reconstruction or 3R rating procedures. NWR RAP reconstruction rating points shall be assigned on the basis of forty points for structural condition, forty points for geometrics, ten points for traffic volume, ten points for traffic accidents, five points for any project on a major collector (07), and ten points for any project on a rural principal arterial (02) or a rural minor arterial (06). Prioritization of NWR projects shall be on the basis of total NWR RAP rating points shown on the project worksheet and the prospectus form of the project application.

NWR RAP 3R rating points shall be assigned on the basis of thirty points for structural condition, twenty points for geometrics, ten points for traffic volume, ten points for

traffic accidents, ten points for any project on a minor collector (08), and thirty points for 3R safety. Prioritization of NWR 3R projects shall be on the basis of total NWR 3R RAP rating points shown on the project worksheet and the prospectus form of the project application.

A total of twenty points representing local significance may be added to one project in each county's biennial submittal.

AMENDATORY SECTION (Amending WSR 03-11-046, filed 5/16/03, effective 6/16/03)

**WAC 136-161-080 Limitations on allocations of RATA funds to counties.** For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

(1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;

(2) NWR: Maximum project RATA contribution is five hundred thousand dollars, except that on one project for each county there is a maximum RATA contribution of ~~((seven hundred fifty thousand))~~ one million dollars; twenty percent limit on percentage of the forecasted regional apportionment amount;

(3) NER: No maximum project RATA contribution; twelve and one-half percent limit on percentage of the forecasted regional apportionment amount;

(4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;

(5) SER: No maximum project RATA contribution; percentage varies by county as follows:

(a) Asotin County	ten percent
(b) Benton County	fourteen percent
(c) Columbia County	eleven percent
(d) Franklin County	thirteen percent
(e) Garfield County	ten percent
(f) Kittitas County	thirteen percent
(g) Klickitat County	fourteen percent
(h) Walla Walla County	fourteen percent
(i) Yakima County	twenty percent

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-161-090 Limitations on use of RATA funds.** RATA funds requested and allocated to a project are limited to eighty percent in the NWR for projects approved by the CRABoard on and prior to April 30, 2008, and ninety percent in the NWR for projects approved thereafter, and ninety percent in the PSR, SWR, NER and SER, of the total eligible project development costs, which include preliminary engineering and construction costs in all regions, and right of way costs in the PSR, NWR, NER and SER. Even though additional and eligible project development costs may be incurred by a county for a specific project, the maximum

amount of RATA funds for that project is limited to the amount allocated and shown in the CRAB/county contract (see chapter 136-170 WAC), unless the allocation is increased pursuant to chapter 136-165 WAC.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-161-110 Use of other funds to match RATA funds.** A county with an approved RAP project may use any other funds available for such project including federal, other state, private, and local funds, provided that the county will be required to use such other funds to match any RATA funds allocated to the project with a minimum of twenty percent other funds in the NWR for projects approved by the CRA Board on and prior to April 30, 2008, and ten percent other funds in the NWR for projects approved thereafter, and ten percent other funds in the PSR, SWR, NER, and SER.

**WSR 07-17-026**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 7, 2007, 8:56 a.m., effective October 6, 2007]

Effective Date of Rule: October 6, 2007.

Purpose: On January 23, 2007, the department adopted changes to chapter 296-874 WAC, Scaffolds. The purpose of this rule making was to correct errors and to make house-keeping changes to keep this rule as-effective-as the federal equivalent.

For example: In WAC 296-874-20052, the word "arrest" was removed from the existing rule and replaced with the word "restraint." We corrected that error by adding the word "arrest" back into the rule, which keeps us as-effective-as the federal equivalent.

In addition, we repealed the crawling board requirements in WAC 296-874-40016, and one crawling board requirement in WAC 296-874-20056, because they did not meet the requirements for the scaffolds rule, and already exist in the construction rule, chapter 296-155 WAC.

**Amended Sections:**

WAC 296-874-100 Scope.

- Corrected a referenced WAC number.

WAC 296-874-20030 Make sure ramps and walkways used to access scaffolds meet these requirements.

- Corrected a title to: "Working surfaces, guarding floors and wall openings."

WAC 296-874-20052 Provide fall protection for employees on scaffolds.

- Added the word "arrest" and removed the word "restraint."

WAC 296-874-20056 Provide specific fall protection for specific types of scaffolds.

- Removed a requirement that did not belong in the rule.

WAC 296-874-40004 Prevent supported scaffolds from tipping.

- Corrected the title of the illustration to match the actual requirement.

WAC 296-874-40006 Make sure supported scaffolds are properly supported.

- Added a reference.

WAC 296-874-40040 Meet these requirements when using tube and coupler scaffolds.

- Removed an illustration that did not belong in this section of the rule.

WAC 296-874-500 Definitions.

- Removed a definition (crawling board) that did not belong in the rule.

**Repealed Sections:**

WAC 296-874-40016 Meet these requirements when using crawling boards (chicken ladders).

- Repealed crawling board requirements from this chapter because they did not meet the requirements for the scaffolds rule, and already exist in the construction rule, chapter 296-155 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 296-874-100 Scope, 296-874-20030 Make sure ramps and walkways used to access scaffolds meet these requirements, 296-874-20052 Provide fall protection for employees on scaffolds, 296-874-20056 Provide specific fall protection for specific types of scaffolds, 296-874-40004 Prevent supported scaffolds from tipping, 296-874-40006 Make sure supported scaffolds are properly supported, 296-874-40040 Meet these requirements when using tube and coupler scaffolds and 296-874-500 Definitions; and repealing WAC 296-874-40016 Meet these requirements when using crawling boards (chicken ladders).

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

Adopted under notice filed as WSR 07-10-070 on May 1, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 8, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 1.

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 8, Repealed 1.

Date Adopted: August 6, 2007.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

**WAC 296-874-100 Scope.** This chapter applies to suspended and supported scaffolds, including their supporting structure and anchorage points.

- Exemption:** This chapter does not apply to:
- Manually propelled elevating work platforms;
  - Self-propelled elevating work platforms;
  - Boom-supported elevating work platforms;
  - Aerial lifts;
  - Crane or derrick suspended personnel platforms;
  - Personnel platforms supported by powered industrial trucks (PITs).

- Reference:** Additional requirements for the following types of platforms are found in the general safety and health standards, chapter 296-24 WAC. Go to the following sections:
- For elevating work platforms and aerial lifts, go to elevating work platforms, WAC 296-24-875;
  - For crane or derrick suspended personnel platforms, go to WAC 296-24-23533;
  - For personnel platforms supported by powered industrial trucks (PITs), go to ~~((WAC 296-24-230))~~ chapter 296-863 WAC.

**Definition:**

A **scaffold** is a temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials.

A **suspended scaffold** is one or more platforms suspended from an overhead structure by ropes or other nonrigid means.

A **supported scaffold** is one or more platforms supported by rigid means such as outrigger beams, brackets, poles, legs, uprights, posts, or frames.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

**WAC 296-874-20030 Make sure ramps and walkways used to access scaffolds meet these requirements.**

**You must:**

- Make sure ramps and walkways are not inclined at a slope steeper than one vertical in three horizontal (1:3 or twenty degrees from the horizontal).
  - Make sure ramps and walkways that are inclined at a slope steeper than one vertical in eight horizontal (1:8) have cleats to provide footing which are:
    - Securely fastened to the planks;
- AND**
- Spaced not more than fourteen inches (35 cm) apart.

- Reference:** Ramps and walkways that are four feet (1.2 m) or more above a lower level need to have a guardrail system. Those requirements are found in other chapters.
- For general industry activities, go to:
    - Working surfaces, guarding floors and wall openings, ~~((ladders;))~~ Part J-1, in the general safety and health standards, chapter 296-24 WAC;
  - For construction activities, go to:
    - Floor openings, wall openings, and stairways, Part K, in the safety standards for construction work, chapter 296-155 WAC.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

**WAC 296-874-20052 Provide fall protection for employees on scaffolds.**

**You must:**

- Protect each employee on a scaffold more than ten feet (3.1 m) above a lower level, from falling to the lower level, by providing either:
    - A personal fall ~~((restraint))~~ arrest system;
- OR**
- Guardrails.

REFERENCE		
Fall protection requirements for employees:	Are located in the following chapters:	In the following sections:
On walkways within scaffolds	Chapter 296-874 WAC, Scaffolds	WAC 296-874-20056
Erecting or dismantling supported scaffolds	Chapter 296-874 WAC, Scaffolds	WAC 296-874-40010
Erecting or dismantling suspended scaffolds in general industry	Chapter 296-24 WAC, General safety and health standards	Part J-1 Working surfaces, guarding floors and wall openings, ladders AND Part J-3 Powered platforms
Erecting or dismantling suspended scaffolds in construction work	Chapter 296-155 WAC, Safety standards for construction work	Part C-1 Fall restraint and fall arrest AND Part K Floor openings, wall openings, and stairways

**You must:**

- Make sure employees erecting the scaffold install the guardrail system, if required, before the scaffold is used by any other employees.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

**WAC 296-874-20056 Provide specific fall protection for specific types of scaffolds.**

**You must:**

- Use a personal fall arrest system to protect employees on the following scaffolds:
    - Boatswain's chair;
    - Catenary scaffold;
    - Float scaffold;
    - Ladder jack scaffold;
    - Needle beam scaffold.
  - Use a personal fall arrest system **and** a guardrail system to protect employees on:
    - Single-point adjustable suspension scaffolds;
- AND**
- Two-point adjustable suspension scaffolds.
- ~~((Protect employees working on a crawling board (chicken ladder) by using at least one of the following:))~~
- A personal fall arrest system;

~~— A guardrail system with a minimum two hundred pound toprail capacity;~~

~~— A three quarter inch (1.9 cm) diameter grabline or equivalent handhold securely fastened beside each crawling board.))~~

• Protect employees working on a self-contained adjustable scaffold that has the platform:

- Supported by the frame structure, using a guardrail system with a minimum two hundred pound toprail capacity.
- Suspended by ropes, using:

■ A guardrail system with a minimum two hundred pound toprail capacity;

AND

■ A personal fall arrest system.

• Protect employees on walkways located within a scaffold by using a guardrail system that meets all of the following:

- Has a minimum two hundred pound toprail capacity;
- Is installed within nine and one-half inches (24.1 cm) of the walkway;
- Is installed along at least one side of the walkway.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

**WAC 296-874-40004 Prevent supported scaffolds from tipping.**

**You must:**

• Make sure supported scaffolds with a height to least base dimension ratio of greater than four to one are prevented from tipping by one or more of the following:

- Guying;
- Tying;
- Bracing;
- Other equivalent means.

**Note:** The least base dimension includes outriggers, if used.

**You must:**

• Install guys, ties, and braces where horizontal members support both the inner and outer legs of the scaffold.

• Install guys, ties, and braces:

– According to the scaffold manufacturer's recommendations;

OR

– At all points where the following horizontal and vertical planes meet:

■ First vertical level at a height equal to four times the least base dimension;

■ Subsequent vertical levels every:

◆ Twenty feet (6.1 m) or less for scaffolds having a width of three feet (0.91 m) or less;

◆ Twenty six feet (7.9 m) or less for scaffolds more than three feet (0.91 m) wide;

■ Horizontally at:

◆ Each end of the scaffold;

AND

◆ Intervals of thirty feet (9.1 m) or less.

**Note:** The thirty-foot horizontal intervals are measured from one end of the scaffold to the other.

**You must:**

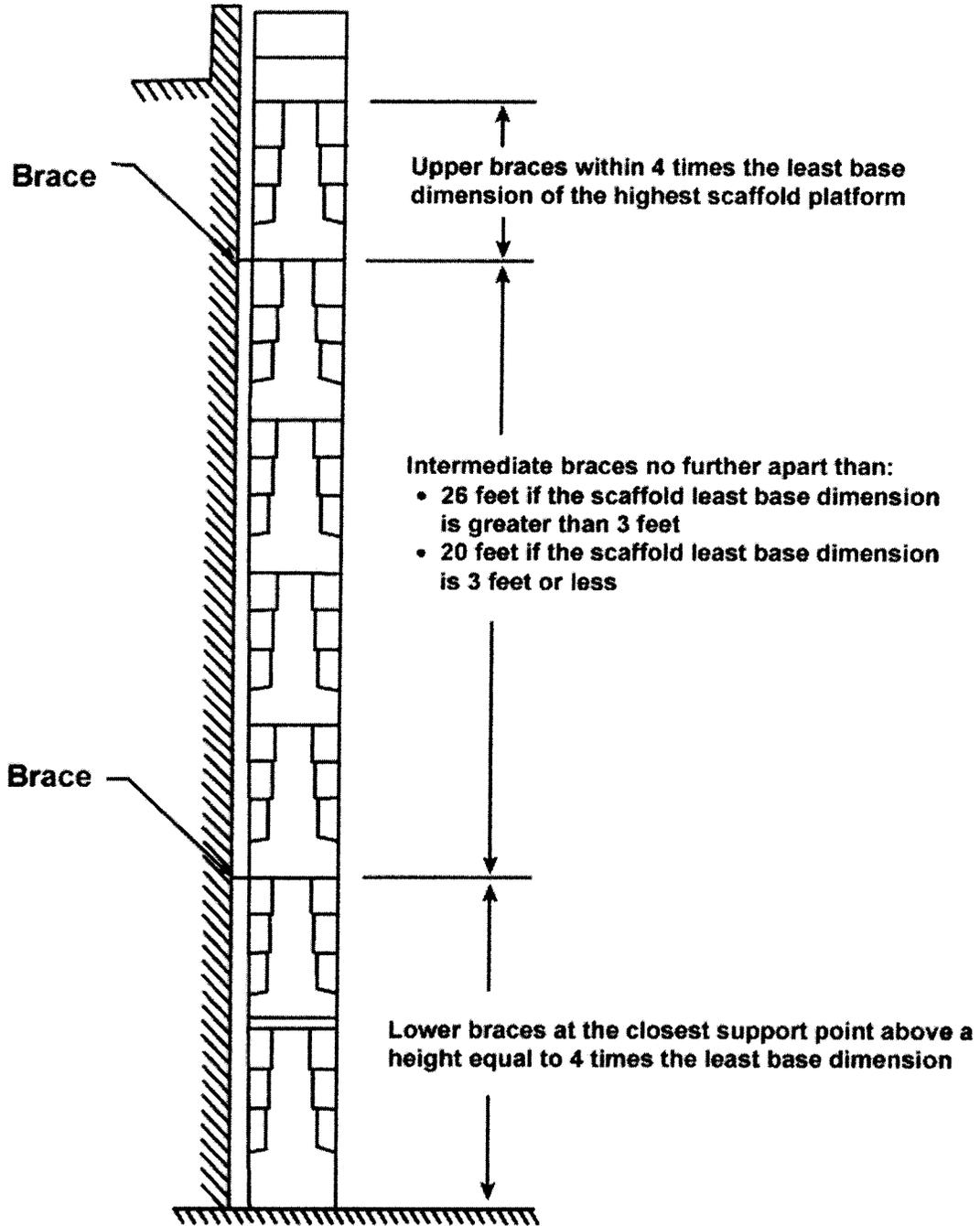
• Make sure the highest level of guys, ties, or braces is no further from the top of the scaffold than a distance equal to four times the least base dimension.

• Make sure scaffolds that have an eccentric load applied or transmitted to them, such as a cantilevered work platform, are prevented from tipping by one or more of the following:

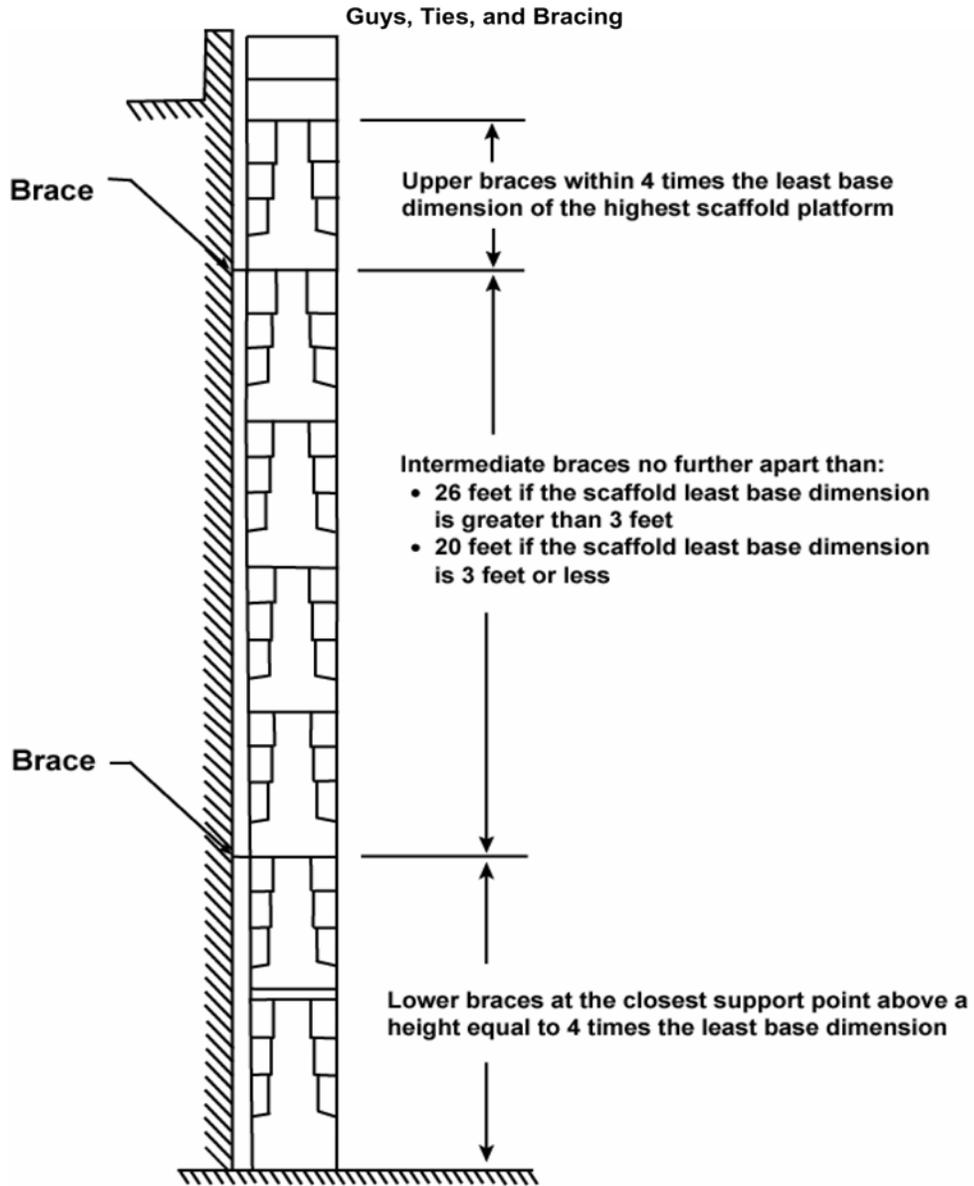
- Guying;
- Tying;
- Bracing;
- Outriggers;
- Other equivalent means.

~~((STRICKEN GRAPHIC~~

Bracing – Tube and Coupler Scaffold



~~STRICKEN GRAPHIC))~~



AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

**WAC 296-874-40006 Make sure supported scaffolds are properly supported.**

**You must:**

- Make sure supported scaffold poles, legs, posts, frames, and uprights are:

- Plumb;

**AND**

- Braced to prevent swaying or displacement.

- Make sure supported scaffold poles, legs, posts, frames, and uprights, bear on base plates that rest on:

- Mudsills;

**OR**

- Other firm foundations such as concrete or dry, compacted soil.

- Make sure foundations are all of the following:

- Level;

- Sound;

- Rigid;

- Capable of supporting the loaded scaffold without settling or displacement.

**Note:** The condition of the foundation may change due to weather or other factors. If changes occur, the foundation needs to be evaluated by a competent person to make sure it will safely support the scaffold.

- Make sure unstable objects are not used:

- To support scaffolds or platform units;

**OR**

- As working platforms.

- Make sure mobile scaffolds meet these additional requirements:

- Wheel and caster stems are pinned or otherwise secured in the scaffold legs or adjustment screws;

- Wheels and casters are locked, or equivalent means are used, to prevent movement when the scaffold is being used;

- Screw jacks or other equivalent means are used if it's necessary to level the work platform.

- Make sure front-end loaders and similar equipment used to support scaffold platforms have been specifically designed for such use by the manufacturer.

**Reference:** When forklifts or other powered industrial trucks are used for personnel lifting on support scaffold platforms, follow the requirements found in Forklifts and other powered industrial trucks, chapter 296-868 WAC.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

**WAC 296-874-40040 Meet these requirements when using tube and coupler scaffolds.**

**You must:**

- Make sure tube and coupler scaffolds over one hundred twenty-five feet high are:

- Designed by a registered professional engineer;

**AND**

- Constructed and loaded as specified in the design.

- Leave existing platforms undisturbed until new bearers have been set in place and braced before moving the platforms to the new level.

- Install crossbracing across the width of the scaffold that meets all of the following:

- Bracing is installed at:

- Each end of the scaffold;

**AND**

- At least at every third set of posts horizontally and every fourth runner vertically.

- Bracing extends diagonally from the:

- Outer posts or runners upwards to the next inner posts or runners;

**AND**

- Inner posts or runners upwards to the next outer posts or runners.

- Install building ties:

- At the bearer levels between the crossbracing;

**AND**

- At locations specified in WAC 296-874-40004.

- Install longitudinal bracing on straight run scaffolds as follows:

- Diagonally in both directions across the inner and outer rows of posts;

- From the base of the end posts upward to the top of the scaffold at approximately a forty-five degree angle;

- As close as possible to the intersection of the bearer and post or runner and post;

- If the scaffold is longer than it is tall, repeat the bracing beginning at every fifth post;

- If the scaffold is taller than its length, install the bracing:

- From the base of the end posts upward to the opposite end posts;

**AND**

- In alternating directions until reaching the top of the scaffold.

- Attach bracing to the runners as close to the post as possible, if bracing can't be attached to the post.

- Make sure bearers meet all of the following:

- Are installed transversely between posts;

- If the bearer is coupled to the post, have the inboard coupler bear directly on the runner coupler;

- If the bearer is coupled to the runners, have the couplers as close to the posts as possible;

- Extend bearers beyond the posts and runners;

- Provide full contact with the coupler;

- The bottom bearers are located as close to the base as possible.

- Make sure runners meet all of the following:

- Are installed along the length of the scaffold;

- Are located on both the inside and outside posts at the same height;

- Are interlocked on straight runs to form continuous lengths and are coupled to each post;

- The bottom runners are located as close to the base as possible.

**Note:** Tube and coupler guardrails and midrails installed on outside posts can be used in lieu of outside runners.

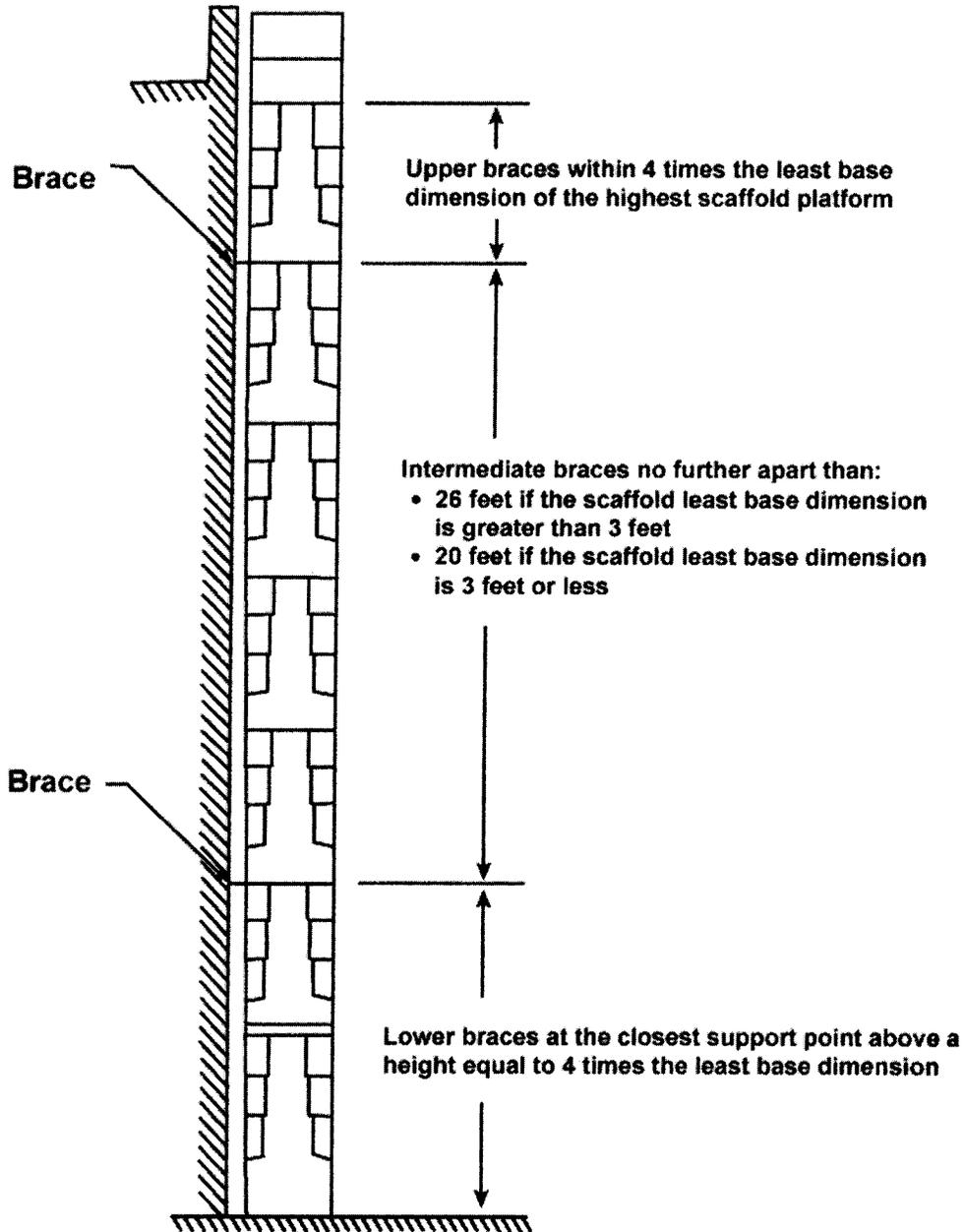
**You must:**

- Make sure couplers are made of a structural metal, such as drop-forged steel, malleable iron, or structural grade aluminum.

- Prohibit using couplers made of gray cast iron.

~~((STRICKEN GRAPHIC~~

Bracing – Tube and Coupler Scaffold



~~STRICKEN GRAPHIC))~~

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

**WAC 296-874-500 Definitions.**

**Adjustable suspension scaffold** a suspended scaffold equipped with one or more hoists that can be operated by employees on the scaffold.

**Bearer** a horizontal scaffold member (which may be supported by ledgers or runners) upon which the scaffold platform rests and which joins scaffold uprights, posts, poles, and similar members.

**Boatswain's chair** a single-point adjustable suspended scaffold consisting of a seat or sling designed to support one employee in a sitting position.

**Brace** a rigid connection that holds one scaffold member in a fixed position with respect to another member, or to a building or structure.

**Bricklayers' square scaffold** a supported scaffold composed of framed squares which support a platform.

**Carpenters' bracket scaffold** a supported scaffold consisting of a platform supported by brackets attached to building or structural walls.

**Catenary scaffold** a suspended scaffold consisting of a platform supported by two essentially horizontal and parallel ropes attached to structural members of a building or other structure. Additional support may be provided by vertical pickups.

**Cleat** a structural block used at the end of a platform to prevent the platform from slipping off its supports. Cleats are also used to provide footing on sloped surfaces such as access ramps.

**Competent person** someone who:

- Is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees;

AND

- Has the authority to take prompt corrective measures to eliminate them.

**Coupler** a device for locking together the tubes of a tube and coupler scaffold.

~~((Crawling board (chicken ladder) a supported scaffold consisting of a plank with cleats spaced and secured to provide footing, for use on sloped surfaces such as roofs.))~~

**Double-pole (independent pole) scaffold** a supported scaffold consisting of one or more platforms resting on cross beams (bearers) supported by ledgers and a double row of uprights independent of support (except ties, guys, braces) from any structure.

**Equivalent** alternative design, material or method to protect against a hazard. You have to demonstrate it provides an equal or greater degree of safety for employees than the method, material or design specified in the rule.

**Exposed power lines** electrical power lines which are accessible to and may be contacted by employees. Such lines do not include extension cords or power tool cords.

**Eye or eye splice** a loop at the end of a wire rope.

**Fabricated frame scaffold (tubular welded frame scaffold)** a scaffold consisting of platforms supported on fabricated frames with integral posts, horizontal bearers, and intermediate members.

**Failure** load refusal, breaking, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

**Float (ship) scaffold** a suspended scaffold consisting of a braced platform resting on two parallel bearers and hung from overhead supports by ropes of fixed length.

**Form scaffold** a supported scaffold consisting of a platform supported by brackets attached to formwork.

**Guardrail system** a vertical barrier, consisting of, but not limited to, top rails, midrails, and posts, erected to prevent employees from falling off a scaffold platform or walkway.

**Handrails (ladder stands)** a rail connected to a ladder stand running parallel to the slope and/or top step.

**Hoist** a manual or power-operated mechanical device to raise or lower a suspended scaffold.

**Horse scaffold** a supported scaffold consisting of a platform supported by construction horses (saw horses). Horse scaffolds constructed of metal are sometimes known as trestle scaffolds.

**Independent pole scaffold** (see double pole scaffold).

**Interior hung scaffold** a suspended scaffold consisting of a platform suspended from the ceiling or roof structure by fixed length supports.

**Ladder jack scaffold** a supported scaffold consisting of a platform resting on brackets attached to ladders.

**Ladder stand** a mobile, fixed-size, self-supporting ladder consisting of a wide flat tread ladder in the form of stairs.

**Landing** a platform at the end of a flight of stairs.

**Large area scaffold** a pole scaffold, tube and coupler scaffold, system scaffold, or fabricated frame scaffold erected over substantially the entire work area. For example: A scaffold erected over the entire floor area of a room.

**Lean-to scaffold** a supported scaffold which is kept erect by tilting it toward and resting it against a building or structure.

**Ledger** (see runner).

**Lifeline** a component consisting of a flexible line that connects to an anchorage at one end to hang vertically (vertical lifeline), or that connects to anchorages at both ends to stretch horizontally (horizontal lifeline). It serves as a means for connecting other components of a personal fall arrest system to the anchorage.

**Lower levels** areas below the level where the employee is located and to which an employee can fall. Such areas include, but are not limited to, ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, materials, water, and equipment.

**Masons' adjustable supported scaffold** (see self-contained adjustable scaffold).

**Masons' multipoint adjustable suspension scaffold** a continuous run suspended scaffold designed and used for masonry operations.

**Maximum intended load** the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time.

**Midrail** a rail, approximately midway between the top rail of a guardrail system and the platform, and secured to the uprights erected along the exposed sides and ends of a platform.

**Mobile scaffold** supported scaffold mounted on casters or wheels.

**Multilevel suspended scaffold** a two-point or multi-point adjustable suspension scaffold with a series of platforms at various levels resting on common stirrups.

**Multipoint adjustable suspension scaffold** a suspended scaffold consisting of a platform(s) which is suspended by more than two ropes from overhead supports and equipped with means to raise and lower the platform to desired work levels.

**Needle beam scaffold** a suspended scaffold which has a platform supported by two bearers (needle beams) suspended from overhead supports.

**Outrigger** a structural member of a supported scaffold which increases the base width of a scaffold. This provides support for and increases the stability of the scaffold.

**Outrigger beam (suspended and supported)** the structural member of a suspended scaffold or outrigger scaffold which provides support for the scaffold by extending the scaffold point of attachment to a point out and away from the structure or building.

**Outrigger scaffold** a supported scaffold consisting of a platform resting on outrigger beams which projects beyond the wall or face of the building or structure. The inboard ends of the outrigger beams are secured inside the building or structure.

**Overhand bricklaying** the process of laying bricks and masonry so that the surface of the wall is on the opposite side of the wall from the mason, requiring the mason to lean over the wall to complete the work. It includes mason tending and electrical installation incorporated into the brick wall during the overhand bricklaying process.

**Personal fall arrest system** a system used to arrest an employee's fall. It consists of an anchorage, connectors, and body harness and may also include a lanyard, deceleration device, lifeline, or combinations of these.

**Platform** a work surface used in scaffolds, elevated above lower levels. Platforms can be constructed using individual wood planks, fabricated planks, fabricated decks, and fabricated platforms.

**Pole scaffold** (see single-pole scaffold and double (independent) pole scaffold).

**Pump jack scaffold** a supported scaffold consisting of a platform supported by vertical poles and movable support brackets.

**Qualified person** a person who has successfully demonstrated the ability to solve problems relating to the subject matter, work, or project, either by:

- Possession of a recognized degree, certificate, or professional standing;

OR

- Extensive knowledge, training and experience.

**Rated load** the manufacturer's specified maximum load to be lifted by a hoist or to be applied to a scaffold or scaffold component.

**Repair bracket scaffold** a supported scaffold consisting of a platform supported by brackets. The brackets are secured in place around the circumference or perimeter of a chimney, stack, tank or other supporting structure by one or more wire ropes placed around the supporting structure.

**Roof bracket scaffold** a supported scaffold used on a sloped roof. It consists of a platform resting on angular-shaped supports so that the scaffold platform is level.

**Runner (ledger)** the lengthwise horizontal spacing or bracing member which may support the bearers.

**Scaffold** a temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials.

**Self-contained adjustable scaffold** a combination supported and suspended scaffold consisting of an adjustable platform mounted on an independent supporting frame, not a part of the object being worked on, which is equipped with a means to raise and lower the platform. Such systems include rolling roof rigs, rolling outrigger systems, and some masons' adjustable supported scaffolds.

**Shore scaffold** a supported scaffold which is placed against a building or structure and held in place with props.

**Single-point adjustable suspension scaffold** a suspended scaffold consisting of a platform suspended by one rope from an overhead support and equipped with means to permit the movement of the platform to desired work levels.

**Single-pole scaffold a supported scaffold** consisting of platforms resting on bearers, the outside ends of which are supported on runners secured to a single row of posts or uprights, and the inner ends of which are supported on or in a structure or building wall.

**Stair tower (scaffold stairway/tower)** a tower comprised of scaffold components which contains internal stairway units and rest platforms. These towers are used to provide access to scaffold platforms and other elevated points such as floors and roofs.

**Stall load** the load at which the prime mover of a power-operated hoist stalls or the power to the prime mover is automatically disconnected.

**Step, platform, and trestle ladder scaffold** a platform resting directly on the rungs of a step, platform, or trestle ladder.

**Stilts** a pair of poles or similar supports with raised footrests, used to permit walking above the ground or working surface.

**Stonesetters' multipoint adjustable suspension scaffold** a continuous run suspended scaffold designed and used for stonesetters' operations.

**Supported scaffold** one or more platforms supported by rigid means such as outrigger beams, brackets, poles, legs, uprights, posts, or frames.

**Suspended scaffold** one or more platforms suspended from an overhead structure by ropes or other nonrigid means.

**System scaffold** a scaffold consisting of posts with fixed connection points that accept runners, bearers, and diagonals that can be interconnected at predetermined levels.

**Toeboard (scaffold)** a barrier erected along the exposed sides and ends of a scaffold platform at platform level to prevent material, tools, and other loose objects from falling from the platform.

**Top plate bracket scaffold** a scaffold supported by brackets that hook over or are attached to the top of a wall. This type of scaffold is similar to carpenters' bracket scaffolds and form scaffolds.

**Tube and coupler scaffold** a scaffold consisting of platforms supported by tubing, erected with coupling devices connecting uprights, braces, bearers, and runners.

**Tubular welded frame scaffold** (see fabricated frame scaffold).

**Tubular welded sectional folding scaffold** a sectional, folding metal scaffold either of ladder frame or inside stairway design. It is substantially built of prefabricated welded sections, which consist of end frames, platform frame, inside inclined stairway frame and braces, or hinged connected diagonal and horizontal braces. It can be folded into a flat package when the scaffold is not in use.

**Two-point suspension scaffold (swing stage)** a suspended scaffold consisting of a platform supported by hangers (stirrups), suspended by two ropes from overhead supports, and equipped with a means to permit the raising and lowering of the platform to desired work levels.

**Unstable objects** items whose strength, configuration, or lack of stability may allow them to become dislocated and shift and therefore may not properly support the loads imposed on them. Unstable objects do not constitute a safe base support for scaffolds, platforms, or employees. Examples include, but are not limited to, barrels, boxes, loose brick, and concrete blocks.

**Vertical pickup** a rope used to support the horizontal rope in a catenary scaffold.

**Walkway (scaffold)** part of a scaffold used only for access and not as a working level.

**Window jack scaffold** a platform resting on a bracket or jack that projects through a window opening.

**Work level** the elevated platform, used for supporting workers and their materials.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-874-40016	Meet these requirements when using crawling boards (chicken ladders).
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#### **WSR 07-17-028**

##### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

[Filed August 7, 2007, 10:02 a.m., effective September 7, 2007]

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

Purpose: The rule adopts a federal rule change which Washington state is required to adopt for compatibility with the United States Nuclear Regulatory Commission regulations. Portable gauges contain radioactive material which, if compromised, could be hazardous to public health. Adopting national standards for security of portable gauges will reduce the potential for theft or unauthorized use of radioactive material.

Citation of Existing Rules Affected by this Order: Amending WAC 246-221-150.

Statutory Authority for Adoption: RCW 70.98.050.

Adopted under notice filed as WSR 07-11-121 on May 21, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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: August 6, 2007.

Mary C. Selecky  
Secretary

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

**WAC 246-221-150 Security and control of ~~((stored))~~ radioactive material and radiation machines.** (1) Licensed radioactive materials and registered radiation machines shall be secured from, or controlled in such a manner so as to prevent, unauthorized access or removal from the place of storage.

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

(3) Licensed radioactive materials in an unrestricted area and not in storage shall be tended under the constant surveillance and immediate control of the licensee.

~~((3))~~ (4) Registered radiation machines in an unrestricted area and not in storage shall be under the control of the registrant.

#### **WSR 07-17-031**

##### **PERMANENT RULES**

#### **DEPARTMENT OF NATURAL RESOURCES**

[Filed August 7, 2007, 11:30 a.m., effective September 7, 2007]

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

Purpose: To update rule to meet the intent of the 2007 legislature and revision of RCW 79.64.040.

Citation of Existing Rules Affected by this Order: Amending WAC 332-100-040.

Statutory Authority for Adoption: RCW 79.64.040.

Adopted under notice filed as WSR 07-12-098 on June 6, 2007.

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 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 0, Repealed 0.

Date Adopted: August 7, 2007.

Bonnie B. Bunning  
Executive Director of  
Policy and Administration

AMENDATORY SECTION (Amending WSR 06-03-016, filed 1/6/06, effective 2/6/06)

**WAC 332-100-040 Deduction determination.** (1) The board of natural resources hereby determines that a deduction from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department of natural resources and affecting public lands as provided for in subsection (2) hereof is necessary in order to achieve the purposes of chapter 79.64 RCW.

(2) The department of natural resources shall deduct up to the maximum percentages as provided for in RCW 79.64.-040 and related statutes. Except for transactions involving aquatic lands, harbor areas and trust land categories that have a deficit revenue/expenditure status, the deductions may be temporarily discontinued by a resolution of the board of natural resources at such times as the balance in the resource management cost account exceeds an amount equal to twelve months operating expenses for the department of natural resources or when the board determines such discontinuation is in the best interest of the trust beneficiaries. The board shall specify the trust lands subject to such discontinuation. The duration of such orders shall be for a specified time period calculated to allow a reduction of the resource management cost account balance to an amount approximately equal to three months operating expenses for the department. Operating expense needs will be determined by the board based on pro rata increments of biennial legislative appropriations. All sums so deducted shall be paid into the resource management cost account in the state general fund created by chapter 79.64 RCW.

## WSR 07-17-034

### PERMANENT RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 7, 2007, 4:04 p.m., effective December 1, 2007]

Effective Date of Rule: December 1, 2007.

Purpose: The Occupational Safety and Health Administration (OSHA) promulgated a new fire protection rule for shipyard employment that incorporated by reference, National Fire Protection Association (NFPA) standards. In this adoption, we replaced the references to those NFPA standards by adding the most recent versions. These amendments will enhance DOSH's fire protection in our shipyard standard by adding the most current NFPA consensus standards to our chapter. These changes will benefit the safety of employees by requiring employers to comply with the newer standards, which may be even more protective than the older standards.

These changes will not result in additional compliance costs.

#### WAC 296-304-01007 Fire safety plan.

- In subsection (1), replaced "Appendix 1" with "Appendix A."
- Moved the Appendix 1, model fire safety plan, into its own WAC section and called it "Appendix A."

#### WAC 296-304-01023 Model fire safety plan.

- Created this new section and moved the nonmandatory Appendix 1 to this section.

#### WAC 296-304-01013 Fire response.

- In subsection (3)(b), replaced "WAC 296-304-09007" with "chapter 296-842 WAC, Respirators."
- In subsection (5)(c)(v), replaced "NFPA 1981-1997" with "NFPA 1981-2002."

#### WAC 296-304-01017 Land-side fire protection systems.

- In subsection (2)(a), replaced "NFPA 10-1998" with "NFPA 10-2002."
- In subsection (2)(b), replaced "NFPA 10-1998" with "NFPA 10-2002" and "NFPA 14-2000" with "NFPA 14-2003."
- In subsection (3)(f), replaced "NFPA 72-1999" with "NFPA 72-2002."
- In subsection (4)(a), replaced "NFPA 14-2000" with "NFPA 14-2003."
- In subsection (4)(b), replaced "NFPA 13-1999" with "NFPA 13-2002" and "NFPA 750-2000" with "NFPA 750-2003."
- In subsection (4)(c), replaced "NFPA 11-1998 Standard for Low-Expansion Foam" with "NFPA 11-2005 Standard for Low, Medium, and High Expansion Foam Systems."
- In subsection (4)(e), replaced "NFPA 12-2000" with "NFPA 12-2005," "NFPA 12A-1997" with "NFPA 12A-2004," and "NFPA 2001-2000" with "NFPA 2001-2004."

**WAC 296-304-020 Confined and enclosed spaces and other dangerous atmospheres in shipyard employment.**

- In the definition of "Coast Guard authorized person" replaced "Appendix B" with "Appendix C."

**WAC 296-304-02005 Cleaning and other cold work.**

- In the note after subsection (2)(d), replaced "Appendix A" with "Appendix B."

**WAC 296-304-02007 Hot work.**

- In the note at the end of this section, replaced "Appendix A" with "Appendix B."

**WAC 296-304-02013 Appendix A—Compliance assistance guidelines for confined and enclosed spaces and other dangerous atmospheres.**

- Changed this Appendix to "Appendix B."

**WAC 296-304-02015 Appendix B—Confined and enclosed spaces and other dangerous atmospheres in shipyard employment.**

- Changed this Appendix to "Appendix C."

Citation of Existing Rules Affected by this Order: Amending WAC 296-304-01007 Fire safety plan, 296-304-01013 Fire response, 296-304-01017 Land-side fire protection systems, 296-304-020 Confined and enclosed spaces and other dangerous atmospheres in shipyard employment, 296-304-02005 Cleaning and other cold work, 296-304-02007 Hot work, 296-304-02013 Appendix A—Compliance assistance guidelines for confined and enclosed spaces and other dangerous atmospheres, and 296-304-02015 Appendix B—Confined and enclosed spaces and other dangerous atmospheres in shipyard employment.

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

Adopted under notice filed as WSR 07-10-076 on May 1, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 8, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 8, 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 8, Repealed 0.

Date Adopted: August 6, 2007.

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

**WAC 296-304-01007 Fire safety plan.** (1) **Employer responsibilities.** The employer must develop and implement

a written fire safety plan that covers all the actions that employers and employees must take to ensure employee safety in the event of a fire. (See Appendix ((†)) A to this section for a model fire safety plan.)

(2) **Plan elements.** The employer must include the following information in the fire safety plan:

- Identification of the significant fire hazards;
- Procedures for recognizing and reporting unsafe conditions;
- Alarm procedures;
- Procedures for notifying employees of a fire emergency;
- Procedures for notifying fire response organizations of a fire emergency;
- Procedures for evacuation;
- Procedures to account for all employees after an evacuation; and
- Names, job titles, or departments for individuals who can be contacted for further information about the plan.

(3) **Reviewing the plan with employees.** The employer must review the plan with each employee at the following times:

- By March 1, 2006, for employees who are currently working;
- Upon initial assignment for new employees; and
- When the actions the employee must take under the plan change because of a change in duties or a change in the plan.

(4) **Additional employer requirements.** The employer also must:

- Keep the plan accessible to employees, employee representatives, and WISHA;
- Review and update the plan whenever necessary, but at least annually;
- Document that affected employees have been informed about the plan as required by this subsection; and
- Ensure any outside fire response organization that the employer expects to respond to fires at the employer's work-site has been given a copy of the current plan.

(5) **Contract employers.** Contract employers in shipyard employment must have a fire safety plan for their employees, and this plan must comply with the host employer's fire safety plan.

**~~((Appendix 1 to WAC 296-304-01007—Model Fire Safety Plan (Nonmandatory))~~****Model Fire Safety Plan**

**Note:** This appendix is nonmandatory and provides guidance to assist employers in establishing a fire safety plan as required in WAC 296-304-01007.

**Table of Contents**

- ~~Purpose.~~
- ~~Worksite fire hazards and how to properly control them.~~
- ~~Alarm systems and how to report fires.~~
- ~~How to evacuate in different emergency situations.~~
- ~~Employee awareness.~~

**1. Purpose**

~~The purpose of this fire safety plan is to inform our employees of how we will control and reduce the possibility of fire~~

in the workplace and to specify what equipment employees may use in case of fire.

**2. ~~Work site fire hazards and how to properly control them~~**

- ~~(a) Measures to contain fires.~~
- ~~(b) Teaching selected employees how to use fire protection equipment.~~
- ~~(c) What to do if you discover a fire.~~
- ~~(d) Potential ignition sources for fires and how to control them.~~
- ~~(e) Types of fire protection equipment and systems that can control a fire.~~
- ~~(f) The level of fire fighting capability present in the facility, vessel, or vessel section.~~
- ~~(g) Description of the personnel responsible for maintaining equipment, alarms, and systems that are installed to prevent or control fire ignition sources, and to control fuel source hazards.~~

**3. ~~Alarm systems and how to report fires~~**

- ~~(a) A demonstration of alarm procedures, if more than one type exists.~~
- ~~(b) The worksite emergency alarm system.~~
- ~~(c) Procedures for reporting fires.~~

**4. ~~How to evacuate in different emergency situations~~**

- ~~(a) Emergency escape procedures and route assignments.~~
- ~~(b) Procedures to account for all employees after completing an emergency evacuation.~~
- ~~(c) What type of evacuation is needed and what the employee's role is in carrying out the plan.~~
- ~~(d) Helping physically impaired employees.~~

**5. ~~Employee awareness~~**

~~Names, job titles, or departments of individuals who can be contacted for further information about this plan.))~~

AMENDATORY SECTION (Amending WSR 05-19-086, filed 9/20/05, effective 12/1/05)

**WAC 296-304-01013 Fire response.** (1) **Employer responsibilities.** The employer must:

- (a) Decide what type of response will be provided and who will provide it; and
- (b) Create, maintain, and update a written policy that:
  - (i) Describes the internal and outside fire response organizations that the employer will use; and
  - (ii) Defines what evacuation procedures employees must follow, if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire.

**(2) Required written policy information.**

- (a) **Internal fire response.** If an internal fire response is to be used, the employer must include the following information in the employer's written policy:
  - (i) The basic structure of the fire response organization;
  - (ii) The number of trained fire response employees;
  - (iii) The fire response functions that may need to be carried out;
  - (iv) The minimum number of fire response employees necessary, the number and types of apparatuses, and a

description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility;

(v) The type, amount, and frequency of training that must be given to fire response employees; and

(vi) The procedures for using protective clothing and equipment.

(b) **Outside fire response.** If an outside fire response organization is used, the employer must include the following information in the written policy:

(i) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite;

(ii) The liaisons between the employer and the outside fire response organizations; and

(iii) A plan for fire response functions that:

(A) Addresses procedures for obtaining assistance from the outside fire response organization;

(B) Familiarizes the outside fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards; and

(C) Sets forth how hose and coupling connection threads are to be made compatible and includes where the adapter couplings are kept; or

(D) States that the employer will not allow the use of incompatible hose connections.

(c) **A combination of internal and outside fire response.** If a combination of internal and outside fire response is to be used, the employer must include the following information, in addition to the requirements in (a) and (b) of this subsection, in the written policy:

(i) The basic organizational structure of the combined fire response;

(ii) The number of combined trained fire responders;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatuses, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite; and

(v) The type, amount, and frequency of joint training with outside fire response organizations if given to fire response employees.

(d) **Employee evacuation.** The employer must include the following information in the employer's written policy:

(i) Emergency escape procedures;

(ii) Procedures to be followed by employees who may remain longer at the worksite to perform critical shipyard employment operations during the evacuation;

(iii) Procedures to account for all employees after emergency evacuation is completed;

(iv) The preferred means of reporting fires and other emergencies; and

(v) Names or job titles of the employees or departments to be contacted for further information or explanation of duties.

(e) **Rescue and emergency response.** The employer must include the following information in the employer's written policy:

(i) A description of the emergency rescue procedures; and

(ii) Names or job titles of the employees who are assigned to perform them.

(3) **Medical requirements for shipyard fire response employees.** The employer must ensure that:

(a) All fire response employees receive medical examinations to assure that they are physically and medically fit for the duties they are expected to perform;

(b) Fire response employees, who are required to wear respirators in performing their duties, meet the medical requirements of (~~WAC 296-304-09007~~) chapter 296-842 WAC, Respirators;

(c) Each fire response employee has an annual medical examination; and

(d) The medical records of fire response employees are kept in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(4) **Organization of internal fire response functions.** The employer must:

(a) Organize fire response functions to ensure enough resources to conduct emergency operations safely;

(b) Establish lines of authority and assign responsibilities to ensure that the components of the internal fire response are accomplished;

(c) Set up an incident management system to coordinate and direct fire response functions, including:

(i) Specific fire emergency responsibilities;

(ii) Accountability for all fire response employees participating in an emergency operation; and

(iii) Resources offered by outside organizations; and

(d) Provide the information required in this subsection to the outside fire response organization to be used.

(5) **Personal protective clothing and equipment for fire response employees.**

(a) **General requirements.** The employer must:

(i) Supply to all fire response employees, at no cost, the appropriate personal protective clothing and equipment they may need to perform expected duties; and

(ii) Ensure that fire response employees wear the appropriate personal protective clothing and use the equipment, when necessary, to protect them from hazardous exposures.

(b) **Thermal stability and flame resistance.** The employer must:

(i) Ensure that each fire response employee exposed to the hazards of flame does not wear clothing that could increase the extent of injury that could be sustained; and

(ii) Prohibit wearing clothing made from acetate, nylon, or polyester, either alone or in blends, unless it can be shown that:

(A) The fabric will withstand the flammability hazard that may be encountered; or

(B) The clothing will be worn in such a way to eliminate the flammability hazard that may be encountered.

(c) **Respiratory protection.** The employer must:

(i) Provide self-contained breathing apparatus (SCBA) to all fire response employees involved in an emergency

operation in an atmosphere that is immediately dangerous to life or health (IDLH), potentially IDLH, or unknown;

(ii) Provide SCBA to fire response employees performing emergency operations during hazardous chemical emergencies that will expose them to known hazardous chemicals in vapor form or to unknown chemicals;

(iii) Provide fire response employees who perform or support emergency operations that will expose them to hazardous chemicals in liquid form either:

(A) SCBA; or

(B) Respiratory protective devices certified by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR Part 84 as suitable for the specific chemical environment;

(iv) Ensure that additional outside air supplies used in conjunction with SCBA result in positive pressure systems that are certified by NIOSH under 42 CFR Part 84;

(v) Provide only SCBA that meet the requirements of NFPA 1981-((1997)) 2002 Standard on Open-Circuit Self-Contained Breathing Apparatus for the Fire Service (incorporated by reference, see WAC 296-304-01003); and

(vi) Ensure that the respiratory protection program and all respiratory protection equipment comply with chapter 296-842 WAC, Respiratory protection.

(d) **Interior structural firefighting operations.** The employer must:

(i) Supply at no cost to all fire response employees exposed to the hazards of shipyard fire response, a helmet, gloves, footwear, and protective hoods, and either a protective coat and trousers or a protective coverall; and

(ii) Ensure that this equipment meets the applicable recommendations in NFPA 1971-2000 Standard on Protective Ensemble for Structural Fire Fighting (incorporated by reference, see WAC 296-304-01003).

(e) **Proximity fire fighting operations.** The employer must provide, at no cost, to all fire response employees who are exposed to the hazards of proximity fire fighting, appropriate protective proximity clothing that meets the applicable recommendations in NFPA 1976-2000 Standard on Protective Ensemble for Proximity Fire Fighting (incorporated by reference, see WAC 296-304-01003).

(f) **Personal alert safety system (PASS) devices.** The employer must:

(i) Provide each fire response employee involved in fire fighting operations with a PASS device; and

(ii) Ensure that each PASS device meets the recommendations in NFPA 1982-1998 Standard on Personal Alert Safety Systems (PASS) (incorporated by reference, see WAC 296-304-01003).

(g) **Life safety ropes, body harnesses, and hardware.** The employer must ensure that:

(i) All life safety ropes, body harnesses, and hardware used by fire response employees for emergency operations meet the applicable recommendations in NFPA 1983-2001, Standard on Fire Service Life Safety Rope and System Components (incorporated by reference, see WAC 296-304-01003);

(ii) Fire response employees use only Class I body harnesses to attach to ladders and aerial devices; and

(iii) Fire response employees use only Class II and Class III body harnesses for fall arrest and rappelling operations.

**(6) Equipment maintenance.**

(a) **Personal protective equipment.** The employer must inspect and maintain personal protective equipment used to protect fire response employees to ensure that it provides the intended protection.

(b) **Fire response equipment.** The employer must:

(i) Keep fire response equipment in a state of readiness;

(ii) Standardize all fire hose coupling and connection threads throughout the facility and on vessels and vessel sections by providing the same type of hose coupling and connection threads for hoses of the same or similar diameter; and

(iii) Ensure that either all fire hoses and coupling connection threads are the same within a facility or vessel or vessel section as those used by the outside fire response organization, or supply suitable adapter couplings if such an organization is expected to use the fire response equipment within a facility or vessel or vessel section.

AMENDATORY SECTION (Amending WSR 05-19-086, filed 9/20/05, effective 12/1/05)

**WAC 296-304-01017 Land-side fire protection systems. (1) Employer responsibilities.** The employer must ensure all fixed and portable fire protection systems needed to meet WISHA standards for employee safety or employee protection from fire hazards in land-side facilities, including, but not limited to, buildings, structures, and equipment, meet the requirements of this section.

**(2) Portable fire extinguishers and hose systems.**

(a) The employer must select, install, inspect, maintain, and test all portable fire extinguishers according to NFPA 10-((+998)) 2002 Standard for Portable Fire Extinguishers (incorporated by reference, see WAC 296-304-01003).

(b) The employer is permitted to use Class II or Class III hose systems, in accordance with NFPA 10-((+998)) 2002, as portable fire extinguishers if the employer selects, installs, inspects, maintains, and tests those systems according to the specific recommendations in NFPA 14-((2000)) 2003 Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems (incorporated by reference, see WAC 296-304-01003).

**(3) General requirements for fixed extinguishing systems.** The employer must:

(a) Ensure that any fixed extinguishing system component or extinguishing agent is approved by an OSHA nationally recognized testing laboratory for use on the specific hazards the employer expects it to control or extinguish;

(b) Notify employees and take the necessary precautions to ensure employees are safe from fire if for any reason a fire extinguishing system stops working, until the system is working again;

(c) Ensure all repairs to fire extinguishing systems and equipment are done by a qualified technician or mechanic;

(d) Provide and ensure employees use proper personal protective equipment when entering discharge areas in which the atmosphere remains hazardous to employee safety or health, or provide safeguards to prevent employees from entering those areas. See WAC 296-304-02003 for additional

requirements applicable to safe entry into spaces containing dangerous atmospheres;

(e) Post hazard warning or caution signs at both the entrance to and inside of areas protected by fixed extinguishing systems that use extinguishing agents in concentrations known to be hazardous to employee safety or health; and

(f) Select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to NFPA 72-((+999)) 2002 National Fire Alarm Code (incorporated by reference, see WAC 296-304-01003).

**(4) Fixed extinguishing systems.** The employer must select, install, maintain, inspect, and test all fixed systems required by WISHA as follows:

(a) Standpipe and hose systems according to NFPA 14-((2000)) 2003 Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems (incorporated by reference, see WAC 296-304-01003);

(b) Automatic sprinkler systems according to NFPA 25-2002 Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems, and either NFPA 13-((+999)) 2002 Standard for the Installation of Sprinkler Systems or NFPA 750-((2000)) 2003 Standard on Water Mist Fire Protection Systems (incorporated by reference, see WAC 296-304-01003);

(c) Fixed extinguishing systems that use water or foam as the extinguishing agent according to NFPA 15-2001 Standard for Water Spray Fixed Systems for Fire Protection; NFPA 11-((+998)) 2005 Standard for Low, Medium, and High-Expansion Foam Systems; ((and NFPA 11A-1999 Standard for Medium- and High-Expansion Foam Systems)) (incorporated by reference, see WAC 296-304-01003);

(d) Fixed extinguishing systems using dry chemical as the extinguishing agent according to NFPA 17-2002 Standard for Dry Chemical Extinguishing Systems (incorporated by reference, see WAC 296-304-01003); and

(e) Fixed extinguishing systems using gas as the extinguishing agent according to NFPA 12-((2000)) 2005 Standard on Carbon Dioxide Extinguishing Systems; NFPA 12A-((+997)) 2004 Standard on Halon 1301 Fire Extinguishing Systems; and NFPA 2001-((2000)) 2004 Standard on Clean Agent Fire Extinguishing Systems (incorporated by reference, see WAC 296-304-01003).

NEW SECTION

**WAC 296-304-01023 Appendix A—Model fire safety plan.**

**Note:** This appendix is nonmandatory and provides guidance to assist employers in establishing a fire safety plan as required in WAC 296-304-01007.

**Table of Contents**

1. Purpose.
2. Worksite fire hazards and how to properly control them.
3. Alarm systems and how to report fires.
4. How to evacuate in different emergency situations.
5. Employee awareness.

**1. Purpose**

The purpose of this fire safety plan is to inform our employees of how we will control and reduce the possibility of fire

in the workplace and to specify what equipment employees may use in case of fire.

## 2. Work site fire hazards and how to properly control them

- (a) Measures to contain fires.
- (b) Teaching selected employees how to use fire protection equipment.
- (c) What to do if you discover a fire.
- (d) Potential ignition sources for fires and how to control them.
- (e) Types of fire protection equipment and systems that can control a fire.
- (f) The level of fire fighting capability present in the facility, vessel, or vessel section.
- (g) Description of the personnel responsible for maintaining equipment, alarms, and systems that are installed to prevent or control fire ignition sources, and to control fuel source hazards.

## 3. Alarm systems and how to report fires

- (a) A demonstration of alarm procedures, if more than one type exists.
- (b) The worksite emergency alarm system.
- (c) Procedures for reporting fires.

## 4. How to evacuate in different emergency situations

- (a) Emergency escape procedures and route assignments.
- (b) Procedures to account for all employees after completing an emergency evacuation.
- (c) What type of evacuation is needed and what the employee's role is in carrying out the plan.
- (d) Helping physically impaired employees.

## 5. Employee awareness

Names, job titles, or departments of individuals who can be contacted for further information about this plan.

AMENDATORY SECTION (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

**WAC 296-304-020 Confined and enclosed spaces and other dangerous atmospheres in shipyard employment.** Scope, application and definitions applicable to this subsection:

(1) Scope and application. This section applies to work in confined and enclosed spaces and other dangerous atmospheres in shipyard employment, including vessels, vessel sections, and on land-side operations regardless of geographic location.

(2) Definitions applicable to this section:

**Adjacent spaces** means those spaces bordering a subject space in all directions, including all points of contact, corners, diagonals, decks, tank tops, and bulkheads.

**Certified industrial hygienist (CIH)** means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

**Coast Guard authorized person** means an individual who meets the requirement of WAC 296-304-02015, Appendix ((B)) C, for tank vessels, for passenger vessels, and for cargo and miscellaneous vessels.

**Dangerous atmosphere** means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space), injury, or acute illness.

**Director** means the director of the department of labor and industries or his/her designated representative.

**Enter with restrictions** denotes a space where entry for work is permitted only if engineering controls, personal protective equipment, clothing, and time limitations are as specified by the marine chemist, certified industrial hygienist, or the shipyard competent person.

**Entry** means the action by which a person passes through an opening into a space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

**Hot work** means any activity involving riveting, welding, burning, the use of powder-actuated tools or similar fire-producing operations. Grinding, drilling, abrasive blasting, or similar spark-producing operations are also considered hot work except when such operations are isolated physically from any atmosphere containing more than 10 percent of the lower explosive limit of a flammable or combustible substance.

**Immediately dangerous to life or health (IDLH)** means an atmosphere that poses an immediate threat to life or that is likely to result in acute or immediate severe health effects.

**Inert or inerted atmosphere** means an atmospheric condition where:

(a) The oxygen content of the atmosphere in the space is maintained at a level equal to or less than 8.0 percent by volume or at a level at or below 50 percent of the amount required to support combustion, whichever is less; or

(b) The space is flooded with water and the vapor concentration of flammable or combustible materials in the free space atmosphere above the water line is less than 10 percent of the lower explosive limit for the flammable or combustible material.

**Labeled** means identified with a sign, placard, or other form of written communication, including pictograms, that provides information on the status or condition of the work space to which it is attached.

**Lower explosive limit (LEL)** means the minimum concentration of vapor in air below which propagation of a flame does not occur in the presence of an ignition source.

**Marine chemist** means an individual who possesses a current marine chemist certificate issued by the National Fire Protection Association (NFPA).

**NFPA** means National Fire Protection Association.

**Nationally Recognized Testing Laboratory (NRTL)** means an organization recognized by OSHA, in accordance with Appendix A of 29 CFR 1910.7, which tests for safety and lists or labels or accepts equipment and materials that meet all the criteria found in Section 1910.7 (b)(1) through (b)(4)(ii).

**Not safe for hot work** denotes a space where hot work may not be performed because the conditions do not meet the criteria for "safe for hot work."

**Not safe for workers** denotes a space where an employee may not enter because the conditions do not meet the criteria for "safe for workers."

**Oxygen-deficient atmosphere** means an atmosphere having an oxygen concentration of less than 19.5 percent by volume.

**Oxygen-enriched atmosphere** means an atmosphere that contains 22.0 percent or more oxygen by volume.

**Safe for hot work** denotes a space that meets all of the following criteria:

(a) The oxygen content of the atmosphere does not exceed 22.0 percent by volume;

(b) The concentration of flammable vapors in the atmosphere is less than 10 percent of the lower explosive limit;

(c) The residues or materials in the space are not capable of producing a higher concentration than permitted in (a) or (b) of the above, under existing atmospheric conditions in the presence of hot work and while maintained as directed by the marine chemist or competent person; and

(d) All adjacent spaces have been cleaned, or inerted, or treated sufficiently to prevent the spread of fire.

**Safe for workers** denotes a space that meets the following criteria:

(a) The oxygen content of the atmosphere is at least 19.5 percent and below 22.0 percent by volume;

(b) The concentration of flammable vapors is below 10 percent of the lower explosive limit (LEL);

(c) Any toxic materials in the atmosphere associated with cargo, fuel, tank coatings, or inerting media are within permissible concentrations at the time of the inspection; and

(d) Any residues or materials associated with the work authorized by the marine chemist, certified industrial hygienist, or competent person will not produce uncontrolled release of toxic materials under existing atmospheric conditions while maintained as directed.

**Space** means an area on a vessel or vessel section or within a shipyard such as, but not limited to: Cargo tanks or holds; pump or engine rooms; storage lockers; tanks containing flammable or combustible liquids, gases, or solids; rooms within buildings; crawl spaces; tunnels; or accessways. The atmosphere within a space is the entire area within its bounds.

**Upper explosive limit (UEL)** means the maximum concentration of flammable vapor in air above which propagation of flame does not occur on contact with a source of ignition.

**Vessel section** means a subassembly, module, or other component of a vessel being built, repaired, or broken.

**Visual inspection** means the physical survey of the space, its surroundings and contents to identify hazards such as, but not limited to, restricted accessibility, residues, unguarded machinery, and piping or electrical systems.

**AMENDATORY SECTION** (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

**WAC 296-304-02005 Cleaning and other cold work.**

(1) Locations covered by this section. The employer shall ensure that manual cleaning and other cold work are not performed in the following spaces unless the conditions of subsection (2) of this section have been met:

(a) Spaces containing or having last contained bulk quantities of combustible or flammable liquids or gases; and

(b) Spaces containing or having last contained bulk quantities of liquids, gases or solids that are toxic, corrosive or irritating.

(2) Requirements for performing cleaning or cold work.

(a) Liquid residues of hazardous materials shall be removed from work spaces as thoroughly as practicable before employees start cleaning operations or cold work in a space. Special care shall be taken to prevent the spilling or the draining of these materials into the water surrounding the vessel, or for shore-side operations, onto the surrounding work area.

(b) Testing shall be conducted by a competent person to determine the concentration of flammable, combustible, toxic, corrosive, or irritant vapors within the space prior to the beginning of cleaning or cold work.

(c) Continuous ventilation shall be provided at volumes and flow rates sufficient to ensure that the concentration(s) of:

(i) Flammable vapor is maintained below 10 percent of the lower explosive limit; and

Note to (2)(c)(i): Spaces containing highly volatile residues may require additional ventilation to keep the concentration of flammable vapors below 10 percent of the lower explosive limit and within the permissible exposure limit.

(ii) Toxic, corrosive, or irritant vapors are maintained within the permissible exposure limits and below IDLH levels.

(d) Testing shall be conducted by the competent person as often as necessary during cleaning or cold work to assure that air concentrations are below 10 percent of the lower explosive limit and within the PELs and below IDLH levels. Factors such as, but not limited to, temperature, volatility of the residues and other existing conditions in and about the spaces are to be considered in determining the frequency of testing necessary to assure a safe atmosphere.

Note to (2)(d): See WAC 296-304-02013—Appendix ((A)) B, for additional information on frequency of testing.

(e) Spills or other releases of flammable, combustible, toxic, corrosive, and irritant materials shall be cleaned up as work progresses.

(f) An employee may not enter a confined or enclosed space or other dangerous atmosphere if the concentration of flammable or combustible vapors in work spaces exceeds 10 percent of the lower explosive limit.

Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment provided:

(i) No ignition sources are present;

(ii) The atmosphere in the space is monitored continuously;

(iii) The atmosphere in the space is maintained above the upper explosive limit; and

(iv) Respiratory protection, personal protective equipment, and clothing are provided in accordance with WAC 206-304-090 through 296-304-09007.

Note to (2)(f): Other provisions for work in IDLH and other dangerous atmospheres are located in WAC 296-304-090 through 296-304-09007.

(g) A competent person shall test ventilation discharge areas and other areas where discharged vapors may collect to determine if vapors discharged from the spaces being ventilated are accumulating in concentrations hazardous to employees.

(h) If the tests required in (g) of this subsection indicate that concentrations of exhaust vapors that are hazardous to employees are accumulating, all work in the contaminated area shall be stopped until the vapors have dissipated or been removed.

(i) Only explosion-proof, self-contained portable lamps, or other electric equipment approved by a National Recognized Testing Laboratory (NRTL) for the hazardous location shall be used in spaces described in subsection (1) of this section, until such spaces have been certified as "safe for workers."

Note to (2)(i): Battery-fed, portable lamps or other electric equipment bearing the approval of a NRTL for the class, and division of the location in which they are used are deemed to meet the requirements of (i) of this subsection.

(j) The employer shall prominently post signs that prohibit sources of ignition within or near a space that has contained flammable or combustible liquids or gases in bulk quantities:

- (i) At the entrance to those spaces;
- (ii) In adjacent spaces; and
- (iii) In the open area adjacent to those spaces.

(k) All air moving equipment and its component parts, including duct work, capable of generating a static electric discharge of sufficient energy to create a source of ignition, shall be bonded electrically to the structure of a vessel or vessel section or, in the case of land-side spaces, grounded to prevent an electric discharge in the space.

(l) Fans shall have nonsparking blades, and portable air ducts shall be of nonsparking materials.

Note to (2): See WAC 296-304-02003(3) and applicable requirements of chapter 296-62 WAC, general occupational health standards, for other provisions affecting cleaning and cold work.

**AMENDATORY SECTION** (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

**WAC 296-304-02007 Hot work.** (1) Hot work requiring testing by a marine chemist or Coast Guard authorized person.

(a) The employer shall ensure that hot work is not performed in or on any of the following confined and enclosed spaces and other dangerous atmospheres, boundaries of spaces or pipelines until the work area has been tested and certified by a marine chemist or a U.S. Coast Guard authorized person as "safe for hot work":

(i) Within, on, or immediately adjacent to spaces that contain or have contained combustible or flammable liquids or gases.

(ii) Within, on, or immediately adjacent to fuel tanks that contain or have last contained fuel; and

(iii) On pipelines, heating coils, pump fittings or other accessories connected to spaces that contain or have last contained fuel.

(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in WAC 296-304-02003, but are adjacent to spaces containing flammable gases or liquids, as long as the gases or liquids with a flash point below 150 deg. F (65.6 deg. C) when the distance between such spaces and the work is 25 feet (7.62 m) or greater.

Note: For flammable liquids with flash points above 150 deg. F (65.6 deg. C), see subsection (2) of this section.

Note to (1)(a): The criteria for "safe for hot work" is located in the definition section, WAC 296-304-020(2).

(b) The certificate issued by the marine chemist or Coast Guard authorized person shall be posted in the immediate vicinity of the affected operations while they are in progress and kept on file for a period of at least three months from the date of the completion of the operation for which the certificate was generated.

(2) Hot work requiring testing by a competent person.

(a) Hot work is not permitted in or on the following spaces or adjacent spaces or other dangerous atmospheres until they have been tested by a competent person and determined to contain no concentrations of flammable vapors equal to or greater than 10 percent of the lower explosive limit:

- (i) Dry cargo holds;
- (ii) The bilges;
- (iii) The engine room and boiler spaces for which a marine chemist or a Coast Guard authorized person certificate is not required under subsection (1)(a)(i) of this section; and

(iv) Vessels and vessel sections for which a marine chemist or Coast Guard authorized person certificate is not required under subsection (1)(a)(i) of this section; and

(v) Land-side confined and enclosed spaces or other dangerous atmospheres not covered by subsection (1)(a) of this section.

(b) If the concentration of flammable vapors or gases is equal to or greater than 10 percent of the lower explosive limit in the space or an adjacent space where the hot work is to be done, then the space shall be labeled "not safe for hot work" and ventilation shall be provided at volumes and flow rates sufficient to ensure that the concentration of flammable vapors or gases is below 10 percent by volume of the lower explosive limit. The warning label may be removed when the concentration of flammable vapors and gases are below 10 percent of the lower explosive limit.

Note to WAC

296-304-02007: See WAC 296-304-02013—Appendix ((A)) B, for additional information relevant to performing hot work safely.

**AMENDATORY SECTION** (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

**WAC 296-304-02013 Appendix ((A)) B—Compliance assistance guidelines for confined and enclosed spaces and other dangerous atmospheres.** This appendix is a nonmandatory set of guidelines provided to assist employers in complying with the requirements of WAC 296-304-

020 through 296-304-02011. This appendix neither creates additional obligations nor detracts from obligations otherwise contained in this chapter. It is intended to provide explanatory information and educational material to employers and employees to foster understanding of, and compliance with, this chapter.

WAC 296-304-020 through 296-304-02011. These standards are minimum safety standards for entering and working safely in vessel tanks and compartments.

WAC 296-304-020(2) Definition of "Hot work." There are several instances in which circumstances do not necessitate that grinding, drilling, abrasive blasting be regarded as hot work. Some examples are:

(1) Abrasive blasting of the hull for paint preparation does not necessitate pumping and cleaning the tanks of a vessel.

(2) Prior to hot work on any hollow structure, the void space should be tested and appropriate precautions taken.

WAC 296-304-020(2) Definition of "Lower explosive limit." The terms lower flammable limit (LFL) and lower explosive limit (LEL) are used interchangeably in fire science literature.

WAC 296-304-020(2) Definition of "Upper explosive limit." The terms upper flammable limit (UFL) and upper explosive limit (UEL) are used interchangeably in fire science literature.

WAC 296-304-02003(1) After a tank has been properly washed and ventilated, the tank should contain 20.8 percent oxygen by volume. This is the same amount found in our normal atmosphere at sea level. However, it is possible that the oxygen content will be lower. When this is the case, the reasons for this deficiency should be determined and corrective action taken.

An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level less than 20.8 percent and greater than 19.5 percent level should also alert the competent person to look for the causes of the oxygen deficiency and to correct them prior to entry.

WAC 296-304-02003(2) Flammable atmospheres. Atmospheres with a concentration of flammable vapors at or above 10 percent of the lower explosive limit (LEL) are considered hazardous when located in confined spaces. However, atmospheres with flammable vapors below 10 percent of the LEL are not necessarily safe.

Such atmospheres are too lean to burn. Nevertheless, when a space contains or produces measurable flammable vapors below the 10 percent LEL, it might indicate that flammable vapors are being released or introduced into the space and could present a hazard in time. Therefore, the cause of the vapors should be investigated and, if possible, eliminated prior to entry.

Some situations that have produced measurable concentrations of flammable vapors that could exceed 10 percent of the LEL in time are:

(1) Pipelines that should have been blanked or disconnected have opened, allowing product into the space.

(2) The vessel may have shifted, allowing product not previously cleaned and removed during washing to move into other areas of the vessel.

(3) Residues may be producing the atmosphere by releasing flammable vapor.

WAC 296-304-02003(2) Flammable atmospheres that are toxic. An atmosphere with a measurable concentration of a flammable substance below 10 percent of the LEL may be above the WISHA permissible exposure limit for that substance. In that case, refer to WAC 296-304-02003 (3)(b), (c), and (d).

WAC 296-304-02005 (2)(d), 296-304-02009(3), and 296-304-02009(5). The frequency with which a tank is monitored to determine if atmospheric conditions are being maintained is a function of several factors that are discussed below:

(1) Temperature. Higher temperatures will cause a combustible or flammable liquid to vaporize at a faster rate than lower temperatures. This is important since hotter days may cause tank residues to produce more vapors and that may result in the vapors exceeding 10 percent of the LEL or an overexposure to toxic contaminants.

(2) Work in the tank. Any activity in the tank could change the atmospheric conditions in that tank. Oxygen from a leaking oxyfuel hose or torch could result in an oxygen-enriched atmosphere that would more easily propagate a flame. Some welding operations use inert gas, and leaks can result in an oxygen-deficient atmosphere. Manual tank cleaning with high pressure spray devices can stir up residues and result in exposures to toxic contaminants. Simple cleaning or mucking out, where employees walk through and shovel residues and sludge, can create a change in atmospheric conditions.

(3) Period of time elapsed. If a period of time has elapsed since a marine chemist or Coast Guard authorized person has certified a tank as safe, the atmospheric condition should be rechecked by the competent person prior to entry and starting work.

(4) Unattended tanks or spaces. When a tank or space has been tested and declared safe, then subsequently left unattended for a period of time, it should be retested prior to entry and starting work. For example, when barges are left unattended at night, unidentified products from another barge are sometimes dumped into their empty tanks. Since this would result in a changed atmosphere, the tanks should be retested prior to entry and starting work.

(5) Work break. When workers take a break or leave at the end of the shift, equipment sometimes is inadvertently left in the tanks. At lunch or work breaks and at the end of the shift are the times when it is most likely someone will leave a burning or cutting torch in the tank, perhaps turned on and leaking oxygen or an inert gas. Since the former can produce an oxygen-enriched atmosphere, and the latter an oxygen-deficient atmosphere, tanks should be checked for equipment left behind, and atmosphere, monitored if necessary prior to reentering and resuming work. In an oxygen-enriched atmosphere, the flammable range is severely broadened. This means that an oxygen-enriched atmosphere can promote very rapid burning.

(6) Ballasting or trimming. Changing the position of the ballast, or trimming or in any way moving the vessel so as to expose cargo that had been previously trapped, can produce a

change in the atmosphere of the tank. The atmosphere should be retested after any such move and prior to entry or work.

WAC 296-304-02007 (1) and (2) hot work. This is a reminder that other sections of the WISHA shipyard safety and health standards in chapter 296-304 WAC should be reviewed prior to starting any hot work. Most notably, WAC 296-304-040 through 296-304-04013, welding, cutting and heating, places additional restrictions on hot work: The requirements of WAC 296-304-04001 and 296-304-04005 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of WAC 296-304-04007 must be met before welding, cutting, or heating is begun on any structural voids.

WAC 296-304-02003 (1)(b). During hot work, more than 20.8 percent oxygen by volume can be unsafe since it extends the normal flammable range. The standard permits the oxygen level to reach 22.0 percent by volume in order to account for instrument error. However, the cause of excess oxygen should be investigated and the source removed.

WAC 296-304-02011(2). If the entire vessel has been found to be in the same condition, then employers shall be considered to be in compliance with this requirement when signs using appropriate warning language in accordance with WAC 296-304-02011(1) are posted at the gangway and at all other means of access to the vessel.

AMENDATORY SECTION (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

**WAC 296-304-02015 Appendix ((B)) C—Confined and enclosed spaces and other dangerous atmospheres in shipyard employment.** This appendix provides a complete reprint of U.S. Coast Guard regulations as of October 1, 1993 referenced in WAC 296-304-020 for purposes of determining who is a Coast Guard authorized person.

(1) Title 46 CFR 35.01-1 (a) through (c) covering hot work on tank vessels reads as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Battery-march Park, Quincy, MA 02269, shall be used as a guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks that have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or

(ii) Within or on the boundaries of fuel tanks; or

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions, the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemists are not reasonably available, the Officer in Charge,

Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicates that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified, throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) Title 46 CFR 71.60(c)(1) covering hot work on passenger vessels reads as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Battery-march Park, Quincy, MA 02269, shall be used as a guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks which have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or

(ii) Within or on the boundaries of fuel tanks; or

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that

may be present from protective coatings or residues from cargoes.

(3) Title 46 CFR 91.50-1(c)(1) covering hot work on cargo and miscellaneous vessels as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, shall be used as a guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks which have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or,

(ii) Within or on the boundaries of fuel tanks; or,

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

### WSR 07-17-035

#### PERMANENT RULES

#### GAMBLING COMMISSION

[Order 474-A—Filed August 8, 2007, 8:57 a.m., effective September 8, 2007]

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

Purpose: The petitioner requested that the maximum prize limit for pull-tab carry-over jackpots be increased from \$2,000 to \$5,000, and the maximum number of tabs per series be increased from 6,000 tabs to 10,000 tabs. The petitioner's

request was approved at the July 13, 2007, commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-30-045.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-11-080 on May 15, 2007, with a published date of June 6, 2007.

Changes Other than Editing from Proposed to Adopted Version: **CORRECTION: Due to an inadvertent error an incorrect version was filed under WSR 07-15-060. The amendment to subsection (5) was not made on that filing. This version reflects what was adopted by the commission at their July 13, 2007, meeting.**

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 Request of a Nongovernmental Entity: New 0, 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 0, Amended 1, Repealed 0.

Date Adopted: August 8, 2007.

Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending Order 474, filed 7/16/07, effective 8/16/07)

**WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements.** Operators may utilize pull-tab series that are specifically designed to include carry-over jackpots. The following definitions and requirements shall apply to these series:

#### Definitions.

(1) The following definitions apply to pull-tab series with carry-over jackpots:

(a) "Carry-over jackpot" means a prize pool that is composed of accumulated contribution amounts from pull-tab series which, if not won, are carried over to other pull-tab series;

(b) "Contribution amount" means the amount from each series which is added to the carry-over jackpot; and

(c) "Guaranteed prizes" means all prizes available to be won, excluding the contribution amount or carry-over jackpot;

#### Prize payout requirements.

(2) The following requirements apply to prizes and prize payout calculations for carry-over jackpots:

(a) Guaranteed prizes must be 60% or more of gross receipts available from the pull-tab series;

(b) The contribution amount for each series may not be more than five hundred dollars;

(c) The contribution amount and the method of play shall be determined by the manufacturer and disclosed on the flare;

**Maximum jackpot amount.**

(d) At no time shall an accumulated carry-over jackpot exceed five thousand dollars. If the carry-over jackpot is awarded, the sum of the advance-level prize and the carry-over jackpot prize shall not exceed five thousand dollars.

**Jackpot must be carried over until won.**

(e) Accumulated carry-over jackpots shall be carried over to subsequent series until won;

**Jackpot must be paid out.**

(f) The carry-over jackpot must be awarded. Failure to have sufficient funds available, or any attempt by an operator to utilize carry-over jackpots for personal or organizational purposes, shall be *prima facie* evidence of defrauding the players in violation of RCW 9.46.190;

**Maximum prize amounts for series when jackpots are not awarded.**

(g) If the jackpot is not awarded and is carried over to a new series, the sum of the advance-level prize and the consolation prize shall not exceed five hundred dollars;

**Distribution of jackpots when a licensee ceases to operate.**

(3) If a licensee ceases to operate gambling activities due to a sale, closure, or failure to maintain a valid gambling license, the carry-over jackpot shall be:

(a) Transferred to the new licensee, which has a valid gambling license. The new licensee shall operate the carry-over jackpot game until the prize is awarded;

(b) Awarded to a player by playing out the game prior to closure;

(c) Distributed to the Washington state council on problem gambling; or

(d) Distributed to a charitable or nonprofit organization licensed by the Washington state gambling commission;

**Bonus pull-tab series.**

(4) The following additional requirements apply to bonus pull-tab series with carry-over jackpots:

(a) The odds of winning the carry-over jackpot shall not exceed one winner out of ten chances, or the probability of winning the carry-over jackpot shall be .10 or higher, at the jackpot level;

(b) There may only be one advance level on the flare;

(c) There shall be at least one guaranteed chance to win the carry-over jackpot;

(d) All chances that are included on the flare shall be covered in a manner that prevents determination of the concealed numbers or symbols prior to being opened by the player. If perforated windows are used, the numbers or symbols must be covered by latex, foil, or other approved means; and

(e) Standards for bonus pull-tab flares, as set forth in WAC 230-30-106, shall apply;

**Maximum number of tickets.**

(5) The maximum ticket count for pull-tab series with carry-over jackpots shall be ~~((six))~~ ten thousand tickets;

**Secondary win codes.**

(6) The secondary win codes on pull-tab series with carry-over jackpots must not repeat within a three-year period;

**Replacing series.**

(7) Once it has been determined that no chances to win the carry-over jackpot remain in a series and the jackpot has not been won, the series shall be removed from play and replaced with a new series within seven operating days;

**Transferring a jackpot to another game.**

(8) If a carry-over jackpot is not won prior to removing a series from play, it shall be carried over to a new series within one operating day from when the series was removed from play. The accrued contribution amounts from all previous series shall be added to the contribution amount from the new series, up to two thousand dollars;

**Recording names of winners.**

(9) For carry-over jackpots in the amount of six hundred dollars and over, the winner's full name, address, and Social Security number shall be recorded on a separate form for income tax purposes;

**Retention requirements.**

(10) Each pull-tab series contributing to a specific carry-over jackpot must be retained as one series. The retention period for these series shall be as required by WAC 230-30-072(3): Provided, That the retention period shall start on the last day of the month in which the carry-over jackpot was awarded rather than when the series was removed from play; and

**Documenting the flow of jackpots.**

(11) Operators are required to maintain a separate record documenting the flow of carry-over jackpots from one game to another in a format prescribed by the commission;

**Recordkeeping on cash basis only - exception.**

(12) For the purposes of monthly records set forth in WAC 230-08-010, all operators shall record carry-over jackpots on a cash basis. This means that carry-over jackpot contribution amounts shall not be recorded on monthly records until the prize is awarded: Provided, That punch board/pull-tab licensees who also hold a Class F or above bingo license may accrue carry-over jackpot contribution amounts on their monthly records if the following conditions are met:

(a) Prior approval is received from the director;

(b) The contribution amounts, up to the point where the jackpot reaches the maximum, shall be recorded as prizes paid on the monthly records;

(c) When the jackpot is awarded, only amounts not previously accrued, if any, shall be recorded as a prize paid;

(d) No more than five carry-over jackpot series shall be in play at once; and

(e) If the contribution amount is not deposited with the net receipts (required by WAC 230-12-020), a proper audit trail and adequate security over the funds must be maintained; and

**Director approval required.**

(13) The director shall approve the following aspects of all pull-tab games with carry-over jackpots prior to sale in Washington state:

(a) The design, payout, method of play, and flare for each pull-tab series;

(b) The manufacturing process for the pull-tab series and flares; and

(c) The secondary win code system for the pull-tab series.

**WSR 07-17-047**

**PERMANENT RULES  
COMMISSION ON  
JUDICIAL CONDUCT**

[Filed August 9, 2007, 11:11 a.m., effective September 9, 2007]

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

Purpose: WAC 292-10-010 and 292-10-020 are amended to update the RCW references due to a recodification of the Revised Code of Washington relating to public records and public disclosure.

Citation of Existing Rules Affected by this Order: Amending WAC 292-10-010 and 292-10-020.

Statutory Authority for Adoption: WA Const. Art. IV, Sec. 31, chapter 42.56 RCW.

Other Authority: Chapter 2.64 RCW.

Adopted under notice filed as WSR 07-04-041 on February 21 [January 30], 2007.

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 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 1, Repealed 0.

Date Adopted: August 9, 2007.

J. Reiko Callner  
Executive Director

AMENDATORY SECTION (Amending Order 3, filed 2/5/91, effective 3/8/91)

**WAC 292-10-010 Purpose.** The purpose of this chapter is to implement those provisions of RCW ((42-17-250)) 42.56.040 through ((42-17-340)) 42.56.550 relating to access to public records.

AMENDATORY SECTION (Amending Order 3, filed 2/5/91, effective 3/8/91)

**WAC 292-10-020 Public records available.** All commission public records are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 2.64.111 and ((42-17-310)) 42.56-210. In accordance with chapter 256, Laws of 1990, work and home addresses of any person requesting in writing that their addresses be kept private because disclosure would endanger life, safety or property, shall be omitted from all documents in public files.

**WSR 07-17-048**

**PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-165—Filed August 9, 2007, 2:35 p.m., effective September 9, 2007]

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

Purpose: Amend WAC 232-16-600 North Potholes Game Reserve and 232-16-780 Fir Island Farm Game Reserve.

Citation of Existing Rules Affected by this Order: Amending WAC 232-16-600 and 232-16-780.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.040.

Adopted under notice filed as WSR 07-09-083 on April 17, 2007.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.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 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: August 4, 2007.

Susan Yeager  
for Jerry Gutzwiler, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 03-175, filed 8/5/03, effective 9/5/03)

**WAC 232-16-600 North Potholes Game Reserve.**

Those lands in Grant County within the following described boundary: In T19N, R27E WM; the N.E. 1/4 of Section 32, and the N.E. 1/4 S.E. 1/4 of Section 32, all of Section 33, except the S.W. 1/4 S.W. 1/4, and all of Section 34.

In T18N, R27E WM; all of Section 4, except the N.W. 1/4 and the N.W. 1/4 N.E. 1/4; all of Section 3; that part of Section 10 north of the Job Corps Dike Rd; that part of Section 9 east of the fenceline, beginning at the N.W. corner of Section 9, and then following said fenceline southeasterly to the fence on the northern section line of Section 16 near Job Corps Dike Road; those portions of sections 15 and 16 north of the above mentioned fence to the west end of the Job Corps Dike; and that part of Section 15 north of the Job Corps Dike Road.

All areas of North Potholes Game Reserve located in Sections 9, 10, and 15 are closed to all public access from March 15 through May 30 and from October 1 through February 1.

AMENDATORY SECTION (Amending Order 97-162, filed 8/25/97, effective 9/25/97)

**WAC 232-16-780 Fir Island Farm Game Reserve.**

In Skagit County, beginning at the intersection of Fir Island Road and the ((east)) west bank of Brown's Slough (inside base of dike); then east along Fir Island Road (96 feet) to the Brown's Slough dike; then southerly and easterly along the Brown's Slough dike to the Fir Island Farm access road; then north along the Fir Island Farm access road to Fir Island Road; then east along Fir Island Road to the northeast corner of Section 22 (T33N, R3E); then south along the east line of Section 22 (T33N, R3E) to Dry Slough; then westerly and south along the west bank of Dry Slough to the intersection with Dike District #22 dike; then westerly along the south side (Skagit Bay side) of the Dike District #22 dike to the intersection of the Dike District #22 dike and the south line of Government Lot #5 (Section 22, T33N, R3E), then west approximately 1900 feet to the ((east)) west bank of Brown's Slough (inside base of dike), then north along the ((east)) west bank of Brown's Slough to the intersection with the Fir Island Road and the point of beginning.

**WSR 07-17-049**

**PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-166—Filed August 9, 2007, 2:35 p.m., effective September 9, 2007]

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

Purpose: Amend WAC 232-28-295 Landowner hunting permits and 232-28-354 2007 Elk special permits; new WAC 232-28-431 2007-08 Migratory waterfowl seasons and regulations; and repealing WAC 232-28-430 2006-07 Migratory waterfowl seasons and regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-430, and amending WAC 232-28-295 and 232-28-354.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

Adopted under notice filed as WSR 07-13-102 on June 20, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 232-28-431 2007-08 Migratory waterfowl seasons and regulations. Changes, if any, from the text of the proposed rule and reasons for difference:

- Under duck season bag limits, change daily limit for canvasback from 1 to 2 and possession limit from 2 to 4. Based on the fact that the canvasback population is at record levels, the United States Fish and Wildlife Service has recently provided additional opportunity.
- Under Goose Management Area 1, change opening season date for snow, Ross' and blue geese from October 13 to October 20, to comply with the maximum season length allowed under United States Fish and Wildlife Service frameworks.
- Under Quality Hunting Areas in Goose Management Area 1, sentence 5, change check-in requirements from "24 hours prior to hunting" to "one week prior to their first scheduled hunting day." This adjustment promotes maximum utilization of hunting opportunity by allowing more time to schedule replacements for hunters who are unable to participate.
- Under Quality Hunting Areas In Goose Management Area 1, sentence 7, change season from "Tuesday, Thursday, Saturday, and Sunday" to "Monday, Tuesday, Wednesday, Friday, and Saturday during the period Nov. 3, 2007 - Jan. 27, 2008." This adjustment responds to recommendations from the Fir Island Snow Goose Hunting Management Plan Working Group to allow 5 days per week hunting, avoid Sunday hunting, and retain the same season length for the quality hunt as in 2006-07.
- Under Falconry Seasons, Goose Management Area 1, change opening season date for snow, Ross' and blue geese (falconry) from October 13 to October 20, to comply with the maximum season length allowed under United States Fish and Wildlife Service frameworks.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 1.

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: August 4, 2007.

Susan Yeager  
for Jerry Gutzwiler, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 07-62, filed 5/3/07, effective 6/3/07)

**WAC 232-28-295 Landowner hunting permits.** A landowner may enter into a contract with the department and establish boundaries and other requirements for hunter access consistent with commission policy.

Hunt Name	Quota	Access Season
Buckrun	10	Sept. 1 - Dec. 31
Buckrun	30	Sept. 1 - Dec. 31
Buckrun Raffle	10	Sept. 1 - Dec. 31

**Deer**

**2007 Buckrun Special Hunting Permits**

Hunters apply to Washington department of fish and wildlife for these permits. Only hunters possessing a modern firearm deer tag are eligible for Buckrun special permits. All hunters must check in and out on hunt day. Schedule hunts in advance by calling 509-345-2577.

Hunt Name	Permit Number	Permit Season
Buckrun	10	Sept. 1 - Dec. 31

Hunters must possess both an access permit from the landowner and a hunting permit from the department when hunting on lands and for species covered under contract.

**(1) Buckrun**

Buckrun is located in Grant County, near the town of Wilson Creek. A legal description of the property has been filed with the county and is in the contract between Buckrun and the department.

Hunting on Buckrun is managed for a quality experience by scheduling hunt dates and keeping the number of hunters in the field low. Hunters with limited flexibility for hunt dates may experience scheduling problems. Hunters can generally expect one day hunts with written authorization from the Buckrun manager. All hunters must check in and out on hunt day. Schedule hunts in advance by calling 509-345-2577.

**Deer**

**2007 Buckrun Landowner Hunting Permits**

The manager of Buckrun will distribute these hunting permits. An access fee may be charged in order to utilize these permits. No access fee will be charged for the raffle permit winners. Only hunters possessing a modern firearm deer tag are eligible for permits on Buckrun properties. Contact the manager at 509-345-2577 for additional information.

Special Restrictions	Boundary Description
Antlerless Mule Deer or any Whitetail Deer	Buckrun
Any deer	Buckrun
Any deer	Buckrun

**(2) 4-O Cattle Company**

The 4-O Cattle Company is located in southwest Asotin County near the Washington/Oregon border. A legal description of the property is in the contract between the 4-O Cattle Company and the department.

**2007 4-O Cattle Company Landowner Hunting Permits**

The manager of the 4-O Cattle Company will distribute these hunting permits. An access fee may be charged in order to utilize these permits.

**Elk**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
4-O Cattle Company	1	Sept. 15-24	Any Bull	4-O Cattle Company
4-O Cattle Company	6	Oct. 27 - Nov. 4	Spike Bull Only	4-O Cattle Company
4-O Cattle Company - A	5	Oct. 1-7	Antlerless Only	4-O Cattle Company
4-O Cattle Company - B	10	Oct. 31 - Nov. 6	Antlerless Only	4-O Cattle Company

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
4-O Cattle Company - C	3	Nov. 23-30	Antlerless Only	4-O Cattle Company
4-O Cattle Company - D	5	Dec. 29 - Jan. 4	Antlerless Only	4-O Cattle Company

**Whitetail Deer**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
4-O Cattle Company	1	Nov. 15-19	Any Whitetail Buck	4-O Cattle Company

**Mule Deer**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
4-O Cattle Company	6	Oct. 13-16	Any Mule Deer Buck	4-O Cattle Company

**2007 4-O Cattle Company Special Hunting Permits**

Hunters apply to the Washington department of fish and wildlife for these permits.

**Elk**

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
4-O Any Bull Elk	1	Sept. 26 - Oct. 6	Any Bull	4-O Cattle Company
4-O Spike Bull Elk	2	Oct. 27 - Nov. 4	Spike Bull Only	4-O Cattle Company
4-O Antlerless Elk A	15	Oct. 1-7	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk B	10	Oct. 31 - Nov. 6	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk C	7	Nov. 23-30	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk D	5	Dec. 1-7	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk E	5	Dec. 8-14	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk F	5	Dec. 15-21	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk G	5	Dec. 22-28	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk H	3	Dec. 29 - Jan. 4	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk I	5	Jan. 12-18	Antlerless Only	4-O Cattle Company
4-O Antlerless Elk J	5	Jan. 26-31	Antlerless Only	4-O Cattle Company

**Whitetail Deer**

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
4-O White-tailed Buck	1	Nov. 20-25	Any White-tailed Deer Buck	4-O Cattle Company

**Mule Deer**

Hunt Name	Permit Number	Access Season	Special Restrictions	Boundary Description
4-O Mule Deer Buck	2	Oct. 17-21	Any Mule Deer Buck	4-O Cattle Company

**(3) Silver Dollar Association**

The Silver Dollar Association is located in Yakima and Benton counties, on the western edge of the Hanford Reservation. A legal description of the property is in the contract between the Silver Dollar Association and the department.

**2007 Silver Dollar Association Landowner Hunting Permits**

The manager of the Silver Dollar Association will distribute these hunting permits. An access fee may be charged in order to utilize these permits.

**Elk**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Silver Dollar	24	Aug. 1 - March 31	Any ( <del>Bull</del> ) <u>Elk</u>	Silver Dollar
Silver Dollar	15	Aug. 1 - March 31	Antlerless	Silver Dollar

**2007 Silver Dollar Special Hunting Permits**

Hunters apply to the Washington department of fish and wildlife for these permits.

**Elk**

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Silver Dollar	6	Aug. 1 - March 31	Youth Only, Any Elk	Silver Dollar
Silver Dollar Antlerless Elk	12	Aug. 1 - March 31	Youth Only, Antlerless Elk Only	Silver Dollar
Silver Dollar Any Elk	2	Aug. 1 - March 31	Persons of Disability Only, Any Elk	Silver Dollar
Silver Dollar Antlerless Elk	3	Aug. 1 - March 31	Persons of Disability Only, Antlerless Elk Only	Silver Dollar

**(4) Blackrock Ranches**

Blackrock Ranches is located in Yakima County, west of the Hanford Reservation. A legal description of the property is in the contract between Blackrock Ranches and the department.

**2007 Blackrock Ranches Landowner Hunting Permits**

The manager of Blackrock Ranches will distribute these hunting permits. An access fee may be charged in order to utilize these permits.

**Elk**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Blackrock Ranches	6	Aug. 1 - March 31	Any Elk	Blackrock Ranches
Blackrock Ranches	8	Aug. 1 - March 31	Antlerless	Blackrock Ranches

**2007 Blackrock Ranches Special Hunting Permits**

Hunters apply to the Washington department of fish and wildlife for these permits.

**Elk**

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Blackrock Ranches	1	Aug. 1 - March 31	Any Elk	Blackrock Ranches
Blackrock Ranches	4	Aug. 1 - March 31	Antlerless Only	Blackrock Ranches
Blackrock Ranches	1	Aug. 1 - March 31	Youth Only, Any Elk	Blackrock Ranches
Blackrock Ranches	4	Aug. 1 - March 31	Youth Only, Antlerless Only	Blackrock Ranches

**(5) Teanaway Ranch**

The Teanaway Ranch is located in Kittitas County, 7 miles west of Cle Elum. A legal description of the property is in the contract between the Teanaway Ranch and the department.

**2007 Teanaway Ranch Landowner Hunting Permits**

The manager of the Teanaway Ranch will distribute this hunting permit. An access fee may be charged in order to utilize this permit.

**Elk**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Teanaway Ranch	1	Aug. 1 - March 31	Any Bull	Teanaway Ranch

**2007 Teanaway Ranch Special Hunting Permits**

Hunters apply to the Washington department of fish and wildlife for this permit.

**ELK**

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Teanaway Ranch	1	Aug. 1 - March 31	Any Bull	Teanaway Ranch

AMENDATORY SECTION (Amending Order 07-62, filed 5/3/07, effective 6/3/07)

**WAC 232-28-354 2007 Elk special permits.**

**Special Elk Permit Hunting Seasons  
(Open to Permit Holders Only)**

Hunters must purchase an elk hunting license prior to purchase of a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice;

however, Multiple Season Permit holders may apply for Eastern or Western Washington archery, muzzleloader, or modern firearm permit hunts. Applicants must have purchased the proper tag for these hunts. The elk tag prefixes required to apply for each hunt are shown in the following table. Hunters drawn for a special permit hunt must comply with weapon restrictions and dates listed for the hunt.

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
<b>Modern Firearm Bull Permit Hunts (Only modern firearm elk tag holders may apply.)</b>					
Prescott A	Oct. 22 - Nov. 4	Any bull	EF	GMU 149	2
Blue Creek A	Oct. 22 - Nov. 4	Any bull	EF	GMU 154	2
Watershed	Oct. 27 - Nov. 4	3 pt. min. or Antlerless	EA, EF, EM	GMU 157	45
Dayton A	Oct. 22 - Nov. 4	Any bull	EF	GMU 162	13
Tucannon A	Oct. 22 - Nov. 4	Any bull	EF	Elk Area 1014	4
Wenaha A	Oct. 22 - Nov. 4	Any bull	EF	GMU 169	17
Mountain View A	Oct. 22 - Nov. 4	Any bull	EF	GMU 172	6
Couse A	Oct. 22 - Nov. 4	Any bull	EF	GMU 181	1
Mission A	Oct. 22 - Nov. 4	Any bull	EF	GMU 251	2
Colockum A	Oct. 22 - Nov. 4	Any bull	EF	GMUs 328, 329	9
Teanaway A	Dec. 19-30	Any bull	EF	GMU 335	22
Teanaway A-1	Oct. 22 - Nov. 4	Any bull	EF	GMU 335	1
Peaches Ridge A	Oct. 22 - Nov. 4	Any bull	EF	GMUs 336, 346	135
Little Naches A	Oct. 1-10	Any bull	EF	GMU 346	15
Observatory A	Oct. 22 - Nov. 4	Any bull	EF	GMUs 340, 342	80
Goose Prairie A	Oct. 22 - Nov. 4	Any bull	EF	GMUs 352, 356	96
Bethel A	Oct. 22 - Nov. 4	Any bull	EF	GMU 360	62
Rimrock A	Oct. 22 - Nov. 4	Any bull	EF	GMU 364	123
Cowiche A	Oct. 22 - Nov. 4	Any bull	EF	GMU 368	24
Klickitat Meadows A	Oct. 22 - Nov. 4	Any bull	EF	Elk Area 3068	1
Nooksack A	Oct. 13 - Nov. 11	Any bull	WF	GMU 418	((6)) 7
Green River	Oct. 27 - Nov. 2	Any bull	WF	GMU 485	3
Margaret A	Nov. 3-12	Any bull	WF	GMU 524	35
Toutle A	Nov. 3-12	Any bull	WF	GMU 556	130
Clearwater	Oct. 1-10	Any bull	WA, WF, WM	GMU 615	2
Matheny	Oct. 1-10	Any bull	WA, WF, WM	GMU 618	3
Olympic A	Nov. 1-9	3 pt. min.	WF	GMU 621, EXCEPT for Elk Area 6071	14
Skokomish A	Nov. 1-9	3 pt. min.	WF	GMU 636	9
Wynoochee	Oct. 1-10	Any bull	WA, WF, WM	GMU 648	1
White River A	Nov. 3-12	Any bull	WF	GMU 653	40
<b>Modern Firearm Elk Permit Hunts (Only modern firearm elk tag holders may apply.)</b>					
Aladdin A	Oct. 27 - Nov. 4	Any elk	EF	GMU 111	15
Selkirk A	Oct. 27 - Nov. 4	Any elk	EF	GMU 113	20
49 Degrees North A	Oct. 27 - Nov. 4	Any elk	EF	GMU 117	45
Blue Creek B	Oct. 27 - Nov. 4	Antlerless	EF	GMUs 149, 154	100
Prescott B	Oct. 27 - Nov. 4	Antlerless	EF	GMU 149	75
Dayton B	Oct. 27 - Nov. 4	Antlerless	EF	GMU 163 and Elk Area 1011	100
Dayton C	Oct. 27 - Nov. 4	Antlerless	EF	GMU 149 and Elk Area 1012	100
Peola A	Oct. 27 - Nov. 4	Antlerless	EF	GMU 178	50
Couse B	Oct. 1-12	Antlerless	EF	GMU 181	30
Mountain View B	Oct. 27 - Nov. 6	Antlerless	EF	Elk Area 1013	20
Lick Creek A	Oct. 27 - Nov. 4	Antlerless	EF	GMU 175	25
Malaga A	Sept. 8-30	Any elk	EF	Elk Area 2032	5

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Malaga B	Sept. 15-25	Antlerless	EF	Elk Area 2032	35
Malaga C	Nov. 6 - Dec. 31	Antlerless	EF	Elk Area 2032	100
Malaga D	Nov. 6 - Dec. 18	Any elk	EF	Elk Area 2032	7
Peshastin A	Sept. 15 - Oct. 5	Antlerless	EF	Elk Area 2033	20
Peshastin B	Oct. 13-31	Any elk	EF	Elk Area 2033	5
West Bar A	Oct. 27-31	Antlerless	EF	GMU 330	5
West Bar B	Nov. 1-4	Antlerless	EF	GMU 330	5
Teanaway B	Dec. 19 - Jan. 13, 2008	Antlerless	EF	GMU 335	100
Taneum A	Oct. 31 - Nov. 4	Antlerless	EF	GMU 336	150
Manastash A	Oct. 31 - Nov. 4	Antlerless	EF	GMU 340	250
Umtanum A	Oct. 31 - Nov. 4	Antlerless	EF	GMU 342	250
Cleman	Dec. 1-15	Antlerless	EF	Elk Area 3944	50
Little Naches B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 346	150
Nile A	Oct. 31 - Nov. 4	Antlerless	EF	GMU 352	50
Bumping B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 356	100
Bethel B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 360	100
Rimrock B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 364	150
Cowiche B	Oct. 31 - Nov. 4	Antlerless	EF	GMU 368	150
Klickitat Meadows B	Oct. 31 - Nov. 4	Spike bull or antlerless	EF	Elk Area 3068	9
Alkali A	Oct. 20 - Nov. 4	Any elk	EF	GMU 371	25
Mossyrock A	Nov. 3-12	Antlerless	WF	GMU 505	50
Willapa Hills A	Nov. 3-12	Antlerless	WF	GMU 506	35
Winston A	Nov. 3-12	Antlerless	WF	GMU 520	130
Margaret B	Nov. 3-12	Antlerless	WF	GMU 524	50
Margaret C	Nov. 24 - Dec. 2	Antlerless	WF	GMU 524	50
Ryderwood A	Nov. 3-12	Antlerless	WF	GMU 530	35
Coweeman A	Nov. 3-12	Antlerless	WF	GMU 550	225
Coweeman B	Jan. 1-15, 2008	Antlerless	WF	GMU 550	50
Toutle B	Nov. 3-12	Antlerless	WF	GMU 556	70
Toutle C	Nov. 24 - Dec. 2	Antlerless	WF	GMU 556	100
Toledo A	Nov. 3-12	Antlerless	WF	Elk Area 5029	20
Green Mtn C	Nov. 3-12	Antlerless	WF	Elk Area 5051	10
Carlton	Sept. 22-30	Any bull	WF	Elk Area 5057	5
West Goat Rocks	Sept. 22-30	Any bull	WF	Elk Area 5058	5
Mt. Adams	Sept. 22-30	Any bull	WF	Elk Area 5059	5
Wildwood A	Jan. 16-30, 2008	Antlerless	WF	Elk Area 5061	15
Lewis River A	Nov. 3-12	Antlerless	WF	GMU 560	375
Siouxon A	Nov. 3-12	Antlerless	WF	GMU 572	125
Raymond A	Nov. 5-10	3 pt. min. or antlerless	WF	Elk Area 6010	20
Raymond B	Dec. 16-31	Antlerless	WF	Elk Area 6010	30
Raymond C	Jan. 1-30, 2008	Antlerless	WF	Elk Area 6010	15
Raymond D	Feb. 1-28, 2008	Antlerless	WF	Elk Area 6010	15
Chehalis Valley A	Oct. 1-31	Antlerless	WF	Elk Area 6066	5
Chehalis Valley B	Nov. 5-10	Antlerless	WF	Elk Area 6066	5
North Minot A	Oct. 20-31	Antlerless	WF	Elk Area 6067	20
Deschutes	Jan. 15-23, 2008	Antlerless	WF	GMU 666	10
North River	Nov. 8-13	Antlerless	WF	GMU 658	10
Williams Creek	Nov. 8-13	Antlerless	WF	GMU 673	50
Tri Valley A	Dec. 1 - Jan. 30, 2008	Antlerless	WF	Elk Area 6012	10
North Shore A	Nov. 4-8	Antlerless	WF	Elk Area 6068	5
<b>Muzzleloader Bull Permit Hunts (Only muzzleloader elk tag holders may apply.)</b>					
Note: Fire closures may limit access during early October seasons.					
Prescott C	Oct. 1-10	Any bull	EM	GMU 149	1
Blue Creek C	Oct. 1-10	Any bull	EM	GMU 154	1
Dayton D	Oct. 1-10	Any bull	EM	GMU 162	2

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Tucannon B	Oct. 1-10	Any bull	EM	Elk Area 1014	1
Wenaha B	Oct. 1-10	Any bull	EM	GMU 169	3
Mountain View C	Oct. 1-10	Any bull	EM	GMU 172	2
Couse D	Oct. 1-10	Any bull	EM	GMU 181	1
Mission B	Oct. 1-10	Any bull	EM	GMU 251	1
Colockum B	Oct. 1-10	Any bull	EM	GMUs 328, 329	2
Teanaway C	Dec. 9-18	Any elk	EM	GMU 335	7
Peaches Ridge B	Oct. 1-10	Any bull	EM	GMUs 336, 346	19
Observatory B	Oct. 1-10	Any bull	EM	GMUs 340, 342	23
Goose Prairie B	Oct. 1-10	Any bull	EM	GMUs 352, 356	14
Bethel C	Oct. 1-10	Any bull	EM	GMU 360	12
Rimrock C	Oct. 1-10	Any bull	EM	GMU 364	17
Cowiche C	Oct. 1-10	Any bull	EM	GMU 368	8
Klickitat Meadows C	Oct. 1-10	Any bull	EM	Elk Area 3068	1
Nooksack B	Sept. 29 - Oct. 12 and Nov. 12-30	Any bull	WM	GMU 418	3
Margaret D	Oct. 6-12	Any bull	WM	GMU 524	8
Toutle D	Oct. 6-12	Any bull	WM	GMU 556	26
Olympic B	Oct. 4-10	Any bull	WM	GMU 621, EXCEPT for Elk Area 6071	3
Skokomish B	Oct. 4-10	Any bull	WM	GMU 636	2
White River B	Oct. 1-10	Any bull	WM	GMU 653	3
<b>Muzzleloader Permit Hunts (Only muzzleloader elk tag holders may apply.)</b>					
Aladdin B	Oct. 6-12	Any elk	EM	GMU 111	10
Selkirk B	Oct. 6-12	Any elk	EM	GMU 113	10
49 Degrees North B	Oct. 6-12	Any elk	EM	GMU 117	20
Blue Creek D	Dec. 9 - Jan. 30, 2008	Antlerless	EM	GMUs 149, 154	60
Mountain View D	Oct. 1-12	Antlerless	EM	Elk Area 1013	20
Lick Creek B	Oct. 1-10	Antlerless	EM	GMU 175	25
Couse E	Dec. 1-31	Antlerless	EM	GMU 181	30
Couse F	Jan. 1-30, 2008	Antlerless	EM	GMU 181	30
Malaga E	Oct. 1-21	Antlerless	EM	Elk Area 2032	50
Malaga F	Oct. 1-21	Any elk	EM	Elk Area 2032	8
West Bar C	Oct. 6-12	Antlerless	EM	GMU 330	5
Taneum B	Oct. 6-12	Antlerless	EM	GMU 336	25
Manastash B	Oct. 6-12	Antlerless	EM	GMU 340	25
Umtanum B	Oct. 6-12	Antlerless	EM	GMU 342	250
Nile B	Oct. 6-12	Antlerless	EM	GMU 352	40
Bumping B	Oct. 6-12	Antlerless	EM	GMU 356	90
Bethel D	Oct. 6-12	Antlerless	EM	GMU 360	40
Cowiche D	Oct. 6-12	Antlerless	EM	GMU 368	225
Klickitat Meadows D	Oct. 6-12	Spike bull or antlerless	EM	Elk Area 3068	4
Alkali B	Oct. 1-15	Any elk	EM	GMU 371	15
Stella A	Nov. 21 - Dec. 15	Antlerless	WM	GMU 504	150
Stella B	Jan. 1-16, 2008	Antlerless	WM	GMU 504	100
Toledo B	Dec. 7-20	Antlerless	WM	Elk Area 5029	30
Mossyrock B	Jan. 1-16, 2008	Antlerless	WM	Elk Area 5052	30
Randle A	Jan. 1-16, 2008	Antlerless	WM	Elk Area 5053	15
Boistfort A	Jan. 1-16, 2008	Antlerless	WM	Elk Area 5054	40
Willapa Hills B	Nov. 21 - Dec. 15	Antlerless	WM	GMU 506	15
Green Mt. A	Jan. 1-16, 2008	Antlerless	WM	Elk Area 5051	30
Wildwood B	Jan. 1-15, 2008	Antlerless	WM	Elk Area 5061	15
Winston B	Nov. 21 - Dec. 15	Antlerless	WM	GMU 520	60
Margaret E	Oct. 6-12	Antlerless	WM	GMU 524	40
Ryderwood B	Oct. 6-12	Antlerless	WM	GMU 530	15
Coweeman C	Nov. 21 - Dec. 15	Antlerless	WM	GMU 550	60
Toutle E	Oct. 6-12	Antlerless	WM	GMU 556	75

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Lewis River B	Oct. 6-12	Antlerless	WM	GMU 560	225
Siouxon B	Oct. 6-12	Antlerless	WM	GMU 572	75
Yale A	Oct. 6-12	Antlerless	WM	GMU 554	75
Yale B	Nov. 21 - Dec. 15	3 pt. min. or antlerless	WM	GMU 554	75
Twin Satsop A	Jan. 5-15, 2008	Antlerless	WM	Elk Area 6061	10
Mashel A	Jan. 1-15, 2008	Antlerless	WM	Elk Area 6054	25
North River	Nov. 26 - Dec. 15	Antlerless	WM	GMU 658	20
North Minot B	Oct. 1-7	Antlerless	WM	Elk Area 6067	20
Raymond E	Oct. 1-31	Antlerless	WM	Elk Area 6010	30
Chehalis Valley C	Jan. 1-30, 2008	Antlerless	WM	Elk Area 6066	15
Capitol Peak A	Nov. 19 - Dec. 15	Antlerless	WM	GMU 663	15
Tri Valley B	Dec. 16 - Jan. 30, 2008	Antlerless	WM	Elk Area 6012	30
<b>Archery Permit Hunts (Only archery elk tag holders may apply.)</b>					
Note: Fire closures may limit access during September seasons.					
Prescott D	Sept. 8-21	Any bull	EA	GMU 149	1
Blue Creek E	Sept. 8-21	Any bull	EA	GMU 154	2
Dayton E	Sept. 8-21	Any bull	EA	GMU 162	7
Tucannon C	Sept. 8-21	Any bull	EA	Elk Area 1014	3
Wenaha C	Sept. 8-21	Any bull	EA	GMU 169	4
Mountain View E	Sept. 8-21	Any bull	EA	GMU 172	3
Couse G	Sept. 8-21	Any bull	EA	GMU 181	1
Colockum C	Sept. 8-21	Any bull	EA	GMUs 328, 329	3
Teanaway E	Nov. 20 - Dec. 8	Any bull	EA	GMU 335	34
Peaches Ridge C	Sept. 8-21	Any bull	EA	GMUs 336, 346	104
Observatory C	Sept. 8-21	Any elk	EA	GMUs 340, 342	91
Goose Prairie C	Sept. 8-21	Any bull	EA	GMUs 352, 356	138
Bethel E	Sept. 8-21	Any bull	EA	GMU 360	43
Rimrock D	Sept. 8-21	Any bull	EA	GMU 364	93
Cowiche E	Sept. 8-21	Any bull	EA	GMU 368	18
Klickitat Meadows E	Oct. 11-22	Any bull	EA	Elk Area 3068	1
Klickitat Meadows F	Oct. 11-22	Spike bull or antlerless	EA	Elk Area 3068	9
Malaga G	Sept. 1-7	Antlerless	EA	Elk Area 2032	25
Peshastin C	Sept. 1-14	Any elk	EA	Elk Area 2033	15
Nooksack C	Sept. 1-28 and Dec. 1-31	Any bull	WA	GMU 418	3
Margaret F	Sept. 15-30 and Dec. 1-15	Any bull	WA	GMU 524	13
Margaret G	Sept. 15-30 and Dec. 1-15	Antlerless	WA	GMU 524	50
Toutle F	Sept. 15-30 and Dec. 1-15	Any bull	WA	GMU 556	66
Toutle G	Sept. 15-30 and Dec. 1-15	Antlerless	WA	GMU 556	90
Lewis River C	Nov. 21-30	3 pt. min. or antlerless	WA	GMU 560	50
Siouxon C	Nov. 21-30	3 pt. min. or antlerless	WA	GMU 572	25
Olympic C	Sept. 8-21	3 pt. min.	WA	GMU 621, EXCEPT for Elk Area 6071	7
Skokomish C	Sept. 8-21	3 pt. min.	WA	GMU 636	6
White River C	Sept. 8-21	Any bull	WA	GMU 653	11
<b>Advanced Hunter Education (AHE) Master Hunter Special Elk Permit Hunts: Only AHE master hunters may apply; antlerless only hunts will not affect accumulated points; and any weapon may be used.</b>					
Peshastin D	Aug. 18-31	Any elk	Any elk tag	Elk Area 2033	5
Mossyrock C	Jan. 17-30, 2008	Antlerless	Any elk tag	Elk Area 5052	20
Randle B	Jan. 17-30, 2008	Antlerless	Any elk tag	Elk Area 5053	15
Quinault Ridge	Oct. 1-10	3 pt. min. or antlerless	Any elk tag	GMU 638	5
Green Mt. B	Jan. 17-30, 2008	Antlerless	Any elk tag	Elk Area 5051	20
Merwin A	Nov. 21 - Dec. 15	Antlerless	Any elk tag	Elk Area 5060	10
Merwin B	Jan. 17-30, 2008	Antlerless	Any elk tag	Elk Area 5060	10
<b>Advanced Hunter Education (AHE) Master Hunter, Second Elk Tag Hunts: Only AHE master hunters may apply; these hunts will not affect accumulated points; a second tag may be purchased by successful applicants as needed; and any weapon may be used. The second elk license and tag type must be the same tag type as the first one.</b>					

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Peola B	Oct. 1-12	Antlerless	Any elk tag	GMU 178	15
Malaga H	Aug. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Elk Area 2032	100 <sup>HM</sup>
Malaga I	Aug. 1 - Feb. 28, 2008	Any elk	Any elk tag	Elk Area 2032	20 <sup>HM</sup>
Peshastin E	Aug. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Elk Area 2033	50 <sup>HM</sup>
Peshastin F	Aug. 1 - Feb. 28, 2008	Any elk	Any elk tag	Elk Area 2033	20 <sup>HM</sup>
Fairview	Feb. 1-29, 2008	Antlerless	Any elk tag	Elk Area 3911	20 <sup>HM</sup>
Rattlesnake Hills	Aug. 1 - Feb. 29, 2008	Antlerless or spike bull	Any elk tag	Designated areas in GMU 372	20 <sup>HM</sup>
Toledo C	Dec. 21-31	Antlerless and spike bull	Any elk tag	Elk Area 5029	20
Toledo D	Aug. 1-7	Antlerless and spike bull	Any archery elk tag	Elk Area 5029	5
Toledo E	Aug. 8-14	Antlerless and spike bull	Any archery elk tag	Elk Area 5029	5
Toledo F	Aug. 15-21	Antlerless and spike bull	Any archery elk tag	Elk Area 5029	5
Toledo G	Aug. 22-28	Antlerless and spike bull	Any archery elk tag	Elk Area 5029	5
Boistfort B	Aug. 1-7	Antlerless and spike bull	Any archery elk tag	Elk Area 5054	5
Boistfort C	Aug. 8-14	Antlerless and spike bull	Any archery elk tag	Elk Area 5054	5
Boistfort D	Aug. 15-21	Antlerless and spike bull	Any archery elk tag	Elk Area 5054	5
Boistfort E	Aug. 22-28	Antlerless and spike bull	Any archery elk tag	Elk Area 5054	5
JBH *	Nov. 12 - Feb. 28, 2008	Antlerless	Any elk tag	Elk Area 5090	20 <sup>HM</sup>
Trout Lake A**	Nov. 21-30	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake B**	Dec. 1-14	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake C**	Dec. 15-31	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake D**	Jan. 1-14, 2008	Antlerless	Any elk tag	Elk Area 5062	5
Trout Lake E**	Jan. 15-30, 2008	Antlerless	Any elk tag	Elk Area 5062	5
North River B	Dec. 16 - Feb. 28, 2008	Antlerless	Any elk tag	Designated areas in GMU 658	10 <sup>HM</sup>
Chehalis Valley D	Aug. 1 - Feb. 28, 2008	Antlerless	Any elk tag	Designated areas in Elk Area 6066	10 <sup>HM</sup>
Raymond F	Dec. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Elk Area 6010	10 <sup>HM</sup>
Hanaford C	Aug. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Designated areas in Elk Area 6069	5 <sup>HM</sup>
Dungeness A	Sept. 1 - Feb. 28, 2008	3 pt. min.	Any elk tag	Elk Area 6071 north of Hwy 101 only	12
Dungeness B	Oct. 1 - Dec. 31	Antlerless	Any elk tag	Elk Area 6071 north of Hwy 101 only	8
<b>Youth - Special Elk Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)</b>					
Mudflow A	Oct. 9-14	Antlerless	WF	Elk Area 5099	6
Mudflow B	Oct. 23-28	Antlerless	WF	Elk Area 5099	6
Mudflow C	Nov. 20-25	Antlerless	WF	Elk Area 5099	6
Dungeness C	Sept. 1 - Feb. 28, 2008	Any elk	Any elk tag	Elk Area 6071 north of Hwy 101 only	4
Sol Duc Valley	Aug. 1 - Jan. 22, 2008	Antlerless	Any elk tag	Elk Area 6072	10
Clearwater Valley	Aug. 1 - Mar. 31, 2008	Antlerless	Any elk tag	Elk Area 6073	1
<b>Persons of Disability Only - Special Elk Permit Hunts</b>					
Sol Duc Valley B	Aug. 1 - Jan. 22, 2008	Antlerless	Any elk tag	Elk Area 6072	5
Observatory D	Oct. 22 - Nov. 4	Any elk	EF or EM	GMUs 340, 342	7
Little Naches C	Oct. 1-10	Any elk	EF, EM, EA	GMU 346	5
Little Naches D	Oct. 31 - Nov. 4	Antlerless	EF, EM, EA	GMU 346	8
Alkali C	Oct. 20 - Nov. 4	Any elk	EF	GMU 371	4
Mudflow F	Oct. 16-21	Antlerless	Any elk tag	Elk Area 5099	6
Mudflow D	Sept. 25-30	Any elk	Any elk tag	Elk Area 5099	6
Mudflow E	Oct. 2-7	Any elk	Any elk tag	Elk Area 5099	6
Mudflow G	Oct. 30 - Nov. 4	Antlerless	Any elk tag	Elk Area 5099	6
Centralia Mine A	Oct. 27-28	Antlerless	Any elk tag	Elk Area 6011	2
Centralia Mine B	Nov. 3-4	Antlerless	Any elk tag	Elk Area 6011	2
North Shore B	Oct. 1-31	Antlerless	Any elk tag	Elk Area 6068	5
North Shore C	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6068	5

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Chehalis Valley E	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6066	15
Hanaford A	Jan. 1-15, 2008	Antlerless	Any elk tag	Elk Area 6069	5
<b>Hunters 65 or Older Only - Special Elk Permit Hunts</b>					
Hanaford B	Jan. 16-30, 2008	Antlerless	Any elk tag	Elk Area 6069	5
Mudflow H	Sept. 18-23	Antlerless	Any elk tag	Elk Area 5099	6
Mudflow I	Nov. 6-12	Antlerless	Any elk tag	Elk Area 5099	6
Mudflow J	Nov. 27 - Dec. 2	Antlerless	Any elk tag	Elk Area 5099	6

\*Muzzleloaders only; scopes allowed in JBH hunt.

\*\*May only hunt on privately owned lands. Must use only archery or legal shotgun (10 or 12 gauge; slugs only).

<sup>HM</sup>This is a damage hunt administered by a WDFW designated hunt master. Successful applicants will be contacted on an as-needed basis to help with specific sites of elk damage on designated landowner's property. Not all successful applicants will be contacted in any given year depending on elk damage activity for that year.

<b>Hunter Education Instructor Incentive Permits</b>				
<ul style="list-style-type: none"> <li>- Special elk permits will be allocated through a random drawing to those hunter education instructors that qualify.</li> <li>- Permit hunters must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons.</li> <li>- Qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing.</li> <li>- Instructors who are drawn, accept a permit, and are able to participate in the hunt, will not be eligible for these incentive permits for a period of ten years thereafter.</li> <li>- Permittees may purchase a second license for use with the permit hunt only.</li> </ul>				
Area	Dates	Restrictions	GMUs	Permits
Region 3	All general season and permit seasons established for GMUs included with the permit	Any elk	GMUs 335-368	2
Region 5		Any elk	All 500 series GMUs except GMU 522	4
Region 6		Any elk	GMUs 654, 660, 672, 673, 681	1

**NEW SECTION**

**WAC 232-28-431 2007-08 Migratory waterfowl seasons and regulations.**

**DUCKS**

**Statewide**

Oct. 13-17, 2007 and Oct. 20, 2007 - Jan. 27, 2008.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 22-23, 2007.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 1 pintail, 3 scaup, 2 canvasback, 2 redhead, 1 harlequin, 4 scoter, and 4 long-tailed duck.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 2 pintail, 6 scaup, 4 canvasback, 4 redhead, 1 harlequin, 8 scoter, and 8 long-tailed duck.

Season limit: 1 harlequin.

**WRITTEN AUTHORIZATION REQUIRED TO HUNT SEA DUCKS.**

All persons hunting sea ducks (harlequin, scoter, long-tailed duck) in Western Washington are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2006-07 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2008, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2008-09 sea duck season.

**COOT (Mudhen)**

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.  
Possession limit: 25 coots.

**COMMON SNIPE**

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.  
Possession limit: 16 snipe.

**GEESE (except Brant)**

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 22-23, 2007, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.  
Possession limit: 8 Canada geese.

**Western Washington Goose Seasons****Goose Management Area 1**

Island, Skagit, Snohomish counties.

Oct. 20, 2007 - Jan. 27, 2008 for snow, Ross', or blue geese.  
Oct. 13-25, 2007 and Nov. 3, 2007 - Jan. 27, 2008 for other geese (except Brant).

Daily bag limit: 4 geese.  
Possession limit: 8 geese.

**WRITTEN AUTHORIZATION REQUIRED TO HUNT SNOW GEESE.**

All persons hunting snow geese in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2006-07 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife, Olympia and regional offices).

Immediately after taking a snow goose into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2008, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2008-09 snow goose season.

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County. While hunting snow geese on Fir Island, if a hunter is convicted of 1) trespass, 2) shooting from, across, or along the maintained part of any public highway, 3) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County, or 4) exceeding the daily bag limit for snow geese, written authorization will be invalidated for the remainder of the 2007-08 snow goose season and an authorization will not be issued for the 2008-09 snow goose season.

**QUALITY HUNTING AREAS IN GOOSE MANAGEMENT AREA 1.**

Hunters possessing written authorization to hunt snow geese in Goose Management Area 1 can apply for a special authorization to access private lands around Fir Island enrolled in a new quality snow goose hunting program. Hunters must apply for special authorization to hunt on these special areas by September 28, 2007, using the department's internet or mail application systems. A random drawing will select hunters for participation, and special hunt authorizations will be mailed prior to the season. Up to 3 individuals possessing snow goose authorizations can hunt with the successful applicant on each hunt day. Successful applicants must check in with the WDFW hunt coordinator at least one week prior to their first scheduled hunting day and all hunters must hunt over decoys. Special authorizations are not valid for commercial uses. Authorizations are valid for one week (only on Monday, Tuesday, Wednesday, Friday, and Saturday) during the period November 3, 2007 - January 27, 2008, and only on

private lands specified by the WDFW hunt coordinator. Hunters will be assigned at random to private farms participating in the program.

**Goose Management Area 2A**

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 10-25, 2007 and Dec. 5, 2007 - Jan. 27, 2008. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 13-24, 2007 and Dec. 6, 2007 - Jan. 19, 2008, except closed Nov. 22 and Dec. 25, 2007, and Jan. 1, 2008.

Bag limits for Goose Management Area 2A:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 4 cackling geese.

Season limit: 1 dusky Canada goose.

**Goose Management Area 2B**

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 13, 2007 - Jan. 12, 2008.

Bag limits for Goose Management Area 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose, 1 Aleutian goose, and 2 cackling geese.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose, 2 Aleutian geese, and 4 cackling geese.

Season limit: 1 dusky Canada goose.

**Special Provisions for Goose Management Areas 2A and 2B:**

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The Canada goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 80 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 80 dusks, to be distributed 15 for Zone 1 (Ridgefield NWR); 25 for Zone 2 (Cowlitz County south of the Kalama River); 20 for Zone 3 (Clark County except Ridgefield NWR); 10 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 10 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunting is only permitted by written authorization from the Washington department of fish and wildlife. New hunters and those who did not maintain a valid 2006-07 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive

written authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

With written authorization, hunters will receive a harvest report. Hunters must carry the authorization card and harvest report while hunting. Immediately after taking a Canada goose (dusky, lesser/Taverner, cackling, or other subspecies) into possession, hunters must record in ink the information required on the harvest report. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest report, written authorization will be invalidated and the hunter will not be able to hunt Canada geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late Canada goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

#### **Special Late Canada Goose Season for Goose Management Area 2A:**

Open to Washington department of fish and wildlife advanced hunter education (AHE) program graduates and youth hunters (15 years of age or under, who are accompanied by an AHE hunter) possessing a valid 2007-08 southwest Washington Canada goose hunting authorization, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 2 - Mar. 5, 2008.

Daily bag limit: 4 Canada geese, to include not more than 1 dusky Canada goose, and 2 cackling geese.

Possession limit: 8 Canada geese, to include not more than 1 dusky Canada goose, and 4 cackling geese.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late Canada goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding written authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions

listed above for the special late season in Goose Management Area 2A.

#### **Goose Management Area 3**

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 13-25, 2007 and Nov. 3, 2007 - Jan. 27, 2008.

Daily bag limit: 4 geese.

Possession limit: 8 geese.

#### **Eastern Washington Goose Seasons**

##### **Goose Management Area 4**

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Oct. 13-15, 2007, and Saturdays, Sundays, and Wednesdays only during Oct. 20, 2007 - Jan. 20, 2008; Nov. 12, 22, and 23, 2007; Dec. 24, 25, 27, and 28, 2007; January 1, 2008; and every day Jan. 21-27, 2008.

##### **Goose Management Area 5**

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 13-15, 2007, every day from Oct. 20, 2007 - Jan. 27, 2008.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.

Possession limit: 8 geese.

#### **BRANT**

Open in Skagit County only on the following dates:

Jan. 17, 19, 20, 22, 24, 26, and 27, 2008.

If the 2007-08 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:

Jan. 10, 12, 13, 15, 17, 19, and 20, 2008.

#### **WRITTEN AUTHORIZATION REQUIRED:**

All hunters participating in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who did not possess a 2006-07 authorization must submit an application form to WDFW (forms available at Washington department of fish and wildlife regional offices).

Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2008, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2008-09 brant season.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.  
Possession limit: 4 brant.

#### SWANS

Season closed statewide.

#### FALCONRY SEASONS

##### DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. 13-17, 2007 and Oct. 20, 2007 - Jan. 27, 2008 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

##### GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 20, 2007 - Jan. 27, 2008 for snow, Ross', or blue geese. Oct. 13-25, 2007 and Nov. 3, 2007 - Jan. 27, 2008 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 10-25, 2007 and Dec. 5, 2007 - Jan. 27, 2008.

Goose Management Area 2B: Wednesdays and Saturdays only, Oct. 13, 2007 - Jan. 12, 2008.

Goose Management Areas 3, 4, and 5: Oct. 13-15, 2007 and Nov. 3, 2007 - Jan. 27, 2008.

Daily bag limit for all areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-430	2006-07 Migratory water-fowl seasons and regulations.
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**WSR 07-17-055**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-62A—Filed August 10, 2007, 10:47 a.m., effective September 10, 2007]

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

Purpose: Correction: Amendment to WAC 232-28-353 2006 Deer special permits, was filed incorrectly.

Citation of Existing Rules Affected by this Order:  
Amending WAC 232-28-353.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

Adopted under notice filed as WSR 07-03-181 on January 24, 2007.

Changes Other than Editing from Proposed to Adopted Version: **WAC 232-28-353 Deer special permits.**

Changes, if any, from the text of the proposed rule and reasons for difference:

Under Modern Firearm:

- Change the year in the title from 2006 to 2007.
- Adjust calendar dates for special permit hunts as necessary to maintain proper opening dates and coordinate with general seasons.
- Remove the Couse hunt because of low fawn production the past couple of years.
- The following permit decreases are the result of low fawn production in the past couple of years.
  - Blue Creek from 150 to 100 permits.
  - Dayton A from 250 to 150 permits.
- The following permit increases are the result of improved buck/doe ratios.
  - Chiwawa from 30 to 38 permits.
  - Entiat A from 50 to 65 permits.
  - Big Bend from 100 to 150 permits.
- Remove the following hunts because of higher winter mortality over the past two years.
  - Naneum A, Teanaway A, Taneum A, Nile A, Cowiche A.
- The following hunt names are adjusted to maintain proper hunt order:
  - Naneum B to Naneum A, Teanaway B to Teanaway A, and Cowiche B to Cowiche A.
- The following permit decreases are the result of higher winter mortality over the past two years.
  - Badger from 50 to 15 permits.
  - Naneum A from 24 to 17 permits.
  - Quilomene A from 24 to 15 permits.
  - Teanaway A from 24 to 19 permits.
  - L.T. Murray from 24 to 18 permits.
  - Bethel A from 10 to 5 permits.
  - Cowiche A from 15 to 10 permits.
- The following permit increases are to address damage complaints and high deer numbers.
  - Mission B from 150 to 210 permits.
  - St. Andrews from 75 to 115 permits.
  - Alkali A from 73 to 75 permits.
  - Kahlotus from 50 to 75 permits.
- Add the following hunts because of increased deer numbers.
  - Washougal A, Oct. 13-31, Any deer, GMU 568, and 10 permits.
  - Skokomish A, Oct. 13-31, Any deer, GMU 636, and 20 permits.
  - Mashel A, Oct. 13-31, Any deer, GMU 654, and 40 permits.
- Decreases the number of permits for Capitol Peak A from 30 to 15 because lower deer numbers.

- Under modern firearm, change Quilomene A from Any buck to 3 pt. min. The fish and wildlife commission made this change in response to public testimony.

Under Muzzleloader:

- Add the following hunts because of healthy deer population levels.
  - Whitcomb B, Sept. 16-21, Antlerless, Deer Area 3071, and 7 permits.
  - Whitcomb C, Sept. 24-Oct. 5, Any deer, Deer Area 3071, and 7 permits.
  - Paterson B, Sept. 16-21, Antlerless, Deer Area 3072, and 10 permits.
  - Paterson C, Sept. 24-Oct. 5, Any deer, Deer Area 3072, and 10 permits.
  - Washougal B, Oct. 6-12, Any deer, GMU 568, and 10 permits.
- Remove the following hunts because of higher winter mortality over the past two years.
  - Couse B, Teanaway C, Manastash A, and Cowiche C.
- The following hunt names are adjusted to maintain proper hunt order:
  - Naneum C to Naneum B, Teanaway D to Teanaway C.
- Delete Entiat G. The fish and wildlife commission made this change in response to public testimony.
- Adjust calendar dates for special permit hunts as necessary to maintain proper opening dates and coordinate with general seasons.
- Reduce the number of permits in Moses Coulee B from 150 to 100 permits due to lower deer numbers.
- Reduce the number of permits in Naneum B, Quilomene B, Teanaway D, and L. T. Murray B from 3 to 2 permits due to allocation formula adjustments.
- Reduce the number of permits in Desert C from 3 to 2 permits. The fish and wildlife commission made this change in response to public testimony.
- The following permit increases are the result of healthy deer population levels.
  - Chiwawa C from 50 to 70 permits.
  - Entiat B from 10 to 13 permits.
  - Swakane B from 25 to 35 permits.
  - Mission C from 30 to 45 permits.
  - Alkali C from 10 to 11 permits.
  - Whitcomb A from 5 to 7 permits.
  - Paterson A from 5 to 10 permits.
  - Paterson B, Sept. 16-21, Antlerless, Deer Area 3072, and 10 permits.
  - Paterson C, Sept. 24-Oct. 5, Any deer, Deer Area 3072, and 10 permits.
  - Washougal B, Oct. 6-12, Any deer, GMU 568, and 10 permits.
- Change Quilomene B from Any buck to 3 pt. min. The fish and wildlife commission made this change in response to public testimony.

Under Archery Only Deer Permit Hunts:

- The following hunt names are adjusted to maintain proper hunt order:

- Entiat C to Entiat B, Entiat D to Entiat C, Naneum D to Naneum C.

- Adjust calendar dates for special permit hunts as necessary to maintain proper opening dates and coordinate with general seasons.
- Change Naneum C from Any deer to Any buck because of higher winter mortality rates.
- Change Quilomene C from Any buck to 3 pt. min. The Fish and Wildlife Commission made this change in response to public testimony.
- Decrease the number of permits in Naneum C from 20 to 13 permits and Quilomene C from 20 to 12 permits due to higher winter mortality rates over the past few years.
- Increase the number of permits for Chiwawa from 19 to 27 as the result of a healthy deer population.
- Decrease the number of permits in Desert D from 14 to 12 permits. This is updated information from the special permit allocation process.
- Increase the number of permits in Alkali E from 91 to 99 permits. This is updated information from the special permit allocation process.

Under Special Modern Firearm Deer Permit Hunts for Hunters 65 or older:

- Remove the following hunts because higher winter mortality rates.
  - Quilomene D, Manastash B, Umtanum A, and Bethel B.
- The following hunt names are adjusted to maintain proper hunt order:
  - Teanaway E to Teanaway D and Entiat D to Entiat E.
- Adjust calendar dates for special permit hunts as necessary to maintain proper opening dates and coordinate with general seasons.
- The following permit decreases are the result because higher winter mortality rates.
  - Teanaway D from 20 to 13 permits.
  - L.T. Murray C from 20 to 6 permits.
  - Palisades A from 15 to 10 permits.
- The following permit increases are the result of healthy deer populations and to provide more recreational opportunity.
  - Wannacut B, Pogue B, and Bridgeport A from 15 to 20 permits.
  - Sinlahekin C, Gardner B, Chiliwist B, and Alta B from 15 to 25 permits.
  - Chewuch B and Pearygin B from 15 to 35 permits.
  - Chiwawa E, Entiat E, Swakane C, and Mission D from 10 to 15.
- Change the name of Washougal A to Washougal C.

Under Disabled Hunter Deer Permits:

- Remove the hunt called Quilomene E, Manastash C, Umtanum B, and Nile B due to higher winter mortality rates.
- Change the names of Entiat E to Entiat F and Washougal B to Washougal D to maintain proper hunt order.

- Adjust calendar dates for special permit hunts as necessary to maintain proper opening dates and coordinate with general seasons.
- The following permit increases are the result of a healthy deer population and to provide more recreational opportunity for seniors.
  - Wannacut C and Pogue C from 15 to 20 permits.
  - Sinlahekin D, Gardner C, Chiliwist C, Alta C, Entiat F, and Mission E from 15 to 25 permits.
  - Chewuch C and Pearrygin C from 15 to 35 permits.
  - Chiwawa F and Bridgeport B from 10 to 15 permits.
- Decrease the number of permits for Palisades B from 10 to 5 permits because of lower deer numbers.

Under Youth Special Deer Permit Hunts – Modern Firearm:

- Remove the following hunts because of high winter mortality. Naneum F, Quilomene F, Manastash D, Umtanum C, and Cowiche D.
- Change the name of Entiat F to Entiat G and Washougal C to Washougal E to maintain proper hunt order.
- Adjust calendar dates for special permit hunts as necessary to maintain proper opening dates and coordinate with general seasons.
- The following permit decreases are the result of shifting opportunity to seniors.
  - Wannacut D and Pogue D from 50 to 40 permits.
  - Sinlahekin E and Chiliwist D from 100 to 80 permits.
  - Chewuch D and Pearrygin D from 175 to 135 permits.
  - Gardner D from 65 to 50 permits.
  - Pogue D from 50 to 40 permits.
  - Chiliwist D from 100 to 80 permits.
  - Alta D from 110 to 90 permits.
  - Palisades C from 100 to 50 permits.
  - Desert E from 10 to 2 permits.
- The following permit increases are the result of healthy deer populations and to provide more recreational opportunity.
  - Chiwawa G from 60 to 85 permits.
  - Entiat G from 40 to 55 permits.
  - Swakane D from 20 to 30 permits.
  - Mission F from 150 to 210 permits.
  - Bridgeport C from 125 to 175 permits.

Under Youth Special Permits – Muzzleloader:

- Change of names of Mission F to Mission G, Whitcomb B to Whitcomb D to maintain proper hunt order.
- Adjust calendar dates for special permit hunts as necessary to maintain proper opening dates and coordinate with general seasons.
- Increase the number of permits for Whitcomb D from 5 to 7, Paterson D from 5 to 10.
- Decrease the number of permits for Desert F from 10 to 2 permits.

Under Youth Special Permits – Archery:

- Adjust calendar dates for special permit hunts as necessary to maintain proper opening dates and coordinate with general seasons.
- Decrease the number of permits for Desert G from 10 to 2 permits.

Under Special Deer Permits – Second Deer Tag.

- Change Mica Peak B from "Restricted to general..." to "Modern Firearm and Archery General Season Only" because there is no muzzleloader season in this unit.
- Change the closing date for Methow from Oct. 21 to Oct. 12 to correct an error.
- Increase the number of permits for Northeast from 200 to 400 permits and Methow from 20 to 50 permits to increase opportunity consistent with population levels.

Under Hunter Education Instructor Incentive Permits:

- Add Region 2, Any white-tailed deer, GMUs 204-215 and 2 permits, and increase Region 5 from 2 to 6 permits to add incentives for instructors consistent with SHB 2372.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.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 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 0, Repealed 0.

Date Adopted: April 7, 2007.

Susan Yeager  
for Jerry Gutzwiler, Chair  
Fish and Wildlife Commission

**AMENDATORY SECTION** (Amending Order 06-92, filed 5/8/06, effective 6/8/06)

**WAC 232-28-353 ((2006)) 2007 Deer special permits.**

**SPECIAL DEER PERMIT HUNTING SEASONS**

**(Open to Permit Holders Only)**

Hunters must purchase a deer hunting license prior to purchase of a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice; however, Multiple Season Permit holders may apply for archery, muzzleloader, or modern firearm permit hunts. Hunters drawn for a special permit hunt must comply with weapon restrictions and dates listed for the hunt.

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
<b>Modern Firearm Deer Permit Hunts (Only modern firearm deer tag holders may apply.)</b>				
Sherman	Oct. <del>((14-29))</del> <u>13-28</u>	Whitetail, antlerless	GMU 101	75
Kelly Hill	Oct. <del>((14-27))</del> <u>13-26</u> & Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 105	150
Douglas	Oct. <del>((14-27))</del> <u>13-26</u> & Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 108	300
Aladdin A	Oct. <del>((14-27))</del> <u>13-26</u> & Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 111	75
Aladdin B	Nov. <del>((22-26))</del> <u>21-25</u>	Whitetail, any buck	GMU 111	50
Selkirk	Oct. <del>((14-27))</del> <u>13-26</u> & Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 113	50
49 Degrees North	Oct. <del>((14-27))</del> <u>13-26</u> & Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 117	350
Huckleberry A	Oct. <del>((14-27))</del> <u>13-26</u> & Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 121	600
Mt. Spokane A	Oct. <del>((14-27))</del> <u>13-26</u> & Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 124	400
Mica Peak A	Oct. <del>((14-22))</del> <u>13-21</u>	Whitetail, antlerless	GMU 127	150
Cheney A	Oct. <del>((14-22))</del> <u>13-21</u>	Antlerless	GMU 130	200
Roosevelt	Oct. <del>((14-22))</del> <u>13-21</u>	Antlerless	GMU 133	200
Harrington	Oct. <del>((14-22))</del> <u>13-21</u>	Antlerless	GMU 136	125
Steptoe	Oct. <del>((14-22))</del> <u>13-21</u> & Nov. <del>((6))</del> <u>5-19</u>	Antlerless	GMU 139	300
Almota A	Oct. <del>((14-22))</del> <u>13-21</u> & Nov. <del>((6))</del> <u>5-19</u>	Antlerless	GMU 142	100
Palouse	Nov. <del>((6))</del> <u>5-19</u>	Whitetail, 3 pt. min.	GMUs 127-142	625
Mayview A	Nov. 1-12	Antlerless	GMU 145	50
Prescott A	Nov. 1-12	Antlerless	GMU 149	50
Blue Creek	Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 154	<del>((150))</del> 100
Dayton A	Nov. <del>((6))</del> <u>5-19</u>	Whitetail, antlerless	GMU 162	<del>((250))</del> 150
Dayton B	Nov. <del>((6))</del> <u>5-19</u>	Antlerless	Deer Area 1010	75
Marengo	Nov. 1-12	Whitetail, antlerless	GMU 163	75
Peola	Nov. 1-12	Whitetail, antlerless	GMU 178	50
Blue Mtns. Foothills A	Nov. <del>((6))</del> <u>5-19</u>	Whitetail, 3 pt. min. or antlerless	GMUs 149, 154, 162-166	100
Blue Mtns. Foothills B	Nov. <del>((6))</del> <u>5-19</u>	Whitetail, 3 pt. min. or antlerless	GMUs 145, 172-181	50
<del>((Cause</del>	<del>Nov. 1-12</del>	<del>Antlerless</del>	<del>GMU 181</del>	<del>50))</del>
East Okanogan A	Nov. 1-18	Any whitetail	GMU 204	50
East Okanogan B	Oct. <del>((14-29))</del> <u>13-28</u>	Whitetail, antlerless	GMU 204	<del>((75))</del> 100
West Okanogan A	Nov. 1-18	Any whitetail	GMUs 218-242	100
West Okanogan B	Oct. <del>((14-22))</del> <u>13-21</u>	Whitetail, antlerless	GMUs 218-242	<del>((75))</del> 100
Sinlahekin A	Nov. 1-18	Any whitetail	GMU 215	50
Sinlahekin B	Oct. <del>((14-22))</del> <u>13-21</u>	Whitetail, antlerless	GMU 215	75
Chewuch A	Nov. 1-18	Any deer	GMU 218	20
Pearygin A	Nov. 1-18	Any deer	GMU 224	20
Gardner A	Nov. 1-18	Any deer	GMU 231	15
Pogue A	Nov. 1-18	Any deer	GMU 233	15
Chiliwist A	Nov. 1-18	Any deer	GMU 239	15
Alta A	Nov. 1-18	Any deer	GMU 242	15
Manson	Nov. 1-18	Any deer	GMU 243	5
Chiwawa A	Nov. 1-18	Any deer	GMU 245	<del>((30))</del> 38
Slide Ridge A	Nov. 1-18	Any deer	GMU 246	20
Entiat A	Nov. 1-18	Any deer	GMU 247	<del>((50))</del> 65
Big Bend A	Nov. 1-18	Antlerless	GMU 248	<del>((100))</del> 150
Swakane A	Nov. 1-18	Any deer	GMU 250	40
Mission A	Nov. 1-18	Any deer	GMU 251	35
Mission B	Oct. <del>((14-29))</del> <u>13-28</u>	Antlerless	GMU 251	<del>((150))</del> 210

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
St. Andrews	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 254	((75)) <u>115</u>
Foster Creek A	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 260	75
Foster Creek B	Nov. 1-18	Antlerless	GMU 260	75
Withrow A	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 262	50
Badger	Nov. 1-18	Antlerless	GMU 266	((50)) <u>15</u>
Ritzville A	Nov. 1-18	3 pt. min. or antlerless	GMU 284	5
Desert A	Nov. 1-12	Any deer	GMU 290	15
Desert B	Nov. ((27)) <u>26</u> - Dec. ((3)) <u>2</u>	Antlerless	GMU 290	75
((Naneum A	Oct. <u>14-22</u>	Antlerless	GMU 328	<u>100</u> )
Naneum ((B)) <u>A</u>	Nov. ((13-19)) <u>12-18</u>	Any buck	GMU 328	((24)) <u>17</u>
Quilomene A	Nov. ((6-19)) <u>5-18</u>	((Any buck)) <u>3 pt. min.</u>	GMU 329	((24)) <u>15</u>
((Teaway A	Oct. <u>14-22</u>	Antlerless	GMU 335	<u>100</u> )
Teaway ((B)) <u>A</u>	Nov. ((13-19)) <u>12-18</u>	Any buck	GMU 335	((24)) <u>19</u>
((Taneum A	Oct. <u>14-22</u>	Antlerless	GMU 336	<u>75</u> )
L.T. Murray A	Nov. ((13-19)) <u>12-18</u>	Any buck	GMUs 336, 340	((24)) <u>18</u>
((Nile A	Oct. <u>14-22</u>	Antlerless	GMU 352	<u>10</u> )
Bethel A	Nov. ((6-19)) <u>5-18</u>	Any buck	GMU 360	((10)) <u>15</u>
((Cowiche A	Oct. <u>14-22</u>	Antlerless	GMU 368	<u>50</u> )
Cowiche ((B)) <u>A</u>	Nov. ((6-19)) <u>5-18</u>	Any buck	GMU 368	((15)) <u>10</u>
Alkali A	Nov. ((18-26)) <u>17-25</u>	Any buck	GMU 371	((73)) <u>75</u>
Alkali B	Nov. ((18-26)) <u>17-25</u>	Antlerless	GMU 371	70
Kahlotus A	Dec. ((10-16)) <u>9-15</u>	Antlerless	GMU 381	((50)) <u>75</u>
East Klickitat A	Oct. ((14-27)) <u>13-26</u>	3 pt. min. or antlerless	GMU 382	45
Grayback A	Oct. ((14-27)) <u>13-26</u>	3 pt. min. or antlerless	GMU 388	55
Grayback B	Nov. ((16-19)) <u>15-18</u>	3 pt. min.	GMU 388	50
Sauk	Nov. 13-16	2 pt. min.	GMU 437	25
Stillaguamish	Nov. 13-16	Any buck	GMU 448	10
Snoqualmie	Nov. 13-16	Any buck	GMU 460	25
Green River A	Oct. ((28)) <u>27</u> - Nov. ((3)) <u>2</u>	Any buck	GMU 485	10
Lincoln A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 501	40
Stella A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 504	35
Mossyrock A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 505	85
Stormking A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 510	30
South Rainier A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 513	30
Packwood A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 516	50
Winston A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 520	50
Yale A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 554	15
Coweeman A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 550	20
Toutle A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 556	25
Lewis River A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 560	35
<u>Washougal A</u>	<u>Oct. 13-31</u>	<u>Any deer</u>	<u>GMU 568</u>	<u>10</u>
Siouxon A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 572	35
Wind River A	Oct. ((14)) <u>13-31</u>	2 pt. min. or antlerless	GMU 574	10
Wind River B	Nov. ((16-19)) <u>15-18</u>	2 pt. min.	GMU 574	40
West Klickitat A	Oct. ((14)) <u>13-31</u>	2 pt. min. or antlerless	GMU 578	30
West Klickitat B	Nov. ((16-19)) <u>15-18</u>	2 pt. min.	GMU 578	40
Pysht	Oct. ((14)) <u>13-31</u>	Any deer	GMU 603	15
Olympic A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 621	35
Kitsap	Oct. ((14)) <u>13-31</u>	Any deer	GMU 627	20
<u>Skokomish A</u>	<u>Oct. 13-31</u>	<u>Any deer</u>	<u>GMU 636</u>	<u>20</u>
Wynoochee A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 648	110
Wynoochee B	Nov. 1-11	Any buck	GMU 648	10
Satsop A	Nov. 1-11	Any buck	GMU 651	10
<u>Mashel A</u>	<u>Oct. 13-31</u>	<u>Any deer</u>	<u>GMU 654</u>	<u>40</u>
North River A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 658	70
Minot Peak	Oct. ((14)) <u>13-31</u>	Any deer	GMU 660	20

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Capitol Peak A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 663	((30)) <u>15</u>
Capitol Peak B	Nov. 1-11	Any buck	GMU 663	10
Deschutes	Oct. ((14)) <u>13-31</u>	Any deer	GMU 666	80
Skookumchuck A	Oct. ((14)) <u>13-31</u>	Any deer	GMU 667	20
Skookumchuck B	Nov. 1-11	Any buck	GMU 667	10
<b>Muzzleloader Only Deer Permit Hunts (Only muzzleloader tag holders may apply.)</b>				
Green Bluff	Dec. ((10)) <u>9-31</u>	Whitetail, antlerless	That portion of GMU 124 east of Hwy 2	90
Mayview B	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 145	25
Prescott B	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 149	25
Blue Mtns. Foothills C	Nov. 20 - Dec. 8	Whitetail, 3 pt. min. or antlerless	GMUs 149, 154, 162, 166	60
<del>((Couse B</del>	<del>Oct. 7-13</del>	<del>Antlerless</del>	<del>GMU 181</del>	<del>25))</del>
Wannacut A	<del>((Nov. 1-18))</del> <u>Oct. 6-12</u>	Antlerless	GMU 209	50
Chiwawa B	Nov. 19-30	Any deer	GMU 245	3
Chiwawa C	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 245	((50)) <u>70</u>
Swakane B	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 250	((25)) <u>35</u>
Mission C	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 251	((30)) <u>45</u>
Foster Creek C	Dec. 1-31	Antlerless	GMU 260	100
Moses Coulee A	Nov. 1-18	Any deer	GMU 269	20
Moses Coulee B	Dec. 1-31	Antlerless	GMU 269	((150)) <u>100</u>
Ritzville B	Nov. 19-30	Mule deer, 3 pt. min. or antlerless; any white-tailed deer	GMU 284	5
Benge A	Dec. 1-15	Antlerless	Deer Area 2010	20
Lakeview A	Nov. 1-18	Antlerless	Deer Area 2011	10
Desert C	Oct. 25-31	Any deer	GMU 290	((3)) <u>2</u>
Naneum ((C)) B	Nov. ((6-12)) <u>5-11</u>	Any buck	GMU 328	((3)) <u>2</u>
Quilomene B	Oct. ((7-13)) <u>6-12</u>	<del>((Any buck))</del> <u>3 pt. min.</u>	GMU 329	((3)) <u>2</u>
<del>((Teanaway C</del>	<del>Oct. 7-13</del>	<del>Antlerless</del>	<del>GMU 335</del>	<del>50))</del>
Teanaway ((D)) C	Nov. ((6-12)) <u>5-11</u>	Any buck	GMU 335	((3)) <u>2</u>
<del>((Manastash A</del>	<del>Oct. 7-13</del>	<del>Antlerless</del>	<del>GMU 340</del>	<del>50))</del>
L.T. Murray B	Nov. ((6-12)) <u>5-11</u>	Any buck	GMUs 336, 340	((3)) <u>2</u>
<del>((Cowiche C</del>	<del>Oct. 7-13</del>	<del>Antlerless</del>	<del>GMU 368</del>	<del>50))</del>
Alkali C	Dec. ((3-10)) <u>1-8</u>	Any buck	GMU 371	((10)) <u>11</u>
Alkali D	Dec. ((3-10)) <u>1-8</u>	Antlerless	GMU 371	15
Whitcomb A	Sept. ((18-24)) <u>10-15</u>	Antlerless	Deer Area 3071	((5)) <u>7</u>
Whitcomb B	<u>Sept. 16-21</u>	<u>Antlerless</u>	<u>Deer Area 3071</u>	<u>7</u>
Whitcomb C	<u>Sept. 24 - Oct. 5</u>	<u>Any deer</u>	<u>Deer Area 3071</u>	<u>7</u>
Paterson A	Sept. 18-24	Antlerless	Deer Area 3072	((5)) <u>10</u>
Paterson B	Sept. 16-21	Antlerless	Deer Area 3072	10
Paterson C	Sept. 24 - Oct. 5	Any deer	Deer Area 3072	10
Kahlotus B	Nov. 20 - Dec. 8	Any deer	GMU 381	25
East Klickitat B	Nov. ((20)) <u>21-30</u>	3 pt. min. or antlerless	GMU 382	20
Grayback C	Oct. ((7-13)) <u>6-12</u>	3 pt. min. or antlerless	GMU 388	10
West Klickitat C	Dec. 1-15	2 pt. min. or antlerless	GMU 578	30
Mossyrock B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 505	10
Stormking B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 510	5
South Rainier B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 513	5
Packwood B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 516	5
Winston B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 520	5
Coweeman B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 550	30
Yale B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 554	2
Toutle B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 556	3
Lewis River B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 560	5
Washougal B	<u>Oct. 6-12</u>	<u>Any deer</u>	<u>GMU 568</u>	<u>10</u>
Siouxon B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 572	5
Wind River C	Oct. ((7-13)) <u>6-12</u>	2 pt. min. or antlerless	GMU 574	1

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Olympic B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 621	20
North River B	Oct. ((7-13)) <u>6-12</u>	Any deer	GMU 658	5
<b>Archery Only Deer Permit Hunts (Only archery deer tag holders may apply.)</b>				
Chiwawa D	Dec. 1-12	Any deer	GMU 245	((49)) <u>27</u>
Entiat B	Nov. 20-29	Any deer	GMU 247	160
Entiat C	Nov. 30 - Dec. 8	Any deer	GMU 247	150
Big Bend B	Nov. 20 - Dec. 8	Any deer	GMU 248	10
Desert D	Nov. 13-26	Any deer	GMU 290	((44)) <u>12</u>
Naneum ((D)) <u>C</u>	Nov. 20 - Dec. 8	Any ((deer)) <u>buck</u>	GMU 328	((20)) <u>13</u>
Quilomene C	Nov. 20 - Dec. 8	((Any deer)) <u>3 pt. min.</u>	GMU 329	((20)) <u>12</u>
Teanaway ((E)) <u>D</u>	Nov. 20 - Dec. 8	Any ((deer)) <u>buck</u>	GMU 335	((20)) <u>13</u>
L.T. Murray C	Nov. 20 - Dec. 8	Any ((deer)) <u>buck</u>	GMUs 336, 340	((20)) <u>6</u>
Alkali E	Dec. ((40-24)) <u>9-25</u>	Any deer	GMU 371	((94)) <u>99</u>
<b>Special Modern Firearm Deer Permit Hunts for Hunters 65 or older</b>				
Blue Mtns. Foothills D	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMUs 145, 149	30
East Okanogan C	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 204	15
Wannacut B	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 209	((45)) <u>20</u>
Sinlahekin C	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 215	((45)) <u>25</u>
Chewuch B	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 218	((45)) <u>35</u>
Pearrygin B	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 224	((45)) <u>35</u>
Gardner B	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 231	((45)) <u>25</u>
Pogue B	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 233	((45)) <u>20</u>
Chiliwist B	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 239	((45)) <u>25</u>
Alta B	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 242	((45)) <u>25</u>
Chiwawa E	Oct. ((44-29)) <u>13-28</u>	Antlerless	GMU 245	((40)) <u>15</u>
Entiat ((D)) <u>E</u>	Oct. ((44-29)) <u>13-28</u>	Antlerless	GMU 247	((40)) <u>15</u>
Swakane C	Oct. ((44-29)) <u>13-28</u>	Antlerless	GMU 250	((40)) <u>15</u>
Mission D	Oct. ((44-29)) <u>13-28</u>	Any deer	GMU 251	((40)) <u>15</u>
Bridgeport A	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMUs 248, 260	((45)) <u>20</u>
Palisades A	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMUs 266, 269	((45)) <u>10</u>
<del>((Quilomene D</del>	Nov. 7-20	<del>Antlerless-</del>	GMU 329	40
<del>Manastash B</del>	Oct. 14-22	<del>Antlerless</del>	GMU 340	25
<del>Umtanum A</del>	Nov. 7-20	<del>Antlerless</del>	GMU 342	40
<del>Bethel B</del>	Oct. 14-22	<del>Antlerless</del>	GMU 360	40))
Sunnyside A	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 372	15
Horse Heaven Hills A	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 373	10
Kahlotus C	Oct. ((44-22)) <u>13-21</u>	Antlerless	GMU 381	15
East Klickitat C	Oct. ((44-27)) <u>13-26</u>	3 pt. min. or antlerless	GMU 382	20
Grayback D	Oct. ((44-27)) <u>13-26</u>	3 pt. min. or antlerless	GMU 388	10
Lincoln B	Oct. ((44)) <u>13-31</u>	Any deer	GMU 501	5
Stella B	Oct. ((44)) <u>13-31</u>	Any deer	GMU 504	5
Mossyrock C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 505	15
Stormking C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 510	5
South Rainier C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 513	5
Packwood C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 516	5
Winston C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 520	5
Yale C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 554	5
Toutle C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 556	10
Lewis River C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 560	5
Washougal ((A)) <u>C</u>	Oct. ((44)) <u>13-31</u>	Any deer	GMU 568	10
Siouxon C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 572	5
Wind River D	Oct. ((44)) <u>13-31</u>	2 pt. min. or antlerless	GMU 574	2
West Klickitat D	Oct. ((44)) <u>13-31</u>	2 pt. min. or antlerless	GMU 578	5
Copalis	Oct. ((44)) <u>13-31</u>	Any deer	GMU 642	20
North River C	Oct. ((44)) <u>13-31</u>	Any deer	GMU 658	10
Williams Creek	Oct. ((44)) <u>13-31</u>	Any deer	GMU 673	20

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
<b>Disabled Hunter Deer Permits (Hunters must use method/weapon listed on their tag. All weapon types may apply unless otherwise noted.)</b>				
East Okanogan D	Restricted to general early season by tag choice	Antlerless	GMU 204	15
Wannacut C		Antlerless	GMU 209	((45)) 20
Sinlahekin D		Antlerless	GMU 215	((45)) 25
Chewuch C		Antlerless	GMU 218	((45)) 35
Pearygin C		Antlerless	GMU 224	((45)) 35
Gardner C		Antlerless	GMU 231	((45)) 25
Pogue C		Antlerless	GMU 233	((45)) 20
Chiliwist C		Antlerless	GMU 239	((45)) 25
Alta C		Antlerless	GMU 242	((45)) 25
Chiwawa F		Oct. ((14-29)) 13-28	Antlerless, modern firearm only	GMU 245
Entiat ((E)) E	Oct. ((14-29)) 13-28	Antlerless, modern firearm only	GMU 247	((45)) 25
Mission E	Oct. ((14-29)) 13-28	Any deer, modern firearm only	GMU 251	((45)) 25
Bridge Port B	Restricted to general early season by tag choice	Any deer	GMUs 248, 260	((40)) 15
Palisades B		Any deer	GMUs 266, 269	((40)) 5
((Quilomene E	Nov. 6-19	Antlerless, modern firearm only	GMU 329	5
Manastash C	Oct. 14-22	Antlerless, modern firearm only	GMU 340	40
Umtanum B	Nov. 6-19	Antlerless, modern firearm only	GMU 342	5
Nile B	Restricted to general early season by tag choice	Antlerless	GMU 352	40))
Sunnyside B	Restricted to general early ((season)) season by tag choice	Antlerless	GMU 372	10
Kahlotus D		Antlerless	GMU 381	10
East Klickitat D		3 pt. min. or antlerless	GMU 382	20
Grayback E		3 pt. min. or antlerless	GMU 388	10
Green River B		Oct. ((28)) 27 - Nov. ((5)) 2	Any deer, modern firearm only	GMU 485
Lincoln C	Restricted to general early season by tag choice	Any deer	GMU 501	3
Stella C		Any deer	GMU 504	3
Mossyrock D		Any deer	GMU 505	5
Stormking D		Any deer	GMU 510	3
South Rainier D		Any deer	GMU 513	3
Packwood D		Any deer	GMU 516	3
Winston D		Any deer	GMU 520	3
Yale D		Any deer	GMU 554	3
Toutle D		Any deer	GMU 556	5
Lewis River D		Any deer	GMU 560	2
Washougal ((B)) D		Any deer	GMU 568	((2)) 10
Siouxon D		Any deer	GMU 572	3
Wind River E		2 pt. min. or antlerless	GMU 574	1
West Klickitat E		2 pt. min. or antlerless	GMU 578	3
Capitol Peak C		Any deer	GMU 663	30
Skookumchuck C		Any deer	GMU 667	30
North River D		Any deer	GMU 658	5
<b>Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)</b>				
<b>Modern Firearm Only</b>				
Blue Mtns. Foothills E	Oct. ((14-22)) 13-21	Antlerless	GMUs 149, 154, 162-163	40
Blue Mtns. Foothills F	Oct. ((14-22)) 13-21	Antlerless	GMUs 145, 172-181	40
East Okanogan E	Oct. ((14-22)) 13-21	Antlerless	GMU 204	70
Wannacut D	Oct. ((14-22)) 13-21	Antlerless	GMU 209	((50)) 40
Sinlahekin E	Oct. ((14-22)) 13-21	Antlerless	GMU 215	((400)) 80

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Chewuch D	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 218	((175)) <u>135</u>
Pearygin D	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 224	((175)) <u>135</u>
Gardner D	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 231	((65)) <u>50</u>
Pogue D	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 233	((50)) <u>40</u>
Chiliwist D	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 239	((100)) <u>80</u>
Alta D	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 242	((110)) <u>90</u>
Chiwawa G	Oct. ((14-29)) <u>13-28</u>	Antlerless	GMU 245	((60)) <u>85</u>
Entiat ((F)) <u>G</u>	Oct. ((14-29)) <u>13-28</u>	Antlerless	GMU 247	((40)) <u>55</u>
Swakane D	Oct. ((14-29)) <u>13-28</u>	Antlerless	GMU 250	((20)) <u>30</u>
Mission F	Oct. ((14-29)) <u>13-28</u>	Antlerless	GMU 251	((150)) <u>210</u>
Bridge Port C	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMUs 248, 260	((125)) <u>175</u>
Palisades C	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMUs 266, 269	((100)) <u>50</u>
Lakeview C	Oct. ((14-22)) <u>13-21</u>	Any deer	Deer Area 2011	10
Benge B	Oct. 23-31	Antlerless	Deer Area 2010	20
Desert E	Sept. ((18-Oct. 1)) <u>22-23</u>	Any deer	GMU 290	((10)) <u>2</u>
((Naneum F	Oct. 14-22	Antlerless	GMU 328	50
Quilomene F	Nov. 6-19	Antlerless	GMU 329	50
Manastash D	Oct. 14-22	Antlerless	GMU 340	100
Umtanum C	Nov. 7-20	Antlerless	GMU 342	25
Cowiche D	Oct. 14-22	Antlerless	GMU 368	50))
Horse Heaven Hills B	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 373	10
Kahlotus E	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 381	20
Grayback F	Oct. ((14-27)) <u>13-26</u>	Any deer	GMU 388	20
East Klickitat E	Oct. ((14-27)) <u>13-26</u>	Any deer	GMU 382	30
Green River C	Oct. ((28)) <u>27</u> - Nov. ((3)) <u>2</u>	Antlerless	GMU 485	5
Lincoln D	Oct. ((14)) <u>13-31</u>	Any deer	GMU 501	10
Stella D	Oct. ((14)) <u>13-31</u>	Any deer	GMU 504	10
Mossyrock E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 505	10
Stormking E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 510	10
South Rainier E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 513	10
Packwood E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 516	10
Winston E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 520	10
Yale E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 554	10
Toutle E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 556	60
Lewis River E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 560	10
Washougal ((€)) <u>E</u>	Oct. ((14)) <u>13-31</u>	Any deer	GMU 568	10
Siouxon E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 572	10
Wind River F	Oct. ((14)) <u>13-31</u>	Any deer	GMU 574	15
West Klickitat F	Oct. ((14)) <u>13-31</u>	Any deer	GMU 578	15
Satsop B	Oct. ((14)) <u>13-31</u>	Any deer	GMU 651	10
Skookumchuck D	Oct. ((7)) <u>6-31</u>	Any deer	GMU 667	60
North River E	Oct. ((14)) <u>13-31</u>	Any deer	GMU 658	10
<b>Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)</b>				
<b>Muzzleloader Only</b>				
East Okanogan F	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 204	10
Wannacut E	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 209	10
Pogue E	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 233	10
Chiliwist E	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 239	10
Alta E	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 242	10
Mission ((F)) <u>G</u>	Oct. ((7-13)) <u>1-12</u>	Any deer	GMU 251	20
Ritzville C	Oct. ((7-13)) <u>6-12</u>	Antlerless	GMU 284	50
Desert F	Sept. ((1-15)) <u>8-9</u>	Any deer	GMU 290	((10)) <u>2</u>
Whitcomb ((B)) <u>D</u>	Sept. ((11-17)) <u>1-7</u>	Antlerless	Deer Area 3071	((5)) <u>7</u>
Paterson B	Sept. ((11-17)) <u>1-7</u>	Antlerless	Deer Area 3072	((5)) <u>10</u>

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits	
<b>Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and be accompanied by an adult during the hunt.)</b>					
<b>Archery Only</b>					
Desert G	((Oct. 2-15)) <u>Sept. 15-16</u>	Any deer	GMU 290	((+0)) <u>2</u>	
<b>Special Deer Permits - Second Deer Tag</b>					
<b>These permits are only valid when a second license and tag is purchased. Hunters must use the method/weapon listed on their tag. The second deer license and tag type must be the same tag type as the first one. These 2nd deer special permit hunts will not affect hunters' accumulated points.</b>					
Hunt Name	Second Tag Season	Special Restrictions	Boundary Description	Permits	
Huckleberry B	Restricted to general seasons by tag choice	Whitetail, antlerless	GMU 121	400	
Mt. Spokane B		Whitetail, antlerless	GMU 124	500	
Almota B		Antlerless	GMU 142	100	
Mica Peak B	<u>Modern firearm and archery general season only</u>	Whitetail, antlerless	GMU 127	200	
Northeast	Archery tag required. Any open archery hunt. Must use archery equipment.	Whitetail, antlerless	GMUs 105, 108, 121, 124	((200)) <u>400</u>	
Benge C	Dec. 16-31	Antlerless	Deer Area 2010	20	
Lakeview C	Jan. 1-30	Antlerless	Deer Area 2011	20	
Methow	<u>Sept. 4 - Oct. 12</u>	<u>Antlerless</u>	<u>Deer Area 2012</u>	<u>50</u>	
High Prairie	Restricted to general early season by tag choice	Antlerless	Deer Area 3088	50	
Shaw	Restricted to general seasons by tag choice	Any deer	Deer Area 4004	50	
Lopez		Any deer	Deer Area 4005	50	
Orcas		Any deer	Deer Area 4006	50	
Decatur		Any deer	Deer Area 4007	50	
Blakely		Any deer	Deer Area 4008	50	
Cypress		Any deer	Deer Area 4009	50	
San Juan		Any deer	Deer Area 4010	50	
Camano		Antlerless	Deer Area 4011	50	
Whidbey		Antlerless	Deer Area 4012	125	
Vashon-Maury		Antlerless	Deer Area 4013	125	
Guemes		Antlerless	Deer Area 4926	50	
Anderson		Antlerless	Deer Area 6014	50	
<b>Advanced Hunter Education (AHE) Master Hunter Special Deer Permit Hunts: Only AHE master hunters may apply; antlerless only hunts will not affect accumulated points; any weapon may be used.</b>					
Lakeview D		Dec. 9-31	Antlerless	Deer Area 2011	20

<b>Hunter Education Instructor Incentive Permits</b>				
<ul style="list-style-type: none"> <li>Special deer permits will be allocated through a random drawing to those hunter education instructors that qualify.</li> <li>Permit hunters must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons.</li> <li>Qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing.</li> <li>Instructors who are drawn, accept a permit, and are able to participate in the hunt, will not be eligible for these incentive permits for a period of ten years thereafter.</li> <li>Permittees may purchase a second license for use with the permit hunt only.</li> </ul>				
Area	Dates	Restrictions	GMUs	Permits
Region 1	All general season and permit seasons established for GMUs included with the permit	Any white-tailed deer	Any 100 series GMU except GMU 157	2
<u>Region 2</u>		<u>Any white-tailed deer</u>	<u>GMUs 204-215</u>	<u>2</u>
Region 2		Any deer	GMUs 215-251	1
Region 2		Any deer	GMU 290	1
Region 3		Any deer	GMUs 335-368, 382, 388	1
Region 4		Any deer	Any 400 series GMU except GMU 485	2
Region 5		Legal buck for 500 series GMU of choice or antlerless	Any 500 series GMU open for a general deer hunting season or a special deer permit hunting season	((2)) <u>6</u>
Region 6		Legal buck for GMU of choice	GMUs 654, 660, 672, 673, 681	1

**WSR 07-17-058**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Order 614—Filed August 10, 2007, 3:38 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. Any substantive changes made to rules related to punch board and pull-tab game [games] are identified on the attached summary sheet which outlines the changes. This new chapter incorporates rules that relate to amusement games.

**SUBSTANTIVE RULE CHANGES:**

**Post-1/1/2008 WAC 230-14-001 Defining "licensee," "licensees," "operator," and "operators."**

We added a definition of "licensee," "licensees," "operator," and "operators" to the post-1/1/2008 chapter because the terms were used in the pre-1/1/2008 rules without being clearly defined.

We are defining these terms in the post-1/1/2008 rules to make it clear that anyone operating the gambling activity - sometimes the licensee, sometimes a bartender or tavern worker - has to understand the gambling activity and has to obey the operating rules. For instance, if a tavern worker knows that a pull-tab game has an incorrect number of pull-tabs, we don't want him or her putting it out for play. We also want all persons operating the gambling activity to keep the required records and follow the correct procedures.

This post-1/1/2008 definition makes it clear that those who are operating punch boards and pull-tabs, even if they are not licensed, must meet the requirements of this chapter.

**Post-1/1/2008 WAC 230-14-005 Defining "punch board."**  
**Pre-1/1/2008 WAC 230-02-270 Punch board defined.**

We removed the term "device" from the post-1/1/2008 rule so that readers would not confuse it with "gambling device" which is defined in RCW 9.46.0241.

The statute defines "gambling device." In other post-1/1/2008 chapters, when discussing the various pieces of equipment which make gambling activity possible, we have used "gambling equipment" as defined in WAC rule (pre-1/1/2008 WAC 230-02-412 and post-1/1/2008 WAC 230-03-200 Defining gambling equipment).

The change adds consistency with the rules in other post-1/1/2008 chapters where we have removed the word "device" when referring to gambling equipment.

**Post-1/1/2008 WAC 230-14-025 Punch boards, pull-tabs, and pull-tab dispensers must meet all requirements.**

**Pre-1/1/2008 WAC 230-30-090 All devices must comply with rules.**

We added "chapter 9.46 RCW" to the post-1/1/2008 requirements that punch boards, pull-tabs, and pull-tab dispensers must meet. This requirement has always been implied, but here we are making it explicit in the post-1/1/2008 rules.

The change adds consistency with the rules in other post-1/1/2008 chapters where we've added compliance with chapter 9.46 RCW as an explicit requirement.

**NEW DEFINITION**

**Post-1/1/2008 WAC 230-14-035 Defining "pull-tab series."**

We added a definition of "pull-tab series" to the post-1/1/2008 chapter because the term is used in the pre-1/1/2008 rules without being clearly defined. We wanted to have a clear definition in the post-1/1/2008 rules.

**Post-1/1/2008 WAC 230-14-050 Operating restrictions for punch boards and pull-tabs.**

**Pre-1/1/2008 WAC 230-30-050 Punch board and pull-tab operating restrictions and dispensing limitations.**

The pre-1/1/2008 rule states that operators must ensure that "no unauthorized person is allowed to play or sell" punch boards or pull-tabs. We added "buys" to the post-1/1/2008 restrictions on owners because we don't want unauthorized persons - underage persons or intoxicated players, for example - to be able to buy the punch board or pull-tabs, either.

These changes clarify requirements licensees already had to meet.

**Post-1/1/2008 WAC 230-14-055 Selling pull-tabs.**

**Pre-1/1/2008 WAC 230-30-050 Punch board and pull-tab operating restrictions and dispensing limitations.**

We removed the phrase "Failing to mix pull-tabs may result in a minimum five-day suspension of their license for each series not mixed" from the post-1/1/2008 rule language. We feel that the named penalty in the pre-1/1/2008 rule restricts our ability to enforce the restriction given different facts. For example, a five-day suspension might be too high for an unintentional first time violation, but too lenient for a repeated, intentional violation.

Further, the requirement to mix pull-tab series is repeated several times in the pre-1/1/2008 rules, but we have removed the redundancies and made one post-1/1/2008 rule about mixing pull-tabs.

We also added an example to the section on the use of spindle pull-tabs in the post-1/1/2008 rule. This clarifies what a "nearby surface" means in the pre-1/1/2008 rule language.

The rule changes eliminate a redundancy, give more flexibility for enforcement, and clarify meaning in the post-1/1/2008 rule.

**NEW DEFINITION**

**Post-1/1/2008 WAC 230-14-060 Defining "flare."**

We added a definition of "flare" to the post-1/1/2008 chapter because the term is used throughout the pre-1/1/2008 rules without being clearly defined.

We wanted to have a clear definition in the post-1/1/2008 rules.

**Post-1/1/2008 WAC 230-14-070 Displaying flares.**

**Pre-1/1/2008 WAC 230-30-106 Punch board and pull-tab flares restrictions—Standards—Substitute flares.**

The pre-1/1/2008 rule has a requirement about the use of substitute flares with pull-tab series, but we separated flare and substitute flare requirements into two rules.

Punch boards use only substitute flares because punch boards come with an attached flare (also known as a "face sheet"). Therefore, any flare used with a punch board would be a substitute flare. The differences between flares and face sheets are clear to most manufacturers and agents, but could be confusing to new operators or manufacturers.

This change adds clarity and consistency to the post-1/1/2008 chapter.

**Post-1/1/2008 WAC 230-14-100 Removing prizes from flares.**

**Pre-1/1/2008 WAC 230-30-070 Control of prizes—Restrictions—Bonus prizes—Displaying—Procedures for awarding.**

The operator is required to delete all references to the prize from the flare, and from any other list, sign, or notice. The pre-1/1/2008 rule adds, "...in such a manner that all future customers will know the prize is no longer available." We propose removing this phrase in the post-1/1/2008 [rule] because we feel that "permanently and conspicuously" deleting is more than enough to meet the requirement.

We also recommend removing the language in the pre-1/1/2008 about the director initiating action for a violation of RCW 9.46.190. Since the violation would fall under the RCW, we are removing a redundancy between the WAC and the RCW.

The changes remove excess verbiage and redundancies in the pre-1/1/2008 rules that don't add anything to the real requirements.

**Post-1/1/2008 WAC 230-14-115 Defacing winning punches or pull-tabs.**

**Pre-1/1/2008 WAC 230-30-070 Control of prizes—Restrictions—Bonus prizes—Displaying—Procedures for awarding.**

We propose changing the pre-1/1/2008 requirement for destruction of winning punches or pull-tabs to "permanently defacing." This phrase covers both marking and perforating as stated in the pre-1/1/2008 rule and makes the post-1/1/2008 rule consistent with other rules on defacing parts of the boards or series. This change increases clarity of the requirement in the rule.

**Post-1/1/2008 WAC 230-14-150 Awarding seal card pull-tab winners.**

**Pre-1/1/2008 WAC 230-30-034 Seal card pull-tab series—Definitions—Restrictions.**

The pre-1/1/2008 rule is ambiguous about what happens if the winner of a seal card pull-tab cannot be located within fourteen days to receive the prize. It states that operators must make rules for their procedures, including how they will select a second winner, but it doesn't say that the prize must be awarded.

We felt that this ambiguity needed to be addressed and clarified, so in the post-1/1/2008 rule we added that the operator must select a second winner to receive the prize. This change removes an ambiguity which has existed in the rule since it was originally passed.

**Post-1/1/2008 WAC 230-14-180 Paying out prizes and defacing tabs in progressive jackpot pull-tab series.**

**Pre-1/1/2008 WAC 230-30-025 Progressive jackpot pull-tab series—Definitions—Restrictions—Operating procedures.**

We removed the pre-1/1/2008 rule requirement that operators record a winner's full name, address, and social security number for jackpot prizes six hundred dollars or greater for federal income tax purposes. One reason for this change is that we no longer seek to enforce federal requirements on operators and licensees. The other reason is that identify [identity] theft potential rises when operators have access to winners' social security numbers and other personal information. By requiring them to keep it, we put them at risk for accusations of abetting identity theft.

Our second change to the pre-1/1/2008 rule was to remove the prohibition against winners cashing their pay out checks on the licensed premises. In player supported jackpots (PSJs) in the card game rules, winners are allowed to cash their pay out checks on the licensed premises. It seems that prohibiting punch board or pull-tab winners from doing the same would be an inconsistency in enforcement.

**Post-1/1/2008 WAC 230-14-185 Additional recordkeeping for progressive jackpot pull-tab series.**

**Pre-1/1/2008 WAC 230-30-025 Progressive jackpot pull-tab series—Definitions—Restrictions—Operating procedures.**

We revised the pre-1/1/2008 rule to remove the so-called "laundry list" of requirements that are already printed on the form we require licensees to complete. This change would match other instances in the post-1/1/2008 rules where we have indicated that forms must be completed "in the format we require." It adds consistency to the post-1/1/2008 rules as a whole.

**Post-1/1/2008 WAC 230-14-190 Defining "event pull-tabs" and "event round."**

**Pre-1/1/2008 WAC 230-30-033 Event pull-tab series—Definitions—Restrictions.**

We removed the phrase "secondary element of chance" from the post-1/1/2008 rule because it conflicts with post-1/1/2008 bingo WAC 230-10-280 about which types of games constitute a second element of chance in a bingo game.

**NEW DEFINITION**

**Post-1/1/2008 WAC 230-14-200 Defining "bonus pull-tab series."**

We included a definition of "bonus pull-tab series" to the post-1/1/2008 rules chapter because this particular type of pull-tab series has not been defined before. The pre-1/1/2008 rule about bonus pull-tab series was passed in 1997 and amended in 1999, but it did not include a definition of the series.

**Post-1/1/2008 WAC 230-14-205 Operating requirements for bonus pull-tab series.****Pre-1/1/2008 WAC 230-30-040 Bonus pull-tab series—Definitions—Restrictions.**

We made a small change to the post-1/1/2008 rule to correct something that was overlooked when the pre-1/1/2008 rule was originally drafted in 1997.

In subsection (3) of the post-1/1/2008 rule, we changed the "and" between the requirements for the bonus pull-tab series to an "or" because we do not want operators of bonus pull-tab series to allow any of the three components listed in subsection (3) to be a part of the pull-tab series.

Using "and" implies to some readers that they only have to avoid using a series that has all three of the components, not each component individually.

It's unlikely that a bonus pull-tab series would have all three components, so operators have been complying with the requirement despite the error.

**Post-1/1/2008 WAC 230-14-230 Transferring a carry-over jackpot to another game.****Pre-1/1/2008 WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements.**

We removed the reference in the pre-1/1/2008 rule to the limit on accrued contribution amounts from series (two thousand dollars) because the limit for accrued contribution amounts is already in post-1/1/2008 WAC 230-14-195 Prize limits for carry-over jackpot pull-tab series.

The change removes a redundancy in the pre-1/1/2008 [rule].

**Post-1/1/2008 WAC 230-14-240 Distributing carry-over pull-tab jackpots.****Pre-1/1/2008 WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements.**

The pre-1/1/2008 rule states that if "a licensee" ceases to operate gambling activities the carry-over jackpot must be distributed in one of four ways. We changed that pre-1/1/2008 rule language to identify the entity ceasing operations as a "business" in the post-1/1/2008 rule rather than a licensee. Once they've stopped operating, the entity is no longer qualified to hold a commercial stimulant license because they no longer have the underlying food and drink business.

We also removed the list of reasons in the pre-1/1/2008 rule for ceasing operation ("due to a sale, closure, or failure to maintain a valid gambling license") because the reasons have little bearing on the business' status as a non-licensee.

We also changed the transfer language in pre-1/1/2008 rule to refer to "the new owners who bought the business" rather than "the licensee, which has a valid gambling license." The new business has to undergo a separate licensure process and we want the business ceasing operation to understand that it simply doesn't transfer the carry-over jackpot to the new owner unless and until that business owner has been licensed.

If it's not closing because of a sale, the business ceasing operation must choose one of the other methods of distribution for the carry-over jackpot.

These changes clarify the role of the business distributing the carry-over jackpot and to whom that entity can distribute the jackpot.

**Pre-1/1/2008 WAC 230-30-045(9) Carry-over jackpot pull-tab series—Definitions—Requirements.**

We removed the pre-1/1/2008 rule requirement that operators record a winner's full name, address, and social security number for carry-over jackpot prizes six hundred dollars or greater for federal income tax purposes. One reason for this recommendation is that we no longer seek to enforce federal requirements on operators and licensees.

The other reason is that identify [identity] theft potential rises when operators have access to winners' social security numbers and other personal information. By requiring them to keep it, we put them at risk for accusations of abetting identity theft.

Operators already provide jackpot winners with the federal form to complete for tax obligations, so the tax consequences are already explained to the players.

**Post-1/1/2008 WAC 230-14-250 Recording carry-over jackpots on cash basis.****Pre-1/1/2008 WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements.**

We removed the pre-1/1/2008 rule requirement that Class F and above bingo licensees have to receive special approval from the director to account for their punch board and pull-tab prizes because licensees in Class F and above bingo are already using the accrual method to account for bingo prizes. It would be a simple thing for them to account for their punch board and pull-tab prizes in a similar manner.

We also propose adding a definition of recording on a "cash basis" to the post-1/1/2008 rule for operators who may not be familiar with that term.

The changes make the post-1/1/2008 rule less restrictive to licensees and clarify an accounting term.

**Post-1/1/2008 WAC 230-14-255 Net income and cash flow requirements when operating punch boards or pull-tabs.****Pre-1/1/2008 WAC 230-30-052 Punch boards and pull-tabs operated by charitable or nonprofit organizations—Net income required.**

The pre-1/1/2008 rule warns charitable and nonprofit licensees of their responsibility under RCW 9.46.010 to conduct gambling only for "the raising of funds for the promotion of" their organization. Therefore, their net income from punch boards and pull-tabs "shall not be less than zero when measured over the annual license period."

We changed the post-1/1/2008 rule to remove the reference to the RCW because the rule merely restates the RCW and we, instead, provided charitable or nonprofit licensees with formulas with which to calculate their compliance with the requirement of RCW 9.46.010.

The post-1/1/2008 rule change provides a consistent way to measure for the net income and cash flow requirement.

**Post-1/1/2008 WAC 230-14-270 Additional retention requirements for some commercial stimulant licensees.**  
**Pre-1/1/2008 WAC 230-30-072 Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments.**

We changed a "director approval" in the pre-1/1/2008 rule to a "staff approval" as we have done in other post-1/1/2008 rules. The pre-1/1/2008 rule required that the director enforce penalties on commercial stimulant licensees who fail to comply with all record-keeping requirements or who misstate gross gambling receipts by more than 1% during any calendar quarter. The director has reviewed this change and is comfortable with staff taking over enforcement of this requirement.

We have delegated many minor duties to staff in other sections of the post-1/1/2008 rules.

**Post-1/1/2008 WAC 230-14-280 Records review of gross gambling receipts.**  
**Pre-1/1/2008 WAC 230-30-072 Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments.**

We removed from the pre-1/1/2008 rule the exact number of randomly selected punch boards or pull-tab series we may select during a records review of gross gambling receipts.

We feel that naming the number in the WAC restricts our ability to enforce the post-1/1/2008 rule given different facts. For example, five boards or series might be too high for some inspections - such as the usual inspection module which special agents routinely perform - but the number might be too low for other situations in records review. We may need more than five to find a pattern of misstatements or recording errors.

**Post-1/1/2008 WAC 230-14-290 Calculating cash over and cash short on the punch board and pull-tab monthly income summary.**

**Pre-1/1/2008 WAC 230-30-072 Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments.**

We added a definition of "reconcile" to the post-1/1/2008 rule because the term is used throughout the rules and we wish to be consistent in our meaning. This definition was also added to post-1/1/2008 rules in the chapter 230-15 WAC, Card game rules and chapter 230-10 WAC, Bingo rules. It ensures that licensees and operators know what we mean when we require a reconciliation. We have had disagreements about the term in the past and want to avoid any in the future. It adds clarity and consistency with the post-1/1/2008 rules in all chapters.

**Post-1/1/2008 WAC 230-14-295 Electronic facsimiles of Washington state identification stamps.**

**Pre-1/1/2008 WAC 230-08-010 Monthly records.**

We corrected two small errors that had crept into the pre-1/1/2008 rule during the amendment and codification process:

1. The licensee does not have to put database information into the system by "scanning the stamp with a barcode reader." The data may be input using a keyboard and special type fonts.

2. The "interleaved two of five" barcode symbology we require is also not called "(USS-12/5)." The pre-1/1/2008 WAC incorrectly spells the barcode citation. In actuality, this high-density numeric-only barcode type is "(USS-ITF-2/5)." This barcode is used by the automatic identification and data capture (AIDC) industry, and the symbology is approved by the American National Standards Institute (ANSI) and the Association for Automatic Identification and Mobility (AIM).

To further clarify which barcoding system we require to create facsimiles of I.D. stamps, we also included in the post-1/1/2008 rule an example of what the barcode should look like.

Operators have been meeting the requirements using the correct software. The corrections will help future operators.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-12-058 on June 4, 2007, and published July 10, 2007.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 55, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 55, 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 55, Amended 0, Repealed 0.

Date Adopted: August 10, 2007.

Susan Arland  
Rules Coordinator

## Chapter 230-14 WAC

### PUNCH BOARD AND PULL-TAB RULES

#### PUNCH BOARDS AND PULL-TABS

#### NEW SECTION

**WAC 230-14-001 Defining "licensee," "licensees," "operator," and "operators."** (1) In this chapter, "licensee" and "licensees" mean the business holding the punch board and pull-tab license.

(2) "Operator" and "operators" mean licensees and those operating the gambling activity for the licensees, for example, those selling pull-tabs to players or putting out games for play.

#### NEW SECTION

**WAC 230-14-005 Defining "punch board."** A "punch board" means:

(1) A board with a number of openings of uniform size in which the manufacturer placed, at random, slips of paper or other substances (punches) imprinted with numbers or symbols; and

(2) A flare (face sheet) covers the openings and sets out the winning numbers or symbols and which prizes players may win. The punches have specific serial numbers assigned and printed on them; and

(3) After buying a punch, a player may select and remove the punch from the opening of the punch board, and, if the number on the selected punch matches the flare, the specified prize is awarded to the player.

#### NEW SECTION

**WAC 230-14-010 Defining "pull-tab."** A "pull-tab" means:

(1) A single folded tab that conceals number(s) or symbol(s) from view; or

(2) A banded tab that conceals number(s) or symbol(s) from view; or

(3) A card with the face covered by perforated window(s) or otherwise hidden to conceal number(s) or symbol(s) from view.

(4) Some of the number(s) in each series of pull-tabs have been selected in advance and at random as prize winners.

(5) After buying a pull-tab, a player opens the pull-tab and, if the numbers or symbols on the pull-tab match the flare, the player wins the prize.

#### NEW SECTION

**WAC 230-14-015 Rules apply to both punch boards and pull-tabs.** Commission rules that apply to operators of both punch boards and pull-tabs also apply to operators of only one of these activities.

#### NEW SECTION

**WAC 230-14-020 Washington state identification and inspection stamps to be called "I.D. stamps."** Because the agents, manufacturers, and other licensees have long referred to Washington state identification and inspection stamps as "I.D. stamps," we will use this abbreviated name for the stamps throughout the rules.

#### NEW SECTION

**WAC 230-14-025 Punch boards, pull-tabs, and pull-tab dispensers must meet all requirements.** Operators must not display or put out for play any punch board, pull-tab series, or pull-tab dispenser that does not comply with chapter 9.46 RCW and Title 230 WAC.

#### NEW SECTION

**WAC 230-14-030 Determining winners or location of winners in advance prohibited.** Manufacturers, distributors, operators, and representatives must not possess, display,

sell, or otherwise furnish a pull-tab series when they know, or reasonably should have known, that:

(1) The location, or approximate location, of any of the winning pull-tabs can be determined in advance of opening by:

(a) Any pattern in the manufacture, assembly, or packaging of the tabs; or

(b) Any markings on the tabs or container; or

(c) The use of a light; or

(2) The winning tabs have not been distributed and mixed among all other tabs in the series.

#### NEW SECTION

**WAC 230-14-035 Defining "pull-tab series."** A "pull-tab series" means all the pull-tabs in a group produced by a manufacturer that offer a single set of prizes specified on the manufacturer's accompanying flare.

#### NEW SECTION

**WAC 230-14-040 Maximum number of pull-tabs in a series.** The maximum number of pull-tabs must be no more than:

(1) Ten thousand in a series; or

(2) Six thousand in a carry-over jackpot series; or

(3) Fifty thousand in progressive jackpot series.

#### NEW SECTION

**WAC 230-14-045 Authorized pull-tab dispensers.** (1) Authorized pull-tab dispensers must:

(a) Be made by a licensed manufacturer; and

(b) Conspicuously display a stamp, seal, or label identifying the manufacturer, city, and state where manufactured; and

(c) Be stamped with a serial number on the case.

(2) Perforated window type pull-tab dispensers must:

(a) Have a resettable counter visible to the customer indicating the number of pull-tabs left in the dispenser; or

(b) Be made so that players can:

(i) Clearly see each pull-tab in the dispenser, except for that area at the bottom, not more than one inch in height, covered for security or mechanical reasons; and

(ii) Estimate how many pull-tabs remain within the dispenser using permanent markings which divide the pull-tabs remaining into divisions of approximately twenty-five tabs.

(3) "Jar" or "banded" type pull-tab dispensers must:

(a) Have a resettable counter visible to the player indicating the number of jar or banded tabs left in the dispenser; or

(b) Be made so that players can clearly see all jar or banded tabs or jar tab bundles within the dispenser.

(4) Dispensers with bill acceptors or similar mechanisms must inform the player if they do not return change.

#### NEW SECTION

**WAC 230-14-050 Operating restrictions for punch boards and pull-tabs.** (1) Punch board and pull-tab operators must ensure no unauthorized person buys, plays, or sells punch boards or pull-tab series; and

(2) Licensees must:

(a) Not display or operate any punch board or pull-tab series which may have been marked, defaced, or tampered with in any way that could affect the chances of winning; and

(b) Not change a flare, except to:

(i) Delete prizes won; or

(ii) Correct inadvertently deleted prizes; or

(iii) Add a substitute flare; and

(c) Keep all records, reports, and receipts relating to punch boards or pull-tab series in play on the licensed premises as long as they are in play. They must make all records, reports, and receipts available on demand to law enforcement officers and us; and

(d) Not place out for further play any punch board or pull-tab series that they have permanently removed from play.

#### NEW SECTION

**WAC 230-14-055 Selling pull-tabs.** (1) No one may add pull-tabs to a series after the manufacturer has shipped that series.

(2) Pull-tab operators must:

(a) Thoroughly mix all pull-tabs in a series before placing them in a dispenser or clear container and offering them for sale. Operators may assemble pull-tabs into bundles with a sales price of up to twenty dollars as long as they thoroughly mix the bundles before they sell them; and

(b) Sell all pull-tabs from a dispenser we approved or a clear container. Pull-tabs sold from a container must be visible to players so players are able to estimate the number of chances remaining in the series; and

(c) Put out the entire pull-tab series for play. If using a spindle series, licensees may set the spindle on a nearby surface, for example, on the counter; and

(d) Not put a new pull-tab series in a dispenser or a clear container until they completely play out or permanently remove from play the series currently in the dispenser or container. If using a multiple-series dispenser, operators must offer each series independently.

(3) Once put out for play, operators must not remove pull-tabs from the dispenser or container until they are:

(a) Sold; or

(b) Permanently removed from play; or

(c) Removed by us or other law enforcement agencies inspecting the dispenser; or

(d) Temporarily removed during necessary repair or maintenance; or

(e) Removed to be held permanently for a player.

#### NEW SECTION

**WAC 230-14-060 Defining "flare."** A "flare" (also known as a "face sheet" for punch boards) means an advertising poster or card listing all the prizes, costs to play, number of pull-tabs, and required manufacturer information for pull-tab series.

#### NEW SECTION

**WAC 230-14-065 One flare per punch board or pull-tab series.** Punch board and pull-tab licensees must have in public view only one flare per punch board or pull-tab series. Flares must have a Washington state identification stamp number and series number on their face.

#### NEW SECTION

**WAC 230-14-070 Displaying flares.** (1) Punch board or pull-tab operators must place flares in plain view and in the vicinity of the pull-tab container or dispenser.

(2) If operators do not attach the flare directly to the container or dispenser, they must include a numerical or alphabetical reference directly on the flare and on the container or dispenser indicating which flare corresponds to which series.

#### NEW SECTION

**WAC 230-14-075 Substitute flares.** Manufacturers must make all flares. Operators or distributors must not alter flares, except that substitute flares are allowed if:

(1) The manufacturer, distributor, or operator who changes the original flare and attaches the substitute flare is responsible for ensuring that the substitute flare meets all other requirements for flares; and

(2) Manufacturers, distributors, or operators must permanently deface the original manufacturer's flare and attach the substitute flare to the original.

(3) Distributors or operators may apply manufacturer-produced substitute flares to punch boards and pull-tab series; and

(4) Distributors or operators must place substitute flares only on the upper face or the top of the punch board; and

(5) If distributors or operators convert flares from cash-only prizes to combined merchandise and cash prizes, they must offer at least fifty percent of the total value of the prizes in merchandise; and

(6) Distributors or operators may use substitute flares on punch boards and pull-tab series which offer merchandise or combination merchandise-cash prizes. These flares must use numbers, not symbols, to denote winners. Distributors or operators making substitute flares must:

(a) Select winning numbers from the manufacturer's original flare, or from the manufacturer's designated winning numbers on the punch board; and

(b) Assign the highest valued prize(s) to the lowest available winning number(s); and

(c) Assign the second highest valued prize(s) to the next lowest available winning number(s) and repeat that pattern until they have assigned all prizes based on their value to winning numbers. Licensed distributors may select winning numbers consecutively from the manufacturer's original flare; and

(7) Substitute flares must have the I.D. stamp number and series number permanently recorded in ink on its face.

NEW SECTION

**WAC 230-14-080 Prize limits and percentage of winners required.** Punch board or pull-tab operators must not possess, display, put out for play, sell, or otherwise transfer punch boards or pull-tab series that:

- (1) Have a total payout of less than sixty percent of the total gross gambling receipts of the board or series; or
- (2) Offer boards or series, except for progressive series or carry-over jackpots, with a single cash prize that is more than:
  - (a) Five hundred dollars in cash for pull-tabs under a dollar; or
  - (b) If we have approved it before, seven hundred fifty dollars for one dollar pull-tabs; or
- (3) Offer a single merchandise prize that is more than seven hundred fifty dollars including markup; or
- (4) Have a single pull-tab or punch with multiple winning combinations that are more than the prize limit; or
- (5) Offer prizes for purchasing the last pull-tab or last punch (last sale) that are more than:
  - (a) One hundred dollars cash; or
  - (b) Merchandise that costs the licensee more than one hundred dollars; or
  - (c) The highest prize offered, whichever is less; or
- (6) Series that have a key to any winning numbers or symbols.

NEW SECTION

**WAC 230-14-085 Calculating markup for merchandise prizes.** To calculate sixty percent of total gross for merchandise prizes, operators take the amount actually paid for the prize and add to it no more than fifty percent of that cost as markup. The total cost to the operator for the purchase of a prize must not exceed seven hundred fifty dollars.

NEW SECTION

**WAC 230-14-090 Controlling prizes.** Punch board and pull-tab operators must:

- (1) Protect players from fraud and game manipulation.
- (2) Award all prizes won.
- (3) Not offer to pay cash instead of merchandise prizes.
- (4) Not award additional punches or tabs as a prize.

Prizes, however, may involve the opportunity to advance and win a larger prize on the same punch board or pull-tab series. Operators must award an immediate additional opportunity to advance called a bonus prize when offered in a bonus pull-tab series or a step-up prize when offered on a punch board.

NEW SECTION

**WAC 230-14-095 Displaying prizes.** Punch board and pull-tab operators must:

- (1) Clearly represent cash prizes on the prize flare; and
- (2) Display merchandise prizes:
  - (a) In plain view and in the immediate vicinity of the punch board or pull-tab series. However, operators may wrap merchandise prizes for games that offer "surprise" prizes so players are unable to identify the prize until opened; or

(b) Elsewhere on the premises if size or space constraints do not allow it to be displayed in the immediate vicinity, as long as operators note a specific reference to the prize on the flare; or

(c) Use an accurate description or photograph of the prize in plain view on, or immediately adjacent to, the flare if operators cannot display the prize merchandise on the premises; and

(3) Meet all the requirements of subsections (1) and (2) of this section for combination cash and merchandise prizes.

NEW SECTION

**WAC 230-14-100 Removing prizes from flares.** (1) After receiving a winning punch or pull-tab for more than twenty dollars or merchandise with a retail value of more than twenty dollars, operators must immediately permanently and conspicuously delete all reference to the prize from the flare and from any other list, sign, or notice. Operators then must pay or deliver the prize to the winner.

(2) On step-up punch boards and bonus pull-tab games, once all chances to win in a section of the flare are won, operators must delete all references to prizes.

(3) Operators may correct an inadvertently deleted prize by noting on the flare that such prize is still available. When they actually award the prize, operators must permanently and conspicuously delete the reference.

(4) If operators elect to delete prizes of less than twenty dollars from flares, they must continue to do so until they remove the games from play.

NEW SECTION

**WAC 230-14-105 Paying prizes not deleted from flares.** When a player buys out a punch board or pull-tab series, operators must award the player all prizes not deleted from the flare that were required to be deleted, even if the operator failed to delete the prize from the flare when originally won.

NEW SECTION

**WAC 230-14-110 Recording winners.** When punch board or pull-tab players win more than twenty dollars or merchandise prizes with a retail value over twenty dollars, operators must make a record by:

(1) Having winners print their name and date of birth, in ink, on the side of the winning punch or tab opposite the winning symbol(s) and verifying the winner's identity and recording the current date and initialing the winning punch or tab; or

(2) Recording the required information on a sheet of paper at least three inches by five inches and stapling the winning tab or punch to the paper if the pull-tab or punch is constructed or printed so that recording the information required in a legible manner is not possible.

NEW SECTION

**WAC 230-14-115 Defacing winning punches or pull-tabs.** Within twenty-four hours after a winning punch or pull-

tab over twenty dollars is presented for payment, licensees must permanently deface the pull-tab or punch so that it cannot be presented again for payment.

#### NEW SECTION

**WAC 230-14-120 Permanently removing punch boards or pull-tab series.** Operators may permanently reserve a series for a player who leaves the premises, but intends to return and play the game. The operator must:

- (1) Prominently post house rules that are clear in meaning and with criteria for reserving a series and the length of time players may reserve a series; and
- (2) Ensure that the player meets the criteria in the house rules; and
- (3) Contain all of the reserved series in a secure manner, clearly identifying it as permanently reserved, and store it in the immediate vicinity of the pull-tab area; and
- (4) Not reserve a board or series for a player without play for more than seven days and not be more than a total reserve time of fourteen days; and
- (5) Not have more than twenty-five boards or series permanently reserved for players at one time; and
- (6) Maintain adequate accounting records showing the status of all reserved boards or series; and
- (7) Not place reserved boards or series out for public play after the reserving player finishes playing them.

#### NEW SECTION

**WAC 230-14-125 Temporarily removing punch boards or pull-tab series from play.** Operators may temporarily remove punch boards or pull-tab series from play and return them to play later. Operators must clearly identify the punch board or pull-tab series as reserved and prominently post house rules regarding hours of play or other conditions affecting play. Operators may temporarily remove punch boards or pull-tab series if they are:

- (1) Reserving a board or series for a player, as long as the operator ensures that the player meets the criteria in the house rules; or
- (2) Repairing or maintaining the pull-tab dispenser or container; or
- (3) Reserving a punch board or pull-tab series for play during certain hours of operation, for example, a "happy hour" game; or
- (4) Complying with the game removal requirements of WAC 230-14-050.

#### NEW SECTION

**WAC 230-14-130 Defining "happy hour punch board or pull-tab games."** (1) A "happy hour punch board or pull-tab game" means a series where licensees offer additional prizes to winners during a selected period.

- (2) Licensees may increase advertised prizes or add cash or merchandise prizes to punch board or pull-tab series if licensees:
  - (a) Do not change the manufacturer's flare; and
  - (b) Disclose to players by permanently attaching an additional sign or notice to the manufacturer's flare:

- (i) The requirements to qualify for prizes; and
  - (ii) The prizes offered; and
  - (c) Add the increased or additional prizes to every prize within a tier or section of the flare; and
  - (d) Staple or otherwise permanently attach documentation about all additional prizes to the winning punch or pull-tab. Minimum documentation must include a description of the prize and the name of the winner.
- (3) Charitable or nonprofit licensees must only offer one happy hour punch board or pull-tab series at any one time.

#### NEW SECTION

**WAC 230-14-135 Operating spindle, banded, or "jar" type pull-tabs which award only merchandise prizes.** (1) Pull-tab series which award only merchandise prizes valued at no more than twenty dollars may use formats with predesignated pull-tabs where:

- (a) Some pull-tabs are free; or
  - (b) Players are reimbursed for the cost of the pull-tabs.
- (2) Flares for spindle-type pull-tab series must indicate the total number of pull-tabs and the total number of pull-tabs designated as free or reimbursable.
- (3) Free or reimbursable pull-tabs do not constitute prizes. Operators must not include as revenue money collected and later reimbursed when determining gross gambling receipts.

#### **SEAL CARD PULL-TAB SERIES**

#### NEW SECTION

**WAC 230-14-140 Defining "seal card pull-tab series."** "Seal card pull-tab series" means a pull-tab series that includes a predetermined number of pull-tabs which allow players to advance to the "seal card round."

#### NEW SECTION

**WAC 230-14-145 Defining "seal card round."** (1) "Seal card round" means a secondary element of chance game linked with the pull-tab series.

- (2) Seals on the pull-tab flare conceal prizes for the secondary element of chance game.
- (3) Winners who advance to the seal card round place their names on the list that matches the winning pull-tab number or symbol.
- (4) Players win the prizes behind the seals when the seal card round ends and the operator opens all the seals.

#### NEW SECTION

**WAC 230-14-150 Awarding seal card pull-tab winners.** (1) Pull-tab operators using seal card pull-tabs series must:

- (a) Award seal card round prizes for all seal card pull-tab series placed out for play; and
  - (b) Establish and fully disclose the method of selecting alternate winners before placing a game out for play.
- (2) When players buy pull-tabs that allow them to enter the seal card round, the operator must:

(a) Enter, or allow the winners to enter, their names on the flare where indicated by the number or symbol on the pull-tab. Players must then turn in their pull-tabs to the operator; and

(b) Gather player contact information and keep it with the records of the series during the record retention period; and

(c) Wait until the series plays out before removing it from play, unless the operator elects to award the seal card round prizes without all pull-tabs being purchased.

(3) After the series is played out, or when they begin to award prizes, operators must:

(a) Contact the seal card round winner within two business days of the end of the series; and

(b) Allow the winner fourteen days after being contacted to redeem their prize; and

(c) Keep all series on premises and available for public inspection for a period of fourteen days after they pull them from play; and

(d) Keep the series until they name a winner for the game if they do not locate the seal card round winner within fourteen days.

(4) If seal card round winners do not redeem their prizes within fourteen days, licensees must select alternate winners.

(5) Licensees must not use substitute flares, bonus pull-tab series, or carry-over jackpots with seal card pull-tab series.

### PROGRESSIVE JACKPOT PULL-TAB SERIES

#### NEW SECTION

**WAC 230-14-155 Definitions for "progressive jackpot pull-tab series."** (1) "Progressive jackpot pull-tab series" means a pull-tab series in which operators award a progressive jackpot prize to the player who presents the winning pull-tab.

(2) The "progressive jackpot" means the starting jackpot prize, the accrued jackpot prize for that specific series, plus any accrued jackpot prize carried over from previous series.

(3) "Starting jackpot prize" means the base or minimum amount of the progressive jackpot for each series before the operator adds any money based on the jackpot accrual rate.

(4) "Accrued jackpot prize" means the amount of all additions to the progressive jackpot before the progressive jackpot is won or the operator removes the series from play.

(5) "Jackpot accrual rate" means the rate at which a progressive jackpot increases for each pull-tab sold. The rate may be a percentage of gross gambling receipts or a dollar value based on the price of a single pull-tab.

(6) "Instant winners" means all prizes available from a progressive jackpot pull-tab series, except for the progressive jackpot.

(7) "Bank system" means a network of pull-tab dispensers offering progressive jackpot pull-tab series connected by a computer. The computer determines the total gross gambling receipts all the dispensers on the network receive and calculates the amount of the progressive jackpot on the networked dispensers.

#### NEW SECTION

**WAC 230-14-160 Progressive jackpot dispensers with a bank system.** (1) Operators may have more than one pull-tab dispenser for a series operating at one time.

(2) Operators may have more than one bank system operating at one time, but one bank system must not have more than ten pull-tab dispensers.

(3) In a bank system, progressive jackpot pull-tab dispensers must be:

(a) Located in close physical proximity on the business premises, so that players may observe all remaining pull-tabs in a series; and

(b) Linked to a computer system which records all sales and the accrual of the progressive jackpot.

#### NEW SECTION

**WAC 230-14-165 Additional operating requirements for progressive jackpot pull-tab series.** Operators must conduct progressive jackpot pull-tab series in the same way as other pull-tab series and must follow these requirements:

(1) An owner or licensed commercial or charitable or nonprofit gambling manager must be on the premises at all times when progressive jackpot pull-tab series are operated; and

(2) Only owners and licensed individuals may have access to progressive jackpot pull-tab series and they must store the series in secured locations; and

(3) Licensees must have sufficient funds available to pay all prizes on redemption of winning tabs. Failure to have sufficient funds available is prima facie evidence of defrauding the public; and

(4) The current progressive jackpot total must be clearly displayed near the bank of machines at all times during the sale of progressive pull-tabs; and

(5) Operators must prominently display one flare near the bank of machines; and

(6) Operators must not use:

(a) Substitute flares; or

(b) Merchandise prizes; or

(c) Last sale prizes; and

(7) Operators must disclose the rules for playing out a series or carrying over accrued prizes.

#### NEW SECTION

**WAC 230-14-170 Prizes in progressive jackpot pull-tab series.** Manufacturers and operators must offer prizes for progressive jackpot pull-tab series that follow these requirements:

(1) Instant winners must be at least forty percent of total gross gambling receipts available from the series; and

(2) The starting jackpot must, at least, equal the value of the highest instant winner; and

(3) Operators must set the minimum jackpot accrual rate to generate an accrued jackpot prize of at least sixty percent of the total gross gambling receipts available from the series when added to the starting jackpot prize and instant winners; and

(4) The manufacturer must determine the starting jackpot prize and corresponding jackpot accrual rate needed to meet the sixty percent payout requirement. Manufacturers must include this information in the package with each series; and

(5) The maximum contribution to a progressive jackpot for each individual progressive pull-tab series must be five thousand dollars. The contribution amount excludes portions carried over from previous series.

#### NEW SECTION

**WAC 230-14-175 Removing progressive jackpot pull-tab series from play.** Operators must not remove a progressive jackpot pull-tab series from play before the progressive jackpot is won. However, operators may remove a series from play if they:

(1) Remove the series before the beginning or at the end of any business day; and

(2) Carry over the accrued jackpot prize from the series and any previously carried over accrued jackpot prize to a new series within twenty-four hours; and

(3) Add the accrued jackpot prize to the starting jackpot amount for the new series when they place it out for play. The amount of the jackpot must not be decreased.

#### NEW SECTION

**WAC 230-14-180 Paying out prizes and defacing tabs in progressive jackpot pull-tab series.** Operators must pay out progressive jackpot pull-tab prizes in the same way required for all other pull-tabs and must follow these requirements:

(1) Operators must pay at least the starting jackpot portion of the progressive jackpot with a check. They must record the check number along with all the information required in WAC 230-14-065; and

(2) Operators must immediately deface all jackpot winning tabs when received instead of within twenty-four hours.

#### NEW SECTION

**WAC 230-14-185 Additional recordkeeping for progressive jackpot pull-tab series.** In addition to other pull-tab recordkeeping requirements, operators must:

(1) Record progressive jackpot series on a separate monthly record in the format we require; and

(2) Retain progressive jackpot winning tabs, winner information, and the flares for one year from the date they removed the series from play.

### **EVENT PULL-TAB SERIES**

#### NEW SECTION

**WAC 230-14-190 Defining "event pull-tab series" and "event round."** Only charitable or nonprofit bingo operators may use event pull-tab series:

(1) "Event pull-tab series" means a pull-tab series that includes a predetermined number of pull-tabs which allow a player to advance to the event round.

(2) "Event round" means a game where the numbers drawn in a bingo game must match pull-tab numbers to determine winners. The winning numbers must be between numbers 1 through 75.

#### NEW SECTION

**WAC 230-14-195 Operating requirements for event pull-tabs.** When using event pull-tab series, charitable or nonprofit bingo operators must:

(1) Offer and complete event pull-tabs within one bingo session; and

(2) Disclose when the event round will take place before putting an event pull-tab series into play; and

(3) Offer event pull-tabs for sale until immediately before the event round unless the series sells out; and

(4) Have a licensed manager present at all times an event pull-tab series is in play, including sales of tabs and selection of winners; and

(5) Allow floor workers to sell event pull-tabs (for example, from aprons). Only event pull-tabs may be sold in this way; and

(6) Maintain accounting records in the format we require to track the event pull-tabs issued to each floor worker; and

(7) Meet all the requirements for carry-over jackpots if the event pull-tab series offer a carry-over jackpot; and

(8) Not use substitute flares or bonus pull-tab series with event pull-tab series.

### **BONUS PULL-TAB SERIES**

#### NEW SECTION

**WAC 230-14-200 Defining "bonus pull-tab series."** "Bonus pull-tab series" means pull-tab series that include a predetermined number of pull-tabs that allow players the opportunity to advance to a bonus section to determine the prize.

#### NEW SECTION

**WAC 230-14-205 Operating requirements for bonus pull-tab series.** Operators of bonus pull-tab series must ensure that:

(1) In addition to all other information required for flares, each flare clearly states:

(a) The number of chances available to advance and win a larger prize; and

(b) The number of winning tabs at each prize level; and

(2) The series uses only guaranteed or minimum prizes in calculating the sixty percent payout required; and

(3) The series does not use:

(a) Substitute flares; or

(b) Merchandise prizes; or

(c) Last sale prizes.

#### NEW SECTION

**WAC 230-14-210 Flares for bonus and step-up prizes.** Flares for punch boards or pull-tab series offering bonus or step-up prizes must clearly indicate how players

may win bonus or step-up prizes, including the amount of the prizes. Bonus or step-up prizes must not be less than the prize for the initial winning punch or pull-tab.

#### CARRY-OVER JACKPOT PULL-TAB SERIES

##### NEW SECTION

**WAC 230-14-215 Defining "carry-over jackpot pull-tab series" and "contribution amount."** (1) "Carry-over jackpot" means a prize pool of added contributions from carry-over pull-tab series which pass (carry-over) to another carry-over pull-tab series if not won.

(2) "Contribution amount" means the amount from each series added to the carry-over jackpot.

##### NEW SECTION

**WAC 230-14-220 Prize limits for carry-over jackpot pull-tab series.** Operators may use pull-tab series which include carry-over jackpots. Operators must use the following calculations for prizes and prize payouts for carry-over jackpots:

(1) Guaranteed prizes must be sixty percent or more of gross gambling receipts available from the pull-tab series. "Guaranteed prizes" means all prizes available, excluding the contribution amount or carry-over jackpot; and

(2) The manufacturer determines the contribution amount and the method of play and discloses both on the flare; and

(3) The contribution amount for each series must not be more than five hundred dollars; and

(4) An accumulated carry-over jackpot must not be more than two thousand dollars; and

(5) If the carry-over jackpot is awarded, the sum of the advance-level prize and the carry-over jackpot prize combined must not be more than two thousand dollars; and

(6) If the operator carries over the jackpot to a new series, the total of the advance-level prize and the consolation prize must not be more than five hundred dollars.

##### NEW SECTION

**WAC 230-14-225 Sufficient funds for carry-over jackpot pull-tab prizes.** We consider it prima facie evidence of defrauding players if the licensee:

(1) Fails to have sufficient funds available to pay a carry-over jackpot; or

(2) Attempts to use carry-over jackpots for any purpose other than paying winners.

##### NEW SECTION

**WAC 230-14-230 Transferring a carry-over jackpot to another game.** (1) If a licensee wants to remove a series from play and the carry-over jackpot has not been won, the operator must carry over the jackpot to a new series within one business day.

(2) Operators must maintain a separate record creating an audit trail for carry-over jackpots in the format we require.

##### NEW SECTION

**WAC 230-14-235 Replacing played out carry-over jackpot series.** If no tabs remain to win the carry-over jackpot but tabs to win other prizes still remain, operators must remove the series from play and replace it with a new series within seven business days.

##### NEW SECTION

**WAC 230-14-240 Distributing carry-over pull-tab jackpots.** If businesses stop conducting gambling activities, they must:

(1) Transfer the carry-over jackpot to the new owners who bought the business and who have a gambling license. The new licensee must operate the carry-over jackpot game until they award the prize; or

(2) Award the carry-over jackpot to a player by playing out the game before closing; or

(3) Give the carry-over jackpot to the Washington state council on problem gambling; or

(4) Give the carry-over jackpot to a charitable or non-profit organization we license.

##### NEW SECTION

**WAC 230-14-245 Retaining carry-over jackpot pull-tab series.** Operators offering carry-over jackpots must keep all pull-tab series that were used for a specific carry-over jackpot together.

##### NEW SECTION

**WAC 230-14-250 Recording carry-over jackpots on a cash basis.** (1) Operators must record carry-over jackpots on a cash basis. "Cash basis" means operators do not record carry-over jackpot contributions until the prize is awarded.

(2) However, punch board and pull-tab licensees who also hold a Class F or above bingo license may record carry-over jackpot contributions on their monthly records if they:

(a) Record contribution amounts, up to the jackpot maximum, as prizes paid on the monthly records; and

(b) When the jackpot is awarded, record only amounts not previously accrued as prizes paid; and

(c) Play no more than five carry-over jackpot series at once; and

(d) Maintain a proper audit trail and adequate security over the funds if the licensee does not deposit the contributions with the net receipts.

#### CHARITABLE OR NONPROFIT ORGANIZATIONS OPERATING PUNCH BOARDS AND PULL-TABS

##### NEW SECTION

**WAC 230-14-255 Net income and cash flow requirements when operating punch boards and pull-tabs.** Charitable or nonprofit punch board and pull-tab licensees must:

(1) When not licensed to operate bingo, ensure that they do not pay excessive expenses and that net income from

punch boards and pull-tabs is more than zero when measured over the annual license period; or

(2) When licensed to operate bingo, meet the cash flow requirements.

**RECORDKEEPING FOR PUNCH BOARDS AND PULL-TABS**

NEW SECTION

**WAC 230-14-260 Inventory control.** (1) Punch board and pull-tab operators must control and account for each punch board and pull-tab series they obtain. Operators must:

(a) Enter the Washington state (I.D. stamp) stamp numbers for the series in all records; and

(b) Record each pull-tab dispenser they purchase.

(2) Distributors must record every purchase of punch boards or pull-tabs on an invoice. Operators must use this record to account for each series between the time they purchase it and the time they remove it from play. Invoices must include space for the operator to attach:

(a) The I.D. stamp numbers for each board or series; and

(b) The date they placed the punch board or pull-tab series out for play.

(3) When operators receive punch boards or pull-tab series, they must ensure that the manufacturer or distributor recorded all required data by comparing the Washington state identification stamp number attached to each punch board and pull-tab series to the number recorded on the purchase invoice.

(4) Operators may use a separate computerized inventory record as long as they:

(a) Use an I.D. stamp or print a computer generated facsimile of the stamp number on the inventory record; and

(b) Record all other required information.

NEW SECTION

**WAC 230-14-265 Retention requirements for punch boards and pull-tab series.** (1) Punch board and pull-tab operators must keep all punch boards or pull-tab series removed from play, including, at least:

(a) All prize flares; and

(b) All unplayed tabs; and

(c) All winning punches or tabs.

(2) Operators must make the items in subsection (1) of this section available on the licensed premises for us, local law enforcement, or local tax agencies to inspect.

(3) If stored off premises, operators must produce the game for inspection on demand.

(4) Operators must retain punch board or pull-tab series removed from play for:

(a) **Charitable or nonprofit operators** - Four months following the last day of the month in which the board or series was removed from play; and

(b) **Commercial operators** -

(i) Two months following the last day of the month in which they removed the board or series from play; and

(ii) Three months following the day they removed the board or series from play for winning punches or pull-tabs

over twenty dollars. Operators must also retain the flare for these games; and

(c) **Carry-over jackpot series** - For four months after the last day of the month in which the carry-over jackpot was won; and

(d) **Progressive pull-tab series** - For one year. After the retention period, operators must destroy unsold progressive pull-tab series tabs in such a way that no one may find and use unopened winning tabs later.

NEW SECTION

**WAC 230-14-270 Additional retention requirements for some commercial stimulant licensees.** (1) Punch board and pull-tab licensees who fail to comply with all record-keeping requirements or who misstate gross gambling receipts by more than one percent during any calendar quarter will receive a letter from us requiring them to comply with additional record retention limits.

(2) Licensees receiving the letter must retain all punch boards and pull-tab series for at least four months following the last day of the month during which they were removed from play. Specially authorized games like carry-over jackpots and progressive pull-tab series may require longer retention periods.

(3) After one year, licensees may petition us to remove the increased retention requirement. The petition must include documentation of the steps taken to correct record-keeping errors or misstatements.

(4) To compute gross gambling receipts to determine compliance with recording accuracy requirements, see WAC 230-14-255.

NEW SECTION

**WAC 230-14-275 Returning punch boards and pull-tab series to the distributor or manufacturer.** (1) If punch board and pull-tab operators return a punch board or pull-tab series for any reason, they must write the date, the invoice or credit memo number, and "returned" on the original purchase invoice or inventory record.

(2) Operators must record each punch board or pull-tab series returned on their monthly record and keep a copy of the quality control report for the retention period required by WAC 230-14-240.

NEW SECTION

**WAC 230-14-280 Records review of gross gambling receipts.** To meet the gross gambling receipts and license class requirements, punch boards and pull-tab licensees must adjust gross gambling receipts from the operation to comply with commission records review findings.

Licensees must perform the following calculations:

(1) **For unrecorded punch boards and pull-tab series**

$$\begin{array}{r}
 \text{Unadjusted gross gambling receipts} \\
 + \\
 \text{Unrecorded punch boards or pull-tab series} \\
 \text{(total number of chances multiplied by price)} \\
 \hline
 \text{Adjusted gross gambling receipts*}
 \end{array}$$

To account for any unrecorded punch boards and pull-tab series, licensees add the unrecorded punch board or pull-tab series to the unadjusted gross gambling receipts. To get the total of unrecorded punch boards or pull-tab series, licensees multiply the total number of chances available by the price of a single chance to determine the maximum amount that could be generated from the punch board or pull-tab series.

\*Licensees must apply this figure to the records for the month in which they purchased the punch board or pull-tab series.

**(2) For recording errors -**

$$\frac{\begin{array}{r} \text{Unadjusted gross gambling receipts} \\ +/ - \\ \text{Adjustment factor} \\ \text{(amount of sample group divided by recorded} \\ \text{amount for the licensee)} \end{array}}{\text{Adjusted gross gambling receipts for the quarter} \\ \text{and the three quarters preceding**}}$$

To adjust gross gambling receipts for the results of our records review, licensees divide the amount we determined for a randomly selected sample of punch boards or pull-tab series by the recorded amount for them.

\*\*Licensees apply this figure to the total recorded gross gambling receipts for the calendar quarter from which we took the sample and to the three quarters immediately before.

**NEW SECTION**

**WAC 230-14-285 Monthly income summary. (1)**

Punch board and pull-tab licensees must prepare a detailed monthly income summary for punch board and pull-tab series removed from play in the format we require either manually or electronically.

(2) Licensees may store punch board and pull-tab monthly records electronically if they:

- (a) Retain all original input control documents supporting the electronic record; and
- (b) Generate a monthly paper income summary that organizes the electronic record into the format we require.
- (c) Ensure that the income summary:
  - (i) Does not hinder our review of records; and
  - (ii) Is available for review no later than thirty days following the end of the month; and
  - (iii) Is available within three days of a request by us, local law enforcement, or local tax agencies.

**NEW SECTION**

**WAC 230-14-290 Calculating cash over and cash short on the punch board and pull-tab monthly income summary. (1)** When preparing their monthly income summary, operators must determine cash over or cash short by:

- (a) Subtracting actual cash from net gambling receipts for punch boards and pull-tabs which award cash prizes; and
  - (b) Subtracting actual cash from gross gambling receipts for punch boards and pull-tabs which award merchandise prizes.
- (2) When operators sell more than one series of pull-tabs from a single dispenser and the dispenser has meters to record

the number of tabs dispensed from each series, operators may compute the actual cash using the meter readings. If operators use this method, they must:

- (a) Play out all series in each dispenser at least once each calendar quarter; and
- (b) Reconcile the total cash removed from the dispenser to the total tabs sold from that dispenser to calculate the combined cash over or cash short for all series played from each dispenser during the period. "Reconcile" means the operator must compare the two balances, resolve any differences, and document the comparison and the differences in writing.

**NEW SECTION**

**WAC 230-14-295 Electronic facsimiles of I.D. stamps.** Punch board and pull-tab licensees may use a printer interfaced with a computer to create an electronic facsimile of the I.D. stamps, as long as licensees:

- (1) Input the I.D. stamp number into the computer; and
- (2) Print records on white paper. Facsimiles of the I.D. stamp must be at least one-quarter inch in height with a "quiet zone" of at least one-quarter inch on each side of the bar code; and
- (3) Code "interleaved two of five" (USS-ITF-2/5) bar code facsimiles. This is a high-density numeric-only barcode type used in the Automatic Identification and Data Capture industry. It is also called American National Standards Institute/Association for Automatic Identification and Mobility (ANSI/AIM) ITF 2/5. The bar code must have a readability rate of at least ninety-nine percent with a maximum of three passes with our bar code reading equipment. An example is below:



- (4) Licensees are responsible for the accuracy of print-outs and that bar codes are electronically readable.

**WSR 07-17-062**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed August 13, 2007, 9:15 a.m., effective September 13, 2007]

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

Purpose: The department is amending WAC 388-543-1100, 388-543-1150, 388-543-1600, 388-543-1700, 388-543-2000, and 388-543-2800 to fix cross-references, change references from "MAA" to "the department," clarify the department's coverage of a wheelchair, and/or specialty bed for clients in a nursing facility, clarify prescribing requirements for dual-eligible clients, clarify the department's policy on client use of a combination of products, clarify/add/

remove items from the limits and limitation extension list under WAC 388-543-1150 (e.g., such as removing lice comb, diaphragmatic pacing antennae, deluxe floor sitter/feeder seat, and high back activity chair; and adding pneumatic compressor, positioning car seat, beds, mattresses, and related equipment, other patient room equipment, noninvasive bone growth/nerve stimulators, communication devices, ambulatory aids, bathroom equipment, and blood monitoring).

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-1100, 388-543-1150, 388-543-1600, 388-543-1700, 388-543-2000, and 388-543-2800.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.050.

Adopted under notice filed as WSR 07-11-042 on May 9, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-543-1150 (10)(f) Limits and limitation extensions. The department removed the following text as proposed by stakeholders during the proposed rule-making (CR-102) stage:

~~(f) Breast pumps~~

~~(g) (f) Pneumatic compressor - one in a five-year period~~

~~(h) (g) Positioning car seat - one in a five-year period~~

A final cost-benefit analysis is available by contacting Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1729, fax (360) 586-9727, e-mail mayoe@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; and Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, 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 6, Repealed 0.

Date Adopted: August 10, 2007.

Robin Arnold-Williams  
Secretary

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-18 issue of the Register.

#### WSR 07-17-064

#### PERMANENT RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Filed August 13, 2007, 1:32 p.m., effective September 13, 2007]

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

**Purpose:** The current rule on this subject is unclear regarding tagging requirements for black bear and cougar. This amendment will clarify the tagging requirements for these animals.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-061 (Amending Order 97-168, filed 8/25/97, effective 9/25/97).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-09-089 on April 18, 2007.

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 Request of a Nongovernmental Entity: New 0, Amended 1, 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 0, Repealed 0.

Date Adopted: August 4, 2007.

Susan Yeager  
for Jerry Gutzwiller, Chair  
Fish and Wildlife Commission

**AMENDATORY SECTION** (Amending Order 97-168, filed 8/25/97, effective 9/25/97)

**WAC 232-12-061 Tagging requirements.** It is unlawful for a person who kills a big game animal or turkey to fail to immediately cut out and completely remove from ~~((their))~~ his or her tag the designated notches corresponding to the day and month of the kill for that species ~~((, except for black bear or cougar, where for purposes of achieving species harvest management goals,))~~ (unless the tagging requirement is specifically exempted by the fish and wildlife commission ((determines that tags are not required for these two big game animals. A person who kills such animal or bird, shall)), and to fail to immediately attach ~~((their))~~ his or her notched tag to the carcass of such animal or bird. That tag must remain attached to the carcass while it is being transported and must remain with the wildlife during the period of retention of the edible parts.

#### WSR 07-17-065

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed August 13, 2007, 2:10 p.m., effective September 13, 2007]

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

**Purpose:** WAC 458-20-229 explains the procedures relating to refunds or credits for the overpayment of taxes,

penalties, or interest. It describes how to calculate the four-year period and clarifies the: Nonclaim statute and its consequences; definition of what constitutes a valid claim; description of required substantiation with timelines for compliance; representative's requirement for providing a confidential information waiver; and allowable sampling procedures.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-229 Refunds.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 07-07-118 on March 20, 2007.

Changes Other than Editing from Proposed to Adopted Version: 1. Subsection 3(b), the department added the address for filing refund claims at Rule 229 (3)(b).

2. Subsection 3(b)(ii)(B), the department added language at the end of subsection 3(b)(ii)(B) allowing the taxpayer to file an application using an estimated claim amount. The new language requires the taxpayer to explain why the claim amount cannot be stated with specificity and how the estimated claim amount was determined. Further, the language prohibiting protective contingent claims was deleted.

3. Subsection 3(b)(ii)(D), the proposed rule explained that the basis for any refund claim must be included on the refund application. Language has been added to explain that the application may be refiled to add additional bases at any time before the nonclaim time limitation has expired.

4. Subsection 3(b)(ii)(E), the department moved the deadline for filing the confidential information waiver from the date of filing the refund claim to the initial deadline for producing substantiation, which is ninety days after the department requests the documentation, but before any additional extensions.

5. Subsection 3(b)(v), regarding adequate substantiation, the list of records is now what the department may request to determine whether to accept or deny the claim. This replaces language stating that the taxpayer must provide the department with specific documents sufficient to substantiate the claim.

6. Subsection 3(b)(v) and (vii), new subsections 3(b)(v) and (vii) state that a valid application does not require that the substantiation documents be attached at the time of the application's submission. The department clarified that failure to timely file substantiation is grounds for denying a claim, but the claim itself is not invalid because of such omission.

7. Subsection 3(b)(v), the proposed rule was changed to allow the taxpayer ninety days to provide the necessary substantiation, unless the documents are under the control of a nonaffiliated third party, in which case the period is increased to one hundred eighty days.

8. Subsection 3(b)(vi), the department added language stating that at the department's discretion, and upon good cause shown, the department may extend the period for providing substantiation.

9. Subsection 3(b)(viii)(E), the language "not being timely" was deleted, resulting in the language: "...the department will not deny the claim for failure to provide timely substantiation."

10. Subsection 4(b)(iv), the department deleted this language in its entirety.

11. Subsection 5) sampling, while statistical sampling is the preferred method, the rule was amended to recognize alternative methods when the department agrees that such methods are appropriate.

12. Subsection 7), this subsection of the proposed rule explains the refund process in cases of a court decision. The department added a reference to BTA opinions so that the subsection also applies in those cases. Further, the department set a time limit for processing refund requests within ninety days from the date that taxpayer has submitted all documents to the department.

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 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 1, Repealed 0.

Date Adopted: August 13, 2007.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
Technical Advice Division

AMENDATORY SECTION (Amending WSR 93-04-077, filed 2/1/93, effective 3/4/93)

**WAC 458-20-229 Refunds. (1) Introduction.** ~~((This section explains the procedures relating to refunds or credits for overpayment of taxes, and penalties or interest. It indicates the statutory period for refunds and the interest rate which applies to those refunds.~~

~~(2) Statute of limitations for refunds or credits.~~

~~(a) With the exception of (b) of this subsection, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which a refund or credit application is made or examination of records by the department is completed.~~

~~(b) Where a taxpayer has executed a written waiver of the limitations governing assessment under RCW 82.32.050 or 82.32.100, a refund or credit may be granted for taxes, penalties, or interest paid during, or attributable to, the years covered by such waiver if, prior to expiration of the waiver period, an application for a refund or credit of such taxes, penalties, or interest is made by the taxpayer or the department discovers a refund or credit is due. (Refer to WAC 458-20-230 for the circumstances under which the department may request a taxpayer to execute a statute of limitations waiver.)~~

(3) **Refund/credit procedures.** Refunds are initiated in the following ways:

(a) Departmental review. When the department audits or examines the taxpayer's records and determines the taxpayer has overpaid its taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. When overpayments are discovered by the department within the statute of limitations, the taxpayer does not need to file a petition or request for a refund or credit.

(b) Taxpayer request. When a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may file an amended return or a petition for refund or credit with the department. The petition or amended tax return must be submitted within the statute of limitations. Refund or credit requests should generally be made to the division of the department to which payment of the tax, penalty, or interest was originally made. The amended tax returns or petitions are subject to future verification or examination of the taxpayer's records. If it is later determined that the refund or credit exceeded the amount properly due the taxpayer, an assessment may be issued to recover the excess amount, provided the assessment is made within four years of the close of the tax year in which the taxes were due or prior to the expiration of a statute of limitations waiver. The following are examples of refund or credit requests:

(i) A taxpayer discovers in January 1992 that the June 1991 combined excise tax return was prepared using incorrect figures which overstated its sales resulting in an overpayment of tax. The taxpayer files an amended June 1991 tax return with the department's taxpayer account administration division. The department treats the taxpayer's amended June 1991 tax return as a petition for refund or credit of the amounts overpaid during that tax period and may take whatever action it considers appropriate under the circumstances to verify the overpayment.

(ii) A customer of a seller pays retail sales tax on a transaction which the customer later believes was not taxable. The customer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the customer, the seller may request a refund or credit from the department. It is generally to the advantage of a consumer to seek a refund directly from the seller for retail sales tax believed to have been paid in error. This is because the seller has the source records to know if retail sales tax was collected on the original sale, knows the customer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the customer concerning the product, may already be aware of the circumstances as to why a refund of sales tax is appropriate such as the return of the merchandise. When in doubt as to whether sales tax should be refunded, a seller may contact the department and request advice. However, in certain situations, upon presentation of acceptable proof of payment of retail sales tax, the department will consider making refunds of retail sales tax directly to consumers. These situations are as follows:

(A) The seller is no longer engaged in business.

(B) The seller has moved and the consumer can not locate the seller.

(C) The seller is insolvent and is financially unable to make the refund.

(D) The consumer has attempted to obtain a refund from the seller and can document that the seller refuses to refund the retail sales tax. However, the department will not consider making refunds directly to consumers when the law leaves it at the discretion of the seller to collect the tax. See, for example, RCW 82.08.0273.

(iii) The department completes an audit of the taxpayer's records relating to taxes reported on combined excise tax returns and an assessment is issued. After the assessment is paid, but within the statute of limitations for refund or credit, the taxpayer locates additional records which would have reduced the tax, penalties, or interest liability if these records had been available in the audit. The taxpayer contacts the department's audit division, requests that a reexamination of the appropriate records be performed, and files a petition for a refund or credit of overpaid amounts. The statute of limitations will be determined based on the date the assessment was paid for an adjustment of taxes, penalties, or interest assessed in the audit. For taxes, penalties, or interest paid through the filing of combined excise tax returns by the taxpayer, the statute of limitations will be based on the date the amounts were paid without regard to when the audit was completed or the assessment was issued.

(e) Taxpayer appeal. If the taxpayer believes that the tax, penalties, or interest overpayment is the result of a difference of legal opinion with the department as to the taxability of a transaction, the application of penalties or the inclusion of interest, the taxpayer may appeal to the department as provided in WAC 458-20-100 or directly to Thurston County superior court.

(d) Court decision. Refunds or credits will be made by the department as required by decisions of any court of competent jurisdiction when the decision of the court is not being appealed.

(i) In the case of court actions regarding refund or credit of retail sales taxes, the department will not require that consumers obtain a refund of retail sales tax directly from the seller if it would be unreasonable and an undue burden on the person seeking the refund to obtain the refund from the seller. In this case the department may make the refunds directly to the claimant and may use the public media to attempt to notify all persons who may be entitled to refunds or credits.

(ii) Forms for applications for refunds for these situations will be available either by mail or at the department's offices and the claimant will need to file an application for refund. The application will request the appropriate information needed to identify the claimant, item purchased, amount of sales tax to be refunded, and the seller. The department may at its discretion request additional documentation which the claimant could reasonably be expected to retain, based on the particular circumstances and value of the transaction. Such refund requests shall be approved or denied within thirty days after all documentation has been submitted by the claimant and legal questions have been resolved. If approved for refund, such refunds shall be made within sixty days after all documentation has been submitted.

(4) **Prompt refunds.** Taxpayers may expect refund requests to be processed promptly by the department.

Refunds can generally be processed faster if the taxpayer provides the following information at the time a refund application is made:

(a) The taxpayer should include its registration number on all documents.

(b) The taxpayer should include the telephone number and name of the person the department should contact in case the department needs additional information or has questions.

(c) The taxpayer should include a detailed description or explanation of the claimed overpayment.

(d) Amended tax returns or worksheets should be attached to the refund or credit application and clearly identify the tax reporting periods involved.

(e) If the refund or credit request involves a situation where a seller has refunded retail sales tax to a customer and the seller is now seeking a refund or credit of the tax from the department, proof of refund to the customer should be attached.

(f) Generally, refund or credit requests require verification by the department through a review of specific taxpayer records which have a bearing on the refund or credit request. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver.

~~(5) Interest on refunds or credits.~~ Interest will be allowed on credits or refunds.

(a) Interest is paid at the rate of three percent per annum for refunds and credits of taxes or penalties which were paid by the taxpayer prior to January 1, 1992.

(b) For amounts overpaid by a taxpayer after December 31, 1991, the rate of interest on refunds and credits is the average of the federal short term rate as defined in 26 U.S.C. Sec. 1274(d) plus one percentage point. The rate will be adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States Secretary of Treasury.

(c) The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return.

(d) If a taxpayer requests that a credit notice be converted to a refund, interest will be recomputed to the date the refund (warrant) is issued, but not to exceed the interest which would have been granted through the credit notice.

~~(6) Offsetting overpayments against deficiencies.~~ The department may apply overpayments against existing deficiencies/assessments for the same legal entity. However, a potential deficiency which is yet to be determined will not be reason to delay the processing of an overpayment where an overpayment has been conclusively determined. The following examples illustrate the use of offsets:

(a) The taxpayer's records are audited for the period 1988 through 1991. The audit disclosed underpayments in 1989 and overpayments in 1991. The department will apply the

overpayments in 1991 to the deficiencies in 1989. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional amounts.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax in 1991. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the processing of the refund of the real estate excise tax while it proceeds with scheduling and performing of an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The department determined that the taxpayer underpaid its B&O tax and overpaid its timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may offset the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.)) This section explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes the statutory time limits for refunds and the interest rates that apply to those refunds.

References to a "refund application" in this section include a request for a credit against future tax liability as well as a refund to the taxpayer.

Examples provided in this section should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

**(2) What are the time limits for a tax refund or credit?**

**(a) Time limits.** No refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made or examination of records by the department is completed. See RCW 82.32.060. This is a nonclaim statute rather than a statute of limitations. This means a valid application must be filed within the statutory period, which may not be extended or tolled, unless a waiver extending the time for assessment has been entered into as described in (c) of this subsection.

For example, a refund or credit may be granted for any overpayment made in a shaded year in the following chart:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>
					<u>Refund application is filed no later than December 31<sup>st</sup></u>

**(b) Relation back to date paid.** Because the time limits relate to the date the taxes, penalties, or interest is paid, a refund application can be timely even though the payment concerned liabilities for a tax year normally outside the time limits. For example, Taxpayer P owes \$1,000 in B&O tax for activity undertaken in December 2000. In January 2001, Taxpayer P makes an arithmetic error and submits a payment of \$1,500 with its December 2000 tax return. In December 2005, Taxpayer P requests a refund of \$500 for the overpayment of taxes for the December 2000 period. This request is timely because the overpayment occurred within the time limits, even though the payment concerned tax liabilities incurred (December 2000) outside the time limits.

Fact situations can be complicated. For example, Taxpayer P pays B&O taxes in Years 1 through 4. The department subsequently conducts an audit of Taxpayer P that includes Years 1-4. The audit is completed in Year 5. As a result of the audit, the department issues an assessment in Year 5 for \$50,000 in additional retail sales taxes that were due from Years 1-4. Taxpayer P pays the assessment in full in Year 6. In Year 10, Taxpayer P files an application requesting a refund of B&O taxes. Taxpayer P's application is timely because it relates to a payment (payment of the assessment in Year 6) made no more than four years before the year in which the application is filed. It does not matter that the taxes relate to years outside the time limits; the actual payment occurred within four years before the refund application. Nor does it matter that the refund is based on an overpayment of B&O taxes while the assessment involved retail sales taxes, because both taxes relate to the same tax years. However, the amount of any refund is limited to \$50,000 - the amount of the payment that occurred within the time limits.

Assume the same facts as described above. When the department reviews Taxpayer P's refund application, it determines that the refund is valid. After reviewing the new information, however, the department also determines that Taxpayer P should have paid \$20,000 in additional B&O taxes during Years 1-4. Because Taxpayer P paid \$30,000 more than the amount properly due (\$50,000 overpayment less \$20,000 underpayment), the amount of the refund will be \$30,000.

**(c) Waiver.** Under RCW 82.32.050 or 82.32.100, a taxpayer may agree to waive the time limits and extend the time for the assessment of taxes, penalties and interest. If the taxpayer executes such a waiver, the time limits for a refund or credit are extended for the same period.

**(3) How do I get a refund or credit?**

**(a) Departmental examination of returns.** If the department performs an examination of the taxpayer's records and determines that the taxpayer has overpaid taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. In this situation, the taxpayer does not need to apply for a refund.

**(b) Taxpayer application.**

**(i)** If a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may apply for a refund or credit. Refund application forms are available from the following sources:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)
- By writing to:

Taxpayer Services  
Washington State Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478.

The application form should be submitted to the department at the following location:

Taxpayer Account Administration  
P.O. Box 47476  
Olympia, WA 98504-7476.

Taxpayers are encouraged to use the department's refund application form to ensure that all necessary information is provided for a timely valid application. However, while use of the department's application form is encouraged, it is not mandatory and any written request for refund or credit meeting the requirements of this section shall constitute a valid application. Filing an amended return showing an overpayment will also constitute an application for refund or credit, provided that the taxpayer also specifically identifies the basis for the refund or credit.

**(ii)** A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this section. An application must contain the following five elements:

**(A)** The taxpayer's name and UBI/TRA number must be on the application.

**(B)** The amount of the claim must be stated. Where the exact amount of the claim cannot be specifically ascertained at time of filing, the taxpayer may submit an application containing an estimated claim amount. Taxpayers must explain why the amount of the claim cannot be stated with specificity and how the estimated amount of the claim was determined.

(C) The tax type and taxable period must be on the application.

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this section expire.

(E) The signature of the taxpayer or the taxpayer's representative must be on the application. If the taxpayer is represented, the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an entity, every member or employee of that entity is authorized to represent the taxpayer. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an individual, only that individual is authorized to represent the taxpayer.

(iii) If the nonclaim statute has run prior to the filing of the application, the department will deny the application and notify the taxpayer.

(iv) If the department determines that the taxpayer is not entitled to a refund as a matter of law, the application may be denied without requiring substantiation. The taxpayer shall be responsible for maintaining substantiation as may eventually be needed should taxpayer appeal.

(v) The taxpayer is encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must submit sufficient substantiation to support the claim for refund or credit before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within ninety days after such notice is sent, unless the documentation is under the control of a third party, not affiliated with or under the control of the taxpayer, in which case the taxpayer will have one hundred eighty days to provide the documentation. The department may request any other books, records, invoices or electronic equivalents and, where appropriate, federal and state tax returns to determine whether to accept or deny the claimed refund and to assess an existing deficiency.

(vi) In its discretion and upon good cause shown, the department may extend the period for providing substantiation upon its own or the taxpayer's request, which may not be unreasonably denied.

(vii) If the department does not receive the necessary substantiation within the applicable time period, the department shall deny the claim for lack of adequate substantiation and shall so notify the taxpayer. Any application denied for lack of adequate substantiation may be filed again with additional substantiation at any time before the time limits in subsection (2) of this section expire. Once the department determines that substantiation is sufficient, the department shall process the refund claim within ninety days, except that the department may extend the time of processing such claim

upon notice to the taxpayer and explanation of why the claim cannot be completed within such time.

(viii) The following examples illustrate the refund application process:

(A) A taxpayer discovers in January 2005 that its June 2004 excise tax return was prepared using incorrect figures that overstated its sales, resulting in an overpayment of tax. The taxpayer files an amended June 2004 tax return with the department's taxpayer account administration division. The department will treat the taxpayer's amended June 2004 tax return as an application for a refund or credit of the amounts overpaid during that tax period, except that the taxpayer must also specifically identify the basis for the refund or credit and provide sufficient substantiation to support the claim for refund or credit. The taxpayer may satisfy this obligation by submitting a completed refund application form with its amended return or providing the additional required substantiation by other means.

(B) On December 31, 2005, a taxpayer files an amended return for the 2001 calendar year. The return includes changed figures indicating that an overpayment occurred, but does not provide any supporting substantiation. No written waiver of the time limits, under subsection (2)(c) of this section, for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ninety days or the application will be denied. If the taxpayer does not provide the necessary substantiation by the stated date, the claim will be denied and, if refiled, will not be granted because it is then past the nonclaim limit of the statute.

(C) Taxpayer submits a refund application on December 31, 2004, claiming that taxpayer overpaid use tax in 2000 on certain machinery and equipment obtained by the taxpayer at that time. No substantiation is provided with the application and no written waiver of the time limit, under subsection (2)(c) of this section, for this taxable period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ninety days or the application will be denied. The taxpayer does not respond by the stated date. The claim will be denied and, if refiled, will not be granted since it is then past the nonclaim limit of the statute.

(D) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that within ninety days from the date the department sent the letter the taxpayer submits substantiation, which the department deems sufficient. The taxpayer's claim is valid, notwithstanding that the substantiation was provided after the nonclaim limit expired.

(E) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that before the ninety-day period expires, the taxpayer requests an additional fifteen days in which to respond, explaining why the substantiation will require the additional time to assemble. The department agrees to the extended deadline. If the taxpayer submits the requested substantiation within the resulting one hundred five-day period, the department will not deny the claim for failure to provide timely substantiation.

(F) Assume the same facts as in (b)(iii)(B) and (C) of this subsection, except that the taxpayer submits substantiation within ninety days. The department reviews the substantia-

tion and finds that it is still insufficient. The department, in its discretion, may extend the deadline and request additional substantiation from the taxpayer or may deny the refund claim as not substantiated.

**(4) May I get a refund of retail sales tax paid in error?**

**(a) Refund from seller.** Except as provided for in RCW 82.08.130 regarding deductions for tax paid at source, if a buyer pays retail sales tax on a transaction that the buyer later believes was not taxable, the buyer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the buyer, the seller may seek its own refund from the department. It is better for a buyer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the buyer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the buyer concerning the product, and may already be aware of the circumstances as to why a refund of sales tax is or is not appropriate. If a seller questions whether he or she should refund sales tax to a buyer, the seller may request advice from the department's telephone information center at 1-800-647-7706.

**(b) Refund from department.** In certain situations where the buyer has not received a refund from the seller, the department will refund retail sales tax directly to a buyer. The buyer must file a complete refund application as described in subsection (3)(b) of this section and either a seller's declaration or a buyer's declaration, under penalty of perjury, must be provided for each seller.

(i) If the buyer is able to obtain a waiver from the seller of the seller's right to claim the refund, the buyer should file a seller's declaration, under penalty of perjury, with the refund application. A seller's declaration substantiates that:

(A) Retail sales tax was collected and paid to the department on the purchase for which a refund is sought;

(B) The seller has not refunded the retail sales tax to the buyer or claimed a refund from the department; and

(C) The seller will not seek a refund of the sales tax from the department.

(ii) If the seller no longer exists, the seller refuses to sign the declaration, under penalty of perjury, or the buyer is unable to locate the seller, the buyer should file a buyer's declaration, under penalty of perjury, with the refund application. The buyer's declaration explains why the buyer is unable to obtain a seller's declaration and provides information about the seller and declares that the buyer has not obtained and will not in the future seek a refund from the seller for that claim.

(iii) Seller's declaration, under penalty of perjury, and buyer's declaration, under penalty of perjury, forms are available from the following sources:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)

- By writing to:

Taxpayer Services  
Washington State Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478.

**(5) May I use statistical sampling to substantiate a refund?** Sampling will only be used when a detailed audit is not possible. However, if your applications for refund or credit involve voluminous documents, the preferred method for substantiating your application is the use of statistical sampling. Alternative methods of sampling, including but not limited to, random sampling, time period sampling, transaction sampling, and block sampling, may be used when the department agrees that such methods are appropriate.

When using statistical sampling or an alternative method to substantiate an application for refund or credit, the applicant must contact the department prior to preparing the sampling to obtain the department's approval of the sampling plan. The sampling plan will describe the following:

- Population and sampling frame;
- Sampling unit;
- Source of the random numbers;
- Who will physically locate the sample units and how and where they will be presented for review;
- Any special instructions to those who were involved in reviewing the sample units;
- Special valuation guidelines to any of the sample units selected in the sample;
- How the sample will be evaluated, including the precision and confidence levels; and
- The applicant must obtain a seller's declaration from those sellers identified in the sample and separately certify, under penalty of perjury, that applicant will not otherwise request or accept a refund or credit for sales or deferred sales tax paid to any seller or any use tax remitted during the taxable period covered by the audit.

Failure to contact the department before preparing the sampling may result in the department rejecting the application on the grounds that the results are not statistically valid.

Contact the department prior to performing a statistical sampling at these locations:

- The department's internet web site at <http://dor.wa.gov>
- By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options)
- By writing to:

Taxpayer Services  
Washington State Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478.

**(6) Is my refund final?** The department may review a refund or credit provided on the basis of a taxpayer application without an examination by audit. If the refund or credit is granted and the department subsequently determines that the refund or credit exceeded the amount properly due the taxpayer, the department may issue an assessment to recover the excess amount. This assessment must be made within the time limits of RCW 82.32.050.

**(7) Refunds made as a result of a court decision.** The department will grant refunds or credits required by a court or Board of Tax Appeals decision, if the decision is not under appeal.

If the court action requires the refund or credit of retail sales taxes, the department will not require that buyers attempt to obtain a refund directly from the seller if it would

be unreasonable and an undue burden on the buyer. In such a case, the department may refund the retail sales tax directly to the buyer and may use the public media to notify persons that they may be entitled to refunds or credits. The department will make available special refund application forms that buyers must use for these situations. The application will request the appropriate information needed to identify the buyer, item purchased, amount of sales tax to be refunded, and the seller. The department may, at its discretion, request additional documentation that the buyer could reasonably be expected to retain, based on the particular circumstances and value of the transaction. The department will approve or deny such refund requests within ninety days after the buyer has submitted all documentation.

**(8) What interest is due on my refund?** Interest is due on a refund or credit granted to a taxpayer as provided in this subsection.

**(a) Rate for overpayments made between 1992 through 1998.** For amounts overpaid by a taxpayer between January 31, 1991 and December 31, 1998, the rate of interest on refunds and credits is:

(i) Computed the same way as the rate provided under subsection (7)(b) of this section minus one percent, for interest allowed through December 31, 1998; and

(ii) Computed the same way as the rate provided under subsection (7)(b) of this section, for interest allowed after December 31, 1998.

**(b) Rate for overpayments after 1998.** For amounts overpaid by a taxpayer after December 31, 1998, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate is adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April and July of the immediately preceding calendar year and October of the previous preceding year, as published by the United States Secretary of Treasury.

**(c) Start date for the calculation of interest.** If the taxpayer made all overpayments for each calendar year and all reporting periods ending with the final month included in a credit notice or refund on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund, interest is computed from either:

(i) January 31st following each calendar year included in a notice or refund; or

(ii) The last day of the month following the final month included in a notice or refund.

If the taxpayer did not make all overpayments for each calendar year and all reporting periods ending with the final month included in the notice or refund, interest is computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

**(d) Calculation of interest on credits.** The department will include interest on credit notices with the interest com-

puted to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return. If a taxpayer requests that a credit notice be converted to a refund, interest is recomputed to the date the refund (warrant) is issued, but not to exceed the interest that would have been granted through the credit notice.

**(9) May the department apply my refund against other taxes I owe?** The department may apply overpayments against existing deficiencies and/or future assessments for the same legal entity. However, if preliminary schedules have not been issued regarding existing deficiencies or future assessments and the taxpayer is not presently under audit, the refund of an overpayment may not be delayed when the department determines a refund is due. The following examples illustrate the application of overpayments against existing deficiencies:

(a) The taxpayer's records are audited for the period Year 1 through Year 4. The audit disclosed underpayments in Year 2 and overpayments in Year 4. The department will apply the overpayments in Year 4 to the deficiencies in Year 2. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional tax.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the refund of the real estate excise tax while it schedules and performs an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The audit disclosed underpayments of B&O tax and overpayments of timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may apply the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

**(10) How do I appeal the department's decision?** The taxpayer may appeal the denial of: A refund claim (or any part thereof, including tax, penalties, or interest overpayments), a request for an extension for providing substantiation, or a request to use a specific sampling technique. Taxpayer may appeal to either:

(a) The department as provided in WAC 458-20-100, Appeals, small claims and settlements; or

(b) Directly to Thurston County superior court.

**(11) Application.** This section applies to refund applications or amended returns showing overpayments, where the taxpayer has also specifically identified the basis for the refund or credit, that are received by the department on or after the effective date of this section.

## WSR 07-17-066

### PERMANENT RULES

### GAMBLING COMMISSION

[Order 476—Filed August 13, 2007, 2:16 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: This new rule expands and codifies requirements to maintain control over logo gambling chips when a card room goes out of business or has damaged or worn chips to dispose of. The new rule will require the following: (1) Chip destruction log; (2) method of destruction; (3) designate the departments responsible for overseeing chip destruction. At least one licensed employee must be from the accounting department; and (4) procedures to be followed if the licensee's chip inventory becomes obsolete (i.e., card room changes its name, license is revoked, expired, or voluntarily surrendered).

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-11-077 on May 15, 2007, with a published date of June 26, 2007.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

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

Date Adopted: August 13, 2007.

Susan Arland  
Rules Coordinator

#### NEW SECTION

**WAC 230-40-817 Destruction and disposal of gambling chips.** Licensees must submit internal controls to us outlining the procedures for destroying or disposing of gambling logo chips.

(1) Licensees' internal controls must set out the method for destroying logo chips that are damaged or worn. The internal controls must include, at least:

(a) That chips must be destroyed or mutilated in such a way that they are unusable for play; and

(b) The two departments, one of which must be the accounting department, that will be responsible for overseeing chip destruction; and

(c) Only licensed employees may perform chip destruction.

(2) Licensees must record all gambling chips they destroyed on a chip destruction log in the format we require.

(3) If a card room closes, the licensee or former licensee must:

(a) Sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor; or

(b) Destroy the chips according to the established internal controls and provide the chip destruction log to us.

#### **WSR 07-17-067 PERMANENT RULES GAMBLING COMMISSION**

[Order 477—Filed August 13, 2007, 2:19 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The change clarifies the size of the target or target areas used in coin/token toss amusement games. Coin/token toss amusement games are games where players toss one or more coins or tokens onto a surface or into a target area. These types of games are primarily operated at carnivals and agricultural fairs. An example of a coin toss game is where a coin is tossed onto a colored area on a flat surface.

Citation of Existing Rules Affected by this Order: Amending WAC 230-20-508 and 230-20-650.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-11-078 on May 15, 2007, with a published date of June 26, 2007.

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 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 2, 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: August 13, 2007.

Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 94-01-036, filed 12/6/93, effective 1/6/94)

**WAC 230-20-508 Authorized amusement games—Types, standards and classifications.** The commission hereby authorizes the following amusement games, whether coin operated or not, to be operated by persons possessing a commercial amusement game license, or bona fide charitable or nonprofit organizations possessing a license issued by the gambling commission or when conducted as authorized by RCW 9.46.0321 at an authorized location.

(1) In all amusement games, a merchandise prize must be awarded to the player, if the player is successful at achieving the objective of the game, with one cost of play.

(2) All amusement games operated within the state of Washington must meet the standards of at least one of the following classifications:

(a) Group I - Ball toss/kick games: The player throws or kicks a ball or balls in order to achieve a specified goal. Upon achieving the goal of the game, the player is awarded a prize.

(i) All balls for each game must be uniform in size and weight.

(ii) All targets for each game must be of the same weight and size or the operator must color code the target and advise the player of the difference in targets if the difference is not visible to the player.

(iii) No target may have a loose or floating weight.

(iv) The weight of any target will not exceed seven and one-half pounds.

(v) When the goal is to estimate the speed of the ball thrown or kicked, a minimum of three balls will be used to estimate the speed by the player and one ball for the actual throw or kick.

(vi) When ping pong or similar light weight balls are utilized in games requiring the ball to be tossed into a dish, saucer, cup or similar container, water must be placed in the bottom of each such container.

(b) Group II - Dart games: The player throws one or more darts into a target or target area. Upon successfully achieving a predetermined score, pattern, penetrating and/or breaking a target, or just sticking in the target, the player is awarded a prize.

(i) All darts must be uniform in size and in original condition with the point sharp or functional suction-cup darts and all feathers or tail sections intact.

(ii) The targets and target area for all dart games must be of a material capable of being penetrated and retaining a metal tip dart; or holding a suction-cup dart.

(iii) The target area will be in the rear of the stand and will be at least three feet but not more than fifteen feet from a foul line.

(iv) In "add em up games," when the player must achieve a predetermined score, all darts stuck on the lines will receive another throw. The player has the right to add up the score of the darts thrown.

(c) Group III - Hoop or ring toss games: The player must toss one or more hoops or rings over one or more targets which may consist of bottles, pegs, blocks, prizes, or any item capable of having a ring or hoop tossed over it.

(i) The operator must specifically advise the player as to the degree that the hoop(s) or ring(s) must go over the target.

(ii) All hoops or rings for each game must be uniform in size and shape and must be capable of going over the target.

(iii) All targets used at an individual stand must be the same size or the operator must disclose to the player by posting signs or using color codes to denote the different sizes.

(d) Group IV - Coin/token toss games: The player or players toss one or more coins or tokens onto a surface or into a target or target area. The game must have a clear and unobstructed thirty-six inch vertical airspace above the target, target area, or surface. The target, target area, or surface must be level. Any game which has a target or target area of four square inches or less must award a prize if any part of the coin or token is within the target or target area. "Four square inches" means a two-inch by two-inch square. The target area, at a minimum, must include a two-inch by two-inch square area. If the target does not include a two-inch by two-inch square area, such as a rainbow or star, a prize must be awarded if any part of the coin or token lands on any portion of the target area.

(e) Group V - Eye/hand coordination games: The player or players perform a task or tasks which requires the player to

use the coordination between their hand(s) and eye(s) to successfully complete the task or tasks. The task or tasks may include one or a combination of the following:

(i) Striking a moving or fixed object or target to include a sequence of moving or fixed objects or targets;

(ii) Causing object(s) to be launched at target(s) from a device. The objects are aimed so they may land in, on, or through a target(s) to include catching or having the object(s) caught in the target(s);

(iii) Dropping object(s) onto target(s) or target area(s) or surface(s), to include covering the target(s), target area(s), or surface(s) with the object(s);

(iv) Capturing, lassoing, hooking, or getting a hold of an object(s) and causing them to move or change position;

(v) Guiding object(s) or images through a pattern, maze, or task;

(vi) Climbing on, over, through, or around object(s); or

(vii) Similar tasks.

(A) If a player is required to cover a spot or specific target area, then the target or target area must be a circular spot.

(I) The player must receive at least five circular discs to drop on the target or target area.

(II) The diameter of the circular discs used to cover the target or target area must be at least sixty-four percent of the diameter of the target spot or area.

(III) The target spot or area must be permanently affixed to a solid surface.

(B) A regulation billiard table, balls, and cue must be used for any game requiring a player to perform any task or tasks normally associated with playing billiards or pool.

(C) In games where objects are launched, tossed, or catapulted at target(s), the launching device shall respond in an identical manner on repetitive uses when an equal amount of force is applied or selected by the player.

(f) Group VI - Strength test games: The player(s) tests their own strength in performing a task or tasks for a predetermined number of times or length of time. This may include hand, arm, or whole body strength and may also require the player to use a tool or instrument to strike an object or target, which may cause the object to be propelled or travel a specific distance. The task(s) may require the object(s) to strike another object(s) to achieve the objective.

(g) Group VII - Crane games: The player, using one or more of a variety of control methods, maneuvers a crane or claw device into a position to attempt to retrieve a prize. All games must meet the following conditions:

(i) At least twenty seconds playing time per operation.

(ii) Crane or claw must be capable of reaching, picking up, and dispensing all prizes contained within the machine.

(iii) The controls for the machine must be clearly labelled as to their function.

(iv) Prizes must be loose and shall not be packed, arranged, lodged, or intertwined in the machine in any way which would prevent the prize from being picked up by the crane or claw and dispensed.

(h) Group VIII - Penny fall games: Penny fall games are electronic or electro-mechanical games in which:

(i) The player inserts a coin or token into a chute;

(ii) The player controls the direction the coin or token falls by aiming the chute;

(iii) The coin or token will land on a flat surface or surfaces which have a sweeper(s) and/or a pusher arm moving across the surface or surfaces;

(iv) The surfaces shall be level and contain similar coins or tokens;

(v) A carefully aimed coin or token will cause coins or tokens on the flat surface(s) to be pushed or swept into holes or chutes dispensing the tokens or awarding a set number of tickets to the player;

(vi) The game may contain additional factors which if properly negotiated or struck by a coin or token, will award additional tickets to the player;

(vii) The additional factor may be in the form of targets that when lit, grant the player bonus tickets when the coin or token passes over the target;

(viii) Any such additional targets or bonus opportunities must be activated prior to the player inserting the coin or token to start play and must remain activated for a period of time sufficient to allow the player to attempt to strike or negotiate the targets or bonus opportunities;

(ix) The skill of the player must be the determining factor in the outcome of the game; and

(x) Merchandise prizes may be placed on the coins, tokens, or other surfaces in the game and if the prize is pushed into a hole or chute then it is awarded to the player. All such prizes must fit into or down the hole or chute in the game which awards prizes to the player.

(i) Group IX - Ball roll down games: The player rolls one or more balls to a target or target area. Upon achieving the objective of the game, the player is awarded a prize.

(i) Ball roll down games may be either one player attempting to score a predetermined number of points by landing in a target or target area, or striking and/or knocking down a target or targets.

(ii) Ball roll down games may be more than one player attempting to score a predetermined number of points, striking and/or knocking down a target(s), or landing in a target area. The first player to accomplish the goal is awarded a prize.

(j) Group X - Shooting games: A game in which the player or players use a device to fire a projectile or projectiles to hit a target or targets. The projectiles may include pellets, BB's, corks, water, electronic beams, light beams, balls, or suction-cup darts. The targets may be stationary or mobile. The player or players may be required to:

(i) Completely shoot out or obliterate a target or portion thereof;

(ii) Hit a target or specific portion thereof; or

(iii) Hold an electronic beam, light beam, or water stream on a target or portion thereof to achieve a specific result.

(A) All safety requirements of the local city or county ordinances must be observed by the operator and player(s).

(B) A short range shooting gallery must give a player at least four shots to shoot out a target which has a diameter of one-quarter inch or less, or at least one shot per target which must be struck. Targets must be at least one-half inch square and may include a bullseye section which the player must shoot out without touching the outside of the target.

(C) Shoot-out-the-star games must give the player at least one hundred projectiles in an automatic type device to shoot out a star which is no more than one and one-quarter inch from point to point.

(D) Games may award a prize based upon the number of players participating and use a combined score to determine the winner.

(E) If suction-cup darts are used in the game, a player must receive another turn if the dart does not stick to the target area.

(F) If targets must be knocked over or off of a shelf, then the bases of the targets must be uniform front and rear.

(G) If a player is required to destroy or obliterate all or part of a target, then the player must have the right to visually inspect the target at the conclusion of the game.

(k) Group XI - Cake walks and fish pond games: Cake walks and fish ponds, as commonly known, are amusement games. Cake walks involve a number of players walking on a numbered or color-coded circle while music is played. When the music stops, the player's prize is determined by the number or color of the portion of the circle they are standing on. Fish ponds are games where players receive a prize every time they compete, by either hooking or capturing a fish or similar object floating in a pool of water with a number or symbol on the bottom of the fish or object which corresponds to a prize or the operator may place a prize directly onto the "line" or catching device of the player from behind a curtain or similar obstruction.

(3) All classifications of amusement games must be operated as either an attended amusement game as defined by WAC 230-02-511 or as a coin or token activated amusement game as defined by WAC 230-02-514.

(4) No amusement game shall award additional plays as a prize.

(5) Operators may introduce new games that meet the standards of the applicable classification without prior approval of the commission: Provided, That an operator must provide to the commission at least sixty days prior to such introduction a description of the game, the rules of play, and a justification for the classification selected: Provided, further, That upon notification by the director that the proposed game does not meet the selected classification, or otherwise violates a provision of law or commission rule, the game may not be introduced, or if already introduced, must be removed from play until its operation is brought into compliance with such law or rules. New games not falling within the classifications of this rule may be approved by the director for a twelve-month test period pending submission of a petition to amend the rule.

AMENDATORY SECTION (Amending Order 114, filed 10/15/81)

**WAC 230-20-650 Amusement games—Coin toss games.** No person licensed to conduct amusement games shall conduct any such game within the state of Washington wherein the ability of a player to win a prize depends upon causing a coin to land within the confines of a space unless the following conditions exist with respect to said game:

(1) There must exist an unobstructed air space, of at least thirty-six inches in height, above any surface upon which the landing of a coin will result in the awarding of a prize.

(2) Plates, spots, targets, etc. will not be inclined so as to give an advantage to the operator.

(3) If the area of an enclosed surface upon which the landing of a coin will result in the awarding of a prize is four square inches, or less, a prize must be awarded to any participant who causes a coin to land so that any part of said coin is within any part of said area. "Four square inches" means a two-inch by two-inch square. The target area, at a minimum, must include a two-inch by two-inch square area. If the target does not include a two-inch by two-inch square area, such as a rainbow or star, a prize must be awarded if any part of the coin or token lands on any portion of the target area.

### WSR 07-17-082

#### PERMANENT RULES

#### GAMBLING COMMISSION

[Order 478—Filed August 14, 2007, 4:44 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: Currently, printed bingo card faces must be issued to players that use electronic bingo card daubers. The petitioner requests that printed card faces no longer be issued to players unless requested. However, operators will keep the printed cards in a master index on-site so they are available for inspection. The petitioner's request was approved at the August 10, 2007, commission meeting.

Citation of Existing Rules Affected by this Order:  
Amending WAC 230-20-244.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-11-105 on May 17, 2007, with a published date of June 26, 2007.

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 Request of a Nongovernmental Entity: New 0, 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 0, Amended 1, Repealed 0.

Date Adopted: August 13, 2007.

Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending Orders 461 and 461-A, filed 8/14/06 and 8/23/06, effective 9/23/06)

**WAC 230-20-244 Electronic bingo card daubers—Definition—Operating restrictions—Standards.** The com-

mission deems that any device, apparatus, or scheme that allows a player in any gambling activity a material advantage over other players is against public policy and restriction of such is in the public's interest. Electronic bingo card marking devices or daubers are deemed to provide a player a material advantage unless operated in accordance with subsection (2) of this section. For purposes of this title, the following definitions, restrictions, and standards apply to such devices:

#### Definition.

(1) Electronic bingo card daubers are defined as electronic appliances used by players to identify bingo cards that contain numbers or symbols input by a player. These devices electronically store preprinted bingo cards purchased by a player, provide a means for players to input numbers or symbols called by the operator, compare the numbers or symbols input by the player to bingo cards previously stored in an electronic data base, and identify to the player those stored bingo cards that contain the numbers or symbols input by the player: Provided, That player-owned devices, which are not directly interfaced with or connected to equipment used to conduct bingo games or the electronic data base in which electronically generated bingo cards are stored in any manner, are not "electronic bingo card daubers" for purposes of this title;

#### Operating restrictions.

(2) Electronic bingo card daubers will not be deemed to provide players a material advantage and may be used by players in bingo games when operated in the following manner:

#### Player responsibilities.

(a) The player must perform at least the following functions:

(i) Input each number or symbol called by the operator into the memory of the dauber unit by use of a separate input function for each number symbol. Automatic or global marking of numbers or symbols is prohibited;

(ii) Notify the operator when a winning pattern or "bingo" occurs by means that do not utilize the dauber unit or the associated system; and

(iii) Identify the winning card and display the card to the operator;

#### Maximum number of cards to be played during each game.

(b) Each electronic dauber unit shall not allow a player to play more than sixty-six cards at one time.

(c) Each player shall not use more than one electronic dauber at any point in time. Provided, That a player can play an unlimited amount of disposable or hard bingo cards in addition to using one electronic dauber unit.

#### Reserving electronic bingo card daubers.

(d) Operators shall not reserve electronic daubers for any player. An operator must devise and disclose to players a scheme for assignment of dauber units to players during each session. Such schemes shall allow all players an equal opportunity to utilize the available dauber units. If a drawing is

used to assign dauber units to players, the operator shall ensure that each player participating in the drawing has an equal chance to win: Provided, That operators that offer electronic dauber units shall reserve at least one device for players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with definitions set forth in the Americans with Disabilities Act (ADA). If there are no requests for use of this unit prior to fifteen minutes before the scheduled start of the session, it may be made available for use by any players;

#### Fees.

(e) If operators charge players a fee for use of the electronic daubers, such fees must be a flat fee and shall not be based on the number or dollar value of cards purchased. Rental fees shall be considered bingo receipts for purposes of WAC 230-12-020: Provided, That players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with the ADA shall not be required to pay a rental fee or to comply with minimum purchase requirements imposed on all players utilizing electronic daubers. Such players are required to comply with any minimum purchase requirement imposed on all players by an operator;

#### Card requirements.

(f) ~~((Each player))~~ Any organization utilizing ~~((an))~~ electronic daubers must have ~~((in their possession cards))~~ the cards printed, placed in a master index and available on-site for inspection at the request of a customer or agent of the Washington state gambling commission that meet all requirements of WAC 230-20-240 and 230-20-106. Electronic images of cards or faces stored in such devices are for player convenience only and are not bingo cards for purposes of this title;

#### Leasing by an operator.

(g) If the electronic daubers are leased to an operator, the lease cannot be based in whole or part on the amount of bingo card sales or rental income derived from such devices. Except that fees may be based on the number of cards sold to a device only for player selection games as described in WAC 230-20-241; and

#### Discounts and marketing schemes.

(h) The use of electronic daubers is prohibited when a licensee utilizes any marketing scheme for cards that results in a decrease in the per unit price of each card as the number of cards purchased increases: Provided, That a single discount level is authorized for each type of card sold if:

- (i) The licensee has a minimum purchase requirement;
- (ii) The discount applies to all additional cards purchased; and
- (iii) "All you can play" schemes are prohibited;

#### Standards.

(3) Electronic bingo card daubers must meet the following standards:

- (a) Be manufactured by licensed manufacturers;

(b) Be sold, leased, and serviced by licensed distributors or manufacturers: Provided, That operators may perform routine maintenance on devices under their control;

(c) Not be capable of accessing the electronic computer system in any manner that would allow modification of the program which operates and controls the dauber units or the cards stored in the electronic data base; and

(d) Be capable of complying with applicable requirements of WAC 230-20-106.

### WSR 07-17-093

#### PERMANENT RULES

### STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed August 16, 2007, 9:14 a.m., effective September 16, 2007]

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

Purpose: Repealing WAC 131-16-200.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 131-16-200.

Statutory Authority for Adoption: RCW 28B.16.100.

Adopted under notice filed as WSR 07-12-095 on June 6, 2007.

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 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 1.

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

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 1.

Date Adopted: August 15, 2007.

DelRae Oderman

Executive Assistant

Agency Rules Coordinator

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 131-16-200

Reduction in force guidelines and procedures supplemental to chapter 251-10 WAC.

**WSR 07-17-107**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed August 17, 2007, 10:41 a.m., effective September 17, 2007]

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

Purpose: The department is striking "for clients through age twenty" that was inadvertently added in WAC 388-535-1065(4). The corrected rule will read: "Each dental-related procedure described under this section is subject to the coverage limitations listed in chapter 388-535 WAC."

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-535-1065.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Adopted under notice filed as WSR 07-14-089 on June 29, 2007.

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 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: August 15, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

**WAC 388-535-1065 Coverage limits for dental-related services provided under the GA-U and ADATSA programs.** (1) Clients who receive medical care services under the following programs may receive the dental-related services described in this section:

- (a) General assistance unemployable (GA-U); and
- (b) Alcohol and drug abuse treatment and support act (ADATSA).

(2) The department covers the following dental-related services for a client eligible under the GA-U or ADATSA program:

- (a) Services provided only as part of dental treatment for:
  - (i) Limited oral evaluation;
  - (ii) Periapical or bite-wing radiographs that are medically necessary to diagnose only the client's chief complaint;
  - (iii) Palliative treatment to relieve dental pain;
  - (iv) Pulpal debridement to relieve dental pain; or

(v) Endodontic (root canal only) treatment for maxillary and mandibular anterior teeth (cuspids and incisors) when prior authorized).

(b) Tooth extraction when at least one of the following apply:

- (i) The tooth has a radiograph apical lesion;
- (ii) The tooth is endodontically involved, infected, or abscessed;
- (iii) The tooth is not restorable; or
- (iv) The tooth is not periodontally stable.

(3) Tooth extractions require prior authorization when:

(i) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; and

(ii) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck.

(4) Each dental-related procedure described under this section is subject to the coverage limitations listed in chapter 388-535 WAC ((for clients through age twenty)).

(5) The department does not cover any dental-related services not listed in this section for clients eligible under the GA-U or ADATSA program, including any type of removable prosthesis (denture).

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

**WSR 07-17-109**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed August 17, 2007, 11:23 a.m., effective September 17, 2007]

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

Purpose: WAC 458-20-163 explains the exemptions and deductions allowed "Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool." It also states that insurance companies are subject to the retail sales or use taxes on their purchases of tangible personal property and certain services, and that they must collect sales tax on sales of tangible personal property, including salvaged property.

The department has amended the rule to:

- Add an introductory subsection (1) to explain the subject matter of the rule;
- Explain that RCW 82.04.322 provides a B&O tax exemption for any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201; and
- Recognize that the B&O tax deduction provided by RCW 82.04.4329 for assessments paid by a member to the Washington state health insurance pool was repealed by chapter 443, Laws of 2005, effective July 1, 2006.

Citation of Existing Rules Affected by this Order:  
Amending WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire

insurance associations, beneficiary corporations or societies and Washington state health insurance pool.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 07-10-058 on April 27, 2007.

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 1, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, 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 0, Repealed 0.

Date Adopted: August 17, 2007.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
Technical Advice Division

AMENDATORY SECTION (Amending WSR 91-05-040, filed 2/13/91, effective 3/16/91)

**WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool. (1) Introduction.** Income earned by insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies, and the Washington state health insurance pool is generally subject to the service and other activities business and occupation (B&O) tax, unless the law provides an exemption or deduction. This section identifies exemptions and deductions available to these businesses. It also explains the reporting responsibilities for retail sales and use taxes for retail purchases and retail services.

**(2) Exemptions.** ((The business and occupation tax does not apply to:)) The law provides the following B&O tax exemptions. These amounts do not need to be reported on the excise tax returns filed with the department of revenue.

(a) RCW 82.04.320 provides an exemption to any person with respect to insurance business upon which a tax based on gross premiums is paid to the state of Washington. ((RCW 82.04.320.)) It should be noted, however, that the law provides expressly that this exemption does not extend to "any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies" or to "any bonding company . . . with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor." The

exemption also does not apply to any business engaged in by an insurance company other than its insurance business. Thus an insurance company is subject to the retailing or wholesaling ((business and occupation)) B&O tax on sales of salvaged property unless the sales are casual or isolated sales as described in WAC 458-20-106 (Casual or isolated sales—Business reorganizations). Also see WAC 458-20-102 (Resale certificates) for resale certificate requirements for wholesale sales.

(b) RCW 82.04.322 provides an exemption to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201.

(c) RCW 82.04.370 provides an exemption to fraternal benefit societies or fraternal fire insurance associations organized or licensed pursuant to Title 48 RCW and as defined in RCW 48.36A.010.

((☞)) The statute also exempts beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits.

((This)) The exemption provided by RCW 82.04.370, however, is limited to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such persons. It is not intended that all the varied, regular business activities (e.g., sales of food, liquor, admissions, and amusement devices receipts) of these societies or organizations be ((exempted from the business and occupation)) exempt from B&O tax. Only that portion of income which can be demonstrated as directly attributable to charges made for insurance or providing death benefits is exempt.

((2)) (3) Deductions. ((Effective May 18, 1987)) For periods prior to July 1, 2006, a B&O tax deduction was provided by RCW 82.04.4329 to a member of the Washington state health insurance pool ((may take a deduction from the measure of the business and occupation tax)) for assessments paid by that member to the pool. ((See RCW 82.04.4329.) The deduction amount should be shown in the deduction column of the business and occupation tax section on the combined excise tax return, where it will be subtracted from the gross amounts, to arrive at a net taxable amount upon which the actual business and occupation tax is computed. If the deduction cannot be fully used because the assessment total exceeds the gross receipts reported in the business and occupation tax section of the tax return, the member may carry forward the unused portion of the deduction to future reporting periods until the deduction is fully taken. The explanation of the deduction should be "Amount paid to Washington state health insurance pool, per RCW 82.04.4329 and WAC 458-20-163.") This deduction ((does)) did not apply to a member who ((has)) had deducted such assessments from the insurance premiums tax, RCW 48.14.020.

((3)) (4) Retail sales and use tax responsibilities. Insurance companies are subject to the retail sales tax or use tax upon retail purchases, certain retail services, or articles acquired for their own use.

When insurance companies make sales to consumers of salvaged property (e.g., from automobile collisions, fire loss, burglary, or theft recoveries) or any other tangible personal

property, they must collect and report retail sales tax on those sales.

### WSR 07-17-110

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed August 17, 2007, 11:25 a.m., effective September 17, 2007]

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

Purpose: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program. The telecommunications relay services (TRS) and Washington telephone assistance program (WTAP) tax rates are determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

The department has revised WAC 458-20-270 to provide these tax rates for the July 1, 2007, through June 30, 2008, fiscal year. The TRS rate increases from nine cents to twelve cents per switched access line for the upcoming fiscal year. There is no change to the WTAP rate.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-270 Telephone program excise tax rates.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 43.20A.725 and 80.36.430.

Adopted under notice filed as WSR 07-10-059 on April 27, 2007.

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 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: August 17, 2007.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
Technical Advice Division

AMENDATORY SECTION (Amending WSR 06-16-137, filed 8/2/06, effective 9/2/06)

**WAC 458-20-270 Telephone program excise tax rates.** RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

((For the period July 1, 2006, through June 30, 2007, the monthly telephone program excise tax rates are as follows:

TRS	9 cents per switched access line
WTAP	14 cents per switched access line))

The monthly telephone program excise tax rates per switched access line are as follows:

<u>Period</u>	<u>TRS Rate</u>	<u>WTAP Rate</u>
<u>7/1/2005 - 6/30/2006</u>	<u>10 cents</u>	<u>14 cents</u>
<u>7/1/2006 - 6/30/2007</u>	<u>9 cents</u>	<u>14 cents</u>
<u>7/1/2007 - 6/30/2008</u>	<u>12 cents</u>	<u>14 cents</u>

### WSR 07-17-111

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed August 17, 2007, 11:26 a.m., effective September 17, 2007]

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

Purpose: This rule provides a general discussion of when tax liability arises for accrual and cash receipts basis taxpayers. It provides specific guidance to construction contractors and persons operating warehouses. The revised rule includes new language explaining that persons operating grain warehouses, licensed under chapter 22.09 RCW, have the choice of reporting the value proceeding or accruing from their operations on either a cash receipts or accrual basis. RCW 82.04.090.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-197 When tax liability arises.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 07-10-089 on May 1, 2007.

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 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: August 17, 2007.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
Technical Advice Division

AMENDATORY SECTION (Amending WSR 90-10-082, filed 5/2/90, effective 6/2/90)

**WAC 458-20-197 When tax liability arises.** (1) Gross proceeds of sales and gross income shall be included in the excise tax return for the period in which the value proceeds or accrues to the taxpayer. For the purpose of determining tax liability of persons making sales of tangible personal property, a sale takes place when the goods sold are delivered to the buyer in this state. With respect to leases or rentals of tangible personal property, liability for retail sales tax arises as of the time the rental payments fall due (see WAC 458-20-211).

**(2) Accrual basis.**

(a) When excise tax returns are made upon the accrual basis, value accrues to a taxpayer at the time:

(i) The taxpayer becomes legally entitled to receive the consideration, or,

(ii) In accord with the system of accounting regularly employed, enters as a charge against the purchaser, customer, or client the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time.

(b) Amounts actually received do not constitute value accruing to the taxpayer in the period in which received if the value accrues to the taxpayer during another period. It is immaterial if the act or service for which the consideration accrues is performed or rendered, in whole or in part, during a period other than the one for which excise tax return is made. The controlling factor is the time when the taxpayer is entitled to receive, or takes credit for, the consideration.

**(3) Cash receipts basis.**

(a) When returns are made upon cash receipts and disbursements basis, value proceeds to a taxpayer at the time the taxpayer receives the payment, either actually or constructively. It is immaterial that the contract is performed, in whole or in part, during a period other than the one in which payment is received.

(b) See: WAC 458-20-199 for limitation as to persons who may report on the cash receipts basis.

**(4) Special application, contractors.**

Value accrues for a building or construction contractor who maintains his accounting records on the accrual basis, as of the time the contractor becomes entitled to compensation under the contract.

(a) If by the terms of the contract the taxpayer becomes entitled to compensation upon estimates as the work progresses, value, to the extent of such estimates, accrues as of the time that each estimate is made and the balance at the time of the completion of the work or of the final estimate.

(b) If by the terms of the contract the taxpayer becomes entitled to compensation only upon the completion of the work, value accrues as of the earlier of the completion of the work, or, any use of the facilities being constructed, or, 60 days after the facility is substantially complete.

(i) Example: A contractor agrees to build two buildings for a buyer. Under the terms of the contract, payment is to be made only upon completion of both buildings. One building is substantially completed and occupied on April 15, 1991, the other building is substantially completed on May 15, 1991 and occupied on July 1, 1991. The work on both buildings is completed under the contract on June 15, 1991. Value accrues for the first building on April 15, 1991, the date it was used. Value accrues for the remainder of the contract on June 15, 1991, the date the work was completed.

(ii) Example: A contractor agrees to build a building for a buyer. Under the terms of the contract, the buyer is to make payment for the building only upon completion of the building. The building is completed, except for minor alterations, and available for planned occupancy on August 15, 1990. However, because of a contract dispute between the buyer and his tenant for the building, the buyer is unable to pay the contractor until February 25, 1991 when the building is finally occupied. The building is completed under the contract on November 15, 1990. Value accrues on the building for sales tax and B&O tax purposes on October 14, 1990, 60 days after August 15, ~~((1991))~~ 1990, the date the building was substantially complete.

(5) ~~((Warehousemen))~~ **Warehouse operators.** In the case of ~~((warehousemen))~~ warehouse operators value proceeds or accrues to the taxpayer as follows:

(a) When the taxpayer is reporting upon the accrual basis, value accrues at the time the charge is entered against the owner of the goods stored in accordance with the terms of the contract between the parties and the regular system of accounting employed by the taxpayer.

(i) Value accrues when the charge is entered whether the consideration for storage is at a fixed rate per unit per month or other period, or, at a flat charge regardless of the length of time, or, whether payable periodically or at the time of withdrawal.

(ii) Thus, where a ~~((warehouseman))~~ warehouse operator, keeping books on accrual basis, customarily enters as a charge to the owner of the goods and a credit to storage income the full amount of a flat storage charge as of the time the goods are received, even though the time for payment is deferred until withdrawal of the goods, value accrues as of the time the goods are received. However, if the ~~((warehouseman))~~ warehouse operator customarily does not enter such charge until the time of withdrawal, value accrues as of such later date.

(b) When the taxpayer is reporting upon a cash receipts basis, value proceeds at the time the payment for storage is received.

**(c) Exception for grain warehouse operators.** Persons operating grain warehouses, licensed under chapter 22.09 RCW, may report the value proceeding or accruing from their grain warehouse operations on either a cash receipts or accrual basis. RCW 82.04.090.

For effect of rate changes, see WAC 458-20-235 (Effect of rate changes on prior contracts and sales agreements).

Date Adopted: August 13, 2007.

Mike Kreidler  
Insurance Commissioner

## WSR 07-17-120

### PERMANENT RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-01—Filed August 20, 2007,  
7:20 a.m., effective September 20, 2007]

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

Purpose: These new rules define unfair sales practices involving military personnel that are considered false, misleading, or deceptive. These rules are consistent with the NAIC model military sales practices regulation, required to be adopted on a uniform basis by the states.

The 109th Congress enacted the Military Personnel Financial Services Protection Act (Public Law 109-290) "to protect members of the armed forces from unscrupulous practices regarding the sale of insurance, financial and investment products." The act requires states to adopt a model regulation jointly developed by the Department of Defense and the National Association of Insurance Commissioners not later than September 29, 2007. The act extends state laws or rules with respect to regulating the business of insurance or securities to military installations, except to the extent that such laws or rules directly conflict with applicable federal laws or rules.

Statutory Authority for Adoption: RCW 48.02.060 and 48.30.010.

Adopted under notice filed as WSR 07-14-111 on July 2, 2007.

Changes Other than Editing from Proposed to Adopted Version: As a result of public comment, the following changes were made:

(1) The citation to credit life insurance, in WAC 284-30-860 (1)(a) as defined in RCW 48.34.030(1), was deleted, and (2) an additional exception was added at WAC 284-30-860 (1)(e) for contracts offered by state sponsored life insurance (SSLI) as authorized by 37 U.S.C. Section 707 et seq.

Number of Sections Adopted in Order to Comply with Federal Statute: New 6, 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 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 6, Amended 0, Repealed 0.

## MILITARY SALES PRACTICES

### NEW SECTION

**WAC 284-30-850 Authority, purpose, and effective date.** In order to prevent unfair methods of insurance sales to active duty service members of the United States armed forces, unfair competition, and unfair or deceptive acts or practices by insurers, fraternal benefit societies, agents, brokers or solicitors, WAC 284-30-850 through 284-30-872 are adopted. These rules may be called the "military sales practices" rules.

(1) The Military Personnel Financial Services Protection Act (P.L. 109-290) was enacted by the 109th Congress to protect members of the United States armed forces from unscrupulous practices regarding the sale of insurance, financial, and investment products on and off military installations. The act requires this state to adopt rules that meet sales practice standards adopted by the National Association of Insurance Commissioners to protect members of the United States armed forces from dishonest and predatory insurance sales practices both on and off of a military installation.

(2) Based on the commissioner's authority under RCW 48.30.010 to define by rule methods of competition and other acts and practices in the conduct of the business of insurance found by the commissioner to be unfair or deceptive, after evaluation of the acts and practices of insurers, fraternal benefit societies, agents, brokers, or solicitors that informed the need for P.L. 109-290, and because the commissioner is required by that act to adopt rules that meet the sales practice standards adopted by the National Association of Insurance Commissioners and federal law, the commissioner finds the acts or practices set forth in WAC 284-30-850 through 284-30-872 to be unfair or deceptive methods of competition or unfair or deceptive acts or practices in the business of insurance.

(3) These military sales practices rules are effective for all benefit contracts, insurance policies and certificates solicited, issued, or delivered in this state on and after (the effective date of these rules).

### NEW SECTION

**WAC 284-30-855 Scope.** WAC 284-30-850 through 284-30-872 affect all life insurance policies and certificates solicited or sold to an active duty service member of the United States armed forces or his or her dependent.

### NEW SECTION

**WAC 284-30-860 Exemptions.** (1) The following life insurance solicitations or sales are exempt from the requirements of WAC 284-30-850 through 284-30-872:

(a) Credit life insurance.

(b) Group life insurance where there is no in-person face-to-face solicitation of individuals by a licensed agent,

broker, or solicitor or where the policy or certificate does not include a side fund.

(c) An application to the insurer that issued the existing policy or certificate when a contractual change or a conversion privilege is being exercised; or when the existing insurance policy or certificate is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term life conversion privilege is exercised among corporate affiliates.

(d) Individual, stand-alone policies of health or disability income insurance.

(e) Contracts offered by Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI), as authorized by 38 U.S.C. section 1965 et seq., and contracts offered by State Sponsored Life Insurance (SSLI) as authorized by 37 U.S.C. Section 707 et seq.

(f) Life insurance policies or certificates offered through or by a nonprofit military association, qualifying under section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer.

(g) Contracts used to fund any of the following:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Prearranged funeral contracts.

(2) Nothing in WAC 284-30-850 through 284-30-872 shall be construed to restrict the ability of nonprofit organizations or other organizations to educate members of the United States armed forces in accordance with federal Department of Defense Instruction 1344.07 "Personal Commercial Solicitation on DOD Installations," or any successor directive.

(3)(a) For purposes of the military sales practices rules, general advertisements, direct mail and internet marketing do not constitute "solicitation." Telephone marketing does not constitute "solicitation" only if the caller explicitly and conspicuously discloses that the product being solicited is life insurance and the caller makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation.

(b) Nothing in this section shall be construed to exempt an insurer, agent, broker, or solicitor from the military sales practices rules in any in-person face-to-face meeting established as a result of the solicitation exemptions listed in this section.

## NEW SECTION

**WAC 284-30-865 Definitions.** The following definitions apply to the military sales practices rules, unless the context clearly requires otherwise:

(1) "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component, such as national guard or reserve, while serving under published orders for active duty or full-time training. This term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of fewer than thirty-one calendar days.

(2) "Department of Defense (DOD) personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door-to-door" means a solicitation or sales method whereby an agent, broker, or solicitor proceeds randomly or selectively from household to household without a prior specific appointment.

(4) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance or the promotion of an insurer, agent, broker, or solicitor.

(5) "Insurer" means an insurance company, as defined in RCW 48.01.050, that provides life insurance products for sale in this state. The term "insurer" also includes fraternal benefit societies, as defined at RCW 48.36A.010. Whenever the term "insurer," "policy," or "certificate" is used in these military sales practices rules, it includes insurers and fraternal benefit societies and applies to all insurance policies, benefit contracts, and certificates of life insurance issued by them.

(6) "Known" or "knowingly" means, depending on its use in WAC 284-30-870 and 284-30-872, that the insurer or agent, broker, or solicitor had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of that the person being solicited is either:

(a) A service member; or

(b) A service member with a pay grade of E-4 or below.

(7) "Life insurance" has the meaning set forth in RCW 48.11.020.

(8) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(9) "MyPay" means the Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(10) "Service member" means any active duty officer (commissioned and warrant) or any enlisted member of the United States armed forces.

(11) "Side fund" means a fund or reserve that is part of or is attached to a life insurance policy or certificate (except for individually issued annuities) by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(a) Accumulated or cash value or secondary guarantees provided by a universal life policy;

(b) Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

(c) A premium deposit fund which:

(i) Contains only premiums paid in advance which accumulate at interest;

(ii) Imposes no penalty for withdrawal;

(iii) Does not permit funding beyond future required premiums;

(iv) Is not marketed or intended as an investment; and

(v) Does not carry a commission, either paid or calculated.

(12) "Specific appointment" means a prearranged appointment that has been agreed upon by both parties and is definite as to place and time.

(13) "United States armed forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

#### NEW SECTION

**WAC 284-30-870 Practices declared to be unfair or deceptive when committed on a military installation.** (1) The following acts or practices by an insurer, agent, broker, or solicitor are found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance when committed on a military installation and solicited in-person face-to-face:

(a) Knowingly soliciting the purchase of any life insurance policy or certificate door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing, or other areas where the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins, notices, or advertisements.

(g) Failing to present DD Form 2885 Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy or certificate of life insurance on the life of an enlisted member of the United States armed forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement related to the sale of life insurance established by regulations,

directives, or rules of the DOD or any branch of the United States armed forces.

(2) The following acts or practices by an insurer, agent, broker, or solicitor are found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance or improper influences or inducements when committed on a military installation:

(a) Using DOD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an agent, broker, or solicitor to participate in any education or orientation program sponsored by United States armed forces.

#### NEW SECTION

**WAC 284-30-872 Practices declared to be unfair or deceptive regardless of where they occur.** (1) The following acts or practices by an insurer, agent, broker, or solicitor are found by the commissioner and declared to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance or improper influences or inducements regardless of the location where they occur:

(a) Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the United States armed forces to direct a service member's pay to a third party for the purchase of life insurance. For example, the using or assisting in the use of a service member's "MyPay" account or other similar internet or electronic medium to pay for life insurance is prohibited. For purposes of these military sales practices rules, assisting a service member by providing insurer or premium information necessary to complete any allotment form is not an unfair, deceptive, or prohibited practice.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(i) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 et seq. and regulations promulgated thereunder; and

(ii) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method, or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement (or equivalent or successor form) as "savings" or "checking" and where the service member has no formal banking relationship.

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without com-

penation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(e) Using DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to their family members.

(f) Offering or giving anything of value, directly or indirectly, to DOD personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income in order to purchase life insurance.

(2) The following acts or practices by an insurer, agent, broker, or solicitor may lead to confusion regarding the source, sponsorship, approval, or affiliation of the insurer or any agent, broker or solicitor. They are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, agent, broker, or solicitor, or the policy or certificate offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. government, the United States armed forces, or any state or federal agency or governmental entity.

(i) For example, the use of the following titles, including but not limited to the following is prohibited: Battalion insurance counselor, unit insurance advisor, Servicemen's Group Life Insurance conversion consultant, or veteran's benefits counselor.

(ii) A person is not prohibited from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Examples include, but are not limited to the following: Chartered life underwriter (CLU), chartered financial consultant (ChFC), certified financial planner (CFP), master of science in financial services (MSFS), or masters of science financial planning (MS).

(b) Soliciting the purchase of any life insurance policy or certificate through the use of or in conjunction with any third-party organization that promotes the welfare of or assists members of the United States armed forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, agent, broker, solicitor, or the insurance policy or certificate is affiliated, connected, or associated with endorsed, sponsored, sanctioned, or recommended by the U.S. government, or the United States armed forces.

(3) The following acts or practices by an insurer, agent, broker, or solicitor lead to confusion regarding premiums, costs, or investment returns. They are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) Misrepresenting the mortality costs of a life insurance policy or certificate (except for individually issued annuities), including stating or implying that the policy or certificate costs nothing or is free.

(4) The following acts or practices by an insurer, agent, broker, or solicitor regarding Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI) are each found by the commissioner to be false, misleading, unfair, or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to service members or dependents by SGLI or VGLI, which is false, misleading, or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, exclusions, or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive.

(c) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy, or issuing a life insurance policy or certificate which replaces an existing SGLI policy unless the replacement takes effect upon or after separation of the service member from the United States armed forces.

(5) The following acts or practices regarding disclosure by an insurer, agent, broker, or solicitor are declared to be false, misleading, unfair, or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where the act occurs:

(a) Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an agent, broker, or solicitor, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person face-to-face meeting with a prospective purchaser.

(c) Except for individually issued annuities, failing to clearly and conspicuously disclose the fact that the policy or certificate being solicited is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the Military Personnel Financial Services Protection Act (P.L. 109-290), p. 16.

(e) Except for individually issued annuities, when the sale is conducted in-person face-to-face with an individual

known to be a service member, failing to provide the applicant at the time of application is taken:

(i) An explanation of any free look period with instructions on how to cancel any policy or certificate issued by the insurer; and

(ii) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure must clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost. A basic illustration that meets the requirements of this state will be considered a written disclosure.

(6) The following acts or practices by an insurer, agent, broker, or solicitor are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Except for individually issued annuities, recommending the purchase of any life insurance policy or certificate which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance policy or certificate which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(i) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors, or dependents.

(ii) Other military survivor's benefits include, but are not limited to: The death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and Social Security survivor benefits.

(c) Except for individually issued annuities, offering for sale or selling any life insurance policy or certificate which includes a side fund:

(i) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined policy or certificate. For this disclosure, the effective rate of return must consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule must be provided for at least each policy year from year one to year ten and for every fifth policy year thereafter, ending at age one hundred, policy maturity, or final expiration; and

(iii) Which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.

(d) Except for individually issued annuities, offering for sale or selling any life insurance policy or certificate which after considering all policy benefits, including but not limited to endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance.

(e) Selling any life insurance policy or certificate to a person known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service, except for accidental death coverage (for example, double indemnity) which may be excluded.

### WSR 07-17-123

#### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed August 20, 2007, 8:45 a.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: This proposal creates new rules in accordance with HB 1507 which passed during the 2007 legislative session. This bill creates the uniformed service shared leave pool. This leave pool allows employees to donate leave for any employee who has been called to service in the uniformed services and who meets the requirements of RCW 41.04.665.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 07-14-122 on July 3, 2007.

Changes Other than Editing from Proposed to Adopted Version: The WAC numbers have been changed to avoid duplicates.

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 18, Amended 0, Repealed 0.

Number of Sections Adopted at 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 18, Amended 0, Repealed 0.

Date Adopted: August 16, 2007.

Eva N. Santos  
Director

#### NEW SECTION

**WAC 357-31-640 What is the purpose of the uniformed service shared leave pool?** The uniformed service shared leave pool was created so that state employees who

are called to service in the uniformed services will be able to maintain a level of compensation and employee benefits consistent with the amount they would have received had they remained in active state service. The pool was also created to allow general government and higher education employees to voluntarily donate their leave to be used by any eligible employee who has been called to service in the uniform services for the purpose set forth herein.

#### NEW SECTION

**WAC 357-31-645 Who will administer the uniformed service shared leave pool?** The military department, in consultation with the department of personnel and the office of financial management, shall administer the uniformed service shared leave pool.

#### NEW SECTION

**WAC 357-31-650 What definitions apply to the uniformed service shared leave pool?** The following definitions apply to the uniformed service shared leave pool:

(1) "Employee" means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained. This does not include employees of school districts and educational service districts.

(2) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(3) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(4) "Military salary" means the base, specialty, and other pay, but does not include allowances such as the basic allowance for housing.

(5) "Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

#### NEW SECTION

**WAC 357-31-655 Must employers have a written policy regarding the uniformed service shared leave pool?** Each employer must have a written policy which at a minimum addresses:

- (1) Eligibility requirements for use of the uniformed service shared leave pool;
- (2) Donation of leave;

(3) Use of pool leave; and

(4) Abuse of pool.

#### NEW SECTION

**WAC 357-31-660 Is participation in the uniformed service shared leave pool voluntary?** Participation in the uniformed service shared leave pool, must at all times, be voluntary on the part of the donating and receiving employee.

#### NEW SECTION

**WAC 357-31-665 What criteria does an employee have to meet to be eligible to request leave from the uniformed service shared leave pool?** Employees are eligible to request leave from the uniformed service shared leave pool if they are called to service in one of the uniformed services and eligible for shared leave under RCW 41.04.665.

#### NEW SECTION

**WAC 357-31-670 How must employees who are receiving leave from the uniformed service shared leave pool be treated during their absence?** An employee using shared leave under these rules continues to be classified as a state employee and receives the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued vacation leave or sick leave.

#### NEW SECTION

**WAC 357-31-675 Is shared leave received under the uniformed service shared leave pool included in the 261 day total specified in RCW 41.04.665?** Shared leave received under the uniformed service shared leave pool is not included in the 261 day total specified in RCW 41.04.665.

#### NEW SECTION

**WAC 357-31-680 May employees donating leave direct the donation to a specific individual?** Leave donated under this section is "pooled" and is withdrawn from the pool by eligible employees according to priorities established by the military department. Leave donated cannot be directed to a specific individual.

#### NEW SECTION

**WAC 357-31-685 What types of leave can an employee donate for the purposes of the uniformed service shared leave pool?** An employee may donate vacation leave, sick leave, or all or part of a personal holiday for purposes of the uniformed service shared leave pool under the following conditions:

- (1) Vacation leave: The donating employee's employer approves the employee's request to donate a specified amount of vacation leave to the uniformed service shared leave pool and the full-time employee's request to donate leave will not cause his/her vacation leave balance to fall below eighty

hours after the transfer. For part-time employees, requirements for vacation leave balances are prorated.

(2) Sick leave: The donating employee's employer approves the employee's request to donate a specified amount of sick leave to the uniformed service shared leave pool and the employee's request to donate leave will not cause his/her sick leave balance to fall below one hundred seventy-six hours after the transfer.

(3) Personal holiday: The donating employee's employer approves the employee's request to donate all or part of his/her personal holiday to an employee authorized to receive leave under the uniformed service shared leave pool.

#### NEW SECTION

**WAC 357-31-690 How much leave may an employee withdraw from the uniformed service shared leave pool?** Shared leave paid under this section, in combination with military salary, as defined in WAC 357-31-650(4), shall not exceed the level of the employee's state monthly salary as defined in WAC 357-31-650(5). However, up to eight (8) hours per month of shared leave under this section may be withdrawn and used to continue coverage under the Public Employees' Benefit Board, regardless of the employee's monthly salary and military salary.

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

#### NEW SECTION

**WAC 357-31-695 How is the maximum shared leave pay, which will be granted from the uniformed service shared leave pool calculated?** The basis for calculating the maximum shared leave pay granted from the uniformed service shared leave pool is the greater of:

(1) The difference between the employee's current monthly salary (as defined in WAC 357-31-650(5)) and his/her monthly military salary (as defined in WAC 357-31-650(4)) or;

(2) The dollar value associated with the number of hours required to maintain eligibility for employee benefits.

#### NEW SECTION

**WAC 357-31-700 What documentation is required to verify military salary and status?** Employees must provide the military department earnings statements verifying military salary and a copy of their orders of service. Employees must notify the military department of any changes to orders of service or military salary and shall submit updated copies of their earnings statements and orders of service when requested by the military department.

#### NEW SECTION

**WAC 357-31-705 What rate of pay is paid to the employee receiving leave under the uniformed service shared leave pool?** The receiving employee is paid his/her regular rate of pay. Therefore, the value of one (1) hour of

donated shared leave may cover more or less than one (1) hour of the recipient's salary.

#### NEW SECTION

**WAC 357-31-710 What happens if the uniformed service shared leave pool does not have sufficient balance to cover all leave requests?** The uniformed service shared leave pool cannot grant more leave than the leave balance available at the time a request is received.

#### NEW SECTION

**WAC 357-31-715 May employers establish restrictions on the amount of leave an employee may receive under this section?** Except in the event of a violation of rule or statute, an employer is required to permit an eligible employee to receive leave from the uniformed service shared leave pool.

#### NEW SECTION

**WAC 357-31-720 May an employer establish restrictions on the amount of leave an employee may donate under this section?** An employer may limit the amount of leave an employee may donate under this section, if authorization of such donation would be in violation of rule or statute.

#### NEW SECTION

**WAC 357-31-725 When an employer has determined that abuse of the uniformed service shared leave pool has occurred will the employee have to repay the shared leave drawn from the pool?** Employers shall investigate any alleged abuse of the uniformed service shared leave pool and on a finding of wrongdoing the employee may be required to repay all of the shared leave received from the uniformed service shared leave pool. The only time an employee will have to repay leave credits is when there is a finding of wrongdoing.

### WSR 07-17-124

#### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed August 20, 2007, 8:46 a.m., effective September 20, 2007]

Effective Date of Rule: September 20, 2007.

Purpose: These changes are housekeeping in nature.

Citation of Existing Rules Affected by this Order:  
Amending WAC 357-01-072, 357-31-565, 357-46-010, and 357-31-480.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 07-14-124 on July 3, 2007.

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 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: August 16, 2007.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 07-03-054, filed 1/12/07, effective 2/15/07)

**WAC 357-01-072 Child.** A biological, adopted, or foster child, or a stepchild, a legal ward, or a child of a person standing in loco parentis~~((+))~~.

AMENDATORY SECTION (Amending WSR 06-23-091, filed 11/14/06, effective 12/18/06)

**WAC 357-31-565 May employers grant paid leave for purposes of recognition?** Employers who have received performance management confirmation may grant employees up to five days of paid leave within a twelve-month period to recognize outstanding accomplishments or the achievement of predefined work goals by individual employees or units. Leave granted under this provision:

(1) Is not payable upon layoff, dismissal, separation, or resignation or transferable between employers;

(2) Must be used within twelve months of the leave being granted~~((+and))~~.

~~((+))~~

AMENDATORY SECTION (Amending WSR 05-19-004, filed 9/8/05, effective 10/10/05)

**WAC 357-46-010 What are the reasons for layoff?**

(1) Employees may be laid off without prejudice according to layoff procedures that are consistent with these rules. The reasons for layoff include, but are not limited to, the following:

(a) Lack of funds;

(b) Lack of work; or

(c) Organizational change.

(2) Examples of layoff actions due to lack of work may include, but are not limited to:

(a) Termination of a project or special employment;

(b) Availability of fewer positions than there are employees entitled to such positions;

(c) Employee's ineligibility to continue in a position following its reallocation to a class with a higher salary range maximum; or

(d) Employee's ineligibility to continue, or choice not to continue, in a position following its reallocation to a class with a lower salary range maximum.

~~((+e))~~ (e) Elimination of a position due to the work of the position being competitively contracted.

AMENDATORY SECTION (Amending WSR 05-08-140 [07-11-094], filed 4/6/05 [5/16/07], effective 7/1/05 [7/1/07])

**WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth?** Under ~~((RCW 49.78.005))~~ RCW 49.78.390, the family leave required by U.S.C. 29.2612 (a)(1)(A) and (B) of the Federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) must be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as provided in WAC 357-31-500.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

## WSR 07-17-125

### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed August 20, 2007, 8:49 a.m., effective September 20, 2007]

Effective Date of Rule: September 20, 2007.

Purpose: These changes are a result of the passage of ESSB 5774. This bill removes the requirement for the department of personnel (DOP) to adopt background check rules for the department of social and health services and requires DOP to adopt background check rules for the department of early learning.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-183, 357-19-184, 357-19-185, 357-19-186, 357-19-187, 357-19-188, 357-19-189, and 357-19-191.

Statutory Authority for Adoption: Chapter 41.06 RCW. Adopted under notice filed as WSR 07-14-123 on July 3, 2007.

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 8, Repealed 0.

Number of Sections Adopted at 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 8, Repealed 0.

Date Adopted: August 16, 2007.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

**WAC 357-19-183 Must (~~(DSHS)~~) DEL conduct background checks on all employees in covered positions and (~~(applicants under final consideration)~~) individuals being considered for a covered position? (1) The (~~(secretary of the department of social and health services (DSHS))~~) director of the Department of Early Learning (DEL) or designee must conduct background checks (~~(, which may include fingerprinting as authorized by statute,)~~) on all employees in covered positions and (~~(applicants under final consideration)~~) individuals being considered for a covered position.**

(2) The requirement for background checks must include the following:

(a) Current employees in covered positions.

(~~(a)~~) (b) Any employee (~~(seeking)~~) considered for a covered position because of a layoff, reallocation, transfer, promotion or demotion, or other actions that result in the employee being in a covered position.

(c) Any individual being considered for positions which are covered positions. (~~(applicant prior to appointment into a covered position, except when appointment is made on a conditional basis in accordance with agency procedures authorized by WAC 357-19-189.))~~

(3) (~~(Applicant means any person who has applied for work or serves in a covered position, including current employees requesting transfer, promotion, demotion, or otherwise requesting a move to a covered position.))~~ Considered for positions includes decisions about:

(a) Initial hiring, layoffs, reallocations, transfers, promotions, demotions, or

(b) Other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

**WAC 357-19-184 Besides the (~~(department of social and health services)~~) DEL, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees? (1) Employers may conduct background checks on applicants and/or employees if required by state or federal law, or if the employer identifies the need for a background check to verify that the applicant or employee satisfies the position requirements.**

(2) Employers who conduct background checks must develop procedures regarding how and when background checks will be conducted. The procedures must include notification to applicants and/or employees if a background check is required.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

**WAC 357-19-185 What is a covered position for purposes of WAC 357-19-183, WAC 357-19-187, and WAC 357-19-191? For purposes of WAC 357-19-183, WAC 357-19-187 and WAC 357-19-191 a covered position is one in which a person will or may have unsupervised access to children (~~(, vulnerable adults, or individuals with mental illness or developmental disabilities)).~~**

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

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

**WAC 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by (~~(DSHS)~~) DEL and what are the results of the background check used for? (1) The background check information considered by the (~~(secretary of the DSHS))~~) director of the DEL will include but not be limited to conviction records, pending charges, and disciplinary board final decisions.**

(2) The results of the background check must be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

**WAC 357-19-187 For purposes of WAC 357-19-183, must an employee and/or (~~(applicant)~~) individual being considered for a covered position authorize the (~~(secretary of the department of social and health services))~~) director of the DEL or designee to conduct a background check and what happens if the employee or (~~(applicant)~~) individual being considered for a covered position does not provide authorization? An employee and/or (~~(applicant)~~) individual applying for or being considered to remain in a covered position must authorize the (~~(secretary of the department of social and health services))~~) director of the DEL or designee to conduct a background check (~~(which may include fingerprinting)).~~**

Failure to authorize the (~~(secretary of the DSHS))~~) director of the DEL or designee to conduct a background check disqualifies an employee or (~~(applicant)~~) individual from consideration for any covered position including their current covered position.

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

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

**WAC 357-19-188 What happens when a permanent (~~(DSHS)~~) DEL employee is disqualified because of a background check? (1) A permanent employee with a background check disqualification may be subject to any of the following actions in no specific order:**

- (a) Voluntary demotion;
- (b) Job restructuring;
- (c) Voluntary resignation;
- (d) Job reassignment;
- (e) Nondisciplinary separation in accordance with WAC 357-46-195; or
- (f) Disciplinary action in accordance with WAC 357-40-010.

(2) An appointing authority may use the following interim measures while exploring the availability of actions (not to exceed 30 calendar days except in cases where there are investigations of pending charges):

- (a) Voluntary use of accrued vacation, exchange, and/or compensatory time;
- (b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; and/or
- (c) Reassignment to another work location.
- (d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(3) Before a permanent employee may be separated due to a background check disqualification, the search for a non-covered position will occur over a period of thirty calendar days.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

**WAC 357-19-189 What are the responsibilities of the ((secretary of the DSHS)) director of the DEL in carrying out the requirement to conduct background checks?** (1) In order to implement the requirements of WAC 357-19-183, the ((secretary of the DSHS)) director of the DEL or designee must:

(a) Notify employees and ((applicants)) individuals being considered for covered positions that a background check is required for covered positions; and

(b) ~~((Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and))~~ Develop policies and procedures pertaining to background checks.

~~((e) Develop policies and procedures pertaining to background checks.))~~

(2) Information contained in background checks must be used solely for the purpose of determining the character, suitability and competence of the ((applicant and/or employee)) employee and/or individual being considered for covered positions. The information must not be disseminated further. Dissemination and use of such information is governed by the criminal records privacy act, chapter 10.97 RCW. Unlawful dissemination of information protected by the criminal records privacy act is a criminal offense and may result in prosecution and/or disciplinary action as provided in chapter 357-40 WAC. However, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

**WAC 357-19-191 Does a permanent employee of ((DSHS)) DEL who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification?** A permanent employee of ((DSHS)) DEL who is disqualified from a covered position as a result of a background check has the right to present to the ((secretary of the DSHS)) director of the DEL or designee evidence that mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

- (1) The employee's background check authorization and disclosure form;
- (2) The employee's age at the time of conviction, charge, or disciplinary board final decision;
- (3) The nature and severity of the conviction, charge, or disciplinary board final decision;
- (4) The length of time since the conviction, charge, or disciplinary board final decision;
- (5) The nature and number of previous offenses;
- (6) Vulnerability of the child(~~, vulnerable adult, or individual with mental illness or developmental disabilities~~) to which the employee will or may have unsupervised access; and
- (7) The relationship between the potentially disqualifying event and the duties of the employee.

## WSR 07-17-126

### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed August 20, 2007, 8:50 a.m., effective September 20, 2007]

Effective Date of Rule: September 20, 2007.

Purpose: The purpose of these amendments is to add language to the shared leave rules which is in line with HB 2281 which was passed during the 2007 legislative session. This bill addresses employees using shared leave if a state of emergency is declared and the employee has the needed skills to assist in responding to the emergency. This bill also adds language to the shared leave law that says before an employer returns any unused leave back to the donor(s) the employer must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-390, 357-31-445, and 357-31-405.

Statutory Authority for Adoption: Chapter 41.06 RCW.  
Adopted under notice filed as WSR 07-14-119 on July 3, 2007.

Changes Other than Editing from Proposed to Adopted Version: Language was added to WAC 357-31-390 (1)(c) to clarify that in order for shared leave to be approved for the purpose of volunteering during a declared emergency the governmental agency or nonprofit organization needs to approve the employee's offer of volunteer services.

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 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 3, Repealed 0.

Date Adopted: August 16, 2007.

Eva N. Santos  
Director

**AMENDATORY SECTION** (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

**WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?** An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature; ~~((ø))~~

(b) The employee has been called to service in the uniformed services~~(-)~~; or

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his/her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services.

(2) The illness, injury, impairment, condition, ~~((ø))~~ call to service, or emergency volunteer service has caused, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete his or her:

(a) Personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section~~(-)~~; or

(c) Personal holiday and accrued vacation leave if the employee qualifies under (1)(c) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

**AMENDATORY SECTION** (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

**WAC 357-31-445 What happens to leave that was donated under the state leave sharing program and was not used by the recipient?** (1) Any shared leave not used by the recipient during each incident/occurrence as determined by the employer must be returned to the donor(s).

If shared leave has been granted under WAC 357-31-390 (1)(a), before the employer makes a determination to return the unused leave to the donor(s) the employer must receive a from the affected employee's licensed physician or health care practitioner a statement verifying that the employee is released to return to work.

The remaining shared leave must be returned to the donors and reinstated to the respective donors' appropriate leave balances based on each employee's current salary rate at the time of the reversion. The shared leave returned must be returned in accordance with office of financial management policies.

(2) Unused shared leave may not be cashed out by a recipient.

**AMENDATORY SECTION** (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

**WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit?** (1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition before the employer approves or disapproves the request.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required absence before the employer approves or disapproves the request.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a nonprofit organization during a declared state of emergency.

**WSR 07-17-127**

**PERMANENT RULES**

**DEPARTMENT OF PERSONNEL**

[Filed August 20, 2007, 9:18 a.m., effective September 20, 2007]

Effective Date of Rule: September 20, 2007.

Purpose: This proposal amends WAC 357-13-025 to reflect the statutory language in RCW 41.06.152 and to better address agency requests for revisions or salary adjustments to the classification plan in accordance with HB 1671 which passed during the 2007 legislative session.

Citation of Existing Rules Affected by this Order: Amending WAC 357-13-025.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 07-14-120 on July 3, 2007.

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 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: August 16, 2007.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

**WAC 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan?** (1) The following three criteria must be met for the director to adopt revisions or salary adjustments to the classification plan:

(a) Implementation of the proposed revision or salary adjustment will result in net cost savings, increased efficiencies, or improved management of personnel or services;

(b) The office of financial management has reviewed the fiscal impact statement of the affected employer and concurs that the biennial cost of the revision or salary adjustment is absorbable within the employer's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia; and

(c) The revision or salary adjustment is due to one of the following causes, as defined by the director in the classification and pay guidelines:

~~((d) Documented recruitment or retention difficulties;))~~

(i) Documented recruitment or retention difficulties;

~~((+))~~(ii) Salary compression or inversion;

(iii) Classification plan maintenance;

~~((#))~~(iv) ((Increased)) Higher level duties and responsibilities; or

(v) Inequities.

~~((iii) Salary inequities caused by similar work assigned to different job classes with a salary disparity greater than 7.5%.)~~

(2) The provisions of subsection (1)(b) and (1)(c) of this section do not apply to the higher education hospital special pay plan or to any adjustments to the classification plan that are due to emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 07-17-128  
PERMANENT RULES**

**BOARD OF  
PILOTAGE COMMISSIONERS**

[Filed August 20, 2007, 9:19 a.m., effective September 20, 2007]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: 2007 legislative action modified RCW 88.16.090 to allow the board to set pilot license fees through rule making.

Purpose: Increasing the pilot license fees is necessary to fund the pilotage account for the administration of the Pilotage Act.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-070 Collection of fees.

Statutory Authority for Adoption: RCW 88.16.090.

Other Authority: RCW 88.16.035.

Adopted under notice filed as WSR 07-14-032 on June 26, 2007.

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 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: August 9, 2007.

Peggy Larson  
Administrator

AMENDATORY SECTION (Amending WSR 04-14-017, filed 6/28/04, effective 7/29/04)

**WAC 363-116-070 Collection of fees.** All pilots shall pay an annual license fee of ~~((three))~~ six thousand dollars for every year in which they perform any pilotage services. If a licensed pilot does not perform pilotage services during a license year, his/her fee for that year shall be reduced to ~~((five~~

hundred)) one thousand dollars upon application to the board. The board of pilotage commissioners shall receive all fees for licenses or for other purposes and make proper accounting of same and transmit all such funds to the pilotage account.

### WSR 07-17-129

#### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed August 20, 2007, 9:27 a.m., effective September 20, 2007]

Effective Date of Rule: September 20, 2007.

Purpose: This proposal creates WAC 357-31-327 to support SSB 5511 that was passed during the 2007 legislative session. This bill requires employers to grant leave without pay to employees who are volunteer fire fighters and are called to respond to a fire, natural disaster, or medical emergency.

Citation of Existing Rules Affected by this Order: Amending [new section] WAC 357-31-327.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 07-14-118 on July 3, 2007.

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 1, Amended 0, Repealed 0.

Number of Sections Adopted at 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 1, Amended 0, Repealed 0.

Date Adopted: August 16, 2007.

Eva N. Santos  
Director

#### NEW SECTION

**WAC 357-31-327 Must an employer grant leave without pay for other miscellaneous reasons?** An employer must grant leave without pay when an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency.

### WSR 07-17-132

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed August 20, 2007, 11:53 a.m., effective September 20, 2007]

Effective Date of Rule: September 20, 2007.

Purpose: The department has adopted a new rule, WAC 458-20-274 Staffing services. This rule recognizes the Washington supreme court's decision in *City of Tacoma v. William Rogers Company, Inc.*, 148 Wash.2d 169, 60 P.3d 79 (2002) and explains the application of business and occupation (B&O) tax, public utility tax (PUT); and the retail sales tax collection responsibilities of staffing businesses providing staffing services. This rule provides information consistent with the more exhaustive detailed "*Staffing Industry Tax Guide*," which is available via the department's internet web site at <http://dor.wa.gov/Content/DoingBusiness/BusinessTypes/Industry/default.aspx>.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 07-04-118 on February 7, 2007.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, 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 0, Repealed 0.

Date Adopted: August 20, 2007.

Janis P. Bianchi  
Assistant Director  
Interpretations and  
Technical Advice Division

#### NEW SECTION

#### **WAC 458-20-274 Staffing services. (1) Introduction.**

This rule explains the application of business and occupation (B&O) tax, public utility tax (PUT); and the retail sales tax collection responsibilities of staffing businesses providing staffing services.

(2) **To whom does this rule apply?** This rule applies to any person engaged in the business activity of providing staffing services. This section does not apply to persons providing professional employer services. Persons providing professional employer services should refer to RCW 82.04.-540 for information on their tax-reporting responsibilities.

(3) **What is the definition of a staffing business and staffing services?** A "staffing business" is a person engaged in the business activity of providing staffing services. "Staffing services" means services consisting of a person:

- Recruiting and hiring its own employees;
- Finding other organizations that need the services of those employees;
- Assigning those employees on a temporary basis to perform work at or services for the other organizations to sup-

port or supplement the other organizations' work forces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the customer; and

- Customarily attempting to reassign the employees to other organizations when they finish each assignment.

(4) **Generally, what kinds of business activities are workers assigned by a staffing business?** Business activities may include, but are not limited to, services rendered with respect to:

- Construction (both custom and speculative);
  - Customer software design and implementation;
  - Manufacturing and light industrial activities;
  - Professional services including medical and clerical;
- and
- Other skilled and unskilled labor.

(5) **Is the gross income received by a staffing business subject to Washington tax?** Yes, the gross income received by a staffing business is subject to B&O and/or PUT tax.

(6) **Is the tax paid by a staffing business or is the tax collected from the client to whom the workers are assigned?**

- B&O tax and/or PUT are paid by the staffing business.
- When the activity of the assigned worker is a retail sale, retail sales tax must be collected from the client unless a specific exemption or exclusion, such as the activity being a sale for resale, applies. The collected tax is paid by the staffing business to the department.

(7) **May a staffing business deduct payroll and other business expenses from gross income?**

- Chapters 82.04 and 82.16 RCW provide limited deductions from the B&O tax and PUT.
- The requirements of each specific deduction or exemption must be met to qualify for the deduction or exemption.
- Generally, amounts paid to the worker, amounts deducted for payroll taxes, or any other expenses paid or accrued may not be deducted by a staffing business.
- But income received for work performed outside the state may be deducted from gross income for B&O tax purposes. Similarly, an interstate haul is deducted from the PUT.

- Bad debts on which tax has been paid and which may be written off for federal tax purposes may be deducted from the gross income of both B&O and PUT.

- Exemptions, deductions and special tax rates that may apply to the client do not automatically also apply to the staffing business.

- **Example 1.**

- Under the Revenue Act, certain nonprofit hospitals may qualify for a B&O tax deduction for income received through Medicare.

- Also, nonprofit and public hospitals are taxable under a special B&O tax classification.

- However, because the staffing business does not meet the criteria for the B&O tax deduction for income received through Medicare or, for the B&O tax special nonprofit hospital classification, the income received by a staffing business from assigning physicians, nurses, or other health care work-

ers to the hospital is taxable under the service and other activities classification.

- **Example 2.**

- Similarly, the Revenue Act exempts from B&O tax income received by licensed adult family homes.

- However, the gross income received by a staffing business from assigning a health care worker to the adult family home is taxable under the service and other activities B&O tax classification.

(8) **What if an activity is not subject to sales tax because it is a sale for resale?**

- When a service that would otherwise be a retail sale is performed for a person that resells that service, such as construction work performed for a general contractor, sales tax is not collected when the staffing business receives a completed resale certificate from the client reselling the service.

- When a resale certificate is received, the staffing business must report such charges for the worker under the wholesaling B&O tax classification. (See WAC 458-20-102 for more information about resale certificates.)

(9) **What is the tax rate?**

- The B&O tax rate and/or the PUT rate is determined by the classification of the activity engaged in by the assigned worker.

- The retail sales tax rate is determined, generally, by the location of where the retail sale is performed. See WAC 458-20-145.

(10) **If the B&O tax rate is determined by the B&O tax classification, who determines or identifies the correct classification?**

- It is the responsibility of the staffing business to determine or identify the applicable B&O tax classification for the activity performed by the assigned worker.

- This determination should be made prior to dispatching the worker to the customer.

- It is important for the staffing business to know whether retail sales tax should be collected from the customer, or if a resale certificate exemption certificate or other documentation should be received from the customer as evidence of a sales tax exemption.

(11) **Is the proper B&O tax classification as reported by the staffing business always the same classification as reported by the client customer to whom the worker is assigned?**

- Regardless of the nature of the customer's business, the staffing business looks to the activity engaged in by the worker assigned.

- The staffing business should not assume that the income it receives through the activities of its workers is taxable under the same classification that the customer reports.

- It is the activity of each worker, not the reporting classification of the customer that determines the tax classification.

- **Example:**

- A person operating an insurance agency is taxable under the insurance agents B&O tax classification.

- If the staffing business assigns a receptionist for the insurance agency, the gross income received for the receptionist's services is subject to B&O tax under the service and other activities classification. The service classification

applies because the receptionist is not providing services under the authority of an insurance agent's license.

– However, if the staffing business assigns a worker licensed as an insurance agent to an insurance agency, and the licensed insurance agent performs services under the authority of his/her license, the related income is taxable under the insurance agents B&O tax classification.

**(12) What are the major B&O tax classifications?**

The major B&O tax classifications include:

- Retailing.
- Wholesaling.
- Manufacturing.
- Processing for hire.
- Service and other activities.
- Stevedoring.
- Travel agent activities.

**(13) Where can I get a description of the activities included in the major B&O tax classification? Where can I get a complete list of the B&O tax classifications and more information?**

• The department's *Staffing Industry Guide* provides detailed information on the staffing industry and includes a description of the activities included in the major B&O tax classifications. The *Staffing Industry Guide* is located on the department's web site <http://dor.wa.gov/>

• A complete list of the B&O tax classifications and more information about the B&O and PUT can be found on the department's web site <http://dor.wa.gov/>

**(14) What is the public utility tax (PUT)? What are the major classifications of PUT?**

• The public utility tax is a tax on gross receipts, similar to the B&O tax.

• It applies to most utility services, such as water, power, and gas distribution, and sewerage collection.

• It also applies to providing transportation of persons or property for hire within five miles of the city limits (urban transportation classification) and beyond (motor transportation classification).

– These classifications apply whether or not the person performing the work owns the vehicle with which the activity is being performed.

– Examples include taxi cab service, limousine service, and hauling goods belonging to others (hauling for hire).

**(15) How is income reported when the assigned worker is engaging in more than one activity?**

• An assigned worker provided by a staffing business to a client may engage in several different activities while on the same job.

• The different activities may be taxable under separate B&O tax and/or PUT classifications.

• If the staffing business separates the amounts it charges the client by activities, the separated charges are reported.

• If the staffing business does not separate its charge to the client the charge is reported under the classification of the predominant activity.

• "Predominant activity" for two worker activities is when more than fifty percent of the worker's time is spent working in one tax classified activity.

• "Predominant activity" for more than two worker activities is the activity the worker spends the greatest amount of time doing.

• When two or more workers, engaged in different activities, are assigned to one client, the charge for each worker is reported based on the predominant activity of each individual worker.

**• Example 1:**

– A staffing business assigns a housekeeper whose primary job is to clean an apartment (subject to the service and other activities B&O tax classification).

– The job also calls for the housekeeper to prepare one meal per day (subject to retailing B&O tax and retail sales tax).

– The majority (over half) of the time spent is associated with the housekeeping service (apartment cleaning - subject to the service and other activities B&O tax classification).

– No segregated charge is made for the preparation of the meal.

– In this case, the predominant activity is cleaning the apartment.

– Therefore, the gross income received by staffing business from the charge to the client is reportable under the service and other activities B&O tax classification. Retail sales tax will not apply.

**• Example 2:**

– A staffing business assigns a construction worker to a client that is a developer/property owner performing construction-related services (subject to retailing B&O tax and retail sales tax).

– The assigned worker has a commercial driver's license and is only occasionally required to drive the client's truck within the city to pick up a load of gravel (an activity subject to the urban transportation PUT classification).

– The worker also spends about one hour per day helping in the office.

– The predominant activity is the retailing activity of performing construction work because the greatest amount of time is spent performing retailing construction work.

– The staffing business has not segregated charge for the other lesser activities.

– In this case, the staffing business reports the gross amount charged to the client under the retailing B&O tax classification. Additionally, the staffing business must also collect from the client retail sales tax measured by the gross charge to the client.

**• Example 3:**

– Same facts as Example 2, except the staffing business also provides a receptionist to the client (developer/property owner).

– As demonstrated in Example 2, the staffing business is subject to the retailing B&O tax on the gross amount charged to the client for work done by the construction worker; and retail sales tax must be collected on this charge.

– However, the staffing business is subject to service and other activities B&O tax on the gross amount charged to the client for the receptionist's work. The service and other activities B&O tax classification is the proper classification notwithstanding the client reports under the retailing classification.

**(16) Is the staffing business required to keep documentation of the activities their assigned workers performed?**

- The staffing business must keep documentation showing what services their assigned workers performed.
- All available information should be recorded concurrently with the assignment of the worker and the charge for the service.
- It is important that the client's labor and skill requirements are detailed up front as much as possible prior to dispatch.
- This is particularly important for purposes of billing retail sales tax.
- Documentation may be in the form of a copy of a client order or other documented request by a client for a worker.
- The documentation must state the specific work to be performed, and/or the worker skills requested by the client.
- If the client's request comes in by telephone, the staffing business should ask exactly what type of services are required and write them down on an order form, or as a memo to the client's file.
- Also, the worker can provide a written explanation of the services actually performed.
- Documentation to support the B&O tax classification must be sufficiently detailed to support the classification reported.
- The classification of primary interest to the client is retailing. Only under retailing is the staffing company, as seller of the service, required to collect retail sales tax from the client.
- Any other classification which does not directly impact the client may be of less interest to the client. Nevertheless, because the rates may vary between classifications, it is in the person providing staffing service's best interest to gather enough information to classify all services correctly.
- If, subsequent to filing a return, it is later determined that income has been incorrectly classified, amended returns should be submitted to the department to make the appropriate adjustment.

**WSR 07-17-140**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 21, 2007, 8:15 a.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: The department is adopting changes to existing rules applicable to the retrospective rating program. Rule changes would better explain how retrospective rating adjustments are calculated and allow the department to use multiple loss development factors in adjustment calculations for non-pension claims. WAC 296-17-90402 and 296-17-90445 would be revised.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-90402 and 296-17-90445.

Statutory Authority for Adoption: RCW 51.18.010 and 51.16.035.

Adopted under notice filed as WSR 07-14-155 on July 5, 2007.

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 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 2, Repealed 0.

Date Adopted: August 21, 2007.

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 02-23-089, filed 11/20/02, effective 1/1/03)

**WAC 296-17-90402 Definitions.** To reduce misunderstandings that can result by our use of certain words or phrases, we have developed definitions that govern what these words or phrases will mean for retro purposes.

**Account:** An individual employer's industrial insurance account and related subaccounts, or in the case of a retro group it means the sponsoring organization's industrial insurance account.

**Account in good standing:** A phrase we use when an employer and/or sponsoring organization is current with all payments due L&I and in compliance with L&I laws, rules and regulations at the time of enrollment or reenrollment. For an account to be in good standing you must:

- Have an active L&I industrial insurance account.
- Submit all reports required by L&I when they were due.
- Pay all industrial insurance premium payments, assessments, penalties and interest when due.

**Note:** This requirement also includes the payment of other fees, fines, penalties and assessments established by the department such as safety violations and computer access fees. An account may be deemed to be in good standing if the employer or group (sponsoring organization) is current with an L&I approved written repayment agreement.

- Not participate in the activities described in WAC 296-17-90428 concerning the direct payment of medical services.

**Note:** Organizations that sponsor a group must also file the safety plan when applicable (WAC 296-17-90409) and the annual safety report required in WAC 296-17-90411 to be in good standing.

**Adjustment:** The process of calculating retrospective premium, and any resulting refund or assessment.

**Note:** For the first adjustment of a coverage period, retrospective premium is compared to the standard premium due. The difference will be refunded if the retrospective premium is lower than the standard premium due. You will be assessed

the difference if the retrospective premium is higher than the standard premium due. In subsequent adjustments of the coverage period, the new retrospective premium is com-

pared to the prior net retrospective premium to determine the amount of refund or assessment.

RETROSPECTIVE PREMIUM ADJUSTMENT FOR: PAGE 1

NOTTA-REAL COMPANY INC EG05

STATE OF WASHINGTON  
 DEPT OF LABOR AND INDUSTRIES  
 INSURANCE SERVICES  
 PROGRAM/SYSTEM A2522235

9999 MAIN ST NW  
 SAMSONVILLE, WA 98000

COVERAGE PERIOD	RETRO ID	ADJUSTMENT NUMBER	ADJUSTMENT DATE	RETROSPECTIVE RATING PLAN	MAXIMUM PREMIUM RATIO
07/01/99 - 06/30/00	999999	2	05/09/02	B	1.45

RETROSPECTIVE PREMIUM CALCULATION

BASIC PREMIUM RATIO	.000	X	STANDARD PREMIUM DUE	204,602		
		PLUS				
LOSS CONVERSION FACTOR	.983	X	TOTAL INCURRED LOSSES (DEVELOPED)	96,334	EQUALS	INDICATED RETROSPECTIVE PREMIUM 94,696
MAXIMUM PREMIUM RATIO	1.45	X	STANDARD PREMIUM DUE	204,602	EQUALS	MAXIMUM PREMIUM 296,673
						≥ 301,804 DEVELOPED LOSSES
MINIMUM PREMIUM RATIO	.000	X	STANDARD PREMIUM DUE	204,602	EQUALS	MINIMUM PREMIUM 0
						≤ 0 DEVELOPED LOSSES
BREAK-EVEN DEVELOPED LOSSES = 208,140						RETROSPECTIVE PREMIUM 94,696

ADDITIONAL PREMIUM OR REFUND CALCULATION

PRIOR RETROSPECTIVE PREMIUM PAID	135,979	-	RETROSPECTIVE PREMIUM	94,696	EQUALS	OR	ADDITIONAL PREMIUM DUE	0
							PREMIUM REFUND	41,283

PRIOR ADJUSTMENTS

ADJ NO	EMPLOYER MEMBERS	SIZE GROUP	STANDARD PREMIUM DUE	TOTAL INCURRED LOSSES (DEVELOPED)	RETRO PREMIUM	REFUND AMOUNT	ADDITIONAL PREMIUM DUE	ADDITIONAL PREMIUM PAID
1.00	2	26	204,602	138,331	135,979	68,623	0	0

**Basic premium ratio (BPR):** A component of the retrospective rating premium formula. The BPR represents a charge for administrative costs (except claims handling) and an insurance charge that covers the cost of having retrospective premium limited by the selected maximum premium ratio.

**Case reserve:** L&I's estimate of the cost associated with a specific claim.

**Coverage period:** A twelve-month period beginning January 1 and ending December 31, or April 1 through March 31, or July 1 through June 30, or October 1 through September 30. Only claims with a date-of-injury within the selected coverage period and the standard premium due for the same coverage period are used to calculate retrospective premium. Effective with the October 1, 2000, coverage period and all subsequent coverage periods thereafter, each coverage period

will have three mandatory adjustments and no optional adjustments. The first adjustment will occur nine months after the coverage period has ended. Each subsequent valuation will take place in twelve-month intervals.

**Note:** The coverage period for a retro group is selected by the sponsoring organization and the coverage period of an individual enrollment is selected by the employer.

**Date of enrollment or reenrollment:** A phrase used by L&I to establish when participation in retro begins. The date of enrollment or reenrollment is the first day of the coverage period.

**Note:** A sponsoring organization can add new group members each quarter during the coverage period. We refer to this as "staggered enrollment." Employers seeking to participate in an organization's group after the coverage period has begun must meet all of the application requirements found in WAC 296-17-90413. Staggered enrollment applications must be received in our Tumwater office by the 15th calendar day of the month prior to the selected quarter (i.e., December 15 for January 1; March 15 for April 1; June 15 for July 1; or September 15 for October 1). If the due date falls on a weekend or holiday, the application will be due on the next business day. Employers that participate in a retro group on a staggered enrollment basis are required to participate for the remainder of the coverage period unless they sell or close the enrolled business or become self-insured.

**Developed losses, a.k.a. total incurred losses (developed):** A component of the retrospective rating premium formula determined on each valuation date. Developed losses are determined by summing up the result of multiplying the incurred losses by the applicable pure loss development factors and then by the performance adjustment factor. ~~((Based on historical trends we know that the total incurred losses for claims in a coverage period tend to increase over time. This can be the result of claim reopenings, changes in time loss duration, increased medical utilization, etc. The developed losses computation anticipates and distributes these increases among all the participants in a coverage period.~~

**Note:** ~~Developed losses for pension claims are determined by multiplying their incurred losses by the applicable performance adjustment factor. For nonpension claims, developed losses are determined by multiplying their incurred losses by the applicable loss development factors.)~~

**Freeze date:** See valuation date.

**Group:** Employer members of an organization who have agreed to have their retrospective premium calculated using the combined applicable standard premium and related developed loss data of the participants as a whole.

**Homogeneity:** A word used to convey the requirement that retro groups be made up of like businesses.

**Incurred losses:** A cost measure of a claim. For open claims, incurred losses are the total of costs paid-to-date which have been assigned to a given employer account, or the case reserve established by the department, whichever is greater. For closed claims, incurred losses are the total of costs paid-to-date which have been assigned to a given employer account, regardless of any case reserve that may have been established.

**Loss conversion factor (LCF):** A component of the retrospective premium formula, the LCF represents an expense

charge for claims handling and the present value of developed losses.

**Note:** LCF can be found in WAC 296-17-90493 through 296-17-90497.

**Loss development factor (LDF):** ~~((These are actuarially determined factors that are multiplied by incurred losses of nonpension retro claims to produce developed losses. LDFs are unique to each coverage period, but are the same for every nonpension retro claim in the coverage period.~~

**Note:** ~~LDFs are periodically recalculated. LDFs shown on retro reports have already been adjusted by the applicable performance adjustment factor.)~~

For each coverage period and valuation date, the department calculates accident and medical aid loss development factors by type of claim. Each loss development factor is calculated by multiplying the pure loss development factor by the performance adjustment factor for the same coverage period and valuation date.

**Loss ratio:** The numerical result of dividing developed losses by standard premium.

**Note:** The retrospective premium calculation will generate a net refund if the basic premium ratio (BPR) + (Loss Ratio x the Loss conversion factor (LCF)) is less than 1. The BPR and LCF are determined by the plan selected by the individual enrollee, or in the case of a group by the sponsoring organization and the premium size of the individual enrollee or the group. Once these have been selected the retro group can only influence the loss ratio to determine the amount of refund. L&I suggests an evaluation of each claim to determine if there are trends and patterns and that the sponsoring organization implement workplace safety measures to eliminate or reduce loss regardless of the loss ratio.

**Maximum premium ratio (MPR):** A factor preselected by the organization (group) or individually enrolled employer. The MPR is multiplied by the standard premium (SP) to determine the maximum retrospective premium requirement for a given coverage period.

**Note:** MPRs can be found in WAC 296-17-90493 through 296-17-90497.

**Member of a group:** These are the individual employers that participate in a group plan of a sponsoring organization.

**Minimum premium ratio (MnPR):** An actuarially determined factor applicable to plans A1, A2 and A3. The MnPR is multiplied by the standard premium (SP) to determine the minimum retrospective premium requirement for a given coverage period.

**Note:** MnPRs can be found in WAC 296-17-90494 through 296-17-90496.

**Pension claim:** A claim designated as a fatality or total permanent disability.

**Performance adjustment factor (PAF):** An actuarially determined factor unique to each retro coverage period that ensures that aggregate refunds reflect the relative performance of retro versus nonretro state fund employers.

**Plan:** A numeric table developed by L&I used to calculate the retrospective premium requirement of a group or individually enrolled employer.

**Note:** A group or individually enrolled employer preselects from one of five plans (A, A1, A2, A3 or B). The selected plan (along with the MPR and standard premium volume) determines the minimum premium, basic premium and the loss conversion factor that is applied to the developed losses used in the retrospective premium calculation.

**Premium:** Money paid (due) from an employer for workers' compensation insurance. It does not include money paid as fees, fines, penalties or deposits.

**Pure developed loss:** The pure developed loss amount is determined by summing up the result of multiplying the incurred losses by the applicable pure loss development factors. This amount is used when pure developed loss amounts from a single accident are capped at a predetermined loss limitation amount.

**Pure loss development factor (pure LDF):** For each coverage period and valuation date, the department calculates accident and medical aid pure loss development factors by type of claim. Based on historical trends we know that the total incurred losses for claims in a coverage period tend to increase over time. This can be the result of claim reopenings and other changes in the condition of a claim. These factors anticipate and distribute these increases among all the claims in a coverage period. For enrollments during 2007 and prior, the department will only consider pension and nonpension claim types. For enrollments starting during 2008 and afterwards, the department will consider fatality, total permanent disability, permanent partial disability, time loss, miscellaneous accident fund and medical only types of claims.

**Qualified employer:** A phrase used by L&I to describe an employer that has an industrial insurance account and that the account is in good standing at the time of enrollment or reenrollment.

**Retrospective premium:** The net premium for a group or individually enrolled employer after an adjustment for a given coverage period. The retrospective premium is determined using the formulas and provisions found in WAC 296-17-90446.

**Standard premium:** A phrase used by L&I to denote the total accident fund and medical aid fund premiums paid (due) by a group or individually enrolled employer for a given coverage period.

**Note:** The supplemental pension assessment portion of total premiums due (paid) is not included. If the group includes employers subject to the staggered enrollment provision of the retro rules, the standard premium is the total accident fund and medical aid fund premiums due (paid) for the calendar months in which they have been accepted into a group.

**Type of claim:** The following claims are defined as follows in order of the severity of the claim:

**Fatality:** Any claim, which is not a total permanent disability claim, where death either results or is expected to result from the work related injury or illness.

**Total permanent disability:** Any claim where a total permanent disability pension has been awarded or is expected to be awarded.

**Permanent partial disability:** Any claim, which is not a pension claim, where a permanent partial disability award either has been awarded or is expected to be awarded.

**Time loss:** Any claim, which is not a pension nor a permanent partial disability claim, where time loss or loss of earning power benefits have either been awarded or are expected to be awarded.

**Miscellaneous accident fund:** Any claim, which is not a pension, permanent partial disability, nor time loss claim, to which other miscellaneous benefits have been awarded or are expected to be awarded from the accident fund.

**Medical only:** Any claim where the only insurance benefits awarded or expected to be awarded to the claim are medical aid fund benefits.

**Valuation date:** The date selected by L&I in which incurred losses for applicable claims are measured and captured for the purpose of calculating retrospective premium.

**Note:** Changes in incurred losses that occur after the valuation date will not be considered until the next applicable valuation date. The first valuation date is nine months after the coverage period ends. All subsequent valuations will occur in twelve-month intervals.

**AMENDATORY SECTION** (Amending WSR 02-23-089, filed 11/20/02, effective 1/1/03)

#### **WAC 296-17-90445 Valuation of coverage period.**

##### **Our responsibility:**

- Nine months after the coverage period has ended, we will do an initial valuation of the losses for each employer and group participating in retrospective rating.

**Note:** Effective with the October 1, 2000, coverage period and all subsequent coverage periods thereafter, each retrospective rating plan has three mandatory valuations and no optional valuations. The first valuation takes place roughly nine months from the last day of the coverage period. Each subsequent valuation will occur at twelve-month intervals from the initial evaluation date.

**Example:** Assume that your coverage period began July 1, 2001, and ended June 30, 2002 (twelve calendar months). Our first valuation date would occur the end of March 2003. This is roughly nine months from the last day of the coverage period.

- On the valuation date, all claims with injury dates that fall within the coverage period are valued and the incurred losses that have been established for these claims are "captured" or "frozen."

**Note:** Our valuation is limited to the open or closed status of a claim on the evaluation date. We do not consider adjudicative decisions (i.e., claim allowance, case reserve, wage determination and dependent status) surrounding a claim in our valuation.

- During the adjustment process we convert the captured incurred loss of each claim into developed losses using the appropriate loss development and performance adjustment factors. Retrospective premium is then calculated using the applicable formulas and tables in the retrospective rating manual.

- Prior to the application of the performance adjustment factor, we will cap the pure developed loss value for any one claim or group of claims arising from a single accident that has collective pure developed losses in excess of five hundred thousand dollars at a maximum of five hundred thousand dollars.

- Since the standard premium used in the retro calculation is based on premiums reported but not necessarily paid, we will deduct from the standard premium calculation any unpaid member premiums.

**Note:** A sponsoring organization and L&I can enter into an agreement for an alternate debt recovery method.

- Approximately twenty days after the valuation date, if entitled, we will send you your premium refund.

**Note:** If you participate in an individual plan or retro group, we will not issue a refund check if it is less than ten dollars. If a refund is less than ten dollars, we will credit the amount to your industrial insurance account and you can deduct the amount from your next premium payment. All retro group refunds are paid directly to the sponsoring organization. It is the responsibility of the sponsoring organization to distribute any refund to the group members. L&I does not regulate how refunds are distributed to group members. Employers that participate in retro are not required to share any of their retro refund with employees nor can they charge employees in the event of an additional assessment.

- We will send you a bill if you owe us additional premium.

**Note:** If you owe additional premium, it is due thirty days after we communicate the decision to you. We will charge penalties on any additional premium not paid when it is due (RCW 51.48.210). If you (employer in an individual plan or sponsoring organization of a retro group) are entitled to a refund for one coverage period and owe additional premiums for another coverage period, we will deduct the additional premiums due L&I from the refund. We will refund the difference to you. In the event that this adjustment still leaves a premium balance due, we will send you a bill for the balance. If an organization sponsors multiple retro groups and one group earns a refund and the other owes additional premium from a retro adjustment, we will deduct the additional premium from the refund due and issue a net refund to the organization for the difference or bill them for the remaining additional premium as applicable.

## WSR 07-17-145

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed August 21, 2007, 8:37 a.m., effective September 21, 2007]

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

Purpose: To align the WACs covering brief adjudicative proceedings with WAC 308-08-525 which are authorized by chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-29-100; and amending WAC 308-29-090, 308-29-110, and 308-29-120.

Statutory Authority for Adoption: RCW 19.16.410.

Adopted under notice filed as WSR 07-07-115 on March 20, 2007.

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 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 1, Amended 2, Repealed 1.

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: August 16, 2007.

Nancy Skewis  
Administrator

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

**WAC 308-29-090 ((Application of) Brief adjudicative proceedings—When they can be used.** (1) The board adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted ((by request of an applicant or licensee, or)) at the discretion of the board ((chair pursuant to RCW 34.05.482, for the categories of matters set out below)). Brief adjudicative proceedings ((may be conducted where the matter is limited solely to one or more of the following issues:

(1) Whether an applicant for licensure meets the minimum criteria for a license to practice as a collection agency, out of state collection agency, or collection agency branch office in this state and the board proposes to deny the application;

(2) Whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the board;

(3) Whether a license holder requesting renewal has submitted all required information and meets minimum criteria for renewal; and

(4) Whether a license holder meets the surety bond requirements to maintain their license and the board proposes to terminate the license)) can be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act. Brief adjudicative proceedings can also be used whenever the statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of any statute or rule that specifically governs disciplinary actions within a profession for which the applicant seeks a license or from which the licensee holds a license.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant or licensee has satisfied financial security requirements by providing adequate proof of

surety bonds or other proof of financial security, as required by law:

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts:

(d) Whether an applicant meets minimum requirements for an initial or renewal application:

(e) Whether an applicant or licensee failed to cooperate in an investigation by the board:

(f) Whether an applicant or licensee was convicted of a crime that should disqualify the applicant or licensee from holding the specific license sought or held:

(g) Whether an applicant or licensee has defaulted on education loans:

(h) Whether an applicant or licensee has violated the terms of a final order issued by the board:

(i) Whether a licensee has committed recordkeeping violations:

(j) Whether a licensee has committed trust account violations:

(k) Whether an applicant or licensee has engaged in false, deceptive, or misleading advertising; or

(l) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (1) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

**WAC 308-29-110 Conduct of brief adjudicative proceedings.** ~~((+))~~ Brief adjudicative proceedings shall be conducted by a presiding officer designated by the board. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

~~((2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.~~

~~(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.~~

~~(4) No witnesses may appear to testify.~~

~~(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.~~

~~(6) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.~~)

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

**WAC 308-29-120 Appeal process for brief adjudicative proceedings.** If you do not receive satisfaction from the brief adjudicative proceeding, you may appeal to the board for an administrative review. The board must receive your written appeal within twenty-one days after the brief adjudicative proceeding order is posted in the United States mail. The board considers your appeal and either upholds or overrules the brief adjudicative proceeding decision. The board's decision, also called an order, is mailed to you. This section does not apply to brief adjudicative proceedings conducted by the board through WAC 308-29-090(2).

NEW SECTION

**WAC 308-29-130 Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings.** (1) At least five days before the scheduled brief adjudicative proceeding, any party to the proceeding, including the board, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that a matter be converted to a formal adjudicative hearing. Upon receiving a timely written objection, the presiding officer shall determine whether the matter should be converted. Regardless of whether any party files a timely objection, the presiding officer may convert any brief adjudicative proceeding to a formal adjudicative hearing whenever it appears that a brief adjudicative proceeding is insufficient to determine the issues pending before the board.

(2) In determining whether to convert a proceeding, the presiding officer may consider the following factors:

(a) Whether witness testimony will aid the presiding officer in resolving contested issues of fact;

(b) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;

(c) Whether a brief adjudicative proceeding will establish an adequate record for further board or judicial review;

(d) Whether the legal issues involved in the proceeding present questions of legal significance or are being raised for the first time before the board;

(e) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and

(f) Any other factors that the presiding officer deems relevant in reaching a determination.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-29-100

Preliminary record in brief adjudicative proceedings.

**WSR 07-17-148  
PERMANENT RULES  
BOARD OF**

**PILOTAGE COMMISSIONERS**

[Filed August 21, 2007, 8:53 a.m., effective September 21, 2007]

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

Purpose: To modify the procedure for lifting pilot license limitations for a Grays Harbor pilot, during his/her second license year. It is intended to separate the two types of required vessel upgrade trips so that as each requirement is fulfilled the appropriate limitation is lifted independently of the other.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-082 Limitations on new pilots.

Statutory Authority for Adoption: RCW 88.16.105.

Other Authority: RCW 88.16.035.

Adopted under notice filed as WSR 07-13-092 on June 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: One housekeeping change was made to replace the term "propane" with "liquefied petroleum."

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 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: August 9, 2007.

Peggy Larson  
Administrator

AMENDATORY SECTION (Amending WSR 05-18-021, filed 8/29/05, effective 10/1/05)

**WAC 363-116-082 Limitations on new pilots.** (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during his/her first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and ~~((propane))~~ liquefied petroleum gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - license limitation periods. Except for trips being made for pilot license upgrades,

licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	30,000 GT (ITC) or 660 feet except for passenger vessels which may only have a maximum size of 5000 GT (ITC)
2	30,000 GT (ITC)	38,000 GT (ITC)
3	38,000 GT (ITC)	48,000 GT (ITC)
4	45,000 GT (ITC)	60,000 GT (ITC)
5	55,000 GT (ITC)	75,000 GT (ITC)

(3) Puget Sound pilotage district - pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of eight trips to be made by each pilot in the last one hundred twenty days of each year of the license limitation periods specified in subsection (2) of this section, except that pilots whose license anniversary date is less than one hundred twenty days after the effective date of this section shall only be required to make three such trips prior to the first license anniversary subsequent to the effective date of this section. As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, or between the pilot station and a port. The supervising pilots shall complete and submit to the board an evaluation form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - license limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	25,000 GT (ITC) except that piloting on vessels of any size is prohibited through the Chehalis River Bridge unless vessel is in ballast and does not exceed 25,000 GT (ITC)
2	10,000 GT (ITC)	30,000 GT (ITC)
3	45,000 GT (ITC)	45,000 GT (ITC)
4	60,000 GT (ITC)	60,000 GT (ITC)
5	75,000 GT (ITC)	75,000 GT (ITC)

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - pilot license upgrade requirements.

(a) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River bridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of 25,000 GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make (~~three~~) two license upgrade trips on tank vessels in excess of 10,000 GT (ITC) and one trip on a vessel(§) in excess of 30,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the one upgrade trip upon a vessel in excess of 30,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make three license upgrade trips on vessels in excess of 45,000 GT (ITC) or on the nearest larger size vessels available. Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on vessels in excess of 60,000 GT (ITC) or on the nearest larger size vessels available.

(e) Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on vessels in excess of 75,000 GT (ITC) or on the nearest larger size vessels available.

(f) Notwithstanding (c), (d), and/or (e) of this subsection not being accomplished due to unavailability of vessels, in the sixth license year a pilot will be issued a license without limitations.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he/she shall notify the board and request a revised schedule of limitations.

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license.

On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that he/she has completed all the required license upgrade trips and the vessel simulator courses.

## WSR 07-17-152

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 21, 2007, 11:19 a.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: The department is proposing these amendments and new text to change transfer of asset rules for clients found eligible for long-term care (LTC) services. This change is due to the 2005 federal Deficit Reduction Act (DRA). The new WAC section is entitled, WAC 388-513-1363 Evaluating the transfer of an asset for clients found eligible for LTC services on or after May 1, 2006. The department is also updating WAC 388-513-1330 to include a reference to WAC 388-513-1363 and 388-513-1364. When effective, these permanent rules supersede emergency rules filed as WSR 07-17-061.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-513-1330.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575.

Other Authority: 2005 federal Deficit Reduction Act (DRA), Public Law 109-171.

Adopted under notice filed as WSR 07-14-019 on June 22, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, 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 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 1, Amended 1, Repealed 0.

Date Adopted: August 13, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

**WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services.** This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) ~~WAC ((388-450-0005(3), Income Ownership and availability and WAC 388-475-0200,))~~ 388-475-0600 Definition of income SSI-related medical;

(b) ~~WAC ((388-450-0085, Self-employment income—Allowable expenses))~~ 388-475-0650 Available income;

(c) ~~WAC ((388-450-0210 (4)(b) and (e), Countable income for medical programs, and WAC 388-475-0750, SSI-related medical—Countable unearned income))~~ 388-475-7000 Income eligibility;

(d) WAC 388-475-0750 Countable unearned income;

(e) WAC 388-475-0840(3) Self employment income—allowance expenses;

(f) ~~WAC 388-506-0620, SSI-related medical clients; and ((e))~~ (g) WAC 388-513-1315 (15) and (16), Eligibility for long-term care (institutional, waiver, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

(a) Income received in the client's name;

(b) Income paid to a representative on the client's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a fair hearing.

(4) For the determination of eligibility only, if available income described in subsections (2)(a) through (d) minus income exclusions described in WAC 388-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; and

(c) Considers one-half of all community income available to the institutionalized client.

(5) If both spouses are either applying or approved for LTC services, then:

(a) The department allocates one-half of all community income described in subsection (4) to each spouse; and

(b) Adds the separate income of each spouse respectively to determine available income for each of them.

(6) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(7) The department considers income not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the income to:

(a) The spouse; or

(b) A trust for the benefit of the spouse.

(8) The department evaluates the transfer of a resource described in subsection (6) according to WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366 to determine whether a penalty period of ineligibility is required.

#### NEW SECTION

**WAC 388-513-1363 Evaluating the transfer of assets on or after May 1, 2006 for persons applying for or receiving long-term care (LTC) services.** This section describes how the department evaluates asset transfers made on or after May 1, 2006 and their affect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institution equivalent to nursing facility services, and home and community-based services furnished under a waiver program. Program of all-inclusive care of the elderly (PACE) and hospice services are not subject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period.

- Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006.

- Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.

(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006 on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(2) The department does not apply a penalty period to transfers meeting the following conditions:

(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month;

(b) The transfer is an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in subsection (2)(d);

(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.

(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing

evidence must be presented regarding the specific purpose of the transfer.

(iii) All assets transferred for less than fair market value have been returned to the client.

(iv) The denial of eligibility would result in an undue hardship as described in WAC 388-513-1367.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 388-475-0050 (1)(c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the individual to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 388-475-0050 (1)(c);

(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC 388-475-0050 (1)(c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) as the transfer of an asset without adequate consideration.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the individual is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application for LTC services or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following ten-day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services;

(a) We divide the penalty between the two spouses.

(b) If one spouse is no longer subject to a penalty (e.g. the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices-Obtaining assistance-Disposal of realty;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

**WSR 07-17-159**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed August 21, 2007, 3:11 p.m., effective September 21, 2007]

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

Purpose: This rule will equitably assess the costs associated with commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment will follow the annual redistribution formula which is based on the number of tests done in the previous year. This testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck, and ensures toxic shellfish do not reach consumers.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 07-12-052 on June 1, 2007.

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 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: August 21, 2007.

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 06-15-131, filed 7/19/06, effective 8/19/06)

**WAC 246-282-990 Fees.** (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$250
Shellstock Shipper	
0 - 49 Acres	\$282
50 or greater Acres	\$452
Scallop Shellstock Shipper	\$282
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$514
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$622
Plants with floor space > 5000 sq. ft.	\$1,147

(2) The fee for each export certificate is \$10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

**Fee Category**

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		
Shucker-Packer	≤ 2	\$354
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$533
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	≤ 2	\$429
(plants 2000 - 5000 ft <sup>2</sup> )		

**Fee Category**

Type of Operation	Number of Harvest Sites	Fee
Shucker-Packer (plants 2000 - 5000 ft <sup>2</sup> )	3 or more	\$644
Shucker-Packer (plants > 5000 ft <sup>2</sup> )	N/A	\$1,189

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shell-stock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	<del>\$(40,132))</del> <u>13,201</u>
Jamestown S'Klallam Tribe	<del>\$(4,193))</del> <u>3,030</u>
Lower Elwah Klallam Tribe	<del>\$(5,241))</del> <u>7,358</u>
<u>Lummi Nation</u>	<u>\$216</u>
Nisqually Indian Tribe	<del>\$(3,494))</del> <u>3,463</u>
Port Gamble S'Klallam Tribe	<del>\$(6,639))</del> <u>4,978</u>
Puyallup Tribe of Indians	<del>\$(5,940))</del> <u>5,194</u>
Skokomish Indian Tribe	<del>\$(5,241))</del> <u>0</u>
Squaxin Island Tribe	<del>\$(5,416))</del> <u>6,276</u>
Suquamish Tribe	<del>\$(41,880))</del> <u>10,604</u>
Swinomish Tribe	<del>\$(873))</del> <u>1,299</u>
Tulalip Tribe	<del>\$(2,620))</del> <u>1,299</u>
Discovery Bay Shellfish	<del>\$(1,048))</del> <u>1,082</u>

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 07-17-162  
PERMANENT RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed August 22, 2007, 7:37 a.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: Workers' compensation self insurance rules and regulations, chapter 296-15 WAC. This chapter governs employers who are permitted to self-insure their workers' compensation obligation pursuant to Title 51 RCW. This filing modifies WAC 296-15-360 to implement a continuing education curriculum in conjunction with the current requirements for recertification of department-approved claims administrators.

Citation of Existing Rules Affected by this Order: Amending WAC 296-15-360 Qualifications of personnel.

Statutory Authority for Adoption: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095.

Adopted under notice filed as WSR 07-09-095 on April 17, 2007.

A final cost-benefit analysis is available by contacting Melissa Ford Shah, P.O. Box 44320, Olympia, WA 98504-4320, phone (360) 902-5122, fax (360) 902-4249, e-mail shaz235@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 Request of a Nongovernmental Entity: New 0, 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 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: August 22, 2007.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

**WAC 296-15-360 Qualifications of personnel. (1) How does an individual initially become a department-approved claims administrator?**

**((+)) In order to become a department-approved claims administrator, an individual must first have a minimum of three years of experience in the administration of time loss claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to the filing of the application.**

An individual must then take and pass the department's "self-insurance claims administrator" test ~~((to be accepted as a department-approved claims administrator. In order to be~~

admitted to take this test, an individual must meet the following requirements:

~~((a))~~ After passing the test, an individual is designated a department-approved claims administrator. The initial designation of department-approved claims administrator is valid for five years.

**(2) How does an applicant receive approval to take the test?** To be approved to take the "self-insurance claims administration" test, an applicant must submit a completed application form to the department (Form F207-177-000). The application must be received by the department no less than forty-five days prior to the scheduled ~~((examination))~~ test date.

~~((b) Have a minimum of three years of experience in the administration of time loss claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to the filing of the application.)~~

The department will review the application and determine if the applicant meets the minimum requirements to take the ~~((examination))~~ test. Notification of approval to take the test will be mailed to the applicant no less than fourteen days prior to the scheduled ~~((examination))~~ test date.

~~((#))~~ **(3) What happens when an applicant fails the test?** When an applicant fails the ~~((examination, he or she must submit another completed application requesting))~~ test, the applicant must reapply to take the ~~((examination))~~ test again. An applicant ~~((must wait))~~ will not be permitted to retake the test until six months have passed after ~~((#))~~ the failed result ~~((before retaking the examination))~~.

~~((2) The designation of department-approved claims administrator is valid for five years or until an individual retakes the examination, whichever occurs first.)~~ The most recent ~~((examination))~~ test results will ~~((always reflect))~~ determine an individual's status as a claims administrator. ~~((To maintain approved status, an individual must:~~

~~((a) Make application))~~ **(4) How does a department-approved administrator maintain their approved status beyond the initial five-year designation?** An administrator may maintain approved status by:

(a) Retaking and passing the "self-insurance claims administrator" test as outlined in subsection (1) of this section; ~~((and))~~ or

(b) ~~((Pass the "self-insurance claims administrator" examination again.))~~ Providing documentation to the department that the individual has remained employed for a minimum of three of the last five years in the administration of, or the oversight of, claims under Title 51 RCW, and meeting the continuing education criteria.

To meet continuing education criteria, the administrator must submit verification to the department that a minimum of seventy-five credits have been obtained prior to lapse of the approved status. Extensions will not be granted.

Credits must be earned in the following categories:

- (i) Twenty claims process/procedure credits;
- (ii) Twenty legal credits;
- (iii) Twenty medical credits;
- (iv) Two ethics credits; and
- (v) Thirteen elective credits (e.g., industry-specific training).

The seventy-five credits must include any training designated as mandatory by the department. If an administrator fails to complete sufficient continuing education credits, he or she will be required to retake the written test.

Assignment of course credit will be determined by the department review committee.

(c) Individuals whose department-approved status expires between October 1, 2008, and September 30, 2012, and who exercise the continuing education option in lieu of retaking the test, must meet the following modified requirements. If the individual's certification expiration date falls between:

(i) 10/1/2008 - 3/31/2009: Earn a minimum of thirty credits (eight process/procedure credits, eight legal credits, eight medical credits, one ethics credit, and five elective credits);

(ii) 4/1/2009 - 9/30/2009: Earn a minimum of thirty-five credits (ten process/procedure credits, ten legal credits, ten medical credits, one ethics credit, and four elective credits);

(iii) 10/1/2009 - 3/31/2010: Earn a minimum of forty credits (eleven process/procedure credits, eleven legal credits, eleven medical credits, one ethics credit, and six elective credits);

(iv) 4/1/2010 - 9/30/2010: Earn a minimum of forty-five credits (twelve process/procedure credits, twelve legal credits, twelve medical credits, two ethics credits, and seven elective credits);

(v) 10/1/2010 - 3/31/2011: Earn a minimum of fifty credits (fourteen process/procedure credits, fourteen legal credits, thirteen medical credits, two ethics credits, and seven elective credits);

(vi) 4/1/2011 - 9/30/2011: Earn a minimum of fifty-five credits (fifteen process/procedure credits, fifteen legal credits, fifteen medical credits, two ethics credits, and eight elective credits);

(vii) 10/1/2011 - 3/31/2012: Earn a minimum of sixty credits (sixteen process/procedure credits, sixteen legal credits, sixteen medical credits, two ethics credits, and ten elective credits);

(viii) 4/1/2012 - 9/30/2012: Earn a minimum of sixty-five credits (eighteen process/procedure credits, eighteen legal credits, eighteen medical credits, two ethics credits, and nine elective credits).

**(5) How does an approved administrator report earned continuing education credit to the department?** Each department-approved administrator must track and report earned credits at the department's online data base. The approved administrator must obtain and retain signed verification of courses attended. Verification of earned credits must be received by the department by the date the approved administrator's certification expires. Extensions will not be granted.

The department may audit the reported credits of any approved administrator at random, or "for cause." Falsification of reported credits will result in revocation of the individual's approved administrator status, and may result in the department's refusal of future applications to take the self-insurance claims administrator test.

(6) The department-approved claims administrator ~~((is responsible for notifying))~~ must notify the department within

thirty calendar days of the effective date of ((any)) a change((s)) in ((his or her)) mailing address, work location, or ((employment status)) name.

**WSR 07-17-167**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 22, 2007, 7:51 a.m., effective September 22, 2007]

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

Purpose: To incorporate amendments to RCW 69.41.190 created by SSB 5838 (chapter 233, Laws of 2006).

Citation of Existing Rules Affected by this Order: Amending WAC 296-20-01002 Definitions—Refill and 296-20-03011(4) Evidence-based prescription drug program.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Adopted under notice filed as WSR 07-13-091 on June 19, 2007.

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 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: August 22, 2007.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

**WAC 296-20-01002 Definitions. Acceptance, accepted condition:** Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).

**Appointing authority:** For the evidence-based prescription drug program of the participating agencies in the state purchased health care programs, appointing authority shall mean the following persons acting jointly: The administrator of the health care authority, the secretary of the

department of social and health services, and the director of the department of labor and industries.

**Attendant care:** Those proper and necessary personal care services provided to maintain the worker in his or her residence. Refer to WAC 296-20-303 for more information.

**Attending doctor report:** This type of report may also be referred to as a "60 day" or "special" report. The following information must be included in this type of report. Also, additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including ICD-9-CM codes and the objective and subjective findings.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending doctor should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker has not returned to work, a doctor's estimate of physical capacities should be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

**Authorization:** Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

**Average wholesale price (AWP):** A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

**Baseline price (BLP):** Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

**Bundled codes:** When a bundled code is covered, payment for them is subsumed by the payment for the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in

the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

**By report:** BR (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

- (1) Diagnosis;
- (2) Size, location and number of lesion(s) or procedure(s) where appropriate;
- (3) Surgical procedure(s) and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;
- (5) Estimated follow-up;
- (6) Operative time;
- (7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

**Chart notes:** This type of documentation may also be referred to as "office" or "progress" notes. Providers must maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include, but are not limited to:

- (1) Date(s) of service;
- (2) Patient's name and date of birth;
- (3) Claim number;
- (4) Name and title of the person performing the service;
- (5) Chief complaint or reason for each visit;
- (6) Pertinent medical history;
- (7) Pertinent findings on examination;
- (8) Medications and/or equipment/supplies prescribed or provided;
- (9) Description of treatment (when applicable);
- (10) Recommendations for additional treatments, procedures, or consultations;
- (11) X rays, tests, and results; and
- (12) Plan of treatment/care/outcome.

**Consultation examination report:** The following information must be included in this type of report. Additional information may be requested by the department as needed.

- (1) A detailed history to establish:
  - (a) The type and severity of the industrial injury or occupational disease.
  - (b) The patient's previous physical and mental health.

(c) Any social and emotional factors which may effect recovery.

(2) A comparison history between history provided by attending doctor and injured worker, must be provided with exam.

(3) A detailed physical examination concerning all systems affected by the industrial accident.

(4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.

(5) A complete diagnosis of all pathological conditions including ICD-9-CM codes found to be listed:

- (a) Due solely to injury.
- (b) Preexisting condition aggravated by the injury and the extent of aggravation.
- (c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.
- (d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).

(6) Conclusions must include:

- (a) Type of treatment recommended for each pathological condition and the probable duration of treatment.
- (b) Expected degree of recovery from the industrial condition.
- (c) Probability, if any, of permanent disability resulting from the industrial condition.
- (d) Probability of returning to work.

(7) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm the diagnosis when indicated.

**Doctor:** For these rules, means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry.

Only those persons so licensed may sign report of accident forms and certify time loss compensation except as provided in WAC 296-20-01502, When can a physician assistant have sole signature on the report of accident or physician's initial report? and WAC 296-23-241, Can advanced registered nurse practitioners independently perform the functions of an attending physician?

**Emergent hospital admission:** Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the workers health or treatment outcome.

**Endorsing practitioner:** A practitioner who has reviewed the preferred drug list and has notified the health care authority that he or she has agreed to allow therapeutic interchange of a preferred drug for any nonpreferred drug in a given therapeutic class.

**Fatal:** When the attending doctor has reason to believe a worker has died as a result of an industrial injury or exposure, the doctor should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

**Fee schedules or maximum fee schedule(s):** The fee schedules consist of, but are not limited to, the following:

(a) Health Care Common Procedure Coding System Level I and II Codes, descriptions and modifiers that describe medical and other services, supplies and materials.

(b) Codes, descriptions and modifiers developed by the department.

(c) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POAC), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.

(d) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.

(e) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

**Health services provider or provider:** For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

**Home nursing:** Those nursing services that are proper and necessary to maintain the worker in his or her residence. These services must be provided through an agency licensed, certified or registered to provide home care, home health or hospice services. Refer to WAC 296-20-091 for more information.

**Independent or separate procedure:** Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

**Medical aid rules:** The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

**Modified work status:** The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the doctor and the worker with a statement describing the available work in terms that will enable the doctor to relate the physical activities of the job to the worker's physical limitations and capabilities. The doctor shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the doctor as to the worker's ability to perform such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time loss

compensation will be resumed upon certification by the attending doctor.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be conducted to determine whether the worker will require assistance in returning to work.

**Nonemergent (elective) hospital admission:** Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

**Physician:** For these rules, means any person licensed to perform one or more of the following professions: Medicine and surgery; or osteopathic medicine and surgery.

**Practitioner:** For these rules, means any person defined as a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; physician or osteopathic assistant; and massage therapy.

**Preferred drug list:** The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

**Proper and necessary:**

(1) The department or self-insurer pays for proper and necessary health care services that are related to the diagnosis and treatment of an accepted condition.

(2) Under the Industrial Insurance Act, "proper and necessary" refers to those health care services which are:

(a) Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

(b) Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes;

(c) Not delivered primarily for the convenience of the claimant, the claimant's attending doctor, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

(3) The department or self-insurer stops payment for health care services once a worker reaches a state of maximum medical improvement. Maximum medical improvement occurs when no fundamental or marked change in an accepted condition can be expected, with or without treatment. Maximum medical improvement may be present though there may be fluctuations in levels of pain and function. A worker's condition may have reached maximum medical improvement though it might be expected to improve or deteriorate with the passage of time. Once a worker's condition has reached maximum medical improvement, treatment that results only in temporary or transient changes is not

proper and necessary. "Maximum medical improvement" is equivalent to "fixed and stable."

(4) In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

**Refill:** The continuation of therapy with the same drug (including the renewal of a previous prescription or adjustments in dosage) when a prescription is for an antipsychotic, antidepressant, chemotherapy, antiretroviral or immunosuppressive drug, or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

**Regular work status:** The injured worker is physically capable of returning to his/her regular work. It is the duty of the attending doctor to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending doctor if the condition is not stationary and such treatment is needed and otherwise in order.

**Temporary partial disability:** Partial time loss compensation may be paid when the worker can return to work on a limited basis or return to a lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of more than five percent before consideration of partial time loss can be made. No partial time loss compensation can be paid after the worker's condition is stationary. **All time loss compensation must be certified by the attending doctor based on objective findings.**

**Termination of treatment:** When treatment is no longer required and/or the industrial condition is stabilized, a report indicating the date of stabilization should be submitted to the department or self-insurer. This is necessary to initiate closure of the industrial claim. The patient may require continued treatment for conditions not related to the industrial condition; however, financial responsibility for such care must be the patient's.

**Therapeutic alternative:** Drug products of different chemical structure within the same pharmacologic or therapeutic class and that are expected to have similar therapeutic effects and safety profiles when administered in therapeutically equivalent doses.

**Therapeutic interchange:** To dispense with the endorsing practitioner's authorization, a therapeutic alternative to the prescribed drug.

**Total permanent disability:** Loss of both legs or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful employment. When the attending doctor feels a worker may be totally and permanently disabled, the attending doctor should communicate this information immediately to the department or self-insurer. A vocational evaluation and an independent rating of disability may be arranged by the department prior to a deter-

mination as to total permanent disability. Coverage for treatment does not usually continue after the date an injured worker is placed on pension.

**Total temporary disability:** Full-time loss compensation will be paid when the worker is unable to return to any type of reasonably continuous gainful employment as a direct result of an accepted industrial injury or exposure.

**Unusual or unlisted procedure:** Value of unlisted services or procedures should be substantiated "by report" (BR).

**Utilization review:** The assessment of a claimant's medical care to assure that it is proper and necessary and of good quality. This assessment typically considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the accepted condition being treated.

**AMENDATORY SECTION** (Amending WSR 04-08-040, filed 3/30/04, effective 5/1/04)

**WAC 296-20-03011 What general limitations are in place for medications? (1) Amount dispensed.** The department or self-insurer will pay for no more than a thirty-day supply of a medication dispensed at any one time.

(2) **Over-the-counter drugs.** Prescriptions for over-the-counter items may be paid. Special compounding fees for over-the-counter items are not payable.

(3) **Generic drugs.** Prescriptions are to be written for generic drugs unless the attending physician specifically indicates that substitution is not permitted. For example: The patient cannot tolerate substitution. Pharmacists are instructed to fill with generic drugs unless the attending physician specifically indicates substitution is not permitted.

(4) **Evidence-based prescription drug program.** In accordance with RCW 70.14.050, the department in cooperation with other state agencies may develop a preferred drug list. Any pharmacist filling a prescription under state purchased health care programs as defined in RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug (see RCW 69.41.190), or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks or the nonendorsing practitioner has received prior authorization from the department to fill the prescription as written, in which case the pharmacist shall dispense the prescribed non-preferred drug.

(5) **Prescriptions for unrelated medical conditions.** The department or self-insurer may consider temporary coverage of prescriptions for conditions not related to the industrial injury when such conditions are retarding recovery. Any treatment for such conditions must have prior authorization per WAC 296-20-055. This would apply to any prescription for such conditions even when the endorsing practitioner indicates "dispense as written."

(6) **Pension cases.** Once the worker is placed on a pension, the department or self-insurer may pay for only those drugs and medications authorized for continued medical treatment for conditions previously accepted by the department. Authorization for continued medical and surgical treatment is at the sole discretion of the supervisor of industrial insurance and must be authorized before the treatment is rendered. In such pension cases, the department or self-insurer cannot pay for scheduled drugs used to treat continuing pain resulting from an industrial injury or occupational disease.

### WSR 07-17-169

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed August 22, 2007, 9:27 a.m., effective September 22, 2007]

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

Purpose: The amended rule allows, but does not require, a registered veterinary technician to close an incision or prepared wound as directed by a licensed veterinarian under direct supervision. By directing the veterinary technician to close an incision or prepared wound, the veterinarian can attend to other animal patients. The development of the rule was initiated through a petition from the Washington State Association of Veterinary Technicians.

Citation of Existing Rules Affected by this Order: Amending WAC 246-935-050.

Statutory Authority for Adoption: RCW 18.92.030.

Adopted under notice filed as WSR 07-10-120 on May 2, 2007.

A final cost-benefit analysis is available by contacting Judy Haenke, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, phone (360) 236-4947, fax (360) 586-4359, e-mail judy.haenke@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 Request of a Nongovernmental Entity: New 0, 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 0, Amended 1, Repealed 0.

Date Adopted: August 21, 2007.

Willard B. Nelson, DVM, Chair  
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 02-02-046, filed 12/27/01, effective 1/27/02)

#### WAC 246-935-050 Animal health care tasks. (1) Veterinary technicians.

No individual, other than a registered veterinary technician, may advertise or offer her/his services in a manner calculated to lead others to believe that she/he is a trained or registered veterinary technician.

Veterinary technicians are prohibited from performing the following activities: Surgery except as outlined below; diagnosis and prognosis; prescribing drugs, medication or appliances; initiation of treatment without prior instruction by a veterinarian except as outlined under emergency animal care.

(a) Immediate supervision. A veterinary technician may perform the following tasks only under the immediate supervision of a veterinarian:

(i) Assist veterinarian in surgery by tissue handling;

(ii) Assist veterinarian in surgery by instrument handling;

(iii) Dental extractions.

(b) Direct supervision. A veterinary technician may perform the following tasks under the direct supervision of a veterinarian:

(i) Endotracheal intubation;

(ii) Blood administration;

(iii) Fluid aspiration, including cystocentesis;

(iv) Intraperitoneal injections;

(v) Monitoring of vital signs of anesthetized patient;

(vi) Application of splints;

(vii) Induce anesthesia by intravenous, intramuscular, or subcutaneous injection or by inhalation;

(viii) Administration of immunological agents including rabies vaccination;

(ix) Catheterization of the unobstructed bladder;

(x) Ophthalmological procedure including:

(A) Tear production testing

(B) Topical anesthetic application

(C) Fluorescein staining of the cornea

(D) Tonometry;

(xi) Teeth cleaning, provided an oral examination of the anesthetized patient has been conducted by the veterinarian;

(xii) Microchip implantation;

(xiii) Floating teeth;

(xiv) Removal of partially exposed foxtails and porcupine quills;

(xv) Provide massage;

(xvi) Suturing. The use of a needle, cutting or tapered and suture material, staples, wound clips or tissue glue to close a skin or gingival incision or prepared wound as directed by the attending licensed veterinarian under direct supervision. Suturing may include the use of needle holders, thumb forceps, tissue forceps, retractors and comparable instruments for gentle handling of the tissues to be repaired/closed by such suturing. Suturing does not include the use of cutting instruments such as scalpels, scissors, electrosurgical equipment or other instruments to remove skin or other tissues from the animal patient.

(c) Indirect supervision. A veterinary technician may perform the following tasks under the indirect supervision of

a veterinarian. If the animal is anesthetized, these tasks require the direct supervision of a veterinarian(-):

- (i) Enema;
- (ii) Electrocardiography;
- (iii) Application of bandages;
- (iv) Gavage;
- (v) Ear flush;
- (vi) Radiology;
- (A) Patient positioning;
- (B) Operation of radiograph machines;
- (C) Oral and rectal administration of radio-opaque materials;
- (vii) Placement and securing of an intravenous catheter;
- (viii) Injections of medications not otherwise prohibited:
  - (A) Intramuscular, excluding immunological agents
  - (B) Subcutaneous, excluding immunological agents
  - (C) Intravenous, including giving medication through an established intravenous catheter;
- (ix) Oral medications;
- (x) Topical medications;
- (xi) Laboratory (specimen collections):
  - (A) Collection of tissue during or after a veterinarian has performed a necropsy
  - (B) Urine, except cystocentesis
  - (C) Blood
  - (D) Parasitology
  - (E) Exfoliative cytology
  - (F) Microbiology
  - (G) Fecal material
- (xii) Laboratory (specimen testing):
  - (A) Urinalysis
  - (B) Hematology
  - (C) Serology
  - (D) Chemistries
  - (E) Endocrinology
  - (F) Parasitology
  - (G) Exfoliative cytology
  - (H) Microbiology
  - (I) Fecal analysis;
- (xiii) Administration of preanesthetic drugs;
- (xiv) Oxygen therapy;
- (xv) Euthanasia in all circumstances as otherwise allowed by law;
- (xvi) Removal of sutures;
- (xvii) Indirect blood pressure measurement;
- (xviii) Obtaining a general history from a client of a patient and the client's concerns regarding that patient;
- (xix) Preliminary physical examination including temperature, pulse and respiration;
- (xx) Behavioral consultation with clients;
- (xxi) Dietary consultation with clients.

**(2) Unregistered assistants.**

Induction of anesthesia by any method is prohibited.

(a) Immediate supervision by veterinarian. An unregistered assistant may perform the following tasks only under the immediate supervision of a veterinarian:

- (i) Assist veterinarian in surgery by tissue handling;
- (ii) Assist veterinarian in surgery by instrument handling.

(b) Immediate supervision by veterinarian or veterinary technician. An unregistered assistant may perform the following tasks only under the immediate supervision of either a veterinarian or veterinary technician:

- (i) Blood administration;
- (ii) Laboratory (specimen collections):
  - (A) Hematology
  - (B) Exfoliative cytology, including skin scraping
  - (C) Microbiology
  - (D) Serology;
- (iii) Placement and securing of an intravenous catheter.
- (c) Direct supervision by veterinarian. An unregistered assistant may perform the following tasks only under the direct supervision of a veterinarian:
  - (i) Monitor vital signs of anesthetized patient;
  - (ii) Euthanasia in all circumstances as otherwise allowed by law;
  - (iii) Removal of sutures;
  - (iv) Teeth cleaning, provided an oral examination of the anesthetized patient has been conducted by the veterinarian;
  - (v) Provide massage;
  - (vi) Administration of immunological agents including rabies vaccination;
  - (vii) Microchip implantation;
  - (viii) Enema;
  - (ix) Removal of partially exposed foxtails and porcupine quills from skin and feet.

(d) Direct supervision by veterinarian or veterinary technician. An unregistered assistant may perform the following tasks under direct supervision of either a veterinarian or veterinary technician. If the animal is anesthetized, these tasks require immediate supervision of a veterinarian or a veterinary technician:

- (i) Application of bandages;
- (ii) Ear flush;
- (iii) Electrocardiography;
- (iv) Intramuscular or subcutaneous injections of medications not otherwise prohibited;
- (v) Laboratory (test preparation, not evaluation):
  - (A) Parasitology
  - (B) Serology
  - (C) Urinalysis;
- (vi) Preliminary physical examination including temperature, pulse and respiration;
- (vii) Radiology:
  - (A) Patient positioning
  - (B) Operation of radiograph machines
  - (C) Rectal and oral administration of radio-opaque materials.

(e) Indirect supervision. An unregistered assistant may perform the following tasks under the indirect supervision of a veterinarian. If the animal is anesthetized, these tasks require the direct supervision of a veterinarian:

- (i) Oral medications;
- (ii) Topical medications;
- (iii) Laboratory (specimen collection):
  - Collecting of voided urine and fecal material;
- (iv) Oxygen therapy;
- (v) Obtaining a general history from a client of a patient and the client's concerns;

- (vi) Behavioral consultation with clients;
- (vii) Dietary consultation with clients.

**(3) Emergency animal care.**

(a) Under conditions of an emergency, a veterinary technician and unregistered assistant may render certain life saving aid to an animal. A veterinary technician may:

- (i) Apply tourniquets and/or pressure bandages to control hemorrhage;
  - (ii) Administer pharmacologic agents to prevent or control shock. Placement of an intravenous catheter and administering parenteral fluids, must only be performed after direct communication with a veterinarian, and only if the veterinarian is either present or immediately (~~en route~~) en route to the location of the distressed animal;
  - (iii) Administer resuscitative oxygen procedures;
  - (iv) Establish open airways including the use of intubation appliances, but excluding surgery;
  - (v) Administer external cardiac resuscitation;
  - (vi) Apply temporary splints or bandages to prevent further injury to bones or soft tissues;
  - (vii) Apply appropriate wound dressings and external supportive treatment in severe burn cases;
  - (viii) Apply external supportive treatment to stabilize body temperature.
- (b) An unregistered assistant may:
- (i) Apply tourniquets and/or pressure bandages to control hemorrhage;
  - (ii) Administer resuscitative oxygen procedures;
  - (iii) Establish open airways including intubation appliances, but excluding surgery;
  - (iv) Apply external supportive treatment to stabilize body temperature.

**WSR 07-17-174**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed August 22, 2007, 9:33 a.m., effective September 22, 2007]

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

Purpose: These rule changes implement a fee increase for WAC 246-320-990 Acute care hospitals, 246-322-990 Private psychiatric and alcoholism hospitals, and 246-324-990 Private alcohol and chemical dependency hospitals. This increase will allow the hospital program to continue their current level of public health activities such as licensing, surveys and complaint investigations during fiscal year 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 246-320-990, 246-322-990, and 246-324-990.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 07-13-075 on June 18, 2007.

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 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 3, Repealed 0.

Date Adopted: August 21, 2007.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 05-18-073, filed 9/7/05, effective 10/8/05)

**WAC 246-320-990 Fees.** This section establishes the licensure fee for hospitals licensed under chapter 70.41 RCW.

(1) Applicants and licensees shall:

(a) Submit an annual license fee of (~~ninety-six~~) one hundred thirteen dollars and (~~ninety~~) zero cents for each bed space within the licensed bed capacity of the hospital to the department;

(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(c) Include neonatal intensive care bassinet spaces;

(d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department;

(e) Exclude all normal infant bassinets;

(f) Limit licensed bed spaces as required under chapter 70.38 RCW;

(g) Submit an application for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the hospital licensed bed capacity;

(h) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not performed an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has

not issued the license because the applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

**AMENDATORY SECTION** (Amending WSR 05-18-073, filed 9/7/05, effective 10/8/05)

**WAC 246-322-990 Private psychiatric hospital fees.**

This section establishes the licensure fees for private psychiatric hospitals licensed under chapter 71.12 RCW.

(1) Applicants and licensees shall:

(a) Submit an annual fee of (~~sixty~~) seventy dollars and zero cents for each bed space within the licensed bed capacity of the hospital to the department;

(b) Include all bed spaces and rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

(c) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The private psychiatric hospital currently possesses the required movable equipment and certifies this fact to the department;

(d) Limit licensed bed spaces as required under chapter 70.38 RCW;

(e) Submit applications for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the private psychiatric hospital's licensed bed capacity;

(f) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not conducted an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because the applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

**AMENDATORY SECTION** (Amending WSR 05-18-073, filed 9/7/05, effective 10/8/05)

**WAC 246-324-990 Fees.** This section establishes the licensure fee for private alcohol and chemical dependency hospitals licensed under chapter 71.12 RCW.

(1) Applicants and licensees shall submit:

(a) An initial fee of (~~sixty~~) seventy dollars and zero cents for each bed space within the proposed licensed bed capacity; and

(b) An annual renewal fee of (~~sixty~~) seventy dollars and zero cents for each licensed bed space.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received an application but has not conducted an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received an application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has conducted more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

**WSR 07-17-182**

**PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed August 22, 2007, 11:37 a.m., effective September 22, 2007]

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

Purpose: New language to chapter 392-107 WAC, Educational service districts—Election of board members.

Statutory Authority for Adoption: RCW 28A.310.080.

Adopted under notice filed as WSR 07-12-019 on May 25, 2007.

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 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 0, Repealed 0.

Date Adopted: August 22, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

## Chapter 392-107 WAC

**EDUCATIONAL SERVICE DISTRICTS—ELECTION  
OF BOARD MEMBERS****~~((EDUCATIONAL SERVICE DISTRICTS ELECTION  
OF BOARD MEMBERS))~~**NEW SECTION

**WAC 392-107-200 Purpose and authority.** (1) The purpose of this chapter is to establish the procedures for electing the members of the boards of directors of the educational service districts.

(2) The authority for this chapter is RCW 28A.310.080.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-107-201 Election of educational service district board members.** (1) The procedures governing the election of members to the boards of directors of educational service districts are set forth under RCW 18A.310.080 through 28A.310.110 and WAC ~~((180-22-205 through 180-22-225))~~ 392-107-205 through 392-107-225.

(2) Elections for members of boards of educational service districts shall be conducted biennially in odd-numbered years.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-107-205 Elector provisions.** (1) It shall be the responsibility of the educational service districts to assure that the ~~((secretary to the state board of education))~~ superintendent of public instruction is provided current and correct information necessary to the conduct of the elections provided for in this chapter. Forms published by the ~~((secretary to the state board of education))~~ superintendent of public instruction for the purpose of providing the following essential information shall be obtained, completed and submitted on a current basis:

(a) The name, legal residence, mailing address and board-member district number of persons serving on the educational service district board of directors; and

(b) The position numbers for which appointments have been made to fill unexpired terms.

(2) On August 21st of the year of election or, if such date is a Saturday, Sunday, or holiday, the state working day immediately preceding such date, the ~~((secretary to the state board of education))~~ superintendent of public instruction shall certify a tentative list of electors consisting of all persons eligible to vote if the election were held on that date.

(3) The list of eligible voters shall remain open for changes and deletions until 5:00 p.m. September 26th or, in the event such date is a Saturday, Sunday, or holiday, until 5:00 p.m. the working day immediately following such date. The ~~((secretary to the state board of education))~~ superintendent of public instruction as soon thereafter as is practical shall certify the list of electors.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-107-210 Publicity and call of election.** (1) The ~~((secretary to the state board of education))~~ superintendent of public instruction shall biennially provide reasonable public information concerning the election of educational service district board members through press and publication releases beginning in May of the year the elections are to be called.

(2) Call of election. See RCW 28A.310.080.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-107-220 Balloting.** (1) Ballots shall be prepared by the ~~((secretary to the state board of education))~~ superintendent of public instruction. The ballot for each position subject to election shall contain the name of each candidate eligible for the particular position. There shall be a separate listing of the candidates for each board-member district open in the particular educational service district. A board-member district position shall be stricken from the ballot if no candidate files for the position within the timelines specified in RCW 28A.310.080 and WAC 180-22-215.

(2)(a) The ~~((secretary to the state board of education))~~ superintendent of public instruction shall develop voting instructions which shall accompany the ballots. Biographical forms submitted under WAC 180-22-215(3) shall also accompany the ballots.

(b) On or before October 1st, ballots shall be mailed to voters with two envelopes to be used for voting.

(i) The outer, larger envelope (i.e., official ballot envelope) shall be labeled "official ballot"; be preaddressed with the ~~((secretary to the state board of education))~~ superintendent of public instruction as addressee; and have provision for the identification of the voter, mailing address, his or her school district, and his or her educational service district.

(ii) The inner, smaller envelope shall be unlabeled and unmarked.

(3) Marking of ballots. Each member of a public school district board of directors may vote for one of the candidates in each board-member district named on his or her ballot by placing an "X" or other mark in the space provided next to the name of a candidate.

(4) Return of ballots. Each member of a public school district board of directors shall complete voting by placing his or her marked official ballot in the smaller, unmarked envelope and sealing the same; placing the smaller envelope containing the ballot in the larger preaddressed envelope marked "official ballot" and sealing the same; if not already designated, completing the following information on the face of the official ballot envelope: Name, mailing address, identification of school district and educational service district; and placing the official ballot envelope in the United States mail to the secretary to the state board of education.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-107-225 Counting—Ineligible votes—Recount—Certification of election—Special election.**

(1)(a) As official ballot envelopes are received by the (~~secretary to the state board of education~~) superintendent of public instruction, a preliminary determination shall be made as to the eligibility of the voter and a record shall be made on the list of eligible voters that the voter has voted.

(b) Official ballot envelopes not submitted in compliance with this chapter and other envelopes containing ballots shall be set aside for a final review and acceptance or rejection by the election board.

(2)(a) The election board shall convene for the purpose of counting votes on October 25th or, if such date is a Saturday, Sunday, or holiday, the state working day immediately preceding **or following** such date at a date, time and place designated by the (~~secretary to the state board of education~~) superintendent of public instruction.

(b) Official ballot envelopes that are accepted by the election board shall be opened and the inner envelopes containing ballots shall be removed and placed aside, still sealed. The inner envelopes shall then be opened and the votes counted by the election board.

(c) No record shall be made or maintained of the candidate for which any voter cast his or her vote.

(3) Ineligible votes. The following ballots and votes shall be declared void and shall not be accepted:

(a) Votes for write-in candidates.

(b) Votes cast on other than an official ballot.

(c) Ballots which contain a vote for more than one candidate in a board-member district.

(d) Ballots contained in other than the official ballot envelope.

(e) Ballots contained in the official ballot envelope upon which the voter's name is not designated.

(f) Ballots received after 5:00 p.m. October 16th. However, any ballot that is postmarked on or before midnight October 16th and received prior to the initial counting of votes by the election board shall be accepted. Any ballot received pursuant to the United States mail on or before 5:00 p.m. on October 21st that is not postmarked or legibly postmarked shall be accepted.

(g) Such other ballots or votes as the election board shall determine to be unidentifiable or unlawful.

(4)(a) Recounts. Automatic. A recount of votes cast shall be automatic if the electoral vote difference between any two candidates for the same position is one vote or less than one percent of electoral votes on a single ballot cast for the position, whichever is greater.

(b) Recounts. Upon request. A recount of votes cast shall be afforded any candidate as a matter of right. The request shall be made in writing and received by the (~~secretary to the state board of education~~) superintendent of public instruction within seven calendar days after the date upon which the votes were counted by the election board.

(5) Certification of election. Within ten calendar days after the date upon which the votes were counted, and no sooner than eight calendar days after the votes are counted by the election board, the (~~secretary to the state board of educa-~~

~~tion~~) superintendent of public instruction shall officially certify to the county auditor of the headquarters county of the educational service district the name or names of candidates elected to membership on the educational service district board of directors.

(6) Special election. See RCW 28A.310.100.