

Washington State Register

September 3, 2003

OLYMPIA, WASHINGTON

ISSUE 03-17



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CITATION

Cite all material in the Washington State Register by its issue number and sequence within that issue, preceded by the acronym WSR. Example: the 37th item in the August 5, 1981, Register would be cited as WSR 81-15-037.

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 786-6697.

REPUBLICATION OF OFFICIAL DOCUMENTS

All documents appearing in the Washington State Register are prepared and printed at public expense. There are no restrictions on the republication of official documents appearing in the Washington State Register. All news services are especially encouraged to give wide publicity to all documents printed in the Washington State Register.

CERTIFICATE

Pursuant to RCW 34.08.040, the publication of rules or other information in this issue of the Washington State Register is hereby certified to be a true and correct copy of such rules or other information, except that headings of public meeting notices have been edited for uniformity of style.

DENNIS W. COOPER
Code Reviser

STATE MAXIMUM INTEREST RATE

(Computed and filed by the State Treasurer under RCW 19.52.025)

The maximum allowable interest rate applicable for the month of September 2003 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.

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The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

John G. Schultz
Chair, Statute Law Committee

Dennis W. Cooper
Code Reviser

Gary Reid
Chief Assistant Code Reviser

Kerry S. Radcliff
Editor

Joyce Matzen
Subscription Clerk

STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following eight sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Inquiry that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (c) **EXPEDITED RULE MAKING**-includes the full text of the rule being proposed using the expedited rule-making process. Expedited rule makings are not consistently filed and may not appear in every issue of the register.
- (d) **PERMANENT**-includes the full text of permanently adopted rules.
- (e) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (f) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (g) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (h) **INDEX**-includes a cumulative index of Register Issues 01 through 24.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. Each filing is listed under the agency name and then describes the subject matter, type of filing and the WSR number. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.05.395 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

- (a) In amendatory sections—
 - (i) underlined material is new material;
 - (ii) ~~deleted material is ((~~lined out between double parentheses~~))~~;
- (b) Complete new sections are prefaced by the heading NEW SECTION;
- (c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading REPEALER.

3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

Material contained in the Register other than rule-making actions taken under the APA (chapter 34.05 RCW) does not necessarily conform to the style and format conventions described above. The headings of these other types of material have been edited for uniformity of style; otherwise the items are shown as nearly as possible in the form submitted to the code reviser's office.

4. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

5. EDITORIAL CORRECTIONS

Material inserted by the code reviser's office for purposes of clarification or correction or to show the source or history of a document is enclosed in [brackets].

2003-2004

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates ¹			Distribution Date	First Agency Hearing Date ³	Expedited Adoption ⁴
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS ² or 10 p. max. Non-OTS			
For Inclusion in -	File no later than 12:00 noon -			Count 20 days from -	For hearing on or after	First Agency Adoption Date
03 - 17	Jul 23, 03	Aug 6, 03	Aug 20, 03	Sep 3, 03	Sep 23, 03	Oct 21, 03
03 - 18	Aug 6, 03	Aug 20, 03	Sep 3, 03	Sep 17, 03	Oct 7, 03	Nov 4, 03
03 - 19	Aug 20, 03	Sep 3, 03	Sep 17, 03	Oct 1, 03	Oct 21, 03	Nov 18, 03
03 - 20	Sep 3, 03	Sep 17, 03	Oct 1, 03	Oct 15, 03	Nov 4, 03	Dec 2, 03
03 - 21	Sep 24, 03	Oct 8, 03	Oct 22, 03	Nov 5, 03	Nov 25, 03	Dec 23, 03
03 - 22	Oct 8, 03	Oct 22, 03	Nov 5, 03	Nov 19, 03	Dec 9, 03	Jan 6, 04
03 - 23	Oct 22, 03	Nov 5, 03	Nov 19, 03	Dec 3, 03	Dec 23, 03	Jan 20, 04
03 - 24	Nov 5, 03	Nov 19, 03	Dec 3, 03	Dec 17, 03	Jan 6, 04	Feb 3, 04
04 - 01	Nov 26, 03	Dec 10, 03	Dec 24, 03	Jan 7, 04	Jan 27, 04	Feb 24, 04
04 - 02	Dec 10, 03	Dec 24, 03	Jan 7, 04	Jan 21, 04	Feb 10, 04	Mar 9, 04
04 - 03	Dec 24, 03	Jan 7, 04	Jan 21, 04	Feb 4, 04	Feb 24, 04	Mar 23, 04
04 - 04	Jan 7, 04	Jan 21, 04	Feb 4, 04	Feb 18, 04	Mar 9, 04	Apr 6, 04
04 - 05	Jan 21, 04	Feb 4, 04	Feb 18, 04	Mar 3, 04	Mar 23, 04	Apr 20, 04
04 - 06	Feb 4, 04	Feb 18, 04	Mar 3, 04	Mar 17, 04	Apr 6, 04	May 4, 04
04 - 07	Feb 25, 04	Mar 10, 04	Mar 24, 04	Apr 7, 04	Apr 27, 04	May 25, 04
04 - 08	Mar 10, 04	Mar 24, 04	Apr 7, 04	Apr 21, 04	May 11, 04	Jun 8, 04
04 - 09	Mar 24, 04	Apr 7, 04	Apr 21, 04	May 5, 04	May 25, 04	Jun 22, 04
04 - 10	Apr 7, 04	Apr 21, 04	May 5, 04	May 19, 04	Jun 8, 04	Jul 6, 04
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04 - 16	Jul 7, 04	Jul 21, 04	Aug 4, 04	Aug 18, 04	Sep 7, 04	Oct 5, 04
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04 - 19	Aug 25, 04	Sep 8, 04	Sep 22, 04	Oct 6, 04	Oct 26, 04	Nov 23, 04
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04 - 23	Oct 20, 04	Nov 3, 04	Nov 17, 04	Dec 1, 04	Dec 21, 04	Jan 18, 05
04 - 24	Nov 3, 04	Nov 17, 04	Dec 1, 04	Dec 15, 04	Jan 4, 05	Feb 1, 05

¹ All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

² A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

³ At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

⁴ A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited adoption and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230 and 1.12.040.

REGULATORY FAIRNESS ACT

The Regulatory Fairness Act, chapter 19.85 RCW, was enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

Small Business Economic Impact Statements (SBEIS)

A small business economic impact statement (SBEIS) must be prepared by state agencies when a proposed rule meets the above criteria. Chapter 19.85 RCW requires the Washington State Business Assistance Center (BAC) to develop guidelines for agencies to use in determining whether the impact of a rule is more than minor and to provide technical assistance to agencies in developing a SBEIS. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, must be reviewed to determine if the requirements of the Regulatory Fairness Act apply; if an SBEIS is required it must be completed before permanent rules are filed with the Office of the Code Reviser.

Mitigation

In addition to completing the economic impact analysis for proposed rules, state agencies must take reasonable, legal, and feasible steps to reduce or mitigate the impact of rules on small businesses when there is a disproportionate impact on small versus large business. State agencies are encouraged to reduce the economic impact of rules on small businesses when possible and when such steps are in keeping with the stated intent of the statute(s) being implemented by proposed rules. Since 1994, small business economic impact statements must contain a list of the mitigation steps taken, or reasonable justification for not taking steps to reduce the impact of rules on small businesses.

When is an SBEIS Required?

When:

The proposed rule has more than a minor (as defined by the BAC) economic impact on businesses in more than twenty percent of all industries or more than ten percent of any one industry.

When is an SBEIS Not Required?

When:

The rule is proposed only to comply or conform with a federal law or regulation, and the state has no discretion in how the rule is implemented;

There is less than minor economic impact on business;

The rule REDUCES costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

The rule is adopted as an emergency rule, although an SBEIS may be required when an emergency rule is proposed for adoption as a permanent rule; or

The rule is pure restatement of state statute.

WSR 03-17-010**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed August 8, 2003, 3:47 p.m.]

Subject of Possible Rule Making: RCW 41.26.195.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.26.195, 41.50.050(5).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The legislature passed HB 1099 in 1997, codified in chapter 122, Laws of 1997, and RCW 41.26.195. The Department of Retirement Systems (DRS) is considering the adoption of a WAC to explain its long-standing policy and practice in implementing this statute.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Department staff will work on the project, with the assistance of the Office of the Attorney General. The public is invited and encouraged to participate, as described below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. Anyone interested in participating should contact the rules coordinator, below. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making, and send a copy to everyone currently on the mailing list and anyone else who requests a copy. For more information on how to participate, please contact Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, Mailstop 48380, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, e-mail merryk@drs.wa.gov, fax (360) 753-3166.

August 7, 2003
Merry A. Kogut
Rules Coordinator

WSR 03-17-021**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH**

[Filed August 13, 2003, 9:43 a.m.]

Subject of Possible Rule Making: Registration of certain generally licensed radioactive devices.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 70.98.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rule under consideration is necessary to conform state regulations to the national standards for radiation protection by requiring the registration of certain generally licensed radioactive devices. This rule covers a federal rule change which has been deemed "a matter of compatibility" for agreement states by the United States Nuclear Regulatory Commission (NRC). Washington, as an agreement state, is required to adopt the federal rule change

in order to maintain a state program that is compatible with that of the NRC. The NRC has amended its basic radiation protection standards with respect to generally licensed radioactive devices. For national uniformity, all states are required to have the same regulation.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other federal or state agencies regulate this subject. This rule making will provide the required coordination between the NRC and the state of Washington.

Process for Developing New Rule: The department will notify interested parties of the intent to develop rules on this subject and to solicit participation in the rule-making process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Terry C. Frazee, Radiation Protection Program, P.O. Box 47827, Olympia, WA 98504-7827, (360) 236-3213, terry.frazee@doh.wa.gov.

August 11, 2003
M. C. Selecky
Secretary

WSR 03-17-026**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

[Filed August 13, 2003, 4:32 p.m.]

Subject of Possible Rule Making: Fee adjustment to chapter 308-20 WAC, regulating cosmetologist, barber, manicurist, and esthetician professions.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.16.030, 43.24.023, and 43.24.086.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Fee structure review.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rosie McGrew, Business and Profession Division, Cosmetology Section, P.O. Box 9026, Olympia, WA 98507-9026, phone (360) 664-6626, fax (360) 570-4967, e-mail plssunit@dol.wa.gov. Additional information will be posted on the cosmetology internet website at <http://www.dol.wa.gov/plss/cosfront.htm>.

August 13, 2003
Trudie Touchette
Acting Administrator

WSR 03-17-027

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING

[Filed August 13, 2003, 4:34 p.m.]

Subject of Possible Rule Making: Fee adjustment to chapter 308-14 WAC, regulating court reporters.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.145.050, 43.24.023, and 43.24.086.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Fee structure review.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Susan Colard, Business and Profession Division, Court Reporter Section, P.O. Box 9026, Olympia, WA 98507-9026, phone (360) 664-6633, fax (360) 570-7002, e-mail plssunit@dol.wa.gov. Additional information will be posted on the court report internet website at <http://www.dol.wa.gov/plss/crtfront.htm>.

August 13, 2003

Susan Colard
Licensing Manager

WSR 03-17-029

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING

[Filed August 13, 2003, 4:37 p.m.]

Subject of Possible Rule Making: Fee adjustment to chapter 308-420 WAC, regulating camping resorts.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 19.105.411, 43.24.023, and 43.24.086.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Fee structure review.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Randy Renfrow, Business and Profession Division, Camping Resorts Section, P.O. Box 9026, Olympia, WA 98507-9026, phone (360) 664-6646, fax (360) 570-4956, e-mail plssunit@dol.wa.gov. Additional information will be posted on the camping resorts internet website at <http://www.dol.wa.gov/plss/camfront.htm>.

August 13, 2003

Randy Renfrow
Licensing Manager

WSR 03-17-028

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING

[Filed August 13, 2003, 4:36 p.m.]

Subject of Possible Rule Making: Fee adjustment to chapter 308-11 WAC, regulating auctioneers.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.11.060, 43.24.023, and 43.24.086.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Fee structure review.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Susan Colard, Business and Profession Division, Auctioneer Section, P.O. Box 9026, Olympia, WA 98507-9026, phone (360) 664-6636, fax (360) 570-7002, e-mail plssunit@dol.wa.gov. Additional information will be posted on the auctioneer internet website at <http://www.dol.wa.gov/plss/aucfront.htm>.

August 12, 2003

Susan Colard
Licensing Manager

WSR 03-17-030

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING

[Filed August 13, 2003, 4:39 p.m.]

Subject of Possible Rule Making: Fee adjustment to chapter 308-127 WAC, regulating timeshare.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 64.36.081, 43.24.023, and 43.24.086.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Fee structure review.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Randy Renfrow, Business and Profession Division, Timeshare Section, P.O. Box 9026, Olympia, WA 98507-9026, phone (360) 664-6632, fax (360) 570-4956, e-mail plssunit@dol.wa.gov. Additional information will be posted on the timeshare internet website at <http://www.dol.wa.gov/plss/timfront.htm>.

August 13, 2003

Randy Renfrow
Licensing Manager

WSR 03-17-035**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

[Filed August 14, 2003, 3:11 p.m.]

Subject of Possible Rule Making: Chapter 308-78 WAC, Aircraft fuel tax.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.42.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule is necessary to clarify the provisions of SB 6056 relating to the administration of the aircraft fuel tax exemption for emergency air transport entities.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Art Farley, Motor Carrier Services Manager, Washington State Department of Licensing, 2424 Bristol Court S.W., Olympia, WA 98504, (360) 664-1820, e-mail afarley@dol.wa.gov.

August 13, 2003
Thao Manikhoth
Administrator

WSR 03-17-036**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

[Filed August 14, 2003, 3:12 p.m.]

Subject of Possible Rule Making: To establish the amount of the filing fee to be submitted by a licensed motorcycle dealer when initiating a protest against the manufacturer for violations of chapter 46.94 RCW.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Section 3(1), chapter 354, Laws of 2003.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Establishes the amount of the filing fee to be submitted by a licensed motorcycle dealer when initiating a protest against the manufacturer for violations of chapter 46.94 RCW.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Office of Administrative Hearings conducts the arbitration hearings between the motorcycle dealer and the motorcycle manufacturer.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Gail Saul, Dealer Services, P.O. Box 9039, Olympia, WA 98507, fax (360) 586-6703.

August 11, 2003
Mykel D. Gable
Administrator

WSR 03-17-040**PREPROPOSAL STATEMENT OF INQUIRY
BOARD OF ACCOUNTANCY**

[Filed August 15, 2003, 9:25 a.m.]

Subject of Possible Rule Making: WAC 4-25-830 What are the CPE requirements?

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.04.055(7), 18.04.215(7).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Current board rules seem to require retired certified public accountants (CPAs) to complete continuing professional education (CPE) during the preceding three calendar years in order to renew their retired CPA license or certificate. The board intends to clarify the time frame for completing the required continuing professional education for renewal of a retired certified public accountant (CPA) license or certificate.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by writing to Dana M. McInturff, Executive Director, Washington State Board of Accountancy, P.O. Box 9131, Olympia, WA 98507-9131, (360) 586-0163, fax (360) 664-9190, e-mail danam@cpaboard.wa.gov.

August 12, 2003
Dana M. McInturff, CPA
Executive Director

WSR 03-17-043**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FINANCIAL INSTITUTIONS**

[Filed August 15, 2003, 11:14 a.m.]

Subject of Possible Rule Making: Distribution and use of funds from the mortgage lending fraud prosecution fund.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.320.040 and _____ (chapter 289, Laws of 2003).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Standards and procedures need to be developed to guide prosecutorial agencies in making application for grants from the mortgage lending prosecution account, as directed by the legislature, and to guide the Department of Financial Institutions in processing the applications.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Meetings of local prosecutors, the Office of the Attorney General, the Department of Revenue staff and the

Department of Financial Institutions staff are being held to devise appropriate procedures and draft the rule. Interested parties should contact Chuck Cross, Assistant Director (acting), Consumer Services, Department of Financial Institutions, P.O. Box 41200, Olympia, WA 98504-1200, (360) 902-8733.

August 15, 2003
 David D. Cheal
 Rules Coordinator
 Consumer Services

WSR 03-17-049

**PREPROPOSAL STATEMENT OF INQUIRY
 DEPARTMENT OF ECOLOGY**

[Order 03-07—Filed August 15, 2003, 4:21 p.m.]

Subject of Possible Rule Making: Updating the Department of Ecology's new source review regulation provisions in chapter 173-400 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70.94 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The federal EPA recently changed the federal rules for new source review. Ecology will restructure chapter 173-400 WAC to accommodate the new federal rules, insuring conformance with state law. If chapter 173-400 WAC successfully addresses the federal rule changes, sources should have greater flexibility in permitting and the environment should remain protected.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The EPA will be involved to insure that the goal of an approved new source review program is achieved. The National Park Service will represent interests of the Federal Land Managers on the advisory committee. The local air pollution control agencies will be represented on the committee to insure their rules are compatible with ecology's.

Process for Developing New Rule: An advisory committee will advise ecology on how the rule will impact various interests. Upon completion of the advisory committee process, the general public will have an opportunity to comment on the rule developed with the aid of the committee.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Tom Todd, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7528, fax (360) 407-7534, e-mail ttod461@ecy.wa.gov. A committee will be established to advise ecology in rule development and language preparation. The first committee meeting will be at ecology's Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, on September 4, 2003, at 9:30 a.m. This meeting is open to the public.

August 15, 2003
 Mary E. Burg
 Program Manager

WSR 03-17-056

**PREPROPOSAL STATEMENT OF INQUIRY
 DEPARTMENT OF HEALTH
 (Board of Osteopathic Medicine and Surgery)
 [Filed August 18, 2003, 9:15 a.m.]**

Subject of Possible Rule Making: WAC 246-854-020 Osteopathic physician assistant program, 246-854-080 Osteopathic physician assistant licensure, and 246-854-090 Osteopathic physician assistant practice plan.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.57A.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The board is considering amending the rule regarding supervision requirement for osteopathic physician assistants (PA). Currently, osteopathic physicians who supervise a PA must review and sign all PA's records. This is not required of medical doctors who supervise PAs. PAs may practice during training, after successful completion of a training course, and after successful completion of the board approved exam. The supervision requirement is dependent upon the level of education and training of the PA. The intent is to reduce the burden of extensive paperwork for the osteopathic physician who supervises a PA.

Process for Developing New Rule: Collaborative rule making, mailings to interested parties and review at regular board meetings.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Arlene Robertson, Program Manager, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4945, fax (360) 236-2406, e-mail Arlene.Robertson@doh.wa.gov. Interested parties may participate at board meetings or submit written comments.

August 6, 2003
 Robert Nicoloff
 Executive Director

WSR 03-17-058

**PREPROPOSAL STATEMENT OF INQUIRY
 DEPARTMENT OF
 FINANCIAL INSTITUTIONS
 [Filed August 18, 2003, 1:57 p.m.]**

Subject of Possible Rule Making: Escrow trust account procedures.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.320.040 and 18.44.410.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Procedures and responsibilities for administering escrow trust accounts are incomplete and unclear in the current applicable WAC provisions. Rule amendments will more clearly and comprehensively spell out escrow officer and agent responsibilities, procedures, and allowable practices. These changes will enhance the safety of client funds placed in escrow licensee trust accounts.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Chuck Cross, Assistant Director (acting), Consumer Services, Department of Financial Institutions, P.O. Box 41200, Olympia, WA 98504-1200, (360) 902-8733.

August 18, 2003
David D. Cheal
Rules Coordinator
Consumer Services

WSR 03-17-062

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Health and Rehabilitative Services Administration)

[Filed August 18, 2003, 4:29 p.m.]

Subject of Possible Rule Making: Add a section to WAC 388-865-0400 series to include adult residential treatment facility certification.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 71.05.560 and 71.24.035.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Mental Health Division is revising these rules to be consistent with rules being developed for residential treatment facilities by the Department of Health.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Department of Health. The Mental Health Division is participating with the DSHS Division of Alcohol and Substance Abuse and the Department of Health in a workgroup with community providers to coordinate development of these rules.

Process for Developing New Rule: An oversight committee consisting of representatives from the Department of Health and representatives from community residential treatment facilities being regulated by these rules will assist the department in rule development. All draft materials will be made available to constituents for a larger review audience. All comments will be taken into consideration for final rule development.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kathy Burns Peterson, Mental Health Division, P.O. Box 45320, Olympia, WA 98504-5320, (360) 902-0843, fax (360) 902-0809.

August 18, 2003
Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-17-063

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 18, 2003, 4:30 p.m.]

Subject of Possible Rule Making: Chapter 388-310 WAC, WorkFirst, and related WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 78.08A.340, 74.04.050 and 74.04.057.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: These rules are being amended by the Division of Employment and Assistance Programs to simplify sanction, Child SafetyNet, and time limit extension policies.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Department of Social and Health Services (DSHS) welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file proposed [rules] with the Office of the Code Reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Brent Low, Program Manager, Division of Employment and Assistance Programs, Lacey Government Center, P.O. Box 45480, Olympia, WA 98504-4580, phone (360) 413-3015, fax (360) 413-3495, e-mail lowbd@dshs.wa.gov.

August 18, 2003
Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-17-064

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 18, 2003, 4:32 p.m.]

Subject of Possible Rule Making: Amendments to WAC 388-71-0100 through 388-71-0155 Adult protective services/personal aide state registry; and other sections as needed.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 34.05.020, chapter 74.34 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Implementing procedures to develop processes for adult protective services.

Process for Developing New Rule: The department welcomes public participation in the development of its rules. Information on how to participate or receive notices about this rule may be obtained by contacting the person below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Tiffany Sevruck, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2538, fax (360) 407-7582, e-mail sevruta@dshs.wa.gov.

August 18, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-17-065

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 18, 2003, 4:32 p.m.]

Subject of Possible Rule Making: WAC 388-71-0500 through 388-71-05952, individual provider and home care provider qualifications, 388-72A-0095 How are the number of hours I can receive for in-home services determined?, and 388-71-0202 Long-term care services—Definitions.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.520, 74.39.005.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To establish and clarify:

- The maximum number of hours an individual provider or personal aide can be paid for one client that receives COPES, Medicaid personal care, or Chore services in their home.
- The maximum number of hours an individual provider or personal aide can be paid when this individual provider or personal aide is a parent, stepparent or adoptive parent and lives in the same household as the client.
- Definition language in WAC 388-71-0202.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Department of Social and Health Services (DSHS), Division of Developmental Disabilities, Children's Administration.

Process for Developing New Rule: Aging and Disability Services Administration (ASDA) will provide draft language before publishing proposed rules and encourage stakeholders to submit written or verbal comments. When ASDA files a notice of proposed rule making, we will notify interested parties of the scheduled hearing to adopt rules and how to submit formal comments. Draft material and information about how to participate are available by contacting DSHS representatives identified below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sue McDonough, Aging and Disability Services Administration, P.O. Box 45600.

August 18, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-17-069

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

(Uniform Commercial Code)

[Filed August 19, 2003, 9:08 a.m.]

Subject of Possible Rule Making: Amend various rules in chapter 308-390 WAC pertaining to search options and fees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 62A.9A-526.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Uniform Commercial Code Program needs to adopt housekeeping amendments in order to bring the rules in alignment with other states and with search options available from the existing system. Fee adjustments may also be needed to maintain self-sufficiency of the program.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Margaret Vogeli, Management Analyst, Uniform Commercial Code, Department of Licensing, P.O. Box 9660, Olympia, WA 98507-9660, phone (360) 664-1530, fax (360) 586-4414.

August 16, 2003

Jon Donnellan
Administrator

WSR 03-17-070

PREPROPOSAL STATEMENT OF INQUIRY LABOR AND INDUSTRIES

[Filed August 19, 2003, 9:45 a.m.]

Subject of Possible Rule Making: Vocational rehabilitation referrals: WAC 296-19A-050, 296-19A-065, 296-19A-090, 296-19A-110, and 296-19A-120.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The purpose of this rule making is to investigate the potential for conflict of interest problems to occur when vocational rehabilitation counselors make recommendations for additional rehabilitation services. For instance, potential conflict of interest problems may occur when a vocational rehabilitation counselor performs an ability to work assessment that determines whether a worker is eligible for further vocational services.

It is also intended to incorporate a change to the reporting requirements in plan implementation referrals when the plan is terminated before the worker is employable.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other federal or state agencies regulate this subject.

Process for Developing New Rule: The department will use focus groups with subject matter experts to investigate the potential problem and possible solutions. Labor and industries' health services analysis (HSA) section will solicit suggestions from subject matter experts through its private sector vocational-technical stakeholder group and its own vocational services consultants.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The department will convene informal focus groups of subject matter experts. Interested persons may contact Blake Maresh, Manager of Program Analysis and Development, Health Services Analysis, Department of Labor and Industries, P.O. Box 44322, Olympia, WA 98504-4322, phone (360) 902-6564, fax (360) 902-4249, e-mail mabl235@lni.wa.gov.

August 19, 2003
Paul Trause
Director

WSR 03-17-085
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 19, 2003, 4:17 p.m.]

Subject of Possible Rule Making: The Department of Social and Health Services Division of Employment and Assistance Programs will amend all necessary sections of Title 388 WAC to reduce reporting requirements under the department's simplified reporting initiative. Simplified reporting allows clients to have one set of reporting requirements based on the program benefits they receive. This optional change in reporting requirements will reduce the number of changes most clients have to report in their circumstances and make it easier for clients to remain eligible for benefits.

This could include changes to rules in any of the following chapters, Certification period requirements in chapter 388-416 WAC, Change of circumstances requirements in chapter 388-418 WAC, and any other sections necessary to implement simplified reporting for cash, basic food, and medical programs.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rule changes under simplified reporting will allow clients to report fewer changes in their circumstances and make it easier for clients to stay connected with department benefits. Clients will report changes based on the most restrictive program reporting requirement that their assistance unit receives.

One goal of simplified reporting is to reduce the number of eligible clients who leave the basic food program after earning their way off of temporary assistance for needy families (TANF) benefits. Reducing reporting requirements will

reduce the burden of receiving benefits from this nutrition program.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The United States Department of Agriculture, Food and Nutrition Service (FNS) publishes federal regulations for the food stamp program in the Federal Register. Rules published in the Federal Register are incorporated into the United States Code of Federal Regulations. FNS also issues administrative notices to inform states of new program requirements that are not yet in the United States Code of Federal Regulations. DSHS incorporates these regulations and exercises state options by adopting administrative rules for food assistance benefits in Washington state.

The department adopts regulations for cash, basic food, and medical assistance in a state plan that is consistent with federal requirements in public law, the code of federal regulations, and other federal guidance on department-administered programs.

Process for Developing New Rule: Department of Social and Health Services (DSHS) welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file proposed rules with the Office of the Code Reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting John Camp, Program Manager, Division of Employment and Assistance Programs, Lacey Government Center, P.O. Box 45470, Olympia, WA 98504-4570, phone (360) 413-3232, fax (360) 413-3493, e-mail CAMPJX@DSHS.WA.GOV.

August 18, 2003
Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-17-098
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF REVENUE

[Filed August 20, 2003, 10:39 a.m.]

Subject of Possible Rule Making: WAC 458-40-660 Timber excise tax—Stumpage value tables.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 84.33.096, 82.32.300, and 82.01.060(2).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The law (RCW 84.33.091) requires that the stumpage value tables be revised every six months. The stumpage values are established by the department so that timber harvesters are apprised of the timber values on which the timber excise tax is calculated.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Although the United States Forest Service and Washington State Department of Natural Resources both regulate forest practices, they are not involved in valuation for pur-

poses of taxation. The nontax processes and definitions are coordinated with these agencies to avoid conflict, but there should be no need to involve them in the valuation revisions provided in this rule.

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary draft of the proposed changes is available upon request on or after October 10, 2003. Written comments on and/or requests for copies of the rule may be directed to Ed Ratcliffe, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6126, fax (360) 664-0693.

Location and Date of Public Meeting: Department of Revenue Conference Room, Target Place Building No. 4, 2735 Harrison Avenue N.W., Olympia, WA, on October 15, 2003, at 10 a.m.

Assistance for Persons with Disabilities: Contact Sandy Davis by October 5, 2003, TDD 1-800-451-7985 or (360) 725-7499 to request assistance.

August 19, 2003

Alan R. Lynn
Rules Coordinator
Legislation and Policy Division

WSR 03-17-101

**PREPROPOSAL STATEMENT OF INQUIRY
LIQUOR CONTROL BOARD**

[Filed August 20, 2003, 11:11 a.m.]

Subject of Possible Rule Making: Requirement that the labels for "strong beer" list the alcohol content.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 66.08.030, 66.24.330, 66.24.371.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: SB 5051, effective July 1, 2003, allows strong beer to be distributed by private distributors and to be sold by grocery stores, beer/wine specialty shops, beer/wine restaurants, beer/wine private clubs, and taverns ("strong beer" is defined in law as a malt beverage containing more than 8% alcohol by weight or approximately 10% by volume). Previously, strong beer could only be sold to-go in liquor stores. Currently consumers are accustomed to beer being approximately 3.5% to 5.5% alcohol by weight. With the passage of this law, beer now has no upper limit and the range of alcohol content is much greater. We believe it is important that consumers are aware of the alcohol content for strong beer, which is outside the range that has been traditionally available in grocery/convenience stores.

Process for Developing New Rule: Input from retail licensees, local governments, and other interested parties will be obtained through series of notices and at least one public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before pub-

lication by contacting Teresa Berntsen, Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, (360) 664-1648, fax (360) 704-4921, e-mail teb@liq.wa.gov.

August 20, 2003

Merritt D. Long
Chairman

WSR 03-17-105

**PREPROPOSAL STATEMENT OF INQUIRY
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2003-04—Filed August 20, 2003, 11:24 a.m.]

Subject of Possible Rule Making: Commercial account rate filing exemption.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.02.060, 48.18.100(6), and 48.19.080.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The commissioner will review existing rate filing requirements for large commercial property casualty accounts in WAC 284-24-120 and consider the concept of commercial deregulation. The theory underlying commercial deregulation is that purchasers of large commercial property casualty policies are sophisticated buyers who have the ability to negotiate as equals over the rates and provisions of their policies and to adequately safeguard their interests.

The existing rules include a "sunset" provision and will expire unless amended. The commissioner will review the experience under WAC 284-24-120 since adoption. Among the concepts that will be explored and discussed in the rule making are repealing the "sunset" provision in WAC 284-24-120(7). The commissioner will also consider altering the requirements of WAC 284-24-120 and the existing scheme of deregulation. This subject has been discussed extensively by the NAIC and other states and the commissioner will consider the recommendations of the "Speed to Market" and other appropriate NAIC working groups that address issues of commercial deregulation. The commissioner will review WAC 284-24-120 and other systems of commercial deregulation and determine what, if any, is the most appropriate for Washington.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study; send written comments by September 29, 2003, to Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, fax (360) 586-3109, e-mail Kacys@oic.wa.gov.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, fax (360) 586-3109, e-mail Kacys@oic.wa.gov.

August 20, 2003

Mike Kreidler
Insurance Commissioner

WSR 03-17-106**PREPROPOSAL STATEMENT OF INQUIRY
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2003-03—Filed August 20, 2003,
11:27 a.m.]

Subject of Possible Rule Making: Insurance policies, the commissioner will review the provisions of chapter 284-20 WAC, including the regulation of standard fire policies. The review will contemplate changes to clarify and update the existing WAC sections and to improve the regulatory framework of the chapter. One specific area that will be reviewed is coverage and exclusions related to acts of terrorism.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.02.060, 48.18.120, 48.05.280, 48.15.100, 48.15.170, and 48.30.010.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The commissioner is committed to [the] review of existing regulations to improve the clarity and efficiency of Title 284 WAC. Interested parties have also specifically requested that the commissioner review the subject of insurance coverage related to acts of terrorism. The commissioner will discuss these issues with interested parties and determine what changes will improve the code and regulatory framework.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other federal agency regulates this subject. The Office of the Insurance Commissioner will review federal, NAIC, and state insurance department's initiatives related to terrorism.

Process for Developing New Rule: Agency study; send written comments by September 29, 2003, to Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacys@oic.wa.gov, fax (360) 586-3109.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacys@oic.wa.gov, fax (360) 586-3109.

August 20, 2003

Mike Kreidler

Insurance Commissioner

required as result of this review in accordance with Executive Order 97-02.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting by mail Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, Vehicle Services, Mailstop 48001, P.O. Box 2957, Olympia, WA 98507-2957, or by phone (360) 902-3718, fax (360) 664-0831, TTY (360) 664-8885, e-mail kvasquez@dol.wa.gov.

August 20, 2003

Eric R. Andersen

for Deborah McCurley, Administrator
Title and Registration Services

WSR 03-17-107**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

[Filed August 20, 2003, 11:48 a.m.]

Subject of Possible Rule Making: Chapter 308-96A WAC, Vehicle licensing, to include but not limited to WAC 308-96A-021.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.01.110, 46.16.135, 46.16.225, 46.16.490, 46.16.276.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule making may be



WSR 03-15-098
PROPOSED RULES
SOUTHWEST
CLEAN AIR AGENCY
 [Filed July 21, 2003, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-19-054.

Title of Rule: See Purpose below.

Purpose: SWCAA 400-030 Definitions, the purpose of this section is to provide definitions for commonly used words or phrases in the rest of the regulation.

SWCAA 400-040 General Standards for Maximum Emissions, the purpose of this section is to establish a minimum set of air emission standards for all sources.

SWCAA 400-045 Permit Application for Nonroad Engines, the purpose of this section is to identify requirements for the submittal of permit applications for nonroad engine projects.

SWCAA 400-046 Application Review Process for Nonroad Engines, the purpose of this section is to identify requirements for the processing of permit applications for nonroad engine projects.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units, the purpose of this section is to establish a minimum set of air emission standards for all combustion and incineration units. Additional requirements are provided for specific categories of combustion and incineration units.

SWCAA 400-052 Stack Sampling of Large Combustion Sources, the purpose of this section is to provide a minimum set of air emission standards for sampling emissions from major combustion sources.

SWCAA 400-060 Emission Standards for General Process Units, the purpose of this section is to provide a minimum set of air emission standards for general process units.

SWCAA 400-070 Emission Standards for Certain Source Categories, the purpose of this section is to provide a minimum set of air emission standards for sampling emissions from certain defined source categories and activities.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, the purpose of this section is to adopt by reference the federal standards relating to hazardous air pollutant standards referred to generally as the MACT standards.

SWCAA 400-076 Emission Standards for Stationary Sources Emitting Toxic Air Pollutants, the purpose of this section is to provide a reference to the toxic air pollutant rule and describe the permitting process.

SWCAA 400-081 Startup and Shutdown, the purpose of this section is to identify allowances for startup and shutdown conditions in technology based emission standards and control technology determinations.

SWCAA 400-091 Voluntary Limits on Emissions, the purpose of this section is to provide a mechanism and process for sources to request a voluntary limit on potential emissions from their facilities.

SWCAA 400-100 Registration Requirements, the purpose of this section is to identify requirements for registration and inspection of air contaminant sources.

SWCAA 400-101 Emission Units Exempt from Registration Requirements, the purpose of this section is to identify those sources that are exempt from the registration and new source review requirements of SWCAA 400-100 and 400-110.

SWCAA 400-103 Operating Permit Fees, the purpose of this section is to identify a mechanism for calculating and assessing fees for operating permit sources.

SWCAA 400-105 Records, Monitoring and Reporting, the purpose of this section is to identify requirements for sources to conduct monitoring, perform emission sampling and reporting, and submit an emission inventory.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources, the purpose of this section is to provide a minimum set of standards for emission testing and monitoring at air contaminant sources.

SWCAA 400-107 Excess Emissions, the purpose of this section is to identify requirements for the reporting of excess emissions, and provide penalty relief in the case of unavoidable excess emissions.

SWCAA 400-109 Air Discharge Permit Applications, the purpose of this section is to identify requirements for submittal and a description of the process for submitting a notice of construction application.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review), the purpose of this section is to identify requirements for the processing of permit applications for new sources.

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area, the purpose of this section is to identify the requirements for new or modified sources in a maintenance plan area. Because of the maintenance plan status of an area, emission standards to maintain air quality in a maintenance plan area are more demanding than those in less populated or industrialized areas.

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas, the purpose of this section is to identify the requirements for new or modified sources in nonattainment areas for permitting purposes. This section also includes provisions for offsetting emissions for larger emission sources.

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas, the purpose of this section is to identify the requirements for new or modified sources in attainment areas for permitting purposes.

SWCAA 400-114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source, the purpose of this section is to identify the requirements for projects involving replacement or alteration of existing emission control technology.

SWCAA 400-115 Standards of Performance for New Sources, the purpose of this section is to adopt by reference the new source performance standards (NSPS) contained in 40 C.F.R. 60 for certain sources categories.

SWCAA 400-116 Maintenance of Equipment, the purpose of this section is to identify requirements for the maintenance of process and emission control equipment.

SWCAA 400-130 Use of Emission Reduction Credits, the purpose of this section is to identify the requirements and procedures for use of emission reduction credits.

PROPOSED

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank, the purpose of this section is to identify the requirements and procedures for depositing emission reduction credits into the credit bank maintained by SWCAA.

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank, the purpose of this section is to identify the requirements for SWCAA to maintain the emission reduction credit bank, how the credits are to be issued and describe how to manage credits that are expired beyond the five year time limit.

SWCAA 400-140 Protection of Ambient Air Increments, the purpose of this section is to identify criteria for all sources that serve to prevent significant deterioration of air quality by protecting ambient air increments.

SWCAA 400-141 Prevention of Significant Deterioration (PSD), the purpose of this section is to identify the requirements for those sources subject to federal PSD permitting requirements and provides reference to the appropriate federal regulations.

SWCAA 400-151 Retrofit Requirements for Visibility Protection, the purpose of this section is to identify the retrofit requirements for visibility protection as they apply to "existing stationary sources."

SWCAA 400-171 Public Involvement, the purpose of this section is to identify the mechanism by which SWCAA provides an opportunity for public involvement on permitting actions. This section also identifies agency actions that are subject to a mandatory public comment period.

SWCAA 400-180 Variance, the purpose of this section is to identify the requirements and procedures for obtaining a variance from the SWCAA board of directors for an existing permit or the established regulations.

SWCAA 400-190 Requirements for Nonattainment Areas, the purpose of this section is to require consultation with local governments and public involvement when developing requirements for nonattainment areas.

SWCAA 400-230 Regulatory Actions and Civil Penalties, the purpose of this section is to identify the different types of common regulatory orders issued by SWCAA and identify the enforcement and civil penalty authorities of SWCAA.

SWCAA 400-250 Appeals, the purpose of this section is to identify the mechanism by which regulatory orders or other agency actions may be appealed.

SWCAA 400-270 Confidentiality of Records and Information, the purpose of this section is to identify SWCAA's policy regarding the submittal and handling of confidential information.

SWCAA 400, Appendix A SWCAA Method 9/Visual Opacity Determination Method, the purpose of this section is to establish a test method for observing opacity.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

Summary: SWCAA 400-030, this section is the placeholder for definitions of words and phrases used throughout SWCAA 400. Most definitions are identical to the federal definitions.

SWCAA 400-040, this section contains the visible emission standard of 20% opacity, and other limits for fallout, fugitive emissions, odors, emissions detrimental to persons or

property, sulfur dioxide, concealment and masking and fugitive dust sources.

SWCAA 400-045, this section identifies requirements for permit applications for nonroad engine projects.

SWCAA 400-046, this section identifies requirements for the processing and approval of permit applications for nonroad engine projects.

SWCAA 400-050, this section identifies emission standards and requirements for combustion and incineration units.

SWCAA 400-052, this section contains requirements for stack sampling of major combustion sources every two years to assist with preparation of the annual emission inventory that is submitted to EPA by SWCAA.

SWCAA 400-060, this section identifies the maximum emission standard of 0.1 grains per dry standard cubic feet of exhaust gas for any general process operation.

SWCAA 400-070, this section contains emission standards and requirements for certain source categories including wigwam burners, hog fuel boilers, orchard heaters, wood waste burners, perc dry cleaners, catalytic cracking units, sulfuric acid plants, gasoline dispensing facilities, dry cleaning facilities, oil heaters, coffee roasters, and abrasive blasting operations.

SWCAA 400-075, this section adopts the federal standards for sources emitting hazardous air pollutants contained in 40 C.F.R. part 61 and part 63 by reference (MACT standards) as requirements for sources in SWCAA jurisdiction for local implementation and enforcement.

SWCAA 400-076, this section describes general requirements for toxic pollutant emission sources and provides a reference to the toxics rule, chapter 173-460 WAC which is adopted by reference by SWCAA under separate rule making.

SWCAA 400-081, this section describes the basis upon which a source may be allowed to exceed technology based emission standards during startup and/or shutdown.

SWCAA 400-091, this section provides the authority and describes the process for a source to request a voluntary limit on emissions. This section provides the ability to have a federally enforceable emission limit to keep out of the Title 5 operating permit program.

SWCAA 400-100, this section establishes a system of registration for air contaminant sources within SWCAA jurisdiction.

SWCAA 400-101, this section identifies those sources that are exempt from the registration and new source review requirements of SWCAA 400-100 and 400-110.

SWCAA 400-103, this section identifies the method by which permit fees for operating permit sources are calculated, and establishes a mechanism for fee assessment.

SWCAA 400-105, this section identifies the requirements for sources to submit an emission inventory, conduct monitoring and perform emission sampling.

SWCAA 400-106, this section provides a minimum set of standards for sampling and reporting emissions from all sources.

SWCAA 400-107, this section identifies requirements for the reporting of excess emissions at registered sources.

The section also includes provisions for penalty relief in the case of unavoidable excess emissions.

SWCAA 400-109, this section identifies requirements for submittal of a notice of construction and a description of the process for submitting a notice of construction application.

SWCAA 400-110, this section defines the procedure used by SWCAA to process permit applications for new sources, and identifies general requirements that must be met during new source review.

SWCAA 400-111, this section identifies the requirements for new or modified sources in a maintenance plan area. Because of the maintenance plan status of an area, emission standards to maintain air quality in a maintenance plan area are more demanding than those in less populated or industrialized areas.

SWCAA 400-112, this section identifies the requirements for new or modified sources in nonattainment areas for permitting purposes. This section also includes provisions for offsetting emissions for larger emission sources.

SWCAA 400-113, this section identifies the new source review requirements for new or modified sources in attainment areas.

SWCAA 400-114, this section identifies the requirements for control technology replacement or alteration projects that are not reviewable under SWCAA 400-110.

SWCAA 400-115, this section adopts by reference the new source performance standards (NSPS) contained in 40 C.F.R. 60 for identified sources categories.

SWCAA 400-116, this section identifies requirements for the maintenance and operation of process and emission control equipment. The section also contains provisions for operation and maintenance (O&M) plans.

SWCAA 400-130, this section identifies the requirements and procedures for use of emission reduction credits once they have been deposited in the emission reduction credit bank maintained by SWCAA.

SWCAA 400-131, this section describes the requirements and procedures for depositing emission reduction credits into the credit bank maintained by SWCAA.

SWCAA 400-136, this section identifies the requirements for SWCAA to maintain the emission reduction credit bank, how the credits are to be issued and describe how to manage credits that are expired beyond the five year time limit.

SWCAA 400-140, this section identifies criteria for the protection of ambient air increments that are applicable to all sources within SWCAA jurisdiction.

SWCAA 400-141, this section describes the requirements for those sources that would be subject to the federal PSD permitting requirements and provides reference to the appropriate federal regulations.

SWCAA 400-151, this section contains procedures by which SWCAA will identify and determine emission requirements for any "existing stationary source" that causes or contributes to visibility impairment in any mandatory federal Class 1 area.

SWCAA 400-171, this section identifies the requirements for public notice of agency actions, and the process by which public involvement is to be administered. This section

also identifies those documents that are subject to a formal public notice and those that are not subject to a formal public notice.

SWCAA 400-180, this section describes the requirements and procedures for obtaining a variance from the SWCAA board of directors for an existing permit or the established regulations.

SWCAA 400-190, this section requires SWCAA to consult local governments and provide for public involvement when developing requirements for nonattainment areas.

SWCAA 400-230, this section identifies the different types of common regulatory orders issued by SWCAA and identifies the enforcement and civil penalty authorities of SWCAA.

SWCAA 400-250, this section identifies the pollution control hearings board as the proper authority for appealing regulatory orders issued by SWCAA or other agency actions pursuant to chapter 371-08 WAC.

SWCAA 400-270, this section identifies what type of information may be considered confidential and the manner in which such information will be handled by SWCAA.

SWCAA 400, Appendix A, this section contains a test protocol for conducting field observations of opacity.

Reasons Supporting Proposal: See Purpose and Summary above and Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 1308 N.E. 134th Street, Vancouver, WA 98685, (360) 574-3058; Implementation: Paul Mairose, 1308 N.E. 134th Street, Vancouver, WA 98685, (360) 574-3058; and Enforcement: Robert D. Elliott, 1308 N.E. 134th Street, Vancouver, WA 98685, (360) 574-3058.

Name of Proponent: Southwest Clean Air Agency (SWCAA), governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: SWCAA 400-030, this is an existing section. Proposed revisions to this section incorporate recent changes made in WAC 173-400-030, and the addition of new definitions that do not appear in the current version of SWCAA 400-030.

SWCAA 400-040, this is an existing section. The proposed changes consist of minor administrative editing.

SWCAA 400-045, this is a new section. The proposed section is intended to provide a mechanism for the submittal of permit applications for projects involving units that meet the federal definition of "nonroad engine."

SWCAA 400-046, this is a new section. The proposed section is intended to provide a mechanism for the review and approval of projects involving units that meet the federal definition of "nonroad engine."

SWCAA 400-050, this is an existing section. The proposed changes incorporate new standards for "commercial and industrial solid waste incineration units" and "small municipal waste combustion units." The proposed standards are consistent with requirements adopted by ecology in 2001.

SWCAA 400-052, this is an existing section. The proposed changes are intended to clarify the requirements of the section. The intent and meaning of the section remain

unchanged with no significant changes in testing frequency or methodology.

SWCAA 400-060, this is an existing section. The date of the EPA test method reference contained in the section (40 C.F.R. 60, Appendix A) is being updated. No other changes are proposed.

SWCAA 400-070, this is an existing section. The proposed changes incorporate requirements for source categories recently added to WAC 173-400-070, and the addition of new emission standards for source categories not currently included in WAC 173-400-070.

SWCAA 400-075, this is an existing section. The proposed changes update adoption reference dates and incorporate new federal regulations contained in 40 C.F.R. Parts 63 and 65.

SWCAA 400-076, this is an existing section. The proposed changes update the definitions, cross sectional references, and sectional titles found in the text of SWCAA 400-076, and make minor corrections to maintain consistency with other sections of SWCAA 400.

SWCAA 400-081, this is an existing section. The proposed changes consist of minor administrative editing and small changes made in response to EPA comments. The proposed revision does not contain any substantive changes.

SWCAA 400-091, this is an existing section. The proposed changes consist of minor changes in terminology to maintain consistency with other sections of SWCAA 400.

SWCAA 400-100, this is an existing section. The proposed changes correct outdated text and remove the operating permit program fee schedule (SWCAA 400-100(4)) from the section. The operating permit fee schedule is being moved to a new section because operating permit sources are not subject to the registration program, and the current format can be confusing to the public and affected sources.

SWCAA 400-101, this is an existing section. The proposed changes clarify the applicability language of the section and remove a number of exemption categories.

SWCAA 400-103, this a new section. The proposed section makes the fee schedule for operating permit sources into a self-contained rule section. The fee schedule is currently contained within the text of SWCAA 400-100 "Registration Requirements and Operating Permit Fees" along with requirements for SWCAA's registration program. This format is confusing and inappropriate because operating permit sources are not subject to any element of the registration program.

SWCAA 400-105, this is an existing section. The proposed changes update references to the Code of Federal Regulations and make administrative corrections.

SWCAA 400-106, this is an existing section. The proposed changes incorporate new monitoring requirements for combustion sources. The new requirements are equivalent to the emission monitoring requirements currently implemented on a case-by-case basis in approval orders for combustion sources.

SWCAA 400-107, this is an existing section. The proposed changes expand the existing section to include notification and reporting requirements for all excess emissions. The proposed language provides more detailed requirements

for reporting excess emissions than found in the existing section.

SWCAA 400-109, this is an existing section. The proposed changes incorporate new terminology, addition of the existing permit application fee table from SWCAA 400-110, and minor administrative changes.

SWCAA 400-110, this is an existing section. The proposed changes incorporate new terminology, removal of the notice of construction application fee schedule, new requirements consistent with SWCAA 400-117, clarification of portable source applicability under SWCAA 400-110(6), approval criteria for modification of approval conditions, and minor administrative changes.

SWCAA 400-111, this is an existing section. The proposed changes incorporate administrative editing and minor text changes intended to improve consistency with the format of SWCAA 400-112 and 400-113.

SWCAA 400-112, this is an existing section. The proposed changes incorporate administrative changes, previously uncited requirements from 40 C.F.R. 51, Appendix S, new requirements consistent with WAC 173-400-117, changes in terminology, and correction of outdated references and requirements.

SWCAA 400-113, this is an existing section. The proposed changes incorporate minor text changes intended to improve consistency with the format of SWCAA 400-111 and 400-112, new requirements consistent with WAC 173-400-117, and administrative editing.

SWCAA 400-114, this is an existing section. The proposed changes incorporate new terminology and minor administrative editing.

SWCAA 400-115, this is an existing section. The proposed changes incorporate updated adoption references and minor format changes intended to improve consistency with the corresponding sections of the WAC.

SWCAA 400-116, this is an existing section. The proposed changes incorporate new terminology and clarification of requirements.

SWCAA 400-130, this is an existing section. The proposed changes correct outdated references in the text of the section.

SWCAA 400-131, this is an existing section. The proposed changes incorporate administrative changes and a modification of the processing timeline for ERC applications.

SWCAA 400-136, this is an existing section. The proposed changes incorporate minor clarifications and administrative changes.

SWCAA 400-140, this is a new section. The proposed section creates a mechanism for protection of ambient air increments pursuant to 40 C.F.R. 51.166 et seq.

SWCAA 400-141, this is an existing section. The proposed changes update the section to match the format and meaning of WAC 173-400-141 as currently adopted.

SWCAA 400-151, this is an existing section. The proposed changes update the section to match the format and meaning of WAC 173-400-151 as currently adopted.

SWCAA 400-171, this is an existing section. The proposed changes revise the public involvement requirements for agency permitting and other proposed actions. These changes incorporate public notice via the internet, and correct

a number of identified deficiencies in the current public involvement provisions of SWCAA 400-171.

SWCAA 400-180, this is an existing section. The proposed changes incorporate an updated reference to EPA.

SWCAA 400-190, this is an existing section. The proposed changes incorporate new terminology.

SWCAA 400-230, this is an existing section. The proposed changes incorporate new terminology and administrative editing.

SWCAA 400-250, this is an existing section. The proposed changes revise existing provisions to improve consistency with applicable state regulations.

SWCAA 400-270, this is an existing section. The proposed changes are intended to make the definition of confidential information more consistent with applicable state regulations and clarify how SWCAA uses and handles such information.

SWCAA 400, Appendix A, this is an existing section. The proposed changes incorporate minor administrative editing and an updated federal regulation reference.

Proposal Changes the Following Existing Rules: See Purpose, Summary, and Explanation of Rule above

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes proposed by SWCAA are consistent with federal or state rules already in effect. This agency is not subject to the small business economic impact provision of chapter 19.85 RCW. A fiscal analysis has been performed to establish the basis for any proposed fee increases. Copies of this analysis are available from SWCAA

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

Hearing Location: Office of SWCAA, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on October 2, 2003, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Mary Allen by September 26, 2003, TDD (360) 574-3058.

Submit Written Comments to: Wess Safford, SWCAA, 1308 N.E. 134th Street, Vancouver, WA 98685, fax (360) 576-0925, by September 23, 2003.

Date of Intended Adoption: October 2, 2003.

July 17, 2003

Robert D. Elliott
Executive Director

SWCAA 400 - General Regulations for Air Pollution Sources

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-030 Definitions

[Statutory Authority: Chapter 70.94.030 RCW, and 70.94.141 RCW. Original adoption by Board 12/17/68 (Regulation 1); Amended by Board 10/29/69 (Regulation 2); Amended by Board 3/20/84; Amended by Board 12/16/86; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

Except as provided elsewhere in this regulation the following definitions apply throughout the regulation:

(1) "**Actual emissions**" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission((s)) unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal "source" operation. The Agency shall allow the use of a different time period upon a determination that it is more representative of normal "source" operation. Actual emissions shall be calculated using the emission((s)) unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The Agency may presume that "source" specific allowable emissions for the unit are equivalent to the actual emissions of the emission((s)) unit.

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

(2) "**Adverse impact on visibility**" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area and (b) the frequency and timing of natural conditions that reduce visibility. ~~((This term does not include effects on integral vistas.))~~

(3) "**Agency**" means the Southwest Clean Air Agency (SWCAA).

~~((3))~~ (4) "**Air contaminant**" or "**air pollutant**" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. This includes any substance regulated as an air pollutant under ~~((WAC))~~ Chapter 173-460 WAC, ~~((NESHAAP,))~~ Sections 111 and 112 of the Federal Clean Air Act ~~((Amendments or))~~, ozone depleting substances (Title VI of the Federal Clean Air Act), any substance for which a primary or secondary National Ambient Air Quality Standard has been established, and volatile organic compounds. ~~(("Air pollutant" means the same as "air contaminant." A criteria pollutant is an air pollutant for which a criteria document has been prepared by EPA and has a primary or secondary ambient air quality standard. These pollutants are identified at 40 CFR Part 50 and include sulfur oxides (measured as sulfur dioxide), particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead. Volatile organic compounds as a category are no longer identified as a criteria pollutant.))~~

(5) "**Air discharge permit**" means the same as "Order of Approval." This term does not apply to any permitting action conducted pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

(6) "**Air discharge permit application**" means the same as "Notice of Construction application." This term does not apply to any permitting action conducted pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

~~((4))~~ (7) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this regulation, air pollution shall not include air contaminants emitted in compliance with Chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of various pesticides.

~~((5))~~ (8) "Allowable emissions" means the emission rate of a "stationary source" calculated using the maximum rated capacity of the "stationary source" (unless the "stationary source" is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards (~~as set forth~~) in 40 CFR Parts 60, 61, or 63;

(b) Any applicable (~~State Implementation Plan~~) SIP emission limitation including those with a future compliance date;

(c) The emission(~~s~~) rate specified as a federally enforceable permit condition, including those with a future compliance date; or

(d) The emission rate specified by (~~an applicable~~) a federally enforceable regulatory order.

(9) "Alteration" means the act of altering, which means to change or make different. Alteration includes, but is not limited to, any enlargement, replacement, or change in the design, operation, capacity, or arrangement of a process; any increase in the connected loading of process or control equipment; and any change in fuels, method of operation or hours of operation not previously approved by the Agency.

~~((6))~~ (10) "Ambient air" means the surrounding outside air.

~~((7))~~ (11) "Ambient air quality standard" (AAQS) means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple air contaminants in the ambient air that shall not be exceeded.

~~((8))~~ "Agency" means the Southwest Clean Air Agency (SWCAA);

(12) "Attainment area" means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(13) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(14) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emission unit, which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

~~((9))~~ (15) "Best available control technology" (BACT) means an emission limitation (including a visible emission standard) based on the maximum degree of reduc-

tion for each air pollutant subject to regulation under Chapter 70.94 RCW which would be emitted from or which results from any new or modified "stationary source," which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such "stationary source" or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of (~~the~~) "best available control technology" result in emissions of any air pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60, Part 61, and Part 63 (~~as they exist on July 1, 2000, or their later enactments as adopted by reference by the Agency by rule~~). Emissions from any "stationary source" utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

~~((10))~~ (16) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the "stationary source," the remaining useful life of the "stationary source," and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

~~((11))~~ (17) "Board" means the Board of Directors of the Southwest Clean Air Agency.

~~((12))~~ (18) "Bubble" means a set of emission limits which allows an increase in emissions from a given emission(~~s~~) unit(~~s~~) in exchange for a decrease in emissions from another emission(~~s~~) unit(~~s~~), pursuant to RCW 70.94.155(~~;)~~) and SWCAA 400-120.

~~((13))~~ (19) "Capacity factor" means the ratio of the average load on a machine or piece of equipment (~~for the period of time considered;~~) to the manufacturer's capacity rating of the machine or equipment for the period of time considered.

~~((14))~~ (20) "Class I area" means any area designated pursuant to (~~§§~~) Sections 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas (~~potentially affected by emissions from sources within SWCAA jurisdiction~~) located within Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- ~~((f) Mt. Hood Wilderness Area;~~
- ~~(g) Mt. Jefferson Wilderness Area;~~
- (f) North Cascades National Park;
- (g) Olympic National Park;

(h) Pasayten Wilderness; and

(i) Spokane Indian Reservation.

(21) "Climate change" means a reported meteorological phenomenon, according to which the average temperature on earth is gradually increasing over its level in recent history. This rise in temperature is attributed to the increased concentration in the atmosphere of gases such as carbon dioxide that trap heat radiating upward and reradiate it toward earth.

~~((15))~~ "Closure" means permanently stopping or terminating all processes at a facility. Such termination of processes shall result in no emissions of pollutants to the ambient air. Closure does not mean temporary shutdown of operations. A facility shall be considered "permanently closed" if operations have ceased and registration fees are not paid as set forth in SWCAA 400-100(2)(c). Process and pollution control equipment may remain in place and on site but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g., disconnection of power to equipment, mechanical positioning that inhibits processing; placing of padlocks on equipment to prevent operation). Closure of a facility requires notification to SWCAA in accordance with SWCAA 400-100(2)(d). New Source Review and applicable emission control technology requirements in accordance with current requirements for similar facilities will be required of the facility prior to restart if the annual registration fee is not paid.)

~~((16))~~ (22) "Combustion and incineration ((sources)) units" means emission units using combustion for waste disposal, steam production, chemical recovery or other process requirements, but excludes open or outdoor burning.

~~((17))~~ (23) "Commenced ((construction))" as applied to construction, means that an owner or operator has all the necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the "stationary source," to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the "stationary source," to be completed within a reasonable time. ~~((ref. 40 CFR 52.21))~~

(c) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local, and federal regulations and orders contained in the Washington SIP.

(24) "Composting" means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

~~((18))~~ (25) "Concealment" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

~~((19))~~ (26) "Construction" means any physical change or change in ~~((the))~~ method of operation (including

fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions. (ref. 40 CFR 52.21)

(27) "Criteria pollutant" or "criteria air pollutant" means an air pollutant for which a criteria document has been prepared by EPA and has a primary or secondary ambient air quality standard. These pollutants are identified in 40 CFR Part 50 and include sulfur oxides (measured as sulfur dioxide), particulate matter, carbon monoxide, ozone, oxides of nitrogen (measured as nitrogen dioxide), and lead. Although volatile organic compounds are no longer identified as a criteria pollutant category, they are regulated together with oxides of nitrogen as a precursor to ozone.

~~((20))~~ (28) "Control Officer" means the Executive Director of the Southwest Clean Air Agency.

(29) "Deviation from approval conditions" means an instance when any approval condition is not met, including, but not limited to, conditions that establish emission limitations, emission standards, control equipment requirements, work practices, parameter ranges, and those designed to assure compliance with such requirements, such as monitoring, recordkeeping, and reporting. A deviation does not necessarily constitute a violation.

~~((21))~~ (30) "Director" means the director of the Washington State Department of Ecology ~~((WDOE))~~ or duly authorized representative.

~~((22))~~ (31) "Dispersion technique" means a method that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

(32) "Distillate oil" means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396-01 "Standard Specification for Fuel Oils."

~~((23))~~ (33) "Ecology" means the Washington State Department of Ecology ~~((WDOE))~~.

~~((24))~~ (34) "Emission" means a release of air contaminants into the ambient air.

~~((25))~~ (35) "Emission control technology" means emission control equipment integral or in addition to the emission unit or other technology, device, component or control parameter that is integral to ~~((the design of an emission unit or))~~ the basic design ~~((to the))~~ of an emission unit; i.e., low NOx burner for a boiler or turbine.

~~((26))~~ (36) "Emission reduction credit" (ERC) means a credit granted pursuant to SWCAA 400-131. This is a voluntary reduction in emissions beyond required levels of control. ERCs may be sold, leased, banked for future use or traded in accordance with applicable regulations. Emission reduction credits shall provide an incentive for reducing emissions below the required levels and ~~((to))~~ establish a framework to promote a market based approach to air pollution control.

~~((27))~~ (37) "Emission standard" and "emission limitation" mean a requirement established under the ~~((FCAA))~~ Federal Clean Air Act, ~~((or))~~ Chapter 70.94 RCW or a local regulation ~~((which))~~ that limits the quantity, rate, or concentration of ~~((emissions of))~~ air contaminant~~((s))~~ emissions on a continuous basis, including any requirement relating to the operation or maintenance of a "stationary source" to assure

continuous emission reduction and any design, equipment, work practice, or operational standard (~~promulgated~~) adopted under the (FCAA) Federal Clean Air Act or Chapter 70.94 RCW.

~~((28))~~ (38) "Emission(s) unit" means any part of a "stationary source" that emits or would have the potential to emit any air pollutant subject to regulation under the (FCAA) Federal Clean Air Act, Chapter 70.94 RCW, or Chapter 70.98 RCW.

~~((29))~~ (39) "Excess emissions" means emissions of an air pollutant in excess of any applicable emission standard or emission limit.

~~((30))~~ (40) "Excess stack height" means that portion of a stack which exceeds the greater of sixty-five meters (213.25 feet) or the calculated stack height described in SWCAA 400-200(2).

~~((31))~~ (41) "Executive Director" means the Control Officer of the Southwest Clean Air Agency.

~~((32))~~ (42) "Existing stationary facility" ((means a stationary source of air pollutants that has the potential to emit two hundred fifty tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1987.)) means a "stationary source" that meets all of the following conditions:

(a) The "stationary source" was not in operation prior to August 7, 1962, and was in existence on August 7, 1977;

(b) The "stationary source" is one of the following:

(i) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input,

(ii) Coal cleaning plants (thermal dryers),

(iii) Kraft pulp mills,

(iv) Portland cement plants,

(v) Primary zinc smelters,

(vi) Iron and steel mills,

(vii) Primary aluminum ore reduction plants,

(viii) Primary copper smelters,

(ix) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(x) Hydrofluoric, sulfuric, or nitric acid plants,

(xi) Petroleum refineries,

(xii) Lime plants,

(xiii) Phosphate rock processing plants,

(xiv) Coke oven batteries,

(xv) Sulfur recovery plants,

(xvi) Carbon black plants (furnace process),

(xvii) Primary lead smelters,

(xviii) Fuel conversion plants,

(xix) Sintering plants,

(xx) Secondary metal production plants,

(xxi) Chemical process plants,

(xxii) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,

(xxiii) Petroleum storage and transfer units with a total capacity exceeding 300,000 barrels,

(xxiv) Taconite ore processing plants,

(xxv) Glass fiber processing plants,

(xxvi) Charcoal production plants; and

(c) The "stationary source" has the potential to emit 250 tons per year or more of any air contaminant. Fugitive emissions, to the extent quantifiable, must be counted in determining the potential to emit.

(d) For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

~~((33))~~ (43) "Federal Clean Air Act" (FCAA) means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(44) "Federal Class I area" means any federal land that is classified or reclassified as Class I. The Federal Class I areas in Washington State are as follows:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness.

~~((34))~~ (45) "Federal land manager" means ((with respect to any lands in the United States, the Secretary of the department with authority over such lands)) the secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior-National Park Service, the U.S. Department of Agriculture-Forest Service, and/or the U.S. Department of the Interior-Bureau of Land Management.

(46) "Federally enforceable" means all limitations and conditions which are enforceable by the EPA, including those requirements developed under 40 CFR Parts 60, 61 and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or any order of approval established under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to WAC 173-400-091 or SWCAA 400-091.

~~((35))~~ (47) "Fossil fuel-fired steam generator" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

~~((36))~~ (48) "Fugitive dust" means a type of particulate emission made airborne by forces of wind, human activity, or

both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

((37)) (49) "**Fugitive emissions**" means emissions which ~~((do not pass and which))~~ could not reasonably ~~((be collected to))~~ pass through a stack, chimney, vent, or other functionally equivalent opening.

((38)) (50) "**General process unit**" means an emission(s) unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

((39)) (51) "**Good agricultural practices**" means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area.

((40)) (52) "**Good engineering practice**" (GEP) refers to a calculated stack height based on the equation specified in SWCAA 400-200 (2)(a)(ii).

(53) "**Greenhouse gas**" means a gas that has the ability to contribute to a greenhouse effect in the ambient atmosphere. Greenhouse gases include carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

((41)) (54) "**Incinerator**" means a furnace used primarily for the thermal destruction of waste.

((42)) (55) "**In operation**" means engaged in activity related to the primary design function of ~~((the))~~ a "stationary source."

(56) "**Installation**" means the act of installing, which means placing, assembling or constructing process equipment or control equipment at the premises where the equipment will be used. Installation includes all preparatory work at such premises.

((43) "**Integral vista**" means a view perceived from within a mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I federal area.)

((44)) (57) "**Lowest achievable emission rate**" (LAER) means for any "stationary source" that rate of emissions which reflects the more stringent of:

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

(b) The most stringent emission limitation which is achieved in practice by such class or category of "stationary source."

In no event shall the application of this term permit a proposed new or modified "stationary source" to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

((45)) (58) "**Maintenance Area**" or "**Maintenance Plan Area**" means a geographical area ~~((of))~~ within the jurisdiction of SWCAA which was formerly designated as a non-attainment area and which has been redesignated as an attainment area as provided under ~~((40 CFR 52))~~ Section 107(d) of the Clean Air Act. The maintenance area designation shall be in effect as long as there is a federal or state requirement to have a maintenance plan in effect.

~~((46))~~ (59) "**Maintenance pollutant**" means a pollutant for which a maintenance plan area was formerly designated as a nonattainment area.

~~((47) "**Major modification,**" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act. Any net emissions increase that is considered significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone. A physical change or change in the method of operation shall not include:~~

~~(a) Routine maintenance, repair, and replacement;~~

~~(b) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Supply Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;~~

~~(c) Use of an alternative fuel by reason of an order or rule under section 125 of the FCAA, 42 U.S.C. 7425;~~

~~(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~(e) Use of an alternative fuel or raw material by a stationary source which:~~

~~(i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, in a Prevention of Significant Deterioration permit or an Order of Approval for a Notice of Construction application; or~~

~~(ii) The source is approved to use under any federally enforceable notice of construction approval or a PSD permit issued by the Environmental Protection Agency;~~

~~(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition that was established after December 21, 1976, in a Prevention of Significant Deterioration permit or an Order of Approval for a Notice of Construction application;~~

~~(g) Any change in ownership at a stationary source.)~~

(60)(a) "**Major modification,**" as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and -112), means any physical change in, or change in the method of operation of, a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(i) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(A) Routine maintenance, repair, and replacement;

(B) Use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act;

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(E) Use of an alternative fuel or raw material by a "stationary source" which:

(I) The "stationary source" was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

(II) The "stationary source" is approved to use under any permit or approval order issued under SWCAA 400-112 or WAC 173-400-112;

(F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or approval order condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation;

(G) Any change in ownership at a "stationary source;"

(H) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2002) at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(I) When the permitting agency has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that "stationary source" in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Federal Clean Air Act, if any; and

(II) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation; or

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the Washington SIP; and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(b) "Major modification," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means any physical change in, or change in the method of operation of, a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(i) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(A) Routine maintenance, repair and replacement;

(B) Use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply

and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act;

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(E) Use of an alternative fuel or raw material by a "stationary source" which:

(I) The "stationary source" was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition or Order of Approval which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation, or

(II) The "stationary source" is approved to use under any PSD permit;

(F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition or an approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation;

(G) Any change in ownership at a "stationary source;"

(H) The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(I) When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2002) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that "stationary source" in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Federal Clean Air Act, if any, and

(II) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation; or

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the Washington SIP, and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

((48) "Major stationary source" means:

(a) Any stationary source which:

(i) Emits or has the potential to emit one hundred tons per year or more of any air contaminant regulated by the Washington State or Federal Clean Air Acts;

(ii) Is located in a "marginal" or "moderate" ozone non-attainment area and which emits or has the potential to emit one hundred tons per year or more of volatile organic compounds or oxides of nitrogen;

(iii) Is located in a "serious" carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels and which emits or has the potential to emit fifty tons per year or more of carbon monoxide; or

(iv) Is located in a "serious" particulate matter (PM₁₀) nonattainment area and which emits or has the potential to emit seventy tons per year or more of PM₁₀ emissions.

(b) Any physical change that would occur at a stationary source not qualifying under (a) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself;

(c) A major stationary source that is major for VOCs or NO_x shall be considered major for ozone;

(d) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the stationary source belongs to one of the following categories of stationary sources or the source is a major stationary source due to (a)(iii) or (iv) of this subsection:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cements plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels (12,600,000 gallons);
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and
- (xxvii) Any other stationary source category which, as of August 7, 1980, was being regulated under sections 111 or 112 of the Federal Clean Air Act.

(e) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit

code) as described in the Standard Industrial Classification Manual, 1987:))

(61)(a) "Major stationary source," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and -112), means:

(i) Any "stationary source" of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act, except that lower emissions thresholds shall apply as follows:

(A) 70 tons per year of PM₁₀ in any "serious" nonattainment area for PM₁₀.

(B) 50 tons per year of carbon monoxide (CO) in any "serious" nonattainment area for CO where "stationary sources" contribute significantly to CO levels in the area.

(ii) Any physical change that would occur at a "stationary source" not qualifying under (a)(i) of this subsection as a "major stationary source," if the change would constitute a "major stationary source" by itself.

(iii) A "major stationary source" that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(iv) The fugitive emissions of a "stationary source" shall not be included in determining whether it is a "major stationary source," unless the "stationary source" belongs to one of the following categories of "stationary sources" or the "stationary source" is major due to (a)(i)(A) or (a)(i)(B) of this subsection:

- (A) Coal cleaning plants (with thermal dryers);
- (B) Kraft pulp mills;
- (C) Portland cement plants;
- (D) Primary zinc smelters;
- (E) Iron and steel mills;
- (F) Primary aluminum ore reduction plants;
- (G) Primary copper smelters;
- (H) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (I) Hydrofluoric, sulfuric, or nitric acid plants;
- (J) Petroleum refineries;
- (K) Lime plants;
- (L) Phosphate rock processing plants;
- (M) Coke oven batteries;
- (N) Sulfur recovery plants;
- (O) Carbon black plants (furnace process);
- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;
- (T) Chemical process plants;
- (U) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(AA) Any other "stationary source" category, which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Federal Clean Air Act.

(v) For purposes of determining whether a "stationary source" is a "major stationary source," the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

(b) "Major stationary source," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means:

(i) Any of the following "stationary sources" of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act:

(A) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(B) Coal cleaning plants (with thermal dryers);

(C) Kraft pulp mills;

(D) Portland cement plants;

(E) Primary zinc smelters;

(F) Iron and steel mill plants;

(G) Primary aluminum ore reduction plants;

(H) Primary copper smelters;

(I) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(J) Hydrofluoric, sulfuric, and nitric acid plants;

(K) Petroleum refineries;

(L) Lime plants;

(M) Phosphate rock processing plants;

(N) Coke oven batteries;

(O) Sulfur recovery plants;

(P) Carbon black plants (furnace process);

(Q) Primary lead smelters;

(R) Fuel conversion plants;

(S) Sintering plants;

(T) Secondary metal production plants;

(U) Chemical process plants;

(V) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

(W) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(X) Taconite ore processing plants;

(Y) Glass fiber processing plants; and

(Z) Charcoal production plants.

(ii) Regardless of the "stationary source" size specified in (b)(i) of this subsection, any "stationary source" which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

(iii) Any physical change that would occur at a "stationary source" not otherwise qualifying under (b)(i) or (ii) of this

subsection, as a "major stationary source" if the change would constitute a "major stationary source" by itself.

(iv) A "major stationary source" that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(v) The fugitive emissions of a "stationary source" shall not be included in determining whether it is a "major stationary source," unless the "stationary source" belongs to one of the following categories:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(AA) Any other "stationary source" category that is being regulated under Section 111 or 112 of the Federal Clean Air Act as of August 7, 1980.

(vi) For purposes of determining whether a "stationary source" is a "major stationary source," the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

((49)) (62) "Mandatory Class I federal area" means any area defined in Section 162(a) of the ((FGAA)) Federal Clean Air Act. The mandatory Class I federal areas potentially affected by emissions from "sources" within SWCAA jurisdiction ((are as follows)) include the following:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) Mt. Hood Wilderness Area;
- (g) Mt. Jefferson Wilderness Area;
- (h) North Cascades National Park;
- (i) Olympic National Park; and
- (j) Pasayten Wilderness.

~~((50))~~ (63) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor, ~~((usually to a less offensive odor.))~~

~~((51))~~ (64) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant alteration of the chemical or physical properties of the material.

~~((52))~~ (65) "Modification" means any physical change in, or change in the method of operation of, a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(66) "Motor vehicle" means any self propelled vehicle required to be licensed pursuant to Chapter 46.16 RCW.

(67) "National Ambient Air Quality Standard" (NAAQS) means an ambient air quality standard set forth in 40 CFR Part 50, which includes standards for carbon monoxide (CO), particulate matter (PM₁₀, PM_{2.5}), ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

~~((53))~~ (68) "National Emission Standards for Hazardous Air Pollutants" (NESHAPS) means the federal ~~((regulations set forth))~~ rules in 40 CFR Part 61 ~~((or Part 63))~~.

(69) "National Emission Standards for Hazardous Air Pollutants for Source Categories" means the federal rules in 40 CFR Part 63. These rules are commonly referred to as Maximum Available Control Technology (MACT) standards.

~~((54))~~ (70) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((55))~~ "Net emissions increase" means:

(a) The amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular change or change in method of operation at a source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the changes in actual emissions occur between the date ten years before construction on the particular change commences and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete Notice of Construction application for the particular change, or it has been documented by an emission reduction credit, in which case the credit shall expire ten years after the date of original issue of the ERC. Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(ii) The Agency or Ecology has not relied on it in issuing any permit or Order of Approval for the source under regulations approved pursuant to 40 CFR 51 Subpart I or the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21, which order or permit is in effect when the increase in emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(iv) The Agency has not relied on it in issuing any permit, regulatory order or Order of Approval under regulations approved pursuant to 40 CFR 51 Subpart I, the EPA has not relied on it in issuing a PSD permit pursuant to 40 CFR 52.21 or Ecology or the Agency has not relied on it in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.)

(71)(a) "Net emissions increase," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and -112), means:

(i) The amount by which the sum of the following exceeds zero:

(A) Any increase in actual emissions from a particular physical change or change in method of operation at a "stationary source"; and

(B) Any other increases and decreases in actual emissions at the "stationary source" that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if:

(A) It occurred no more than one year prior to the date of submittal of a complete air discharge permit application for the particular change, or it has been documented by an emis-

sion reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(B) The permitting agency has not relied on it in issuing any permit or order of approval for the "stationary source" under this section or a previous SIP approved nonattainment area new source review regulation, which order or permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(B) It is federally enforceable at and after the time that actual construction on the particular change begins;

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(D) The permitting agency has not relied on it in issuing any permit or order of approval under this section or a SIP approved nonattainment area new source review regulation; or the permitting agency has not relied on it in demonstrating attainment or reasonable further progress.

(vi) An increase that results from a physical change at a "stationary source" occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(b) "Net emissions increase," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means:

(i) The amount by which the sum of the following exceeds zero:

(A) Any increase in actual emissions from a particular physical change or change in the method of operation at a "stationary source"; and

(B) Any other increases and decreases in actual emissions at the "stationary source" that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if the permitting agency or EPA has not relied on it in issuing a PSD permit for the "stationary source," which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining avail-

able. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the net emissions increase for PM₁₀.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(B) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vii) An increase that results from a physical change at a "stationary source" occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

~~((56))~~ (72) "New source" means one or more of the following:

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

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

~~((c) Restart after a lapse in one year or more in payment of registration fees or operating permit fees;~~

~~((d))~~ (c) Restart of a "stationary source" after ~~((a period of five years of non-operation where registration or operating permit fees have been paid))~~ permanent shutdown; or

~~((e))~~ (d) Relocation of ~~((an existing business))~~ a "stationary source" to a new location, except in the case of portable sources operating under a valid permit as provided in SWCAA 400-110(6).

~~((57))~~ (73) "New Source Performance Standards" (NSPS) means the federal ~~((regulations set forth))~~ rules in 40 CFR Part 60 ~~((and adopted by the Agency in SWCAA 400-115)).~~

~~((58))~~ (74) "Nonattainment area" means a ~~((clearly delineated))~~ geographic area ~~((that has been))~~ designated by EPA ~~((promulgation))~~ in 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard ~~((or standards))~~ (NAAQS) for a given criteria air pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(75) "Nonroad engine"

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

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

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

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

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

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

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

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine(s) that replace(s) an engine at a location and that is intended to perform the same or similar function as the engine(s) replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a "stationary source" that remains in a single location on a permanent basis (i.e., two seasons or more) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location. (ref. 40 CFR 89.2)

(76) "Nonroad engine permit" means a regulatory order issued by the Agency to approve the installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

(77) "Nonroad engine permit application" means a written application for installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

((59)) (78) "Notice of Construction application" (NOC) means a written application ((from the source by which the Agency records and tracks requests from registered and nonregistered sources for the purpose of obtaining information regarding proposed changes or activities)) requesting approval for installation, replacement, modification, or other alteration of an emission unit at an air contaminant source or replacement or substantial alteration of control technology at an existing "stationary source." ((Types of changes)) Affected activities ((may)) include, but are not limited to, equipment modifications((:)) or alterations, changes to process or control equipment, establishment of emission limits, installation of "new sources," control technology determinations, PSD determinations, and other items specified by the Agency. ((A Notice of Construction application shall be submitted to the Agency for review and approval prior to construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source or portable source. A Notice of Construction application may be submit-

ted to the Agency for activities not requiring New Source Review and shall not automatically impose New Source Review requirements)). "Notice of Construction application" means the same as "air discharge permit application." (For more information refer to SWCAA 400-109.)

((60)) (79) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage.

((61)) (80) "Open or outdoor burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Open burning includes all forms of outdoor burning except those listed as exempt in SWCAA 425-020. Wood waste disposal in wig-wam burners is not considered open or outdoor burning.

(81) "Operating permit" means a permit issued pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

(82) "Operating permit application" means the same as "application" as described in WAC 173-401-500 and -510.

((62)) (83) "Order" ((or "Regulatory Order")) means any regulatory order issued by Ecology or the Agency pursuant to Chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153 and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, air discharge permit, nonroad engine permit, compliance schedule order, consent order, order of denial, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

((63)) (84) "Order of Approval" ((and "Approval Order")) means a regulatory order issued by Ecology or the Agency to approve a Notice of Construction or air discharge permit application ((for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source or portable source)). "Order of Approval" means the same as "air discharge permit." Note: For more information refer to SWCAA 400-230 ((1)(a)).

(85) "Ozone depleting substance" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

((64)) (86) "Particulate matter" ((or "particulates")) (PM) means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

((65)) (87) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in ((40 CFR Part 60)) Title 40, Chapter I of the Code of Federal Regulations or by a test method specified in the Washington ((State Implementation Plan)) SIP.

((66)) (88) "Parts per million by volume" (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume. When calculating or measuring the ppmv of a given gas or carrier stream, such measurement or calculation shall be exclusive of water and particulate matter.

(89) "Permanent Shutdown" means permanently stopping or terminating all processes at a "stationary source" or "emission unit." Except as provided in subsections (a), (b)

and (c), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown and the payment status of registration fees. Failure to pay registration fees for greater than one year is presumed to constitute a permanent shutdown. A shutdown lasting two or more years is presumed to be permanent, except that this presumption does not apply in the case of portable equipment operating under a valid permit pursuant to SWCAA 400-110(6).

(a) A shutdown is permanent if the owner or operator files a report of shutdown, as provided in SWCAA 400-100(5). Failure to file such a report does not mean that a shutdown was not permanent.

(b) Failure to pay registration fees for greater than two years shall constitute a permanent shutdown.

(c) Any shutdown lasting five or more years is considered to be permanent.

(90) "Permitting agency" means Ecology or the local air pollution control agency with jurisdiction over a "source."

((67)) (91) "Person" means an individual, firm, public or private corporation, owner, owner's agent, operator, contractor, association, partnership, political subdivision, municipality, or government agency.

(92) "Pipeline quality natural gas" means natural gas fuel with a total fuel sulfur content of 0.5 grains per 100 standard cubic feet or less.

((68)) (93) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

((69)) (94) "PM₁₀ emissions" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the Washington ((State Implementation Plan)) SIP.

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

((70)) (96) "PM_{2.5} emissions" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 50 or by a test method specified in the Washington ((State Implementation Plan)) SIP.

((71)) (97) "Pollutant" means the same as air contaminant, air pollutant and air pollution. (Refer to definitions ((3)) (4) and ((78)) (7))

(98) "Portable equipment" means a "stationary source" consisting of one or more emission units that is por-

table or transportable and capable of being operated at multiple locations. Portable equipment is subject to the requirements of SWCAA 400-109 and 400-110. Portable equipment includes, but is not limited to, rock crushers, portable asphalt plants, and portable concrete mixing plants (Portland cement).

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

((73)) (100) "Prevention of Significant Deterioration" (PSD) means the program set forth in ((SWCAA 400-141 and) WAC 173-400-141 and adopted by reference in SWCAA 400-141.

((74)) (101) "Projected width" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

((75)) (102) "Reasonably attributable" means attributable by visual observation or any other technique the Agency deems appropriate.

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

((77)) (104) "Regulatory order" means an order issued by Ecology or the Agency to an air contaminant source ((which applies to that source)), any applicable provision of Chapter 70.94 RCW, or the rules adopted there under, or, the regulations of the Agency. Note: For further clarification, refer ((also)) to the definitions of "Order," ((and)) "Order of Approval," "air discharge permit," "nonroad engine permit," and SWCAA 400-230.

(105) "Residual Oil" means crude oil, fuel oil that does not comply with the specifications for "distillate oil," and all fuel oil numbers 4, 5, and 6 as defined by the American Society for Testing and Materials in ASTM D396-01.

(106) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a "major stationary source" or "major modification," but do not come from the "major stationary source" or "major modification" itself. Secondary emissions must be specific, well

defined, quantifiable, and impact the same general area as the "major stationary source" or "major modification" which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains located at the new or modified "major stationary source"; and

(b) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the "major stationary source" or "major modification."

~~((78) "Significant" or "significant emission rate"~~ means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission equal to or greater than any one of the following rates:

Pollutant	Tons/Year
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulate matter (PM)	25
Fine particulate matter (PM ₁₀)	15
Volatile organic compounds (VOC)	40
Lead	0.6
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H ₂ S)	10
Total reduced sulfur (including H ₂ S)	10
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035
Municipal waste combustor metals (measured as PM)	15
Municipal waste combustor acid gases (measured as SO ₂ and hydrogen chloride))	40

(107)(a) "Significant," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and -112), means, in reference to a net emissions increase or the potential of a "stationary source" to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM ₁₀ :	15 tpy

(b) "Significant," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means:

(i) In reference to a net emissions increase or the potential of a "stationary source" to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy - PM 15 tpy - PM ₁₀
Volatile organic compounds:	40 tpy
Fluorides:	3 tpy
Lead:	0.6 tpy
Sulfuric acid mist:	7 tpy
Hydrogen sulfide (H ₂ S):	10 tpy
Total reduced sulfur (including H ₂ S):	10 tpy
Reduced sulfur compounds (including H ₂ S):	10 tpy
Municipal waste combustor organics: (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 grams per year (0.112 oz. per year or 49 grains per year)
Municipal waste combustor metals: (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases: (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions: (measured as non-methane organic compounds)	45 megagrams per year (50 tpy)
Ozone-depleting substances (in effect on July 1, 2000):	100 tpy

(ii) In reference to a "net emissions increase" or the potential of a "stationary source" to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (b)(i) of this subsection does not list, any emissions rate. However, for purposes of the applicability of this section, the hazardous air pollutants listed under Section 112(b) of the Federal Clean Air Act, including the hazardous air pollutants that may have been added to the list, are not considered subject to regulation.

(iii) Regardless of the definition in (b)(i) of this subsection, significant means any emissions rate or any net emissions increase associated with a "major stationary source" or "major modification" which would construct within 10 kilometers of a Class I area, and have an impact on such area

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equal to or greater than 1 microgram per cubic meter (twenty-four-hour average).

~~((79)) "Significant visibility impairment" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of visitor visual experience of a Class I area as defined in Section 162(a) of the FCAA. The determination must be made on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairment, and how these factors correlate with the time of visitor use of the Class I area and frequency and timing of natural conditions that reduce visibility.~~

~~((80)) (108) "Source" means all of the emission(s) unit(s) units (including quantifiable fugitive emissions) that are located on one or more contiguous and adjacent properties, and are under the control of the same person (or persons under common control), whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual (1972)*, ((1987)) as amended by the 1977 supplement.~~

~~((81)) (109) "Source category" means all "sources" or "stationary sources" of the same type or classification as described in the *Standard Industrial Classification Manual (1972)*, ((1987)) as amended by the 1977 supplement.~~

~~((82)) (110) "Southwest Clean Air Agency" ((or "Agency")) (SWCAA) means the local air pollution agency empowered to enforce and implement the Federal Clean Air Act (42 U.S.C. 7401, et seq.) and the Clean Air Washington Act ((RCW) Chapter 70.94 RCW) in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties of Washington State.~~

~~((83)) (111) "Stack" means any emission point in a "stationary source" designed to emit solids, liquids, or gases into the air, including a pipe or duct.~~

~~((84)) (112) "Stack height" means the height of an emission point measured from the ground-level elevation at the base of the stack.~~

~~((85)) (113) "Standard conditions" means a temperature of 20 degrees C (68 degrees F) and a pressure of 29.92 inches (760 mm) of mercury ((except as otherwise specified)).~~

~~((86)) (114) "State Implementation Plan" ((SIP)) or "Washington SIP" means ((a comprehensive plan developed/prepared by the Washington State Department of Ecology with assistance from the Southwest Clean Air Agency, other regional air pollution control authorities and other interested planning and governing entities, and submitted to EPA for approval, which provides for implementation, maintenance and enforcement of the primary and secondary)) the Washington SIP in 40 CFR Part 52, Subpart WW. The SIP contains federal, state and local regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.~~

~~((87)) (115) "Stationary source" means any building, structure, facility, or installation that emits or may emit any~~

air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road engine or non-road vehicle as defined in Section 216(11) of the ((FCAA)) Federal Clean Air Act.

~~((88)) (116) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.~~

~~((117)) "Synthetic minor" means any "stationary source" whose potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule or permit condition.~~

~~((89)) (118) "Total reduced sulfur" (TRS) means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA Method 16 in 40 CFR Part 60, Appendix A or an EPA approved equivalent method and expressed as hydrogen sulfide.~~

~~((90)) (119) "Total suspended particulate" (TSP) means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B ((as in effect on July 1, 2000)).~~

~~((120)) "Toxic air pollutant" (TAP) means any Class A or B toxic air pollutant listed in WAC 173-460-150 or -160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 or -160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.~~

~~((121)) "Unclassifiable area" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA in 40 CFR Part 81.~~

~~((91)) (122) "United States Environmental Protection Agency" (USEPA) shall be referred to as EPA.~~

~~((92)) (123) "Upgraded" is defined only for gasoline dispensing facilities and means the modification of a gasoline storage tank or piping to add cathodic protection, tank lining or spill and overflow protection that involve((d))s removal of ground or ground cover above a portion of the product piping. ((("Modification" of a gasoline dispensing facility means the same as "upgraded."))~~

~~((124)) "Upset condition" means a failure, breakdown, or malfunction of any piece of process equipment or pollution control equipment that causes, or has the potential to cause, excess emissions.~~

~~((93)) (125) "Visibility impairment" means any humanly perceptible ((degradation)) change in visibility (light extinction, visual range, contrast, or coloration) ((not caused-by)) from that which would have existed under natural conditions.~~

~~((94)) (126) "Visibility impairment of Class I areas" means visibility impairment within the Class I area and visibility impairment of any formally designated integral vista associated with the Class I area.~~

~~((95)) (127) "Volatile organic compound" (VOC) means:~~

(a) Any carbon compound (~~(of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which)~~) that participates in atmospheric photochemical reactions. (~~(This includes any organic compound other than the following, which have negligible photochemical activity:)~~) Exceptions: The following compounds are not a VOC: acetone; ammonium carbonate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ethane; methane; methyl acetate; ((t-butyl acetate (TBAC));) methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1,-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mf); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OCH₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅); and perfluorocarbon compounds (~~(which)~~) that fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOCs will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where ~~((such a))~~ the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by the Agency or EPA.

(c) As a precondition to excluding negligibly-reactive compounds as VOC, or at any time thereafter, the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating to the satisfaction of the Agency the amount of negligibly-reactive compounds in the "source's" emissions.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-040 General Standards for Maximum Emissions

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, and 70.94.154 RCW. Original adoption by Board 12/17/68 (Regulation 1); Amended by Board 10/29/69 (Regulation 2); Amended by Board 12/18/79; Amended by Board 3/20/84; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

All "stationary sources" and emission(s) units are required to meet the emission standards of this section. Where an emission standard listed in another section is applicable to a specific emission(s) unit, such standard shall take precedent over a general emission standard listed in this section. When two or more emission(s) units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emission(s) units, and the relative contributions of the individual emission(s) units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emission(s) units. Further, all emission(s) units are required to use reasonably available control technology (RACT) that may be determined for some "stationary sources" or "source categories" to be more stringent than the applicable emission limitations of this regulation or any Chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the Agency shall, as provided in RCW 70.94.154, define RACT for each "stationary source" or "source category" and issue a rule or regulatory order requiring the installation of RACT.

(1) **Visible emissions.** No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any emission(s) unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity as determined in accordance with ~~((Appendix A by a Certified Observer certified in accordance with EPA Method 9 "Visual Determination of the Opacity of Emissions from Stationary Sources" as specified in 40 CFR Part 60 Appendix A))~~ SWCAA Method 9, Ecology Method 9A or 9A-Alternate 1 (LIDAR) except:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning

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necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the Agency shall be advised of the schedule.

(b) When the owner or operator of an ~~((source))~~ emission unit supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

(c) When two or more ~~((sources))~~ emission units are connected to a common stack, the Agency may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

(2) **Fallout.** No person shall cause or permit the emission of particulate matter from any "stationary source" to be deposited beyond the property under direct control of the owner~~((s))~~ or operator~~((s))~~ of the "stationary source" in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) **Fugitive emissions.** The owner or operator of any emission~~((s))~~ unit engaging in materials handling, construction, demolition or any other operation that ~~((is a source of))~~ emits fugitive emissions:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emission~~((s))~~ unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(4) **Odors.**

(a) Any person who shall cause or allow the generation of any odor from any "source," which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

~~((b) A scentometer No. 1 odor strength or equivalent dilution in residential and commercial areas shall not be exceeded.~~

~~((c) A scentometer No. 3 odor strength or equivalent dilution in all other land use areas shall not be exceeded.~~

Scentometer Readings

Scentometer No.	Concentration Range No. of Thresholds
0	1 to 2
1	2 to 8
2	8 to 32
3	32 to 128
4	128

~~((d) A violation of this section shall have occurred when two measurements made within a period of one (1) hour, separated by at least fifteen (15) minutes, off the property sur-~~

~~rounding the air contaminant source exceeds the scentometer limitations set hereunder.))~~

~~((e))~~(b) ~~((When the))~~ A "stationary source" that is a manufacturing process ~~((, no violation of this section shall have occurred))~~ shall not be considered in violation of this section provided that:

(i) The "stationary source" is implementing all reasonable means of odor control and abatement including, but not limited to, Best Available Control Technology (BACT), Maximum Available Control Technology (MACT), or Lowest Achievable Emission Rate (LAER), as applicable for odor control and abatement ~~((is provided and))~~;

(ii) All odor control measures are properly maintained and operated; and

(iii) The "stationary source" is operating in compliance with other applicable regulations and emission limits.

~~((f))~~(c) When the "source" is using "good agricultural practices," as provided in RCW 70.94.640, no violation of this section shall have occurred.

(5) **Emissions detrimental to persons or property.** No person shall cause or permit the emission of any air contaminant from any "source" if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(6) **Sulfur dioxide.**

No person shall cause or permit the emission of a gas containing sulfur dioxide from any emission~~((s))~~ unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen or twelve percent ~~((CO₂))~~ carbon dioxide as required by the applicable emission standard for combustion sources, and based on the average of any period of sixty consecutive minutes.

(7) **Concealment and masking.** No person shall cause or permit the installation or use of any means that conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this section.

(8) **Fugitive dust sources.**

(a) The owner or operator of a "stationary source" of fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the "stationary source" to minimize emissions.

(b) The owner(s) or operator(s) of any existing "stationary source(s)" of fugitive dust that has been identified as a significant contributor to a PM₁₀ nonattainment area shall be required to use reasonably available control technology (RACT) to control emissions. ~~((Significance))~~ The status of a "stationary source" as a significant contributor will be determined by the criteria found in SWCAA 400-113(3).

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

SWCAA 400-045 Permit Application for Nonroad Engines

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, Original adoption WSR 02-XX-XXX, filed XX/XX/02, effective XX/XX/02]

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(1) **Purpose.** A nonroad engine permit application is the document used by the Agency to record and track requests to approve the installation, replacement, or other alteration of a nonroad engine.

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030(74) except for the following:

- (a) Nonroad engine projects with an aggregate power rating less than 200 horsepower;
- (b) Well drilling rigs;
- (c) Portable firefighting equipment;
- (d) Mobile cranes and pile drivers;
- (e) Engines used for emergency flood control; or
- (f) Engines used to power carnival or amusement rides.

(3) **Application Submittal.** A complete nonroad engine permit application shall be submitted for each new installation, replacement, or other alteration of a nonroad engine.

(4) **Application Fees.** A filing fee of \$300.00 and a review fee, as shown in Table A, shall be submitted with the applicant prior to Agency review. If other types of review, as identified in Table B, are required by the Agency as a result of the proposed installation, replacement or alteration, an additional review fee shall be paid as described in Table B. (Total Fee = Filing Fee + Review Fee [Table A] + Additional Review Fee [Table B]).

ments of SEPA (State Environmental Policy Act) shall be complied with for each application.

(6) **Withdrawn or exempt applications.**

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, an application may be determined to be exempt from the requirements of SWCAA 400-046 and 400-100. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exemption status shall not take effect until confirmed in writing.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

SWCAA 400-046 Application Review Process for Nonroad Engines

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, Original adoption WSR 02-XX-XXX, filed XX/XX/02, effective XX/XX/02]

(1) **Applicability.**

(a) All nonroad engine permit applications submitted to the Agency pursuant to SWCAA 400-045 shall be reviewed and processed as described in this section.

(b) Review of a permit application shall be limited to the nonroad engine proposed to be installed, replaced or altered and the air contaminants whose emissions would increase as a result.

(c) The requirements of this section do not apply to "stationary sources" as defined in SWCAA 400-030(110). Permit applications for "stationary sources" are reviewed and processed in accordance with SWCAA 400-110.

(2) **Requirements.**

(a) Provided that all review requirements are met, a nonroad engine permit shall be issued by the Agency prior to the installation, replacement or alteration of any nonroad engine subject to the requirements of SWCAA 400-045 and this section.

(b) A completed environmental checklist or a completed determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.

(c) Each nonroad engine permit application shall demonstrate that the proposed nonroad engine complies with applicable requirements for ambient air increments and ambient air quality standards (See Table A below). Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A.

TABLE A

Nonroad Engine Permit Application Review Fees

i.	Nonroad Engine (Aggregate horsepower rating):	
	Less than 500	400.00
	500 or more but less than 2,000	700.00
	2,000 or more but less than 5,000	1,500.00
	5,000 or more but less than 10,000	3,000.00
	10,000 or more	6,000.00
ii.	Minor Change to Existing Permit Conditions:	\$ 300.00
iii.	Other (Not classified above):	\$200.00/ton of emission
iv.	Emergency Applications	Double the normal application and review fee

TABLE B

Other Review Fees

v.	State Environmental Policy Act (SEPA) - Lead Agency	\$ 1,000.00
vi.	Environmental Impact Statement (EIS) Review	\$ 500.00
vii.	Variance request	\$ 500.00
viii.	Review of ambient impact analysis	\$ 50.00/hr

(5) **Agency actions.** Each acceptable and complete nonroad engine permit application shall result in the issuance of a nonroad engine permit or other regulatory order by the Agency in accordance with SWCAA 400-046. The require-

TABLE A
Emission Concentration Regulatory Standards

Pollutant	Averaging Period	PSD Ambient Increment 40 CFR 51.166(c)		National Ambient Air Quality Standards (NAAQS) 40 CFR 50		State Ambient Air Quality Standards 173-470, 474, and 475 WAC
		Class I µg/m ³	Class II µg/m ³	Primary Standard µg/m ³ (ppm)	Secondary Standard µg/m ³ (ppm)	Ambient Standard µg/m ³ (ppm)
Carbon Monoxide (CO)	8-Hour	—	—	10,000 ^b (9.0)	—	10,000 ^b (9.0)
	1-Hour	—	—	40,000 ^b (35.0)	—	40,000 ^b (35.0)
Nitrogen Dioxide (NO ₂)	Annual ^a (arithmetic mean)	2.5	25	100 (0.05)	100 (0.05)	100 (0.05)
Ozone (O ₃)	1-Hour ^e	—	—	(0.12)	(0.12)	(0.12)
	8-Hour ^f	—	—	(0.08)	(0.08)	—
Sulfur Dioxide (SO ₂)	Annual ^a	2	20	80 (0.03)	—	53 (0.02)
	24-Hour	5	91	365 ^b (0.14)	—	260 ^b (0.10)
	3-Hour	25	512	—	1,300 ^b (0.50)	—
	1-Hour	—	—	—	—	1,065 ^b (0.40) ^d
Lead	Quarterly Average	—	—	1.5	1.5	1.5
Total Suspended Particulates (TSP)	Annual ^a (geometric mean)	—	—	—	—	60
	24-Hour	—	—	—	—	150 ^b
Particulate Matter less than 10 µm (PM ₁₀)	Annual (arithmetic mean)	4	17	50	50	50
	24-Hour ⁱ	8	30	150 ^b	150 ^b	150 ^b
Particulate Matter less than 2.5 µm (PM _{2.5})	Annual ^g (arithmetic mean)	—	—	15	15	—
	24-Hour ^h	—	—	65	65	—

If the ambient impact in a Class I or Class II area of a proposed project is predicted to be less than the respective ambient air increments, the air quality analysis is complete at that point. If the ambient impact of a proposed project could potentially exceed the applicable ambient air increments, the applicant shall demonstrate compliance with available ambient air increments and applicable Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on July 1, 2002). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(3) **Application processing/completeness determination.** Within thirty (30) calendar days of receipt of a nonroad engine permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(4) **Final determination.** Within sixty (60) calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171.

(5) **Appeals.** A nonroad engine permit, any conditions contained in a nonroad engine permit, the denial of a nonroad engine permit application, or any other regulatory order issued pursuant to this section, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter

371-08 WAC. The Agency shall promptly mail copies of each nonroad engine permit or order to the applicant and any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) **Compliance.** Noncompliance with any term or condition identified in a nonroad engine permit issued pursuant to this section shall be considered a violation of this section.

(7) **Expiration.** Nonroad engine permits issued pursuant to this section shall become invalid if installation or alteration is not commenced within eighteen months after the date of issuance of a permit or if installation or alteration is discontinued for a period of eighteen months or more. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date. The Agency may specify an earlier date for commencement of construction in a nonroad engine permit.

(8) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in conditions of an existing nonroad engine permit. The request may be approved provided the Agency finds that:

(i) No ambient air quality standard or ambient air increment will be exceeded as a result of the change;

(ii) The change will not adversely impact the ability of the Agency to determine compliance with an applicable permit term or condition; and

(iii) The revised permit meets the requirements of SWCAA 400-046.

(b) A request to change existing approval conditions shall be filed as a nonroad engine permit application. The application shall demonstrate compliance with the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-045(3) shall apply to these requests.

(c) All actions taken under this subsection shall be subject to the public involvement provisions of SWCAA 400-171.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring 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 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-050 Emission Standards for Combustion and Incineration Units

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption by board 12/18/79; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 01-05-055 filed 2/15/01, effective 3/18/01]

(1) **Particulate matter emissions.** Combustion and incineration emission(s) units shall meet all requirements of SWCAA 400-040 and, in addition, no person shall cause or permit emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emission(s) unit combusting wood derived fuels for the production of steam. No person shall allow or permit the emission of particulate matter from an emission(s) unit combusting wood derived fuels for the production of steam in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA Method 5 in 40 CFR Part 60, Appendix A or other acceptable sampling methods approved in advance by both the Agency and EPA.

(2) **Incinerators.** For any incinerator, no person shall cause or permit emissions in excess of one hundred (100) ppm of total carbonyls as measured by applicable sampling methods or other ((acceptable)) procedures approved in advance by the Agency including but not limited to those methods contained in "Source Test Manual - Procedures for Compliance Testing," State of Washington, Department of Ecology. Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from the Agency.

(3) **Measurement correction.** Measured concentrations for combustion and incineration ((sources)) units shall be adjusted in accordance with the following listing. "Source categories" not identified shall have measured concentrations for volumes corrected to ((seven percent)) 7% oxygen, except when the Agency determines that an alternate oxygen correction factor is more representative of normal operations. Concentrations for the following "source(s) categories" shall normally be adjusted to the following oxygen concentrations:

gas, diesel, ((&)) and oil-fired boilers: 3%; medical/hospital waste incinerators: 12%; natural gas turbines: 15%.

(4) Commercial and industrial solid waste incineration units constructed on or before November 30, 1999. (See SWCAA 400-115(1) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.)

(a) **Definitions.**

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) **Applicability.** This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (4)(c) of this subsection.

(c) **Exempted units.** The following types of incineration units are exempt from this subsection:

(i) **Pathological waste incineration units.** Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on January 30, 2001) that meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting agency that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) **Agricultural waste incineration units.** Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and

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combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (in effect on January 30, 2001) that meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting agency that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) Municipal waste combustion units. Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units regulated under 40 CFR Part 60, Subpart Ea or Subpart Eb (in effect on July 1, 2000); 40 CFR Part 60, Subpart AAAA (in effect on June 1, 2001); or WAC 173-400-050(5).

(B) Units burning greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, Subparts Ea (in effect on July 1, 2000), Eb (in effect on July 1, 2000), and AAAA (in effect on June 1, 2001), and SWCAA 400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if the two requirements in (c)(iii)(B)(I) and (II) of this subsection are met.

(I) Notify the Agency that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned and the weight of all other fuels and wastes burned in the unit.

(iv) Medical waste incineration units. Incineration units regulated under 40 CFR Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, 2000);

(v) Small power production facilities. Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) The owner or operator of the unit has notified the permitting agency that the unit meets all of these criteria.

(vi) Cogeneration facilities. Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator of the unit has notified the permitting agency that the unit meets all of these criteria.

(vii) Hazardous waste combustion units. Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under Section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under Subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, 2002).

(viii) Materials recovery units. Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) Air curtain incinerators. Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on July 1, 2002).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) Cyclonic barrel burners. See 40 CFR 60.2265 (in effect on July 1, 2002).

(xi) Rack, part, and drum reclamation units. See 40 CFR 60.2265 (in effect on July 1, 2002).

(xii) Cement kilns. Kilns regulated under Subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, 2002).

(xiii) Sewage sludge incinerators. Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, 2002).

(xiv) Chemical recovery units. Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) Laboratory analysis units. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on July 1, 2002).

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(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on July 1, 2002) mean the CISWI unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on July 1, 2002, which is adopted by reference.

(i) The federal rule contains these major components:

(A) Increments of progress towards compliance in 60.2575 through 60.2630;

(B) Waste management plan requirements in 60.2620 through 60.2630;

(C) Operator training and qualification requirements in 60.2635 through 60.2665;

(D) Emission limitations and operating limits in 60.2670 through 60.2685;

(E) Performance testing requirements in 60.2690 through 60.2725;

(F) Initial compliance requirements in 60.2700 through 60.2725;

(G) Continuous compliance requirements in 60.2710 through 60.2725;

(H) Monitoring requirements in 60.2730 through 60.2735;

(I) Recordkeeping and reporting requirements in 60.2740 through 60.2800;

(J) Title V operating permits requirements in 60.2805;

(K) Air curtain incinerator requirements in 60.2810 through 60.2870;

(L) Definitions in 60.2875; and

(M) Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(ii) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the Agency.

(iii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iv) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(v) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, Chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(vi) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than January 1, 2004. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) Small municipal waste combustion units. Small municipal waste combustion units constructed on or before August 30, 1999. (See SWCAA 400-115(1) for the requirements for a municipal waste combustion unit constructed

after August 30, 1999, or reconstructed or modified after June 6, 2001.)

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in (c)(viii) and (ix) of this subsection.

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in (c)(x) of this subsection.

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) Small municipal waste combustion units that combust less than 11 tons per day. Units are exempt from this section if four requirements are met:

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(A) The municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable permit to the permitting agency.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) Small power production units. Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under Section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(iii) Cogeneration units. Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under Section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(iv) Municipal waste combustion units that combust only tires. Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(v) Hazardous waste combustion units. Units are exempt from this section if the units have received a permit under Section 3005 of the Solid Waste Disposal Act.

(vi) Materials recovery units. Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) Co-fired units. Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable permit limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable permit to the permitting agency.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) Plastics/rubber recycling units. Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on July 1, 2002).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) Units that combust fuels made from products of plastics/rubber recycling plants. Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) Cement kilns. Cement kilns that combust municipal solid waste are exempt.

(xi) Air curtain incinerators. If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on July 1, 2002) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on July 1, 2002).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on July 1, 2002).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on July 1, 2002), mean the unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart AAAA (in effect on July 1, 2002).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on July 1, 2002) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid

waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on July 1, 2002) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on July 1, 2002).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on July 1, 2002) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on July 1, 2002) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on July 1, 2002), which is adopted by reference.

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - operator training in 60.1645 through 60.1670;

(C) Good combustion practices - operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935; and

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means SWCAA 400-050(5);

(B) "You" in the federal rule means the owner or operator;

(C) "Administrator" includes the permitting agency;

(D) Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule; and

(E) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must comply with Table 1.

Table 1 Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin on-site construction)	Increment 4 (Complete on-site construction)	Increment 5 (Final compliance)
All Class I units	August 6, 2003	April 6, 2004	October 6, 2004	October 6, 2005	November 6, 2005
All Class II units	September 6, 2003	Not applicable	Not applicable	Not applicable	May 6, 2005

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (in effect on July 1, 2002).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, Subpart BBBB (in effect on July 1, 2002) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction permit or operation permit) if a permit modification is required.

(i) Air operating permit. Chapter 173-401 WAC, the air operating permit regulation, applicability begins on July 1, 2002. See WAC 173-401-500 for permit application requirements and deadlines.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-052 Stack Sampling of (~~Major~~) Large Combustion Sources

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption 93-21-003 filed 10/7/93, effective 11/8/93; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

~~((1) General requirements. No owner or operator of a major source which is also a combustion or incineration source shall operate the source except in compliance with the requirements of this section.)~~

~~((2))~~(1) Applicability. ((All sources that are designated as major as a result of the operation of a combustion or incineration unit (or units) where the combined emissions of a single pollutant from the combustion or incineration unit

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(or units) are 100 tons per year or more of oxides of nitrogen, carbon monoxide, particulate matter, sulfur dioxide or volatile organic compounds.) The requirements of this section apply to each "stationary source" which emits 100 tons per year or more of nitrogen oxides, carbon monoxide, particulate matter, sulfur dioxide or volatile organic compounds due to the operation of one or more combustion or incineration units. Individual emission units with a potential to emit of less than 10 tons per year of the qualifying pollutant are exempt from the requirements of this section.

~~((3) Emissions sampling requirements. The owner or operator of a major combustion or incineration source identified in (2) shall cause or conduct emissions tests at least once every two calendar years to quantify emissions of the pollutants for which the source has been designated major. In the event that the combined emissions of a single pollutant from several emissions units establishes the source as major, emissions tests shall be conducted at least once every two calendar years for all emissions units which emit 30 percent or more of the emissions of the pollutant for which the source has been designated major. Emissions testing shall be performed in accordance with SWCAA 400-106.))~~

(2) Emission testing requirements. The owner or operator of a "stationary source" subject to this section shall conduct emission testing to quantify emissions of each qualifying pollutant. Unless an alternative schedule has been provided in accordance with subsections (5) or (6) below, emission testing shall be conducted according to the following schedule:

(a) "Stationary sources" subject to the requirements of this section with more than one combustion or incineration unit shall divide affected combustion or incineration units into test groups. The collective emissions of each test group shall comprise at least 25 percent of the potential emissions of the qualifying pollutant. One test group shall be emission tested at least once every two calendar years. Test groups shall be tested in rotation so that one group is tested during each test period, and each group is tested before any other group is tested twice in the same rotation.

(b) Regardless of subsection (2)(a), any individual combustion or incineration unit that has the potential to emit greater than 100 tons per year of any pollutant listed in subsection (1) shall be emission tested at least once every two calendar years.

~~((4))(3) Sampling methods. ((All emissions tests shall be conducted in accordance with the specific test methods approved in advance by the Agency.)) All emission testing shall be conducted in accordance with the requirements of SWCAA 400-106.~~

~~((5))(4) Additional requirements. Nothing in this section shall be construed as to limit the ability of the Agency to impose additional or supplemental emission(s) testing requirements for any emission(s) unit within the Agency's jurisdiction in accordance with SWCAA 400-((105(4)) 105(2) or 400-106 (1)(a).~~

~~((6))(5) Alternative sampling schedules. ((The Agency may on a case-by-case basis, accept or require an alternative emissions sampling schedule provided sufficient source specific sampling data exists to adequately demonstrate that the source is capable of continuous compliance~~

~~with any emission standards that are applicable to the source. Alternative sampling schedules shall be based upon measured emissions relative to the applicable emissions limitation. The Agency may reduce the frequency of the required emissions testing.)) The Agency may accept or require an alternative to the emission testing schedule in subsection (2). Such an alternative emission testing schedule must be specified in writing by the Agency.~~

~~((7))(6) Continuous emission(s) monitors. ((The use of continuous emissions monitors shall be acceptable as an alternative emissions sampling schedule.)) Continuous emission monitors may be utilized as an alternative to the emission testing requirements in subsection (2) provided the monitors are operated and maintained in accordance with the applicable performance specification(s) in 40 CFR Part 60, Appendix B and the quality assurance procedures of 40 CFR Part 60, Appendix F, both as in effect on July 1, 2002.~~

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-060 Emission Standards for General Process Units

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption by Board 12/18/79; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

General process units shall meet all applicable provisions of SWCAA 400-040, and((;)) no person shall cause or permit the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter of exhaust gas at standard conditions (0.1 grain/dscf) ((of exhaust gas)). EPA test methods from 40 CFR Parts 51, 60, 61 and 63 ((Appendix A which are adopted by reference)) as in effect July 1, 2002 and any other appropriate test procedures approved in advance by both the Agency and EPA shall be used to determine compliance.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-070 Emission Standards for Certain Source Categories

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

The Agency finds that the reasonable regulation of "stationary sources" within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emission(s) units within the categories listed.

(1) **Wigwam burners.** The use of wigwam ("tee-pee", "conical", or equivalent type) burners is prohibited effective January 1, 1994.

(2) Hog fuel boilers.

(a) Hog fuel boilers shall meet all provisions of SWCAA 400-040 and SWCAA 400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any consecutive eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary for efficient operation of these units. This practice is to be scheduled for the same specific times each day and the Agency shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) Orchard heating.

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) Catalytic cracking units.

~~((a) All existing catalytic cracking units shall meet all provisions of SWCAA 400-040:~~

~~(i) No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity.~~

~~(ii) No person shall cause or permit the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.~~

~~((b)) All new catalytic cracking units shall install BACT ((that may be more stringent than the provisions of SWCAA 400-115-)) and meet all requirements applicable to a new "stationary source." As of January 1, 2002, there are no existing catalytic cracking units in SWCAA's jurisdiction.~~

(5) **Sulfuric acid plants.** No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.

(6) Gasoline dispensing facilities.

(a) All gasoline dispensing facilities shall meet all the provisions of SWCAA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors."

(b) Methyl tertiary-butyl ether (MTBE) may not be intentionally added to any gasoline, motor fuel, or clean fuel produced for sale or use in the state of Washington after December 31, 2003, and in no event may MTBE be knowingly mixed in gasoline above six-tenths of one percent by volume. [RCW 19.112.100]

~~((7) **Dry cleaning facilities.** All dry cleaning facilities shall meet all the provisions of SWCAA 494 "Dry Cleaning Operations".))~~

(7) Perchloroethylene Dry Cleaners.

(a) Applicability.

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Table 1 divides dry cleaning facilities into 3 source categories by the type of equipment they use and the volume of PCE purchased.

TABLE 1. PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(1) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
(2) Only Transfer Machines	200 gallons PCE/yr	200-1,800 gallons PCE/yr	1,800 gallons PCE/yr
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/yr	140-1,800 gallons PCE/yr	1,800 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, 2002).

(b) Operations and maintenance record.

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection. The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed;

(B) Repair. The date, time, and result of each repair of the dry cleaning system;

(C) Refrigerated condenser information. If a refrigerated condenser is being used, record the following information:

(I) The air temperature at the inlet of the refrigerated condenser.

(II) The air temperature at the outlet of the refrigerated condenser.

(III) The difference between the inlet and outlet temperature readings, and

(IV) The date the temperature was taken;

(D) Carbon adsorber information. If a carbon adsorber is being used, record the following information:

(I) The concentration of PCE in the exhaust of the carbon adsorber, and

(II) The date the concentration was measured;

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(c) General operations and maintenance requirements.

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

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(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.

(d) Inspection.

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source
Once every 2 weeks.	Once every week.	Once every week.

(ii) An inspection must include an examination of these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

(iii) The dry cleaning system must be inspected while it is operating.

(iv) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

(e) Repair.

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(f) Requirements for systems with refrigerated condensers. A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991;

(II) The air temperature sensor must be accurate to within 2°F (1.1°C);

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991;

(II) The air temperature sensor must be accurate to within 2°F (1.1°C);

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn

into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(g) Requirements for systems with carbon adsorbers. A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be recorded in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible.

(B) The sampling port must be located eight stack or duct diameters downstream from a bend, expansion, contraction or outlet.

(C) The sampling port must be two stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

(8) Abrasive blasting.

(a) Abrasive blasting shall be performed inside a booth or structure designed to capture the blast grit, overspray, and removed material except that outdoor blasting of structures or items too large to be reasonably handled indoors or in an enclosure shall employ control measures such as curtailment during windy periods, wet blasting, and/or enclosure of the area being blasted with tarps.

(b) Outdoor blasting shall be performed with either steel shot or an abrasive material containing less than one percent (by mass) (~~which~~) of material that would pass through a No. 200 sieve.

(c) All abrasive blasting with sand shall be performed inside a blasting booth, enclosure, or structure designed to capture fugitive particulate matter.

(d) All abrasive blasting of materials that have a coating or that may contain a substance that is identified as a toxic air pollutant in (WAC) Chapter 173-460 WAC or a hazardous substance shall be analyzed prior to blast operations. If a

toxic or hazardous material is present in the blast media or removed media, all material shall be handled and disposed of in accordance with applicable regulations.

(9) Sewage sludge incinerators. Standards for the incineration of sewage sludge found in 40 CFR 503, Subparts A (General Provisions) and E (Incineration) in effect on July 1, 2002, are adopted by reference.

(10) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991. A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Resource Conservation and Recovery Act including the following: Commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on July 1, 2000.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See SWCAA 400-115(1) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the Agency.

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) An MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable requirements specified in this section.

(ii) An MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752 (b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. An MSW landfill must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submittal of an initial design capacity report) and 40 CFR 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) An MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40

CFR 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753.

(B) The systems must follow the compliance provisions in 40 CFR 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 CFR 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 CFR 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has an NMOC emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the Agency within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 CFR 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen or less.

(i) Air operating permit.

(i) An MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to WAC 173-401 for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million

megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to Chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) An MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to Chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no "source" may operate after the time that it is required to submit a timely and complete application.)

(iii) When an MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to Chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752 (b)(2)(v).

(11) Used oil burners.

(a) Applicability. The requirements of this section do not apply to:

(i) Facilities operating in accordance with an air discharge permit or other regulatory order issued by the Agency;

(ii) Used oil burned in used oil fired space heaters provided that (40 CFR 279.23):

(a) The space heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators,

(b) The space heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour, and

(c) Combustion gases from the space heater are vented to the ambient air;

(iii) Ocean-going vessels (40 CFR 279.20 (a)(2)); and

(iv) Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles (40 CFR 279.20 (a)(3)).

(b) No person shall burn as fuel used oil that exceeds any of the following specification levels:

(i) Arsenic - 5 ppm maximum;

(ii) Cadmium - 2 ppm maximum;

(iii) Chromium - 10 ppm maximum;

(iv) Lead - 100 ppm maximum;

(v) Flash point - 100 °F minimum; and

(vi) Total halogens - 4,000 ppm maximum. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under 40 CFR 279.10 (b)(1). Such used oil is subject to 40 CFR 266, Subpart H when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: 40 CFR 761.20(e) imposes standards for the burning of used oil containing polychlorinated biphenyls (PCBs).

(12) Coffee roasters.

(a) Batch coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch are required to main-

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tain and operate an afterburner that treats all roasting and cooling exhaust streams prior to discharge to the ambient air.

(b) The following equipment is subject to the provisions of SWCAA 400-109 and 400-110:

(i) All batch process coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch;

(ii) Batch process coffee roasters with a capacity of 10 pounds or less of green coffee beans per batch on a case-by-case basis;

(iii) Continuous process coffee roasters regardless of capacity; and

(iv) Coffee roasting processes involving decaffeination regardless of capacity.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/18/79; Amended by Board 12/16/86; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

(1) The national emission standards for hazardous air pollutants promulgated by ~~((the United States Environmental Protection Agency (USEPA)))~~ EPA as in effect July 1, ~~((2000))~~ 2002, as contained in ~~((Title 40, Code of Federal Regulations,))~~ 40 CFR Part 61 ~~((and Part 63)),~~ are adopted by reference. The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA ~~((, the Director of Ecology))~~ and the ~~((Control Officer))~~ Executive Director of the Agency.

(2) The Agency may require that ~~((source))~~ emission tests be conducted and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Part 61, ~~((and/or))~~ Part 63, or Part 65 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) ~~((Source))~~ Emission testing, monitoring, and analytical methods for sources of hazardous air pollutants shall conform with the requirements of ~~((Title 40, Code of Federal Regulations,))~~ 40 CFR Part 61 ~~((and/or)),~~ Part 63 and/or Part 65, as in effect on July 1, ~~((2000))~~ 2002.

(4) This section shall not apply to any "stationary source" operating pursuant to a waiver granted by EPA or an exemption granted by the President of the United States during the effective life of such waiver or exemption.

(5) Specific standards of performance referred to as Maximum Achievable Control Technology (MACT) have been promulgated by ~~((the US))~~ EPA.

(a) As of July 1, ~~((2000))~~ 2002, ~~((the following standards of performance as set forth in))~~ 40 CFR Part 63 and appendices are hereby adopted by reference. The following list is provided for informational purposes:

Subpart A National Emission Standards for Hazardous Air Pollutants for Source Cate-

- Subpart B National Emission Standards for Hazardous Air Pollutants for Source Categories: Equivalent Emission Limitation By Permit (ref. 40 CFR 63.50 et seq.)
- Subpart D National Emission Standards for Hazardous Air Pollutants for Source Categories: Early Reduction Program (ref. 40 CFR 63.70 et seq.)
- Subpart F National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)
- Subpart G National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)
- Subpart H National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)
- Subpart I National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)
- Subpart L National Emission Standards for Hazardous Air Pollutants for Coke Oven Operations (ref. 40 CFR 63.300 et seq.)
- Subpart M National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities - as it applies to major sources (ref. 40 CFR 63.320 et seq.)
- Subpart N National Emission Standards for Hazardous Air Pollutants from Hard and Decorative Electroplating and Anodizing Operations (ref. 40 CFR 63.340 et seq.)
- Subpart O National Ethylene Oxide Air Emission Standards for Commercial Sterilizers (ref. 40 CFR 63.360 et seq.)
- Subpart Q National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)
- Subpart R National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Operations (Stage I) (ref. 40 CFR 63.420 et seq.)
- Subpart S National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)
- Subpart T National Emission Standards for Hazardous Air Pollutants for Halogenated Solvents Cleaning Operations (ref. 40 CFR 63.460 et seq.)

Subpart U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins and Group IV Polymers and Resins (ref. 40 CFR 63.480 et seq.)	Subpart OO	National Emission Standards for Tanks - Level 1 (ref. 40 CFR 63.900 et seq.)
Subpart W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)	Subpart PP	National Emission Standards for Containers (ref. 40 CFR 63.920 et seq.)
Subpart X	National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting Manufacturing Operations (ref. 40 CFR 63.541 et seq.)	Subpart QQ	National Emission Standards for Surface Impoundments (ref. 40 CFR 63.940 et seq.)
Subpart Y	National Emission Standards for Hazardous Air Pollutants for Marine Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)	Subpart RR	National Emission Standards for Individual Drain Systems (ref. 40 CFR 63.960 et seq.)
<u>Subpart AA</u>	<u>National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)</u>	<u>Subpart SS</u>	<u>National Emission Standards for Hazardous Air Pollutants for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)</u>
<u>Subpart BB</u>	<u>National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)</u>	<u>Subpart TT</u>	<u>National Emission Standards for Hazardous Air Pollutants for Equipment Leaks - Control Level 1 (ref. 40 CFR 63.1000 et seq.)</u>
Subpart CC	National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (ref. 40 CFR 63.640 et seq.)	<u>Subpart UU</u>	<u>National Emission Standards for Hazardous Air Pollutants for Equipment Leaks - Control Level 2 (ref. 40 CFR 63.1019 et seq.)</u>
Subpart DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)	Subpart VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)
Subpart EE	National Emission Standards for Hazardous Air Pollutants for Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.710 et seq.)	<u>Subpart WW</u>	<u>National Emission Standards for Hazardous Air Pollutants for Storage Vessels (Tanks) - Control Level 2 (ref. 40 CFR 63.1060 et seq.)</u>
Subpart GG	National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing Operations (ref. 40 CFR 63.740 et seq.)	<u>Subpart YY</u>	<u>National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT (ref. 40 CFR 63.1100 et seq.)</u>
<u>Subpart HH</u>	<u>National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)</u>	<u>Subpart CCC</u>	<u>National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)</u>
Subpart II	National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)	<u>Subpart DDD</u>	<u>National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)</u>
Subpart JJ	National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)	Subpart EEE	National Emission Standards for ((H))Hazardous Air Pollutants from Hazardous Waste Combustors (ref. 40 CFR 63.1211 et seq.)
Subpart KK	National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)	<u>Subpart GGG</u>	<u>National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)</u>
Subpart LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)	<u>Subpart HHH</u>	<u>National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)</u>
		Subpart III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)

Subpart JJJ National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)

Subpart LLL National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)

Subpart MMM National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)

Subpart NNN National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)

Subpart OOO National Emission Standards for Hazardous Air Pollutants for Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)

Subpart PPP National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)

Subpart RRR National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)

Subpart TTT National Emission Standards for Hazardous Air Pollutants for Primary Smelting (ref. 40 CFR 63.1541 et seq.)

Subpart VVV National Emission Standards for Hazardous Air Pollutants for Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)

Subpart XXX National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)

Subpart CCCC National Emission Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)

Subpart GGGG National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)

Subpart HHHH National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)

Subpart TTTT National Emission Standards for Hazardous Air Pollutants for Leather Tanning and Finishing Operations (ref. 40 CFR 63.5280 et seq.)

Subpart VVVV National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)

Appendix A Test Methods (ref. 40 CFR 63, Appendix A)

Appendix B Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)

Appendix C Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)

Appendix D Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)

Appendix E Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E)

(b) Exceptions to 40 CFR Part 63 adoption by reference.
 (i) The term "administrator" in 40 CFR Part 63 includes the Executive Director of the Agency.

(ii) The following subparts of 40 CFR Part 63 are not adopted by reference:

(A) Subpart C, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List;

(B) Subpart E, Approval of State Programs and Delegation of Federal Authorities; and

(C) Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities - as it applies to nonmajor sources.

(6) Consolidated requirements for the synthetic organic chemical manufacturing industry. (SOCMI) 40 CFR Part 65, as in effect on July 1, 2002, is adopted by reference.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-076 Emission Standards for Stationary Sources Emitting Toxic Air Pollutants

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

(1) The term toxic air pollutants (TAP) or toxic air contaminant means any air pollutant listed in WAC 173-460-150 or 460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 or 460-160. The Chemical Abstract Service (CAS) number shall be the primary means used to specifically identify a substance. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(2) All "stationary sources" subject to the requirements of SWCAA 400-110, 400-111, 400-112, 400-113 or 400-114 shall be subject to the requirements of ((WAC)) Chapter 173-460 WAC. All "stationary sources" subject to review under SWCAA 400 shall also be reviewed for applicability and/or compliance under ((WAC)) Chapter 173-460 WAC.

(3) The ~~((New Source))~~ review fee schedule provided in SWCAA 400-~~((110))~~ 109 shall be applicable to all "stationary sources" subject to ~~((WAC))~~ Chapter 173-460 WAC. The fees identified in SWCAA 400-~~((110))~~ 109 shall not be duplicate to any fees collected under ~~((WAC))~~ Chapter 173-460 WAC. Only a single fee shall apply to "stationary sources" that are subject to SWCAA 400 and ~~((WAC))~~ Chapter 173-460 WAC.

(4) ~~((A Notice of Construction is a written application to request approval for construction or modification of an air contaminant source.))~~ If an ~~((Notice of Construction))~~ air discharge permit application is required under both SWCAA 400 and ~~((WAC))~~ Chapter 173-460 WAC, then the applications shall be combined. All "stationary sources" subject to ~~((WAC))~~ Chapter 173-460 WAC shall file an ~~((Notice of Construction))~~ air discharge permit application in accordance with SWCAA 400-109 ~~(("Notice of Construction" and SWCAA 400-110 "New Source Review"))~~.

(5) Agency actions including issuance of regulatory orders and enforcement actions for "stationary sources" subject to ~~((WAC))~~ Chapter 173-460 WAC shall be the same as those actions for "stationary sources" subject to and identified in SWCAA 400.

(6) "Stationary sources" subject to ~~((WAC))~~ Chapter 173-460 WAC shall be subject to the registration requirements of SWCAA 400-100. Where a "stationary source" is subject to both SWCAA 400 and ~~((WAC))~~ Chapter 173-460 WAC, only one registration shall be provided and only one fee shall be collected in accordance with the schedule outlined in SWCAA 400-100.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-081 Startup and Shutdown

[Statutory Authority: Chapter 70.94.141 RCW. 93-21-003 filed 10/7/93, effective 11/8/93; Original adoption 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-055 filed 2/15/01, effective 3/18/01]

(1) In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) the Agency shall consider any physical and operational constraints on the ability of a "stationary source" or source category to comply with the applicable technology based standard during startup or shutdown.

~~((2))~~ Where the Agency determines that the "stationary source" or source category, operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with a ~~((n-emission))~~ technology based standard during startup or shutdown, the Agency shall include in ~~((regulatory orders or the Operating Permit.))~~ the technology based standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the "stationary source" or source category during startup or shutdown conditions. No provision of this rule section shall be construed to authorize emissions in excess of SIP approved emission standards unless previously approved by EPA as a SIP amendment.

~~((3))~~ (2) In modeling the emissions of a "stationary source" for purposes of demonstrating attainment or maintenance of national ambient air quality standards, the Agency shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule section.

~~((4))~~ Any emission limitation or other parameter adopted under this section which increases allowable emissions during startup or shutdown conditions over levels authorized in the Washington State Implementation Plan shall not take effect until approved by EPA as a SIP amendment.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-091 Voluntary Limits on Emissions

[Statutory Authority: Chapter 70.94.141 RCW. Section previously numbered SWCAA 400-090 - 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

(1) Voluntary limits on emissions and limitations on potential to emit or process parameters or throughputs may be requested by ~~((a))~~ the owner or operator of any "stationary source" by submittal of a complete ~~((Notice of Construction))~~ air discharge permit application ~~((to the Agency))~~ as provided in SWCAA 400-109. Confidential information shall be identified as set forth in SWCAA 400-270. Upon ~~((request by the owner or operator of a source and))~~ completion of review of the application ~~((by the Agency))~~, the Agency shall issue a regulatory order ~~((which reduces))~~ limiting that "stationary source's" potential to emit to an amount agreed to by the owner or operator and the Agency.

(2) A condition contained in an order issued under this section shall ~~((be))~~ limit operation to a level less than the "stationary source's" otherwise allowable annual emissions of that air contaminant, process parameters or throughputs ~~((;))~~ under all applicable requirements of Chapter 70.94 RCW and the ~~((FCAA))~~ Federal Clean Air Act, including any standard or other requirement provided for in the Washington ~~((State Implementation Plan (SIP)))~~ SIP.

(3) Any order issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the "stationary source" complies with any emission limit, process parameter, or throughput limitation established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of SWCAA 400-105.

(4) Any order issued under this section shall be subject to the ~~((public notice and comment procedures under))~~ requirements of SWCAA 400-171.

(5) The terms and conditions of an ~~((regulatory))~~ order issued under this section shall be federally enforceable, upon approval of this section as an element of the Washington ~~((State Implementation Plan))~~ SIP. Any proposed ~~((increase in emissions above limits))~~ change in a term or condition con-

tained in an order issued under this section shall require revision or revocation of the order.

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-100 Registration Requirements (~~and Operating Permit Fees~~)

[Statutory Authority: Chapter 70.94.141 RCW, 70.94.151 RCW, 70.94.200 RCW, and 70.94.395 RCW. Original Board adoption 10/29/69 (Regulation 2 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; 92-04-030 filed 1/28/92, effective 2/28/92; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-032 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01]

The registration program is intended to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify "source" compliance with applicable air pollution requirements.

(1) **Applicability.** All "sources" or emission units (~~that emit contaminants to the ambient air~~) shall be registered with the Agency in accordance with this section as set forth in RCW 70.94.151 except (~~those~~) the following: ((sources or emission units specifically exempted by SWCAA 400-100(3) and SWCAA 400-101-))

(a) Emission units or activities exempted under SWCAA 400-101; and

(b) "Stationary sources" required to apply for, or to maintain, an operating permit under Chapter 173-401 WAC.

(2) General requirements.

(a) The owner or operator of a "source" for which registration is required shall initially register the "source" with the Agency. A unique ((registration)) identification number shall be assigned to ((all)) each "source((s))" ((required to be registered with SWCAA)) and a separate registration fee shall be provided for each ((air contaminant)) emission unit; provided that, an owner has the option to register a process with a detailed inventory of air contaminant sources and emissions related to the process. A registration fee shall not be collected for exempt emission units identified ((at)) in SWCAA 400-101.

(b) ~~((Registration information shall be provided to the "source" on forms supplied by the Agency. The forms shall be verified by the "source" and returned to the Agency with payment in full within the time specified by the Agency.))~~ The owner or operator of a registered "source" shall submit annual reports to the Agency. Each report shall contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Rel-

evant information may include air pollution requirements established by rule, regulatory order or ordinance pursuant to Chapter 70.94 RCW. The owner, operator, or their designated representative shall sign the annual report for each "source," and be responsible for the accuracy, completeness, and timely submittal of all required information.

~~((e) Annual registration fees that are unpaid after June 30 for the effective year shall be considered to be in default and the source shall be considered to be out of business and/or in violation of item (d) below for failure to report closure. At the discretion of the Control Officer, all Orders of Approval for existing equipment shall become invalid for this source and the source shall be required to submit a Notice of Construction and applicable fees in accordance with SWCAA 400-110 prior to resuming operations. Prior to taking actions to 'un-register' a source, the source must be notified by certified letter. The registration program covers the period of July 1 through June 30. Sources or emission units operating less than six months in the current registration period that are terminated, shall not be liable for registration fees. This does not apply to temporary or portable stationary sources.~~

~~(d) A report of closure or discontinuance shall be filed with the Agency within ninety days after operations producing emissions permanently cease at any source. (Refer to SWCAA 400-230 for issuance of an Order of Discontinuance.))~~

(3) **Registration fees.** Before the Control Officer may register any emission unit, ~~((the use of which may emit contaminants to the atmosphere,))~~ an annual registration fee of \$75.00 for each emission unit, plus ~~(((\$25)) \$39~~ per ton of each criteria air pollutant and VOC (combined) ~~((for fiscal year 1998/1999)), plus \$10 per ton of total toxic air pollutants greater than 1.0 tons, shall be paid. Annual registration fees cover the period from July 1 through June 30. "Sources" or emission units that permanently shutdown prior to January 1 of the current registration period shall not be liable for registration fees. This provision does not apply to "temporary sources." Operation of equipment subject to registration without payment of applicable registration fees shall be considered a violation of this section. ((The \$25 per ton of each criteria air pollutant and VOC shall be adjusted in fiscal year 1999/2000, and beyond, to \$39 per ton.))~~

~~((a))~~ Exceptions:

~~((i))~~ (a) An annual registration fee of \$50.00 shall be charged to each gasoline transport tank.

~~((ii))~~ (b) The registration fee for a small operation may be waived or reduced by the Control Officer provided sufficient demonstration of circumstances is presented, subject to the discretion of the Control Officer.

~~((iii))~~ Emission((s)) units and activities specifically exempted under SWCAA 400-101 are not required to comply with the requirements of this section.))

~~((iv))~~ (c) "Stationary sources" subject to the Operating Permit Program ~~((sources)), as defined in RCW 70.94.030 (17), shall pay an operating permit fee in accordance with SWCAA 400-((100(4))) 103. ((Operating Permit Program sources, as defined in RCW 70.94.030(17), are not required to comply with the registration requirements of this section~~

after EPA grants interim or final approval of the SWCAA Operating Permit Program pursuant to 40 CFR Part 70.)

((4) Operating Permit Fees. Fee determination and certification for sources subject to 70.94.161 RCW requirements:

(a) Applicability. The owner or operator of all sources subject to the requirement to obtain an Operating Permit under 40 CFR 70 or 70.94.161 RCW, shall pay an annual fee, or the equivalent over some other period as approved, subject to the discretion of the Control Officer, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Operating Permit Program requirements as specified in this section.

(b) Pollutants for which fees will be assessed.

(1) A volatile organic compound.

(2) Each pollutant regulated under Section 7411 or 7412 of the 1990 Federal Clean Air Act Amendments.

(3) Each pollutant for which a national primary ambient air quality standard has been promulgated except that carbon monoxide shall be excluded from this reference. PM₁₀ emissions will be utilized for purposes of calculating particulate matter emissions when such data is provided by the 40 CFR Part 70 source. Source test data is required to demonstrate the PM₁₀ portion of total particulate matter emissions.

(4) Emissions of each regulated pollutant emitted in excess of 7500 tons from a source shall be excluded from fee assessment.

(e) Program cost projections. The Agency shall prepare an Operating Permit Program budget each year based on a projected workload evaluation. Only fee eligible activities as specified in SWCAA 400-100(f) and Ecology's development and oversight costs, as provided in RCW 70.94.162 shall be considered in the workload analysis. The projected budget shall be submitted to the Agency's Technical Advisory Council, as described in SWCAA 400-172, for comments. The Technical Advisory Council shall be given an opportunity to provide input regarding the projected budget. The Control Officer shall evaluate all comments and revise the projected budget where deemed appropriate. After consideration of the comments, the Control Officer shall submit the proposed budget to the Board of Directors for approval. The approved budget shall be used in the equations below to determine the Operating Permit Program fees. The Agency shall publish the proposed and approved budgets and workload analysis in the Permit Register.

(d) Three part fee assessment methodology. Operating Permit Program fees shall be determined using a three part fee assessment methodology as described below:

(1) Participation Fee. Fees sufficient to cover one third of the Board approved Operating Permit Program budget shall be assessed such that each source shall pay an equal share. The total Operating Permit Program budget shall be divided by three. This amount shall be further divided by the number of 40 CFR Part 70 sources within the Agency's jurisdiction. Participation fees shall be equal in amount for each 40 CFR Part 70 source. The participation portion of the fee shall be assessed according to the following formula:

$PF = B/3/n$, where;

PF = Participation fee portion of total fee;

- B = The total Agency budget for the Operating Permit Program;
- n = The number of 40 CFR Part 70 sources.

(2) Emissions Fee. Fees sufficient to cover one third of the budget shall be assessed such that each source shall pay an amount equal to that source's portion of the total annual emissions of the fee applicable pollutants from all 40 CFR Part 70 sources within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each source's annual emissions (in tons) to the total annual emissions of fee applicable pollutants emitted by all 40 CFR Part 70 sources within the Agency's jurisdiction shall be paid by the owner or operator of each source. The emissions portion of the fee shall be assessed according to the following formula:

$EF = B/3 * SE/TE$, where:

- EF = Emissions fee portion of total fee;
- B = The total Agency budget for the Operating Permit Program;
- SE = The sum of annual emissions of fee applicable pollutants in tons per year from the individual 40 CFR Part 70 source;
- TE = The sum of annual emissions of fee applicable pollutants in tons per year from all 40 CFR Part 70 sources.

(3) Complexity Fee. Fees sufficient to cover one third of the budget shall be assessed such that each 40 CFR Part 70 source shall pay an amount equal to that source's portion of the total emissions units at all 40 CFR Part 70 sources within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each source's emissions units to the total number of emissions units located at all 40 CFR Part 70 sources within the Agency's jurisdiction shall be paid by the owner or operator of each source. The complexity portion of the fee shall be assessed according to the following formula:

$CF = B/3 * SU/TU$, where:

- CF = Complexity fee portion of total fee;
- B = The total Agency budget for the Operating Permit Program;
- SU = The number of emission units at a source;
- TU = The number of emissions units at all 40 CFR Part 70 sources.

(4) Total Fee. The amount of the annual assessed fees for each 40 CFR Part 70 source shall be the sum of the participation, emissions and complexity fee portions ($PF + EF + CF = \text{Total Fee}$). The sum of the total fees for all 40 CFR Part 70 sources within the Agency's jurisdiction shall be equal in amount to the Board adopted budget for the Operating Permit Program.

(e) Accountability.

(1) The sum of the fees assessed by the Agency to all sources required to obtain Operating Permits within the

Agency's jurisdiction shall not exceed the cost of developing and administering the program. All fees collected from permit program sources as provided in RCW 70.94.162, shall be deposited in a dedicated air operating permit account. Such fees shall be used exclusively to support and administer the operating permit program.

(2) The Agency shall keep a record of all reasonable (direct and indirect) costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information shall be used by the Agency to develop the Operating Permit Program budget specified in section (3) above. The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(3) In the event that the assessed fees exceed the cost of developing and administering the Operating Permit Program, such excess fees shall be used to develop and administer the Operating Permit Program in the next subsequent year. The amount of the excess fees shall be deducted from the projected budget of the next subsequent year prior to fee assessment for the subsequent year.

(f) Fee eligible activities:

(1) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision or permit renewal;

(2) Source inspections, testing and other data gathering activities necessary for development of a permit, permit revision or renewal;

(3) Acting on an application for a permit, permit revision or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet and preparing a final permit, but excluding the costs of developing BACT, LAER, BART or RACT requirements for criteria and toxic air pollutants;

(4) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(5) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(6) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(7) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a source is complying with permit conditions;

(8) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(9) The share attributable to permitted sources to the development and maintenance of emissions inventories;

(10) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(11) Training for permit administration and enforcement;

(12) Fee determination, assessment and collection, including the costs of necessary administrative dispute resolution and enforcement;

(13) Required fiscal audits, periodic performance audits and reporting activities;

(14) Tracking of time, revenues and expenditures and accounting activities;

(15) Administering the permit program including costs of clerical support, supervision and management;

(16) Provision of assistance to small business under jurisdiction of SWCAA as required under Section 507 of the Federal Clean Air Act; and

(17) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

(g) Late Fee Payments. Fees shall be paid in accordance with the schedule of payment agreed upon in advance by the Control Officer and each operating permit source. Delinquent fees are subject to a late fee equal to three times the operating permit fee. The penalties authorized by this subsection are additional to and in no way prejudice SWCAA's ability to exercise other civil and criminal remedies, including authority to revoke a source's operating permit for failure to pay all or part of its permit fee.

(h) Schedules of Payment. A source shall be allowed to pay its annual operating permit fees in one, two or four installments. Each schedule of payment shall specify the terms and dates of payments.

(i) Transfer of Ownership. Transfer of ownership of a source shall not affect that source's obligation to pay operating permit fees. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a source.)

(4) Delinquent registration fees. Annual registration fees that are unpaid after June 30 for the effective year shall be considered delinquent. Air discharge permits and Orders of Approval for "sources" with delinquent registration fees may be invalidated by the Control Officer. The Agency shall notify the owner or operator of a "source" by certified letter prior to taking action to invalidate affected air discharge permits and Orders of Approval.

(5) Reporting requirements for transfer or permanent shutdown of registered "sources."

(a) The registered owner or operator shall report the transfer of ownership or permanent shutdown of a registered "source" to the Agency within ninety (90) days of shutdown or transfer. The report shall contain the following information:

(i) Legal name of the registered owner or operator;

(ii) Effective date of the shutdown or transfer;

(iii) Comprehensive description of the affected emission units; and

(iv) Name and telephone number of the registered owner's or operator's authorized representative.

(b) Any party that assumes ownership and/or operational control of a registered "source" shall file a written report with the Agency within ninety (90) days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

(i) Legal name of the company or individual involved in the transfer;

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- (ii) Effective date of the transfer;
- (iii) Description of the affected emission units; and
- (iv) Name and telephone number of the owner's or operator's authorized representative.

(c) In the case of a permanent shutdown, process and pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g. disconnection of power to equipment, mechanical positioning that inhibits processing; placing of padlocks on equipment to prevent operation).

~~((5))~~ **(6) Inspections.**

(a) Periodic onsite inspections of emission units and "sources" shall be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a "source" as set forth in RCW 70.94.200.

(b) Agency personnel or representatives shall have the authority to enter at reasonable times upon any private or public property excepting non-multiple unit private dwellings housing two families or less for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants to the atmosphere.

(c) No person shall refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection(~~, who present appropriate credentials~~)).

(d) No person shall obstruct, hamper or interfere with any such inspection.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-101 (~~Source~~) Emission Units Exempt from Registration Requirements

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.163 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 4.08); Amended by Board 10/29/69 (Regulation 2 Sec 3.03); Amended by Board 12/18/79 (400-100(3)); Amended by Board 12/18/79; Amended by Board 4/17/84; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01]

~~((All air contaminant emissions units shall be registered with the Agency except for the emissions units listed in this section. In the event that a registered source has any of these emissions units at a location that is otherwise required to be registered or obtain an operating permit, the Agency may require that these emissions units be included on the permit or registration. However, registration fees shall not be assessed for any of the exempt emissions units. Any source exempted from registration under this section shall maintain sufficient documentation acceptable to the Agency that the source is entitled to exemption under this section. Any source exempted from registration under this section shall also be considered exempt from the requirements of SWCAA 400-110, 400-111, 400-112, 400-113, and 400-114. For the pur-~~

~~pose of identifying sources or emission units exempt from registration, the source's or emission unit's potential to emit shall be used as the basis for emissions and shall consider emissions before application of any control equipment. All exempt emission units shall be identified on an inspection report for an otherwise registered source (refer to SWCAA 400-109). An exemption for an entire facility or source shall be valid only if the combined emissions from all emission units at that site or facility are less than 1.0 ton per year for criteria pollutants and VOCs and less than the Small Quantity Emission Rate for each toxic air pollutant identified in WAC 173-460. If any exemption threshold is exceeded for an emission unit or units, either individually or combined, the source or emission unit(s) shall not be considered to be exempt.))~~

(1) The emission units listed in subsection (5) of this section are exempt from the registration requirements of SWCAA 400-100. If an exempt emission unit is located at a "stationary source" that is otherwise required to be registered, the Agency may require that the exempt emission unit be included in the "stationary source" registration. If an exempt emission unit is located at a Title V facility, it must be included in the facility's Title V permit in accordance with Chapter 173-401 WAC.

(a) The owner or operator of any emission unit exempted from registration under this section shall maintain documentation sufficient to verify that the emission unit is entitled to exemption under this section.

(b) Any emission unit exempted from registration under this section shall also be considered exempt from the requirements of SWCAA 400-046, 400-110, 400-111, 400-112, 400-113 and 400-114, except as provided in SWCAA 400-110 (2)(b).

(2) Wherever a "stationary source" has multiple emission units, which are similar in function and purpose, exemption status shall be determined based on aggregate capacity (e.g., horsepower, Btu per hour, airflow, etc.) or the aggregate emissions of similar emission units.

(3) An exemption for an entire "stationary source" shall be valid only if the emissions from all emission units at that site or facility are less than the exemption thresholds listed below. Whenever a "stationary source" exemption is determined by the quantity of annual emissions (tons per year), an emission unit's uncontrolled potential to emit shall be used as the basis for exemption.

<u>Pollutant</u>	<u>Exemption Threshold</u>
<u>Criteria pollutants and VOC</u>	<u>1.0 tpy, combined</u>
<u>Lead</u>	<u>0.005 tpy</u>
<u>Ozone depleting substances</u>	<u>1.0 tpy, combined</u>
<u>Toxic air pollutants</u>	<u>Less than the applicable SOER as specified in Chapter 173-460 WAC.</u>

(4) List of exempt ((Emission Units or Sources as a Single Source or Emission Unit)) equipment and activities:

((1) Air conditioning or ventilating systems designed for space heating and cooling, combined or separate, that are less than 2.0 million Btu per hour which do not exhaust to the

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atmosphere contaminants generated by or released from process equipment.

~~(2) Any commercial or industrial manufacturing operation or business or process(es) associated with such operation or business which emits less than one ton per year combined of nitrogen oxides, carbon monoxide, (PM₁₀), sulfur dioxide and volatile organic compounds from all emissions units combined. The one ton exemption does not apply to emissions of toxic air pollutants. Sources or emission units with emissions of toxic air pollutants to the ambient air may be exempted only if the annual emissions quantity for each toxic air pollutant is below the Small Quantity Emission Rate (annual rate) for each toxic air pollutant emitted as identified in WAC 173-460.~~

~~(3) Any commercial or industrial manufacturing operation or business or process(es) associated with such operation or business which is of insufficient stature to trigger a new source review fee assessment, from all emission units combined, as specified in Table A under SWCAA 400-110.)~~

~~((4)) (a) Asphalt roofing and application equipment (not manufacturing or storage equipment).~~

~~((5)) (b) Fuel burning equipment unless waste-derived fuel is burned, which((+))~~

~~((+)) is used solely for a private dwelling serving less than five families((+or)).~~

~~((b) Has an energy input of less than 2 million Btu per hour.~~

~~(6) Fuel burning equipment used exclusively for office space heating other than boilers.)~~

~~((7)) (c) Insecticide, pesticide or fertilizer spray equipment.~~

~~((8)) (d) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents.~~

~~((9)) (e) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business.~~

~~((10)) (f) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process.~~

~~((11)) (g) Food preparation facilities, establishments or equipment (e.g., restaurants).~~

~~((12)) (h) Retail paint sales establishments (not including manufacturing).~~

~~((13)) (i) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.~~

~~((14)) (j) Sewing equipment.~~

~~((15) Sources, which due to the amount and nature of air contaminants produced and their potential to contribute to air pollution, are determined through review by the Agency to not warrant registration; provided that, for new sources, such determination shall be based upon review of a Notice of Construction application.~~

~~((16)) (k) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other structures.~~

~~((17)) (l) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in~~

SWCAA 400-~~((101(2)))~~101(3). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses that do not exceed the small quantity ~~((exemption of (2) above))~~ thresholds specified in SWCAA 400-101(3). This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations.

~~((18))~~(m) Residential wood heaters.

~~((19))~~(n) Office equipment, operations and supplies.

~~((20))~~(o) Internal combustion equipment including diesel engines used for standby emergency power generation ~~((that are used less than 100 hours per year and are rated at))~~ with a maximum aggregate power rating less than ~~((500))~~ 200 horsepower.

~~((21))~~(p) Steam cleaning equipment used exclusively for that purpose.

~~((22))~~(q) Refrigeration systems that are not in air pollution control service.

~~((23))~~(r) Housekeeping activities and equipment.

~~((24))~~(s) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks.

~~((25))~~(t) Natural and forced air vents and stacks for bathroom/toilet facilities.

~~((26))~~(u) Personal care activities.

~~((27))~~(v) Lawn and landscaping activities.

~~((28))~~(w) Flares used to indicate danger to the public.

~~((29))~~(x) Fire fighting and similar safety equipment and equipment used to train fire fighters.

~~((30))~~(y) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

SWCAA 400-103 Operating Permit Fees

[Statutory Authority: Chapter 70.94.162 RCW]

(1) **Applicability.** The owner or operator of all "stationary sources" required to obtain an Operating Permit under 40 CFR Part 70, Chapter 173-401 WAC or RCW 70.94.161, shall pay an annual fee as specified in this section, or the equivalent over some other time period as approved by the Executive Director, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Operating Permit Program.

(2) **Fee applicable pollutants.** The following pollutants shall be considered fee applicable for the purposes of fee assessment.

(a) A volatile organic compound.

(b) Each pollutant regulated under Section 7411 or 7412 of the 1990 Federal Clean Air Act Amendments.

(c) Each pollutant for which a national primary ambient air quality standard has been promulgated except that carbon monoxide shall be excluded from this reference. PM₁₀ emissions will be utilized for purposes of calculating particulate matter emissions when such data is provided by the "station-

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ary source." Emission test data is required to demonstrate the PM₁₀ portion of total particulate matter emissions.

(d) Emissions of each regulated pollutant emitted in excess of 7,500 tons from a "stationary source" shall be excluded from fee assessment.

(3) **Program cost projections.** The Agency shall prepare an Operating Permit Program budget each year based on a projected workload evaluation. Only fee eligible activities as specified in SWCAA 400-103(6), Ecology's development and oversight costs, as provided in RCW 70.94.162, and the program reserve fund shall be considered in the workload analysis. The Executive Director shall submit the proposed budget to the Board of Directors for approval. The approved budget shall be used in the equations below to determine Operating Permit Program fees.

(4) **Three part fee assessment methodology.** Operating Permit Program fees shall be determined using a three-part fee assessment methodology as described below:

(a) **Participation Fee.** Fees sufficient to cover one-third of the Board approved Operating Permit Program budget shall be assessed such that each "stationary source" shall pay an equal share. The total Operating Permit Program budget shall be divided by three. This amount shall be further divided by the number of 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. Participation fees shall be equal in amount for each 40 CFR Part 70 source. The participation portion of the fee shall be assessed according to the following formula:

$$PF = B \div 3 \div n, \text{ where:}$$

- PF = Participation fee portion of total fee
- B = The total Agency budget for the Operating Permit Program
- n = The number of 40 CFR Part 70 sources

(b) **Emissions Fee.** Fees sufficient to cover one-third of the budget shall be assessed such that each "stationary source" shall pay an amount equal to that "stationary source's" portion of the total annual emissions of the fee applicable pollutants from all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" annual emissions (in tons) to the total annual emissions of fee applicable pollutants emitted by all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The emissions portion of the fee shall be assessed according to the following formula:

$$EF = B \div 3 * SE \div TE, \text{ where:}$$

- EF = Emissions fee portion of total fee
- B = The total Agency budget for the Operating Permit Program

SE = The sum of annual emissions of fee applicable pollutants in tons per year from the individual 40 CFR Part 70 "stationary source" (not to exceed 7,500 tons per pollutant)

TE = The sum of annual emissions of fee applicable pollutants in tons per year from all 40 CFR Part 70 "stationary sources"

(c) **Complexity Fee.** Fees sufficient to cover one-third of the budget shall be assessed such that each 40 CFR Part 70 "stationary source" shall pay an amount equal to that "stationary source's" portion of the total emission units at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" emission units to the total number of emission units located at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The complexity portion of the fee shall be assessed according to the following formula:

$$CF = B \div 3 * SU \div TU, \text{ where:}$$

- CF = Complexity fee portion of total fee
- B = The total Agency budget for the Operating Permit Program
- SU = The number of emission units at a "stationary source"
- TU = The number of emission units at all 40 CFR Part 70 "stationary sources"

(d) **Total Fee.** The amount of the annual assessed fees for each 40 CFR Part 70 "stationary source" shall be the sum of the participation, emissions and complexity fee portions (PF+EF+CF = Total Fee). The sum of the total fees for all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be equal in amount to the Board adopted budget for the Operating Permit Program.

(5) Accountability.

(a) The sum of the fees assessed by the Agency to all "stationary sources" required to obtain Operating Permits within the Agency's jurisdiction shall not exceed the cost of developing and administering the program and maintaining a program reserve fund. All fees collected from permit program "stationary sources" as provided in RCW 70.94.162, shall be deposited in a dedicated air operating permit account. Such fees shall be used exclusively to support and administer the operating permit program. The purpose of the program reserve fund is to ensure that permit program costs are not funded by fees from "stationary sources" not participating in the operating permit program. The value of monies held in the program reserve fund shall not exceed 15 percent of the average permit program budget over the most recent three-year period.

(b) The Agency shall keep a record of all reasonable (direct and indirect) costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information shall be used by the Agency to develop the

Operating Permit Program budget specified in section (3) above. The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual "stationary source's" fee.

(c) In the event that the assessed fees exceed the cost of developing and administering the Operating Permit Program, including the program reserve fund, such excess fees shall be used to develop and administer the Operating Permit Program in the next subsequent year. The amount of the excess fees shall be deducted from the projected budget of the next subsequent year prior to fee assessment for the subsequent year.

(6) Fee eligible activities.

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision or permit renewal;

(b) Inspections, testing and other data gathering activities necessary for development of a permit, permit revision or renewal;

(c) Acting on an application for a permit, permit revision or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet and preparing a final permit, but excluding the costs of developing BACT, LAER, BART or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a "stationary source" is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(i) The share attributable to permitted "stationary sources" for the development and maintenance of emissions inventories;

(j) The share attributable to permitted "stationary sources" of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment and collection, including the costs of necessary administrative dispute resolution and enforcement;

(m) Required fiscal audits, periodic performance audits and reporting activities;

(n) Tracking of time, revenues and expenditures and accounting activities;

(o) Administering the permit program including costs of clerical support, supervision and management;

(p) Provision of assistance to small business under jurisdiction of SWCAA as required under Section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

(7) Activities not eligible for fee.

(a) New Source Review activity that does not include processing or preparing an operating permit;

(b) Development of BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants; and

(c) Acting on an application for a PSD permit.

(8) Schedules of payment. Fees shall be paid in accordance with the schedule of payment agreed upon in advance by the Control Officer and each operating permit "stationary source." An operating permit "stationary source" shall be allowed to pay its annual operating permit fees in one, two, or four installments. Each schedule of payment shall specify the terms and dates of payments.

(9) Late fee payments. Delinquent fees are subject to a late fee equal to three times the operating permit fee. The penalties authorized by this subsection are additional to and in no way prejudice SWCAA's ability to exercise other civil and criminal remedies, including authority to revoke a "stationary source's" operating permit for failure to pay all or part of its permit fee.

(10) Transfer of ownership. Transfer of ownership of a source shall not affect that "stationary source's" obligation to pay operating permit fees. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a "stationary source."

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-105 Records, Monitoring and Reporting

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/18/79; Amended by Board 4/17/84 - renumbered to 400-170; Amended by Board (400-170) 12/16/86; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01]

The owner or operator of each registered or Title V "source" (~~(or emission unit)~~) shall maintain records of the type and quantity of emissions from the "source" and other information deemed necessary to determine whether the "source" is in compliance with applicable emission limitations, operating limitations, and control measures. "Sources" that are not subject to the registration requirements of SWCAA 400-100 because they are exempt under SWCAA 400-101 shall maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) Emission inventory.

~~((a) Smaller sources:))~~ The owner(s) or operator(s) of all ~~((air contaminant))~~ registered and Title V "sources" shall submit an inventory of emissions from the "source" each year to the Agency. The inventory shall include stack and fugitive

emissions of particulate matter, PM_{10} , $PM_{2.5}$, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, and toxic air pollutants identified in WAC 173-460. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(a) Small "sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission submittal deadline (~~(may be allowed by the Executive Director)~~) on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 days.

(b) Large(†) "sources." At a minimum, ~~((the))~~ "sources" satisfying the criteria of 40 CFR ~~((51.320 et seq.))~~ 51, ((†)Subpart Q((†))) will be submitted to EPA by the Agency for inclusion in the national emission database. The "sources" described below shall complete and return the emission inventory form supplied by the Agency for this purpose (~~((shall be completed and returned to the Agency))~~) by March 15 ~~((th for the following sources))~~. Upon written request, an extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 days.

(i) "Stationary sources" with the potential to emit over 100 tons of criteria pollutants per year, 10 tons of a single hazardous air pollutant per year or 25 tons of combined hazardous air pollutants ~~((, sources subject to NSPS, except Subpart AAA, and sources subject to NESHAPS, except Subpart M, sources))~~ per year are required to submit an emissions inventory. Only the hazardous air pollutants listed in Section 112 of the FCAA are considered ~~((for inclusion as hazardous air pollutant emissions))~~ for the purpose of determining those "stationary sources" required to submit an emissions inventory.

(ii) In ozone nonattainment or maintenance plan areas, those "stationary sources" that emit over 10.0 tons of VOCs per year or over 25.0 tons per year of NO_x are also required to submit emission inventories. "Stationary sources" subject to this section are also required to submit average daily emissions or process throughput data for NO_x and VOCs for ozone season in preparation for the SIP update.

(iii) "Stationary sources" with actual emissions or potential to emit greater than 50 ~~((%)~~) percent of the Title V permit thresholds as identified in (i) above.

(iv) "Synthetic minor" or Title V opt out "stationary sources."

(c) Greenhouse gases. The Agency may require that "sources" submit an inventory of greenhouse gas emissions. Affected "sources" shall be notified of the inventory requirement and submittal deadline in writing.

(2) **Monitoring.** The Agency shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the ~~((Control Officer))~~ Executive Director or an authorized representative may require any "source" under the jurisdiction of the Agency to

conduct stack and/or ambient air monitoring and to report the results to the Agency.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from the Agency shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing one or two families.

(4) **Continuous monitoring and recording.** Owners and operators of the following "source categories" (~~((of sources))~~) shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million Btu per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million Btu per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Agency by the owner(s) or operator(s).

(b) Sulfuric acid plants. Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluidized bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million Btu per hour heat input.

(ii) Continuous monitoring equipment. The requirements of SWCAA 400-105 (4)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by SWCAA 400-105 (4)(d) shall be subject to approval by the Agency.

(e) Owners and operators of those "sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 ~~((as in effect on July 1, 2002))~~, and 40 CFR Part 60, Appendices B through F, as appropriate, as ~~((in effect July 1, 2000 which is))~~ adopted by reference in SWCAA 400-115.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, the Agency determines that continuous monitoring is not a reasonable

requirement, alternative monitoring and reporting procedures shall be established on an individual basis. Alternative monitoring and reporting procedures may include continuous monitoring of process/operational parameters as a surrogate to continuous emissions monitoring and/or stack tests conducted at a frequency sufficient to determine compliance with applicable regulations and permit requirements as well as to quantify emissions.

(g) Exemptions. This subsection ~~((5))~~ (SWCAA 400-105(4)) does not apply to any "stationary source" that is:

(i) Subject to a New Source Performance Standard (NSPS). NSPS "stationary sources" shall be governed by SWCAA 400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A "source" may be temporarily exempted from the monitoring and reporting requirements of this section during periods of monitoring system malfunctions provided that the ~~((source))~~ owner(s) or operator(s) shows to the satisfaction of the Agency that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(5) **Change in raw materials or fuels for sources not subject to requirements of the Operating Permit Program.** Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by SWCAA 400-105(1) shall require the submittal of sufficient information to the Agency to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The Agency may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase ~~((or decrease))~~ in average annual sulfur content over the initial inventory shall not require such notice.

(6) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(7) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption - 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01]

(1) Emission testing requirements.

~~((1))~~ (a) Requirement to test. The Agency may conduct or require that emission testing be conducted of ~~((the))~~ any "source" or ~~((any))~~ emission(s) unit within the jurisdiction of the Agency to determine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions.

~~((2))~~ (b) Test methods. Any required ~~((source))~~ emission testing shall be performed using appropriate sampling and analytical methods as approved in advance by the Agency including, but not limited to, approved EPA test methods from 40 CFR Parts 51, 60, 61, and 63 which are hereby adopted by reference (as in effect on July 1, 2002), approved test methods from Ecology's Test Manual Procedures for Compliance Testing, Opacity Determination Method (SWCAA Method 9 - Appendix A to SWCAA 400), Oregon Department of Environmental Quality (DEQ) Method 8 "Sampling Particulate Emissions from Stationary Sources (High Volume Method)" hereby adopted by reference, or alternate procedures approved ((in writing)) by both the Agency and EPA.

~~((3))~~ (c) Accommodations for sampling. The operator of a "source" shall provide the necessary platform and sampling ports for Agency personnel or others to perform a test of an emission(s) unit. The Agency shall be allowed to obtain a sample from any emission(s) unit. The operator of the "source" shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

~~((4))~~ (d) Notification. The owner or operator of a "source" shall ~~((notify))~~ submit a test plan to the Agency in writing at least 2 weeks (10 business days) prior to any required emissions test ((and provide the Agency an opportunity to review the test plan)) or as otherwise approved by the Agency. Agency personnel shall be informed at least three days prior to testing so that they have an opportunity to be present during testing.

~~((5))~~ (e) Test duration. A minimum of three test runs, at least one hour in length, shall be performed at ((normal)) maximum achievable operating conditions unless otherwise approved in advance to establish that collected data is representative of normal operations. ((The source shall be operated at or near its maximum rated capacity during testing. Compliance shall be determined by averaging)) The results of the individual test runs shall be averaged together for the purpose of demonstrating compliance with applicable emission limits.

~~((6))~~ (f) Records. A complete record of production related parameters including startups, shutdowns, and adjustments shall be kept during emissions testing to correlate operations with emissions and shall be recorded in the final test report.

~~((7))~~ (g) Reports. Results of all required ~~((source or))~~ emission(s) testing shall be submitted to the Agency within 45 days of test completion or as specified in the applicable regulatory order. Measured concentrations for combustion and incineration ~~((sources))~~ emission units shall be corrected as provided in the applicable air discharge permit or nonroad engine permit, or as specified in SWCAA 400-050(3). The report shall include:

~~((a))~~ (i) A description of the ~~((source))~~ emission unit including manufacturer, model number and design capacity

of the equipment, and the location of the sample ports or test locations(-);

((b)) (ii) Time and date of the test and identification and qualifications of the personnel involved(-);

((c)) (iii) A summary of results, reported in units and averaging periods consistent with the applicable emission standard or limit(-);

((d)) (iv) A summary of control system or equipment operating conditions(-);

((e)) (v) A summary of production related parameters(-);

((f)) (vi) A description of the test methods or procedures used including all field data, quality assurance/quality control procedures and documentation(-);

((g)) (vii) A description of the analytical procedures used including all laboratory data, quality assurance/quality control procedures and documentation(-);

((h)) (viii) Copies of field data and example calculations(-);

((i)) (ix) Chain of custody information(-);

((j)) (x) Calibration documentation(-);

((k)) (xi) Discussion of any abnormalities associated with the results(-); and

((l)) (xii) A statement signed by the senior management official of the testing firm certifying the validity of the ((source)) emission test report.

(2) Emission monitoring requirements for combustion sources.

(a) Requirement to monitor. The Agency may require in an air discharge permit or nonroad engine permit that emission monitoring be conducted for any "source" within the jurisdiction of the Agency to evaluate process equipment operation or control equipment performance.

(b) Monitoring method. Emission monitoring shall be performed with a portable analyzer. Alternative methodologies may be preapproved by SWCAA.

(i) For any portable analyzer used to perform emission monitoring pursuant to this section, the response of the analyzer to a calibration gas of known concentration shall be determined before sampling commences and after sampling has concluded. These "calibration error" measurements shall be conducted as close as practical to the time of the monitoring event, but in no case on a different day than the event. At a minimum, the calibration error procedure shall include a two point (zero/span gas) calibration error check using EPA Protocol 1 reference gases. Results of the sampling shall not be valid if the pre and post calibration error check results vary by more than 10 percent of the span value; and

(ii) Span gas concentrations shall be no less than 50 percent and no more than 200 percent of the emission concentration corresponding to the permitted emission limit. Ambient air may be used to zero CO and NO_x cells/analyzer(s) and span oxygen cells/analyzer.

(c) Accommodations for sampling. The owner or operator of a "source" shall provide the necessary platform and sampling ports for Agency personnel or others to perform monitoring of an emission unit.

(d) Data collection. Emission data shall be collected for at least five minutes following a "ramp-up" phase. The "ramp-up" phase ends when analyzer readings have stabi-

lized (less than five percent per minute change in emission concentration value). Emission concentrations shall be recorded every 30 seconds during data collection. All emission data collected following the ramp-up phase(s) shall be reported to the Agency.

(e) Records. A complete record of production related parameters including startups, shutdowns, and adjustments shall be kept during emission monitoring to correlate operations with emissions and shall be recorded in the final monitoring report.

(f) Reports. Results of all required emission monitoring shall be submitted to the Agency within 15 days of completion or as specified in the applicable regulatory order. The report shall include:

(i) Time and date of the emission monitoring;

(ii) Identification of the personnel involved;

(iii) A summary of results, reported in units consistent with the applicable emission standard or limit;

(iv) A summary of control system or equipment operating conditions;

(v) A description of the evaluation methods or procedures used including all field data, quality assurance/quality control procedures and documentation; and

(vi) Calibration error check documentation.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-107 Excess Emissions

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 4.07 & 4.08); Amended by Board 10/29/69 (Regulation 2 Sec 5.07); 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-056 filed 2/15/01, effective 3/18/01]

(1) Recordkeeping and reporting. Excess emissions that represent a potential threat to human health or safety, or which the owner or operator wishes to be considered as unavoidable, shall be reported to the Agency as soon as possible, but no later than 48 hours after discovery. All other excess emissions shall be reported within thirty days after the end of the month during which event is discovered. Excess emission reports shall contain the following information:

(a) Identification of the emission unit(s) involved;

(b) A brief description of the event;

(c) Duration of the event; and

(d) Anticipated corrective action to prevent or minimize excess emissions, if any.

Upon request by the Agency, the owner(s) or operator(s) of the "source" shall submit a full written report describing the known causes, the corrective actions taken, and the preventive measures implemented to minimize or eliminate the chance of recurrence.

(2) Penalty Exclusion for Unavoidable Excess Emissions.

((1)) (a) The owner or operator of a "source" shall have the burden of proving to the Agency or the ((decision-making entity (e.g.,)) Pollution Control Hearings Board((?)) in an enforcement action that excess emissions were unavoidable.

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This demonstration shall be a condition to obtaining relief under ~~((subsections (4), (5) and (6) of))~~ this section.

~~((2))~~ (b) Excess emissions determined by the Agency to be unavoidable under the procedures and criteria in this section shall be excused ~~((and not subject to))~~ from penalty.

~~((3))~~ Excess emissions shall be reported to the Agency as soon as possible. Upon request by the Agency, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.)

~~((4))~~ (c) Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the "source" reports as required under subsection ~~((3))~~ (1) of this section and adequately demonstrates that the excess emissions could not have been prevented through careful planning and design, and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

~~((5))~~ (d) Excess emissions due to scheduled maintenance shall be considered unavoidable if the "source" reports as required under subsection ~~((3))~~ (1) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

~~((6))~~ (e) Excess emissions due to upsets shall be considered unavoidable provided the "source" reports as required under subsection ~~((3))~~ (1) of this section and adequately demonstrates that:

~~((a))~~ (i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

~~((b))~~ (ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

~~((c))~~ (iii) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded; and

~~((d))~~ (iv) The owner's or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-109 ((Notice of Construction)) Air Discharge Permit Applications

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.152 RCW. Original Board adoption 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01]

(1) **Purpose.** An ~~((Notice of Construction))~~ air discharge permit application is the document ~~((or form))~~ used by

the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information shall be identified as set forth in SWCAA 400-270. ~~((Changes may include modifications, alterations, changes to process or control equipment, establishment of emission limits, and installation of new sources.))~~

(2) **Applicability.**

(a) An ~~((Notice of Construction))~~ air discharge permit application ~~((consistent with SWCAA 400-110))~~ shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consistent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may begin actual construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

(i) New construction or installation;

(ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);

(iii) Review of existing or installed equipment operating without prior approval;

(iv) Modification, alteration or replacement of existing process or control equipment;

(v) Relocation of existing equipment;

(vi) Review of existing equipment with an expired or lapsed approval or registration;

(vii) Review of case-by-case RACT, BACT, MACT or other similar determination.

(b) Submittal of an ~~((Notice of Construction))~~ air discharge permit application shall not automatically impose ~~((New Source))~~ review requirements ~~((for meeting emissions standards (including, but not limited to: NSPS, NESHAPs, any ambient air quality standard, etc.)))~~ pursuant to SWCAA 400-110.

(c) "Stationary sources" subject to the PSD program (WAC 173-400-141) shall submit a PSD application to Ecology for pollutants subject to PSD permitting, and submit a permit application to SWCAA for pollutants that are not subject to PSD permitting.

(d) The owner or operator of any "new source" that meets the exemption criteria specified in SWCAA 400-101 may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 days of receiving a complete notification. To be considered complete, written notification shall, at a minimum, contain the following information:

(i) Name and location of "stationary source";

(ii) Description of primary processes at the "stationary source";

(iii) Description of emission units at the "stationary source"; and

(iv) Estimated air contaminant emissions from "stationary source" operations.

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Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified in SWCAA 400-101, an air discharge permit application shall be submitted pursuant to this section.

((3) Types of applications. A Notice of Construction application may be submitted for, but not be limited to, the following activities:

- (a) New construction or installation.
- (b) Change of existing approved emission limits (including Title V opt-out requests—SWCAA 400-091).
- (c) Review of existing or installed equipment operating without prior approval.
- (d) Modification, alteration or replacement of existing process or control equipment.
- (e) Change of registered owner (purchase or sale of source, facility or equipment).
- (f) Change of location of operations of existing portable and stationary equipment.
- (g) Review of existing equipment with an expired or lapsed approval or registration.
- (h) Review of a case by case RACT, BACT, MACT or other similar determination.
- (i) Other activities as identified by the Agency.)

((4)) (3) Fees. ((A fee consistent with the fee schedule (Tables A and B) provided in SWCAA 400-110 shall be paid by the owner or operator to the Agency prior to review of the Notice of Construction application by the Agency)). Before the Agency may review a permit application, a filing fee of \$300.00 and a review fee, as identified in Table A shall be submitted by the applicant. If offsetting emission reductions or other types of review identified in Table B must be performed by the Agency as a result of the proposed installation, alteration, or modification, an additional review fee shall be paid as described in Table B. (Total Fee = Filing Fee + Review Fee [Table A] + Additional Review Fee [Table B]).

Permit application review fees based on emissions are to utilize actual or proposed allowable emissions, after controls, as supported by test data or emission factors, not potential to emit. Other review fees as noted in the fee tables are based on the design capacities of affected equipment. Where a "stationary source" may fall under multiple categories in Table A, only one fee per application shall apply. In these cases, the fee determination shall be based on the primary emission unit or activity of the new, modified or altered "stationary source."

TABLE A
Permit Application Review Fees

i.	<u>Fuel burning equipment (Million Btu/hr heat input @ design capacity):</u>	
	<u>Less than 5</u>	<u>\$ 300.00</u>
	<u>5 or more but less than 10</u>	<u>400.00</u>
	<u>10 or more but less than 30</u>	<u>550.00</u>
	<u>30 or more but less than 50</u>	<u>700.00</u>

	<u>50 or more but less than 100</u>	<u>1,200.00</u>
	<u>100 or more but less than 250</u>	<u>2,500.00</u>
	<u>250 or more but less than 500</u>	<u>4,000.00</u>
	<u>500 or more</u>	<u>6,000.00</u>
	<u>Change in fuel type</u>	<u>One half of the applicable fee listed above</u>
ii.	<u>Discharge from control equipment or from uncontrolled process equipment</u>	
	<u>(Actual Cubic Feet per Minute - ACFM):</u>	
	<u>Less than 50</u>	<u>\$ 300.00</u>
	<u>50 or more but less than 5,000</u>	<u>400.00</u>
	<u>5,000 or more but less than 20,000</u>	<u>500.00</u>
	<u>20,000 or more but less than 50,000</u>	<u>600.00</u>
	<u>50,000 or more but less than 100,000</u>	<u>700.00</u>
	<u>100,000 or more but less than 250,000</u>	<u>1,000.00</u>
	<u>250,000 or more but less than 500,000</u>	<u>2,000.00</u>
	<u>500,000 or more</u>	<u>4,000.00</u>
iii.	<u>Refuse burning equipment (Incinerators)(Tons/day):</u>	
	<u>Less than 0.5</u>	<u>\$ 400.00</u>
	<u>0.5 or more but less than 5</u>	<u>500.00</u>
	<u>5 or more but less than 12</u>	<u>1,000.00</u>
	<u>12 or more but less than 50</u>	<u>3,000.00</u>
	<u>50 or more</u>	<u>6,000.00</u>
iv.	<u>Storage tanks, reservoirs, or containers (Gallons-total capacity):</u>	
	<u>(Other than gasoline or diesel fuel dispensing facilities):</u>	
	<u>250 or more but less than 10,000</u>	<u>\$ 300.00</u>
	<u>10,000 or more but less than 40,000</u>	<u>700.00</u>
	<u>40,000 or more but less than 100,000</u>	<u>1,000.00</u>
	<u>100,000 or more</u>	<u>2,000.00</u>
v.	<u>Gasoline dispensing facilities:</u>	
	<u>Stage I</u>	<u>\$ 300.00</u>
	<u>Stage II</u>	<u>400.00</u>
	<u>Stages I & II, combined</u>	<u>500.00</u>
	<u>Toxics review for gasoline facility</u>	<u>1,500.00</u>
	<u>Stage II removal</u>	<u>300.00</u>
vi.	<u>Other:</u>	<u>\$200.00/ton</u>
	<u>(Not classified in Subsection i., ii., iii., iv. or v. above)</u>	<u>of emission</u>
vii.	<u>Toxic air contaminants</u>	<u>\$200.00 up to one ton and \$100.00 for each additional ton</u>
viii.	<u>Complex stationary source or modification:</u>	<u>\$6,000.00</u>
ix.	<u>Synthetic minor application (including, but not limited to: Title V, HAP):</u>	<u>Not to exceed \$5,000.00</u>

<u>x.</u>	<u>Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions - tons per year):</u>	
	<u>Less than or equal to 10</u>	<u>\$ 300.00</u>
	<u>More than 10 but less than or equal to 50</u>	<u>700.00</u>
	<u>More than 50 but less than or equal to 100</u>	<u>1,000.00</u>
	<u>More than 100 but less than 250</u>	<u>2,500.00</u>
	<u>250 or greater</u>	<u>6,000.00</u>
<u>xi.</u>	<u>Minor modifications to existing permit conditions:</u>	<u>\$ 300.00</u>
<u>xii.</u>	<u>Temporary, substitute, or emergency Sources</u>	<u>\$ 500.00</u>
<u>xiii.</u>	<u>Dry cleaner:</u>	<u>\$ 300.00</u>
<u>xiv.</u>	<u>Diesel engine generators/pumps (Aggregate horsepower rating):</u>	
	<u>Less than 100</u>	<u>\$ 300.00</u>
	<u>100 or more but less than 500</u>	<u>400.00</u>
	<u>500 or more but less than 2,000</u>	<u>700.00</u>
	<u>2,000 or more but less than 5,000</u>	<u>1,500.00</u>
	<u>5,000 or more but less than 10,000</u>	<u>3,000.00</u>
	<u>10,000 or more</u>	<u>6,000.00</u>
<u>xv.</u>	<u>Crematory/small incinerators/small flares:</u>	<u>\$400.00</u>
<u>xvi.</u>	<u>Gluing/flow coating operations without active ventilation:</u>	<u>\$500.00</u>
<u>xvii.</u>	<u>Soil remediation:</u>	<u>\$500.00</u>
<u>xviii.</u>	<u>Composting Facilities (Average material throughput - tons per day):</u>	
	<u>Less than 50</u>	<u>\$ 300.00</u>
	<u>50 or more but less than 100</u>	<u>700.00</u>
	<u>100 or more but less than 200</u>	<u>1,200.00</u>
	<u>200 or more but less than 500</u>	<u>3,000.00</u>
	<u>500 or more</u>	<u>6,000.00</u>
<u>xix.</u>	<u>Coffee roasters:</u>	<u>\$400.00</u>
<u>xx.</u>	<u>Emergency Application:</u>	<u>Double normal application and review fee</u>

TABLE B
Other Review Fees

<u>xxi.</u>	<u>Emission offset analysis or bubble:</u>	<u>\$400.00</u>
<u>xxii.</u>	<u>Emission reduction credit (ERC) application: (Deposit or withdrawal)</u>	<u>\$400.00</u>
<u>xxiii.</u>	<u>State environmental policy act (SEPA) - lead agency:</u>	<u>\$1,000.00</u>

<u>xxiv.</u>	<u>Environmental impact statement (EIS) review:</u>	<u>\$500.00</u>
<u>xxv.</u>	<u>RACT/BACT/MACT/BART/LAER determination:</u>	<u>\$70.00/hr</u>
<u>xxvi.</u>	<u>Variance request:</u>	<u>\$500.00</u>
<u>xxvii.</u>	<u>Review of ambient impact analysis:</u>	<u>\$70.00/hr</u>
<u>xxviii.</u>	<u>Review of projects under RCW 70.105D.090:</u>	<u>\$70.00/hr</u>
<u>xxix.</u>	<u>Review of Ecology agreed orders and consent orders pursuant to RCW 70.105D.090(1):</u>	<u>\$70.00/hr</u>

TABLE C
Major NSR Review Fees

<u>xxx.</u>	<u>Plantwide applicability limitations:</u>	<u>\$10,000.00 + \$70/hr for excess cost to Agency</u>
<u>xxxi.</u>	<u>Clean unit/pollution control project designations:</u>	<u>\$5,000.00 + \$70/hr for excess cost to Agency</u>

~~((5))~~ (4) **Agency actions.** Each ~~((acceptable and))~~ complete ~~((Notice of Construction))~~ air discharge permit application shall ((have)) result in the issuance of an ((Order of Approval)) air discharge permit or other applicable order ~~((issued)) or confirmation of exempt status~~ by the Agency. ~~((A Notice of Construction for a gasoline dispensing station shall be submitted and approved as provided in SWCAA 400-110(8).))~~ The requirements of SEPA (State Environmental Policy Act) shall be complied with for each ~~((Notice of Construction))~~ air discharge permit application. Demonstration of completion of an environmental checklist as provided in WAC 197-11 shall be submitted with each ~~((Notice of Construction))~~ air discharge permit application. If a SEPA determination has been issued for the proposed activity by another permitting agency, the applicant need only submit a copy of that agency's SEPA determination. Issuance of regulatory orders for all ~~((Notice of Construction))~~ air discharge permit applications shall be consistent with the requirements of SWCAA 400-110. ~~((Requirements for New Source Review are provided in SWCAA 400-110, 400-111, 400-112, 400-113 & 400-114. A Notice of Construction application may be withdrawn prior to issuance of a final regulatory order by the Agency as provided in (6) below; or an application may be determined by the Agency to be exempt as provided under 400-100, 400-101, or 400-110. An application determined to be exempt will be processed as identified in (6) below.))~~

~~((6))~~ (5) **Withdrawn or exempt applications.**

(a) An ((Notice of Construction)) air discharge permit application may be withdrawn by the applicant at any time prior to issuance of a regulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw ~~((a Notice of Construction))~~ the application, and certification that the proposed equipment or

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modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, ~~((a))~~ a permit application may be determined to be exempt from the ~~((registration))~~ requirements of SWCAA 400-100 and ~~((New Source Review requirements of SWCAA))~~ 400-110 if it meets the exemption criteria provided in SWCAA 400-101. The Agency shall provide written notification ~~((shall be provided by the Agency))~~ to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees, if provided with the application, may be refunded ~~((;))~~ upon request, provided that substantial time has not been expended by the Agency for review of the ~~((Notice of Construction))~~ application.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review)

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.152 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; 92-06-015 filed 2/25/92, effective 3/25/92; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-030 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01]

(1) Applicability.

~~(((a) New Source Review (NSR) means that if the new source, modification or substantial alteration or replacement, meets the definition of "new source" then that new source or modification must demonstrate that all applicable emission standards have been or will be met by the proposed modification or new source. A complete Notice of Construction application shall be submitted for each source required to submit an application under the requirements of this section. Confidential information shall be identified as set forth in SWCAA 400-270.~~

Before the Agency may review a Notice of Construction application, a filing fee of \$300.00 and a review fee, as shown in Table A shall be submitted by the applicant. If offsetting emission reductions or other types of review identified in Table B are required to be performed by the Agency as a result of the proposed installation, alteration, or modification, an additional review fee shall be paid. ~~((Total Fee = Filing Fee + Review Fee [Table A] + Additional Review Fee [Table B])).~~

Notice of Construction application review fees based on emissions are to utilize actual or approved emissions, after controls, as supported by test data or emission factors, not

potential to emit. Other review fees as noted in the fee tables are based on design capacities of the source equipment. Where a source may fall under multiple categories, only one fee per application shall apply; Table A fees are not considered additive as they apply to an application. In general, the fee determination shall be based on the primary emission unit or activity of the new, modified or altered source.

TABLE A
Notice of Construction Application Review Fees

i.	Fuel Burning Equipment Million Btu/hr heat input @ design capacity):	
	Less than 5	\$ 300.00
	5 or more but less than 10	400.00
	10 or more but less than 30	550.00
	30 or more but less than 50	700.00
	50 or more but less than 100	1200.00
	100 or more but less than 250	2,500.00
	250 or more but less than 500	4,000.00
	500 or more	6,000.00
ii.	Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute—ACFM):	
	Less than 50	\$ 300.00
	50 or more but less than 5,000	400.00
	5,000 or more but less than 20,000	500.00
	20,000 or more but less than 50,000	600.00
	50,000 or more but less than 100,000	700.00
	100,000 or more but less than 250,000	1,000.00
	250,000 or more but less than 500,000	2,000.00
	500,000 or more	4,000.00
iii.	Refuse Burning Equipment (Incinerators)(Tons/day):	
	0.5 or more but less than 5	\$ 500.00
	5 or more but less than 12	1,000.00
	12 or more but less than 250	3,000.00
	250 or more	4,000.00
iv.	Storage Tanks, Reservoirs, or Containers (Gallons total capacity): (Other than gasoline or diesel fuel dispensing facilities)	
	250 or more but less than 10,000	\$ 300.00
	10,000 or more but less than 40,000	700.00
	40,000 or more but less than 100,000	1,000.00
	100,000 or more	2,000.00
v.	Gasoline Dispensing Facilities	
	Stage I	\$ 300.00
	Stage II	400.00
	Stages I & II, combined	500.00
	Toxics review for gasoline facility	1500.00
	Stage II removal	300.00
vi.	Other	\$ 200.00/ton

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	(Not classified in Subsection i., ii., iii., or iv. above)	of emission
vii.	Toxic Air Contaminants	\$ 200.00 up to one ton and \$100.00 for each additional ton
viii.	Major Source or Major Modification	\$ 5,000.00
ix.	Synthetic minor application (including, but not limited to: Title V, HAP)	Not to exceed \$ 5,000.00
x.	Particulate Matter and Fugitive Emissions from Rock Crushing, Material Transfer and Ship Loading (Emissions—tons per year)	
	Less than or equal to 10	\$ 300.00
	More than 10 but less than or equal to 50	700.00
	More than 50 but less than or equal to 100	1,000.00
	More than 100 but less than 250	2,500.00
	250 or greater	5,000.00
xi.	Modifications to an Existing Order	\$ 300.00
xii.	Installation or Operation of a Temporary, Substitute or Emergency Source	\$ 500.00
xiii.	Dry cleaner	\$ 300.00
xiv.	Standby diesel generators	\$ 400.00
xv.	Crematory/Small Incinerators/Small Flares	\$ 400.00
xvi.	Gluing/flow coating operations without active ventilation	\$ 500.00
xvii.	Soil remediation	\$ 500.00

TABLE B
Other Review Fees

The following fees are considered additive to the filing and review fees assessed for Notice of Construction applications (Table A). These fees apply to activities that may be requested of and performed by the Agency with or without submittal of a Notice of Construction application and are not part of the activities normally performed by the Agency as part of the Notice of Construction application review.

xviii.	Emission Offset Analysis or Bubble	\$ 400.00
xix.	Emission Reduction Credit (ERC) Application (Deposit or withdrawal)	\$ 400.00
xx.	State Environmental Policy Act (SEPA) — Lead Agency	\$ 1000.00
xxi.	Environmental Impact Statement (EIS) Review	\$ 500.00
xxii.	RACT/BACT/MACT/BART/LAER Determination	\$ 50.00/hr

xxiii. Variance request \$ 500.00

(b) A Notice of Construction application that meets the minimum requirements for New Source Review must be filed by the owner or operator and an Order of Approval issued by the Agency prior to the establishment of any new source or emission unit or modification which is listed in SWCAA 400-100 or required to obtain an Operating Permit under RCW 70.94.161.

(e) The Agency may require that:

(i) a Notice of Construction application be filed by the owner or operator of a proposed new source or modification;

(ii) the source meets all New Source Review requirements; and

(iii) an Order of Approval be issued by the Agency prior to the establishment of any new source or emission unit or modification, other than a single family or a duplex dwelling.

(a) Air discharge permit applications submitted to the Agency pursuant to SWCAA 400-109 shall be reviewed and approved in accordance with the requirements of this section. ((d)) (b) ((New Source)) Review of a modification shall be limited to the emission unit(s) ((or units)) proposed to be added to an existing "stationary source" or modified and the air contaminants whose emissions would increase as a result of the modification except that review of a "major modification" shall comply with the requirements of SWCAA 400-111, 400-112, 400-113 and/or WAC 173-400-141.

((e)) (c) ((New Source Review is not required for those)) The requirements of this section are not applicable to:

(i) "Stationary sources" ((whose facilitywide combined emissions (potential to emit) do not exceed the limits)) that meet the exemption criteria specified in SWCAA 400-101 ((or whose emission unit capacities are less than the minimum quantities specified in Table A of SWCAA 400-110(1)(a))). The owner or operator of an exempt facility shall maintain sufficient documentation acceptable to the Agency to substantiate that the "stationary source" is entitled to exemption under this section. ((An emission unit exempt from registration under SWCAA 400-100 or 400-101 may be exempt from New Source review.)); and

(ii) Nonroad engines subject to the requirements of SWCAA 400-045 and 400-046.

((f)) (d) ((New Source)) Review is not required ((when)) for the following ((conditions are met)):

((i)) Performance of routine maintenance or repair that involves the replacement of like-in-kind air pollution control equipment or controls. This includes upgrades of parts or components where due to wear or breakage, parts or components must be replaced and exact replacement parts or components are no longer available from the original equipment manufacturer or after market vendors. In no case shall the replacement parts result in an increase in actual emissions above allowable emissions;

(ii) A process change is made that does not result in an emission of a different type not previously approved or an increase in capacity and total air pollutant emissions;))

((iii)) (i) A process change ((is made)) that does not result in ((an)) the emission of a ((different)) type of toxic air pollutant, as provided in ((WAC)) Chapter 173-460 WAC, not previously approved and individual toxic air pollutant

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emissions do not exceed the Small Quantity Emission Rates specified (~~in the Small Quantity Emission Rate tables~~) in WAC 173-460-080 (~~((annual rate))~~); or

~~((iv))~~ (ii) A raw material composition change that does not result in individual toxic air pollutant emissions that exceed the applicable Small Quantity Emission Rate(s) specified (~~in the Small Quantity Emission Rate tables~~) in WAC 173-460-080 (~~((annual rate))~~).

(2) Requirements.

(a) All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any "new source," new emission unit, or modification.

(b) Regardless of any other provision of this section, 400-101 or 400-109, all review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any of the following:

(i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Part AAA, Wood stoves (as in effect on July 1, 2002);

(ii) Any project that qualifies as a new or modified "stationary source" within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants as in effect on July 1, 2002), except for asbestos demolition and renovation projects subject to 40 CFR 61.145;

(iii) Any project that qualifies as a "new source" within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories as in effect on July 1, 2002);

(iv) Any project that qualifies as a new major stationary source, or a major modification; or

(v) Any modification to a "stationary source" that requires an increase in an existing plantwide emissions cap or unit specific emission limit.

~~((g))~~ (c) (~~Any source required to submit a Notice of Construction~~) Air discharge permit applications (~~for New Source Review is required to~~) must demonstrate that all applicable emission standards have been or will be met by the proposed modification or "new source." Examples of applicable emissions standards (~~may~~) include, but are not (~~be~~) limited to: RACT, BACT, LAER, BART, MACT, NSPS, NESHAPS, ambient air increments and (~~any~~) ambient air quality standards (~~as identified in~~) (See Table (C) A below). A completed environmental checklist or a completed determination, as provided in Chapter 197-11 WAC, shall be submitted with each application. Additional requirements for new and modified "stationary sources" and replacement or alteration of control equipment are (~~further~~) addressed in SWCAA 400-111, 400-112, 400-113, 400-114, and 400-151.

((TABLE C
Emission Concentration Regulatory Standards and Significance Levels

Pollutant	Averaging Period	Class-II Significant Impact Criteria ^a mg/m ³	Class-I PSD Increments ^k mg/m ³	Class-II PSD Increments ^k mg/m ³	NAAQS		Washington Ambient Standards mg/m ³ (ppm)
					Primary Ambient Standards mg/m ³ (ppm)	Secondary Ambient Standards mg/m ³ (ppm)	
Carbon Monoxide (CO) (WAC 173-475)	8-Hour	500	—	—	10,000 ^b (9.0)	10,000 ^b (9.0)	10,000 ^b (9.0)
	1-Hour	2,000	—	—	40,000 ^b (35.0)	40,000 ^b (35.0)	40,000 ^b (35.0)
Nitrogen Dioxide (NO ₂) (WAC 173-475)	Annual (arithmetic mean)	1	2.5	25	100 (0.05)	100 (0.05)	100 (0.05)
Ozone (O ₃) (WAC 173-475)	1-Hour	—	—	—	(0.12)	(0.12)	(0.12)
Ozone (O ₃) (40 CFR Part 50) (62 FR-38856)	8-Hour ^f	—	—	—	(0.08)	(0.08)	—
Sulfur Dioxide (SO ₂) (WAC 173-474)	Annual	1	2	20	80 (0.03)	—	53 (0.02)
	24-Hour	5	5	91	365 ^b (0.14)	—	260 ^b (0.10)
	3-Hour	25	25	512	—	1,300 ^b (0.50)	—
Total Reduced Sulfur (TRS)	1-Hour	—	—	—	—	—	1,065 ^b (0.40) ^d
	1-Hour	—	—	—	—	—	—
Lead	Quarterly Average	—	—	—	1.5	1.5	1.5

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Pollutant	Averaging Period	Class II Significant Impact Criteria ^a mg/m ³	Class I PSD Increments ^k mg/m ³	Class II PSD Increments ^k mg/m ³	NAAQS		Washington Ambient Standards mg/m ³ (ppm)
					Primary Ambient Standards mg/m ³ (ppm)	Secondary Ambient Standards mg/m ³ (ppm)	
Total Suspended Particulates (TSP) (WAC 173-470)	Annual ^a (geometric-mean)	1	5	19	75	60 ^e	60
	24 Hour	5	10	37	260 ^b	150 ^b	150 ^b
Particulate-Matter less than 10-Fm (WAC 173-470)	Annual (geometric-mean)	1	—	17	50	50	50
	24 Hour	5	—	30	150 ^b	150 ^b	150 ^b
Particulate-Matter less than 2.5-F (40 CFR Part 50) (62 FR 38652)	Annual ^g	—	—	—	15	15	—
	24 Hour ^h	—	—	—	65	65	—

mg/m³—micrograms per cubic meter; ppm—parts per million
 a-Never to be exceeded.
 b-Not to be exceeded more than once per year.
 c-This is not a standard, rather it is to be used as a guide in assessing whether implementation plans will achieve the 24-hour standard.
 d-Also, 0.25 ppm not to be exceeded more than twice in seven days.
 e-Not to be exceeded on more than 1 day per calendar year as provided in ((WAC)) Chapter 173-475 WAC.
 f-Based on the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at each monitor.
 g-Based on the 3-year average of annual arithmetic mean PM_{2.5} concentrations.
 h-Based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each monitor within an area.
 i-Based on the 99th percentile of 24-hour PM₁₀ concentrations at each monitor.
 j-Found in 40 CFR 51.165(b)(2).
 k-Found in 40 CFR 51.166(e).
 Annual standards never to be exceeded; short term standards not to be exceeded more than once per year unless otherwise noted.
 Sources include the EPA New Source Review Workshop Manual, 40 CFR 52.21 and individual WAC Chapters.

((The significant impact criteria are used to determine if a proposed project or modification will cause a significant deterioration in ambient air quality for Class II areas)). If the ambient impact of a proposed project ((impacts)) (i.e., changes in ambient concentrations resulting from the proposed project or modification alone) ((are)) is predicted to be less than the ((significant impact criteria)) applicable ambient air increments, ((then)) the air quality analysis is complete at that point. If the ambient impact of a proposed project ((or modification exceeds these levels)) could potentially exceed

the applicable ambient air increments, the applicant shall demonstrate compliance with available ((PSD)) ambient air increments and Ambient Air Quality Standards (AAQS) ((must then be demonstrated)) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on July 1, 2002). ((If a proposed project or modification exceeds the significant ambient concentrations for Class II areas,)) Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

TABLE A - Emission Concentration Regulatory Standards

Pollutant	Averaging Period	Ambient Air Increment 40 CFR 51.166(c)		National Ambient Air Quality Standards (NAAQS) 40 CFR 50		State Ambient Air Quality Standards 173-470, 474, and 475 WAC
		Class I µg/m ³	Class II µg/m ³	Primary Standard µg/m ³ (ppm)	Secondary Standard µg/m ³ (ppm)	Ambient Standard µg/m ³ (ppm)
Carbon Monoxide (CO)	8-Hour	=	=	10,000 ^b (9.0)	=	10,000 ^b (9.0)
	1-Hour	=	=	40,000 ^b (35.0)	=	40,000 ^b (35.0)
Nitrogen Dioxide (NO ₂)	Annual ^a (arithmetic mean)	2.5	25	100 (0.05)	100 (0.05)	100 (0.05)
Ozone (O ₃)	1-Hour ^e	=	=	(0.12)	(0.12)	(0.12)
	8-Hour ^f	=	=	(0.08)	(0.08)	=

PROPOSED

Pollutant	Averaging Period	Ambient Air Increment 40 CFR 51.166(c)		National Ambient Air Quality Standards (NAAQS) 40 CFR 50		State Ambient Air Quality Standards 173-470, 474, and 475 WAC
		Class I µg/m ³	Class II µg/m ³	Primary Standard µg/m ³ (ppm)	Secondary Standard µg/m ³ (ppm)	Ambient Standard µg/m ³ (ppm)
Sulfur Dioxide (SO ₂)	Annual ^a	2	20	80 (0.03)	=	53 (0.02)
	24-Hour	5	91	365 ^b (0.14)	=	260 ^b (0.10)
	3-Hour	25	512	=	1,300 ^b (0.50)	=
	1-Hour	=	=	=	=	1,065 ^b (0.40) ^d
Lead	Quarterly Average	=	=	1.5	1.5	1.5
Total Suspended Particulates (TSP)	Annual ^a (geometric mean)	=	=	=	=	60
	24-Hour ⁱ	=	=	=	=	150 ^b
Particulate Matter less than 10 µm (PM ₁₀)	Annual (arithmetic mean)	4	17	50	50	50
	24-Hour ⁱ	8	30	150 ^b	150 ^b	150 ^b
Particulate Matter less than 2.5 µm (PM _{2.5})	Annual ^a (arithmetic mean)	=	=	15	15	=
	24-Hour ^h	=	=	65	65	=

µg/m³ - micrograms per cubic meter; ppm - parts per million

^a Never to be exceeded.

^b Not to be exceeded more than once per year.

^c This is not a standard, rather it is to be used as a guide in assessing whether implementation plans will achieve the 24-hour standard.

^d Also, 0.25 ppm not to be exceeded more than twice in seven days.

^e Not to be exceeded on more than 1 day per calendar year as provided in ((WAC)) Chapter 173-475 WAC.

^f Based on the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at each monitor.

^g Based on the 3-year average of annual arithmetic mean PM_{2.5} concentrations.

^h Based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each monitor within an area.

ⁱ Based on the 99th percentile of 24-hour PM₁₀ concentrations at each monitor.

Annual standards never to be exceeded; short term standards not to be exceeded more than once per year unless otherwise noted.

Sources include the EPA New Source Review Workshop Manual, 40 CFR 52.21 and individual WAC Chapters.

(d) PSD applicability. Air discharge permit applications for "major stationary sources" or "major modifications" shall demonstrate that all applicable requirements of SWCAA 400-141 and WAC 173-400-141 have been met.

(e) An applicant filing an air discharge application for a project described in WAC 173-400-117(2), Special Protection Requirements for Federal Class I Areas, must send a copy of the application to the responsible federal land manager.

~~((2))~~ (3) **Application completeness determination.** Within thirty (30) calendar days of receipt of an ~~((Notice of Construction))~~ air discharge permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary ~~((based upon review of information already supplied,))~~ to complete the application as provided under RCW 70.94.152.

(a) For an ~~((project))~~ application subject to PSD review under ~~((SWCAA))~~ WAC 173-400-141, a completeness determination includes a determination that the application provides all information required to conduct PSD review. ~~((The Agency may request additional clarification of information submitted from the source after a completeness determination has been made for a Notice of Construction application.))~~

(b) For an application subject to Special Protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determina-

tion that the application includes all information required for review of that project under WAC 173-400-117(3).

~~((3))~~ (4) **Final determination ~~((Regulatory orders))~~.**

(a) Within sixty (60) calendar days of receipt of a complete application, the Agency shall either issue a final decision on the application or ~~((, for these projects subject to public notice, issue a preliminary determination and))~~ initiate public notice ~~((and comment procedures under SWCAA 400-171))~~ on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. An owner or operator seeking to construct or modify a "stationary source" that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the ~~((Notice of Construction))~~ application required by this section. An ~~((Notice of Construction))~~ application designated for integrated review shall be processed in accordance with ~~((WAC))~~ Chapter 173-401 WAC procedures and deadlines. A PSD permit application under WAC 173-400-141 or an air discharge permit application for a "major modification" or a "major stationary source" in a non-attainment area must also comply with SWCAA 400-171 and WAC 173-400-171, as applicable.

(b) Every final determination on an ~~((Notice of Construction))~~ air discharge permit application that results in the issuance of an ~~((Order of Approval))~~ air discharge permit by the Agency shall be reviewed and signed prior to issuance by

a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

(c) If the "new source" is a "major stationary source" or the ~~((change))~~ proposed modification is a "major modification," the Agency shall submit any control technology determination(s) included in a final ~~((Order of Approval))~~ air discharge permit to the RACT/BACT/LAER clearinghouse maintained by EPA and submit a copy of the final permit to EPA.

~~((4))~~ (5) **Appeals.** An ~~((Order of Approval))~~ air discharge permit, any conditions contained in an ~~((Order of Approval))~~ air discharge permit, the denial of an ~~((Notice of Construction))~~ air discharge permit application, or any other regulatory order issued by the Agency, may be appealed to the ~~((Board of Directors as specified in SWCAA 400-220 of this regulation or appealed directly to the))~~ Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. The Agency shall promptly mail copies of each order approving or denying an ~~((Notice of Construction))~~ air discharge permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board ~~((and, where applicable, to the EPA Environmental Appeals Board)).~~

~~((5))~~ (6) **Portable ~~((sources))~~ equipment.** ~~((For portable sources which locate temporarily at particular sites,))~~ The owner(s) or operator(s) of "portable equipment," as defined in SWCAA 400-030, shall be allowed to operate at ~~((the))~~ temporary locations without filing an ~~((Notice of Construction))~~ air discharge permit application for each location provided that:

(a) The affected ~~((source/))~~emission~~((s))~~ units are registered with the Agency.

(b) The affected ~~((source/))~~emission~~((s))~~ units have an ~~((Order of Approval))~~ air discharge permit as a portable "stationary source."

(c) The owner(s) or operator(s) notifies the Agency of intent to operate at the new location at least ten business days prior to starting the operation.

(d) The owner(s) or operator(s) supplies sufficient information including production quantities and hours of operation, to enable the Agency to determine that the operation will comply with ~~((the))~~ applicable emission standards ~~((for a new source)),~~ and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(e) ~~((The owner(s) and/or resident(s)))~~ Landowners and residents of immediately adjacent properties ~~((shall be))~~ are notified by the owner(s) or operator(s) of the "portable ~~((source))~~ equipment" in writing at least 10 business days prior to commencement of operations at the proposed location. ~~((with))~~ Copies of the notification letters shall be mailed to the Agency. Written notification to the adjacent landowners~~((s))~~ and residents shall be by certified mail with return receipt requested. Such written notification shall include a complete description of the proposed operation, the associated emissions control provisions and equipment, the total estimated project emissions, the name, address and

phone number of the person in charge of the operation, and the address and phone number for SWCAA. Written notification shall indicate that all comments shall be directed to the Agency.

~~((Sources))~~ "Portable equipment" that does not operate within the jurisdiction of the Agency for a period of more than 5 years shall be considered to be ~~((nonoperational))~~ permanently shutdown and will be removed from active registration. Any ~~((such source))~~ "portable equipment" removed from active registration shall be required to ~~((go through new source))~~ submit a new permit application and undergo review as a "new source" prior to operating again within the jurisdiction of the Agency ~~((consistent with the definition of new source)).~~

~~((6))~~ (7) **Compliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

~~((7))~~ (8) **Expiration.** Approval to construct or modify a "stationary source" shall become invalid if construction is not commenced within eighteen months after the date of issuance of an ~~((Order of Approval))~~ air discharge permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. An extension for a PSD permit must be approved by Ecology, and comply with the public notice requirements in WAC 173-400-171. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date. The Agency may specify an earlier date for commencement of construction in an ~~((Order of Approval))~~ air discharge permit.

~~((8))~~ **Temporary, emergency, or substitution sources.**

~~((a))~~ A temporary source shall be considered to be a new source. The Agency may require that a Notice of Construction application and applicable review fees be submitted before reviewing a request for a temporary, emergency or substitution source. The Agency may provide approval for special situations for a source without meeting the requirements for New Source Review when one or more of the following conditions are met:

(i) The temporary source is needed to replace a previously approved similar source where the approved source is non-functional due to breakdown or other similar circumstances beyond the control of the owner or operator. This may include replacement steam or power supply units where facilities have an immediate need to continue production or service to public or private industries, or have a need for an extended or unscheduled shutdown of equipment that is of a duration not otherwise planned for. The Agency may provide written approval for a temporary source that may include but not be limited to emission limits, operational or maintenance requirements or limitations, monitoring and reporting requirements, and testing requirements. Installation of a temporary source due to poor or improper maintenance or operations is required to submit a Notice of Construction application for permanent replacement within 30 days of installation.

(ii) ~~The temporary source is necessary to support public or private needs in the event of a local or regional disaster when proper planning could not be accommodated. In no event shall the temporary source be authorized for operations for durations greater than three months. Written approval shall be provided by the Agency that may contain, but not be limited to: emission limits, operation and maintenance requirements and limitations, monitoring and reporting requirements, and testing requirements. For operations greater than three months the owner or operator shall submit a Notice of Construction application under New Source Review requirements (SWCAA 400-110) for approval from the Agency.~~

(iii) ~~The temporary source is a one time special need, urgent application, that cannot otherwise be accommodated through the New Source Review process due to the critical nature of the source and time constraints. As a condition of approval under this expedited approval process, a new source of this type could not request to be allowed or expected to operate within the jurisdiction of the Agency for the following three years. Written approval shall be provided by the Agency that may contain but not be limited to: emission limits, operation and maintenance requirements and limitations, monitoring and reporting requirements and testing requirements. In no case shall approval be provided for operation greater than three months. For operations greater than three months, the owner or operator shall submit a Notice of Construction application under the New Source Review requirements of SWCAA 400-110.~~

(b) ~~An emergency source is the result of an emergency situation that could not otherwise be planned for. The Agency shall provide written approval for an emergency source provided that the owner or operator has provided sufficient documentation or demonstration of the need for the source to the satisfaction of the Control Officer. The written approval may include but not be limited to: emission limits, operation and maintenance requirements and limitations, monitoring and reporting requirements, and testing requirements. In no case shall approval be provided for operations greater than three months.~~

(c) ~~A substitute source is the same as a temporary source as in (a) above. A substitute source may be of a different manufacturer and model number and size and may result in increased emissions from installation from previously approved equipment on a short term basis. The Agency shall provide written approval for a substitute source that may include but not be limited to: emission limits, operational or maintenance requirements or limitations, monitoring and reporting requirements, and testing requirements. In no event shall the substitute source be authorized for operations for durations greater than three months. For operations greater than three months, the owner or operator shall submit a Notice of Construction application under the New Source Review requirements of SWCAA 400-110.)~~

(9) Change of conditions.

(a) The owner or operator may request, at any time, a change in existing approval conditions. The Agency may approve the request provided that:

(i) The change will not cause the an applicable emissions limit or standard to be exceeded;

(ii) No ambient air quality standard or ambient air increment will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the Agency to determine compliance with an emissions standard;

(iv) The revised approval conditions will continue to require BACT, as defined at the time of the original approval, for each approved "stationary source" except where the Federal Clean Air Act requires LAER (Any change that meets the definition of a "new source" must complete a new BACT determination); and

(v) The revised approval conditions meet the requirements of SWCAA 400-110, 400-111, 400-112 and 400-113, as applicable.

(b) Requests for a change in PSD permit conditions must be made directly to Ecology. The Agency does not have authority to issue or modify PSD permits.

(c) Actions taken under this subsection are subject to the public involvement provisions of SWCAA 400-171.

(d) A request to change approval conditions shall be filed as an air discharge permit application in accordance with SWCAA 400-109. The application shall meet the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-109(3) shall apply to these requests.

(10) Reopening for cause. The Agency may, on its own initiative, reopen any order issued pursuant to this section under the following circumstances:

(a) The order contains a material mistake, or

(b) Inaccurate statements were made in establishing the emission standards and/or conditions of the order.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area

(Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01)

For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions found in SWCAA 400-030, subsections (59)(a), (60)(a), (70)(a) and (106)(a) respectively.

((Any person proposing to install, construct or operate a new source or emission unit or make a modification to an existing source or emission unit shall file a Notice of Construction application with the Agency in accordance with SWCAA 400-109 and shall be subject to the New Source Review provisions of SWCAA 400-110. Confidential information shall be identified as set forth in SWCAA 400-270.)) An ((Notice of Construction)) air discharge permit applica-

tion to establish a "new source" or make a modification to a "stationary source" in an area that is covered by a maintenance plan, shall result in the issuance of an ~~((Order of Approval))~~ air discharge permit or other regulatory order ~~((Such an order shall))~~, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section ~~((if it is determined that the proposed project satisfies all of the requirements of this section))~~. "New sources" or modifications within a designated maintenance plan area, including "stationary sources" ~~((ef))~~ that emit VOC or NO_x in a designated ozone maintenance plan area, shall meet the following requirements ~~((listed below))~~:

(1) **Emission standards.** The proposed "new source" or modification shall:

(a) Comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for Source Categories, emission standards adopted under Chapter 70.94 RCW, and ~~((;))~~ the applicable emission standards of the Agency; and

(b) Not cause any ambient air quality standard as provided in SWCAA 400-113(3) to be ~~((exceeded))~~ violated; and

(c) Not violate the requirements for reasonable further progress established by the Washington State Implementation Plan; and

(d) Minimize emissions to the extent that the "new source" or modification will not delay the attainment date for a nonattainment area, exceed emission levels or other requirements provided in a maintenance plan for an area that was previously identified as a nonattainment area, nor cause or contribute to a violation of any ambient air quality standard.

(2) **BACT.** Except as provided in ~~((S))~~ subsection (7) of this section, the owner or operator of the proposed "new source" or modification shall apply BACT for each pollutant. In the case of a modification, the requirement for BACT shall apply to each new or modified emission unit which increases emissions. For phased construction projects, the determination of BACT shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase.

(3) **Source compliance.** The owner or operator of the proposed "new source" or modification shall certify that all "stationary sources" owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in Washington are in compliance or on a schedule for compliance, with all applicable emission limitations and standards under the Washington Clean Air Act ~~((RCW))~~ Chapter 70.94 RCW.

(4) **Offsets or growth allowance.** The owner or operator of a proposed new "major stationary source" or "major modification" shall provide offsets as specified in ~~((S))~~ subsection (8) of this section. Except as provided in ~~((S))~~ subsection (7) of this section, the requirements of this section may be met in whole or in part in an ozone maintenance plan area with an allocation by SWCAA from a growth allowance, if available, in accordance with ~~((S))~~ subsection (8) of this section and the applicable maintenance plan in the SIP adopted by the Board and approved by EPA.

(5) **Net air quality benefit.** For cases in which emission reduction or offsets are required in accordance with ~~((S))~~ subsection (4) above, the applicant shall demonstrate that a net air quality benefit will be achieved in the maintenance plan area. If the proposed "new source" or ~~((the proposed))~~ modification is major for the contaminant for which the area has a maintenance plan, allowable emissions of the maintenance pollutant from the proposed "new source" or modification shall be offset by reductions in actual emissions of the maintenance pollutant. All offsetting emission reductions must satisfy the ~~((following))~~ requirements of ~~((S))~~ subsection (8).

(6) **Alternative analysis.**

(a) Except as provided in subsection (6)(c) of this section, the owner or operator of a proposed "major stationary source" or "major modification" shall conduct an alternatives analysis;

(b) This analysis shall include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed "stationary source" or modification that demonstrates that benefits of the proposed "stationary source" or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification;

(c) This analysis shall not be required for a "major stationary source" or "major modification" that is subject to this rule due to emissions of particulate matter in a designated TSP maintenance area.

(7) **Contingency plan requirements.** If the contingency plan in an applicable maintenance plan (CO or ozone) has been triggered due to a violation of an ozone ambient air quality standard or a second violation of the CO ambient air quality standard, this section shall apply in addition to other requirements of this rule and the applicable approved maintenance plan adopted by the Board and approved by EPA as a revision to the SIP.

(a) ~~((The requirements for BACT in Section (2) of this section shall be replaced by a requirement for LAER. If the new source is))~~ A proposed "major stationary source" or ((the proposed modification is a)) "major modification," ((it)) must achieve LAER for the maintenance pollutant(s) and any pollutant for which the proposed "new source" or modification is major.

(b) An allocation from a growth allowance shall not be used to meet the requirement for offsets in ~~((S))~~ subsection (4) of this section. The growth allowance emissions shall be unavailable until ~~((such time as))~~ a sufficient demonstration is made to reinstate the growth allowance emissions, the Board adopts a revised maintenance plan, and EPA approves it as a SIP revision.

(8) **Industrial growth allowance and offset allocation.**

(a) Industrial growth allowances for "stationary sources" in a maintenance plan area are identified in and governed by the Washington ~~((State Implementation Plan))~~ SIP and the ~~((applicable))~~ maintenance plan for the applicable maintenance plan area.

(b) The growth allowance emissions may be increased or decreased as provided in a revision to the maintenance plan submitted to and approved by EPA. In the event of a confirmed ozone violation, the growth allowance for VOC and NO_x emissions shall be eliminated and "new sources" shall be

required to implement LAER and offsets. Growth allowance emissions may be reinstated as provided in the EPA approved maintenance plan.

(c) The owner or operator of a proposed new "major stationary source" or "major modification" emitting VOCs or NO_x, may obtain a portion of any remaining emissions in the respective growth allowance in accordance with the following process:

(i) Access is on a first-come-first-served basis, based on the date of a complete (~~notice of construction~~) application and allowance allocation request;

(ii) No single "stationary source" may receive an emissions allocation of more than 50(~~(%)~~) percent of any remaining growth allowance, or up to 10.0 tons per year, whichever is greater. On a case-by-case basis, the SWCAA Board of Directors may approve an emissions allocation of greater than 50(~~(%)~~) percent upon consideration of the following:

(A) Information submitted by the "stationary source" to SWCAA justifying (~~it's~~) its request for exceeding the 50(~~(%)~~) percent emissions allocation, based on significant economic, employment, or other benefits to the maintenance plan area that will result from the proposed new "major stationary source" or "major modification";

(B) Information provided by SWCAA on other known new "major stationary sources," or "major modifications" seeking an emissions allocation from the same growth allowance; and

(C) Other relevant information submitted by the "stationary source" or SWCAA.

(iii) To avoid jeopardizing maintenance of the ozone standard during the interim years of the ozone maintenance plan, SWCAA shall allocate only a portion of the VOC and NO_x growth allowances each year. SWCAA will track use of VOC and NO_x (~~(emissions)~~) allocations from the growth allowances. The amount of the growth allowance that can be allocated each year is identified in the applicable ozone maintenance plan.

(iv) The amount of the CO growth allowance that can be allocated is identified in the applicable CO maintenance plan, if any.

(d) If no emissions remain in the respective growth allowance, or the contingency plan has been triggered which effectively zeros the growth allowance, the owner or operator of the proposed "major stationary source" or "major modification" shall provide offsets. (~~(Applicants in a maintenance area shall demonstrate the following:)~~)

(i) A demonstration shall be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the "new source" or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in 40 CFR Part 51, Appendix W, Guideline on Air Quality Models (Revised).

(ii) Offsets for VOCs or nitrogen oxides shall be within the same maintenance plan area as the proposed "stationary source." Offsets for particulate matter, PM₁₀, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and other pollutants (~~(shall be less than the level of significant air quality impact. (Refer to SWCAA 400-110(1)(g) for significance levels))~~)

may be from inside or outside of the same maintenance plan area.

(iii) "New sources" or modifications shall meet the following offset requirements:

(A) Within a designated maintenance plan area, the offsets shall provide reductions that are equivalent or greater than the proposed increases. The offsets shall be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions;

(B) Outside a designated maintenance plan area, owners or operators of "new sources" or modifications which have a significant air quality impact on the maintenance plan area as provided in SWCAA 400-113(3) shall provide emission offsets which are sufficient to reduce impacts to levels below the significant air quality impact level within the maintenance plan area; and

(C) The emission reductions must provide for a net air quality benefit.

(I) New "major stationary sources" within an ozone maintenance plan area shall:

(a) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.

(b) Offset the new NO_x emissions at a ratio of 1.1 to 1, if the NO_x emissions exceed either 100 tons per year or 700 pounds per day.

(II) "Stationary sources" within an ozone maintenance plan area undergoing "major modifications" shall:

(a) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(b) Offset the entire NO_x emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(III) New "major stationary sources" within a carbon monoxide maintenance plan area shall:

(a) Offset the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.

(IV) "Stationary sources" within a carbon monoxide maintenance plan area undergoing "major modifications" shall:

(a) Offset the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.

(D) New "major stationary sources" or "major modifications" with CO emissions greater than 250 (~~(tpy)~~) tons per year are required to obtain offsets (~~(and comply with the PSD requirements of SWCAA 400-141))~~).

(iv) (~~(The)~~) Emission reductions shall be of the same type of pollutant as the emissions from the "new source" or modification. Sources of PM₁₀ shall be offset with particulate in the same size range.

(v) (~~(The)~~) Emission reductions shall be contemporaneous, that is, the reductions shall take effect prior to the time of startup but not more than two years prior to the submittal of a complete (~~notice of construction~~) application for the "new source" or modification. This time limitation may be extended through banking, as provided in SWCAA 400-130, 400-131 and 400-136 for banking activities approved after

the effective date of this regulation. In the case of replacement facilities, SWCAA may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that emissions do not exceed the new emission limits.

(vi) Offsets for new "major stationary sources" or "major modifications" in a maintenance plan area shall meet the following requirements:

(A) The proposed new level of allowable emissions of the "stationary source" or emission((s)) unit((s)) providing the reduction must be less than the current level of actual emissions of that "stationary source" or emission unit((s)). No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the "stationary source" or emission((s)) unit((s)) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits cannot be credited.

(B) If the offsets are provided by another "stationary source," the reductions in emissions from that "stationary source" must be federally enforceable by the time the new or modified "stationary source" commences operation. The "new source" may not commence operation before the date such reductions are actually achieved. SWCAA may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that the facility-wide emissions do not exceed the new emission limit.

(9) **PSD applicability.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" for the purposes of the PSD program as described in ((SWCAA)) WAC 173-400-141, the "new source" or modification shall meet the requirements of that program for all pollutants. For maintenance plan pollutants, the "new source" shall meet all PSD requirements in addition to the ((additional)) requirements of this section.

(10) **Toxics.** If the proposed "new source" or modification will emit any toxic air pollutants regulated under ((WAC)) Chapter 173-460 WAC, the "new source" shall meet all applicable requirements of that regulation.

(11) **Visibility.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the "new source" shall meet all the visibility protection requirements of ((40 CFR 52.27 as in effect on July 1, 2000)) WAC 173-400-117.

(12) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; Renumbered from 400-110 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01]

For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions found in SWCAA 400-030, subsections (59)(a), (60)(a), (70)(a) and (106)(a) respectively.

An ((Notice of Construction)) air discharge permit application to establish a "new source" or make a modification to a "stationary source" in a nonattainment area, shall result in the issuance of an ((Order of Approval)) air discharge permit or other regulatory order, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section((, if the Agency determines that the proposed project satisfies each of)). "New sources" or modifications within a designated nonattainment area shall meet the following requirements:

(1) The proposed "new source" or modification will comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, emission standards adopted under Chapter 70.94 RCW and((s)) the applicable emission standards of the Agency.

(2) The proposed "new source" or modification will employ BACT for all air contaminants, except that if the "new source" is a "major stationary source" or the proposed modification is a "major modification" it ((must)) will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed "new source" or modification is major.

(3) The proposed "new source" or modification will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the Washington ((State Implementation Plan)) SIP and will comply with SWCAA 400-113(3) for all air contaminants for which the area has not been designated nonattainment.

(4) If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," ((and)) the Agency has determined, based on review of an analysis performed by the "stationary source" of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(5) If the proposed "new source" or the proposed modification is major for the air contaminant for which the area is designated nonattainment, allowable emissions of the ((pollutant)) air contaminant for which the area has been designated nonattainment from the proposed "new source" or modification ((are)) shall be offset by reductions in actual

emissions of the ~~((pollutant))~~ air contaminant for which the area has been designated nonattainment from existing "stationary sources" in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (before submitting the application) so as to represent (when considered together with the nonattainment provisions of Section 172 of the ~~((FCAA))~~ Federal Clean Air Act) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(a) The proposed new level of allowable emissions of the "stationary source" or emission(s) unit(s) providing the reduction must be less than the current level of actual emissions of that "stationary source" or emission unit(s). No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the "stationary source" or emission(s) unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits required by the Federal Clean Air Act, including the Washington SIP, cannot be credited.

(b) The emission reductions must provide for a net air quality benefit.

(i) New "major stationary sources" within a marginal ozone nonattainment area shall:

(A) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.

(B) Offset the new NO_x emissions at a ratio of 1.1 to 1, if the NO_x emissions exceed either 100 tons per year or 700 pounds per day.

(ii) "Stationary sources" within a marginal ozone nonattainment area undergoing "major modifications" shall:

(A) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(B) Offset the entire NO_x emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(iii) New "major stationary sources" within a moderate carbon monoxide nonattainment area shall(~~(=~~

(A)) ~~offset~~ the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.

(iv) "Stationary sources" within a moderate carbon monoxide nonattainment area undergoing "major modifications" shall(~~(=~~

(A)) ~~offset~~ the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.

(v) For any other nonattainment area, determinations on whether emission offsets provide a positive net air quality benefit shall be made in accordance with the guidelines contained in 40 CFR Part 51, Appendix S (as in effect on July 1, 2002).

(c) If the offsets are provided by another "stationary source," the reductions in emissions from that "stationary

source" must be federally enforceable by the time the air discharge permit for the new or modified "stationary source" ~~((commences operation. The new source may not commence operation before the date such reductions are actually achieved))~~ becomes effective. An emission reduction credit issued under SWCAA 400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

(7) If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the owner or operator ~~((has))~~ shall demonstrate(~~(d)~~) that all "major stationary sources" owned or operated by such person (or by any entity controlling, controlled by, or under common control ~~((with))~~ of such person) in Washington are ~~((subject to emission limitations and are))~~ in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules contained in the ~~((EPA approved))~~ Washington ~~((State Implementation Plan))~~ SIP.

(8) If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" for the purposes of the PSD program described in ~~((SWCAA))~~ WAC 173-400-141, it shall meet(~~(s)~~) the requirements of that program for all air contaminants for which the area has not been designated nonattainment.

(9) If the proposed "new source" or modification will emit any toxic air pollutants regulated under ~~((WAC))~~ Chapter 173-460 WAC, ~~((the source))~~ it shall meet(~~(s)~~) all applicable requirements of that chapter.

(10) If the proposed "new source" is a "major stationary source," or the proposed modification is a "major modification," as those terms are defined in SWCAA 400-030(59)(b) and (60)(b), ((the Agency has complied with the visibility protection review requirements of 40 CFR 52.28(e) through (h), as in effect on July 1, 2000, and determined that the project meets the criteria set forth in 40 CFR 52.28(g). For purposes of this subsection definitions referenced in 40 CFR 52.28(b) are incorporated by reference, except that the term "visibility protection area" means any Class I area, and terms defined in SWCAA 400-030 shall have the meanings defined in that section. References in 40 CFR 52.28 to "the Administrator" shall mean the agency (either Ecology or the Agency) processing the Notice of Construction application.)) it shall meet the special protection requirements for federal Class I areas found in WAC 173-400-117.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; Renumbered from 400-110 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective

9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/1/99; 01-05-056 filed 2/15/01, effective 3/18/01]

For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions found in SWCAA 400-030, subsections (59)(b), (60)(b), (70)(b) and (106)(b) respectively.

(Any person proposing to install, construct or operate a new source or emission unit or modification to an existing source or emission unit shall file a Notice of Construction application with the Agency and shall be subject to the New Source Review provisions of SWCAA 400-110. Confidential information shall be identified as set forth in SWCAA 400-270.) An ((Notice of Construction)) air discharge permit application to establish a "new source" or make a modification to a "stationary source" in an area that is in attainment or unclassifiable for any air contaminant the proposed "new source" would emit, and that is in attainment or unclassifiable for ozone if the proposed new or modified "stationary source" would emit VOC(s) or NO_x, shall result in the issuance of an ((Order of Approval)) air discharge permit or other regulatory order, ((Such order shall)) which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section((, if it is determined that the proposed project satisfies all of)). The air discharge permit or other regulatory order shall not be issued until the "new source" or modification meets the following requirements:

(1) The proposed "new source" or modification ((will)) shall comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, emission standards adopted under Chapter 70.94 RCW and the applicable emission standards of the Agency.

(2) The proposed "new source" or modification ((will)) shall employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the "new source" or modification.

(3) Allowable emissions from the proposed "new source" or modification ((will)) shall not delay the attainment date for an area not in attainment ((or unclassifiable)) nor cause or contribute to a violation of any ambient air quality standard. This requirement will be ((considered to be)) met if the projected impact of the allowable emissions from the proposed "new source" or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment or maintenance plan area does not exceed the following levels for the pollutant(s) for which the area has been designated nonattainment or maintenance:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	-	0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

(4) If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" ((for purposes of the PSD program described in SWCAA 400-141)), it shall meet((s)) all applicable requirements of ((that section)) WAC 173-400-141.

(5) If the proposed "new source" or the proposed modification will emit any toxic air pollutants regulated under ((WAC)) Chapter 173-460 WAC, ((the source)) it shall meet((s)) all applicable requirements of that chapter.

(6) If the proposed "new source" is a "major stationary source," or the proposed modification is a "major modification," it shall meet the special protection requirements for federal Class I areas found in WAC 173-400-117.

((6)) (7) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

((7) If, within the meaning of the PSD program described in SWCAA 400-141, the proposed new source is a major stationary source or the proposed modification is a major modification, the source would not cause an adverse impact upon visibility.)

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-056 filed 2/15/01, effective 3/18/01)

SWCAA 400-114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.153 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84, Renumbered from 400-110; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 01-05-056 filed 2/15/01, effective 3/18/01]

(1) Any person proposing to replace or substantially alter the emission control technology installed on an existing "stationary source" or emission unit shall file an ((Notice of Construction)) air discharge permit application with the Agency and shall be subject to the ((New Source)) review process of SWCAA 400-110. If the replacement or substantial alteration meets the definition of "new source" or "modification" then the "new source" emissions standards of SWCAA 400-111, 400-112 or ((SWCAA)) 400-113 shall apply. If the replacement or substantial alteration does not meet the definition of "new source" or ((")modification(")) then RACT or other requirements shall apply. Replacement or substantial alteration of control technology does not include routine maintenance, repair or parts replacement.

(2) For projects not otherwise reviewable under SWCAA 400-110, the Agency may:

- (a) Require that the owner or operator employ RACT for the affected emission unit;
- (b) Prescribe reasonable operation and maintenance conditions for the control equipment; and
- (c) Prescribe other requirements authorized by Chapter 70.94 RCW.

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(3) Within thirty calendar days of receipt of an ~~(Notice of Construction)~~ air discharge permit application under this section the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty calendar days of receipt of a complete ~~(Notice of Construction)~~ application under this section, the Agency shall either issue an ~~(Order of Approval)~~ air discharge permit or a proposed RACT determination for the proposed project.

(4) Construction shall not commence ~~(, as defined in SWCAA 400-030(16),)~~ on a project subject to review under this section until the Agency issues a final ~~(Order of Approval)~~ air discharge permit or other regulatory order. However, any ~~(Notice of Construction)~~ air discharge permit application filed under this section shall be deemed to be approved without conditions if the Agency takes no action within thirty days of receipt of a complete ~~(Notice of Construction)~~ application. The Agency may request clarification of information submitted in support of the application after the application has been determined to be complete.

(5) An ~~(Order of Approval)~~ air discharge permit to replace or substantially alter emission control technology shall become invalid if construction is not commenced within eighteen months from the date of issuance ~~(of an Order of Approval)~~, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. The Agency may specify an earlier date for commencement of construction in an ~~(Order of Approval)~~ air discharge permit.

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-115 Standards of Performance for New Sources

[Statutory Authority: Chapter 70.94.141 RCW. Originally adopted by Board 12/18/79; Amended by Board 4/17/84 (renumbered to 400-135); Amended by Board 12/16/86; 93-16-007 filed 7/22/93, effective 8/22/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

(1) Adoption by reference. ~~(Title 40, Code of Federal Regulations,)~~ The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices ((Standards of Performance for New Sources,)) as in effect on July 1, ~~(2000)~~ 2002 ~~(is)~~ are adopted by reference. ~~(except for~~

~~sections 60.5 (Determination of Construction or Modification) and 60.6 (Review of Plans,))~~ The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA ~~(, the Director of Ecology)~~ and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2).

~~((As of July 1, 2000, the federal regulations adopted by reference hereby set standards of performance affecting facilities for the following described subparts of 40 CFR Part 60:))~~ The following list of affected subparts is provided for informational purposes:

- Subpart A General provisions (ref. 40 CFR 60.1 et seq.)
- Subpart D Fossil fuel-fired steam generators for which construction is commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts (ref. 40 CFR 60.40 et seq.)
- Subpart Da Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts (ref. 40 CFR 60.40a et seq.)
- Subpart Db Industrial-commercial-institutional steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts (ref. 40 CFR 60.40b et seq.)
- Subpart Dc Small industrial-commercial-institutional steam generating units (ref. 40 CFR 60.40c et seq.)
- Subpart E Incinerators (ref. 40 CFR 60.50 et seq.)
- Subpart Ea Municipal waste combustors for which construction commenced after December 20, 1989 and on or before September 20, 1994 (ref. 40 CFR 60.50a et seq.)
- Subpart Eb Large Municipal waste combustors for which construction is commenced after September 20, 1994 or for which Modification of reconstruction is commenced after June 19, 1996 (ref. 40 CFR 60.50b et seq.)
- Subpart Ec Hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 (ref. 40 CFR 60.50c et seq.)
- Subpart F Portland cement plants (ref. 40 CFR 60.60 et seq.)
- Subpart G Nitric acid plants (ref. 40 CFR 60.70 et seq.)
- Subpart H Sulfuric acid plants (ref. 40 CFR 60.80 et seq.)
- Subpart I Hotmix asphalt facilities (ref. 40 CFR 60.90 et seq.)

Subpart J	Petroleum refineries which produce less than 25,000 barrels per day of refined products (ref. 40 CFR 60.100 et seq.)	Subpart AAa	Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels (ref. 40 CFR 60.270a et seq.)
Subpart K	Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons (ref. 40 CFR 60.110 et seq.)	Subpart BB	Kraft pulp mills (ref. 40 CFR 60.280 et seq.)
Subpart Ka	Storage vessels for petroleum liquids for which construction, reconstruction or modification commenced after May 18, 1978, and prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)	Subpart CC	Glass manufacturing plants (ref. 40 CFR 60.290 et seq.)
Subpart Kb	Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984 (ref. 40 CFR 60.110b et seq.)	Subpart DD	Grain elevators (ref. 40 CFR 60.300 et seq.)
Subpart L	Secondary lead smelters (ref. 40 CFR 60.120 et seq.)	Subpart EE	Industrial surface coating: metal furniture (ref. 40 CFR 60.310 et seq.)
Subpart M	Brass and bronze ingot production plants (ref. 40 CFR 60.130 et seq.)	Subpart GG	Stationary gas turbines (ref. 40 CFR 60.330 et seq.)
Subpart N	Iron and steel plants (ref. 40 CFR 60.140 et seq.)	Subpart HH	Lime manufacturing plants (ref. 40 CFR 60.340 et seq.)
Subpart Na	Secondary emissions from basic oxygen process steel making facilities (ref. 40 CFR 60.140 et seq.)	Subpart KK	Lead-acid battery plants (ref. 40 CFR 60.370 et seq.)
Subpart O	Sewage treatment plants (ref. 40 CFR 60.150 et seq.)	Subpart LL	Metallic mineral processing plants (ref. 40 CFR 60.380 et seq.)
Subpart P	Primary copper smelters (ref. 40 CFR 60.160 et seq.)	Subpart MM	Automobile and light duty truck surface coating operations (ref. 40 CFR 60.390 et seq.)
Subpart Q	Primary zinc smelters (ref. 40 CFR 60.170 et seq.)	Subpart NN	Phosphate rock plants (ref. 40 CFR 60.400 et seq.)
Subpart R	Primary lead smelters (ref. 40 CFR 60.180 et seq.)	Subpart PP	Ammonium sulfate manufacture (ref. 40 CFR 60.420 et seq.)
Subpart S	Primary aluminum reduction plants (ref. 40 CFR 60.190 et seq.)	Subpart QQ	Publication rotogravure printing (ref. 40 CFR 60.430 et seq.)
Subpart T	Phosphate fertilizer industry: Wet process phosphoric acid plants (ref. 40 CFR 60.200 et seq.)	Subpart RR	Pressure sensitive tape and label surface coating operations (ref. 40 CFR 60.440 et seq.)
Subpart U	Phosphate fertilizer industry: Superphosphoric acid plants (ref. 40 CFR 60.210 et seq.)	Subpart SS	Industrial surface coating: Large appliances (ref. 40 CFR 60.450 et seq.)
Subpart V	Phosphate fertilizer industry: Diammonium phosphate plants (ref. 40 CFR 60.220 et seq.)	Subpart TT	Industrial surface coating: Metal coils (ref. 40 CFR 60.460 et seq.)
Subpart W	Phosphate fertilizer industry: Triple superphosphate plants (ref. 40 CFR 60.230 et seq.)	Subpart UU	Asphalt processing and asphalt roofing manufacture (ref. 40 CFR 60.470 et seq.)
Subpart X	Phosphate fertilizer industry: Granular triple superphosphate storage facilities (ref. 40 CFR 60.240 et seq.)	Subpart VV	Synthetic Organic Chemical Manufacturing Industry equipment leaks (VOC) (ref. 40 CFR 60.480 et seq.)
Subpart Y	Coal preparation plants (ref. 40 CFR 60.250 et seq.)	Subpart WW	Beverage can surface coating operations (ref. 40 CFR 60.490 et seq.)
Subpart Z	Ferroalloy production facilities (ref. 40 CFR 60.260 et seq.)	Subpart XX	Bulk gasoline terminals (ref. 40 CFR 60.500 et seq.)
Subpart AA	Steel plants: Electric arc furnaces (ref. 40 CFR 60.270 et seq.)	Subpart AAA	New residential wood heaters (ref. 40 CFR 60.530 et seq.)
		Subpart BBB	Rubber tire manufacturing industry (ref. 40 CFR 60.540 et seq.)
		Subpart DDD	VOC emissions from the polymer manufacturing industry (ref. 40 CFR 60.560 et seq.)
		Subpart FFF	Flexible vinyl and urethane coating and printing (ref. 40 CFR 60.580 et seq.)
		Subpart GGG	Petroleum refineries - compressors and fugitive emission sources (ref. 40 CFR 60.590 et seq.)
		Subpart HHH	Synthetic fiber production facilities (ref. 40 CFR 60.600 et seq.)

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Subpart III	VOC emissions from Synthetic Organic Chemical Manufacturing Industry air oxidation unit processes (ref. 40 CFR 60.610 et seq.)	<u>Appendix A</u>	<u>Test methods (ref. 40 CFR 60, Appendix A)</u>
Subpart JJJ	Petroleum dry cleaners (ref. 40 CFR 60.620 et seq.)	<u>Appendix B</u>	<u>Performance specifications (ref. 40 CFR 60, Appendix B)</u>
Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants (ref. 40 CFR 60.630 et seq.)	<u>Appendix C</u>	<u>Determination of emission rate change (ref. 40 CFR 60, Appendix C)</u>
Subpart LLL	Onshore natural gas processing; SO2 emissions (ref. 40 CFR 60.640 et seq.)	<u>Appendix D</u>	<u>Required emission inventory information (ref. 40 CFR 60, Appendix D)</u>
Subpart NNN	VOC emissions from Synthetic Organic Chemical Manufacturing Industry distillation operations (ref. 40 CFR 60.660 et seq.)	<u>Appendix F</u>	<u>Quality assurance procedures (ref. 40 CFR 60, Appendix F)</u>
Subpart OOO	Nonmetallic mineral processing plants (ref. 40 CFR 60.670 et seq.)	<u>Appendix I</u>	<u>Removable label and owner's manual (ref. 40 CFR 60, Appendix I)</u>
Subpart PPP	Wool fiberglass insulation manufacturing plants (ref. 40 CFR 60.680 et seq.)		
Subpart QQQ	VOC emissions from petroleum refinery waste water emissions (ref. 40 CFR 60.690 et seq.)		
Subpart RRR	Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes (ref. 40 CFR 60.700 et seq.)		
Subpart SSS	Magnetic tape coating facilities (ref. 40 CFR 60.710 et seq.)		
Subpart TTT	Industrial surface coating: Surface coating of plastic parts for business machines (ref. 40 CFR 60.720 et seq.)		
Subpart UUU	Calciners and dryers in mineral industries (ref. 40 CFR 60.730 et seq.)		
Subpart VVV	Polymeric coating of supporting substrates facilities (ref. 40 CFR 60.740 et seq.)		
Subpart WWW	<u>Municipal solid waste landfills constructed, reconstructed or modified on or after May 30, 1991 (See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991) (ref. 40 CFR 60.750 et seq.)</u>		
<u>Subpart AAAA</u>	<u>Small municipal waste combustion units constructed after August 30, 1999, or modified or reconstructed after June 6, 2001 (ref. 40 CFR 60.1000 et seq.) (See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)</u>		
<u>Subpart CCCC</u>	<u>Commercial and industrial solid waste incinerators constructed after November 30, 1999; or modified or reconstructed on or after June 1, 2001 (ref. 40 CFR 60.2000 et seq.) (See SWCAA 400-050(4) for rules regulating commercial and industrial solid waste incinerators constructed on or before November 30, 1999)</u>		
			Note: ((For fossil fuel-fired steam generators referenced by Subpart D and Da above, units greater than 250 megawatts are governed by the Energy Facility Site Evaluation Council (EFSEC) in Title 463 WAC)) Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC) under WAC 463-39-115.
			(2) Exceptions. The following sections and subparts of 40 CFR 60 are not adopted by reference:
		(a)	<u>40 CFR 60.5</u> <u>Determination of construction or modification</u>
		(b)	<u>40 CFR 60.6</u> <u>Review of plans</u>
		(c)	<u>Subpart C</u> <u>Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)</u>
		(d)	<u>Subpart Cb</u> <u>Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.b et seq.)</u>
		(e)	<u>Subpart Cc</u> <u>Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)</u>
		(f)	<u>Subpart Cd</u> <u>Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)</u>
		(g)	<u>Subpart Ce</u> <u>Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)</u>
		(h)	<u>Subpart BBBB</u> <u>Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)</u>
			<u>Note: These sources are regulated under SWCAA 400-050(5)</u>

- (i) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4)

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-116 Maintenance of Equipment

[Statutory Authority: Chapter 70.94.152(7) RCW, and 70.94.155 RCW. Original Board adoption 96-21-099 filed 10/21/96, effective 11/21/96; 01-05-057 filed 2/15/01, effective 3/18/01]

(1) **Process equipment.** Any process equipment, including features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted for approval or required as part of an approval shall be maintained and operate in good working order. ~~((Defective or malfunctioning equipment that emit air pollutants shall be repaired immediately or shall be taken out of service.))~~ The Agency reserves the right to take any and all appropriate action to maintain compliance with approval conditions, including directing the facility to cease operations of defective or malfunctioning equipment until corrective action can be completed.

(2) **Pollution control equipment.** Any equipment that serves as air contaminant control or capture equipment shall be maintained and operate in good working order at all times in accordance with good operations and maintenance practices and in accordance with Agency approval conditions. ~~((Defective or malfunctioning equipment shall be repaired immediately or shall be taken out of service.))~~ The Agency reserves the right to take any and all appropriate action to maintain compliance with approval conditions, including directing the facility to cease operations of defective or malfunctioning equipment until corrective action can be completed.

(3) **Operation and Maintenance plans.** ~~((SWCAA shall have the authority to))~~ The Agency may require that an Operations and Maintenance (O&M) plan be developed and implemented for each emission unit or piece of control or capture equipment in order to assure continuous compliance with approval conditions. A copy of the plan shall be available for site inspections. The plan shall reflect good industrial practice and shall include periodic inspection of all equipment and control apparatus, monitoring and recording of equipment and control apparatus performance, prompt repair of any defective equipment or control apparatus, procedures for start up, shutdown and normal operation, and a record of all actions required by the plan. The plan shall be

reviewed by the "source" ~~((or owner))~~ at least annually and updated to reflect any changes in good industrial practices. The O&M plan shall be available at or near the equipment it applies to so as to assist operations and maintenance personnel in assuring good operations and maintenance practices as well as the ability to log and record equipment performance parameters. As a minimum, the O&M plan shall contain each of the parameters required to be monitored, logged or recorded as provided in ~~((an Order of Approval))~~ the applicable air discharge permit.

(4) Noncompliance with any emission limit, test requirement, reporting or recordkeeping requirement or other requirement identified in ~~((a))~~ applicable regulatory orders shall be considered a violation of this section.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-130 Use of Emission Reduction Credits

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption by Board 12/16/86; Amended by Board 9/21/93; 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

(1) **Applicability.** The owner(s) of any emission reduction credits (ERCs) shall maintain its ability to use said ERCs through approval and registration with the Agency. An ERC shall be considered an emission unit and subject to registration. If the owner of said ERCs fails to maintain or renew its annual registration 6 months beyond the due date, ~~((or))~~ fails to pay its operating permit fee 6 months beyond the due date or has not applied for emission reduction credits, then said amount of emission reduction ~~((s))~~ credits shall revert back to the Agency. The Agency may keep said credits in a credit bank to be used by the Agency in the best interest of the area or credits may be dissolved by the Agency.

(2) **Permissible use.** An ERC may be used to satisfy the requirements for authorization of a bubble under SWCAA 400-120, as a part of a determination of "net emissions increase," as an offsetting reduction to satisfy the requirements for new source review per SWCAA 400-111, 400-112, or ((SWCAA)) 400-113(3)((or SWCAA 400-113(6), or to satisfy requirements for PSD review per SWCAA 400-113(4)). The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(3) **Conditions of use.** An ERC may be used only for the air contaminant(s) for which it was issued and in the area for which it was issued except in the case of transportable pollutants, which will be determined on a case-by-case basis and per interagency agreement for interstate transfers. The Agency may impose additional conditions of use of ERCs to account for temporal and spatial differences between the emission ~~((s))~~ unit(s) that generated the ERC and the emission ~~((s))~~ unit(s) that use the ERC. An ERC may not be used in place of a growth allowance as required under SWCAA 400-111.

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(4) Procedures to use ERC.

(a) **Individual use.** When an ERC is used under subsection (2) of this section, an application must be submitted to the Agency and the Agency must issue a regulatory order for use of the ERC(s).

(b) **Sale or transfer of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. An application for the sale or transfer must be submitted by the original ERC owner to the Agency. After receiving an application, the Agency shall reissue a regulatory order to the new owner. The Agency shall update the ERC bank to reflect the availability or ownership of ERCs. No discounting shall happen as part of this type of transaction.

(5) **Expiration of ERC.** An unused ERC and any unused portion thereof shall expire five years after the date the emission reduction was accomplished and not the date of the regulatory order.

(6) **Maintenance of ERCs.** The Agency has established its policy and procedure for maintenance of ~~((said credits))~~ ERCs in SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.850 RCW. Originally adopted by Board as 400-120 on 3/20/84; renumbered to 400-131 in 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

(1) **Applicability.** The owner(s) or operator(s) of any "stationary source~~((s))~~" may apply to the Agency for an emission reduction credit (ERC) if the "stationary source" proposes to reduce its actual emission(s) rate for any contaminant regulated by state or federal law or regulations established to implement such law(s) for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emission(s) unit(s) involved.

(2) **Time of application.** The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the Agency.

(a) No part of the emission reductions claimed for credit shall have been required pursuant to an adopted rule.

(b) The quantity of emission(s) reductions claimed for credit shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.

(c) The ERC application must include a description of all the changes that are required to accomplish the claimed emission(s) reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent

shutdown of equipment, specified control practices and any other pertinent supporting information.

(d) The quantity of emission reductions claimed must be greater than 1 ton/year and be readily quantifiable for the emission(s) unit(s) involved.

(e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under SWCAA 400-112(5) nor as part of a bubble transaction under SWCAA 400-120 nor to satisfy NSPS, NESHAPS, BACT, MACT, RACT, LAER or other applicable emission standard.

(f) Concurrent with or prior to the authorization of an ERC, the applicant shall have received a regulatory order or permit that establishes total allowable emissions from the "stationary source" or emission(s) unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(g) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within thirty days after the receipt of an ERC application, supporting data and documentation, the Agency may require the submission of additional information needed to review the application.

(5) **Approval.** Within ~~((thirty))~~ sixty days after all required information has been received, the Agency shall approve or deny the application, based on a finding that conditions in subsections (3)(a) through ~~((f))~~ (g) of this section have been satisfied or not. If the application is approved, the Agency shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the "source" will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order or equivalent document shall include any conditions required to assure that subsections (3)(a) through ~~((f))~~ (g) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment; and,

(b) Issue a regulatory order with emission reduction credit. The regulatory order shall specify the issue date, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the regulatory order is issued.

(6) **Maintenance and use of ERCs.** The Agency has established its policy and procedure for maintenance of ~~((said))~~ ERCs in SWCAA 400-136. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.850 RCW. Original Board adoption as 400-125 4/17/84; renumbered to 400-136 in 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

(1) **Applicability.** The Agency shall maintain a bank for the purpose of administering emission reduction credits (ERCs) pursuant to the provisions of RCW 70.94.850.

(2) **Conditions for ERC bank.**

(a) ERCs established under SWCAA 400-131 (~~or used under SWCAA 400-130~~) shall be available for said credit bank.

(b) ERCs shall not have been used, sold or transferred to another entity for use; e.g. ERCs cannot be banked or used by two "sources" at one time.

(c) ERCs established under SWCAA 400-131 or used under SWCAA 400-130 for a specific "source" shall be allocated privately and not be (~~included in the bank~~) available for public allocation unless (~~(1)~~) specifically requested by the owner(s) of the ERCs or (~~(2)-(f)~~) the owner of the ERCs fails to maintain registration with the Agency.

(3) **Maintenance of the bank.**

(a) The Agency shall maintain an emission inventory of all allowed and actual emissions (including any growth allowances identified in a maintenance plan) in each of the nonattainment or maintenance areas by pollutant or in the case of ozone, it shall be volatile organic compounds and oxides of nitrogen.

(b) The ERCs contained in the bank shall be discounted by 10(~~(%)~~) percent to allow for minor emission(~~(s)~~) increases in nonattainment areas by minor "sources" each of which would emit less than one ton per year. Minor emitting "sources" shall be ineligible to receive or expend an emission reduction credit as identified in SWCAA 400-131 or 400-130. ERCs shall be discounted at the applicable ratio on a one-time basis at the time of deposit into the bank. ERCs shall not be discounted each time a transaction is completed. If reductions in emission beyond those identified in the Washington (~~(State Implementation Plan)~~) SIP are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating "sources," and if the plan must be revised, ERCs may be discounted by the Agency over and above the initial 10(~~(%)~~) percent without compensation to the holder after public involvement (~~(per)~~) pursuant to SWCAA 400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach or maintain attainment status.

(c) The Control Officer shall not provide greater than 25(~~(%)~~) percent of the available emission credit in the bank to a single applicant. Any exceptions shall be considered on a case-by-case basis by the Board of Directors after a public notice at the next regularly scheduled meeting.

(d) When the Control Officer issues credits for a new or modified "stationary source," the amount of emission credits shall be removed from the bank and a regulatory order allocating the emission credits shall be issued. The applicant

shall start a continuous program of construction or process modification within 18 months. If the applicant does not exercise the approval, the emission credit allocation shall expire and revert to the bank. If there is a six month delay in construction after the start of a continuous program to construct or modify a "stationary source" or emission(~~(s)~~) unit the remaining amount of the emission reduction credit shall be reviewed by the Control Officer and if it is determined that the unused portion of the credit will not, in all likelihood be used in the next year, the Control Officer shall notify the applicant that the credit allocation has expired and shall revert to the bank. The applicant shall reapply, as needed, for use of the emission reduction credits when a continuous program of construction or modification begins.

(4) **Annual review.** The Agency shall review the content and administration of this section annually to ensure regulatory consistency and equity of impact as a portion of the Washington (~~(State Implementation Plan)~~) SIP review. The results of the review shall be reported to the Board with recommendations for correction if the Control Officer deems that such corrections are necessary to properly administer the emission credit bank.

(5) **Issuance and use of ERCs.** The Agency has established its policy and procedure for deposit of ERCs in SWCAA 400-131. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

(6) **Expiration of public credits.**

(a) Emissions reduction credits deposited in the bank for public allocation (public bank) as the result of the shutdown of the Carborundum facility expired on July 8, 1996 as provided in Regulatory Order SWCAA 86-843 which establish(~~(ing))ed~~ such credits.

(b) Emission reduction credits deposited in the bank for public allocation as the result of Board Resolution 1988-3 amended by Board Resolution 1989-3 expired on January 24, 1999.

(c) Credits and regulatory orders/certificates assigned to "stationary sources" from this public bank expired on July 8, 1996.

(d) Each "stationary source" which had credits assigned from the public bank by issuance of a regulatory order shall be approved for the total of previous emissions plus any additional amount approved under a regulatory order assigning public credits to that "stationary source" effective July 8, 1996.

(e) Emission reduction credits deposited into the public bank shall not be available to be assigned to any "stationary source" after July 8, 1996.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

SWCAA 400-140 Protection of Ambient Air Increments

[Statutory Authority: RCW 70.94.141]

(1) **Purpose.** This section constitutes a program to prevent significant deterioration of air quality by protecting ambient air increments.

(2) **Applicability.** This section shall apply to all "sources" within SWCAA jurisdiction.

(3) **Requirements.**

(a) **Ambient air increments.** The ambient impact of any proposed "source" or modification shall not cause an increase in ambient pollutant concentration over the applicable base-line concentration in excess of the following increments:

Area Designation	Pollutant	Max. allowable increase (µg/m ³)
Class I	Particulate matter: PM ₁₀ , annual arithmetic mean	4
	PM ₁₀ , 24-hr maximum	8
Class II	PM ₁₀ , annual arithmetic mean	17
	PM ₁₀ , 24-hr maximum	30
Class I	Sulfur dioxide Annual arithmetic mean	2
	24-hr maximum	5
	3-hr maximum	25
Class II	Annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	512
Class I	Nitrogen dioxide Annual arithmetic mean	2.5
	Class II Annual arithmetic mean	25

(b) **Source notification.** If possible over consumption of an ambient air increment is identified, the Agency shall notify the affected "source(s)" thirty days prior to taking further action. The purpose of notification is to allow the "source(s)" an opportunity to review the possible over consumption and related emission information.

(c) **Air quality analysis.** If possible over consumption of an ambient air increment is identified, an air quality analysis shall be conducted by the Agency or the affected "source(s)" to demonstrate compliance with the requirements of this section.

(d) **Cost of air quality analysis.**

(i) The cost of any air quality analysis conducted pursuant to the requirements of SWCAA 400-046 and 400-110 shall be paid by the permit applicant.

(ii) The cost of any air quality analysis conducted by the Agency pursuant to this section shall be:

(A) Assessed to the affected "source" if the identified increment violation is attributed solely to the emissions of a single "source;" or

(B) Assessed to the affected "sources" on a prorated basis if the increment violation is attributed to the combined emissions of multiple "sources" located within the affected baseline area. The prorated assessment will be based on the relative contribution of each "source" to the identified increment violation.

(e) If over consumption of an ambient air increment is demonstrated, the Agency shall take actions to require

affected "sources" to reduce ambient impact to a level less than the allowable increment.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-141 Prevention of Significant Deterioration (PSD)

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

~~((Section 40 CFR 52.21, Subparts (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (t), (v), and (w); Prevention of Significant Deterioration of Air Quality, as in effect on July 1, 2000, are incorporated by reference with the following additions and modifications:~~

~~(1) Administrator. In 40 CFR 52.21 (b)(17), federally enforceable, (f)(1)(v), (f)(3), and (f)(4)(i), exclusions from increment consumption, (g), redesignation, (l) and (2), air quality models, (p)(2), federal land manager, and (t); disputed permits or redesignations, the word "Administrator" shall be construed in its original meaning. In 40 CFR 52.21 (b)(3)(iii) Administrator shall mean the Administrator of EPA, Director of Ecology and Control Officer of the Agency.~~

~~(2) Contemporaneous. Subpart 40 CFR 52.21 (b)(3)(ii) is changed to read: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date ten years before construction on the particular change commences and the date that the increase from the particular change occurs. If a decrease occurred more than one year prior to the date of submittal of the Notice of Construction application for the particular change it can only be credited if the decrease has been documented by an emission reduction credit."~~

~~(3) Public participation. Subpart 40 CFR 51.166(q) public participation, as in effect July 1, 2000 is hereby incorporated by reference except that in 40 CFR 51.166 (q)(2)(iv), the phrase "specified time period" shall mean thirty days and the word "Administrator" shall mean the EPA Administrator.~~

~~(4) Section 40 CFR 51.166 Subpart (p)(1). Sources Impacting Federal Class I areas—additional requirements—Notice to EPA, as in effect on July 1, 2000, is herein incorporated by reference.~~

~~(5) Secondary emissions. Subpart 40 CFR 52.21 (b)(18) is changed to read: Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions may include, but are not limited to:~~

~~(a) Emissions from ships or trains coming to or from the new or modified stationary source; and~~

~~(b) Emissions from any offsite support facility which would not otherwise be constructed or increase its emissions~~

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as a result of the construction or operation of the major stationary source or major modification:

(6) **Significant.** The definition of "significant" in 40 CFR 52.21 (b)(23) is changed to exclude from the list of pollutants which may trigger PSD review any pollutant listed under FCAA §112.)

((Note—SWCAA has not been delegated authority by Ecology for the PSD program.))

(1) **Program adoption.** WAC 173-400-141, as in effect on July 1, 2002, is hereby adopted by reference.

(2) **Permitting.** The Agency does not currently have delegated authority to issue PSD permits. PSD permits are issued by Ecology. "Stationary sources" that comply with the provisions of WAC 173-400-141 shall be considered to have met the permitting requirements of this section. Affected "stationary sources" shall submit a copy of PSD application information to the Agency pursuant to WAC 173-400-141 (3)(b)(iii).

(3) **Monitoring, Recordkeeping and Reporting.** Pursuant to WAC 173-400-141(4), a PSD applicable "stationary source" within the Agency's jurisdiction shall submit all required reports to the Agency.

(4) **Enforcement.** The Agency shall enforce the requirements of WAC 173-400-141 and the terms and conditions of PSD permits issued by Ecology to "stationary sources" within the Agency's jurisdiction.

The complete text of WAC 173-400-141 is provided below for informational purposes.

WAC 173-400-141 Prevention of significant deterioration (PSD).

(1) The prevention of significant deterioration or PSD program is a construction permitting program for new major stationary sources and major modifications to existing major stationary sources located in areas in attainment or in areas that are unclassifiable for any criteria air pollutant. No major stationary source or major modification to which the requirements of this section apply shall begin actual construction without a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available when ecology is the permitting agency.

(3) Application.

(a) The PSD application is a form of a notice of construction application and the PSD permit is a form of an approval order.

(b) The applicant shall provide complete copies of its PSD application, distributed in the following manner:

(i) Three copies shall be sent to the permitting agency. If ecology is the permitting agency, copies must be sent to the Air Quality Program at P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy shall be sent to each of the following federal land managers:

(A) U.S. Department of the Interior - National Park Service; and

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) If the local authority is not the permitting agency and the project lies within the territory of a local authority, one copy shall be sent to the authority in whose territory the source is located.

(iv) One copy shall be sent to EPA.

(c) Ecology shall provide the names and addresses of the federal land managers.

(4) **Enforcement.** Ecology or the permitting agency with authority over the source under Chapter 173-401 WAC, the Operating permit regulation, shall receive all required reports and enforce the conditions in the PSD permit.

(5) **Applicable requirements.** A PSD permit must comply with the following requirements:

(a) WAC 173-400-110 - New source review;

(b) WAC 173-400-113 - Requirements for new sources in attainment or unclassifiable areas;

(c) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(d) WAC 173-400-171 - Public involvement; and

(e) The following subparts of 40 CFR 52.21, in effect on July 1, 2000, which are adopted by reference. Exceptions are listed in (5)(e)(i), (ii), (iii), and (iv):

40 CFR 52.21(b) Definitions.

40 CFR 52.21(c) Ambient air increments.

40 CFR 52.21(d) Ambient air ceilings.

40 CFR 52.21(h) Stack heights.

40 CFR 52.21(i) Review of major stationary sources and major modifications - source applicability and exemptions.

40 CFR 52.21(j) Control technology review.

40 CFR 52.21(k) Source impact analysis.

40 CFR 52.21(l) Air quality models.

40 CFR 52.21(m) Air quality analysis.

40 CFR 52.21(n) Source information.

40 CFR 52.21

(o)(1) and (2) Additional impact analysis.

40 CFR 52.21(r) Source obligation.

40 CFR 52.21(v) Innovative control technology.

40 CFR 52.21(w) Permit rescission.

(i) Exception to adopting 40 CFR 52.21 by reference. Every use of the word "administrator" in 40 CFR 52.21 means ecology or the authority except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(ii) Exception to adopting 40 CFR 52.21 by reference. The following definitions apply to this section instead of the definitions in 40 CFR 52.21(b):

(A) Major modification as defined in WAC 173-400-113;

(B) Major stationary source as defined in WAC 173-400-113;

(C) Net emissions increase as defined in WAC 173-400-113;

(D) Significant as defined in WAC 173-400-113; and

(E) Volatile organic compound as defined WAC 173-400-030.

(iii) Exception to adopting 40 CFR 52.21 by reference. The following definition of "secondary emissions" applies to

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this section instead of the definition in 40 CFR 52.21 (b)(18): "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions may include, but are not limited to:

(A) Emissions from ships or trains located at the new or modified stationary source; and

(B) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(iv) Exception to adopting 40 CFR 52.21 by reference. Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (n) of this section, paragraphs (o)(1) and (o)(2) of this section, paragraph (r) of this section, WAC 173-400-117 and 173-400-171."

(6) Notifying EPA. The permitting agency shall provide notice to EPA of every action related to consideration of the permit.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-151 Retrofit Requirements for Visibility Protection

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 93-21-005 filed 10/7/93, effective 11/8/93; 01-05-057 filed 2/15/01, effective 3/18/01]

((1) Determination of best available retrofit technology (BART). The Agency shall identify and analyze each source which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I area in Washington and any adjacent state and to determine BART for the contaminant of concern and those additional air pollution control technologies that are to be required to reduce impairment from the source.

(2) Initially defined BART. The owner(s) or operator(s) of any source(s) to which significant visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART for each contaminant contributing to visibility impairment that is emitted at more than 250 tons per year. Each source for which BART is required must install and operate BART as expeditiously as possible, but in no case later than five years after the conditions are included in a regulatory order.

(3) Future definitions of BART. The owner(s) or operator(s) of any source(s) to which significant visibility impairment of a mandatory Class I area is reasonably attributable

shall apply BART as new technology becomes available for a contaminant if:

(a) The source emits more than 250 tons per year of the contaminant; and,

(b) The controls representing BART have not previously been required in this section.

(4) Appeal. Any source owner or operator required by this section to install, operate, and maintain BART, may apply to the EPA Administrator for an exception from that requirement pursuant to 40 CFR 51.303-))

(1) The requirements of this section apply to any "existing stationary facility" as defined in SWCAA 400-030.

(2) SWCAA shall identify each "existing stationary facility" within its jurisdiction, which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I federal area in Washington and any adjacent state.

(3) For each "existing stationary facility" identified under subsection (2) of this section, SWCAA shall determine BART for the air contaminant of concern and any additional air pollution control technologies that are to be required to reduce impairment from the "existing stationary facility."

(4) Each "existing stationary facility" shall apply BART as new technology for control of the air contaminant when it becomes reasonably available if:

(a) The "existing stationary facility" emits the air contaminant contributing to visibility impairment;

(b) Controls representing BART for that air contaminant have not previously been required under this section; and

(c) The impairment of visibility in any mandatory Class I federal area is reasonably attributable to the emissions of the air contaminant.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-171 Public Involvement

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

(1) Public Notice.

(a) Notice shall be published on the SWCAA Internet website announcing the receipt of air discharge permit applications, nonroad engine permit applications and other proposed actions. Notice shall be published for a minimum of fifteen (15) consecutive days. Publication of a notice on the SWCAA website at the time of application receipt is not required for any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section. In the event that publication on the SWCAA Internet website does not occur for the prescribed time period, notice will be published for a minimum of one (1) day in a newspaper of general circulation in the area of the proposed action. Each notice shall, at a minimum, include the following information:

(i) The name and address of the owner or operator and the affected facility;

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(ii) A brief description of the proposed action;

(iii) Agency contact information;

(iv) A statement that a public comment period will be provided upon request pursuant to SWCAA 400-171(3); and

(v) The date by which a request for a public comment period is due.

(b) Requests for a public comment period shall be submitted to the Agency in writing via letter, fax, or electronic mail. A public comment period shall be provided pursuant to subsection (3) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement.

~~((1))~~ ~~(2)~~ ~~((Applicability))~~ **Mandatory public comment period.**

(a) ~~((The Agency shall provide))~~ A public ~~((notice for a preliminary determination of a regulatory order prior to issuance of the final approval or denial of))~~ **comment period** shall be provided pursuant to subsection (3) of this section before approving or denying any of the following ~~((types of applications or other actions))~~:

~~((a))~~ ~~(i)~~ ~~((Notice of Construction))~~ **Any air discharge permit** application for a ~~((ny))~~ new or modified "stationary source" or emission ~~((s))~~ unit that results in a significant net increase in emissions (actual or potential to emit) of any ~~((pollutant))~~ **air contaminant** regulated by state or federal law ~~((significant as defined in SWCAA 400-030)). Furthermore, public notice for each regulatory order for a non-significant increase may be provided at the discretion of the Control Officer))~~; ~~((or))~~

~~((b))~~ Any application or other proposed action for which a public hearing is required by PSD rules; ~~((or))~~

(ii) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (as in effect on July 1, 2002) as part of review under SWCAA 400-046 or 400-110;

~~((c))~~ ~~(iii)~~ Any order to determine RACT; ~~((or))~~

~~((d))~~ ~~(iv)~~ Any order to establish a compliance schedule or a variance. A variance shall be handled as provided in SWCAA 400-180; ~~((or))~~

~~((e))~~ The establishment, disestablishment or redesignation of a nonattainment area, or the changing of the boundaries thereof; ~~((or))~~

~~((f))~~ ~~(v)~~ Any order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; ~~((or))~~

~~((g))~~ ~~(vi)~~ Any order to authorize a bubble; ~~((or))~~

~~((h))~~ ~~(vii)~~ Any order used to establish a creditable emission reduction;

~~((i))~~ ~~(viii)~~ ~~((Issuance of))~~ An Order of Discontinuance as provided in SWCAA 400-230 (1)(g); ~~((or))~~

~~((j))~~ ~~(ix)~~ Any order issued under SWCAA 400-091 which establishes limitations on a "stationary source's" potential to emit ~~((for the purpose of opting out of the Title V Air Operating Permit program (WAC 173-401)))~~; ~~((or))~~

~~((k))~~ ~~(x)~~ Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;

~~((l))~~ ~~(xi)~~ Any change in conditions of an existing air discharge permit;

~~((m))~~ ~~(xii)~~ Any application or other proposed action which has received a request for public notice pursuant to subsection (1) of this section; or

~~((n))~~ ~~(xiii)~~ Any ~~((Notice of Construction))~~ nonroad engine permit application, air discharge permit application or other proposed action ~~((made pursuant to this regulation in))~~ for which the Control Officer determines there is a substantial public interest ~~((according to the discretion of the Control Officer))~~.

~~((except:~~

~~((k))~~ Any Notice of Construction application or other proposed action which results in a reduction of emissions from a previously established emission limit in an order issued by the Agency that has previously been subjected to public notice, or other permitting authority, may not require public notice in accordance with this section. This exemption does not apply to those sources opting out of the Title V Air Operating Permit program (WAC 173-401).

~~((l))~~ Any Notice of Construction application or other proposed action that does not result in a net emissions increase (actual or potential to emit) unless otherwise required by the Agency.

~~((m))~~ Public notice for a preliminary determination of a regulatory order may run concurrently with immediate approval to operate provided that a corporate officer of the source submits an affidavit that they understand the liability associated with the action and agree to implement any necessary changes that would have otherwise resulted from the public comment process.)

~~((b))~~ Any air discharge permit application designated for integrated review that includes a PSD permit application, an application for a "major modification" in a nonattainment area, or an application for a "major stationary source" in a nonattainment area must also comply with the public notice requirements of WAC 173-400-171.

~~((2))~~ ~~(3)~~ **Public ~~((notice))~~ comment period.** A public ~~((notice))~~ **comment period** shall be ~~((made))~~ **provided** only after all information required by the Agency has been submitted and after applicable preliminary determinations, if any, have been made. ~~((Public notice shall include:))~~

(a) Availability for public inspection ~~((in at least one location near the proposed project, of the nonproprietary)).~~ The information submitted by the applicant, and ~~((or))~~ any applicable preliminary determinations, including analyses of the effect(s) on air quality, shall be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270.

(b) Publication of comment period notice. Notice shall be published in a newspaper of general circulation in the area of the proposed project ~~((of notice))~~ for a minimum of one (1) day. For applications or actions subject to a public comment period pursuant to subsections (2)(a)(xii) or (2)(a)(xiii) of this section, publication on the SWCAA Internet homepage for a minimum of thirty (30) days may be substituted for newspaper publication. Notice for a public comment period shall include the following information:

(i) The name and address of the owner or operator and the affected facility;

~~((ii))~~(ii) A brief description of the proposal;

~~((iii))~~(iii) The location of the documents made available for public inspection;

~~((iv))~~(iv) Identification of a thirty-day period for submitting written comment to the Agency;

~~((v))~~(v) A statement that a public hearing may be held if the Agency determines within a thirty-day period that significant public interest exists;

(vi) The length of the public comment period in the event of a public hearing; and

(vii) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the comment period notice shall explain the Agency's decision.

(c) EPA Notification. A copy of the comment period notice shall be sent to the EPA Region 10 Regional Administrator.

~~((d))~~ Public participation procedures for Notice of Construction applications that are processed in coordination with an application to issue or modify a Title V Air Operating Permit shall be conducted as provided in WAC 173-401-11.

~~((3))~~ (d) Consideration of public comment. The Agency shall make no final decision on any application or other action (of any of the types described in subsection (1) of this section, shall be made) for which a public comment period has been provided until the public comment period has ended and any comments received during the public comment period have been considered. (Unless a public hearing is held, the public comment period shall be the thirty-day period for written comment published as above. If a public hearing is held, the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.)

~~((4))~~ (e) Public hearings. (The applicant, any interested governmental entity, any group, or) Any person may request a public hearing within the thirty-day public comment period. (published as above. Any such) Each request shall indicate the interest of the (entity) party filing it and why a hearing is warranted. The Agency may (at the discretion of the Control Officer,) hold a public hearing if ((it)) the Control Officer determines significant public interest exists. (Any such hearing(s) shall be held upon such notice and at a time(s) and place(s) as the Agency deems reasonable) The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, the public comment period shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) Public involvement for integrated review with an operating permit. Any air discharge permit application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).

(5) Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, ~~((such))~~ those procedures may be used in lieu of the provisions of this section

(e.g., SEPA). This subsection does not apply to applications for a "major modification" or a "major stationary source."

(6) Public information. All information is available for public inspection at the Agency, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270. Such information includes copies of Notice(s) of Construction applications, orders of approval, regulatory orders, and modifications thereof ((which are issued hereunder shall be available for public inspection on request at the Agency)).

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-180 Variance

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.181 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 2.07); Amended by Board 12/18/79; Amended by Board 4/17/84; Repealed and renumbered to 400-180 93-21-005 filed 10/7/93, effective 11/8/93, previous 400-180 (Maintenance of Pay was deleted; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the Agency for a variance from provisions of SWCAA regulations governing the quality, nature, duration, or extent of discharges of air contaminants in accordance with the provisions of RCW 70.94.181.

(1) Jurisdiction. "Stationary sources" in any area over which the Agency has jurisdiction shall make application to the Agency. Variances to State rules shall require approval of Ecology prior to being issued by the Agency. The Board of Directors may grant a variance only after public involvement per SWCAA 400-171.

(2) Full faith and credit. Variances granted in compliance with state and federal laws by the Agency for "sources" under its jurisdiction shall be accepted as variances to this regulation.

(3) EPA concurrence. No variance or renewal shall be construed to set aside or delay any requirements of the Federal Clean Air Act except with the approval and written concurrence of the ~~((USEPA))~~ EPA.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-190 Requirements for Nonattainment Areas

[Statutory Authority: Chapter 70.94.141 RCW. Original Board Adoption 93-21-005 filed 10/7/93, effective 11/8/93; 01-05-057 filed 2/15/01, effective 3/18/01]

The development of specific requirements for nonattainment areas shall include consultation with local government in the area and shall include public involvement per SWCAA

400-171. Requirements for new or modified "stationary sources" in nonattainment areas are found in SWCAA 400-110 and SWCAA 400-112.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-230 Regulatory Actions ((&)) and Civil Penalties

[Statutory Authority: Chapter 70.94.141 RCW, 70.94.211 RCW, 70.94.332 RCW, 70.94.425 RCW, 70.94.431, 70.94.435 RCW and 70.94.715 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 2 & 3); Amended by Board renumbered to 400-130 12/18/79; Amended by Board renumbered to 400-200 4/17/84; Amended by Board 12/16/86; Amended by Board 1/21/92, 92-04-030 filed 1/28/92; 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

(1) The Agency shall have the power to issue such orders as necessary to effectuate the purpose of RCW 70.94 and RCW 43.21B as provided in, ~~((including))~~ but not limited to: RCW 70.94.141, RCW 70.94.152, RCW 70.94.153, ~~((and))~~ RCW 70.94.332 and RCW 43.21B.300. ~~((The Agency may issue orders for establishing limits and controls for "sources" of emissions to the ambient air or otherwise controlling activities that may violate any ambient air quality regulations, including but not limited to the following:))~~ For informational purposes, a list of specific orders issued by the Agency in the past is presented below.

(a) **Order of Approval.** An order ~~((of Approval may be))~~ issued by the Agency to provide approval for an ~~((Notice of Construction))~~ air discharge permit or ERC application. ~~((An Order of Approval shall contain the following, as appropriate: reference to applicable regulations, emissions limitations, control and process equipment operating conditions and limits, testing requirements, monitoring and reporting requirements, and other conditions considered necessary by the Agency. An Order of Approval, which constitutes the final determination of the Agency, shall be issued within sixty (60) calendar days of a complete application or for those projects subject to public notice, as promptly as possible after the 30 calendar day public notice requirements have been satisfied. An Order of Approval may not identify all applicable regulations. All Orders of Approval may be subject to the public notice and comment procedures set forth in SWCAA 400-171(2), (3), and (4).))~~

(b) **Order of Denial.** An order ~~((of Denial may be))~~ issued by the Agency in response to an ~~((Notice of Construction))~~ air discharge permit application that is incomplete, not feasible, proposes inadequate control technology, or otherwise would result in violation of any ambient air quality regulation, control technology requirement, or applicable emission standard~~((s))~~. ~~((in the area in which the equipment would be located and operated. All Orders of Denial shall be subject to the public notice and comment procedures set forth in SWCAA 400-171 (2), (3), and (4).))~~

(c) **Order of Violation.** An order ~~((of Violation may be))~~ issued by the Agency to document specific regulation(s) alleged to be violated and establish the facts surrounding a

violation. ~~((An Order of Violation may be prepared by the Agency only after formal written notice has been served on the "source" as provided in (2) below. The Order of Violation shall not be subject to the public notice and comment period set forth in SWCAA 400-171.))~~

(d) **Order of Prevention.** An order ~~((of Prevention may be))~~ issued by the Agency ~~((to a source))~~ to prevent installation or construction of an emission unit, performance of an activity, or actions that may otherwise endanger public health that are on site, in the process of being installed, or have been installed, constructed or operated without prior Agency review and approval, or actions ~~((are))~~ being conducted in addition to a previous Agency approval without prior approval. ~~((An Order of Prevention shall not be subject to the public notice and comment period set forth in SWCAA 400-171.))~~

(e) **Consent Order.** An ~~((Consent))~~ order ~~((may be))~~ issued by the Agency to establish emission limits, operation and maintenance limits or controls, monitoring or reporting requirements, testing requirements, or other limits or controls ~~((as necessary))~~ that are determined by the Agency to be necessary. Actions identified in a Consent Order may be necessary to demonstrate compliance with applicable regulations, provide measures whereby a "source" may take the necessary steps to achieve compliance, establish a schedule for activities, or provide other information that the Control Officer deems appropriate. ~~((The))~~ Consent Orders ~~((shall be))~~ are agreed to and signed by an appropriate officer of the company or "source" for which the Consent Order is prepared and the Control Officer, or designee, of the Agency. ~~((Installation, construction, modification or operation of a source shall be subject to the New Source Review requirements of SWCAA 400-110. A Consent Order shall not be subject to the public notice and comment period set forth in SWCAA 400-171 at the discretion of the Control Officer.))~~ A Consent Order does not sanction noncompliance with applicable requirements.

(f) **Compliance Schedule Order.** An ~~((Compliance Schedule))~~ order ~~((may be))~~ issued by the Agency to a "source" to identify specific actions that must be implemented to establish, maintain, and/or demonstrate compliance with applicable regulations and identify the schedule by which these actions must be completed. ~~((All Compliance Schedule Orders shall be subject to the public notice and comment period set forth in SWCAA 400-171 (2), (3), and (4). Refer to SWCAA 400-161 for further guidance.))~~

(g) **Order of Discontinuance.** ~~((The Agency may issue))~~ An order ~~((of Discontinuance))~~ issued by the Agency for any "source" that has ~~((discontinued operations))~~ permanently shutdown, ~~((and/or))~~ has not maintained ~~((their source))~~ registration for affected emission units, or ~~((Refer to SWCAA 400-100 (2)(d)). An Order of Discontinuance may also be issued to a source))~~ that continues to operate in violation of applicable regulations and requirements. ~~((Such issuance may require that the source cease operations that result in emissions to the ambient air that are in violation of applicable regulatory orders, requirements and regulations.))~~

~~((Any source that fails to maintain registration fees (i.e., payment of registration fees by June 30 of each year), may be issued an Order of Discontinuance. The Order of Discontinuance))~~

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ance shall identify the source location and emission units and identify the most current registration activity.

(ii) The Order of Discontinuance shall provide for discontinuance of operations at that source or facility and all previous authorizations, orders, agreements or stipulations shall be superseded, directly or indirectly, by the Order of Discontinuance without specific identification in the Order of Discontinuance.

(iii) The Order of Discontinuance shall be subject to the public notice and comment procedures set forth in SWCAA 400-171 (2), (3), and (4).

(iv) For sources that have ceased doing business in SWCAA jurisdiction, or the state of Washington, the Agency shall make a reasonable effort to establish contact with the source. If the Agency is unable to establish contact with the source, the Agency shall issue an Order of Discontinuance via certified mail, return receipt requested, to the last known address. Lack of response by the source or return of the notification by the US Postal Service shall be considered de facto evidence that the source has discontinued operations.

(v) The source shall have 30 calendar days from the date of the final regulatory order after public notice in which to pay past due and current registration fees. If the source fails to pay current registration fees, the source or facility shall be considered discontinued and shall be required to submit a Notice of Construction application under the New Source Review procedures of SWCAA 400-110 prior to resuming or restarting operations.

(vi) Facilities that terminate operations and discontinue paying registration fees, and are later sold with the intent of restart, in whole or in part, shall be subject to the New Source Review requirements of SWCAA 400-110.

(vii) Sources that continue to operate in violation of established regulatory orders and regulations, the Agency may issue an Order of Discontinuance that is effective immediately.)

(h) **Corrective Action Order.** ((The Agency may issue a Corrective Action)) An order issued by the Agency to any "source" ((within its jurisdiction, including an unregistered source;)) to provide measures to correct or rectify a situation that ((has)) is an immediate or eminent threat to person(s) or the public or that may be in violation or have the potential of being in violation of federal, state and local regulations or may pose a threat to the public health, welfare or enjoyment of personal or public property. ((The Corrective Action Order may specify specific actions that must be implemented to demonstrate compliance with applicable regulations and identify dates by which these actions must be completed. All actions and dates identified in the Corrective Action Order shall be fully enforceable. Corrective Action Orders shall be issued to correct immediate problems. Corrective Action Orders shall not be subject to the public notice and comment period set forth in SWCAA 400-171.))

(i) **Administrative Order.** An ((Administrative)) order ((may be)) issued ((to a source)) by the Agency to provide for implementation of items not addressed above, that are identified by the Control Officer. An Administrative Order may contain emission limits, operating and maintenance limitations and actions, schedules, resolutions by the Board of Directors, provide for establishing attainment or nonattain-

ment boundaries, establish working relationships with other regulatory agencies, establish authority for enforcement of identified actions, and other activities identified by the Agency. ((All Administrative Orders shall be subject to the public notice and comment procedures set forth in SWCAA 400-171 (2), (3), and (4))).

(j) **Resolutions.** A ((Resolution may be)) document issued by the Agency as a means to ((document or)) record a Board of Directors decision, authorize or approve budget transactions, establish Agency policies, or take other actions as determined by the Agency. ((Resolutions shall not be subject to the public notice and comment procedures set forth in SWCAA 400-171.))

(2) The Agency may take any of the following regulatory actions to enforce its regulations to meet the provisions of RCW 43.21B.300 which is incorporated herein by reference.

(a) ((Enforcement actions by the Agency)) **Notice of Violation.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the Agency shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this regulation, or the rule, regulation, regulatory order or permit requirement alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the Agency may require that the alleged violator or violators appear before it for the purpose of providing the Agency information pertaining to the violation or the charges complained of. Every Notice of Violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action. ((Enforcement action may be commenced by the Agency by issuance of a regulatory order as provided in SWCAA 400-230(1).))

(b) **Civil penalties.**

(i) In addition to or as an alternate to any other penalty provided by law, any person (e.g., owner, owner's agent, contractor, operator) who violates any of the provisions of Chapter 70.94 or 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. Any person who fails to take action as specified by an order issued pursuant to this regulation shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(ii) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal. The maximum penalty amounts established in RCW 70.94.431 may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

(iii) Each act of commission or omission that procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same

penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300. Section 113 (e)(2) of the 1990 Clean Air Act Amendments provides that the number of "days of violation" is to be counted beginning on the first proven day of violation and continuing every day until the violator demonstrates that it achieved continuous compliance, unless the violator can prove by preponderance of the evidence that there were intervening days on which no violation occurred. This definition applies to all civil and administrative penalties.

(iv) All penalties recovered under this section by the Agency, shall be paid into the treasury of the Agency and credited to its funds.

(v) To secure the penalty incurred under this section, the Agency shall have a lien on any equipment used or operated in violation of its regulations which shall be enforced as provided in RCW 60.36.050. The Agency shall also be authorized to utilize a collection agency for nonpayment of penalties and fees.

(vi) In addition to other penalties provided by this regulation, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) **Assurance of Discontinuance.** The Control Officer may accept an assurance of discontinuance as provided in RCW 70.94.435 of any act or practice deemed in violation of this regulation as written and certified to by the "source." Any such assurance shall specify a time limit during which discontinuance or corrective action is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of its regulations or any order issued there under which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the Superior Court.

(4) **Restraining orders & injunctions.** Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of its regulations, the Control Officer, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) **Emergency episodes.** The Agency may issue such orders as authorized by SWCAA 435 (~~via Chapter 70.94 RCW,~~) whenever an air pollution episode forecast is declared.

(6) **Compliance Orders.** The Agency may issue a Compliance Order in conjunction with a Notice of Violation or when the Control Officer has reason to believe a regulation is being violated, or may be violated. The order shall require the recipient of the Notice of Violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated and completed. Compliance Orders are not subject to the public notice requirements of SWCAA 400-171.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-250 Appeals

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.221 RCW. Original Board adoption 12/18/79 as 400-140; Amended by Board renumbered to 400-220 4/17/84; renumbered to 400-250 93-21-005, filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

~~((1))~~ Any decision or regulatory order issued by the Agency may be appealed ~~((to the Board of Directors as provided herein or appealed directly))~~ to the Pollution Control Hearings Board as provided by ~~((RCW))~~ Chapter 43.21B RCW and ~~((WAC))~~ Chapter 371-08 WAC. ~~((In addition, Orders of Approval and permits issued in accordance with the PSD program may be appealed to the EPA Environmental Appeals Board, to the extent authorized in 40 CFR 124. If appealed to the Board of Directors, the procedure shall be as follows:~~

~~(a) The decision, Notice of Violation, or Order issued by the Control Officer shall become final unless, not later than 15 calendar days after the date the Order is served upon the owner or applicant, the owner or applicant petitions the Control Officer for reconsideration, with reasons for the reconsideration. If the Control Officer refuses to reconsider, the Control Officer shall so notify the owner or applicant in writing, giving reasons for the decision. Such ruling on the petition shall become final unless not later than 15 calendar days after such notice of refusal is served, the owner or applicant appeals to the Board setting forth the reasons for the appeal.~~

~~(b) The Control Officer may reverse or modify the Order and issue such an Order in replacement thereof as deemed proper. Such Order also may be appealed to the Board of Directors as in (a) above.~~

~~(c) Any failure of the Control Officer to act upon a petition for reconsideration 15 calendar days after the petition is delivered to the Agency, shall be considered as a refusal to reconsider.~~

~~(d) In lieu of a petition for reconsideration, the owner or applicant may appeal directly to the Board of Directors within the time specified in (a) above.~~

~~(2) The Board shall promptly hear and consider all appeals after providing reasonable notice to the appellant. The Board shall, within 30 calendar days of the hearing sustain, reverse or modify the Order of the Control Officer as it deems proper. Such ruling of the Board shall be communicated to the appellant in writing and the appellant if aggrieved, may appeal de novo to the Pollution Control Hearings Board as provided in RCW 43.21B.230 and WAC 371-08.~~

~~(3) It is the intent of the Board in establishing this regulation concerning appeals to provide for a method of resolving issues at the Agency level. Consequently, Decisions and Orders of the Control Officer on compliance, new source review, or any other matter regulated herein except violations shall not be considered as commencing any appeal period for appeals to the Pollution Control Hearings Board. Such~~

PROPOSED

~~appeal period shall commence only when the final Order is issued by the Board of Directors and served upon the person aggrieved as provided in RCW 43.21B.120.~~

~~(4) Nothing contained herein shall be construed as denying the exclusive jurisdiction of the Pollution Control Hearings Board on violations as provided by RCW 43.21B.1)~~

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-270 Confidentiality of Records and Information

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.205 RCW. Original Board adoption 10/29/69 (Regulation 2 Sec 2.05); recodified and removed by Board 12/18/79; new section 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-057 filed 2/15/01, effective 3/18/01]

(1) The owner or operator of a "source" (or ~~((person))~~ the agent submitting the information) is responsible for clearly identifying ~~((the))~~ information that is considered proprietary and confidential prior to submittal to the Agency. Information submitted to the Agency that has not been identified as confidential at the time of submittal may not be classified as confidential at a later date.

(2) Confidential information submitted to the Agency by an owner, ~~((or))~~ operator or agent shall be stamped or clearly marked in red ink at the time of submittal. Such information considered to be confidential or proprietary by the owner or operator will be handled as such, and will be maintained by the Agency, to the extent that release of such information may provide unfair economic advantage or compromise processes, products, or formulations to competitors as provided under RCW 70.94.205. ~~((Requests for))~~ Such information ~~((under the Freedom of Information Act))~~ shall be released to the public only after:

- (a) Legal opinion by the Agency's legal counsel, and
- (b) Notice to the source of the intent to either release or deny the release of information.

(3) Records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, related to processes or production unique to the owner or operator, or likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, ~~((such records or information))~~ shall be only for the confidential use of the Agency as provided in RCW 70.94.205 ~~((, Title 18 USC 1905, Section 114 of the 1990 Federal Clean Air Act Amendments, and 40 CFR 2 "Public Information"))~~.

(4) Emissions data furnished to or obtained by the Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at the office of the Agency.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

APPENDIX A

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption - 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01]

SWCAA METHOD 9

VISUAL OPACITY DETERMINATION METHOD

1. Principle
The opacity of emissions from stationary sources is determined visually by a qualified observer.
2. Procedure
The observer must be certified in accordance with the provisions of Section 3 of 40 CFR Part 60, Appendix A, Method 9, as in effect on July 1, ~~((2000))~~ 2002.
- 2.1 Position
The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented in the 140° sector to his/her back. Consistent with maintaining the above requirement, the observer shall, as much as possible, make his/her observations from a position such that his/her line of vision is approximately perpendicular to the plume direction, and when observing opacity of emissions from rectangular outlets (e.g., roof monitors, open baghouses, noncircular stacks), approximately perpendicular to the longer axis of the outlet. The observer's line of sight should not include more than one plume at a time when multiple stacks are involved, and in any case, the observer should make his/her observations with his/her line of sight perpendicular to the longer axis of such a set of multiple stacks (e.g., stub stacks on baghouses).
- 2.2 Field Records
The observer shall record the name of the plant, emission location, type of facility, observer's name and affiliation, a sketch of the observer's position relative to the source, and the date on a field data sheet. The time, estimated distance to the emission location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), and plume background are recorded on a field data sheet at the time opacity readings are initiated and completed.
- 2.3 Observations
Opacity observations shall be made at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15-second intervals.

2.3.1 Attached Steam Plumes

When condensed water vapor is present within the plume as it emerges from the emission outlet, opacity observations shall be made beyond the point in the plume at which condensed water vapor is no longer visible. The observer shall record the approximate distance from the emission outlet to the point in the plume at which the observations are made.

2.3.2 Detached Steam Plumes

When water vapor in the plume condenses and becomes visible at a distinct distance from the emission outlet, the opacity of emissions should be evaluated at the emission outlet prior to the condensation of water vapor and the formation of the steam plume.

2.4 Recording Observations

Opacity observations shall be recorded to the nearest 5 percent at 15-second intervals on a field data sheet. A minimum of 24 observations shall be recorded. Each momentary observation recorded shall be deemed to represent the average opacity of emissions for a 15-second period.

2.5 Data Reduction

The number of observations at each opacity level shall be determined and recorded on the field data sheet. Opacity shall be determined by the highest 13 observations in any consecutive 60-minute period. The opacity standard or emissions limit is exceeded if there are more than 12 observations during any consecutive 60-minute period for which an opacity greater than the standard or emission limit is recorded. The opacity standard is a 1 hour standard (rolling 60 minutes). Only one violation of the standard per hour may be recorded meaning that a violation for any given consecutive 60-minute period may be recorded in substantially fewer than 60 minutes. No one-hour time sets shall overlap for purpose of determining a violation or violations. Data used to establish a violation in one consecutive 60-minute period can not be used to establish a violation in a second consecutive 60-minute period.

3. References

Federal Register, Vol. 36, No. 247, page 24895, December 23, 1971.

"Criteria for Smoke and Opacity Training School 1970 - 1971" Oregon-Washington Air quality Committee."

"Guidelines for Evaluation of Visible Emissions" EPA 340/1-75-007."

- Notes: (1) The difference between the SWCAA Method 9 and WDOE Method 9 or WDOE Method 9A is the SWCAA method does not recommend that the observer make note of the ambient relative humidity, ambient temperature, the point in the plume that the observations were made, the estimated depth of the plume at the point of observation, and the color and condition of the plume. In addition, the SWCAA method does not recommend that pictures be taken.
- (2) The difference between the SWCAA Method 9 and EPA Method 9 is in the data reduction section. The

SWCAA method establishes a three-minute period in any one-hour period where opacity can not exceed an opacity limit. For the SWCAA method, 13 readings in a 1-hour period or less, above the established opacity limit, no matter how much, constitutes a violation. The EPA method is an arithmetic average of any 24 consecutive readings at 15-second intervals. These values are averaged and this average value cannot exceed the established opacity limit.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 03-16-094
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 6, 2003, 8:07 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: Changes to several sections of chapter 388-14A WAC to correct erroneous cross-references. See Statutory Authority for list of sections amended in this proposal.

Purpose: The Division of Child Support (DCS) has discovered erroneous cross-references in chapter 388-14A WAC. These errors mostly are due to changes in WAC or RCW, but some are due to typographical errors in the rules when they were initially adopted.

Other Identifying Information: This proposal is exempt from filing a CR-101 under RCW 34.05.310 (4)(d) because we are correcting information without changing the effect of the rules.

Statutory Authority for Adoption: General rule-making authority: The changes in this CR-102 are being done pursuant to RCW 34.05.310 (4)(d). Specific statutory authority for each amended WAC section proposed is as follows:

WAC 388-14A-1030 What kinds of services can the division of child support provide?: RCW 74.08.090, 45 C.F.R. 303.106.

WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support? and 388-14A-2075 What happens if the division of child support determines that I am not cooperating?: RCW 74.08.090, 26.23.035, 74.20A.310.

WAC 388-14A-2135 When might DCS deny a request for address information without going through the notice and hearing process?: RCW 26.23.120, 74.08.090.

WAC 388-14A-2150 How much does it cost to get copies of DCS records? and 388-14A-2155 Can I appeal a denial of public disclosure by the division of child support? and 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else?: RCW 74.08.090.

WAC 388-14A-3125 The notice and finding of medical responsibility is used to set a medical support obligation when the custodial parent receiving medical assistance

declines full child support enforcement services, 388-14A-3135 Late hearings, or hearing on untimely objections to support establishment notices, 388-14A-3140 What can happen at a hearing on a support establishment notice? and 388-14A-3205 How does DCS calculate my income?: RCW 34.05.220 (1), 74.08.090, 74.20A.055, 74.20A.056.

WAC 388-14A-3315 When DCS serves a notice of support debt or notice of support owed, we notify the custodial parent and/or the payee under the order: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.310.

WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?, 388-14A-3375 What kinds of credits does the division of child support give when establishing or enforcing an administrative support order?, 388-14A-3865 Duties of the administrative law judge when a party requests a temporary support order and 388-14A-3875 What if a party does not agree with a temporary support order?: RCW 74.20A.055 and 74.08.090.

WAC 388-14A-3800 Once a support order is entered, can it be changed?: RCW 74.08.090, chapter 26.19 RCW, RCW 34.05.220(1), 74.20A.055, 74.20A.056.

WAC 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted Internet site?: RCW 26.23.120(2), 74.08.090.

WAC 388-14A-5000 How does the division of child support distribute support payments? and 388-14A-5008 Can the noncustodial parent prepay support?: RCW 74.08.090, 26.23.035, 74.20A.057, 74.20A.310.

Statute Being Implemented: RCW 34.05.310 (4)(d). Also, see Statutory Authority above.

Summary: See Purpose above.

Reasons Supporting Proposal: DCS desires to have correct cross-references in its rules.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: All rules in this proposal need correction of erroneous cross-references.

Proposal Changes the Following Existing Rules: The cross-references will now be correct.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DCS is correcting information in the text of the rules without changing the effect of the rules. The proposed rules are exempt from preparing a small business economic impact statement under RCW 19.85.025 and 34.05.310(4).

RCW 34.05.328 does not apply to this rule adoption. The rule does not meet the definition of a significant legislative rule but DSHS/DCS is exempt from preparing further analysis under RCW 34.05.328 (5)(b)(iv). DCS is correcting information in the text of the rules without changing the effect of the rules.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on September 23, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by September 19, 2003, phone (360) 664-6094, TTY (360) 664-6178, e-mail fernaax@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, mail to P.O. Box 45850, Olympia, WA 98504-5850, deliver to 4500 10th Avenue S.E., Lacey, WA, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., September 23, 2003.

Date of Intended Adoption: Not earlier than September 24, 2003.

August 1, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-1030 What kinds of services can the division of child support provide? The services provided by the division of child support include, but are not limited to the following:

- (1) Receiving payments and distributing the payments (see WAC 388-14A-5000);
- (2) Establishing or modifying administrative child support orders (see WAC 388-14A-3100 and 388-14A-3925);
- (3) Enforcing and modifying court orders for child support or maintenance (see WAC ((~~388-14A-3305 and~~) 388-14A-3304, 388-14A-3310 and 388-14A-3900);
- (4) Referral to the prosecuting attorney for establishment of paternity;
- (5) Providing locate services as provided in WAC 388-14A-1035;
- (6) Referral for welfare to work services in conjunction with other parts of DSHS, the employment security department (ESD) and private contractors;
- (7) Cooperation with the IV-D agencies of other states and Indian tribes (see WAC 388-14A-1060); and
- (8) Providing any other services allowed by the state plan and applicable state and federal law.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support? (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate under WAC 388-422-0020. For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at issue, the custodial parent (CP) of a child who

receives assistance must cooperate whether or not the parent receives assistance.

(2) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:

- (a) Identify and locate the responsible parent;
 - (b) Establish the paternity of the child(ren) on assistance in the CP's care; and
 - (c) Establish or collect support payments or resources such as property due the CP or the child(ren).
- (3) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW ((74.20A.320)) 74.20A.275 (3)(c). If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2075 What happens if the division of child support determines that I am not cooperating? (1) When the division of child support (DCS) or its representatives believe you are not cooperating as defined in WAC 388-14A-2040, DCS sends a notice to you and to the community service office (CSO) stating the noncooperation and explaining the following:

- (a) How the noncooperation was determined, including what actions were required;
- (b) What actions you must take to resume cooperation;
- (c) That this notice was sent to the CSO;
- (d) That you may contact the CSO immediately if you disagree with the notice, need help in order to cooperate, or believe the actions required are unreasonable; and
- (e) That the CSO may sanction you by either reducing or terminating the grant.

(2) The CSO sends a notice of planned action to you as provided by WAC ((388-245-1700 or any subsequent amendment)) 388-472-0005 (1)(i).

(3) Either the notice of alleged noncooperation or the CSO's notice of planned action may serve as the basis for a sanction.

(4) If the noncooperation was due to missing an interview without reasonable excuse, you will be considered to be cooperating when you appear for a rescheduled interview and either provide information or attest to the lack of information. DCS or its representative must reschedule the interview within seven business days from the date you contact them to reschedule an interview.

(5) If the noncooperation was due to not taking a required action, cooperation resumes when you take that action.

(6) There is no hearing right for a notice of noncooperation, but you can request a hearing on the sanction imposed by the CSO.

AMENDATORY SECTION (Amending WSR 02-07-091, filed 3/19/02, effective 4/19/02)

WAC 388-14A-2135 When might DCS deny a request for address information without going through the notice and hearing process? (1) The division of child support (DCS) denies a request for address information without going through the notice process under WAC 388-14A-2114 if:

(a) The department has determined, under WAC ((388-422-0021)) 388-422-0020, that the custodial parent (CP) has good cause for refusing to cooperate;

(b) The order, on which the request is based, restricts or limits the address requesting party's right to contact or visit the other party or the child by imposing conditions to protect the party or the child from harm;

(c) An order has been entered finding that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of the information; or

(d) DCS has information which gives DCS reason to believe that release of the address may result in physical or emotional harm to the other party or to the children.

(2) Whenever DCS denies a request for disclosure under subsection (1) of this section, DCS notifies the nonrequesting party that disclosure of the address was requested and was denied.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2150 How much does it cost to get copies of DCS records? (1) WAC ((388-01-030)) 388-01-080 authorizes the division of child support (DCS) to charge copying and postage costs for responses to public disclosure.

(2) DCS charges fifteen cents per page for copies.

(3) DCS may waive copy fees in appropriate circumstances.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2155 Can I appeal a denial of public disclosure by the division of child support? (1) If the division of child support (DCS) denies a request for public disclosure, you may file an appeal with DCS Public Disclosure Appeals, P.O. Box 9162, Olympia WA 98507-9162.

(2) If DCS denies your appeal, you may pursue the other options listed in WAC ((388-01-080)) 388-01-130.

AMENDATORY SECTION (Amending WSR 00-15-016 and 00-20-022, filed 7/10/00 and 9/25/00, effective 11/6/00)

WAC 388-14A-3125 The notice and finding of medical responsibility is used to set a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services. (1) A notice and finding of medical responsibility (NFMR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support pursuant to chapter 74.20A RCW to establish and enforce a health insurance obligation.

(2) DCS may serve a NFMR when:

(a) The custodial parent (who is either a parent or the physical custodian of the child) or a dependent child receives or is certified eligible to receive medical assistance and is not receiving cash grant public assistance under 74.12 RCW; and

(b) The custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

(3) The NFMR advises the NCP and the CP of the medical support obligation for the children named in the notice. The NFMR fully and fairly advises the parties of their rights and responsibilities under the NFMR.

(4) The NFMR warns the noncustodial parent and the custodial parent that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFMR, if necessary for an accurate support order.

(5) The NFMR includes:

(a) The information required by ~~((WAC 388-11-210 (or as later amended)))~~ RCW 26.23.050;

(b) The noncustodial parent's health insurance obligation, pursuant to ~~((WAC 388-11-215 (or as later amended)))~~ RCW 26.18.170;

(c) The maximum premium amount the noncustodial parent must pay; and

(d) The income basis used to calculate the maximum premium amount, pursuant to WAC 388-14A-3200.

(6) The income basis for an obligation established by DCS for a NFMR is not binding on any party in any later action to establish a cash child support obligation.

(7) After service of the NFMR, the noncustodial parent (NCP) and the custodial parent must notify DCS of any change of address, or of any changes that may affect the support obligation.

(8) DCS may take enforcement action under RCW 26.18.170 ~~((, WAC 388-11-215, and 388-14-480 (or as these sections are later amended)))~~ and chapter 388-14A WAC without further notice when the NFMR is a final order. See WAC 388-14A-3110 for how a notice becomes a final order.

(9) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC ~~((388-11-155 (or as later amended)))~~ 388-14A-3810 describes when the obligation under the NFMR can end sooner or later than age eighteen.

(10) If the custodial parent applies for full enforcement services while a hearing on a NFMR is pending, DCS may, at any time before the hearing record is closed, convert the hearing to a hearing on a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115 or a notice and finding of parental responsibility (NFPR) under WAC 388-14A-3120. To convert the hearing, DCS serves a NFFR or NFPR on the parents and files a copy with the administrative law judge (ALJ). The ALJ may grant a continuance if a party requests additional time to respond to the claim for monetary child support.

(11) In a NFMR hearing, the ALJ must determine the:

(a) Basic support obligation, without deviations; and

(b) Maximum premium amount under chapter 26.19 RCW ~~((and WAC 388-11-215 (or as later amended)))~~.

(12) A hearing on a NFMR is for the limited purpose of resolving the NCP's medical support responsibility. The NCP has the burden of proving defenses to liability.

AMENDATORY SECTION (Amending WSR 00-15-016 and 00-20-022, filed 7/10/00 and 9/25/00, effective 11/6/00)

WAC 388-14A-3135 Late hearings, or hearing on untimely objections to support establishment notices. (1) For orders established before August 30, 1997, if the noncustodial parent did not timely object to the notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), only the noncustodial parent may petition for a late hearing, pursuant to WAC ~~((388-11-310 (or as later amended)))~~ 388-14A-3500.

(2) For orders established after August 30, 1997, if neither parent timely objected to the NFFR, NFPR, or NFMR, either the noncustodial parent or the custodial parent may petition for a late hearing, pursuant to WAC ~~((388-11-310 (or as later amended)))~~ 388-14A-3500. See WAC 388-14A-3110 for the time limits for a timely hearing request.

(3) The division of child support (DCS) continues to enforce the order even if a late request for hearing is filed.

(4) If DCS receives the late hearing request within one year of the date of service of the notice, the parent requesting the hearing is not required to show good cause to have a hearing on the merits of the notice.

(5) If DCS receives the late hearing request more than a year after the date of service of the notice, the parent requesting the hearing must show good cause why the hearing request was not timely. WAC ~~((388-11-011 (or as later amended)))~~ 388-14A-1020 contains the definition of good cause.

AMENDATORY SECTION (Amending WSR 00-15-016 and 00-20-022, filed 7/10/00 and 9/25/00, effective 11/6/00)

WAC 388-14A-3140 What can happen at a hearing on a support establishment notice? (1) When a parent requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to resolving the accrued support debt, current support and future support obligation.

(2) The noncustodial parent has the burden of proving any defenses to liability. See WAC ~~((388-11-065 (or as later amended)))~~ 388-14A-3370.

(3) Both the NCP and the custodial parent (CP) must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

(4) The administrative law judge (ALJ) or review judge has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation. The ALJ or review judge may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any nonappearing party, if the ALJ

or review judge finds that due process requirements have been met.

(5) The ALJ has no authority to determine custody or visitation issues.

(6) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number of the location of the party appearing by phone.

(7) In certain cases, there is no "custodial parent" because the child or children are in foster care.

(a) If the NCP fails to appear for hearing, see WAC 388-14A-3131.

(b) If the NCP appears for hearing, see WAC 388-14A-3133.

(8) In certain cases, there can be two NCPs, called "joint NCPs." This happens when a husband and wife are jointly served a support establishment notice for a common child who is not residing in their home.

(a) If both NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both NCPs appear for hearing, see WAC 388-14A-3133; or

(c) One joint NCP may appear and represent the other joint NCP.

(9) When the CP asserts good cause level B (see WAC 388-422-0020), DCS notifies the CP that they will continue to receive documents, notices and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC ((~~388-14-201 (or as later amended)~~)) 388-14A-2041.

(10) If any party appears for the hearing and elects to proceed, absent the granting of a continuance the ALJ hears the matter and enters an initial decision and order based on the evidence presented. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear shall be limited to an appeal on the record made at the hearing.

AMENDATORY SECTION (Amending WSR 00-15-016 and 00-20-022, filed 7/10/00 and 9/25/00, effective 11/6/00)

WAC 388-14A-3205 How does DCS calculate my income? ((~~1~~)) The division of child support (DCS) calculates a parent's income using the best available information, in the following order:

((~~a~~)) (1) Actual income;

((~~b~~)) (2) Estimated income, if DCS has:

((~~i~~)) (a) Incomplete information;

((~~ii~~)) (b) Information based on the prevailing wage in the parent's trade or profession; or

((~~iii~~)) (c) Information that is not current.

((~~e~~)) (3) Imputed income under RCW 26.19.071(6).

((~~2~~)) DCS calculates support obligations using the methods set forth in WAC 388-11-205 (or as later amended.)

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else? (1) If a support order requires the noncustodial parent (NCP) to pay support to anywhere other than the Washington state support registry (WSSR), the division of child support (DCS) may serve a notice on the NCP telling the NCP to make all future payments to the WSSR.

(2) DCS may serve a notice of support debt on a noncustodial parent (NCP) as provided in RCW 74.20A.040. See WAC ((~~388-14A-3305~~)) 388-14A-3304.

(3) DCS may serve a notice of support owed on an NCP as provided in RCW 26.23.110. See WAC 388-14A-3310.

(4) When DCS serves a notice of support debt or a notice of support owed, DCS sends a notice to the payee under the order. See WAC 388-14A-3315.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3315 When DCS serves a notice of support debt or notice of support owed, we notify the custodial parent and/or the payee under the order. (1) The division of child support (DCS) sends a notice to a payee under a court order or foreign administrative order for support when DCS receives proof of service on the noncustodial parent (NCP) of:

(a) A notice of support owed under WAC ((~~388-14A-3305~~)) 388-14A-3310; or

(b) A notice of support debt under WAC ((~~388-14A-3310~~)) 388-14A-3304.

(2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the NCP.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC ((~~388-14A-3105~~)) 388-14A-3310 or a notice of support debt under WAC ((~~388-14A-3310~~)) 388-14A-3304 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(5) The effective date of a hearing request is the date DCS receives the request.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish? (1) When no public assistance is being paid to the custodial parent (CP) and the children, the division of child support (DCS) starts the claim for support as of the date DCS receives the application for nonassistance services.

(2) When another state or an Indian tribe is paying public assistance to the CP and children, DCS starts the claim for support as of the date specified by the other state or tribe.

(3) For the notice and finding of parental responsibility, WAC 388-14A-3120(9) limits the back support obligation.

(4) When the state of Washington is paying public assistance to the CP and/or the children, the following rules apply:

(a) For support obligations owed for months on or after September 1, 1979, DCS must exercise reasonable efforts to locate the noncustodial parent (NCP);

(b) DCS serves a notice and finding of financial or parental responsibility within sixty days of the date the state assumes responsibility for the support of a dependent child on whose behalf support is sought;

(c) If DCS does not serve the notice within sixty days, DCS loses the right to reimbursement of public assistance payments made after the sixtieth day and before the notice is served;

(d) DCS does not lose the right to reimbursement of public assistance payments for any period of time:

(i) During which DCS exercised reasonable efforts to locate the NCP; or

(ii) For sixty days after the date on which DCS received an acknowledgment of paternity for the child for whom the state has assumed responsibility, and paternity has not been established.

(5) The limitation in subsection (4) does not apply to:

(a) Cases in which the physical custodian is claiming good cause for not cooperating with the department; and

(b) Cases where parentage is an issue and:

(i) Has not been established by superior court order; or

(ii) Is not the subject of a presumption under RCW ((26.26.040(1)(a) or (e))) 26.26.320.

(6) DCS considers a prorated share of each monthly public assistance payment as paid on each day of the month.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3375 What kinds of credits does the division of child support give when establishing or enforcing an administrative support order? (1) After the noncustodial parent (NCP) has been advised of the requirement to make payments to the Washington state support registry (WSSR) by service of a support establishment notice, or by entry of a support order requiring payments to WSSR, the NCP may obtain credit against the support obligation only:

(a) By cash, check, electronic funds transfer, or money order payments through WSSR or payment of health insurance premiums; or

(b) As provided under subsections (3) and (6) of this section.

(2) The division of child support (DCS) allows credit against a NCP's support debt for family needs provided directly to a custodial parent (CP), a child, or provided through a vendor or third party only when the:

(a) Items are provided before service of the notice on the NCP;

(b) NCP proves the items provided were intended to satisfy the NCP's support obligation; and

(c) Items are food, clothing, shelter, or medical attendance directly related to the care, support, and maintenance of a child.

(3) After service of the notice, an NCP may obtain credit against the parent's current support obligation only when the NCP proves that the payments were made and:

(a) DCS determines there:

(i) Is no prejudice to:

(A) The CP, a child, or other person; or

(B) An agency entitled to receive the support payments.

(ii) Are special circumstances of an equitable nature justifying credit for payments.

(b) A court of competent jurisdiction determines credit should be granted after a hearing where all interested parties were given an opportunity to be heard.

(4) DCS does not allow credit for shelter payments made before service of the notice in an amount more than the greater of the:

(a) Shelter allocation in the public assistance standards for the period when payments were made; or

(b) One-half of the actual shelter payment.

(5) DCS does not allow credit for shelter payments made after service of the notice.

(6) DCS applies credits for dependent benefits allowed under RCW ((26.19.190)) 26.18.190 as required by WAC 388-14A-4200.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3800 Once a support order is entered, can it be changed? (1) Only the court that entered the order can modify a support order entered by a superior court or tribal court. If the order specifically states how the amount of support may be adjusted, the division of child support (DCS) may bring an administrative action under RCW 26.23.110 and WAC 388-14A-3310.

(2) As provided in WAC ((388-14A-3925)) 388-14A-3900, DCS may review any support order to determine whether DCS should petition to modify the support provisions of the order.

(3) Either DCS, the CP or the NCP may petition to modify an administrative order under WAC 388-14A-3925.

(4) Under appropriate circumstances, an administrative support order may be vacated. See WAC 388-14A-3700.

AMENDATORY SECTION (Amending WSR 00-09-076, filed 4/18/00, effective 5/19/00)

WAC 388-14A-3865 Duties of the administrative law judge when a party requests a temporary support order.

(1) An administrative law judge (ALJ) who hears a request for a temporary support order must:

(a) Issue a written order which either:

(i) Determines the responsible parent's current and future support obligation beginning no later than the month following the hearing; or

(ii) Denies the request for a temporary support order.

(b) Include in the temporary order:

(i) A statement that any amounts collected under the temporary order will be credited and will be offset against any debt established in the initial decision;

(ii) A statement that amounts collected will be distributed and may be subject to recovery under WAC ((~~388-14-272~~) 388-14A-5300 from the physical custodian; and

(iii) The information required by WAC ((~~388-11-210(1)(a) through (j), and 388-11-210(2))~~) RCW 26.23.050 and 26.18.170.

(c) Issue the temporary order within twenty calendar days of the date the request for temporary order is heard by the ALJ.

(2) If the temporary order is entered subsequent to a continuance, the ALJ must set a new hearing date within ninety days from the date of the date the ALJ hears the request for continuance;

(3) The ALJ must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a temporary support order.

AMENDATORY SECTION (Amending WSR 00-09-076, filed 4/18/00, effective 5/19/00)

WAC 388-14A-3875 What if a party does not agree with a temporary support order? (1) A temporary support order or the denial of a TSO is not an initial decision subject to review under WAC ((~~388-08-464~~) 388-02-0560). This means that no party has the right to file a petition for review of a temporary support order.

(2) The terms of a temporary order are not binding on the administrative law judge (ALJ) who later enters the initial decision in the matter.

(3) The issuance of a temporary support order does not affect any party's right to ask for review of the initial decision subsequently entered in the matter.

AMENDATORY SECTION (Amending WSR 01-24-083, filed 12/3/01, effective 1/3/02)

WAC 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted Internet site? (1) If the child's custodial parent (CP) requests DCS to post the NCP to the DCS most wanted Internet site (also called the "site"), the CP must:

(a) Give written permission to DCS to post the NCP on the site; and

(b) Provide a photograph of the NCP.

(2) Only the NCP's photograph appears on the site. If the CP submits a group photograph, DCS edits out everyone except the NCP.

(3) DCS may post an NCP to the site when:

(a) The NCP:

(i) Has made no payments in at least six months (intercepted IRS refunds are not considered to be payments for purposes of this section); and

(ii) Owes at least five thousand dollars in back child support; or

(b) DCS has been unable to locate the NCP after trying other means for at least twelve months, and:

(i) There is a valid support order; or

(ii) There is a valid paternity affidavit filed for a child on the case, or

(iii) The NCP is:

(A) The mother of the child(ren) on the case; or

(B) The presumed father under RCW ((~~26.26.040~~) 26.26.320).

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5000 How does the division of child support distribute support payments? (1) Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program and/or a cooperative agreement regarding the delivery of child support services; or

(e) Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information.

(2) If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter ((~~458-65-WAC~~) 63.29 RCW), the uniform unclaimed property act (~~rules~~).

(3) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.

(4) DCS changes the distribution rules based on changes in federal statutes and regulations.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5008 Can the noncustodial parent prepay support? If the division of child support (DCS) receives or collects support money representing payment on the required support obligation for future months, DCS must:

(1) Apply the support money to future months when the support debt is paid in full;

(2) Distribute the support money on a monthly basis when payments become due in the future; and

(3) Mail a notice to the last known address of the person entitled to receive support money. The notice informs the person that:

(a) DCS received prepaid support money;

(b) DCS intends to distribute the prepaid money as support payments become due in the future; and

(c) The person may request a conference board under WAC 388-14A-6400 to determine if DCS should immediately distribute the prepaid support money.

(d) DCS does not mail the notice referred to in ((WAC 388-14A-5008)) subsection (3) of this section if the prepaid support is equal to or less than one month's support obligation.

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WSR 03-17-004
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Board of Pharmacy)
 [Filed August 7, 2003, 2:24 p.m.]

Continuance of WSR 03-11-092.

Preproposal statement of inquiry was filed as WSR 03-11-092 [98-14-118].

Title of Rule: WAC 246-870-010 - 246-870-090, electronic transmission of prescription information.

Purpose: The proposed rule implements legislation to allow the electronic transfer of prescription information from practitioner's offices to pharmacies and between pharmacies.

Statutory Authority for Adoption: Chapters 69.41, 69.50 RCW, RCW 18.64.005.

Statute Being Implemented: Chapters 69.41, 69.50 RCW.

Summary: The proposed rule will ensure compliance with law on the electronic transfer of prescription information and provide guidance to the user on how compliance with the rule can be achieved. The rule also implements legislation enacted in 2001 pertaining to the faxing of controlled substance prescriptions.

Reasons Supporting Proposal: Promotes public health and safety.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Donald Williams, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4828.

Name of Proponent: Department of Health, Board of Pharmacy, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule allows the electronic transfer of prescription information from practitioner's offices to pharmacies and between pharmacies. The proposed rule provides guidance to users on how compliance with the rule can be achieved. Electronic prescription transfer programs can promote public health and safety by reducing medication errors attributed to illegible handwriting and look alike/sound alike drugs. By requiring standard data input protocols, pharmacists should not need to contact prescribers to obtain missing prescription information. This could reduce patient wait time at the pharmacy. The rule also implements legislation enacted in 2001 pertaining to the faxing of controlled substance prescriptions.

Proposal does not change existing rules. This is a new WAC section.

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

Small Business Economic Impact Statement

See WSR 03-11-092.

A copy of the statement may be obtained by writing to Lisa Salmi, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, Lisa.Salmi@doh.wa.gov, phone (360) 236-4828, fax (360) 586-4359.

RCW 34.05.328 applies to this rule adoption. The rule subjects a violator of the rule to penalty or sanction.

Hearing Location: Phoenix Inn, 12712 S.E. 2nd Circle, Vancouver, WA 98684, on September 12, 2003, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Lisa Salmi by September 1, 2003, TDD (800) 833-6388 or (360) 236-4828.

Submit Written Comments to: Lisa Salmi, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504, Lisa.Salmi@doh.wa.gov, fax (360) 586-4359, by September 1, 2003.

Date of Intended Adoption: September 19, 2003.

July 28, 2003

D. H. Williams

Executive Director

WSR 03-17-005
PROPOSED RULES
DEPARTMENT OF REVENUE
 [Filed August 7, 2003, 3:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-03-100.

Title of Rule: Amending WAC 458-12-060 (~~Listing of personal property—Burden on taxpayer to list~~) Listing of personal property; and repealing WAC 458-12-065 Listing personal property—Form and notice, 458-12-070 Listing of personal property—When due—Late filing, 458-12-075 Personal property—Filing by corporations, partnerships, firms or agents, and 458-12-080 Listing of personal property—Manufacturers.

Purpose: To provide information about the listing of personal property for purposes of ad valorem property taxation.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Statute Being Implemented: RCW 84.40.020, 84.40-040, 84.40.060, 84.40.070, 84.40.120, 84.40.185, 84.40.190, 84.40.200, 84.40.210, 84.40.340, and 84.44.080 as they apply to the listing of personal property for property taxation.

Summary: These rules provide information about the listing of personal property for purposes of ad valorem property taxation.

Reasons Supporting Proposal: These rules need to be revised to incorporate changes to the statutes being implemented. In addition, consolidating these rules into a single document will provide information about the listing of personal property in a more efficient and user-friendly manner by reducing the need for readers to consult multiple rules for information about the listing of personal property.

Name of Agency Personnel Responsible for Drafting: Mark Mullin, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6112; Implementation and Enforcement: Gary O'Neil, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules provide important information for county assessors, their staff, taxpayers, and the general public regarding the listing of personal property for purposes of ad valorem property taxation. These rules provide information about who is required to list personal property with the county assessor, how property should be identified on the listing form and what other information should be included on the form, when the listing is due, the assessor's duty to maintain a list of persons liable to assessment of personal property, the assessor's duties upon receipt of a listing, and specific information regarding the listing of personal property by manufacturers.

These rules are being revised to reflect legislation affecting the statutes being implemented, including chapter 302, Laws of 2003 (SHB 1278), which eliminated the requirement that personal property listing forms be signed and verified under penalty of perjury, provided that assessors may electronically transmit listing forms to property owners, and provided that property owners may electronically transmit listing forms to the assessor. In addition, these rules are being consolidated into a single comprehensive document, which will provide information about the listing of personal property in a more efficient and user-friendly manner by reducing the need for readers to consult multiple rules for information about the listing of personal property.

Proposal Changes the Following Existing Rules: This is a revision to update information and to consolidate WAC 458-12-060, 458-12-065, 458-12-070, 458-12-075, and 458-12-080 into a single rule. As a result, WAC 458-12-060 will address the information currently contained in WAC 458-12-065, 458-12-070, 458-12-075, and 458-12-080, and these latter rules will be cancelled.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposed WAC 458-12-060 does not impose a responsibility or require a small business to perform something that is not already required by law.

RCW 34.05.328 does not apply to this rule adoption. WAC 458-12-060 is an interpretive rule as defined in RCW 34.05.328.

Hearing Location: Capital Plaza Building, 4th Floor, Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on Thursday, September 25, 2003, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

Submit Written Comments to: Mark Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail MarkM@dor.wa.gov, by September 25, 2003.

Date of Intended Adoption: October 2, 2003.

August 7, 2003

Alan R. Lynn

Rules Coordinator

Legislation and Policy Division

AMENDATORY SECTION (Amending Order PT 68-6, filed 4/29/68)

WAC 458-12-060 Listing of ~~((personality—Burden on taxpayer to list)) personal property.~~ ~~((Every person, firm or corporation regardless of residency who owns or controls personal property not specifically exempted by law located in this state as of 12 noon on the first day of January shall be required to annually submit a personal property listing and statement. Such listing and statement shall be due regardless of whether or not the assessor has provided notice of such listing to the individual taxpayer. (RCW 84.40.190.))~~ (1) Introduction. This rule provides information about the listing of personal property subject to ad valorem taxation. This rule also provides specific information about the listing of personal property by manufacturers. For information about the listing of ships and vessels subject to property taxation, refer to WAC 458-17-101.

(2) Who is required to list personal property with the county assessor? Every person is required to list all taxable (i.e., nonexempt) personal property in the person's ownership, possession, or control. RCW 84.40.185 and 84.40.190. Every person required to list personal property must deliver to the county assessor a form listing all of the person's taxable personal property that was located in the county as of 12:00 p.m. on January 1st of the assessment year. The listing may be delivered to the assessor either in person, by mail, or by electronic transmittal (e.g., Internet-based application, e-mail, or facsimile) if available. The listing does not need to be signed or verified under penalty of perjury. (Chapter 302, Laws of 2003.)

For purposes of this rule, the term "person" includes natural persons and artificial persons such as partnerships, corporations, limited liability companies, associations, trusts, and estates.

(a) How should property be identified on the listing form? Each category of taxable personal property must be separately identified on the listing form. For example, office equipment must be separately identified as computers, desks, facsimile machines, and the like. RCW 84.08.020 and 84.40.040.

(b) What other information must be included in the personal property listing? In addition to a listing of all items of taxable personal property identified by category, a listing form must also include:

(i) The date of acquisition for each item of personal property; and

(ii) The total original cost of each item of personal property. The value of any trade-in is not to be deducted from the acquisition cost. For purposes of listing taxable personal property, the total original cost of an item includes all costs associated with making the property operational but excludes sales tax. For example, installation, freight, and engineering

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charges are costs that may be incurred while placing property into operation. RCW 84.08.020 and 84.40.040.

(c) **When are personal property listings due?** RCW 84.40.040 provides that personal property listings are due on or before April 30th. A penalty may be added to the amount of tax assessed if listing is not made by the due date. RCW 84.40.130. Refer to WAC 458-12-110 for detailed information about the penalties imposed under RCW 84.40.130.

(d) **How do the exemptions for household goods, furnishings, and personal effects and for the head of a family affect listing?** RCW 84.36.110 provides exemptions for the head of a family and for household goods, furnishings, and personal effects. Information about these exemptions and their effect on listing is provided in WAC 458-16-115.

(e) **What if the assessor believes that an incomplete or inaccurate listing has been made?** When the assessor believes that an incomplete or inaccurate listing has been made, the assessor has the following options:

(i) If the assessor believes that a person listing personal property for himself or herself, or on behalf of a principal (e.g., any other person, company, or corporation), has not made a full, fair, and complete listing of such property, the assessor may examine the person under oath in regard to the amount of the property the person is required to list. If the person refuses to answer under oath, the assessor may list the property of that person, or of that person's principal, according to the assessor's best judgment and information. RCW 84.40.110. Any oath authorized to be administered under Title 84 RCW may be administered by any assessor or deputy assessor, or by any other officer having authority to administer oaths. Any person willfully making a false list, schedule, or statement under oath is subject to the penalties of perjury. RCW 84.40.120.

(ii) For the purpose of verifying any list, statement, or schedule required to be furnished to the assessor by any taxpayer, any assessor or the assessor's trained and qualified deputy may visit, investigate, and examine any personal property at any reasonable time. For the purposes of this verification, the records, accounts, and inventories, which will aid in determining the amount and valuation of the property, will also be subject to visitation, investigation, and examination. The visitation, investigation, and examination may be performed at any office of the taxpayer in this state. The taxpayer is required to furnish or make available all the information pertaining to property in this state to the assessor even though the records may be maintained at any office outside this state. RCW 84.40.340.

(f) **What if the owner of personal property moves to another county or into this state after January 1st?** The owner of taxable personal property who moves from one county to another between January 1st and July 1st will be assessed in the county whose assessor first calls upon the owner to make a listing. The owner of personal property who moves into this state from another state between January 1st and July 1st must make a listing of taxable personal property that the person owned on January 1st of the assessment year with the assessor in the county in which the person resides.

If the owner of personal property moves to another county or into this state after January 1st and can satisfy the assessor that the owner's property has been assessed and will

be held liable for the tax on the current year in another state or county, the owner cannot be assessed again for the current year. RCW 84.44.080.

(3) **Assessor's duty to maintain list of persons liable to assessment.** Assessors must maintain an alphabetical list of the names and last known addresses of all property owners in the county who are subject to assessment of personal property. On or before January 1st of each year, the assessor is required to mail or electronically transmit (e.g., e-mail) a notice to such persons that a listing is required along with a listing form. The notice and listing form must be in accordance with forms prescribed by the department of revenue. If practicable, the notice and listing form mailed or electronically transmitted to each taxpayer must include a copy of the previous year's listing. RCW 84.40.040. A copy of the taxpayer's previous year's listing must also be provided to the taxpayer upon the taxpayer's request.

(a) **What if I do not receive a listing form from the assessor?** Property owners who are subject to assessment of personal property and any other person required to list personal property are responsible for making a listing regardless of whether or not the person receives a listing form from the assessor.

(b) **What are the assessor's duties upon receipt of a personal property listing?** Upon receipt of a personal property listing, the assessor will determine the true and fair value of the property listed and enter one hundred percent of the true and fair value of the property on the assessment roll opposite the name of the party assessed (i.e., the owner of the property). The assessor may, after giving written notice of the action to the person assessed, add to the assessment list any taxable property that should have been included in the list but was omitted by the taxpayer. RCW 84.40.040.

RCW 84.40.200 requires that a copy of the completed personal property listing containing the assessor's determination of the true and fair value of the property assessed must be provided to the person assessed, or to the person listing the property. The information may be provided in person, by mail, or by electronic transmittal if available.

(4) **Listing of personal property by manufacturers.** This subsection provides specific information about the listing of taxable personal property by manufacturers. A manufacturer must make and deliver to the assessor a personal property listing. The listing is made in the county where the personal property is situated. RCW 84.44.010. The listing must include the manufacturer's stock, engines, machinery, and other nonexempt personal property, together with the date of acquisition and total original cost for each item. Detailed information about the cost of personal property is contained in subsection (2)(b)(ii) of this rule. Manufacturer's stock that constitutes "business inventories," as that term is defined in RCW 84.36.477, is exempt from ad valorem taxation and need not be included in the personal property listing.

Fixtures considered by the assessor as part of any parcel of real property should not be included in a manufacturer's personal property listing. For detailed information about fixtures or trade fixtures, refer to WAC 458-12-005 and 458-12-010.

(a) **Who is a "manufacturer"?** A "manufacturer" is any person who purchases, receives, or holds personal prop-

erty of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by so doing. RCW 84.40.210.

(b) What is "manufacturer's stock"? "Manufacturer's stock" includes all articles purchased, received, or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying, or refining.

(c) What if property identified on the personal property listing has also been listed and assessed as part of any parcel of real property? On receipt of the manufacturer's personal property listing, the assessor will delete from the assessment the value of any engines and machinery that the assessor knows to have been assessed as part of any parcel of real property (i.e., as a fixture). A copy of the corrected assessment will be provided to the manufacturer.

WSR 03-17-016
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed August 12, 2003, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-05-072.

Title of Rule: Workers' compensation classification plan, chapter 296-17 WAC, General reporting rules, classifications, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance.

Purpose: Agency proposes to revise the general reporting rules and classification plan applicable to chapter 296-17 WAC for Workers' Compensation Insurance, underwritten by the Department of Labor and Industries. Specifically, to amend seven general reporting rules, repeal one existing risk classification definition rule, and amend twenty-nine risk definitions.

Statutory Authority for Adoption: RCW 51.04.020 General authority, 51.16.035 Classification plan/base rate, 51.12.120 Extraterritorial agreements.

Statute Being Implemented: RCW 51.16.035.

Summary: The department proposes to amend seven general reporting rules, repeal one existing risk classification definition, and amend twenty-nine risk classification definitions applicable to chapter 296-17 WAC.

Reasons Supporting Proposal: RCW 51.16.035 requires that the department maintain actuarial solvency of the industrial insurance (workers' compensation) funds and maintain a classification plan. Adjustments to the classification and rating plan reflect changes in Washington industries. Revisions to general reporting rules and risk classification definitions are being amended to provide greater detail and clarity to the rules. Codification of the reciprocal agreements and extraterritorial coverages into rule form is required by RCW 51.12-120.

Name of Agency Personnel Responsible for Drafting: Ken Woehl, Tumwater, Washington, (360) 902-4775; Imple-

mentation: Kathy Kimbel, Tumwater, Washington, (360) 902-4739; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The department is required by RCW 51.16.035 to establish and maintain a workers' compensation insurance classification plan that classifies all occupations or industries within the state, and to set basic rates of premium for all classifications. The department proposes to revise general reporting rules and classification plan. The rule proposals are intended to better clarify certain general reporting rules, to distribute the costs fairly among employers, and to ensure actuarial solvency. This includes amending seven general reporting rules, repealing one risk classification definition, and amending twenty-nine risk classification definitions applicable to chapter 296-17 WAC for workers' compensation insurance underwritten by the Department of Labor and Industries.

These changes are brought about by various elements. (1) The department has conducted a review of certain classifications and determined that certain revisions are needed. (2) The addition of new emerging industries to the classification plan. (3) Requests from stakeholders for certain changes or clarification in rules. (4) To continue to clarify, while providing adequate detail, in compliance with clear rule writing.

Proposal Changes the Following Existing Rules:
Amend General Reporting Rules:

WAC 296-17-31002 General rule definitions, redefine actual hours worked.

WAC 296-17-31007 Owner coverage, define date of injury.

WAC 296-17-31009 Reciprocal agreements, add reciprocity and extraterritorial agreements per RCW 51.12.120.

WAC 296-17-31018 Exception classifications, add special exception for construction superintendent or project manager.

WAC 296-17-31021 Units of exposure, define units of exposure for pilots and flight crew.

WAC 296-17-35201 Recordkeeping and retention and 296-17-35203 Special reporting instruction, clarification.

Amend Risk Classification Rules:

WAC 296-17-501 Classification 0101 Excavation and land clearing, add a new sub code to existing classification.

WAC 296-17-519 Classification 0504 Pressure washing and sandblasting, clarification.

WAC 296-17-521 Classification 0508 Crane or derrick installation, clarification.

WAC 296-17-52108 Classification 0516 Building repair and carpentry, clarification.

WAC 296-17-52109 Classification 0517 Factory built housing, clarification, and add a new sub[code] to existing classification.

WAC 296-17-52110 Classification 0518 Building construction, add a new sub code to existing classification.

WAC 296-17-527 Classification 0607 Advertising displays, include merchandising activities.

PROPOSED

WAC 296-17-536 Classification 1101 Driver delivery sales, clarification for merchandising activities.

WAC 296-17-538 Classification 1103 Pallet recycle services, clarification.

WAC 296-17-544 Classification 1404 Cabulance and paratransit, remove outdated reference to paratransit businesses.

WAC 296-17-57001 Classification 2907 Wood fixtures, clarification.

WAC 296-17-583 Classification 3406 Automotive service stations, clarification.

WAC 296-17-594 Classification 3602 Telegraph component manufacturing, clarification.

WAC 296-17-618 Classification 3905 Restaurants, clarification.

WAC 296-17-644 Classification 4803 Orchards, add a new sub code to existing classification.

WAC 296-17-64999 Classification 4900 Construction superintendents, clarification.

WAC 296-17-659 Classification 5001 Logging, clarification.

WAC 296-17-66002 Classification 5004 Reforestation, repeal sub code for fertilizing service and move to another sub code.

WAC 296-17-66003 Classification 5005 Logging and/or tree thinning—Mechanical operations, clarification.

WAC 296-17-67601 Classification 5208 Iron or steel work, remove an incorrect word.

WAC 296-17-677 Classification 5301 Service organizations, clarification.

WAC 296-17-680 Classification 6103 Churches-clerical office, clarification.

WAC 296-17-681 Classification 6104 Churches-all other employees, clarification.

WAC 296-17-698 Classification 6303 Home health care services, clarification.

WAC 296-17-72201 Classification 6510 Domestic servants, clarification.

WAC 296-17-72202 Classification 6511 Chore services, clarification.

WAC 296-17-724 Classification 6602 Janitorial services, clarification.

WAC 296-17-729 Classification 6607 Card rooms, remove food and beverage operations to be separately rated.

WAC 296-17-752 Classification 6907 Household movers, capping hours at 520 hours per quarter.

Repeal Risk Classification Rules:

WAC 296-17-52001 Classification 0506 Building demolition and wrecking.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Regulatory Fairness Act requires that the economic impact of proposed regulations be analyzed in relation to small business, and outlines the information that must be included in a small business economic impact statement (SBEIS). Preparation of an SBEIS is required when a proposed rule has the potential of placing a more than minor economic impact on business.

However, since the proposed rule would not place a more than minor economic impact on business, the preparation of a comprehensive SBEIS is not required.

RCW 34.05.328 does not apply to this rule adoption. RCW 51.16.035 requires the Department of Labor and Industries to establish a classification plan to include general reporting rules, risk classification definitions, and premium rates for all classifications in accordance with recognized principles of insurance.

The rule is significant under RCW 34.05.328, however, this rule is exempt from the significant rule-making criteria because RCW 34.05.328 (5)(b)(vi) establishes that rules that set or adjust fees or rates pursuant to legislative standards are exempt from the criteria outlined in RCW 34.05.328.

Hearing Location: Tumwater Labor and Industries Office, 7273 Linderson Way S.W., Room S118, Tumwater, WA 98504-4851, on September 26, 2003, at 10 a.m.

Assistance for Persons with Disabilities: Contact Office of Information and Assistance, by September 29, 2003, TDD (360) 902-5797.

Submit Written Comments to: Department of Labor and Industries, Ken Woehl, Classification Services Section, P.O. Box 44148, Olympia, WA 98504-4148, or e-mail to WOEH235@lni.wa.gov or fax (360) 902-4729, by September 29, 2003.

Date of Intended Adoption: November 12, 2003.

August 12, 2003

Paul Trause

Director

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-31002 General rule definitions. In developing the general reporting rules and classifications which govern Washington's workers' compensation classification plan, we have used certain words or phrases which could have several meanings. Many of these words or phrases are defined by law in the Revised Code of Washington (*Title 51 RCW*) and can be found in **Appendix A** of this manual. Some words, however, are not defined by law. To reduce the misunderstanding which can result by our use of certain words or phrases not defined in law (*Title 51 RCW*), we have developed definitions which will govern what these words and phrases mean for purposes of this chapter (*chapter 296-17 WAC*).

The following words or phrases mean:

Account: A unique numerical reference that we assign to you that identifies your business or businesses and allows us to track exposure that you report to us and losses (*claims*) which we pay on your behalf.

Actual hours worked: A worker's composite work period (~~during each work day, including all of the time the employee performed work, and all periods of mandatory presence at the worksite. Actual hours worked does not include nonpaid lunch periods~~) beginning with the starting time of day that the employee's work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by an employee. The following example is provided to illustrate how work hours are to be reported. If you have questions on reporting please contact our underwriting section at (360) 902-4817.

Example: A carpet installer arrives at the employer's place of business at 8:00 a.m. to pick up supplies, carpet, and the job assignment. The carpet installer arrives at the job site at 9:00 a.m. and works until 12 noon. The installer takes a half hour nonpaid lunch period and resumes working from 12:30 p.m. until 4:00 p.m. The installer then returns to the employer's premise to drop off supplies and carpet waste. The installer leaves the employer's premise at 5:30 p.m. The employer is to report nine hours of work time regardless of whether the employee is paid by the hour or by the number of yards of carpet installed.

All: When a classification contains a descriptive phrase beginning with "all" such as in "all employees," "all other employees," "all operations," or "all work to completion," it includes all operations and employments which are normally associated with the type of business covered by the classification. This condition applies even if the operations or employments are physically separated or conducted at a separate location. Operations or employments are to be classified separately when the classification wording requires it, or when the operations or employments are not incidental to, and not usually associated with, the business described by the classification.

And: When this word is contained in any rule it is to be considered the same as the phrase "and/or."

Basic classification: A grouping of businesses or industries having common or similar exposure to loss without regard to the separate employments, occupations or operations which are normally associated with the business or industry. Basic classifications describe a specific type of business operation or industry such as mechanical logging, sawmills, aircraft manufacturing, or restaurants. In most business operations some workers are exposed to very little hazard, while others are exposed to greater hazard. Since a basic classification reflects the liability (*exposure to hazard*) of a given business or industry, all the operations and occupations that are common to an industry are blended together and included in the classification. The rate for a basic classification represents the average of the hazards within the classification. All classifications contained in this manual are considered basic classifications with the exception of classifications 4806, 4900, 4904, 5206, 6301, 6302, 6303, 7101, and temporary help classifications 7104 through 7121. Classification descriptions contained in WAC 296-17-501 through 296-17-779, establish the intended purpose or scope of each classification. These descriptions will routinely include types of businesses, operations, processes or employments which are either included or excluded from the classification. These references are not to be considered an all inclusive listing unless the classification wording so specifies.

But not limited to: When this phrase is used in any rule in this manual it is not to be interpreted as an all inclusive list. Such a list is meant to provide examples of operations, employments, processes, equipment or types of businesses which are either included or excluded from the scope of the classification.

Excludes or excluding: When a classification contains a descriptive phrase beginning with "excludes" or "excluding" such as "excluding drivers or delivery," "excluding second hand appliance stores," or "excludes construction opera-

tions," you must report those operations in a separate classification. If a business fails to keep the records required in the auditing recordkeeping section of this manual and we discover this, we will assign all workers hours for which records were not maintained to the highest rated classification applicable to the work which was performed.

Exposure: Worker hours, worker days, licenses, material, payroll or other measurement which we use to determine the extent to which an employer's workers have been exposed to the hazards found within a particular business or industry classification.

Governing classification: Is the basic classification assigned to a business that produces the largest number of worker hours during a calendar year (*twelve months*). The governing classification rule applies only to situations where a business has been assigned two or more basic classifications and is used for the sole purpose of determining what classification applies to employees and covered owners who support two or more operations. The governing classification rule is not to be used to determine the basic classification of a business.

Includes or including: When a classification contains a descriptive phrase beginning with "includes" or "including" such as "including clerical office," "including meter readers," or "includes new construction or extension of lines," you must report these operations in that basic classification even though they may be specifically described by some other classification contained in this manual or may be conducted at a separate location.

Industrial insurance: Refer to the definition of "workers' compensation insurance."

N.O.C.: This abbreviation stands for not otherwise classified. Classifications are often worded in this way when there are many variations of the same general type of business and it would be nearly impossible to list all the variations. Before a classification designated with N.O.C. is used, all other related classifications must be reviewed to determine if the business or industry is specified in another classification.

Example: You operate a retail store that sells greeting cards. In our search to classify your business we come across a classification that covers retail stores N.O.C. Before our underwriter assigns this classification to your business, they would look at other retail store classifications to see if a more precise classification could be found. In our review we note several classifications such as grocery and department stores where greeting cards are sold. None of these classifications, however, specify that they include stores that exclusively sell greeting cards. Classification 6406 "Retail stores, N.O.C.," on the other hand, contains language in its description that states it includes stores that sell items such as greeting cards, table top appliances, tropical fish and birds, and quick print shops. We would assign classification 6406 "Retail stores, N.O.C." to your business.

Or: Refer to the definition of the word "and."

Policy manager: An individual who works in the underwriting section of the department of labor and industries and manages an employer's workers' compensation insurance account. A policy manager is also referred to as an underwriter.

Premium: The total amount of money owed to the department of labor and industries as calculated by multiplying the assigned classification composite rate by the total units of exposure.

Rate: The amount of premium due for each unit of exposure. All rates are composite rates per worker hour except as otherwise provided for by other rules in this manual.

Risk: All insured operations of one employer within the state of Washington.

Temporary help: The term "temporary help" means the same as temporary service contractors defined in (*Title 19 RCW*) and applies to any person, firm, association or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary help basis to others.

Underwriter: Refer to the definition of a "policy manager."

Work day: Any consecutive twenty-four hour period.

Work hour: Refer to the definition of "actual hours worked."

Workers' compensation insurance: The obligation imposed on an employer by the industrial insurance laws (*Title 51 RCW*) of the state of Washington to insure the payment of benefits prescribed by such laws.

AMENDATORY SECTION (Amending WSR 99-24-055, filed 11/29/99, effective 12/31/99)

WAC 296-17-31007 Owner coverage. (1) **As a business owner, can I buy workers' compensation insurance to cover myself?**

Yes. If you are a sole proprietor, partner, corporate officer, or member of a limited liability company you may not be required to have industrial insurance coverage as provided in RCW 51.12.020. In these instances, you can still obtain workers' compensation coverage from us. We refer to this coverage as optional coverage since as the owner/officer, you are not required to have this insurance. Because owner insurance coverage is optional, you must meet certain conditions and requirements which are detailed on the *application for owner/officer optional coverage*. These requirements include:

- Completing an application for optional owner/officer coverage;
- Reporting owner/officer hours in the classification assigned to your business that is applicable to the work being performed by the owner/officer;
- Submitting a supplemental report which lists the name of each covered owner/officer; and
- Reporting four hundred eighty hours or actual hours worked each quarter for each covered owner/officer and in the applicable workers' compensation classification code.

(2) **When will my owner/officer coverage become effective?**

Your coverage will become effective upon receipt of your application in the department in writing or by fax unless you indicate a future date. However, no such person or ben-

eficiaries thereof shall be entitled to benefits unless the date of injury were the next day or later after coverage was elected. We will not make coverage effective on a date prior to our receipt of your completed application for owner/officer coverage.

(3) **Where can I obtain an application for owner/officer coverage?**

To obtain a copy of this application, contact your local labor and industries office. We are listed in the government pages of your local directory or you can call our underwriting section at (360) 902-4817.

AMENDATORY SECTION (Amending 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-31009 Reciprocal agreements. (1) **Occasionally one of my Washington employees will do some work for me in another state. Do I need to buy workers' compensation insurance in the state where they are working?**

In some cases, we can provide workers' compensation insurance coverage for your Washington based employees working for you on a temporary assignment in another state. We have formal written agreements with some states which detail coverage and jurisdiction issues. We refer to these formal agreements as "*reciprocal agreements*." If you have questions regarding temporary coverage in another state you should contact your policy manager for assistance. The name and telephone number of your policy manager can be found on your quarterly premium report or annual rate notice. For your convenience you can call us at (360) 902-4817 for assistance and we will put you in contact with your assigned policy manager.

(2) **What is a reciprocal agreement?**

A reciprocal agreement is a contract between the department of labor and industries acting on behalf of the state of Washington and another state. The primary purpose of the agreement is to identify which state will be responsible for paying benefits if one of your employees is injured. This also limits your insurance costs. If you employ only Washington workers you need to buy workers' compensation insurance only from us.

(3) **You mentioned that there are circumstances when you can provide insurance coverage. What are the circumstances?**

The actual circumstances will vary by state. In most cases we will look at:

- The work to be performed,
- The location where the work is to be performed,
- Where the employee was first hired to work,
- How long the employee will be working in the other state.

(4) **Which states have reciprocal agreements with Washington?** We currently have reciprocal agreements with the following states:

- ~~Idaho~~
- ~~Montana~~
- ~~Nevada~~
- ~~North Dakota~~
- ~~Oregon~~

• South Dakota

• Wyoming

(5) Can I get a copy of a reciprocal agreement? You can get a copy of a reciprocal agreement by calling your policy manager. The name and telephone number of your policy manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at (360) 902-4817 and we will put you in contact with your assigned policy manager.))

• IDAHO

RECIPROCITY AGREEMENT BETWEEN IDAHO INDUSTRIAL ACCIDENT BOARD AND WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES IN REGARD TO EXTRATERRITORIAL JURISDICTION

This agreement is made between the industrial accident board of the state of Idaho (herein, for convenience, abbreviated Idaho IAB) and the department of labor and industries of the state of Washington (DOLAI), as administrators of the worker's compensation (WC) laws of their respective states, each of said parties being authorized to enter into reciprocity agreements with other states in matters involving their respective extraterritorial jurisdictional powers and duties.

PREMISES:

1. Employers in each state on occasion find it necessary or expedient to have their workers perform services in the other state. The parties are desirous of entering into an agreement whereby the employers and workers of each of the respective states may continue to be entitled to the protection and benefits provided by the WC laws of their respective home states.

DEFINITIONS:

2. For the purposes of this agreement: Person whose employment is "principally localized" in Idaho shall be deemed to be an Idaho worker. A person's employment is "principally localized" in Idaho when:

(1) His/her employer has a place of business in Idaho and he/she regularly works (or it is contemplated that he/she shall regularly work) at or from such place of business; or

(2) If clause (1) foregoing is not applicable, he/she is domiciled and spends a substantial part of his/her working time in the service of his/her employer in Idaho.

A person whose employment is "principally localized" in Washington shall be deemed to be a Washington worker. A person's employment is "principally localized" in Washington when:

(1) His/her employer has a place of business in Washington and he/she regularly works (or it is contemplated that he/she shall regularly work) at or from such place of business; or

(2) If clause (1) foregoing is not applicable, he/she is domiciled and spends a substantial part of his/her working time in the service of his/her employer in Washington.

An employee whose duties require him/her to travel regularly in the service of his/her employer in more than one state may, by written agreement with his/her employer, designate the state in which his/her employment shall be "principally localized." Unless the state so designated refuses jurisdiction, such agreement shall be given effect under the instant agreement.

In cases where none of the foregoing tests can be made to apply, the person shall be deemed to be a worker of whichever jurisdiction in which his/her contract of hire was made.

3. This agreement shall not apply to Washington workers of an Idaho employer working in the state of Washington, nor to Idaho workers of a Washington employer working in the state of Idaho: Provided, however, That the right and remedies of both Idaho and Washington workers engaged in the construction and maintenance of interstate structures such as dams, bridges, trestles and similar structures between the two states, may be regulated by specific separate reciprocity agreements.

THE PARTIES AGREE:

4. The Idaho IAB in keeping with the provision of the Idaho WC law will assume and exercise extraterritorial jurisdiction of compensation claims on any Idaho worker injured in the state of Washington and of his/her dependents upon any Idaho employer under its jurisdiction and the latter's surety or insurance carrier.

5. The Washington DOLAI in keeping with the provisions of the Washington WC law will provide protection of any Washington employer under its jurisdiction and benefits to any Washington worker injured in the course of his/her employment while working in the state of Idaho.

6. A Washington employer while performing work in the state of Idaho shall be subject to the safety codes of the state of Idaho, AND an Idaho employer working in the state of Washington shall be subject to the safety codes of the state of Washington.

7. Employers' premium payments on the out-of-state earnings of Idaho workers shall be due and payable to the respective employers' insurance carriers AND premium payments of the out-of-state earnings of Washington workers shall be made to the Washington DOLAI.

8. For the purpose of implementing the terms of the agreement, the parties agreed upon the following procedures:

The Idaho IAB will upon request and on behalf of an Idaho employer issue a certificate of extraterritorial coverage to the Washington DOLAI AND the latter upon request and on behalf of a Washington employer will issue a certificate of extraterritorial coverage to the Idaho IAB. Such certificates may be canceled or revoked at the discretion of the issuing agency. Due notice of issuance, modification and cancellation of any such certificate shall be given to the employer and to his/her insurance carrier, if any.

9. This agreement shall be effective January 1, 1971, and shall remain in full force and effect until superseded or modified by the parties hereto.

• MONTANA

THE WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES AND THE DEPARTMENT OF LABOR OF THE STATE OF MONTANA, DESIRING TO RESOLVE JURISDICTIONAL ISSUES THAT ARISE WHEN WORKERS FROM ONE STATE TEMPORARILY WORK IN ANOTHER, ENTER INTO THE FOLLOWING AGREEMENT:

WHO IS AFFECTED BY THIS AGREEMENT?

This agreement affects the rights of workers and their employers when the contract of employment arises in one state and the worker is temporarily working in the other. To be covered by this agreement, an employer must be consid-

ered an employer under both Washington's and Montana's workers' compensation laws, and workers must be considered workers under both Washington's and Montana's workers' compensation laws.

BASIC RULE:

When a worker's contract of hire arises in one state and the worker is temporarily working in the other state:

Employers are required to secure the payment of workers' compensation benefits under the workers' compensation law of the state the contracts of employment arose in, and pay premiums if not self-insured for the work performed while in the other state; and

Workers' compensation benefits for injuries and occupational diseases arising out of the temporary employment in the other state are payable under the workers' compensation law of the state the contract of employment arose in, and that state's workers' compensation law provides the exclusive remedy available to the injured worker.

Any Washington employer while performing work in the state of Montana will be subject to the safety codes of the state of Montana. Any Montana employer while performing work in the state of Washington will be subject to the safety codes of the state of Washington.

Washington and Montana both agree to notify the other state in writing of any changes to their law that may affect this agreement within thirty days of that law change.

EXCLUSIONS FROM THE BASIC RULE:

This agreement does not apply to Washington workers of Montana employers while working in the state of Washington nor to Montana workers of Washington employers while working in the state of Montana.

Washington employers engaged in the construction industry as defined in Section 39-71-116 MCA and working in Montana must obtain coverage for workers so employed in Montana under the provisions of Montana's Workers' Compensation Act.

Montana employers engaged in the construction industry and working in Washington must obtain coverage for workers so employed in Washington under the provisions of Washington's Industrial Insurance Act.

CERTIFICATES OF COVERAGE:

Upon request, each state will issue certificates of extraterritorial coverage to the other when appropriate. The issuing state may cancel these certificates at any time.

AGREEMENT:

This agreement retroactively supersedes the previous agreement between Washington and Montana in effect July 1, 1968. This agreement is effective November 1, 2000, and will remain in effect unless terminated, modified, or amended in writing between the parties. Either party may terminate the agreement, without cause, by giving written notice to the other party at least thirty days in advance of such termination.

This agreement creates no rights or remedies, causes of action, or claims on behalf of any third person or entity against Washington or Montana and is executed expressly and solely for the purpose of coordinating issues of workers' compensation coverage between the states.

Any communication between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing the same, postage pre-

paid, to the addresses or numbers set forth below on the signature pages or as subsequently modified in writing by the party to be noticed.

• NEVADA

RECIPROCITY AGREEMENT BETWEEN THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON AND THE NEVADA INDUSTRIAL COMMISSIONS OF THE STATE OF NEVADA REGARDING EXTRATERRITORIAL RECIPROCITY

WHEREAS, The worker's compensation law of the state of Washington authorizes the director of labor and industries to enter into agreement of reciprocity for worker's compensation purposes with other states; and

WHEREAS, The worker's compensation law of the state of Nevada authorizes the Nevada industrial commission to enter into agreements of reciprocity for worker's compensation purposes with other states; and

WHEREAS, Employers who conduct operations in the state of Washington are required on occasion to have Washington workers perform services in the state of Nevada; and

WHEREAS, Employers who conduct operations in the state of Nevada are required on occasion to have Nevada workers perform services in the state of Washington; and

WHEREAS, The department of labor and industries of the state of Washington and the Nevada industrial commission of the state of Nevada are desirous of entering into an agreement whereby the employers and workers of each of the respective states may continue to be entitled to the protection and benefits provided by the worker's compensation laws of their respective home state.

IT IS HEREBY AGREED That for the purpose of this agreement of reciprocity, a Washington worker is a person hired to work in the state of Washington, and a Nevada worker is a person hired to work in the state of Nevada.

IT IS FURTHER AGREED BETWEEN The department of labor and industries of the state of Washington and the Nevada industrial commission of the state of Nevada.

That the department of labor and industries of the state of Washington in keeping with the provisions of the Washington worker's compensation law will provide protection for any Washington employer under its jurisdiction and benefits to any of the Washington workers who may be injured in the course of employment while working temporarily in the state of Nevada. In the event of an injury to one of these workers, his/her exclusive remedy would be that provided by the worker's compensation law of the state of Washington.

That the Nevada industrial commission of the state of Nevada in keeping with the provisions of the Nevada worker's compensation law will provide protection for any Nevada employer under its jurisdiction, and benefits to any of its workers who may be injured in the course of employment while working temporarily in the state of Washington. In the event of injury to one of these workers, his/her exclusive remedy would be that provided by the worker's compensation law of the state of Nevada.

That the department of labor and industries of the state of Washington will upon request and on behalf of the Washington employer issue a certificate of extraterritorial coverage to the Nevada industrial commission of the state of Nevada, and that the Nevada industrial commission of the state of Nevada will upon request and on behalf of the Nevada employer issue

a certificate of extraterritorial coverage to the department of labor and industries of the state of Washington.

That these certificates of extraterritorial coverage shall be issued and/or canceled at the discretion of the Washington department of labor and industries or the Nevada industrial commission.

That the Nevada employer while performing work in the state of Washington will be subject to the safety codes of the state of Washington, and that the Washington employer while performing work in the state of Nevada will be subject to the safety codes of the state of Nevada.

IT IS MUTUALLY UNDERSTOOD, That this agreement will not apply to Nevada workers of the Washington employer working in the state of Nevada, nor to the Washington workers of the Nevada employer working in the state of Washington.

IT IS ALSO MUTUALLY UNDERSTOOD, That premium payments on the out-of-state earnings of Washington workers will be made to the Washington department of labor and industries, and that premium payments on the out-of-state earnings of Nevada workers will be made to the Nevada industrial commission of the state of Nevada.

IT IS FURTHER AGREED That this statement of extraterritorial reciprocity shall be effective April 1, 1970, and further that this agreement shall remain in full force and effect until superseded or modified by the parties to this agreement.

• NORTH DAKOTA

THE WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES AND THE NORTH DAKOTA WORKERS COMPENSATION, DESIRING TO RESOLVE JURISDICTIONAL ISSUES THAT ARISE WHEN WORKERS FROM ONE STATE TEMPORARILY WORK IN ANOTHER, ENTER INTO THE FOLLOWING AGREEMENT:

WHO IS AFFECTED BY THIS AGREEMENT?

This agreement affects the rights of workers and their employers when the contract of employment arises in one state and the worker is temporarily working in the other. To be covered by this agreement, an employer must be considered an employer under both Washington's and North Dakota's workers' compensation laws, and workers must be considered workers under both Washington's and North Dakota's workers' compensation laws.

BASIC RULE:

When a worker's contract of hire arises in one state and the worker is temporarily working in the other state:

Employers are required to secure the payment of workers' compensation benefits under the workers' compensation law of the state the contracts of employment arose in, and pay premiums if not self-insured for the work performed while in the other state; and

Workers' compensation benefits for injuries and occupational diseases arising out of the temporary employment in the other state are payable under the workers' compensation law of the state the contract of employment arose in, and that state's workers' compensation law provides the exclusive remedy available to the injured worker.

Any Washington employer while performing work in the state of North Dakota will be subject to the safety codes of the state of North Dakota. Any North Dakota employer while

performing work in the state of Washington will be subject to the safety codes of the state of Washington.

EXCLUSION FROM THE BASIC RULE:

This agreement does not apply to Washington workers of North Dakota employers while working in the state of Washington or to North Dakota workers of Washington employers while working in the state of North Dakota.

CERTIFICATES OF COVERAGE:

Upon request, each state will issue certificates of extraterritorial coverage to the other when appropriate. The issuing state may cancel these certificates at any time.

AGREEMENT:

This agreement is effective March 1, 2001, and will remain in effect unless terminated, modified, or amended in writing between the parties. Either party may terminate the agreement, without cause, by giving written notice to the other party at least thirty days in advance of such termination.

This agreement creates no rights or remedies, causes of action, or claims on behalf of any third person or entity against Washington or North Dakota, and is executed expressly and solely for the purpose of coordinating issues of workers' compensation coverage between the states.

Any communication between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing the same, postage prepaid, to the addresses or numbers set forth below on the signature pages or as subsequently modified in writing by the party to be noticed.

• OREGON

THE STATE OF WASHINGTON, ACTING BY AND THROUGH THE WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DESIRING TO RESOLVE JURISDICTIONAL ISSUES THAT ARISE WHEN WORKERS FROM ONE STATE TEMPORARILY WORK IN ANOTHER, ENTER INTO THE FOLLOWING AGREEMENT (THE "AGREEMENT"):

WHO IS AFFECTED BY THIS AGREEMENT?

This agreement affects the rights of workers and their employers when the contract of employment arises in Washington and the worker is temporarily working in Oregon, or when the contract of employment arises in Oregon and the worker is temporarily working in Washington. To be covered by this agreement, an employer must be considered an employer under both Washington's and Oregon's workers' compensation laws, and workers must be considered workers under both Washington's and Oregon's workers' compensation laws.

BASIC RULE:

When a contract of employment arises in Washington and the worker is temporarily working in Oregon or when the contract of employment arises in Oregon and the worker is temporarily working in Washington:

Employers shall be required to secure the payment of workers' compensation benefits under the workers' compensation law of the state the contract of employment arose in, and pay premiums or be self-insured in that state for the work performed while in the other state; and

Workers' compensation benefits for injuries and occupational diseases arising out of the temporary employment in

PROPOSED

the other state shall be payable under the workers' compensation law of the state the contract of employment arose in, and that state's workers' compensation law provides the exclusive remedy available to the injured worker.

In determining whether a worker is temporarily working in another state, Washington and Oregon agree to consider:

1. The extent to which the worker's work within the state is of a temporary duration;

2. The intent of the employer in regard to the worker's employment status;

3. The understanding of the worker in regard to the employment status with the employer;

4. The permanent location of the employer and its permanent facilities;

5. The extent to which the employer's contract in the state is of a temporary duration, established by a beginning date and expected ending date of the employer's contract;

6. The circumstances and directives surrounding the worker's work assignment;

7. The state laws and regulations to which the employer is otherwise subject;

8. The residence of the worker; and

9. Other information relevant to the determination.

• Washington and Oregon both agree to notify the other state of any changes to their law that may affect this agreement within thirty days of that law change.

• Any Washington employer while performing work in the state of Oregon will be subject to the safety codes of the state of Oregon. Any Oregon employer while performing work in the state of Washington will be subject to the safety codes of the state of Washington.

EXCLUSION FROM THE BASIC RULE:

This agreement does not apply to any Washington worker of an Oregon employer while working in the state of Washington nor to any Oregon worker of a Washington employer while working in the state of Oregon. It is understood that an employer from either Oregon or Washington may have a contract in the other state where they may have both Oregon and Washington workers which may require obtaining coverage in both states for that same contract.

This agreement does not apply to employees of an employer working for stevedoring or steamship companies.

This agreement does not supersede separate agreements made regarding workers employed in the construction or maintenance of interstate structures such as dams, bridges, trestles, etc. between Oregon and Washington.

CERTIFICATES OF COVERAGE:

Upon request, each state will issue certificates of extra-territorial coverage to the other when appropriate. The issuing state may cancel these certificates at any time.

MERGER:

This agreement replaces and supersedes the previous agreement on the same subject matter entered into between Washington and Oregon in effect since October 5, 1997.

EFFECTIVE DATE:

This agreement shall take effect immediately upon completion of all of the following requirements:

(1) Execution by both parties;

(2) Public notification in compliance with Oregon law;

and

(3) Adoption as a rule in compliance with Washington law. This agreement will remain in effect unless terminated, modified, amended or replaced in writing between the parties.

TERMINATION:

Either party may terminate the agreement, without cause, by giving written notice to the other party at least thirty days in advance of such termination.

NOTICE:

Any communication between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing the same, postage prepaid, to the addresses or numbers set forth below on the signature pages or as subsequently modified in writing by the party to be noticed.

• SOUTH DAKOTA

THE WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES AND THE SOUTH DAKOTA DEPARTMENT OF LABOR, DESIRING TO RESOLVE JURISDICTIONAL ISSUES THAT ARISE WHEN WORKERS FROM ONE STATE TEMPORARILY WORK IN ANOTHER, ENTER INTO THE FOLLOWING AGREEMENT:

WHO IS AFFECTED BY THIS AGREEMENT?

This agreement affects the rights of workers and their employers when the contract of employment arises in one state and the worker is temporarily working in the other. To be covered by this agreement, an employer must be considered an employer under both Washington's and South Dakota's workers' compensation laws, and workers must be considered workers under both Washington's and South Dakota's workers' compensation laws.

BASIC RULE:

When a worker's contract of hire arises in one state and the worker is temporarily working in the other state:

Employers are required to secure the payment of workers' compensation benefits under the workers' compensation law of the state the contracts of employment arose in, and pay premiums if not self-insured for the work performed while in the other state; and

Workers' compensation benefits for injuries and occupational diseases arising out of the temporary employment in the other state are payable under the workers' compensation law of the state the contract of employment arose in, and that state's workers' compensation law provides the exclusive remedy available to the injured worker.

Any Washington employer while performing work in the state of South Dakota will be subject to the safety codes of the state of South Dakota. Any South Dakota employer while performing work in the state of Washington will be subject to the safety codes of the state of Washington.

EXCLUSION FROM THE BASIC RULE:

This agreement does not apply to Washington workers of South Dakota employers while working in the state of Washington or to South Dakota workers of Washington employers while working in the state of South Dakota.

CERTIFICATES OF COVERAGE:

Upon request, each state will issue certificates of extra-territorial coverage to the other when appropriate. The issuing state may cancel these certificates at any time.

AGREEMENT:

This agreement is effective March 1, 2001 and will remain in effect unless terminated, modified, or amended in writing between the parties. Either party may terminate the agreement, without cause, by giving written notice to the other party at least thirty days in advance of such termination.

This agreement creates no rights or remedies, causes of action, or claims on behalf of any third person or entity against Washington or South Dakota, and is executed expressly and solely for the purpose of coordinating issues of workers' compensation coverage between the states.

Any communication between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing the same, postage pre-paid, to the addresses or numbers set forth below on the signature pages or as subsequently modified in writing by the party to be noticed.

• UTAH

THE WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES AND THE UTAH LABOR COMMISSION, DESIRING TO RESOLVE JURISDICTIONAL ISSUES THAT ARISE WHEN WORKERS FROM ONE STATE TEMPORARILY WORK IN ANOTHER, ENTER INTO THE FOLLOWING AGREEMENT:

WHO IS AFFECTED BY THIS AGREEMENT?

This agreement affects the rights of workers and their employers when the contract of employment arises in one state and the worker is temporarily working in the other. To be covered by this agreement, an employer must be considered an employer under both Washington's and Utah's workers' compensation laws, and workers must be considered workers under both Washington's and Utah's workers' compensation laws.

BASIC RULE:

When a worker's contract of hire arises in one state and the worker is temporarily working in the other state:

Employers are required to secure the payment of workers' compensation benefits under the workers' compensation law of the state the contracts of employment arose in, and pay premiums if not self-insured for the work performed while in the other state; and

Workers' compensation benefits for injuries and occupational diseases arising out of the temporary employment in the other state are payable under the workers' compensation law of the state the contract of employment arose in, and that state's workers' compensation law provides the exclusive remedy available to the injured worker.

Any Washington employer while performing work in the state of Utah will be subject to the safety codes of the state of Utah. Any Utah employer while performing work in the state of Washington will be subject to the safety codes of the state of Washington.

Washington and Utah both agree to notify the other state in writing of any changes to their law that may affect this agreement within thirty days of that law change.

EXCLUSION FROM THE BASIC RULE:

This agreement does not apply to Washington workers of Utah employers while working in the state of Washington nor to Utah workers of Washington employers while working in the state of Utah.

CERTIFICATES OF COVERAGE:

Upon request, each state will issue certificates of extraterritorial coverage to the other when appropriate. The issuing state may cancel these certificates at any time.

AGREEMENT:

This agreement is effective March 1, 2001, and will remain in effect unless terminated, modified, or amended in writing between the parties. Either party may terminate the agreement, without cause, by giving written notice to the other party at least thirty days in advance of such termination.

This agreement creates no rights or remedies, causes of action, or claims on behalf of any third person or entity against Washington or Utah and is executed expressly and solely for the purpose of coordinating issues of workers' compensation coverage between the states.

Any communication between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing the same, postage pre-paid, to the addresses or numbers set forth below on the signature pages or as subsequently modified in writing by the party to be noticed.

• WYOMING

AGREEMENT BETWEEN THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON AND THE WORKMEN'S COMPENSATION DEPARTMENT OF THE STATE OF WYOMING REGARDING EXTRATERRITORIAL RECIPROcity

WHEREAS, The workmen's compensation law of the state of Washington authorized the director of labor and industries to enter into agreements of reciprocity for workmen's compensation purposes with other states; and

WHEREAS, The workmen's compensation law of the state of Wyoming authorizes the workmen's compensation department to enter into agreements of reciprocity for workmen's compensation purposes with other states; and

WHEREAS, Employers who conduct operations in the state of Washington are required on occasion to have Washington-hired workers perform services in the state of Wyoming; and

WHEREAS, Employers who conduct operations in the state of Wyoming are required on occasion to have Wyoming-hired workers perform services in the state of Washington; and

WHEREAS, The department of labor and industries of the state of Washington and the workmen's compensation department of the state of Wyoming are desirous of entering into an agreement whereby the employers and workers of each of the respective states may continue to be entitled to the protection and benefits provided by the workmen's compensation laws of their respective home states.

IT IS HEREBY AGREED BETWEEN The department of labor and industries of the state of Washington and the workmen's compensation department of the state of Wyoming:

That the department of labor and industries of the state of Washington in keeping with the provisions of the Washington workmen's compensation law will provide protection for any Washington employer under its jurisdiction and benefits to any of his/her workers who may be hired in the state of Washington and injured in the course of employment while working temporarily in the state of Wyoming. In the event of injury to one of these workers, his/her exclusive remedy

would be that provided by the workmen's compensation law of the state of Washington.

That the workmen's compensation department of the state of Wyoming in keeping with the provision of the Wyoming workmen's compensation law will provide protection for any Wyoming employer under its jurisdiction, and benefits to any of his/her workers who may be hired in the state of Wyoming and injured in the course of employment while working temporarily in the state of Washington. In the event of injury to one of these workers, his/her exclusive remedy would be that provided by the workmen's compensation law of the state of Wyoming.

That for the purpose of this agreement "temporary" shall mean a period not to exceed six months.

That the department of labor and industries of the state of Washington will, upon request and on behalf of the Washington employer, issue a certificate of extraterritorial coverage to the workmen's compensation department of the state of Wyoming, and that the workmen's compensation department of the state of Wyoming will, upon request and on behalf of the Wyoming employers, issue a certificate of extraterritorial coverage to the department of labor and industries of the state of Washington.

That these certificates of extraterritorial coverage shall be issued for a maximum period of six months subject to renewal upon request by the affected employers and at the discretion of the Washington department of labor and industries, or the Wyoming workmen's compensation department.

That the Wyoming employer and his/her workers while performing work in the state of Washington under this agreement will be subject to the safety codes of the state of Washington, and that the Washington employer and his/her workers while performing work in the state of Wyoming under this agreement will be subject to the safety codes of the state of Wyoming.

IT IS MUTUALLY UNDERSTOOD That this agreement will not apply to workers of the Washington employer who may be hired in the state of Wyoming, nor to the workers of the Wyoming employer who may be hired in the state of Washington.

IT IS ALSO MUTUALLY UNDERSTOOD That premium payments on the out-of-state earnings of Washington-hired workers will be made to the Washington department of labor and industries, and that premium payments on the out-of-state earning of Wyoming-hired workers will be made to the workmen's compensation department of the state of Wyoming.

IT IS FURTHER AGREED That this agreement of extraterritorial reciprocity shall become effective on July 15, 1963, and shall remain in full force and effect until superseded or modified by the parties to this agreement.

AMENDATORY SECTION (Amending WSR 99-24-055, filed 11/29/99, effective 12/31/99)

WAC 296-17-31018 Exception classifications. (1) What are exception classifications?

In WAC 296-17-31012 we discussed our classification policy. We described the process used to classify risk and stated that we assign the basic classification or basic classification

that best describe the nature of your company's business. While this policy is modeled after the policy used by private insurance carriers and is geared to administrative ease for you, we recognize that there are some duties or operations where your employees do not share the same general workplace hazards that your other employees are exposed to. To provide for those operations that are outside the scope of a basic classification, we have created three types of exception classifications listed below:

- Standard exception classifications,
- Special exception classifications, and
- General exclusion classifications.

(2) What are the standard exception classifications?

Standard exception classifications cover those employments that are administrative in nature and common to many industries. Employees covered by a standard exception classification cannot be exposed to any operative hazard of the business. If the language of the basic classification assigned to your business does not include these employments, you may be able to report them separately. The standard exception classifications are:

- Classification 4904 (WAC 296-17-653) "clerical office employment." This classification includes clerical, administrative, and drafting employees.
- Sales personnel classifications 6301 (WAC 296-17-696), 6302 (WAC 296-17-697), and 6303 (WAC 296-17-698) includes outside sales personnel and messengers.
- Classification 7101 (WAC 296-17-754) applies to corporate officers who have elected optional coverage. A corporate officer as used in these rules is a person who is an officer in the corporation, such as the president, who also serves on the corporation's board of directors and owns stock in the corporation.
- Classification 7100 (WAC 296-17-75306) applies to members of a limited liability company who have elected optional coverage.

Clerical office employees are defined as employees whose duties are limited to: Answering telephones; handling correspondence; creating or maintaining financial, employment, personnel, or payroll records; composing informational material on a computer; creating or maintaining computer software; and technical drafting. Their work must be performed in a clerical office which is restricted to:

- A work area which is physically separated by walls, partitions, or other physical barriers, from all other work areas of the employer, and
- Where only clerical office work as described in this rule is performed.

A clerical office does not include any work area where inventory is located, where products are displayed for sale, or area where the customer brings products for payment. Clerical office employees can perform cashing and telephone sales work if they do not provide any retail or wholesale customer service that involves handling, showing, demonstrating, or delivering any product sold by the employer. Clerical office employees can make bank deposits, pick up and deliver mail at the post office, or purchase office supplies, if

their primary work duties are clerical office duties as defined in this rule.

Sales personnel are defined as employees whose duties are limited to: Soliciting new customers by telephone or in person; servicing existing customer accounts; showing, selling, or explaining products or services; completing correspondence; placing orders; performing public relations duties; and estimating. Although some of sales person's duties may be performed in a clerical office, most of their work is conducted away from the employer's physical business location or in showrooms. We refer to work that takes place away from the employer's premises as "outside sales." Sales personnel whose duties include customer service activities such as, but not limited to, the delivery of product, stocking shelves, handling inventory, or otherwise merchandising products sold to retail or wholesale customers are excluded from all standard exception classifications. Sales personnel with duties such as delivery and stocking of shelves are to be reported in the basic classification applicable to the business unless the basic classification assigned to the business requires another treatment.

Messengers are defined as employees whose duties are delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business. Classification 6303 "messengers" does not include delivering mail or packages to the employer's customer or as a service to the public. If a messenger is engaged in delivering mail or packages as a service to the public they are to be assigned to the basic classification of the business or classification 1101 as applicable.

Corporate officers duties in classification 7101 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. To qualify for this classification, a corporate officer must:

- Be a shareholder in the corporation,
- Be elected as a corporate officer and empowered in accordance with the articles of incorporation or bylaws of the corporation,
- Serve on the corporation's board of directors,
- Not have any exposure to any operative hazard of the business, and
- Not directly supervise employees who have any exposure to any operative hazard of the business.

Members of a limited liability company (LLC) duties in classification 7100 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. This includes only those members who have duties and authority similar to the exemption criteria of corporate officers in RCW 51.12-.020.

Classification 6303 may apply to a corporate officer or member of a limited liability company whose duties are limited to outside sales activities as described in the sales personnel section of this rule. Under no circumstance is classification 4904 to be assigned to any corporate officer or member of a limited liability company. You cannot divide the work hours of an employee between a standard exception classification

and a basic classification unless it is permitted by another rule. If an employee works part of their time in a standard exception classification and part of their time in your basic classification, then all exposure (hours) must be reported in the highest rated basic classification applicable to the work being performed.

(3) What are the special exception classifications?

Special exception classifications represent operations found within an employer's business that are allowed to be reported separately when certain conditions are met. Assuming the conditions have been met, the following classifications may be used even if your basic classification includes the phrases "all operations" or "all employees."

Security guards - classification 6601 (WAC 296-17-723) will apply if the security guard:

- Is an employee of an employer engaged in logging or construction,
- Is for the purpose of guarding the employer's logging or construction sites,
- Is employed at the site only during the hours the employer is not conducting any other operations at the site,
- Has no other duties during their work shift as a security guard.

If all of the above conditions are not met, the security guard is to be reported in the basic classification applicable to the construction or logging operation being conducted.

Janitors - classification 6602 (WAC 296-17-724) will apply if:

- The janitorial/cleaning activities being performed are limited to the employer's clerical office,
- The clerical office meets the criteria described earlier in this rule, and
- The employer's office employment is assigned to be reported in classification 4904.

Construction: Superintendent or project manager - classification 4900 (WAC 296-17-64999) will apply if the superintendent or project manager:

- Is an employee of a licensed contractor engaged in construction,
- Has no direct control over work crews,
- Performs no construction labor at the construction site or project location.

If all of the conditions are not met, the superintendent or project manager is to be reported in the basic classification applicable to the construction project.

Log truck drivers - classification 5003 (WAC 296-17-66001) will apply if the log truck driver has no other duties during their work shift that are subject to the logging classification 5001 (WAC 296-17-659).

(4) What are the general exclusion classifications?

General exclusion classifications represent operations that are so exceptional or unusual that they are excluded from the scope of all basic classifications. If you have these operations, we will assign a separate classification to cover them. You must keep accurate records of the work hours your employees work in these classifications. If you do not keep accurate time records for each employee performing work covered by a general exclusion classification, we will assign

the work hours in question to the highest rated classification applicable to those hours. The general exclusion classifications are:

- Aircraft operations: All operations of the flying crew.
- Racing operations: All operations of the drivers and pit crews.
- Diving operations: All operations of diving personnel and ship tenders who assist in diving operations.
- New construction or alterations of the business premises.
- Musicians and entertainers.

A division of work time is permitted between a standard exception classification and flight crew operations, racing operations, or diving operations. If you fail to keep original time records that clearly show the time spent in the office or in sales work, we will assign all work hours in question to the highest rated classification applicable to the work hours in question.

Example: Assume a corporate officer performs duties which are described in classification 7101. Occasionally, the officer flies a plane to attend a meeting. You would report the flying exposure (hours) of the corporate officer in classification 6803. The remainder of the corporate officer's time would continue to be reported in classification 7101.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-31021 Units of exposure. (1) What is a "unit of exposure?"

A unit of exposure is the measure which is used to help determine the premium you will pay. For most businesses the unit of exposure is the *hours* worked by their employees. Because not all employees are compensated based on the hours they work, we have developed reporting alternatives to make reporting to us easier. Those alternatives are outlined in subsection (2) of this section. In other cases, the department *may* authorize some other method in assuming workers hours for premium calculation purposes.

(2) What are the alternatives to actual hours worked? The exceptions are:

- **Apartment house managers, caretakers, or similar employees:** To determine the number of hours you need to report to us, divide an employee's total compensation, including housing and utility allowances, by the average hourly wage for the classification. The total number of work hours to be reported for each employee is not to exceed 520 hours per quarter. You will need to call us at (360) 902-4817 to obtain average hourly wage information.
- **Baseball, basketball, and soccer teams as defined in WAC 296-17-745 - including players, coaches, trainers, and officials:** Report each individual at 40 hours per week for each week in which they have duties.
- **Commission employees - outside (such as, but not limited to, real estate and insurance sales):** You must select one of the following methods to report your commission employees - outside:
- Actual hours worked; or

- Assumed hours of eight hours per day for part-time employees or one hundred-sixty hours per month for full-time employees.

All outside commission employees of an employer must be reported by the same method. You cannot report some outside commission employees based on the actual hours they work and others using the eight hours per day for part-time employees or one hundred-sixty hours per month for full-time employees method.

- **Drywall - stocking, installation, scrapping, taping, and texturing:** Premiums are based on material installed/finished rather than the hours it took to install/finish the drywall.
- **Horse racing - excluding jockeys:** Employers in the horse racing industry pay premiums based on a type of license their employees hold rather than the hours the employees work. Premiums are collected by the Washington horse racing commission at the time of licensing.
- **Jockeys:** Report ten hours for each race/mount or for any day in which duties are reported.
- **Pilots and flight crew members.** Pilots and flight crew members having flight duties during a work shift including preflight time shall have premium calculated by utilizing daily readings logged per federal requirements of the aircraft tachometer time: Provided, That if the total tachometer time for any day includes a fraction of an hour, the reportable time will be increased to the next full hour: Provided further, That pilots and flight crew members who assume nonflying duties during a work shift will have premium calculated in accordance with the appropriate rules and classifications applicable to nonflight duties.
- **Race car drivers:** Report ten hours for each race/heat.
- **Salaried employees:** You must select one of the following methods to report your salaried employees:
 - Actual hours worked; or
 - Assumed hours of one hundred-sixty hours per month.

All salaried employees of an employer must be reported by the same method. You cannot report some salaried employees based on the actual hours they work and others using the one hundred sixty hours per month method. Provided further, as in the case of contract personnel employed by schools and/or school districts, the school or school district shall report actual hours worked for each employee, one hundred sixty hours per month for each employee, or the department *may* authorize some other method in assuming workers hours for premium calculation purposes.

(3) Can I use assumed work hours for piece workers?

No, if you employ piece workers you must report the actual hours these individuals work for you unless another unit of exposure is required.

Example: If you have employees engaged in drywall work you would report and pay premiums on the basis of the square footage of the material they installed not the hours they worked.

AMENDATORY SECTION (Amending WSR 99-18-068, filed 8/31/99, effective 10/1/99)

WAC 296-17-35201 Recordkeeping and retention. Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums due to the state for workers' compensation insurance for their covered workers. In the administration of Title 51 RCW, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums due to the state fund. The records so specified and required, shall be provided at the time of audit to any authorized representative of the department who has requested them.

Failure to produce the requested records within thirty days of the request, or within an agreed upon time period shall constitute prima facie evidence of noncompliance with this rule and shall invoke the statutory bar to challenge found in RCW 51.48.030 and/or 51.48.040.

(1) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which employment occurred:

- (a) The name of each worker;
- (b) The Social Security number of each worker;
- (c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each such worker;
- (d) The basis upon which wages are paid to each worker;
- (e) The number of units earned or produced for each worker paid on a piecework basis;
- (f) The risk classification applicable to each worker whenever the worker hours of any one employee are being divided between two or more classifications;
- (g) The number of actual hours worked (WAC 296-17-31002) by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021;
- (h) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;
- (i) The workers' total gross pay period earnings;
- (j) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;
- (k) The net pay earned by each such worker.

(2) Business, financial records, and record retention. Every employer is required to keep and preserve all original employment time records for three full calendar years following the calendar year in which employment occurred. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(3) Recordkeeping - Estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in

subsections (1) and (2) of this section, who fails to make, keep, and preserve such records, shall for the purpose of premium calculation assume worker hours using the average hourly wage rate for each classification, and also will be subject to penalties prescribed in subsection (4) of this section. The records ~~((of))~~ compiled by the department ~~((as compiled for the preceding fiscal year ending June 30,))~~ shall be the basis for determining the average hourly wage rate: Provided, That the average hourly wage rate shall be no less than the state minimum wage existing at the time such assumed hours are worked. Notwithstanding any other provisions of this section, workers employed in a work activity center subject to Classification 7309 shall be reported on the basis of the average hourly wage.

(4) Failure to maintain records - Penalties. Any employer required by this section to make, keep, and preserve records containing the information as specified in subsections (1) and (2) of this section, who fails to make, keep, and preserve such record, shall be liable, subject to RCW 51.48.030, to a penalty in the amount of two hundred fifty dollars for each such offense. Failure to make, keep, and preserve records containing the information as specified in subsections (1) and (2) of this section, for a single employee shall constitute one offense, for two employees two offenses, and so forth.

AMENDATORY SECTION (Amending WSR 02-09-093, filed 4/17/02, effective 7/1/02)

WAC 296-17-35203 Special reporting instruction. (1) **Professional and semiprofessional athletic teams.** Athletes assigned to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance: Provided, That a professional athlete who is under contract with a parent team domiciled outside of the state of Washington while assigned to a team domiciled within Washington is subject to mandatory coverage by Washington industrial insurance unless the player and employer (parent team) have agreed in writing as to which state shall provide coverage in accordance with RCW 51.12.120(5).

The following rules shall apply to the written agreement:

(a) Agreement must be in writing and signed by the employer and the individual athlete.

(b) Agreement must specify the state that is to provide coverage. The state agreed upon to provide coverage must be a state in which the player's team, during the course of the season, will engage in an athletic event. For example, if the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they could not agree to have California provide the coverage as this would not qualify as a state in which the player regularly performs assigned duties.

(c) The state agreed upon accepts responsibility for providing coverage and acknowledges such to the department by certified mail.

(d) Agreement and certification by the other state must be received by this department's underwriting section prior to any injury incurred by the athlete.

(e) Agreement will be for one season only commencing with the assigning of the player to a particular team. A sepa-

rate agreement and certification must be on file for each additional season.

Failure to meet all of these requirements will result in the athlete being considered a Washington worker for premium and benefit purposes until such time as all requirements have been met.

Professional sports teams who are domiciled outside the state of Washington and who participate in sporting events with Washington-domiciled teams are not subject to Washington industrial insurance for their team members while in this state. These out-of-state teams are not considered employers subject to Title 51 on the basis that they are not conducting a business within this state.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) **Insurance liability.** Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) **Reporting.** Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original

time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) **Exclusions.** Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) **Definitions.** For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

PROPOSED

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

(i) The name of each worker;

(ii) The Social Security number of each worker;

(iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;

(iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and cancelled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of

(e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(I) The employers' unified business identification account number (UBI).

(II) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(III) The total contract award.

(IV) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(V) Physical location/site where the work will be performed including legal description.

(VI) Number of acres covered by the contract.

(VII) Dates during which the work will be performed.

(VIII) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall submit in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each sub-

contractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The department will notify the contractor, and the entity that awarded the contract, of the status of the contractors' account immediately after verification. The landowner, firm, or contractors' premium liability will not be released until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

(I) The name of the contractor who has been engaged to perform the work;

(II) The contractor's UBI number;

(III) The contractor's farm labor contractor number;

(IV) The total contract award;

(V) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

(VI) Location where the work is to be performed;

(VII) A contact name and phone number of the person, firm, or corporation who let the contract;

(VIII) The total estimated wages to be paid by the contractor and any subcontractors;

(IX) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(X) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries
Reforestation Team 8
P.O. Box 44168
Tumwater, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) **Logging and/or tree thinning—Mechanized operations—Industry rule.** The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17-66003.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer as a prerequisite of being assigned risk classification 5005 and having exposure (work hours) which is reportable under other risk classifications assigned to the employer shall be required to establish a separate sub-account for the purpose of reporting exposure (work hours) and paying premiums under this risk classification (5005). Except as otherwise provided for in this rule, only exposure (work hours) applicable to work covered by risk classification 5005 shall be reported in this subaccount. In the event that the employer's only other reportable exposure (work hours) is subject to one of the standard exception risk classifications, or the shop or yard risk classification then all exposure (work hours) will be reported under a single main account.

(c) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) Special drywall industry rule.

(a) **What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing

firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) **I do some of the work myself. Can I deduct material I as an owner install or finish?** Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\text{Total owners hours} \div (\text{owners hours} + \text{workers hours}) = \text{\% of owner discount.}$$

$$\text{\% of owner discount} \times (\text{total footage of job} - \text{subcontracted footage, if any}) = \text{Total owner deduction of footage.}$$

(c) **Can I deduct material installed or finished by subcontractors?** You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) **I understand there are discounted rates available for the drywall industry. How do I qualify for them?** To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) **Can I be disqualified from using the discounted rates?** Yes. You can be disqualified from using the discounted rates for three years if you:

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) **If I discover I have made an error in reporting or paying premium, what should I do?** If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department who find errors in their reporting and paying premiums, and who voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-501 Classification 0101.

0101-00 Land clearing: Highway, street and road construction, N.O.C.

Applies to contractors engaged in clearing right of ways for subsurface construction on a new or existing highway, street, or roadway project that is not covered by another classification (N.O.C.). The subsurface is the roadbed foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is a compressed gravel road, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities. Work con-

templated by this classification involves the excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, earth excavation, cut and fill work, and bringing the roadbed to grade. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders, rollers, and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; bridge or tunnel construction including the abutments and approaches which is to be reported separately in classification 0201; felling of trees which is to be reported separately in the applicable logging classification; and logging road construction which is to be reported separately in classification 6902.

0101-01 Land clearing: Airport landing strips, runways and taxi ways; alleys and parking lots

Applies to contractors primarily engaged in clearing right of ways for subsurface construction on a new or existing airport landing strip, runway, and taxi way. This classification also includes clearing of right of ways for alley and parking lot projects. The subsurface is the foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is compressed gravel, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities. Work contemplated by this classification involves the excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, earth excavation, cut and fill work, and bringing the roadbed or project site to grade. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders, rollers, and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; and felling of trees which is to be reported separately in the applicable logging classification.

0101-02 Excavation work, N.O.C.

Applies to contractors engaged in general excavation work for others that is not covered by another classification (N.O.C.). Work contemplated by this classification involves excavating or digging of earth to form the foundation hole such as for a wood-frame or nonwood-frame building and side sewer hookups (street to house) when performed as part of the excavation contract. Activities include, but are not limited to, excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth, earth excavation, cut and fill work, backfilling, etc. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210 and felling of trees which is to be reported separately in the applicable logging classification.

0101-03 Grading work, N.O.C.

Applies to contractors engaged in various forms of grading work for others that are not covered by another classification (N.O.C.). Typical equipment used is a grader, but other equipment such as a bulldozer and a front end loader may also be used. Work contemplated by this classification includes, but is not limited to, leveling and grading lands, spreading dirt, sand, gravel and/or ballast to desired contour on farm lands or other tracts of land.

0101-04 Land clearing, N.O.C.

Applies to contractors engaged in general land clearing work that is not covered by another classification (N.O.C.). This classification includes, but is not limited to, excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth to rearrange the terrain, earth excavation, cut and fill work, backfilling, and slope grooming. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders and dump trucks.

This classification excludes felling of trees which is to be reported separately in the applicable logging classification.

0101-16 Railroad line: Construction, maintenance and repair, N.O.C.

Applies to contractors engaged in the construction, maintenance and repair of railroad tracks not covered by another classification (N.O.C.), including the dismantling of track and the sale of salvaged track metal and ties. Work contemplated by this classification includes all operations on new or existing main lines, side tracks and spurs to industrial properties. This classification includes, but is not limited to, the laying of rock or ballast, laying of ties and track, installation of crossover frogs and switches, erection of switch stands and switch mechanism, erection of cattle guards, the placing of grade crossing planks, and similar activities related to the laying or relaying of railroad lines and also includes the dismantling of railroad main lines, side tracks and spurs to include track, ties, etc., and the subsequent storage and sale of salvaged material after the railroad line is dismantled.

This classification excludes asphalt surfacing/resurfacing and all concrete construction work which is to be reported separately in the applicable asphalt or concrete construction classification; logging railroad construction which is to be reported separately in classification 6902; and the construction, maintenance, or repair of an elevated railway which is to be reported separately in classification 0508.

0101-17 Retaining wall: Construction or repair when done in connection with road, street and highway construction, N.O.C.

Applies to contractors engaged in the construction or repair of retaining walls in connection with highway, street, or roadway projects that are not covered by another classification (N.O.C.). Retaining walls are often constructed to

protect against potential problems such as earth slides or erosion of banks alongside a roadway or overpass. Work contemplated by this classification involves large scale excavation to contour a specific area of earth serving as a retaining wall. Activities include, but are not limited to, excavation, clearing, cut and fill work, backfilling, grading and slope grooming. Fill material used may include dirt, sand, stone or boulder. Equipment used by contractors subject to this classification includes, but is not limited to, scrapers, bulldozers, graders, backhoes and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; concrete construction which is to be reported separately in the applicable concrete construction classification; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; bridge or tunnel construction including the abutments and approaches which is to be reported separately in classification 0201; felling of trees by chain saw which is to be reported separately in classification 5001; logging road construction which is to be reported separately in classification 6902; and tunnels and approaches including lining, cofferdam work, shaft sinking and well digging with caissons which is to be reported separately in classification 0201.

0101-36 Tree care and pruning services, N.O.C.

Applies to specialist contractors engaged in providing a variety of tree care services such as tree topping and tree pruning that are not covered by another classification (N.O.C.). Work contemplated by this classification generally takes place in residential areas, parking lots, business parks, shopping malls, or settings adjacent to nonforestry or timberland roadways. A primary purpose of this work is to remove tree or branch hazards from power lines, structures, or buildings. This classification includes, but is not limited to, incidental ground operations such as picking up branches and limbs, operating mobile chip machines used in connection with a tree care service, spraying or fumigating of trees, debris removal and stump removal when conducted by employees of an employer subject to this classification.

This classification excludes tree care services done in connection with an orchard operation which is to be reported separately in classification 4803 when performed by orchard employees; tree care services done in connection with a nursery operation which is to be reported separately in classification 4805; tree care services done in connection with a public or private forest or timberland which is to be reported separately in classification 5004; tree care services done in connection with a Christmas tree farm operation which is to be reported separately in classification 7307; and felling trees which is to be reported separately in classification 5001.

0101-37 Soil remediation

Applies to establishments engaged in various types of remediation of soil contaminated with hazardous or toxic materials. Soil remediation can take place at the site of the contamination, or the contaminated soil may be hauled to another area for remediation. This classification also includes oil spill cleanup on land. Equipment used will include back-

hoes and front end loaders, as well as other types of dirt moving equipment.

The methods used for soil remediation include, but are not limited to,:

- Bio-remediation: Contaminated soil is mixed with nutrients, sawdust, and various other additives. Naturally occurring bacteria in the soil break down the pollutants.

- Encapsulation: Contaminated soil is enclosed in some type of protective material to prevent drainage into surrounding soil.

- Excavation and hauling to an approved disposal site.

- Hot air vapor extraction: A burner unit is mounted on a trailer. Contaminated soil is arranged in layers on which an aluminum perforated pipe system is placed at 2' intervals, with a return pipe on the top layer. The soil stack is enclosed in visqueen, then hot air is pumped into the piping system which creates the steam that is recycled through the system and carries the contaminants back through the catalytic burner. Because of the catalytic action there are virtually no contaminants exhausted into the atmosphere.

- Soil vapor extraction: A series of holes are bored in the ground and vacuum pumps are used to suck the trapped gases which are drawn through carbon filters for decontamination.

- In situ vitrification: Graphite electrodes are fed into contaminated soil at a specified rate, where high voltage "melts" the organic and inorganic materials in the soil and forms a solid, glasslike substance.

- Land farming: Contaminated soil is deposited and spread out by a farm type spreader on an area of ground dedicated for this purpose. Chemical or manure fertilizer is added to provide a medium for naturally occurring bacteria to thrive. (This part is similar to bio-remediation.) The soil is turned frequently by tillers or rototillers to assist in the aeration of the soil and in the growth of the bacteria. It may take anywhere from a month to two years to cleanse the soil, depending on the volatility of the contaminants. This method is used particularly with soil that is heavily contaminated with oil.

- Mobile incineration: Contaminated soil is loaded onto a conveyor belt which carries it into the hopper of a mobile unit mounted on a lowboy trailer. The unit is heated to burn off the contaminants in the soil. The mobile unit contains a type of dust-collecting mechanism which filters out gases and other nondesirable elements so only clean air enters the atmosphere as the refreshed soil is produced. There are various methods of mobile incineration, but the general process and the end result are similar.

- Thermal desorption: A process similar to mobile incineration.

- Stabilization: Concrete landfill cells are created by mixing cement with refuse or other contaminated soil to stabilize the material and reduce the seepage into the surrounding soil.

This classification excludes oil spill cleanup involving diking or ditching work which is to be reported separately in classification 0201.

0101-39 Pool or pond excavation Placement of pool or pond liners

Applies to contractors engaged in the excavation of pools or ponds. Work contemplated by this classification

involves excavating or digging of earth to form the hole such as for a swimming pool or pond. Work contemplated by this classification includes excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth, earth excavation, cutting, filling or backfilling, etc. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, bulldozers, backhoes and dump trucks. This classification includes the placement of plastic pool and pond liners provided it is not in connection with concrete work.

This classification excludes concrete construction which is to be reported separately in the applicable concrete construction classification.

0101-40 Mowing or chemical spraying of roadway median strips, roadsides, and/or power line right of ways

Applies to contractors engaged in mowing, grooming, picking up litter, and chemical spraying of roadway median strips and edges, roadsides, and power line right of ways. Work contemplated by this classification includes spraying chemicals to control weeds and unwanted vegetation, tall grass, brush, brambles and tree seedlings as part of a roadway, roadside or right of way maintenance contract. Equipment used by contractors subject to this classification includes, but is not limited to, a variety of equipment such as backhoes, tractors, push mowers, brush mowers, weed eaters, as well as hand tools such as machetes, sickles, and pruners.

This classification excludes mowing and/or grooming of roadway median strips, roadsides, and power line right of ways when performed by employees of cities, counties, state agencies, or other municipalities which is to be reported in the classification applicable to the type of municipality performing the work; forest, timber or range land contract work which is to be reported separately in the classification applicable to the work being performed; and the felling and removal of trees by chain saw which is to be reported separately in classification 5001.

Special note: Classification 0301, "landscape construction," and classification 0308, "landscape maintenance," are not to be assigned to mowing and/or grooming of roadway median strips, roadsides, and power line right of ways.

0101-41 Logging machine operators

This classification applies to employees of a logging company that does not qualify as a mechanized operation but operates equipment such as a feller buncher, processor, forwarder, skidder, log loader, or tower and who are in a protective cab. This classification also applies to firms who contract with logging firms to provide such equipment and operators to a logging site. The operator does not leave the cab to perform duties as part of the logging operation. Equipment used by employers subject to this classification are required to meet WISHA guidelines for roll over protection standards (ROPS) and falling object protection standards (FOPS).

This classification does not allow a division of an employee's work hours between this classification and any other classification during a work shift.

This classification excludes all logging activities being performed on the ground which are to be reported separately in classification 5001.

Special note: This classification does not apply to classification 5005 "logging and/or tree thinning - mechanical operations" whereby logging activities are performed exclusively by machine and no employees are on the ground.

AMENDATORY SECTION (Amending WSR 99-18-068, filed 8/31/99, effective 10/1/99)

WAC 296-17-519 Classification 0504.

0504-06 Waterproofing, N.O.C.: Buildings or structures

Applies to contractors engaged in waterproofing buildings or structures not covered by another classification (N.O.C.). This classification includes the application and repair services of waterproofing material to all types of buildings or structures, regardless of height, including, but not limited to, foundations and foundation walls, floors, decks, fences, walkways and driveways. Waterproof material is applied to a variety of surfaces such as wood, concrete, asphalt, steel, metal, plaster, or stone. There are several types of waterproof processes: Membrane, which adheres long strips of rubber and pumice to exterior walls or foundations with the use of primer; pressure injection, which uses a long wand inserted into the ground to fill cracks; epoxy injection, which is performed on the interior or exterior with use of a caulk gun to inject a silicon material into cracks; or application with use of a brush, roller or spray directly onto the surface. This classification includes the application of asphalt sealant to driveways.

This classification excludes excavation work performed in conjunction with a waterproofing contract which is to be reported separately in classification 0101; waterproofing operations performed in connection with roofing or subaqueous work which is to be reported separately in the classification applicable to the work being performed; the application of asphalt sealant or waterproof materials to roadways and parking lots which is to be reported separately in classification 0219; and the application of waterproof materials performed by a concrete contractor as part of the concrete construction project which is to be reported separately in the classification applicable to the work being performed.

Special note: Classification 0101 applies when excavation work is performed (to remove dirt away from a foundation wall or to push it against the wall after the waterproofing material is applied) regardless of the type of contractor performing the excavation work.

0504-18 Pressure washing services or sandblasting, N.O.C.: Buildings or structures

Applies to contractors engaged in pressure washing or sandblasting buildings or structures, not covered by another classification (N.O.C.). This classification includes cleaning, washing, pressure washing or sandblasting buildings or structures. These services are performed to remove dirt, moss, rust or old paint from buildings or structures. Pressure washing involves a forced spray of air and water to remove unwanted surface materials, whereas, sandblasting, or abrasive blasting, involves a forced spray of sand, steel, or glass. This classification includes the cleaning of roofs, gutters, and downspouts, and the removal of moss or snow from multiple story buildings(~~and the cleaning of ceiling tiles~~). Pressure

washing and sandblasting systems include portable blast and pressure cleaning machines, hand-operated, cabinet-type sandblasting or pressure washing machines, automatic blast or pressure cleaning machines and wet-blast cleaning machines.

This classification excludes contractors engaged in multimedia blasting in shop which is to be reported separately in classification 3402; pressure washing or sandblasting by a painting contractor as a part of the preparation for painting exterior buildings, structures, or the interior/exterior of tanks which is to be reported separately in the classification 0504-21; pressure washing as a part of interior building painting contracts which is to be reported separately in classification 0521; cleaning or washing roofs, or removing snow from, single story buildings (provided the cleaning or washing is not part of a painting or roofing contract) which is to be reported separately in classification 6602; waterproofing buildings or structures, N.O.C. which is to be reported separately in classification 0504-06; and pressure washing or sandblasting operations performed in conjunction with and as a part of another type of business such as a foundry, metal goods manufacturer, auto body repair shop, etc., which is to be reported separately in the applicable classification.

0504-20 Lead abatement

Applies to contractors engaged in lead abatement which is performed on structures where there are significant amounts of lead-based paint and lead dust. Contractors must comply with various governmental regulations. The first step in all lead abatement projects is the preliminary testing of the site to determine the presence of lead and the extent of the contamination. If the ground surrounding the proposed worksite is contaminated, it will require remediation, which is done by a soil remediation contractor who is to be reported separately in the appropriate classification. The next step is deciding which abatement procedure is right for the project such as: Encapsulation which is used on interior surfaces to seal the lead-based paint with a bonding material; enclosure which is used on interior and exterior surfaces and involves constructing special airtight enclosures made out of gypsum wallboard, plywood paneling, aluminum, vinyl or wood exterior sidings; component replacement which involves removing building components such as paneling, moldings, windows and doors which are coated with lead-based paint and replacing them with new components; and chemical removal, abrasive removal or handscraping which are methods to physically remove the lead paint. This classification includes all preparation work and all cleanup work.

This classification excludes soil remediation work which is to be reported separately in classification 0101; asbestos abatement which is to be reported separately in classification 0512; and lead abatement as part of a painting contract for interior/exterior of buildings or structures, or the interior/exterior of tanks which is to be reported separately in the applicable classification.

0504-21 Painting: Exterior buildings or structures, N.O.C.; Cleaning: Interior/exterior of oil or gas storage tanks, beer vats, and sewage treatment tanks

Applies to contractors engaged in painting the exterior of all types of buildings or structures not covered by another

PROPOSED

classification (N.O.C.), regardless of height. Buildings and structures include, but are not limited to, bridges, towers, smokestacks, stadiums, factories, warehouses, stores, churches, and residential or commercial single or multiple story buildings. Paint is applied by brush, roller or spray to a variety of surfaces such as wood, concrete, steel, metal, plaster, stone, or other types of exterior surfaces. This classification includes all preparation work such as the set up of scaffolding or power lifts, pressure washing, removal of old paint or asbestos, sandblasting, taping or masking, and cleanup work. This classification also applies to cleaning, coating, or painting the interior/exterior of oil or gas storage tanks, beer vats, or sewage treatment tanks.

This classification excludes contractors engaged in waterproofing buildings or structures, N.O.C. which are to be reported separately in classification 0504-06; pressure washing services or sandblasting of buildings or structures which are to be reported separately in classification 0504-18; interior painting of buildings which is to be reported separately in classification 0521; painting of murals or other artwork on the interior of buildings which is to be reported separately in classification 4109; and painting of murals or other artwork on the exterior of buildings which is to be reported separately in classification 0403.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-521 Classification 0508.

0508-00 Radio, television, cellular or water towers, poles and towers, N.O.C.: Construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the construction or erection, dismantling, maintenance or repair of iron, steel, or wood radio, television, cellular or water towers, poles, towers and those towers which are not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to, clearing of land (if done by the foundation/excavation contractor), excavating for the foundation, the placement of forms, installation of reinforcing steel, pouring and finishing the foundation, on-site fabrication and assembly of parts, erecting the frame, installation of scaffolding, raising structural members by crane and welding or bolting them into place, and the installation, removal, service and/or repair of antennas, dish units and/or other transmitting/receiving apparatus to the structure. This classification also includes the delivery of material and supplies to the job site when done by employees of an employer having operations subject to this classification.

This classification excludes the felling of timber which is to be reported separately in the applicable logging classification; the preliminary clearing of land by a contractor who is not also excavating for the foundation which is to be reported separately in classification 0101; delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification; and the construction of a control building or installation of a modular control building which is to be reported separately in the applicable construction classification.

Special note: This classification does not allow the separate reporting of excavation or foundation work irrespective of who performs the work. This classification includes specialty contractors who install, remove, service or repair antennas, dish units and/or other transmitting/receiving apparatus to a structure covered by this classification.

0508-01 Smokestack: Construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the construction or erection, dismantling, maintenance or repair of iron, steel or concrete smokestacks. These structures are part of an industrial complex and facilitate the discharge of combustion vapors, gases, or smoke. Work contemplated by this classification includes, but is not limited to, clearing of land (if done by the excavation contractor), excavating for the foundation, the placement of forms, installation of reinforcing steel, pouring and finishing the foundation, on-site fabrication and assembly of parts, installation of scaffolding, raising segments into place with a crane and welding or bolting them into place. This classification includes the delivery of material and supplies to the job site and installation of any apparatus onto a structure covered by this classification when done by employees of an employer having operations subject to this classification.

This classification excludes the felling of timber which is to be reported separately in the applicable logging classification; the installation of machinery which is to be reported separately in classification 0603; preliminary clearing of land by a contractor who is not also excavating the foundation which is to be reported separately in classification 0101; delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification; and the construction of a control building or installation of a modular control building which is to be reported separately in the applicable construction classification.

Special note: This classification does not allow separate reporting of excavation or foundation work irrespective of who performs the work.

0508-02 Windmill and silo: Construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the construction or erection, dismantling, maintenance or repair of iron, steel or wood windmills or silos. Windmills use the force of wind passing around the rotor blades to turn turbines and produce electric power. These may be built individually or in groups known as "wind farms." Additional apparatus and storage batteries are housed in separate buildings nearby. Silos are large cylindrical structures used to store grain or fodder (silage). They are filled through the top by means of a conveyor. Within the structure, augers and pumps can move the grain to blend, aerate, or feed it out the chute. Work contemplated by this classification includes, but is not limited to, clearing of land (if done by the excavation contractor), excavating for the foundation, the placement of forms, installation of reinforcing steel, pouring and finishing the foundation, on-site fabrication and assembly of parts, erecting the frame, installation of scaffolding, raising structural members by crane and welding or bolting them into place. This classifica-

tion includes the delivery of material and supplies to the job site and the installation of apparatus onto a structure covered by this classification when done by employees of an employer having operations subject to this classification.

This classification excludes the felling of timber which is to be reported separately in the applicable logging classification; the installation of machinery which is to be reported separately in classification 0603; the preliminary clearing of land by a contractor who is not also excavating for the foundation which is to be reported separately in classification 0101; delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification; and the construction of a control building or installation of a modular control building which is to be reported separately in the applicable construction classification.

Special note: This classification does not allow the separate reporting of excavation or foundation work irrespective of who performs the work.

0508-03 Oil still or refinery: Construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the construction or erection, dismantling, maintenance or repair of oil stills or refineries. These facilities are basically composed of multi-story storage tanks, chimneys, pipelines, separating apparatus and steam generating systems. They receive unprocessed petroleum (crude oil) and convert it into usable products such as gasoline, kerosene, wax, grease and chemical feed stocks. Work contemplated by this classification includes, but is not limited to, clearing of land (if done by the excavation contractor), excavating for the foundation, the placement of forms, installation of reinforcing steel, pouring and finishing the foundation and other concrete, on-site fabrication and assembly of parts, erecting framework, installation of scaffolding, raising structural members by crane and welding or bolting them into place. This classification includes the delivery of material and supplies to the job site and the installation of apparatus in an oil still or refinery when done by employees of an employer having operations subject to this classification.

This classification excludes the felling of timber which is to be reported separately in the applicable logging classification; the installation of machinery which is to be reported separately in classification 0603; preliminary clearing of land by a contractor who is not also excavating for the foundation which is to be reported separately in classification 0101; delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification; and the construction of control or pump houses and other buildings not part of the main processing plant which is to be reported separately in the applicable construction classification.

Special note: This classification does not allow separate reporting of excavation or foundation work irrespective of who performs the work and plant maintenance contract work which is to be reported separately in classification 0603.

0508-04 Blast furnace and metal burners: Construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the construction or erection, dismantling, maintenance or repair of blast furnaces and metal burners. These are tall, very heavy gauge, cylindrical steel structures in which heated air and combustible fuels are combined to produce the heat necessary to separate the usable material in metal ores from the waste products. Work contemplated by this classification includes, but is not limited to, clearing of land (if done by the excavation contractor), excavating for the foundation, the placement of forms, installation of reinforcing steel, pouring and finishing the foundation, on-site fabrication and assembly of parts, erecting the frame, installation of scaffolding, installation of a brick lining, raising structural members by crane and welding or bolting into place. This classification includes the delivery of material and supplies to the job site and the installation of apparatus onto a structure covered by this classification when done by employees of an employer having operations subject to this classification.

This classification excludes the felling of timber which is to be reported separately in the applicable logging classification; the installation of machinery which is to be reported separately in classification 0603; the preliminary clearing of land by a contractor who is not also excavating for the foundation which is to be reported separately in classification 0101; delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification; and the construction of additional buildings as part of an ore reduction or metal producing facility which is to be reported separately in the applicable construction classification.

Special note: This classification does not allow separate reporting of excavation or foundation contractors irrespective of who performs the work.

0508-08 Elevated railway, tram, lift or similar conveyances: Construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the construction or erection, dismantling, maintenance or repair of elevated railways, trams, lifts or similar conveyances. An elevated railway can be a full scale railroad or a smaller scale system such as a recreational monorail. For the purposes of this classification, trams are overhead cable cars, and lifts are similar to the typical ski lift. Work contemplated by this classification includes, but is not limited to, clearing of land (if done by the excavation contractor), excavating for the foundation, the placement of forms, installation of reinforcing steel, pouring and finishing the foundation, on-site fabrication and assembly of parts, erecting frames and supports (metal or concrete), installation of scaffolding, raising structural members by crane and welding or bolting them into place, and installing and securing tracks, cables or pulley systems. This classification includes the delivery of material and supplies to the job site and the installation of apparatus onto a structure covered by this classification when done by employees of an employer having operations subject to this classification.

This classification excludes the felling of timber which is to be reported separately in the applicable logging classification; the installation of machinery which is to be reported

separately in classification 0603; the preliminary clearing of land by a contractor who is not also excavating for the foundation which is to be reported separately in classification 0101; delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification; or the construction of a control building or installation of a modular control building which is to be reported separately in the applicable construction classification.

Special note: This classification does not allow separate reporting of excavation or foundation contractors irrespective of who performs the work.

0508-09 Exterior tanks, N.O.C.: Construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the construction or erection, dismantling, maintenance or repair of all types of exterior tanks not covered by another classification (N.O.C.). These tanks may be part of water storage and distribution systems, chemical or petroleum processing and storage operations, or other industrial applications. This classification includes the erection or construction of tanks that are elevated on structural piers and those that rest on the ground. These tanks may be constructed singly or in groups known as "tank farms" which are common to the petroleum industry. Work contemplated by this classification includes, but is not limited to, clearing of land (if done by the excavation contractor), excavating for the foundation, the placement of forms, installation of reinforcing steel, pouring and finishing the foundation, on-site fabrication and assembly of parts, erecting the frame, installation of scaffolding, and raising structural members by crane and welding or bolting them into place. This classification includes the delivery of material and supplies to the job site and installation of apparatus onto a structure covered by this classification when done by employees of an employer having operations subject to this classification.

This classification excludes the felling of timber which is to be reported separately in the applicable logging classification; the installation of machinery which is to be reported separately in classification 0603; the preliminary clearing of land by a contractor who is not also excavating for the foundation which is to be reported separately in classification 0101; delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification; and the construction of a control building or installation of a modular control building which is to be reported separately in the applicable construction classification.

Special note: This classification does not allow separate reporting of excavation or foundation contractors irrespective of who performs the work.

0508-11 Crane or derrick: Installation, construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the installation, construction or erection, dismantling, maintenance or repair of nonmobile cranes and derricks for commerce and industrial use. Cranes and derricks can be very similar in that they are both defined as machines for hoisting and moving heavy objects through the use of stationary or movable booms

equipped with cables. An object, sometimes weighing many tons, can be secured to the cables and moved into position along the length of a stationary boom or to another location within the reach of a movable boom. A derrick, however, can also be a permanent framework over an opening, such as an oil-drilling operation, to support boring equipment. The cranes included in this classification are those that are permanently installed at a marine port, cargo handling facility or an industrial facility to move supplies, cargo containers, or heavy objects (vertically or horizontally) that are being assembled and must pass through the length of a building to complete the process. Work contemplated by this classification includes, but is not limited to, the placement of forms and reinforcing steel for a foundation (in the case of some structures described above, the additional reinforcing required to support the crane is usually contemplated in the plan for the building's foundation where the crane is being anchored), on-site fabrication and assembly of parts, erecting the frame, installation of scaffolding, raising structural members by hoist and welding or bolting them into place. This classification includes the delivery of material and supplies to the job site and installation of apparatus onto a structure covered by this classification when done by employees of an employer having operations subject to this classification.

This classification excludes the operation of mobile cranes which is to be reported in classification 3506, the installation of machinery which is to be reported separately in classification 0603; the preliminary clearing of land by a contractor who is not also excavating for the foundation which is to be reported separately in classification 0101; and delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification.

Special note: This classification does not allow separate reporting of excavation or foundation contractors irrespective of who performs the work.

0508-12 Water cooling towers or structures - metal or wood: Construction or erection, dismantling, maintenance or repair

Applies to contractors engaged in the construction or erection, dismantling, maintenance or repair of metal or wood water cooling towers or vertical structures. These structures are usually part of an industrial complex in which water is used as a cooling element in a manufacturing process. The water, which absorbs heat from the machinery being cooled, can be circulated and reused after it has been channeled through a cooling tower to be chilled sufficiently. A common design allows the hot water to tumble down numerous open louvers or steps to lower its temperature. These towers are often composed of prefabricated parts which are delivered to the site and then assembled by bolting or welding together, then the necessary motors, pipes, fans and pumps are installed. Work contemplated by this classification includes, but is not limited to, clearing of land (if done by the excavation contractor), excavating for the foundation, the placement of forms, installation of reinforcing steel, pouring and finishing the foundation, on-site fabrication and assembly of parts, erecting the frame, installation of scaffolding, raising structural members by crane and welding, bolting or otherwise fastening them into place. This classification includes the

delivery of material and supplies to the job site and installation of apparatus onto a structure covered by this classification when done by employees of an employer having operations subject to this classification.

This classification excludes the felling of timber which is to be reported separately in the applicable logging classification; the installation of machinery which is to be reported separately in classification 0603; the preliminary clearing of land by a contractor who is not also excavating for the foundation which is to be reported separately in classification 0101; delivery of material to the site by employees of a material supplier or a common carrier which is to be reported separately in the applicable classification; and the construction of other related buildings at the project site which is to be reported separately in the applicable construction classification.

Special notes: This classification does not allow separate reporting of excavation or foundation irrespective of who performs the work. Construction of a water cooling structure that uses a horizontal rather than tower-like design is to be reported separately in classification 0518.

AMENDATORY SECTION (Amending WSR 99-18-068, filed 8/31/99, effective 10/1/99)

WAC 296-17-52108 Classification 0516.

0516-00 Building repair and carpentry, N.O.C.

Applies to contractors engaged in building repair and carpentry work, not covered by another classification (N.O.C.). This classification applies to carpentry-related framing work on concrete, brick and steel buildings, and to wood framed building renovation and remodeling projects where the structure is not being modified or altered. Typical projects include, but are not limited to: Interior building demolition ("strip outs") involving only the removal of interior walls, partitions and related construction materials; converting a room from one use to another, such as a bedroom to a study, or a garage to a family room; enlarging or changing the configuration of a room by removing or adding an interior wall; upgrading a kitchen or bathroom; or adding structures such as a wooden deck to an existing building, screening a porch, installing a wood patio cover, or assembling sheet metal tool or garden sheds. Contractors subject to this classification use a variety of dimensional lumber and wood products as well as metal fasteners (nails, screws and bolts), and metal reinforcing or support straps such as joist hangers and post brackets. Technological changes have produced new materials which are replacing wood and wood products. These materials include, but are not limited to, light weight metal studs and plastic and fiber reinforced boards. This classification includes the framing of private residences with light weight metal studs and the installation of earthquake tie downs on residential buildings. This classification also includes specialty service providers or contractors engaged in providing general repair services (handyman) on buildings and dwellings. Classification 0516-00 can be used for these businesses to simplify recordkeeping and reporting if they provide general carpentry work and at least two of the following types of *repair* work; electrical, plumbing, cabinet, inte-

rior alteration, painting, drywall, masonry, carpet/lino-leum/laminate, glazing, or appliance repair.

This classification excludes roofing or roof work which is to be reported separately in classification 0507.

0516-01 Wood playground equipment: Installation and/or repair

Applies to contractors engaged in the installation and/or repair of wood playground equipment. Work contemplated by this classification begins after the area of land has been excavated and/or cleared and includes installing wood playground equipment at private residences and in public settings such as, but not limited to, schools, parks, day care centers, churches, and hotels. This classification usually includes a variety of playground equipment comprised of treated wood beams, poles, posts, and a variety of dimensional lumber used in building swings, forts, stationary and swinging bridges, balance beams, climbing towers, slides, and rope and tire walks. Generally, the process involves setting poles or posts with use of a post hole digger, backhoe or tractor equipped with an auger. The poles or posts may be set in concrete. Depending on the piece of equipment being built, use of beams, planks, dimensional lumber, rope, chains, tires, and metal bars or rings, are securely attached with nails, screws, bolts or eye hooks. This classification includes the building of borders surrounding the playground equipment area with beams or railroad ties and the spreading of pea gravel, sand or wood chips underneath the equipment.

This classification excludes the installation of metal playground equipment which is to be reported separately in classification 0603, and the excavation or clearing of land which is to be reported separately in classification 0101.

AMENDATORY SECTION (Amending WSR 99-18-068, filed 8/31/99, effective 10/1/99)

WAC 296-17-52109 Classification 0517.

0517-00 Factory built housing units: Set up by contractor or by employees of the manufacturer

Applies to the set up of factory built housing units such as mobile/manufactured homes, modular homes, or prefab cedar homes by contractors who work independently from a sales dealership or by employees of the manufacturer. This classification includes, but is not limited to, delivery of the factory built unit when performed by the set up contractor. The set up process includes placement of the unit or unit sections on blocks or foundations; joining the interior and exterior sections which may involve incidental placement of ridge cap, siding, trim boards, moldings, and interior seams; plumbing and electrical connections; and the installation of skirting, awnings or decks.

This classification excludes mobile home or factory built housing sales dealerships who set up and/or deliver the unit to a sales location or customer's site which are to be reported separately in classification 3415; the delivery of a mobile home or other factory built housing unit by a trucking service which is to be reported separately in classification 1102; the pouring of foundations; and/or the construction of nonstructural sheet metal patio covers/carports, garages or storage sheds regardless if performed by employees of the set up con-

tractor or by another contractor which is to be reported separately in the applicable classification.

0517-01 Building raising, moving and underpinning

Applies to contractors engaged in raising, moving and underpinning buildings. Work contemplated by this classification includes a variety of services involving the change of a building's elevation, location or support structure including incidental shoring and removal or rebuilding of walls, foundations, columns or piers. Employees of the contractor responsible for the overall completion of the project are to be reported in this classification. Underpinning is a process to correct wall cracks, foundation settling or collapse of a building or structure. Generally, underpinning involves one of two methods. In the first method, earth around a foundation is removed to permit construction of a new foundation to replace the old one or to allow for the installation of subfoundations to support the existing earth. This would include masonry or concrete work, blasting (when required) and shoring of surrounding ground and building or structure to prevent cave-ins while foundation work is being performed. The second method deals with steel or wooden beams being inserted through a lower point of the building or structure. The beams are raised and supported by jacks until the foundation is relieved of some or all of its ground pressure. Building raising or moving is a process to change a building's position, either raised to a new elevation in place or moved to a new site, or both. Workers, subcontractors or utility companies will first disconnect all utilities from the building or structure to be moved. Workers will remove all detachable items and open foundation walls to allow metal or wood beams to be placed under the floor structure. Once beams are placed, hydraulic jacks are used to lift the building or structure clear of the old foundation high enough for a new foundation to be constructed, or high enough to allow the carrying vehicle (trailer) to be placed under the beams if it is to be moved. The trailer is moved along a previously graded and cleared path to the new location. The building or structure is then set down on a new foundation which is usually constructed by a separate contractor. Miscellaneous repair work is performed and utilities are reconnected.

This classification excludes contractors engaged in clearing paths, grading and excavation work who are to be reported separately in classification 0101; contractors who disconnect or hook-up underground gas, water or power lines who are to be reported separately in classification 0107; contractors who construct concrete foundations for wood frame or nonwood frame buildings who are to be reported separately in classification 0217, or in classification 0518 as applicable; and contractors engaged in the delivery and set up of factory built housing units who are to be reported separately in classification 0517.

AMENDATORY SECTION (Amending WSR 99-18-068, filed 8/31/99, effective 10/1/99)

WAC 296-17-52110 Classification 0518.

0518-00 Building construction, N.O.C.: Alterations and concrete construction, N.O.C.

Applies to contractors engaged in building construction, not covered by another classification (N.O.C.), including alterations. Work contemplated by this classification includes nonwood frame buildings and structures such as, but not limited to, waste treatment and waste disposal plants, fish hatcheries and stadiums in which the superstructure, skeleton framework, or building shell consists of concrete, iron or steel, or a combination of concrete, iron, steel and/or wood. This classification makes no distinction to the size of the structure or number of stories within the building and includes all concrete tilt-up buildings. Activities include, but are not limited to, the set up and tear down of forms, placement of reinforcing steel, rebar, or wire mesh, pouring and finishing concrete within the building or structure such as foundations, monolithic slabs, ground supported floor pads, precast or poured in place bearing floors or wall panels, columns, pillars, balconies, stairways, including the raising and/or standing of concrete tilt-up walls or precast floors and wall portions, and raising and securing metal frames or members into place using a crane or boom and securing by bolt, rivet or weld.

This classification excludes all other phases of construction which are not in connection with building the superstructure, skeleton framework, or building shell such as, but not limited to, site preparation and excavation which is to be reported separately in classification 0101; bridge or tunnel construction which is to be reported separately in classification 0201; pile driving which is to be reported separately in classification 0202; underground utilities and systems which is to be reported separately in the classification applicable to the work being performed; asphalt work which is to be reported separately in the classification applicable to the work being performed; concrete paving or flatwork not contained within the building which is to be reported separately in the classification applicable to the work being performed; new landscape construction which is to be reported separately in classification 0301; brick, block, granite, marble, slate or masonry work which is to be reported separately in classification 0302; plastering, stuccoing and lathing work which is to be reported separately in classification 0303; plumbing work which is to be reported separately in classification 0306; HVAC work which is to be reported separately in classification 0307; carpet and tile work which is to be reported separately in classification 0502; exterior painting which is to be reported separately in classification 0504; roof work which is to be reported separately in classification 0507; installation of glass panels, curtain walls or windows which is to be reported separately in classification 0511; installation of insulation, sound proofing or suspended acoustical ceilings which is to be reported separately in classification 0512; interior finish carpentry such as the installation of interior doors, cabinets, fixtures or molding which is to be reported separately in classification 0513; installation of overhead doors, garage doors which is to be reported separately in classification 0514; installation of exterior doors and door frames, interior framing and carpentry work which is to be reported separately in classification 0516; installation of sheet metal siding or gutter work which is to be reported separately in classification 0519; interior building painting which is to be reported separately in classification 0521; elec-

trical work which is to be reported separately in classification 0601; the installation of elevators and elevator door bucks which is to be reported separately in classification 0602; new dam construction projects which are to be reported separately in classification 0701; wood frame buildings which are to be reported separately in classification 0510; sheet metal tool sheds which are to be reported separately in classification 0516; brick or block buildings which are to be reported separately in classification 0302 and wallboard installation, taping or texturing which are to be reported separately in the applicable classifications.

0518-01 Metal carport: Erection

Applies to contractors engaged in the erection of metal carports such as those used for commercial parking lots. This classification includes raising and securing metal frames, members, or I-beams into place with a boom or crane and securing by bolt, rivet or weld.

This classification excludes the erection of nonstructural sheet metal patio cover/carports which is to be reported separately in classification 0519, and the erection of a wood carport which is to be reported separately in the applicable carpentry classification (see classification 0510 for additional information).

0518-02 Metal service station canopy: Erection

Applies to contractors engaged in the erection of metal service station canopies. Work contemplated by this classification includes, but is not limited to, raising and securing metal frames, members, or I-beams into place with a boom or crane and securing by bolt, rivet or weld.

This classification excludes the removal or installation of underground tanks which is to be reported separately in classification 0108, and the removal or installation of service station pumps which is to be reported separately in classification 0603.

0518-03 Building wrecking or demolition - iron, steel, concrete, or wood

Applies to contractors engaged in wrecking or demolishing iron, steel, concrete, or wood buildings or structures not covered by another classification. Work contemplated by this classification includes incidental sales of materials, burning or hauling away of debris, and incidental ground clearing activities at the site to permit other use of land. Wrecking and demolition involves barricading the site and walkways to keep nonconstruction workers out of the area to prevent possible injury to them. Guards, watchmen, and traffic controllers (flaggers) are on-site and in adjacent areas to keep work areas secure. Salvage of materials is usually done by hand. Loading of trucks with debris is by chute or front end loaders. Actual demolition of a building or structure is performed in a variety of ways, including dismantling board by board, by crane (pulling sections to the ground), by crane equipped with a steel ball which is swung from the boom of the crane, or by explosives. Employees of the contractor responsible for the overall completion of the project are to be reported in this classification.

This classification excludes security guards employed by contractors to guard the job site before or after the construction work activity hours who are to be reported separately in classification 6601; establishments primarily engaged in sell-

ing salvaged building materials which are to be reported separately in classification 2009; interior building demolition ("strip outs") which is to be reported separately in classification 0516; and all iron, steel, concrete, or wood building construction which is to be reported separately in the applicable classification.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-527 Classification 0607.

0607-11 Household appliances: Installation, service and/or repair by nonstore service or repair company; dealers of used household appliances

Applies to establishments engaged in the installation, service and/or repair of electrical or gas household appliances and to dealers of used electrical or gas household appliances. Many establishments covered by this classification have small retail store operations where they offer reconditioned or second hand appliances for sale, a parts department, and an area where appliances brought into the shop are repaired. Although this classification deals primarily with service away from the shop, the store, parts department and shop operations are included within the scope of this classification. The term "household appliances" includes, but is not limited to, stoves, ovens, ranges, dishwashers, refrigerators, trash compactors, television sets, residential type garage door openers, washing machines, and clothes dryers. This classification also applies to the installation, service or repair of automated teller machines. Repair services provided by establishments subject to this classification may also include related smaller appliances such as video players, portable television sets, stereo systems, microwave and toaster ovens, blenders, coffee makers and mixers. The *servicing* of water softening systems, coffee and juice machines, and beer taps is also included in this classification.

This classification excludes dealers of new household appliances who are to be reported separately in classification 6306; installation, service, and/or repair of commercial appliances such as those used in laundries, bakeries, and restaurants which is to be reported separately in classification 0603; installation, service, and repair of commercial garage doors and openers which is to be reported separately in classification 0603; installation of water softening systems which is to be reported separately in classification 0306; and small table top or counter top appliance stores which are to be reported separately in classification 6406.

Special note: Classification 0607 is distinguishable from classification 6306-02 operations in that appliance stores covered in classification 6306-02 are engaged primarily in the sales of new appliances. Although classification 6306 includes repair of appliances, most repairs are related to warranty work and represent a minor part of the business. By contrast, the repair of appliances in classification 0607 is the primary activity of the business.

0607-16 Television antenna or satellite dish: Installation, removal, service and/or repair

Applies to establishments engaged in the installation, removal, service and/or repair of television antennas or satel-

lite dish receiving units. Operations contemplated by this classification are limited to rooftop installation of television antennas or ground or rooftop-mounted satellite dish reception units. Establishments covered by this classification will generally employ technicians and installers to install systems and trouble shoot reception problems. Equipment is limited primarily to delivery trucks, vans, ladders, and small power and/or hand tools.

This classification excludes specialty contractors who install, remove, service or repair antennas, dish units, and/or other transmitting/receiving apparatus to a structure covered by classification 0508, who are to be reported separately in classification 0508; and establishments engaged in the sale of new console type and big screen televisions who also sell and install antennas which are to be reported separately in classification 6306.

0607-17A Safes or vaults, private mail boxes, or safe deposit boxes: Installation, removal, service and/or repair

Applies to contractors engaged in the installation, removal, service and/or repair of all types of safes or vaults regardless of size or application, private mail or postal boxes, or safe deposit box units within buildings. Safes and vaults are found in businesses such as, but not limited to, banks, jewelry stores, rare coin and stamp stores, grocery stores, and gasoline service stations, as well as in private residences. Services contemplated by this classification include, but are not limited to, safe opening services.

0607-17B Lock sets and/or dead bolt locks: New installation

Applies to the *new installation* of lock sets and/or dead bolt locks on buildings or structures by contractor or by employees of a locksmith. The term new installation applies to installing a lock set (locking doorknob) or a dead bolt where none previously existed. The process consists of measuring and marking where the unit is to be placed on the door, boring holes into the door to accept the lock set or dead bolt lock, and installing the lock set unit using a power drill and basic hand tools.

This classification excludes the installation of a *replacement* lock set or dead bolt lock unit by employees of a locksmith, and locksmith store operations which are to be reported separately in classification 6309.

0607-18A Window/door blinds, shades, curtains and drapes: Installation

Applies to contractors and employees of store operations who are engaged in the installation of indoor or outdoor window coverings, such as, but not limited to, blinds, shades, screens, exterior roll shutters and draperies or curtains, but does not include awnings. The process consists of marking the location of covering on the frame or opening, securing brackets or hardware, rods and poles, and installing the covering.

This classification excludes the installation of window and door awnings which is to be reported separately in the applicable classification, and the manufacture of coverings which is to be reported in the applicable classification.

Special note: Care should be taken when considering the assignment of a store classification to an establishment

engaged in the installation of coverings to verify that a store exists. It is common for establishments subject to this classification to have show rooms to help customers visualize covering products available for sale. These establishments have little or no product available for immediate sale, as most items are special order from the manufacturer. A bona fide window/door covering store will have a large assortment of coverings, as well as related home interior products such as, but not limited to, pillows, small rugs, and accent pieces, readily available for sale to customers.

0607-19 Advertising or merchandise display: Set up or removal within buildings by nonstore employees

Applies to contractors engaged in the set up or removal of advertising or merchandise displays within buildings for retail or wholesale store customers. Operations contemplated by this classification will vary from seasonal panoramas with extensive carpentry, painting, and art work to dressing mannequins to be displayed in store windows. (~~Classification 0607 also includes employees of a manufacturer and manufacturer's representatives who are involved in the setting up of these displays.~~)

This classification also applies to establishments engaged in providing merchandising services N.O.C. for certain products without the responsibility of delivering them to the customer's place of business. Customers of these types of services are generally retail businesses assigned classifications 6304, 6305, or 6406 such as, but not limited to, gift, variety or department stores, dry goods stores, drug stores, news stands, book or video stores, and cosmetic stores. Merchandising services contemplated by this classification include, but are not limited to, taking inventory of goods on hand, restocking, reordering, removing outdated or damaged merchandise from shelves, and/or assembling temporary displays.

This classification excludes employees of store operations engaged in setting up displays who are to be reported separately in the applicable store classification as this is a common store activity, and merchandising establishments or employees who deliver products to their customer's place of business, and may also perform related merchandising functions, who are to be reported separately in classification 1101.

Special note: The distinguishing factor between merchandising employees who may be reported in this classification and those who are to be reported in classification 1101-17 is the delivery of products to the customer's place of business. Any employee who delivers merchandise to the customer's place of business is to be reported in classification 1101.

0607-21 Meat slicer or grinder: Installation, service and/or repair

Applies to contractors and employees of equipment manufacturers engaged in the installation service and/or repair of meat cutting, slicing, or grinding equipment within stores, restaurants, or processing plants. Repair may be performed at the customer's location or in a shop operated by an employer subject to this classification. This classification includes repair shops, field technicians, installers, and warehouse or parts department employees.

Special note: Establishments subject to this classification generally do not have store operations. Equipment is generally ordered from the manufacturer or distributor and shipped to the customer's location where it will be installed. In the event that an establishment subject to this classification has a store operation it is included within classification 0607.

0607-22 Protective bumpers: Installation

Applies to contractors engaged in the installation of protective bumpers on structures such as, but not limited to, store loading docks for freight or cargo. Operations contemplated by this classification are limited to measuring the dock to be fitted with a rubber bumper, finish cutting or otherwise fabricating the rubber pieces to fit the required application, and fastening the dock bumper with the use of hand tools. Dock bumpers are made of rubber from recycled tires or similar pliable materials.

This classification excludes the manufacture of loading dock bumpers which is to be reported separately in the applicable manufacturing classification.

0607-23 Cellular phone systems or audio components: Installation in vehicles, service and repair

Applies to establishments engaged in the installation of cellular phone systems and/or audio components in vehicles. Audio components include, but are not limited to, radios and stereo systems, speakers and amplifiers, alarm systems, television units, antennas, two-way radio systems. This classification applies to installation employees of stores that sell products as well as to auto service centers that specialize in the installation of products covered by this classification.

This classification excludes retail and wholesale store operations which are to be reported separately in the applicable store classification.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-536 Classification 1101.

1101-04 Automobile delivery or repossessing

Applies to establishments engaged in delivering or repossessing individual automobiles for others. Generally, a client will contact the service company and arrange for a car to be delivered to a specific destination or request that a car of which they (client) is the legal owner, be repossessed and delivered to a specific location. In either case, a driver, not a motorized transportation service, does the delivery. Duties of employees subject to this classification are generally limited to unlocking vehicles and driving. It is common on long distance deliveries for the service company to use more than one driver. This classification also applies to drivers of sound trucks.

This classification excludes operation of tractor/trailer combinations to transport vehicles which is to be reported separately in classification 1102 or classification 1109, depending on the method of transporting.

1101-06 Delivery by retail and wholesale stores and distributors, N.O.C.

Applies to employees of retail and wholesale stores engaged in inter-store delivery, customer merchandise deliv-

ery when excluded from the store classification, and delivery not covered by another classification (N.O.C.). Employees subject to this classification are generally involved in loading and unloading delivery vans or trucks and driving from store to store, or from a store to a customer's location. Drivers may or may not have designated routes or delivery areas. This classification is not applicable to establishments engaged in general trucking services which are to be reported separately in classification 1102. Classification 1101 is distinguishable from delivery operations reported in classification 1102 in that businesses covered by classification 1102 generally do not own the merchandise they are transporting.

1101-09 Parcel delivery companies for delivery of small parcels

Applies to establishments engaged in the delivery of small parcels for others. Establishments subject to this classification may offer overnight express services, but usually do not deliver packages that exceed 150 pounds. Work contemplated by this classification includes, but is not limited to, driving, loading and unloading delivery vehicles. This classification also applies to contract mail delivery route drivers and contract hauling of mail between post offices.

This classification excludes the delivery of bulk freight such as that delivered by trucking companies which are to be reported separately in classification 1102.

1101-14 News agents or distributors of magazines, periodicals and telephone books - no retail dealers

Applies to establishments engaged in the distribution of newspapers, periodicals, and telephone books. Work contemplated by this classification includes, but is not limited to, driving, loading and unloading the vehicles, stocking shelves, and removing old periodicals from shelves.

1101-17 Driver delivery sales, N.O.C.

Applies to establishments engaged in route sales of a wide variety of merchandise not covered by another classification (N.O.C.), including, but not limited to, hand tools, automotive supply, and household items (~~(- used clothing, snack foods (such as potato chips), dairy products, greeting cards, over-the-counter medications, grooming products, and pamphlets)~~). Sales personnel (~~((drive company vehicles to deliver products which have been previously ordered and, while at the customer's location, solicit further orders, remove outdated merchandise, and restock shelves or displays))~~) deliver products, show samples and solicit further orders. They may also call on new customers along their route. The classification also applies to establishments or employees known as merchandisers who (~~((travel))~~) deliver products to their customer's place of business ((and remove outdated merchandise from shelves and restock with new products)) then perform related merchandising functions such as taking inventory of goods on hand, restocking, reordering, removing outdated or damaged merchandise from shelves or the premises, and/or assembling temporary displays which are usually made of lightweight material such as cardboard or plastic and used for promotional or seasonal goods. These merchandisers often deal in products such as, but not limited to, greeting cards, over-the-counter medications, and grooming products.

This classification excludes employees of establishments who provide merchandising services, but who do not deliver products to the customer's place of business, who may be reported separately in classification 0607; and establishments engaged in the set up or removal of advertising or merchandise displays that involve more than incidental assembly of seasonal or promotional exhibits which are to be reported separately in classification 0607.

Special note: The distinguishing factor between merchandising employees who are to be reported in classification 1101-17 and those who may be reported in classification 0607 is the delivery of products to the customer's place of business. Any employee who delivers merchandise to the customer's place of business is to be reported in classification 1101.

1101-19 Route food services

Applies to establishments engaged in route food services where prepackaged, prepared food is sold, or where food may be prepared in the mobile unit for immediate sale by employees of the route food service. Duties include, but are not limited to, driving, food preparation, loading and unloading the vehicle, and cashiering. Typical route food services include, but are not limited to, traveling coaches that sell beverages and prepared pastries or snack items at various locations during a given work day, ice cream wagons, refrigerated trucks that sell specialty prepackaged foods to route customers, or mobile "short-order" food services that sell fast foods at special events or at locations where hot food may not be available.

This classification excludes food preparation at a fixed location for the route food vehicles which may be reported separately in classification 3905 or as applicable.

1101-20 Computer tape or accounting records delivery service

Applies to establishments engaged in picking up and delivering computer tape, accounting records, or similar financial records to or from storage centers to customer locations. Delivery drivers in this classification often work in metropolitan areas and drive small cars or bicycles.

1101-21 Errand service

Applies to establishments engaged in providing errand services for others. Types of errands include, but are not limited to, shopping services, delivery of food, beverages or other commodities, and delivery of body fluid samples to laboratories. Vehicles used by these services are typically small cars or bicycles. This classification also applies to the distribution of sample merchandise by vehicle.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-538 Classification 1103.

1103-00 Coal and solid fuel dealers - yard operations

Applies to establishments engaged in the sale and delivery of coal, pressed wood fiber logs (fire logs), wood stove pellets, wood chips, and sawdust. Operations contemplated by this classification include all related store, yard and deliv-

ery operations when conducted by employees of employers having operations subject to this classification.

This classification excludes all manufacturing operations which are to be reported separately in the classification applicable to the material and process used, and all mining operations which are to be reported separately in the applicable classification.

1103-02 Firewood dealers - yard operations

Applies to establishments engaged in the sale of firewood. This classification is limited to establishments operating a firewood sales lot where customers either pick up firewood or the dealer will make deliveries from. Operations contemplated by this classification are limited to yard and delivery operations.

This classification excludes firewood cutting operations conducted in timber or forest lands and firewood sales lots conducted from a logging landing which are both to be reported separately in the applicable logging classification.

Special note: Establishments subject to this classification may purchase pre-cut firewood from other nonrelated businesses or may have a cutting crew. The only cutting operations allowed in classification 1103 are those conducted in the sales lot.

1103-04 Composting

Applies to establishments engaged in composting yard waste or other materials. Depending on the type of yard waste accepted, grinders may be used to reduce the size of the material for faster composting. Once the material is an acceptable size for composting, it may be placed in static curing piles, turned periodically to aerate until it is adequately decomposed, then sometimes screened. Another method of curing is to place the waste material in long rows, called "windrows" which are turned periodically. Other establishments, either operated privately or by municipalities, may use processed and dewatered sludge which is mixed with other materials such as shredded yard waste, sawdust, or other wood waste. The mixture must be designed to have the right degree of moisture and air to maintain a temperature of between 130 and 160 degrees Fahrenheit. The end product, in either instance, is a "Class A" pathogen product, meaning it can be used in soil for raising vegetables and is referred to as "manufactured" soil. This classification includes delivery when performed by employees of an employer having operations subject to this classification.

1103-05 Pallet recycle service - yard operations

Applies to establishments engaged in the sale and/or repair of used wood pallets to others. Operations contemplated by this classification are limited to the pick up of discarded used pallets from stores, warehouses, or other facilities, transporting of pallets to the establishment's sorting and storage yard where they are sorted by grade and size, reloading of pallets onto trucks, and delivery of pallets to customers.

This classification excludes all pallet repair activities which are to be reported separately in classification 2903.

1103-06 Top soil, humus, peat and beauty bark dealers - yard operations

Applies to establishments engaged in the sale of soils, humus, peat, and beauty bark to others. Operations contemplated by this classification are limited to the receipt of soils, peat, humus, bark and compost in bulk and the subsequent load out of bark, soil and related organic matter into customer vehicles. This classification includes custom mixing soils, incidental sales of landscaping rock, sand, gravel, and crushed rock, and delivery when performed by employees of an employer subject to this classification.

This classification excludes contract delivery by non-dealer employees who are to be reported separately in classification 1102, and digging of soils/humus/peat/gravel or grinding of bark which are to be reported separately in the applicable classification.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-544 Classification 1404.**1404-06 Vessels, ferries, tugs, and steamboats, N.O.C.**

Applies to employees not covered under federal jurisdiction, or another classification (N.O.C.), who provide services for seaworthy vessels such as ferries, tugs, or steamboats at the docking site or on adjacent land. Vessels may operate seasonal or year-round. Employments include, but are not limited to, dock workers, maintenance workers, traffic control personnel, and night security personnel.

Special note: Care should be exercised prior to assignment of this classification as the workers could be subject to federal laws covered by the Jones Act or by the U.S. Longshore and Harbor Workers Act. A detailed description of these acts can be found in classifications 0104 or 0202.

1404-07 Train rides

Applies to establishments engaged in the operation of passenger excursion train rides for scenic or amusement purposes on an intrastate basis only. Excursion train rides are typically operated from a mountain, lake or similar site. The trains may operate on a seasonal basis in direct relation to the volume of tourists, weather conditions, or dates of local celebration. Employments in this classification include, but are not limited to, drivers/engineers, guides, lecturers, hostesses, and maintenance personnel. Ticket sellers may be reported separately in classification 4904 provided that they do not handle baggage and that the conditions of the standard exception general reporting rules have been met. On-board food service personnel may be reported separately in classification 3905 as long as their duties are limited to food service and they do not facilitate the train ride or train ride operation in any way.

1404-11 Escort and pilot cars

Applies to establishments that provide escort or pilot car services for others. The duties include driving ahead of, or behind, various types of vehicles.

This classification excludes employees of an employer assigned to drive escort or pilot cars in connection with the delivery of equipment, buildings, goods, or similar items which the employer sells or contracts to deliver. Such

employment is to be reported separately in the classification applicable to sales or delivery of such items. For example, an escort driver employed by a common carrier transporting a modular home to a customer's site is to be reported separately in classification 1102.

1404-12 Cabulance and paratransit

Applies exclusively to establishments that provide on-demand, nonemergency transportation services to passengers with special needs. Vehicles used are usually vans that are equipped for accessibility to accommodate passengers with mobility limitations including passengers in wheelchairs or gurneys. Work contemplated by this classification includes, but is not limited to, operation of the vehicle, assisting passengers in and out of the vehicle, and maintenance/repair of the vehicle when performed by employees of an employer subject to this classification.

This classification excludes: Cabulance services offered in conjunction with a taxi service which are to be reported separately in classification 1401, cabulance services offered in conjunction with an ambulance service which are to be reported separately in classification 1405, paratransit services offered in conjunction with a municipal bus or transit system which are to be included in classification 0803 or 1501 as appropriate, ambulance services which are to be reported separately in classification 1405, limousine drivers who are to be reported separately in classification 6301, and dispatchers with no other duties who are to be reported separately in classification 4904.

Special note: Care should be exercised in determining what type of cabulance service is being provided. This classification is *not to be* assigned when provided as an incidental part of a taxi cab service subject to classification 1401. A cabulance service as defined in this rule will need a specialized van or bus to transport passengers as opposed to a passenger automobile that is not equipped to accommodate special mobility needs, and whereby the transportation service has been prearranged. ~~((For purposes of this subclassification, paratransit businesses reporting under classification 1405-00 are not required to report in this subclassification until January 1, 2001.))~~

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-57001 Classification 2907.**2907-00 Wood cabinet, countertop, and fixture: Manufacturing, modifying or assembly**

Applies to establishments engaged in the manufacture, modification, or assembly of wood cabinets, countertops, and fixtures. Cabinetry work contemplated by this classification includes, but is not limited to, manufacturing custom or modular cabinets, assembling prefabricated modular cabinet components, refacing existing cabinets and replacing hardware, and modifying the dimension or design of modular cabinets. Manufacturing countertops includes fabricating the core or sub top in addition to laying the plastic laminate, polyester overlay or tile when performed in the shop by employees of employers subject to this classification. Finishing that is subcontracted out to a prefinishing contractor or performed by

the general or specialty construction contractor at the job site is to be reported in the classification applicable to the work being performed. Finish work, including staining, lamination, and the attachment of hardware, is included in classification 2907-00 when performed by employees of an employer subject to this classification. Fixture manufacturing includes built-in store, office, restaurant, bank and residential fixtures such as, but not limited to, showcases, display cases, end aisles, display pedestals, shelving, partitions, racks, podiums, wall units, china hutches, entertainment centers, cashier cubicles, check-out counters, and curio cabinets. The wiring of fixtures for electrical fittings, and the cutting and fitting of plastic laminates, glass, mirrors, or metal trim, when performed in the shop, is included as an integral function of the manufacturing process encompassed within this classification. Raw materials include, but are not limited to, dimensional lumber, plywood, veneer, particleboard, plastic laminates, polyester overlays, sheet rock, slot wall dowels, hardware, mirrors, metal trim, electrical hardware, carpet, upholstery fabric, stain, paint, lacquer or glue. Machinery includes, but is not limited to, table, panel, radial arm, cut-off, chop, rip, band, and miter saws, wide belt sanders, edge sanders, hand finish jointers, mortises, tenoners, drill presses, hand drills, boring machines, edge banders, dowel machines, glue spreaders, face framing machines, pneumatic nail, screw and staple guns, air compressors, spray guns, forklifts, pallet jackets, and dust collectors. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification. Lumber yards, building material dealers, or general construction contractors that maintain a separate woodworking shop for manufacturing, assembling cabinets, and fixtures are subject to this classification for the woodworking operations, in addition to any other basic classification applicable to their business.

This classification excludes the installation of countertops only which is to be reported separately in classification 0502, the installation of cabinets, countertops, and fixtures which is to be reported separately in classification 0513; the manufacture of wood furniture and caskets which is to be reported separately in classification 2905; the manufacture of metal cabinets which is to be reported separately in classification 3404; lumber remanufacturing which is to be reported separately in classification 2903; veneer manufacturing which is to be reported separately in classification 2904; and sawmill operations which are to be reported separately in classification 1002.

Special note: Establishments primarily engaged in the manufacture of cabinets, countertops and fixtures, may make other wood products such as doors, windows, moldings, and/or furniture as an incidental activity to the main business. The manufacture of these incidental products is included within the scope of classification 2907-00. Furniture is generally moveable and unsecured. Fixtures are usually secured, stationary, permanently built-in objects. Even though some fixtures may be secured to a wall or floor, they are not intended to be relocated, unlike furniture which is frequently and more easily arranged.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-583 Classification 3406.

3406-00 Automotive or truck gas service stations, N.O.C.; Lube and oil change specialists, and mobile lube and oil services

Applies to establishments operating full service gasoline or diesel service stations not covered by another classification (N.O.C.) (~~and includes lube and oil change specialists and mobile lube and oil services~~). Full service includes, but is not limited to, pumping gas for customers, replacing wiper blades, checking and/or filling the fluid levels (oil, transmission, wiper wash and antifreeze), and adding air to the tires. The repairs included in this classification are oil and filter changes, tune-ups, replacement of brakes, front end alignments and the repair or replacement of tires. This classification includes cashiers.

This also applies to establishments engaged exclusively in preventive automotive maintenance, such as, but not limited to, changing oil and oil filters, lubing chassis, checking and/or filling fluid levels, replacing wiper blades, adding air to tires, and checking and/or replacing belts, hoses, and filters.

This classification excludes portable automobile or truck car washes which are to be reported separately in classification 6602; establishments engaged in automobile or truck repair services and tune up specialists which are to be reported separately in classification 3411; establishments engaged in the service or repair of machinery or equipment N.O.C. which are to be reported separately in classification 6409; self-service gas stations which are to be reported separately in classification 3409; and convenience grocery stores or mini-markets with self-service gasoline operations which are to be reported separately in classification 3410.

3406-01 Automobile or truck storage garages

Applies to establishments operating automobile or truck storage garages. Generally, these types of storage garages consist of an enclosed structure and usually with more than one level of parking. Storage garages may provide additional incidental services such as, but not limited to, gasoline, tune-ups, washing and waxing services, as well as cashiers and full time attendants or security personnel.

This classification excludes portable automobile or truck car washes which are to be reported separately in classification 6602; establishments providing parking lot services which are to be reported separately in classification 6704; automobile or truck repair services which are to be reported separately in classification 3411; establishments engaged in the service or repair of machinery or equipment N.O.C. which are to be reported separately in classification 6409; self-service gas stations which are to be reported separately in classification 3409; and full service gas station services which are to be reported separately in classification 3406-00.

Special note: Storage garages applicable to this classification are distinguishable from parking lots in classification 6704 in that parking lots usually are not an enclosed structure, and they do not provide service to automobiles.

3406-04 Automobile or truck - detailing by contractor; glass tinting

Applies to establishments engaged in providing automobile or truck detailing services and to establishments engaged solely in tinting glass in automobiles. Detailing services involve complete, in-depth cleaning of exteriors and interiors such as, but not limited to, washing, waxing, polishing, buffing, vacuuming or otherwise cleaning the auto bodies, chrome work, tires, hub caps, windows, mirrors, carpets and seats and may also involve tinting glass. This classification includes cashiers.

This classification excludes portable automobile or truck car washes which are to be reported separately in classification 6602; tinting of automobile or truck window glass performed by a glass dealer which is to be reported separately in classification 1108; glass tinting or the application of tinted plastic film to glass windows and doors in buildings which are to be reported separately in classification 0511; detailing performed in connection with automobile or truck dealers, service centers or repair garages which are to be reported separately in classification 3411; detailing performed in connection with automobile or truck body and fender repair shops which are to be reported separately in classification 3412; detailing performed in connection with establishments engaged in the service or repair of machinery or equipment, N.O.C. which is to be reported separately in classification 6409; and detailing performed in connection with full service gas stations which are to be reported separately in classification 3406-00.

3406-05 Automobile or truck car washes

Applies to establishments providing automobile or truck washing services. This classification includes the exterior washing, waxing, polishing or buffing, cleaning of chrome and tires, and the interior cleaning of windows, carpets, dash and seats. These services may be performed at a coin operated self-service unit, or at a full service automatic unit where the vehicle is conveyed through the line assisted by attendants. This classification includes cashiers and the sale of accessory items such as, but not limited to, bottled car care products, air fresheners, floor mats, beverages and snack foods.

This classification excludes portable automobile or truck car washes which are to be reported separately in classification 6602; washing services performed in connection with automobile or truck dealers, service centers or repair garages which are to be reported separately in classification 3411; washing services performed in connection with automobile or truck body and fender repair shops which are to be reported separately in classification 3412; washing services performed in connection with establishments engaged in the service or repair of machinery or equipment, N.O.C. which are to be reported separately in classification 6409; washing services performed in connection with full service gas stations which are to be reported separately in classification 3406; washing services performed in connection with self-service gasoline operations which are to be reported separately in classification 3409; and washing services performed in connection with convenience stores that have self-service gasoline operations which are to be reported separately in classification 3410.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-594 Classification 3602.**3602-01 Electrical, telegraph or radio component, telephone set: Manufacture, assembly, or repair**

Applies to establishments engaged in the manufacture, assembly, or repair of components related to the telegraph, electrical, radio or telephone industry. Component parts may be for items such as, but not limited to, radio or television sets, hearing aids, transformers, coils, condensers, switches, antennae, phones, speaker units, dials, rheostats, plugs, arrestors, resistors, and electrical control relays, circuit breakers, or other parts necessary to accomplish radio, electrical, telegraph or telephone communication. Materials include, but are not limited to, metal, plastic, and wood used for the outside casings, and component parts. Some establishments in this classification manufacture the casings and the internal components. Other establishments in this classification assemble the ready-made parts with air and hand tools such as, but not limited to, drill presses, solder guns, or saws. Internal parts are usually assembled simply by clamping circuit boards in place, then soldering small pieces together. This classification includes engineers, research and laboratory personnel employed by establishments having operations subject to this classification. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-02 Instrument - scientific, medical, or professional: Manufacturing; magnetic tape: Manufacturing

Applies to establishments engaged in the manufacture of instruments used in medical, scientific, or professional applications. This classification also applies to establishments engaged in the manufacture of magnetic tapes. Instruments in this classification range widely in shape and size; they include, but are not limited to, dental or surgical instruments, microscopes or other scientific testing or research instruments, surveyors' instruments, and electrical testing instruments. Materials include, but are not limited to, metal, glass, plastic, or wood for casings, and component parts. Processes vary depending upon the product being produced, and could involve some stamping, machining, and heat-treating. However, component parts are usually manufactured by others, and establishments in this classification perform a substantial amount of hand assembling, inspecting, testing, and packaging operations. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

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3602-03 Sound recording equipment: Manufacturing

Applies to establishments engaged in the manufacture of sound recording equipment. Establishments in this classification may manufacture all or some equipment such as instruments for measuring sounds, and generators (for producing sounds), filters or modulators (for processing sounds), magnetic or tape recorders (for storing sounds), and speakers (for reproducing sounds). Materials include, but are not limited to, metal, glass, plastic, or wood for casings, clamps, glue or epoxy, and component parts. Components may be produced by the manufacturer or purchased from others and assembled. The assembly may be partially or wholly automated. Machinery includes, but is not limited to, shears, drill presses, grinders, soldering guns, welding equipment, and air or hand tools. There may be inspection areas and sound testing rooms. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-04 Thermometer and steam gauge: Manufacturing

Applies to establishments engaged in the manufacture of thermometers and/or steam gauges. The most common type of thermometer is a mercury thermometer which consists of a capillary tube that is sealed at its upper end and is enlarged into a spherical or cylindrical bulb at its lower end. This bulb is filled with mercury and mounted on a thin metal or plastic sheet. The manufacturers of steam gauges may simply assemble component parts with hand tools, test, and package them. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-05 Dental laboratories

Applies to establishments engaged in the manufacture of dentures, artificial teeth, braces, and retainers. These types of establishments are generally referred to as dental laboratories. The manufacture of these items involves precision work with castings, plastic or vinyl molding, and light wire forming. In the state of Washington dental laboratories can fit patients for dentures, in addition to making the denture which is included when performed by employees of employers subject to this classification. This is a shop only classification. Repair work when specified is limited to work performed at the shop.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported

separately in the classification applicable to the production process used.

3602-06 Jewelry: Manufacturing or engraving; trophy assembly or engraving

Applies to establishments engaged in the manufacture or engraving of jewelry, such as, but not limited to, rings, bracelets, necklaces, earrings, watchbands, pins, broaches, and cigarette lighters. Jewelry manufacturing or engraving involves working with precious metal and/or stones. Operations usually include polishing, buffing, drilling, and assembly, mixing and melting alloys and metals, then pouring the mixture into small casts. This classification also applies to establishments engaged in assembling or engraving trophies on a production basis. For purposes of this classification, assembly means making trophies from premanufactured components purchased from others. The engraving may be done by "etching" or by computer. In the etching method, patterns or lettering is cut into a metal strip that is coated with a solution resistant to etching acids. The metal strip is treated with etching acids that "melt away" the uncoated portion of metal, leaving an impression of the design. Computerized engraving is done by keying the designs or letters into the computer; the designs are transmitted to an "arm" on the computer which "draws" (engraves) them onto the metal plate. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used; and establishments engaged in the manufacture of watches which are to be reported separately in classification 3602-09.

Special note: This classification is for manufacturers engaged in the mass production of jewelry items and is distinguishable from jewelry stores reported in classification 6308 who produce custom, one-of-a-kind pieces on a special order basis. Trophy stores in classification 6308 may assemble components to make custom trophies, or engrave plaques for the trophies they sell. Assembly and engraving that is incidental to their retail sales operation is included in their store classification.

3602-07 Electronic parts: Assembly

Applies to establishments engaged in the assembly of electronic parts which are usually sold to other manufacturers. They may have automated/robotics assembly lines for all or part of the processes. In manual operations, small parts are soldered, chipped, riveted, or screwed into place with hand tools such as, but not limited to, soldering guns, riveters, drills, screw drivers, or water jets. This classification also applies to establishments engaged in the manufacture or assembly of computers and the manufacture of dry cell (flashlight type) batteries. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the

manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-08 Electrical/electronic ignition assembly, cord set, or radio set: Assembly

Applies to establishments engaged in the assembly of electrical/electronic ignition assemblies, cord sets, and radio set components. An ignition assembly is a switching component that allows an electrical circuit to be completed in order to start a piece of machinery or equipment. Electrical cord sets are the portion of wiring found on appliances and tools that plug into electrical power sources. A radio set is comprised of an input circuit for tuning in to the frequencies of the various transmitters to be received, the demodulation circuit for separating the audio-frequency from the high-frequency carrier, a low-frequency amplifier stage, and the loudspeaker. The amplifier elements are transistors supplied with the necessary operating voltages. Establishments in this classification usually assemble radio component parts and circuit boards that are manufactured by others. The assembly is accomplished by soldering, clipping, riveting, and welding the parts into place. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-09 Watch: Manufacturing

Applies to establishments engaged in the manufacture of watches. The component parts are usually mass produced on an assembly line. Watch cases are usually made from sheet metal or plastic; watch faces are made from plastic or glass. The internal works are very small gears or springs and/or computer chips. The face may have hands and a dial, or may consist of a light emitting diode (LED). This classification includes the manufacture of internal works of clocks. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes establishments engaged in the manufacture of jewelry which are to be reported separately in classification 3602-06; establishments engaged in the manufacture of wooden housings or casings for clocks such as grandfather and mantle types which are to be reported separately in classification 2905; all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-10 Camera, video camcorder, motion picture projectors: Manufacturing, assembly, or repair

Applies to establishments engaged in the manufacture, assembly, or repair of cameras, video camcorders, and motion picture projectors. Materials include, but are not limited to, metals, plastics, glass and internal components. Machinery includes, but is not limited to, punch presses, drill

presses, and soldering guns. Establishments in this classification often assemble products from internal components manufactured by others. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

Special note: When an establishment subject to this classification has a retail store, then both classifications 6406 and 3602-10 may be assigned, provided all the conditions of the general reporting covering the operation of a secondary business have been met. Otherwise, all operations are to be reported in the highest rated classification of the two.

3602-11 Fishing tackle: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of fishing tackle. For purposes of this classification, the term fishing tackle is limited to lures, spinners, spoons, flies, plugs, sinkers, artificial bait and similar items. Work contemplated by this classification includes the receipt of supplies such as wire, hooks, spoons, swivels, beads and feathers, and other components from unrelated manufacturers and distributors, hand assembly of components into finished fishing tackle, painting spoons and plug bodies, packaging and shipping. This classification also contemplates testing of products and research and development of new products. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes the manufacture of items such as, but not limited to, reels, poles, nets, tackle boxes, knives, melting pots, plastic beads, wooden or plastic plug bodies, hand tools (pliers, bench vise) molds, specialty clothing or protective gear which are to be reported separately in the classification applicable to the material and process used to produce the product; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

Special note: Care should be taken when assigning this classification to verify that the product being manufactured is compatible with the manufacturing and assembly processes contemplated within this classification. Most fishing tackle subject to this classification is hand assembled from small component parts.

3602-12 Incandescent lamp or electric tube: Manufacturing

Applies to establishments engaged in the manufacture of electrical or gas-filled bulbs or tubes such as, but not limited to, incandescent lamps, photoflash lamps, flood lamps, fluorescent tubes, X-ray tubes, cathode-ray tubes, neon tubes or artistic style neon tube signs that are not attached to metal backings. The processes and equipment will vary somewhat depending on the type of electrical bulb, tube, or lamp being made, but the basic operation is the same. Component parts such as, but not limited to, glass bulbs, globes, or tubes, tungsten wire, metal bases, shellac, and nitrogen and argon gas

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are purchased from outside sources. Using flange machines, the bottom of the glass tubing is fused to the flange to produce the base that is used within the bulb or globe. Metal bases may be milled, then coated with a sealing compound such as shellac. Mounts are assembled and inserted into the flange on stem machines. The assemblies are seared together, then the tungsten filaments are fixed between support wires forming the stem. The bulbs or globes are flushed with nitrogen to expel any moisture before the stems are inserted into them. These units are inserted into the metal bases and cemented. Air is evacuated and argon gas is pumped into the bases, after which they are heat sealed and trimmed. Neon tube signs or displays are made by heating a thin tube of glass over a ribbon flame until the tube becomes flexible, blowing air into the tube to keep the glass from collapsing, then, while it is still hot, bending it to shape. Because the glass cools rapidly, the heating and bending is repeated until the desired shape is achieved, then the tube is filled with neon or argon gas and the ends sealed.

This classification excludes establishments engaged in the manufacture of metal fixtures equipped with electrical or gas lighting which are to be reported separately in classification 3404; all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-14 Musical instrument - metal: Repair

Applies to establishments engaged in the repair of metal musical instruments which include, but are not limited to, trumpets, trombones, French horns, and tubas. The operations involve primarily hand work such as, but not limited to, brazing and soldering, as well as fitting, testing, and polishing the instruments. Tools include, but are not limited to, solder or brazing guns, lathes, drill presses, and various types of saws. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; the repair of wood musical instruments which is to be reported separately in classification 2906; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-23 Electronics products - resistors, capacitors, chips and relays, transistors: Manufacturing

Applies to establishments engaged in the manufacture of resistors, capacitors, chips, relays, and transistors which are usually tiny and delicate. Products manufactured in this classification are usually mass produced with little human intervention during the production process, which is often done in a vacuum or a nitrogen filled room. Materials include, but are not limited to, silicon, wires, and plastics. In addition to the automated equipment, hand-held tools include, but are limited to, pliers, wrenches, and soldering guns. Finished products are inspected, usually through powerful microscopes, then packaged and shipped. This is a shop or plant

only classification. Repair work, when specified, is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-24 Stamped metal goods: Manufacturing

Applies to establishments engaged in the manufacture of small, stamped, metal goods such as, but not limited to, metal tags, buttons, zippers, bottle caps, fasteners, snaps, clasps, buckles, and curtain fasteners. Materials, which come in coils or strips, are run through presses. Most of the stamping is done on automatic stamping presses. Products are cut, stamped, formed, trimmed, and cleaned, then usually finished by plating or lacquering. This is a shop or plant only classification. Repair work, when specified, is limited to work performed at the shop or plant.

This classification excludes the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-27 Electronic circuit board, N.O.C: Assembly

Applies to establishments engaged in the assembly of electronic circuit boards not covered by another classification (N.O.C.) which are used in a wide variety of electronic and automotive products. The process usually begins by cutting boards to size with power saws, then drilling or punching holes in them with automated drills or punches. Depending upon the original materials used, the boards used for the base may be coated or dipped. Then the chips, transistors, resistors, and/or condensers are installed, usually as part of an assembly line process. Next, the circuit boards are dipped and coated with a thin metal. Finished products are inspected, tested, packaged and shipped. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-28 Stereo components: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of stereo components such as, but not limited to, record changers, disc or video players, receivers and amplifiers. Materials include, but are not limited to, circuit boards, resistors, drivers, baffle plates, chambers, trim/rings, and grills. Equipment includes, but is not limited to, hot glue guns, electric drills, electric screw drivers, and automated assembly or manufacturing equipment. Finished products are inspected, tested, packaged and shipped. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the

manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-618 Classification 3905.

3905-00 Restaurants, N.O.C.

Applies to establishments engaged in restaurant operations not covered by another classification (N.O.C.). These establishments are "traditional, family or full service" restaurants that provide sit-down services, or cafeteria or buffet style meals. This classification includes the preparation and service of food and beverages. Establishments in this classification may serve beer and wine; however, they are prohibited from selling spirits or hard liquor. Typical occupations include, but are not limited to, hostesses, waiters, waitresses, cooks, busboys, dishwashers, cashiers, and managerial staff. This classification also includes the preparation of "take-out food" that customers pick up directly from the restaurant for consumption away from the premises and the operation of a card room in conjunction with the restaurant.

This classification excludes establishments engaged in operating restaurants or lounges that sell spirits or hard liquor which are to be reported separately in classification 3905-07, and catering services that are not part of the restaurant operation which are to be reported separately in classification 3909.

Special note: Traditional, family or full service restaurants are establishments where wait persons bring customers a menu, take orders, and deliver prepared meals to the customer's table or where customers choose from a variety of food items from a buffet or cafeteria style service. Such establishments will generally use nondisposable eating utensils and plates to serve food as opposed to throw away paper plates and plastic eating utensils. Includes establishments where orders are placed at the counter, and the food or drink is delivered to your table. Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as an independent contractor. Musicians or entertainers who are considered to be employees of a restaurant are to be reported separately in classification 6605.

3905-01 Food, drink, and candy vending concessionaires at theatres, parks, tracks, and exhibitions

Applies to establishments engaged in operating food, drink or candy concessions at ball parks, race tracks, theaters and exhibitions. This classification is applicable only to concession operations which are operated independent from the facility or event at which the concession service is being provided. These independent vendors selling food items are not employees of the facility or site where the event or exhibition is taking place. Vendors subject to this classification sell a variety of food, snack and beverage items from booths, mobile push carts, mobile stands, carrying boxes, or trays.

This classification excludes food and beverage operations (concession stands) operated in connection with an

event or facility by employees of the event sponsor or facility operator which are to be reported separately in the classification applicable to the event or exhibition; street vendors or route food services which are to be reported separately in classification 1101; vendors of nonfood items which are to be reported separately in the applicable classification; and vending machine service companies that replenish food, snack and beverage products which are to be reported separately in classification 0606.

3905-03 Commissaries and restaurants with construction, erection, logging or mine operations

Applies to commissary or restaurant operations conducted *exclusively* in connection with a construction, erection, logging or mining camp operation. This classification is limited to food preparation services provided at a camp site or at a mess hall used to feed employees of the construction, logging, erection, or mining company. The foods prepared and served are not intended for, or offered to, the general public.

Special note: The purpose of this classification is to provide employees engaged in the food preparation activity with a classification representative of the work being performed, even though such activities may be occurring at or adjacent to the construction, logging, erection or mining site as provided for in the general reporting rule covering general inclusions.

3905-04 Eating establishments, N.O.C. such as public lunch counters in stores

Applies to establishments not covered by another classification (N.O.C.) engaged in operating lunch counters and restaurants within a retail store location. Use of this classification is limited to employees of an employer who also operates the retail store where the food service is located.

3905-06 Taverns

Applies to establishments engaged in the operation of a tavern. A tavern is primarily engaged in the sale of beer ~~((and)),~~ wine, and alcoholic beverages for on-premises consumption, and may also provide a variety of foods ranging from peanuts and pretzels to hot food dishes. Typical occupations include, but are not limited to, bartenders, waiters, waitresses, cooks, busboys, dishwashers, and managerial staff. Beer may also be sold by the keg with the rental of necessary taps and pumps. This classification includes the operation of a "beer garden" at special events such as, but not limited to, fairs or race meets, and the operation of a card room in connection with the tavern.

~~((This classification excludes restaurants with a license to sell spirits or hard liquor which are to be reported separately in classification 3905-07.))~~

Special note: Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as an independent contractor. Musicians or entertainers who are considered to be employees of a tavern are to be reported separately in classification 6605.

3905-07 Restaurants serving spirits or hard liquor

Applies to establishments engaged in the operation of a restaurant having a license to sell spirits or hard liquor, beer and wine in connection with their food preparation and service. This classification includes the preparation and service

of food and beverages at sit down restaurants and lounges. Such establishments have extensive cooking facilities and equipment to prepare full meals. Typical occupations covered by this classification include, but are not limited to, bartenders, hostesses, waiters, waitresses, valet parking attendants, cooks, busboys, dishwashers, cashiers, and managerial staff. This classification also includes the preparation of "take-out food" that customers pick up directly from the restaurant for consumption away from the premises and the operation of a card room in connection with the restaurant.

This classification excludes establishments engaged as a restaurant without a license to sell spirits or hard liquor which are to be reported separately in classification 3905-00; taverns which are to be reported separately in classification 3905-06; catering services which are not part of a restaurant operation which are to be reported separately in classification 3909; musicians who are to be reported separately in classification 6605; and entertainers such as dancers who are to be reported separately in classification 6620.

Special note: Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as an independent contractor. Musicians or entertainers who are considered to be employees of a restaurant are to be reported separately in classification 6605.

3905-08 Pizza parlors

Applies to establishments engaged in operating a pizza parlor or restaurant. Establishments subject to this classification specialize in the preparation and sales of pizza (but may also provide other foods) and beverages such as wine, beer, alcoholic beverages, or soft drinks for on-premises consumption. Typical occupations include, but are not limited to, hostesses, waiters, waitresses, cooks, busboys, dishwasher, cashiers, and managerial staff. This classification also includes establishments that deliver pizza to customers, or where customers can pick up already prepared pizza at the shop, but where no customer seating is provided.

This classification excludes (~~pizza parlors with a license to sell spirits or hard liquor which are to be reported separately in classification 3905-07 and~~) U-bake pizza operations which are to be reported separately in classification 6403.

Special note: Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as an independent contractor. Musicians or entertainers who are considered to be employees of a pizza parlor are to be reported separately in classification 6605.

3905-09 Fast food drive-ins, N.O.C.

Applies to establishments engaged in the operation of fast food drive-ins or restaurants. These establishments serve easily prepared foods quickly and nonalcoholic beverages which can be eaten on the premises or picked up by customers at a counter or a drive through window. Fast food establishments offer a variety of menu items such as, but not limited to, hamburgers, french fries, tacos, sandwiches, fried chicken, hot dogs, fish and chips. Such establishments will

generally use disposable eating utensils and throw away plates.

This classification excludes street vendors and/or route food services which are to be reported separately in classification 1101 and full service restaurants which are to be reported separately in classification 3905-00.

3905-11 Soft drink lounges

Applies to establishments engaged in operating soft drink lounges. These types of establishments may provide entertainment such as dancing for an adult audience or a place where youths under the age of 21 can dance or listen to music. These lounges do not sell alcoholic beverages. This classification includes the preparation and service of light snacks and hors d'oeuvres, such as chips, peanuts, pretzels or finger sandwiches.

This classification excludes entertainers such as exotic dancers who are to be reported separately in classification 6620 and musicians who are to be reported separately in classification 6605.

Special note: Care should be exercised when dealing with establishments that provide entertainment such as musicians, entertainers, disc jockeys or piano players who may be exempt from coverage as an independent contractor. Musicians or entertainers who are considered to be employees of a lounge are to be reported separately in classification 6605 or 6620 as applicable.

3905-12 Ice cream parlors

Applies to establishments engaged in the operation of an ice cream parlor or frozen yogurt shop. These specialty shops offer a limited menu, usually confined to ice cream and frozen yogurt offered in individual servings, various size containers, and specialty items. Special occasion ice cream cakes may be ordered and picked up at a later date by the customer. These establishments usually provide customer seating.

This classification excludes street vendors and/or route food services which are to be reported separately in classification 1101.

3905-13 Candy, nut, and popcorn retail stores with on-premises manufacturing

Applies to establishments engaged in operating candy, nut or popcorn stores where some or all the products sold are manufactured on the premises. Establishments in this classification may sell a variety of candies, nuts, or popcorn, or may specialize in one or two products. They may also sell their products in gift wrapped packages.

This classification excludes establishments engaged in selling candy, nuts, or popcorn, *that do not manufacture* any product on the premises, which are to be reported separately in classification 6406, and establishments primarily engaged in the wholesale manufacturing of candy which is to be reported separately in classification 3906.

3905-14 Espresso/coffee stands and carts

Applies to vendors operating espresso or coffee stands or carts. Products sold include, but are not limited to, coffee, espresso, lattes, Italian sodas, soft drinks, pastries and pre-packaged items. These types of vendors *do not prepare food*. This classification is distinguishable from retail coffee, tea or spice stores in that coffee stands or carts in classification

3905 sell only ready-to-serve products; they do not sell packaged coffee, tea or spice items.

This classification excludes street vendors and/or route food services which are to be reported separately in classification 1101.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-644 Classification 4803.

4803-02 Farms: Orchards - fruit tree crops

Applies to establishments engaged in operating fruit orchards (~~(of all types)~~). Work contemplated by this classification includes, but is not limited to, preparing soil for new trees, planting trees, fertilizing, spraying, fumigating, weeding, pruning, harvesting tree fruit, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes fresh fruit packing operations which are to be reported separately in classification 2104; fruit cannery or freezer operations which are to be reported separately in classification 3902; winery operations which are to be reported separately in classification 3702; trellised orchards which are to be reported separately in 4803-17; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: Prune harvesting is often accomplished by a person laying a canvas cover around the base and surrounding area of the tree. The tree is then shaken by hand causing the fruit to dislodge and fall to the canvas cover where it is picked by hand. Harvesting done by this method is subject to classification 4806 provided that the conditions set forth in classification 4806 have been met. The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4803-04 Farms: Orchards - nut tree crops

Applies to establishments engaged in operating nut producing orchards of all types. Work contemplated by this classification includes, but is not limited to, preparing soil for

new trees, planting trees, fertilizing, spraying, fumigating, weeding, pruning, machine harvesting of nuts, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes the incidental sale of bulk or packaged nuts at roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes nut shelling and packaging operations which are to be reported separately in classification 3902; ground hand picking of nuts which is to be reported separately in classification 4806; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: Nut harvesting is often accomplished by a person laying a canvas cover around the base and surrounding area of the tree. The tree is then shaken by hand causing the nuts to dislodge and fall to the canvas cover where they are picked by hand. Harvesting done by this method is subject to classification 4806 provided that the conditions set forth in classification 4806 have been met. The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4803-16 Farms, N.O.C.

Applies to establishments engaged in operating farms not covered by another classification (N.O.C.). Establishments in this classification include holly farms and the raising of sheep, goats, alpacas and llamas. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, pruning and otherwise maintaining trees, tending and feeding animals, raising crops for feed, erecting or mending fences, breeding animals, transporting animals to market, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification also covers artificial insemination and veterinary care when performed by employees of an employer subject to this classification.

This classification excludes businesses primarily engaged in holly packing or wreath making who are to be reported separately in classification 6404 (florists), and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

PROPOSED

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4803-17 Farms: Trellised orchards

Applies to establishments engaged in operating trellised orchards. Work contemplated by this classification includes, but is not limited to, preparing soil for new trees, planting trees, fertilizing, spraying, fumigating, weeding, pruning, harvesting tree fruit, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes fresh fruit packing operations which are to be reported separately in classification 2104; fruit cannery or freezer operations which are to be reported separately in classification 3902; winery operations which are to be reported separately in classification 3702; all other orchards, fruit tree crops, which are to be reported separately in 4803-02; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-64999 Classification 4900.

4900-00 Construction: Superintendent or project manager

Applies to those employees, of general or specialty construction contractors, whose job duties are exclusively that of construction superintendents or project managers. Construction superintendents spend some time in an office and spend the remainder of time visiting various job sites to confer with construction foreman to keep track of the progress occurring at each construction site or project location. Project managers are generally stationed at the construction site or project location and confined to a temporary type of office to schedule activities and arrival of supplies such as the delivery of iron, steel, rebar, lumber, concrete ready mix, concrete pump truck services, and cranes.

This classification excludes construction superintendents or project managers who are employed by a business that specializes in offering construction management and consulting services. These businesses do not do any of the actual construction or erection activities and are to be reported separately in classification 4901.

Special notes: This classification is applicable *only* to construction superintendents or project managers who have no direct control over work crews and do not perform construction labor at the construction site or project location. A superintendent or project manager performing duties subject to this classification who also is engaged in operating equipment, performing manual labor, or who directly supervises a work crew at the construction site or project location is excluded from this classification. They are to be reported separately in the applicable construction or erection classification assigned to their employer without any division of hours. *A division of hours is not permitted between classification 4900 and any other classification. Under no circumstances can this be the only classification assigned to a contractor, as a basic construction classification must also be assigned.*

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-659 Classification 5001.

5001-03 Logging, N.O.C.

Applies to establishments engaged in various logging operations not covered by another classification (N.O.C.). Typical work contemplated by this classification includes, but is not limited to, high lead or tower logging, ground logging, and team logging with horses. For purposes of this rule, logging is the complete operation of felling, skidding, yarding, delimiting, and bucking of trees into logs or block wood and loading them onto trucks or rail cars.

Definitions:

High Lead or Tower Logging - usually occurs in steep terrain where a metal tower is set-up on a hilltop with a system of heavy cables running down the hillside and fastened to a stump or tree and has other smaller cables with chokers hanging from it. A choker is wrapped around each fallen tree and pulled back to the landing site.

Helicopter logging - includes ground crews that work with the use of helicopters to hoist fallen trees or bucked log lengths to the landing sight.

Chokers - chains or cables which are attached to the fallen trees for skidding to the landing site.

Ground logging - usually occurs on relatively flat land; fallen trees are moved to a landing by a skidder, cat or shovel.

Bucking - stripping or delimiting tree of branches and cutting the tree to desired log lengths.

Skidding - process of dragging the fallen logs to the landing site.

Landing - place where the fallen logs are brought for sorting and loading onto log trucks.

Yarding - usually performed at the landing site with use of a log loader to sort the logs by species, length and diameter, prior to loading onto log trucks.

This classification excludes flight crews of helicopters used in helicopter logging which are to be reported separately in classification 6803; log hauling which is to be reported separately in classification 5003; logging road construction which is to be reported separately in classification 6902; logging machine operators which are to be reported separately in classification 0101; and mechanical or mechanized logging operations which are to be reported separately in classification 5005 provided the classification has been approved by the classification services section.

5001-04 Shake, shingle bolt, and post cutting

Applies to establishments engaged in the cutting of shakes, shingle bolts (blocks), and fence posts in the woods. For the purposes of this rule, this classification includes all operations performed in the woods such as, but not limited to, the felling of trees, stripping or delimiting of branches, and all further cutting or splitting of trees/logs to produce shakes, shingle bolts or fence posts. This classification includes all transporting of shakes, shingle bolts or fence posts from the cutting site when conducted by employees of employers subject to this classification.

5001-05 Firewood cutting

Applies to establishments engaged in the cutting of firewood in the woods. For the purposes of this rule, this classification includes all operations performed in the woods such as, but not limited to, the felling of trees, stripping or delimiting of branches, and all further cutting or splitting of trees/logs to produce firewood. This classification includes all transporting of log lengths, rounds or split wood from the cutting site when conducted by employees of employers subject to this classification.

5001-06 Sawmill operations conducted in the woods in connection with logging operations

Applies to establishments operating a temporary or portable sawmill operation in the woods. This type of work is usually performed on privately owned land. A portable sawmill and saw tables, similar to those at a permanent sawmill location, are transported directly to the logging site. Log lengths are fed through a circular saw that is capable of producing various sized rough cut timber, blocks, boards and planks. This classification includes all transporting of rough cut timber, blocks, boards and planks from the cutting and/or

sawing site when conducted by employees of employers subject to this classification.

This classification excludes sawmill operations which are not conducted in the woods in connection with a logging operation which is to be reported separately in the applicable sawmill classification.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-66002 Classification 5004.

This classification applies to establishments engaged in forestry and timberland management services. It applies to employees of contractors or of land owners. This classification includes all field crew supervisors and foremen assigned to oversee work covered by this classification including internal quality control audits regardless of whether their assigned duties include manual labor. Classification 5004, and related classification 1007 and 5006, cover various activities associated with the management of forests, range or timberland. These classifications have also been assigned to establishments engaged in erosion control projects and fish and wildlife habitat enhancement projects. *The industry covered by this series of classifications has special reporting requirements.* Reforestation establishments assigned to classifications 1007, 5004, and 5006 report work on a contract basis. These contracts may last a quarter or several quarters. Refer to WAC 296-17-35203(4) for specific reporting requirements. Classification 1007 applies to technical services such as identifying volume and species of trees in a section of timberland or a forest, auditing parcels planted by a tree planting contractor for quality control purposes, conducting environmental studies, testing growing techniques and similar activities. Classification 5004 covers various forms of work conducted in the forest or timberland generally associated with the overall care of these lands. Classification 5004 is used to report manual crew labor. Classification 5006 covers machinery operations on these lands such as clearing, slashing, hydro seeding, chemical spraying and forest fire fighting. It will be common in the case of a forest fire to have employees reporting in both classification 5004 and 5006 for forest fire fighting since some employees will operate bulldozers, loaders and tanker trucks while others will use chain saws and shovels. In some cases establishments subject to classification 5004 will use multiple subclassification codes on a single contract and premium report.

This classification excludes forestry related machine work used in connection with trail construction, slash burning, fire watch/patrol and forest fire fighting, slashing, pile burning, roadside brushing, roadway dust/mud control which is to be reported separately in classification 5006 "forestry related machine work"; logging operations which are to be reported separately in classification 5001; logging road construction which is to be reported separately in classification 6902; and technical survey work which is to be reported separately in classification 1007.

5004-04 Animal damage control

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry and timberland services. Use of this clas-

sification is limited to services related to animal damage control such as placing salt blocks and hay for wildlife. This is done to provide food and nutritional supplements to forest wildlife as an alternative and preventative measure to reduce destruction to newly planted seedlings (trees) caused by feeding animals.

5004-05 Beaver trapping

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to services related to trapping mountain beaver. This is done to prevent damage to trees caused by mountain beaver when feeding and building nests for rearing their young.

5004-06 Chemical spraying

Fertilizing services

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to services related to chemical spraying. This is done to kill competing vegetation growing around young seedlings (chemical conifer release) and keep the brush on roadsides down.

This classification excludes manual conifer release which is to be reported separately in classification 5004-14.

5004-07 Cone picking

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to services related to cone picking which is done to obtain seed for new trees. Cone picking may occur on the ground or in the trees. All forms of cone picking are included within the scope of this classification.

~~((5004-08 Fertilizing services~~

~~*(to be assigned only by the reforestation underwriter)*~~

~~Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to services related to applying liquid and dry fertilizers on trees and vegetation within forested or timbered lands. This is done to stimulate and encourage the growth of desired trees and vegetation.)~~

5004-09 Hydro seeding services

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to hydro seeding abandoned roads and roadsides which is done primarily for erosion control and habitat development. This classification also includes manual labor associated with erosion control or habitat development projects.

5004-11 Pruning services

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to pruning lower tree branches. This is being done on an experimental basis on certain plots to aid in

the production of clear wood (knot free) for future plywood and furniture demands.

5004-12 Tree netting services

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to placing netting or paper sleeves over new tree growth to discourage animals from eating the growth. This is also referred to as bud capping.

5004-13 Tree planting services

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to planting trees in a forest (reforestation) or in privately owned timbered land. This is done to re-establish a tree population after logging or a fire.

5004-14 Tree thinning services including forest trail construction and brush clearing, N.O.C.

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in the removal of unmarketable trees with a chain saw, machete, or pruning loppers, brush clearing, manual tree slashing and constructing walking paths or trails. This is done to reduce competition of the remaining trees for water and nutrients, eliminate fire hazard and provide trails for management and recreational use. This classification includes manual conifer release.

This classification excludes chemical conifer release which is to be reported separately in classification 5004-06.

5004-18 Miscellaneous forestry services, N.O.C.

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry and timberland services not covered by another classification (N.O.C.). This classification is for miscellaneous manual labor on forest or timberland such as, but not limited to, manual forest fire fighting.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-66003 Classification 5005.

5005-00 Logging and/or tree thinning - mechanized operations

(to be assigned only by classification services staff)

Applies to establishments engaged in mechanized logging or tree thinning operations. For purposes of this classification, mechanized logging is defined as the entire process of felling, removal (skidding), yarding, processing, delimiting, bucking and loading of trees/logs by machine. This classification can be used by a logging contractor only if the entire side is being logged using methods and equipment described in this rule. If any portion of the side is being logged by conventional methods the entire operation must be reported in classification 5001 - Logging, N.O.C. For example, an employer that subcontracts to fell trees with a feller/buncher or processor but is not involved in the removal (skidding) of

the trees, the processing (delimiting and bucking) of the trees and the loading of trees is excluded from classification 5005 and is to be reported in classification 5001 - Logging, N.O.C. Any employer whose operation includes any manual felling, removal, processing, or loading of trees is excluded from classification 5005 and is to be reported in classification 5001 - Logging, N.O.C. Work contemplated by this classification includes the falling of trees with a machine such as a feller buncher or processor; skidding logs to the landing with use of a grapple skidder or forwarder; delimiting logs with a mechanized delimitter such as a stroke delimitter, processor, CTR or harvester; and loading logs onto log trucks with a mechanical loader or shovel. Equipment used by employers subject to this classification will consist of the following:

Feller/buncher - used to fell trees and place felled trees into stacks (bunches) for removal to the log landing for further processing. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

Processor - used to fell trees, delimit them, buck tree to desired log length and stack the bunches for removal to the landing where they will be segregated by general grade and loaded onto log trucks. A processor is sometimes used at the landing to delimit trees and buck them to log length, especially when the trees are felled by a feller/buncher. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

Grapple skidder - is used to remove (ground skid) stacks (bunches) of felled trees from the woods to the landing. The industry refers to both the skidder and the bulldozers as a tractor. The two are distinguished from one another in that the skidder is a tire-driven tractor and the bulldozer is a track-driven tractor. A bulldozer equipped with a grapple is an acceptable piece of equipment to be used in the removal of trees. The operator of either the grapple skidder or bulldozer equipped with grapple does not leave the cab of the machine in the performance of duties in the logging operation.

Forwarder - is used to remove logs as cut by a processor from the woods to an awaiting log truck or to be stacked in piles for a future pick up by a log truck. This is a small specialized tractor equipped with a self-loader and a log bunk. The operator of this machine does not leave the machine in the performance of duties in the logging operation.

Harvester - is used at the landing of the logging side to delimit trees and buck trees to desired log length. This machine can also be used to load logs onto log trucks. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

Loader - is used at the landing to load logs onto log trucks. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

This classification excludes log hauling which is to be reported separately in classification 5003 (~~and~~), logging road construction which is to be reported separately in classification 6902, logging machine operators which are to be reported separately in classification 0101, and logging operations which are to be reported separately in classification 5001.

Special notes: If any portion of the logging contract is performed manually or by hand, the establishment does not qualify for this classification. If any portion of the logging contract is subcontracted out to another business and is performed manually or by hand, then none of the businesses involved in the logging contract will qualify for this classification and are to be reported separately in classification 5001.

All equipment used by employers subject to this classification must meet WISHA guidelines for Roll Over Protection Standards (ROPS) and Falling Object Protection Standards (FOPS).

See classification 5206 (WAC 296-17-675) for permanent shop/yard operations.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-67601 Classification 5208.

5208-00 Iron or steel works: Fabrication or assembly - structural iron or steel

Applies to establishments engaged in the fabrication or assembly of structural iron or steel. Structural in this classification will mean when fabricated for and used in the frame or grid work of a building, tower, bridge, or similar construction. Fabrication means the laying out of the pieces, the marking, cutting, sawing, drilling, punching, bolting, welding, assembling and finishing of the structural steel products. Raw materials include, but are not (~~not~~) limited to, steel I-beams, tube steel, angle steel, and flat steel. Machinery includes overhead cranes, horizontal and vertical band saws, shears, punches, drill press, brake presses, and welding equipment. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes the erection of structural iron or steel in connection with towers, refineries, elevated railways, and buildings which is to be reported separately in the applicable iron or steel construction classification; contractors engaged in building construction who are to be reported separately in the applicable iron or steel construction class; bridge construction, including structural iron or steel erection, which is to be reported separately in the classification applicable to the work being performed; and manufacturing of rebar for construction which is to be reported separately in classification 5209.

5208-01 Brass, bronze, iron - ornamental: Shop fabrication, assembly or manufacture

Applies to establishments engaged in the manufacture, fabrication, or assembly of ornamental items from brass, bronze and/or iron. Products include, but are not limited to, railings, guards, staircases, fire escapes, and art items. Products are often light and do not require cranes or hoists to move them. The processes vary depending on the product being produced. The equipment includes, but is not limited to, iron workers, shears, drill presses, band saws, forklifts, welders, and grinders. The painting of products manufactured is included in this classification when performed by employees of employers subject to this classification. This is

a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes installation which is to be reported separately in the classification applicable to the work being performed.

5208-02 Iron works: Fabrication, assembly, or manufacture; nonstructural iron or steel

Applies to establishments engaged in the manufacture, fabrication or assembly of nonstructural iron or steel. Fabrication means the laying out of the pieces, the marking, cutting, sawing, drilling, punching, bolting, welding, assembling and finishing operations including painting. Products include, but are not limited to, cattle crossing grates, window gratings, grill pieces, and storage racks used by warehouses. Equipment includes, but is not limited to, cut saws, welders, drill presses, grinders, band saws, and hoists. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes installation which is to be reported separately in the classification applicable to the work being performed.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-677 Classification 5301.

5301-10 Accounting or bookkeeping services

Applies to establishments engaged in providing general accounting or bookkeeping services to others. Types of services contemplated by establishments subject to this classification include, but are not limited to, auditing, tax preparation, medical or dental claims processing and billing, and/or advisory services. This classification includes all employments such as, but not limited to, clerical office, outside sales, and personnel who travel from one office to another.

This classification excludes establishments engaged primarily in management consultant services that are not otherwise classified, which are to be reported separately in classification 5301-12.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-11 Law firms

Applies to establishments engaged in providing legal services to others. Law firms may specialize in one or more areas of law. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

Special note: This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or

operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-12 Management consultant services, N.O.C.

Applies to establishments engaged in providing management consulting services not covered by another classification (N.O.C.). Management consultants typically will observe and analyze organizational structures, work processes or work flows, mail distribution, computer or communication systems, and planning or development of related business needs. After a thorough analysis, consultants usually prepare a written report for the customer which identifies problem areas and/or recommends improvements to processes or equipment. Consultants may remain to oversee the implementation of the recommended improvements. Consultants subject to this classification do not sell any product they have recommended although they may act as an agent for their client in purchasing the product. Consulting projects vary from client to client depending upon the contract. This classification includes clerical office staff, outside sales personnel and other staff who travel from one office to another.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-13 Credit bureaus; collection agencies

Applies to establishments that are licensed to provide collection and/or credit investigation services to others. Services include, but are not limited to, the collection of NSF checks or delinquent debts owed to clients of the collection agency and checking the credit backgrounds of their client's potential customers. If debts are not collected, the service agency may initiate legal proceedings against the debtor. This classification includes clerical office and outside sales personnel, other staff who travel from one office to another, and process servers, although collection agencies subject to this classification generally employ process servers of other businesses to deliver legal documents.

This classification excludes establishments engaged in providing process serving services which may be reported separately in classification 6303 provided all the conditions of the general reporting rules covering standard exception employees have been met.

5301-14 Employment agencies

Applies to establishments that are licensed to provide employment services for others. Clients of employment agencies may be persons seeking employment or companies looking for employees. Employment agencies usually conduct preliminary interviews with candidates for positions prior to referring them to their client companies for interviews. Generally, establishments subject to this classification place people in permanent positions. This classification includes clerical office and outside sales personnel, and staff who travel from one office to another.

This classification excludes employees of a temporary help agency who are assigned to work in the administrative or

branch offices of the agency who are to be reported separately in classification 7104 and employees of a temporary help agency who are assigned on a temporary basis to its customers who are to be reported separately in the appropriate temporary help classification.

5301-15 Court reporting services

Applies to establishments engaged in providing court reporting services to others. Court reporters record verbatim testimony presented in court proceedings, depositions, public hearings or meetings. The most frequently used method to record testimony is by stenotype machine, although it may be recorded by voice recording on audio tape, or by manual shorthand. Transcription of the recorded material may be performed by the court reporter or by "note readers" or typists. The majority of court reporters today use computer-aided transcription systems. Court reporters may also offer notary public services for their clients. This classification includes clerical office and staff who travel from one office to another.

5301-16 Service and professional organizations

Applies to establishments engaged in protecting or furthering the interest of their members and/or the general public. Many of these operate as nonprofit organizations. Service and professional organizations may perform one or many of the following activities: Maintain a membership directory; collect membership dues; publish a newsletter; sponsor educational training programs; administer certification tests; provide job placement assistance; award scholarships; offer insurance programs; research and interpret local, state, and federal regulations and apprise members of the results; manage promotional marketing programs; organize fund raising campaigns; perform charitable community services; sponsor athletic leagues and tournaments; host conventions; disburse funds; perform collective bargaining; arbitrate disputes; provide counseling, adoption, and advocacy services; lobby the legislature; compile, review, and disseminate informational data; operate a tourist information center; issue vehicle license registrations, plates, decals, and certificates of title. Also included in this classification are Economic Development Councils, Boards, or Associations. These nonprofit organizations provide economic consulting services and related statistics to government and industry in the promotion of economic stability, and recruit businesses who will create jobs and provide loans from the grant funds they manage. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

This classification excludes labor unions and employee representative associations which are to be reported separately in classification 6503, and the collection of donated items by truck which is to be reported separately in classification 1101.

Special note: If a charitable organization subject to classification 5301 operates a retail store for the sale of donated items, the collection of those items by truck, and all store operations, are to be reported separately in classification 6504.

5301-18 Telephone answering services

Applies to establishments engaged in providing telephone answering services for others. Customers include, but are not limited to, medical professionals, attorneys, private businesses, and individuals. Most answering services today use computerized communications systems to identify company names when answering calls for various companies, obtain correct information about the company to respond to questions, record and relay accurate messages in a timely manner. Related services often offered by telephone answering service companies include, but are not limited to, voice mail or paging, rental of office space, telemarketing, dispatching, monitoring alarm systems, placing reminder calls, and scheduling appointments for customers. This classification includes clerical office personnel and staff who travel from one office to another.

5301-19 Travel agencies

Applies to establishments engaged in providing travel arrangement services for others. Travel agencies coordinate all types of travel arrangements for their clients through air, cruise, train, or bus lines, hotels, motels, or resorts, car rental agencies, travel insurance companies, and related travel providers. Services vary and could include delivery of tickets and itineraries to clients, booking reservations and selling tickets for tours, excursions, or other entertainment events, or arrangement of special needs for disabled or elderly travelers. This classification includes clerical office and sales staff who travel from one office to another.

5301-21 Word processing or secretarial services

Applies to establishments engaged in providing word processing or secretarial services to others. Services include, but are not limited to, desktop publishing, dictation and transcription services, typing/compiling reports, proposals, resumes, or correspondence, sending faxes, and making copies of documents. A pickup and delivery service may be offered. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-680 Classification 6103.

6103-01 Schools: Academic, K-12 - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as principals, assistant principals, receptionists, secretaries, counselors, school nurses, payroll and bookkeeping personnel, and teachers or teachers' aides of establishments engaged in operating public or private aca-

demic school facilities, K-12 (kindergarten level through grade 12).

This classification excludes all other types of employees in connection with the school facilities such as, but not limited to, cooks, bus drivers, custodians, maintenance personnel and grounds keepers, and teachers or teachers' aides who are exposed to machinery hazards such as a wood shop, metal shop, print shop, auto shop, and driver training instructors who are to be reported separately in classification 6104.

6103-02 Schools: Trade or vocational - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as deans, directors, assistant directors, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and professors or instructors of establishments engaged in operating trade or vocational school facilities. These types of schools provide specialized training and instruction to prepare students for occupations in the chosen fields. Often these facilities will coordinate on-the-job training with employers as well as assist students in finding employment.

This classification excludes all other types of employees in connection with the school facilities such as, but not limited to, cooks, drivers, custodians, maintenance personnel and grounds keepers, and professors or instructors who are exposed to machinery hazards such as a wood shop, metal shop, print shop and auto shop who are to be reported separately in classification 6104.

6103-03 Libraries, N.O.C. - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as librarians, assistant librarians, receptionists, secretaries, and payroll and bookkeeping personnel of establishments engaged in operating library facilities not covered by another classification (N.O.C.). These types of facilities maintain a wide selection of reading materials such as books, journals, articles, magazines, publications, newspapers, and audio-visual or micrographic materials.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers, drivers, and storage room workers who are to be reported separately in classification 6104.

**6103-04 Churches - clerical office, sales personnel, teachers, N.O.C. and administrative employees
Bell ringers**

Applies to clerical office, sales personnel and administrative employees such as pastors, priests, reverends, clergymen, ushers, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and instructors of establishments engaged in operating church facilities for members of a religious congregation to meet and worship on a daily or weekly basis. Other services provided include, but are not limited to, sermons, rites, counseling, baptisms, weddings, funerals, bible school, and ~~((day))~~ child care during church services and events. When a church is also operating a school facility, the church classifications are to be assigned for both opera-

tions. This classification also applies to bell ringers for charitable organizations.

This classification excludes all other types of employees in connection with the church facilities such as, but not limited to, custodians, maintenance personnel and grounds keepers, and drivers who are to be reported separately in classification 6104.

6103-05 Museums, N.O.C. - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as directors, assistant directors, buyers, coordinators, tour guides, receptionists, secretaries, and payroll and bookkeeping personnel of establishments engaged in operating museum facilities not covered by another classification (N.O.C.). Museums maintain a wide variety of artifacts, art, statues, sculptures, and other exhibit works.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers (including exhibit set-up), drivers, packers, and warehousemen who are to be reported separately in classification 6104.

6103-06 Day nurseries or child day care centers - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel, and administrative employees such as teachers, teachers' aides and nurses of establishments engaged in operating day nurseries or day care centers for infants, toddlers, and children, or in providing baby-sitting services. Employees will instruct children in activities designed to promote social, physical, and intellectual growth in preparation for primary school. Most day care centers provide breakfast and lunch.

This classification excludes all other types of employees such as, but not limited to, custodians, cooks, maintenance personnel and grounds keepers, and drivers who are to be reported separately in classification 6104.

6103-10 Flight instructors - clerical office, sales personnel, classroom teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel, classroom instructors, and administrative employees of establishments engaged in providing classroom instruction to student pilots in flight procedures and techniques. Flight instructors explain various aircraft components and instruments for controlling aircraft during maneuvers, and, using flight simulators, demonstrate procedures such as, but not limited to, take-offs and landings.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers and drivers who are to be reported separately in classification 6104 and in-air flight instructors outside the classroom who are to be reported separately in the classification 6803.

Special note: Reporting rules are outlined in the division of worker hours provision in the general rules.

6103-11 Schools: N.O.C. - clerical office, sales personnel, classroom teachers, N.O.C. and administrative employees

Applies to classroom instructors, clerical office, sales personnel and administrative employees such as directors and assistant directors, coordinators, instructors, receptionists, secretaries, counselors, payroll and bookkeeping personnel of establishments engaged in providing specialized classroom instruction to students in schools which are not covered by another classification (N.O.C.). Schools include, but are not limited to, dance, modeling, music, driving, cooking, first aid, and schools for coaches. Modeling and dance schools emphasize poise, balance, facial gestures, self-confidence, and counseling in wardrobe and make-up. Music schools emphasize the disciplines of playing various instruments. Driving schools concentrate on the rules, principles, and coordination needed to drive safely, using textbooks, audio-visuals, and driving simulators.

This classification excludes all other types of employees in connection with the specialized school facilities such as, but not limited to, custodians, maintenance personnel and grounds keepers, and instructors who perform activities not as part of a classroom environment who are to be reported separately in classification 6104 and driving instructors outside of the classroom who are to be reported separately in classification 6301.

6103-12 Officials for amateur athletic or cultural events, N.O.C. - clerical office, teachers, N.O.C. and administrative employees

Applies to clerical office employees, administrative employees, and event officials of establishments engaged in providing officials such as, but not limited to, umpires or referees for amateur athletic or cultural events sponsored by schools or communities. Events include, but are not limited to, sports, spelling bees, debates, and musical competitions.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-681 Classification 6104.**6104-01 Schools: Academic, K-12 - all other employments, N.O.C.**

Applies to all other employees of public or private academic schools K-12 (kindergarten level through grade 12). All other in this classification is defined as employees such as, but not limited to, cooks, bus drivers, custodians, maintenance personnel and grounds keepers, and teachers or teachers aides who are exposed to machinery hazards such as wood shop, metal shop, print shop, auto shop, and driver instructors.

This classification excludes clerical office, sales personnel and administrative employees such as principals, assistant principals, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and teachers or teachers' aides who have no exposure to machinery hazards who are to be reported separately in classification 6103.

6104-02 Schools: Trade or vocational - all other employments, N.O.C.

Applies to all other employees of trade or vocational schools. All other in this classification is defined as employ-

ees such as, but not limited to, cooks, drivers, driving instructors, custodians, maintenance personnel and grounds keepers, and teachers and teachers aides who are exposed to machinery hazards such as, but not limited to, those in wood shop, metal shop, automotive shops, and plumbing or electrical work. Vocational or trade schools provide specialized training and instruction to prepare students for occupations in their chosen field. Often these facilities will coordinate on-the-job training and assist students in finding employment.

This classification excludes clerical office, sales personnel and administrative employees such as deans, directors, assistant directors, receptionists, secretaries, counselors, payroll and bookkeeping personnel and teachers or teachers' aides who have no exposure to machinery hazards who are to be reported separately in classification 6103.

6104-03 Libraries, N.O.C. - all other employments, N.O.C.

Applies to all other employees of library facilities which are not covered by another classification (N.O.C.). All other in this classification is defined as employees such as, but not limited to, custodians, maintenance personnel and grounds keepers, drivers, and storage room workers. Libraries maintain a wide selection of reading materials such as books, journals, articles, magazines, publications, newspapers, and audio-visual or micrographic materials.

This classification excludes clerical office, sales personnel and administrative employees such as librarians, assistant librarians, receptionists, secretaries, and payroll and bookkeeping personnel who are to be reported separately in classification 6103.

6104-04 Churches - all other employments, N.O.C.

Applies to all other employees of churches. All other in this classification is defined as employees such as, but not limited to, custodians, maintenance personnel, grounds keepers, and drivers. Services offered by a church include, but are not limited to, providing a place for members of a religious congregation to meet and worship on a daily or weekly basis, sermons, rites, counseling, baptisms, weddings, funerals, bible school, ((day)) child care during church services and events.

This classification excludes clerical office, sales personnel and administrative employees such as pastors, priests, reverends, clergymen, ushers, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and instructors who are to be reported separately in classification 6103.

6104-05 Museums, N.O.C. - all other employments, N.O.C.

Applies to all other employees of establishments engaged in operating museum facilities not covered by another classification (N.O.C.). All other in this classification is defined as employees such as, but not limited to, custodians, maintenance personnel and grounds keepers (including exhibit set-up), drivers, packagers, and warehousemen. Museums maintain a wide selection of artifacts, art, statues, sculptures, and other exhibit works.

This classification excludes clerical office, sales personnel and administrative employees such as museum directors, assistant museum directors, buyers, coordinators, tour guides, receptionists, secretaries, and payroll and bookkeep-

ing personnel who are to be reported separately in classification 6103.

6104-06 Day nurseries or child day care centers - all other employments, N.O.C.

Applies to all other employees of establishments engaged in operating day nurseries or day care centers for infants, toddlers, and children, which provide activities to promote social, physical, and intellectual growth in preparation for primary school. All other in this classification is defined as employees such as, but not limited to, custodians, cooks, maintenance personnel and grounds keepers, and drivers.

This classification excludes clerical office, sales personnel and administrative employees such as principals, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and teachers or teachers' aides who are to be reported separately in classification 6103.

6104-11 Schools: N.O.C - all other employments, N.O.C.

Applies to all other employees of establishments engaged in providing specialized classroom instruction to students in schools which are not covered by another classification (N.O.C.) such as, but not limited to, dance, modeling, music, cooking, first aid, and schools for coaches. All other in this classification is defined as employees such as, but not limited to, custodians, maintenance personnel and grounds keepers, and instructors or teachers who perform activities not as part of a classroom environment or who are exposed to machinery hazards.

This classification excludes administrative employees such as directors and assistant directors, coordinators, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and classroom instructors, who are to be reported separately in classification 6103 and driving instructors outside of the classroom who are to be reported separately in classification 6301.

AMENDATORY SECTION (Amending WSR 99-18-068, filed 8/31/99, effective 10/1/99)

WAC 296-17-698 Classification 6303.

6303-00 Outside sales personnel, N.O.C.; messengers

Applies to those employees whose job duties and work environment meet *all* the conditions of the general reporting rules covering outside sales personnel, and who are not covered by another classification (N.O.C.) assigned to the employer's account. Duties of outside sales personnel contemplated by this classification are limited to soliciting new customers by telephone or in person, showing, selling, and explaining products or services, servicing existing accounts, completing correspondence, placing orders, performing public relations duties, and estimating. Duties of messengers are limited to delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business.

This classification excludes the delivery of products or merchandise or the stocking of shelves which is to be reported separately as applicable; the demonstration or delivery of machinery or equipment which are to be reported separately as applicable, establishments engaged as collection

agencies or public relations agencies which are to be reported separately in classification 5301; establishments engaged in providing inspection and valuations exclusively for insurance companies which are to be reported separately in classification 4903.

Special note: When considering this classification care must be taken to look beyond titles of employees. Employees with occupational titles such as, but not limited to, collectors, counselors, consultants, or appraisers may or may not qualify for this classification. This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

6303-03 Insurance sales personnel and claims adjusters

Applies to insurance sales personnel and claims adjusters with outside duties. Duties of employees subject to this classification are limited to selling insurance policies at their place of business or at the client's home, or going to the scene of an accident or catastrophe to assess damage. Work may be performed within an office or away from the employer's premises.

Special note: Individuals performing duties as an agent, broker, or solicitor (and hold a license as issued by the office of the insurance commissioner) are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010, 48.17.020, and 48.17.030. To elect voluntary coverage these individuals must submit a completed optional coverage form to the department.

6303-21 Home health care services: Social workers and dietitians

Applies to social workers and dietitians employed by home health care service establishments who provide care for handicapped individuals. Duties of these employees include teaching and assisting physically or developmentally disabled individuals in their own home to manage daily living skills such as caring for themselves, dressing, cooking, shopping, and going to the doctor. This classification also includes dietitians, sometimes called nutritionists, who usually are referred to patients by their physicians. The dietitian assesses the patient's current nutritional status, including current food intake, medical background, family history, currently prescribed medications, and social and psychological needs, then develops a food plan to meet the patient's needs. Employees subject to this classification do no cooking.

This classification excludes nursing and home health care services which are to be reported separately in classification 6110; therapy services which are to be reported separately in classification 6109; domestic servants who are to be reported separately in classification 6510; and chore workers who are to be reported separately in classification 6511.

Special note: This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met. *This classification is not to be assigned to any account that does not also have classification 6110 and/or 6511.*

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-72201 Classification 6510.

6510-00 Domestic servants/home care assistants employed in or about the private residence of a home owner

Applies to individuals employed by a home owner to provide domestic services/home care assistants in the home owner's private residence. This classification includes services such as, but not limited to, cooking, housekeeping, caring for children, caring for the elderly and handicapped including personal care such as bathing, body care, dressing and help with ambulating, as well as companionship, running errands, shopping, and transporting members of the household by vehicle to appointments, after school activities, or similar activities.

This classification is subject to the provisions of RCW 51.12.020 - Employments excluded - which states in part: "The following are the only employments which shall not be included within the mandatory coverage of this title: Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment." This classification is also subject to the provisions of RCW 51.12.110 which allows the employer to elect optional coverage for domestic servants.

This classification excludes chore services which are to be reported separately in classification 6511; domestic (residential) cleaning or janitorial services which are to be reported separately in classification 6602; and skilled or semiskilled nursing care which is to be reported separately in classification 6110.

AMENDATORY SECTION (Amending WSR 99-18-068, filed 8/31/99, effective 10/1/99)

WAC 296-17-72202 Classification 6511.

6511-00 Chore services/home care assistants

Applies to establishments engaged in providing chore services/home care assistants to private individuals. Chore services performed by the chore workers/home care assistants include, but are not limited to, general household chores, meal planning and preparation, shopping and errands either with or without the client, personal care such as bathing, body care, dressing, and help with ambulating, as well as companionship. Frequently the recipients of service are funded by DSHS or some other community service agency; however, the services are also available to those who pay privately. This classification also applies to supportive living, tenant support, and intensive tenant support services.

This classification excludes individuals working under a welfare special works training program who are to be reported separately in classification 6505; domestic (residential) cleaning or janitorial services which are to be reported separately in classification 6602; and skilled or semiskilled nursing care which is to be reported separately in classification 6110.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-724 Classification 6602.

6602-02 Contract window washing services

Applies to establishments engaged in contract window washing services not done in connection with a janitorial service. These establishments specialize in cleaning both interior and exterior windows in residential and commercial, single and multistory buildings.

This classification excludes establishments engaged in residential cleaning which are to be reported separately in classification 6602-04 and establishments engaged in both commercial and residential cleaning which are to be reported separately in classification 6602-03.

6602-03 Janitorial cleaning services, N.O.C.

Applies to establishments engaged in providing general interior cleaning services for commercial businesses or for combined commercial and residential customers. General cleaning services include, but are not limited to, washing, waxing, and polishing floors, vacuuming and shampooing carpets, dusting and washing walls, dusting or cleaning mirrors, cabinets, moldings, lights, hardware, sinks, tubs, commodes, and appliances, and replacing light globes, paper or linen towels. This classification includes window washing when performed by the janitorial service employees in conjunction with a general house cleaning contract, it also includes the cleaning of swimming pools, spas and hot tubs. Fire restoration, which includes cleaning smoke or water damaged buildings, drying and/or cleaning carpets and upholstered furniture, washing and polishing furniture, washing walls, washing and waxing floors, cleaning personal contents of the home or business such as linens, dishes, drapes, and other general cleaning tasks, are included in this classification.

This classification excludes establishments engaged exclusively in contract window washing services which are to be reported separately in classification 6602-02((;)), and establishments engaged in residential cleaning which are to be reported separately in classification 6602-04((; and establishments that specialize in the cleaning of ceiling tiles which are to be reported separately in classification 0504)).

Special note: Care should be exercised with companies specializing in fire restoration or water damage related work. These companies may be general contractors who will not only do the clean up work, but will also do repairs such as, but not limited to, repair or replace cabinets, doors, and fixtures, patch drywall, paint, and replace windows. Construction-related tasks, when performed by a company doing the clean up work, are to be assigned the appropriate construction classification. Each contract should be reviewed to determine the proper classification assignment. A division of individual work hours between classification 6602 and any construction, erection, or shop classification is not allowed. Employees having duties that fall within a construction classification and who are also engaged in preoccupancy cleanup are to be reported in the applicable construction classification.

PROPOSED

6602-04 Janitorial cleaning services - residential

Applies to establishments engaged in providing general interior janitorial cleaning or services to residential customers. General cleaning services include, but are not limited to, washing, waxing, and polishing floors, vacuuming and shampooing carpets, dusting and washing walls, dusting or cleaning mirrors, cabinets, moldings, lights, hardware, sinks, tubs, commodes, and appliances. This classification includes window cleaning when performed in connection with a general house cleaning contract.

This classification excludes establishments engaged exclusively in contract window cleaning which are to be reported separately in classification 6602-02 and establishments engaged in commercial or combined commercial and residential cleaning which are to be reported separately in 6602-03.

6602-05 Janitors, N.O.C.

Applies to the janitorial staff assigned to clean the clerical and administrative offices of establishments whose principle business undertaking is other than providing janitorial services *and* who are eligible to report their clerical employees in classification 4904. *This classification is applicable only to janitors who clean the office area.* Janitors who clean outside the office area such as a shop, warehouse, or retail store area, are excluded from this classification and are to be reported separately in the classification applicable to the employer's business.

Special note: See the special exception section of the general rules for a complete description of these requirements.

6602-08 Pest control

Applies to establishments engaged in pest control services for others. These establishments offer inspection for, and elimination of, unwanted pests in buildings and other wooden structures. Pests include, but are not limited to, termites, carpenter ants, fleas, ticks, mice, ants, cockroaches, and bees. This classification applies to all operations of elimination services such as, but not limited to, spraying liquid or aerosol pesticide, dusting with powder, setting out traps or bait, applying pesticides to the soil to creating a chemical barrier around the base of a structure, digging trenches around foundations, and drilling holes through masonry surfaces in order to pour or pump chemicals into the infected areas. Establishments may also offer inspection and certification services for customers seeking mortgage approval.

This classification excludes any structural repairs which are to be reported separately in the appropriate construction classification.

6602-10 Portable cleaning and washing, N.O.C.

Applies to establishments engaged in cleaning and washing services not otherwise classified (N.O.C.). This classification contemplates cleaning and washing, by means of portable spray or steam power units, machinery, equipment, automobiles, trucks, recreational vehicles, mobile homes, walk-in freezers, and shopping carts. This classification also applies to the cleaning or removal of snow from roofs, gutters or downspouts of one-story buildings.

This classification excludes establishments engaged in cleaning buildings or structures, cleaning or removing snow

from roofs, gutters, and downspouts on multistory buildings, which are to be reported separately in classification 0504.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-729 Classification 6607.**6607-00 Card rooms; bingo parlors or casinos**

Applies to establishments engaged in operating card rooms, bingo parlors, or casinos. To qualify for this classification, card rooms must be run as a separate operation when located in a tavern or restaurant that has a license to sell spirits or hard liquor. ~~((If the food and beverage service is provided by the tavern or restaurant for the convenience of the card room operation, then the waiters/waitresses are to be reported separately in the appropriate tavern or restaurant classification.))~~ This classification includes employments such as, but not limited to, dealers, security floor managers, janitorial and maintenance staff, and food and beverage operations. Bingo parlors and casinos are usually operated by Native American tribal organizations or by nonprofit organizations to raise funds for charity. This classification applies to any workers these organizations employ to operate bingo or casino games. Typical employments include, but are not limited to, game attendants and helpers, money collectors, callers, card dealers, janitorial and maintenance staff, and food and beverage operations.

Special note: Coverage for Native American tribes conducting a bingo operation is subject to jurisdictional policy.

6607-01 Billiard or pool halls

Applies to establishments engaged in operating billiard or pool halls. This classification *could* apply to the operation of a billiard or pool hall in connection with another enterprise, such as a bowling alley or skating rink, but *only* if it is conducted as a separate and distinct operation. This classification includes, but is not limited to, counter personnel who collect money for the rental of billiard and pool equipment, rackers, food and beverage operations, and janitorial and maintenance staff.

This classification excludes clerical office and outside sales personnel who may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met; billiard or pool tables that are provided as part of a bowling center, tavern, or restaurant operation which are to be reported separately in the applicable classification.

6607-02 Recreational, social or community centers, N.O.C.

Applies to establishments engaged in operating recreational, social or community centers not covered by another classification (N.O.C.) such as, but not limited to, senior centers, community centers for minors, and adult social establishments. These organizations may target a particular age or cultural group. Organizations may provide educational workshops, social interaction, drug prevention programs, crafts and limited physical recreational activities. This classification includes food or beverage operations provided by the center. Organizations in classification 6607 do not require

membership fees as opposed to clubs in classification 6205 that charge a fee for membership.

This classification excludes YMCA's and boy/girls clubs which are to be reported separately in classification 6203; health clubs and gymnasiums which are to be reported separately in classification 6204; clubs, N.O.C. such as fraternal organizations which are to be reported separately in classification 6205, and municipal community centers which are to be reported separately in the applicable classification.

6607-03 Indoor playgrounds

Applies to establishments that provide indoor entertainment centers for children. Generally these operations include a playground area consisting of interconnecting tubes, ladders, slides, ball bins, roller slides, and water and/or air beds. The equipment is typically made of plastic, rubber, and/or plexi-glass. Video games may also be available on the premises but generally they are maintained by the game vendor. Typical duties of the employees include, but are not limited to, selling tickets, supervising the playground area, facilitating parties, snack bar operations and light cleaning such as dusting the tubes, vacuuming and cleaning the snack area. The more involved janitorial duties are usually contracted out to a private janitorial firm. Included in this classification is child day care service whereby parents can leave children at the playground for a specific period of time. This service usually places limitations on the time a child may be left at the center.

This classification excludes child day care services not part of an indoor playground operations which are to be reported separately in classifications 6103 and 6104; amusement parks, permanently located kiddie rides, and establishments which provide adult or family sports entertainment, which may include batting cages and miniature golf, which are to be reported separately in classification 6208; and establishments engaged in providing gymnastic training to children which are to be reported separately in classification 6204.

Special note: Normally establishments in this classification do not employ workers who are engaged exclusively in clerical office or sales. However, separate classifications could be assigned provided all the conditions of the general reporting rules covering standard exception employees have been met.

6607-04 Indoor simulated golfing

Applies to establishments engaged in providing computer simulated indoor golf facilities to the public. The operation consists of separate cubicles which house a computer simulated screen and a play area. Customers select a particular course from a list of available courses which are generally exact replicas of famous courses throughout the world. The player hits a golf ball against a canvas screen inside the cubicle; a computer measures the speed and direction of the ball and simulates the shot so the player can view the results on the screen. Facilities may provide a small putting area, a snack area with limited seating, and/or the sale of golf shirts and memorabilia. Typical duties of the workers include monitoring facilities, setting up computers and collecting the admission price, selling memorabilia, food and beverage operations, and light janitorial work.

This classification excludes miniature golf courses and driving ranges which are reported separately in classification 6208.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-752 Classification 6907.

6907-01 Household furnishings moving and storage

Applies to establishments engaged in interstate and/or intrastate moving and/or storage of household furnishings. Work contemplated by this classification includes packing and unpacking, loading and unloading of household goods, transportation from one residence to another, and temporary storage of household goods in a warehouse. This classification includes the moving van drivers, packing personnel, laborers who assist in the loading and unloading operations, warehouse employees and truck mechanics.

This classification excludes intrastate and/or interstate delivery of nonhousehold furnishings which are to be reported separately in either classification 1101 or 1102, as applicable, and nonhousehold furnishing warehouses, which are to be reported separately in the appropriate warehouse classification.

Special note: Establishments subject to this classification are to report actual hours worked for each driver. However, the hours are to be capped at 520 hours per driver per quarter. Detailed information can be found in the general audit rule covering the trucking industry and in RCW 51.12.095.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17-52001 Classification 0506.

WSR 03-17-045

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed August 15, 2003, 2:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-14-025 [03-14-027].

Title of Rule: WAC 468-38-110 Escort vehicle requirements.

Purpose: A rule change is necessary to remove certain ambiguities that have resulted in varying interpretations by instructors of pilot/escort vehicle operator training classes.

Statutory Authority for Adoption: RCW 46.44.090.

Summary: The current rule provides the requirements for both care and driver when operating as a pilot/escort vehicle for oversize vehicles/loads. Certain requirements have some ambiguities. These ambiguities are addressed in the proposed amended rule, and include: Requirement for outside mounted rear-view mirrors, who can be in the car with

the driver, size of "oversize load" sign, when height pole is required, appropriate WAC reference for first-aid kits, and use of flashing lights when not operating as an escort.

Reasons Supporting Proposal: The revision provides an improved basis on which training curriculum can be developed, taught and supported.

Name of Agency Personnel Responsible for Drafting: Barry Diseth, Olympia, Washington, (360) 704-6346; Implementation: Tim Erickson, Olympia, Washington, (360) 705-7343; and Enforcement: Captain Fred Fakkema, Olympia, Washington, (360) 753-0350.

Name of Proponent: Washington State Department of Transportation, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule sets requirements for both driver and vehicle when operating as a pilot/escort for the movement of oversize loads on the state highways. The rule is used as the basis for development of training curriculum used to certify pilot/escort vehicle operators. The effect of the revisions will be to clarify those areas that have been identified as ambiguous during training activities.

Proposal Changes the Following Existing Rules: The proposed revisions will not change the intent or interpretation of the original rule, but it adds language that will clarify the rule and eliminate the need for additional interpretation, as well as update references to the appropriate site.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Washington State Department of Transportation, Commission Board Room 1D2, Transportation Building, Olympia, WA 98504, on September 25, 2003, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact TDD (800) 833-6388 by September 19, 2003.

Submit Written Comments to: Tim Erickson, Motor Carrier Services, P.O. Box 47367, Olympia, WA 98504-7367, fax (360) 705-7343, by September 23, 2003.

Date of Intended Adoption: September 25, 2003.

August 15, 2003

John F. Conrad

Assistant Secretary

Engineering and Regional Operations

AMENDATORY SECTION (Amending Order 198, filed 5/9/00, effective 6/9/00)

WAC 468-38-110 Escort vehicle requirements. (1) When the escort vehicle is in front of the permitted vehicle, the operator shall:

(a) Warn oncoming traffic of the presence of the permitted vehicle by use of signs and lights as provided in subsections (4) and (8) of this section.

(b) Notify the driver of the permitted vehicle, and driver(s) of any trailing escorts, by two-way radio, of all hazards; overhead clearances; obstructions; traffic congestion; pedestrians; and any other circumstances evident to the operator that could affect either the safe movement of the permit-

ted vehicle, the safety of the traveling public, or the efficient movement of traffic in sufficient time for the driver of the permitted vehicle to take corrective action, as necessary.

(c) To the extent necessary, locate safe places (if available) adjacent to the highway and notify the driver of the permitted vehicle, and driver(s) of trailing escorts, in ample time for the permitted vehicle and the escort vehicle(s) to clear the highway, allowing the traffic following to safely pass, or for any other reasons necessary to provide for the safety of the traveling public.

(d) Be far enough in front of the permitted vehicle to signal oncoming motorists to stop in a timely manner, or as specified by local jurisdiction, before such motorists enter any narrow structures or other restrictions on the highway, to permit the safe passage of the permitted vehicle.

(2) When the escort vehicle is behind the permitted vehicle, the operator shall:

(a) Warn traffic approaching from the rear of the presence of the permitted vehicle ahead, by use of signs and lights as provided in subsections (4) and (8) of this section.

(b) Notify the driver of the permitted vehicle, and driver of any lead escort, by two-way radio of flat tires or other problems with the permitted vehicle; objects coming loose from the permitted vehicle; other traffic approaching or passing the permitted vehicle; and any other circumstances evident to the operator that could affect either the safe movement of the permitted vehicle, the safety of the traveling public, or the efficient movement of traffic, in sufficient time for the driver of the permitted vehicle to take corrective action.

(c) Notify the front escort driver and the driver of the permitted vehicle by two-way radio of traffic build-up and other delays to the normal flow and efficient movement of traffic caused by the movement of the permitted vehicle.

(d) Notify the driver of the permitted vehicle, and driver of any lead escort, by two-way radio of other vehicles attempting to pass the permitted vehicle or load.

(e) Be far enough behind the permitted vehicle to signal motorists following the permitted vehicle to slow or stop in a timely manner, or as specified by local jurisdiction, before narrow structures or other restrictions in the highway, to permit the safe passage of the permitted vehicle.

(3) The escort vehicle operator shall ensure that the escort vehicle is in safe and reliable operating condition.

(4) An escort vehicle shall, in addition to any other equipment required by traffic law, be equipped with a minimum of two flashing or rotating amber lights, positioned above the roof line, visible from a minimum of five hundred feet to traffic approaching from the front or rear of the escort. The light apparatus must not obstruct, or be obstructed by, the required OVERSIZE LOAD sign.

(5) The escort vehicle shall:

(a) Be either a single unit passenger car or a two-axle truck;

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

(c) Be at least sixty inches wide; ~~((and))~~

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

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

(6) The escort vehicle shall not carry any passengers, human or animal, ~~((excluding))~~ except for certified individuals in training status or necessary flag persons(, or). No equipment or load may be carried in or on the escort vehicle which:

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

(b) Obstructs the view of the flashing or rotating yellow lights, or the signs used by the escort vehicle; or

(c) Causes safety risks; or

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

(7) The escort vehicle operator shall properly load and secure any item(s) or equipment or load carried by the escort vehicle to ensure compliance with the requirements of this section.

(8) An escort vehicle shall display "oversize load" signs, in clear readable condition, which shall be mounted above the roofline of the escort vehicle and be visible to approaching traffic from the front and the rear. All such signs shall be a minimum of five feet wide, ten inches high with one-inch wide brush stroke, black letters a minimum of eight inches high on yellow background ~~((, or shall be a maximum of seven feet wide, eighteen inches high, with a 1.41 inch brush stroke, black letters a minimum of ten inches high on yellow background)).~~

(9) The escort vehicle(s) shall have its headlights activated at all times when escorting a permitted vehicle.

(10) The escort vehicle shall be equipped with a two-way radio capable of providing reliable two-way voice communication between the driver of the permitted vehicle and the driver(s) of the escort vehicle(s) when the permitted vehicle is in motion on a public highway.

(11) An escort vehicle shall carry the following items of equipment at all times when escorting a permitted vehicle:

(a) Standard eighteen inch STOP & SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one 5 pound B, C, fire extinguisher, or equivalent.

(d) A reflectorized high visibility orange or other color vest, shirt or jacket, as permitted by the *Manual on Uniform Traffic Control Devices*, and a yellow or other highly visible colored hard hat to be worn by the operator while directing traffic, in accordance with WAC 296-155-305, Signaling.

(e) A height measuring device which is nonconductive and nondestructive to overhead clearances, when required by the terms of the permit or regulations.

(f) First-aid supplies must be readily available as described in WAC ~~((296-24-06145))~~ 296-800-15020.

(g) A flashlight in working order with red nose cone.

(12) An escort vehicle is prohibited from escorting more than one permitted vehicle at the same time, unless expressly authorized by the department.

(13) A front escort vehicle shall use a height pole at all times when escorting a permitted vehicle exceeding ~~((fifteen))~~ fourteen feet six inches in height, unless otherwise expressly authorized/directed by the department on the permit. The height pole shall not extend less than three inches

nor more than six inches above the maximum height of the permitted vehicle being escorted. When the escort vehicle is not escorting a permitted vehicle, but is moving on the highway, the height pole shall be removed, tied down, or shortened to within legal limits, unless involved in the act of prerunning a route to determine height acceptance.

(14) When an escort vehicle is not escorting a permitted vehicle, or prerunning a route, but is moving on a public highway, the signs, described in subsection (8) of this section, shall either be removed, lowered to a position not readily visible, or covered, and the flashing yellow lights, described in subsection (4) of this section, shall not be operated: Provided, the flashing yellow lights may be used as traffic warning devices during the prerunning of a route when the escort vehicle is sitting stationary on the shoulder of the road during the measurement of structures.

(15) In the performance of the duties required by these rules, the operator of the escort vehicle may be required to advise the permitted vehicle to stop, allowing other traffic to proceed safely. The operator of the escort vehicle shall signal the permitted vehicle to stop, and the permitted vehicle shall stop, as far off the roadway as practicable to allow other traffic to pass in the following situations:

(a) When the permitted vehicle becomes disabled; or

(b) When the movement of the permitted vehicle on a particular section of public highway presents a safety risk or unreasonably interferes with the efficient movement of other traffic, based upon such factors as the widths of the permitted vehicle and the roadway, volume of other traffic, visibility and limited sight distance, and mountainous terrain; or

(c) When driving conditions for the permitted vehicle are hazardous for any other reason, including weather.

(16) The operator of the permitted vehicle and the operator(s) of the escort vehicle(s) shall comply with the following procedures:

(a) Before trip:

(i) Discuss aspects of the move, including the permitted vehicle, the route, and specific responsibilities.

(ii) Review permit special conditions.

(iii) Review the permitted route.

(iv) Determine the proper position of the escort vehicle(s).

(v) Establish any necessary procedures.

(vi) Check mandatory equipment, each operator being responsible for their own vehicle.

(vii) Mount signs, adjust mirrors, turn on lights.

(viii) Check each two-way radio to ensure clear communication on a selected channel.

(ix) Assure special motor vehicle permit(s) is in the possession of the appropriate operator(s).

(x) Determine if additional flagpersons will be necessary and, if so, have them available.

(b) During the trip:

(i) Obey all traffic laws.

(ii) Do not follow or precede more closely than is reasonably prudent, considering the speed of the permitted vehicle, other traffic, and highway conditions.

(iii) Do not exceed 1/2 mile distance between permitted vehicle and the escort vehicle to maintain radio contact,

except when necessary to safely travel a long narrow section of highway.

(c) Traffic lights:

(i) If the front escort vehicle goes through a traffic light but the permitted vehicle does not, the escort vehicle must pull over to the right side of the highway, where practicable, to wait for the permitted vehicle.

(ii) If the permitted vehicle goes through the traffic light but the escort vehicle does not, then the permitted vehicle must pull over to the right side of the highway, where practicable, to wait for the rear escort vehicle.

(17) Compliance with the rules of this chapter requires safe consistent operating procedures for the interaction between escort vehicle, escorted load and the surrounding traffic. Operators of escort vehicles, therefore, must be certified as having received a predefined base level of training as an escort vehicle operator. An escort vehicle operator with a Washington state driver's license must have a valid Washington state escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties. (~~Escort vehicle operators licensed to drive in Washington state and operating with current certification cards from a different jurisdiction, approved by the department, must get a Washington state escort vehicle operators card upon expiration of their current card, but not later than January 1, 2003.~~) Escort vehicle operators with a driver's license from a jurisdiction other than Washington state may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another department approved jurisdiction, subject to ongoing department reviews and approval of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's motor carrier services office. Washington state pilot/escort vehicle operator cards must be renewed every three years.

(18) When uniformed off-duty law enforcement officers act as escorts, using official police cars or motorcycles, the requirements of this section may be amended as necessary.

WSR 03-17-046
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed August 15, 2003, 2:44 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: WAC 136-150-022 Ascertaining the expenditures for traffic law enforcement and 136-150-023 Ascertaining the expenditures for fish passage barrier removal.

Purpose: Amends WAC 136-150-022 and 136-150-023 changing the due dates of required forms from March 15 of each year to April 1 of each year.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, 753-5989;

Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, 753-5989.

Name of Proponent: County Road Administration Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 136-150-022 Ascertaining the expenditures for traffic law enforcement and 136-150-023 Ascertaining the expenditures for fish passage barrier removal.

Proposal Changes the Following Existing Rules: Amends WAC 136-150-022 and 136-150-023 changing the due dates of required forms from March 15 of each year to April 1 of each year.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: County Road Administration Board, 2404 Chandler Court S.W., Suite 280, Olympia, WA 98504-0913, on October 9, 2003, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Karen Pendleton by October 1, 2003, TDD (800) 833-6384 or (360) 753-5989.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, fax (360) 586-0386, by October 1, 2003.

Date of Intended Adoption: October 9, 2003.

August 11, 2003

Jay P. Weber

Executive Director

AMENDATORY SECTION (Amending WSR 01-17-104, filed 8/21/01, effective 9/21/01)

WAC 136-150-022 Ascertaining the expenditures for traffic law enforcement. In those counties in which diverted road levy or transfer of road funds has been budgeted for traffic law enforcement, the county sheriff shall submit a certification showing the actual expenditure for traffic law enforcement in the previous budget year, provided that counties with a population of less than eight thousand shall be exempt from this requirement. Such certification shall be submitted to the county road administration board no later than ~~(March 15))~~ April 1 of each year.

AMENDATORY SECTION (Amending WSR 03-05-010, filed 2/7/03, effective 3/10/03)

WAC 136-150-023 Ascertaining the expenditures for fish passage barrier removal. In those counties in which road funds have been used for removal of barriers to fish passage and accompanying streambed and stream bank repair as specified in RCW 36.82.070, the county engineer shall submit a certification showing that activities related to the removal of barriers to fish passage performed beyond the county right of way did not exceed twenty-five percent of the total costs for activities related to fish barrier removal on any one project, and that the total annual cost of activities related to the removal of barriers to fish passage performed beyond

the county rights of way did not exceed one-half of one percent of the county's annual road construction budget. Such certification shall be submitted to the county road administration board no later than (~~March 15~~) April 1 of each year.

WSR 03-17-057
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Recreation Therapy)
 [Filed August 18, 2003, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-02-020.

Title of Rule: WAC 246-927-010 AIDS education and training for recreational therapists.

Purpose: All practitioners must demonstrate completion of AIDS education prior to initially obtaining a health care credential. Rules must be developed to establish the number of hours of AIDS education and training that are required for recreational therapists.

Statutory Authority for Adoption: RCW 18.230.040, 70.24.270, 70.24.250.

Statute Being Implemented: RCW 70.24.270.

Summary: To establish the number of hours of AIDS education and training required prior to recreational therapists obtaining their initial credential.

Reasons Supporting Proposal: RCW 70.24.270 requires each disciplining authority under chapter 18.130 RCW to adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, 310 Israel Road S.E., (360) 236-4847.

Name of Proponent: Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: All practitioners must demonstrate completion of AIDS education prior to initially obtaining a health care credential. Rules must be developed to establish the number of hours of AIDS education and training that are required for recreational therapists. Each disciplining authority under chapter 18.130 RCW is required to adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the cost to implement the proposed rule does not exceed the threshold. The more than minimum cost threshold from "804 Office of Clinics and Other Healthcare Practitioners" is set at \$110.00.

RCW 34.05.328 applies to this rule adoption. This rule is significant because it creates a requirement for licensure.

Hearing Location: Department of Health, 1101 Eastside Street, Olympia, WA 98504, on September 23, 2003, at 3:00 - 4:00 p.m.

Assistance for Persons with Disabilities: Contact Kris Waidely by September 1, 2003, TDD (800) 833-6388 or (360) 236-4847.

Submit Written Comments to: Department of Health, Kris Waidely, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, fax (360) 664-9077, by September 1, 2003.

Date of Intended Adoption: September 23, 2003.

August 15, 2003

Mary C. Selecky
 Secretary

AIDS REQUIREMENT

NEW SECTION

WAC 246-927-010 How many hours of AIDS prevention and information education do I need? Applicants must complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

WSR 03-17-059
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed August 18, 2003, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-14-039.

Title of Rule: WAC 392-140-974 Finance—Special allocations—Salary bonus for teachers who attain certification by the National Board for Professional Teaching Standards.

Purpose: Implement rule changes in providing funding for salary bonuses to teachers who attain certification by the national board for professional teaching standards.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Statute Being Implemented: Section 513(11) of ESSB 5404.

Summary: These rules implement changes in providing funding for salary bonuses to teachers who attain certification by the national board for professional teaching standards. The legislature has removed the previous four-year eligibility limit for those teachers to receive an annual bonus. Candidates now remain eligible for the bonus as long as they hold a valid certificate from the national board.

Reasons Supporting Proposal: Rule revisions are needed to implement changes in providing funding for the salary bonus. This change is in section 513(11) of ESSB 5404 (the 2003-05 State Operating Appropriations Act).

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6130; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and

Enforcement: Cal Brodie, Office of Superintendent of Public Instruction, (360) 725-6301.

Name of Proponent: Office of Superintendent of Public Instruction, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rules are part of the state funding formula for K-12 education. Rule revisions are needed to implement language in the 2003-05 State Operating Appropriations Act. These revisions will provide for the correct funding of salary bonuses in the 2003-04 school year and thereafter.

Proposal Changes the Following Existing Rules: The legislature has removed the previous four-year eligibility limit for those teachers to receive an annual bonus. Candidates now remain eligible for the bonus as long as they hold a valid certificate from the national board.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. No small business impact.

RCW 34.05.328 does not apply to this rule adoption. The Superintendent of Public Instruction is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

Hearing Location: Old Capitol Building, Room 152, P.O. Box 47200, Olympia, WA 98504-7200, on September 23, 2003, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Ben Gravely, by September 13, 2003, TDD (360) 664-3631 or (360) 725-6271.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, 600 South Washington Street, Olympia, WA 98504-7200, fax (360) 753-4201, by September 22, 2003.

Date of Intended Adoption: September 24, 2003.

August 12, 2003

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

WAC 392-140-974 Salary bonus for teachers who attain certification by the national board—Administrative procedures. (1) School districts that employ teachers eligible for the salary bonus shall report those employees to the office of superintendent of public instruction by submitting Form SPI 1525 for each individual.

(2) Districts shall document each teacher's eligibility by maintaining on file for audit a copy of the teacher's national board certification notice and, if the teacher is not shown on Report S-275, evidence of employment and duties assigned.

(3) Report forms received by the superintendent of public instruction by the 15th of the month shall be paid in that month's apportionment and displayed on Report 1197, in revenue account 4158.

(4) For each candidate, the superintendent of public instruction shall send the district the amount of the salary bonus set in the operating appropriations act plus an amount

for the district's (employer) portion of social security benefits.

(5) The district shall pay the bonus to the employee in a lump sum amount on a supplemental contract pursuant to RCW 28A.400.200.

(6) The salary bonus is excluded from the definition of "earnable compensation" under RCW 41.32.010(10).

~~((7) Teachers achieving certification by the national board for professional teaching standards shall receive the salary bonus for no more than four years.))~~

WSR 03-17-060

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed August 18, 2003, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-12-083.

Title of Rule: WAC 4-25-622 Independence.

Purpose: To promote the dependability of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises and protect the public interest by requiring that persons who hold themselves out as licensed CPAs or certificateholders conduct themselves in a competent, ethical, and professional manner.

Statutory Authority for Adoption: RCW 18.04.055(2).

Statute Being Implemented: RCW 18.04.055(2).

Summary: Outlines when a CPA must be independent so that attest opinions, reports, conclusions, and judgments are impartial and viewed as impartial by parties expected to rely on the attest report.

Reasons Supporting Proposal: The board has serious concerns with the effectiveness of the current regulations governing CPA independence and the recent nationwide decline in confidence with CPAs' ethical standards.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, Olympia, Washington, (360) 586-0163.

Name of Proponent: Primarily the Washington State Board of Accountancy, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule requires Washington CPAs to be responsible for maintaining independence so that attest opinions, reports, conclusions, and judgments will be impartial and viewed as impartial by parties expected to rely on the attest report. This standard is needed to establish and maintain a high standard of ethics to address the need to protect the public. The goal of the amendment is to promote clarity, ensure effective communication, ensure fairness in interpretation and application of the rule, and promote efficiencies through minimizing gray areas.

Proposal Changes the Following Existing Rules:

(1) Changes the title of the rule to "When must a CPA or CPA firm be independent?"

(2) Replaces specific examples of impairment of independence with an overarching independence principle.

(3) Specifically states that CPAs and CPA firms are required to (1) comply with all applicable independence rules regulations, and the AICPA's code of conduct as referenced in board rule and (2) decline attest engagements where the CPA or CPA firm has a relationship that could lead a reasonable and foreseeable user to conclude that the CPA or CPA firm is not independent.

(4) Written in clear rule-writing format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Hilton Seattle Airport and Conference Center, 17620 Pacific Highway South, SeaTac, WA, on October 30, 2003, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton, by October 24, 2003, TDD (800) 833-6384 or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail danam@cpaboard.wa.gov, fax (360) 664-9190, by October 17, 2003.

Date of Intended Adoption: October 31, 2003.

August 12, 2003

Dana M. McInturff, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 98-12-049, filed 5/29/98, effective 6/29/98)

WAC 4-25-622 ((Independence.)) When must a CPA or CPA firm be independent? (((1) A CPA in public practice must be independent in the performance of the following:

(a) An audit or review of a financial statement; or

(b) A compilation of historical or prospective financial statement when the CPA's report does not disclose a lack of independence; or

(c) Other attest engagements when required by board rules or other professional standards such as the statements of standards for attestation engagements.

(2) The following specific acts are examples of impairment of independence. The board does not intend this listing to be all inclusive.

(a) During the period of a professional engagement, or at the time of expressing an opinion, a CPA or a CPA's firm:

(i) Had or was committed to acquire any direct or material indirect financial interest in the enterprise.

(ii) Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise.

(iii) Had any joint closely held business investment with the enterprise or with any officer, director, or principal stockholder thereof which was material in relation to the CPA's net worth or the net worth of the CPA's firm.

(iv) Had any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise except under certain circumstances for home mortgages, other secured loans, loans not material to the CPA's net worth, and various personal loans.

(b) During the period covered by the financial statements, during the period of the professional engagement or at the time of expressing an opinion, the CPA or a CPA's firm:

(i) Was connected with the enterprise as a promoter, underwriter, or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or

(ii) Was a trustee for any pension or profit sharing trust of the enterprise.) When performing attest services, CPAs and CPA firms are responsible for maintaining independence so that attest opinions, reports, conclusions, and judgments will be impartial and viewed as impartial by parties expected to rely on the attest report. CPAs and CPA firms are required:

• To comply with all applicable independence rules, regulations, and the AICPA code of conduct as referenced in and required by WAC 4-25-631; and

• To decline attest engagements where the CPA or CPA firm has a relationship that could lead a reasonable and foreseeable user to conclude that the CPA or CPA firm is not independent.

Independence is not required when performing a compilation engagement provided the CPA's report discloses a lack of independence.

WSR 03-17-061

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed August 18, 2003, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-12-052.

Title of Rule: WAC 4-25-410 Definitions, 4-25-640 Clients' confidential information, New 4-25-670 What enforcement actions must be reported to the board?, 4-25-750 What are the CPA firm licensing requirements?, and 4-25-910 What are the bases for the board to impose discipline?

Purpose: To adopt or amend rules to implement the revisions to chapter 18.04 RCW passed through the 2003 legislative session (SHB 1211).

Statutory Authority for Adoption: For WAC 4-25-410 is RCW 18.04.055; for WAC 4-25-640 is RCW 18.04.055(2), 18.04.390 (4)(b) and 18.04.405(1); for WAC 4-25-670 is RCW 18.04.195 (10)(b) and 18.04.215 (9)(b); for WAC 4-25-750 is RCW 18.04.055(8), 18.04.195 and 18.04.205; and for WAC 4-25-910 is RCW 18.04.055(16), 18.04.295, and 18.04.305.

Statute Being Implemented: For WAC 4-25-410 is RCW 18.04.055(16); for WAC 4-25-640 is RCW 18.04.390 (4)(b) and 18.04.405(1); for WAC 4-25-670 is RCW 18.04.195 (10)(b) [18.04.195 (10)(b)] and 18.04.215 (9)(b); for WAC 4-25-750 is RCW 18.04.055(8), 18.04.195 and

18.04.205; and for WAC 4-25-910 is RCW 18.04.055(16), 18.04.295, and 18.04.305.

Summary: Due to the passage of SHB 1211 rule making is required to implement the new provisions of chapter 18.04 RCW related to (1) workpapers and document retention; (2) RCW 18.04.195(10) and 18.04.215(9) requiring self-reporting to the board by licensees (firms and individuals), certificateholders, and nonlicensee owners within thirty days of certain enforcement related actions by federal agencies, state agencies, and nongovernmental professionally related standard-setting entities; (3) raising the maximum fine to \$30,000; (4) requiring firms to notify the board in writing within ninety days of falling out of compliance with ownership requirements; and (5) definitions related to (1), (2), and (3).

Reasons Supporting Proposal: SHB 1211 that passed through the 2003 legislative session revised the Public Accountancy Act (chapter 18.04 RCW). The Board of Accountancy is required to adopt and amend rules to implement the revisions to chapter 18.04 RCW.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, Olympia, Washington, (360) 586-0163.

Name of Proponent: Primarily the Washington State Board of Accountancy, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The board's goal with all of its rule proposals is to:

- Promote clarity.
- Ensure effective communication.
- Ensure fairness in interpretation and application of the rules.
- Promote efficiencies through minimizing gray areas.

Specifically:

WAC 4-25-410 Defines terms used throughout the board's rules to provide clarity for users.

WAC 4-25-640 Incorporates parts of statute (RCW 18.04.390) into the board's rules of professional conduct. Restating the statute in board rule makes the rule complete. It is confusing and difficult for individuals (CPAs and the public) to review both the RCW and WAC to find the requirements related to a certain activity. The rule establishes what records are the property of a licensee; prohibits the sale or transfer of client records without the consent of the client; clarifies that certificateholders are also obligated to comply with specific subsections concerning records and client confidential information; and establishes the requirements for audit and review work paper retention. These standards of professional conduct are needed to protect the public by ensuring privacy and record accessibility.

WAC 4-25-670 - New RCW 18.04.195(10) and 18.04.215(9) direct the board to set out what enforcement actions taken by other regulatory bodies must be reported to the board. The board cannot ensure that other regulatory bodies report enforcement actions taken against Washington CPAs. The reporting of enforcement actions by other regulatory bodies taken against CPAs and nonlicensee firm owners ensures that the board will be informed and can take disciplinary action, if necessary. These reporting requirements are necessary to protect the public ensuring Washington state CPAs are operating under the appropriate technical and ethical standards particularly with CPA firms auditing publicly traded companies.

WAC 4-25-750 RCW 18.04.205(3) directs the board to prescribe the procedures to be followed to register and maintain offices established for the practice of public accounting in Washington state. RCW 18.04.195 requires CPA firms to obtain, and renew, licenses to practice public accounting.

WAC 4-25-910 RCW 18.04.295 and 18.04.305 authorize the board to impose discipline against Washington CPAs, CPA firms, permitholders, or resident nonlicensee firm owners. Using the clear rule-writing technique that eliminates confusion, this rule lists specific examples of prohibited acts that constitute grounds for discipline.

Proposal Changes the Following Existing Rules:

- WAC 4-25-410**
 - Adds the definition of "Independence."
 - Adds the definition of "IRS," "PCAOB," and "SEC" in support of revisions to WAC 4-25-910 and the proposed WAC 4-25-670.
- WAC 4-25-640**
 - Adds the statutory explanation of what constitutes property of the licensee.
 - Adds the statutory requirements for the sale or transfer of client records.
 - Adds certificateholders to the listing of those who may not disclose confidential client communication or information.
 - Clarifies that the employees referenced in the rule are the employees of licensees.
 - Adds certificateholders to the listing of those who must furnish client records to their clients.
 - Adds audit and review record retention requirements.
- WAC 4-25-670** New rule that identifies which enforcement actions must be reported to the board.
- WAC 4-25-750**
 - Adds the consequences of a CPA firm's failure to file a complete renewal form by the due date.
 - Adds authority for the board to waive, reduce, or extend the renewal due date and/or late fees based on hardship.
 - Revises the rule to align with the ninety day notification provisions changed in RCW 18.04.195.
- WAC 4-25-910**
 - Aligns the maximum fine (up to \$30,000) with the maximum changed in RCW 18.04.295, [18.04.]370.
 - Adds the new self-reporting provisions (from the new statute).

PROPOSED

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Hilton Seattle Airport and Conference Center, 17620 Pacific Highway South, SeaTac, WA, on October 30, 2003, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by October 24, 2003, TDD (800) 833-6384 or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by October 17, 2003.

Date of Intended Adoption: October 31, 2003.

August 15, 2003

Dana M. McInturff, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 02-04-064, filed 1/31/02, effective 3/15/02)

WAC 4-25-410 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

(1) "**Act**" means the Public Accountancy Act codified as chapter 18.04 RCW.

(2) "**Active individual participant**" means a natural person whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

(3) "**Affiliated entity**" means any entity, entities or persons that directly or indirectly through one or more relationships influences or controls, is influenced or controlled by, or is under common influence or control with other entities or persons. This definition includes, but is not limited to, parents, subsidiaries, investors or investees, coinvestors, dual employment or management in joint ventures or brother-sister entities.

(4) "**Attest services**" are services performed by a licensee in accordance with:

(a) Statements on Auditing Standards and related Auditing Interpretations issued by the American Institute of Certified Public Accountants (AICPA);

(b) Statements on Standards for Accounting and Review Services and related Accounting and Review Services Interpretations issued by the AICPA; and

(c) Statements on Standards for Attestation Engagements and related Attestation Engagements Interpretations issued by the AICPA.

(5) "**Audit**," "**review**," and "**compilation**" are terms reserved for use by licensees and individuals granted practice privileges under the act.

(6) "**Board**" means the board of accountancy created by RCW 18.04.035.

(7) "**Certificate**" means a certificate as a CPA issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule.

(8) "**Certificateholder**" means the holder of a certificate as a certified public accountant who has not become a licensee, has maintained CPE requirements, and who does not practice public accounting.

(9) "**Client**" means the person or entity that retains a CPA firm, a CPA, the CPA's firm, or a firm owner, an affiliated entity, or the owner of an affiliated entity through other than an employer/employee relationship.

(10) "**Commissions and referral fees**" are compensation arrangements where:

(a) The primary contractual relationship for the product or service is not between the client and the CPA firm, the CPA, the CPA's firm, or a firm owner;

(b) The CPA firm, the CPA, the CPA's firm, or a firm owner is not primarily responsible to the client for the performance or reliability of the product or service;

(c) The CPA firm, the CPA, the CPA's firm, or a firm owner adds no significant value to the product or service; or

(d) A third party instead of the client pays the CPA firm, the CPA, the CPA's firm, or a firm owner for the products or services.

(11) "**Contingent fees**" are fees established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

(12) "**CPA**" or "**certified public accountant**" means a person holding a CPA certificate or a CPA license recognized in the state of Washington, including a person granted practice privileges pursuant to RCW 18.04.350(2).

(13) "**CPE**" means continuing professional education (see also "Interactive self-study program").

(14) "**Entering the state**" means an individual is practicing public accounting in the state of Washington and that individual spends more than ten percent of his or her total work hours on activities conducted within the state of Washington, maintains an office or workstation in the state of Washington or advertises to provide his or her services within the state of Washington.

(15) "**Enterprise**" means any person or entity, whether organized for profit or not, with respect to which a CPA firm, a CPA, a CPA's firm, or a firm owner performs professional services.

(16) "**Firm**" means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company formed under chapter 25.15 RCW.

(17) "**Generally accepted accounting principles**" (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

(18) "**Generally accepted auditing standards**" (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

(19) "**Holding out**" means any representation to the public by the use of restricted titles as set forth in RCW

18.04.345 by a person or firm that the person or firm holds a license or practice privileges under the act and that the person or firm offers to perform any professional services to the public as a licensee. "Holding out" shall not affect a person or firm not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

(20) **"Inactive"** means the certificate is in an inactive status because a person, who held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted inactive certificateholder status through the renewal process established by the board.

(21) **"Independence"** means an absence of relationships that impair a licensee's impartiality and objectivity in rendering attest services.

(22) **"Interactive self-study program"** means a CPE program designed to use learning methodologies that simulate a classroom learning process by employing software or administrative systems that provide significant ongoing interactive feedback to learners regarding their learning progress.

(23) **"IRS"** means Internal Revenue Service.

(24) **"License"** means a license to practice public accountancy issued to an individual under the act or a license issued to a firm under the act.

(25) **"Licensee"** means the holder of a license to practice public accountancy issued under the act.

(26) **"Manager"** means a manager of a limited liability company licensed as a firm under the act.

(27) **"NASBA"** means the National Association of State Boards of Accountancy.

(28) **"Natural person"** means a living, human being.

(29) **"Nonlicensee owner"** means a CPA firm owner who is not licensed in any state to practice public accountancy.

(30) **"PCAOB"** means Public Company Accounting Oversight Board.

(31) **"Peer review"** means a study, appraisal, or review of one or more aspects of the attest work of a licensee or licensed firm in the practice of public accountancy, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under RCW 18.04.025(14).

(32) **"Practice privileges"** means an individual:

- Has a principal place of business outside of Washington state;
- Is licensed to practice public accounting in another state;
- Has notified the board of intent to enter the state;
- Meets the statutory criteria for a grant of privileges;
- Is subject to discipline in the state of Washington; and
- Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege.

(33) **"Principal place of business"** means a single fixed location designated by the individual from which the individual directs, controls, and coordinates the majority of his or her business activities.

(34) **"Public practice"** or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit reports," "review reports," or "compilation reports" on financial statements, or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters.

(35) **"Quality assurance review or QAR"** is the process, established by and conducted at the direction of the board, of study, appraisal, or review of one or more aspects of the attest work of a licensee or licensed firm in the practice of public accountancy, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

(36) **"Reciprocity"** means board recognition of licenses, certificates or other professional accounting credentials that the board will rely upon in full or partial satisfaction of licensing requirements.

(37) **"Referral fees"** see definition of "commissions and referral fees" in subsection (10) of this section.

(38) **"Reports on financial statements"** means any reports or opinions prepared by licensees, based on services performed in accordance with generally accepted auditing standards, standards for attestation engagements, or standards for accounting and review services, as to whether the presentation of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private, or governmental, conforms with generally accepted accounting principles or other comprehensive bases of accounting. "Reports on financial statements" does not include services referenced in RCW 18.04.350(6) provided by persons not holding a license under the act.

(39) **"Representing oneself"** for the purposes of RCW 18.04.295(2) and WAC 4-25-910(3), means having a license, practice privilege, certificate or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

(40) **"Rules of professional conduct"** means rules adopted by the board to govern the conduct of CPAs and CPA firms while representing themselves to others as CPAs. These rules also govern the conduct of nonlicensee firm owners and all persons using the title CPA or CPA-Inactive.

(41) **"SEC"** means the Securities and Exchange Commission.

(42) **"State"** includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands.

(43) **"Statements on auditing standards (SAS)"** are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

(44) **"Statements on standards for accounting and review services (SSARS)"** are standards, promulgated by the AICPA, to give guidance to licensees who are associ-

ated with the financial statements of nonpublic companies and issue compilation or review reports.

~~((41))~~ (45) "Statements on standards for attestation engagements (SSAE)" are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

AMENDATORY SECTION (Amending WSR 02-22-082, filed 11/5/02, effective 12/31/02)

WAC 4-25-640 What are the requirements concerning records and clients' confidential information?

(1) **Client:** The term "client" as used throughout this section includes former and current clients. For purposes of this section, a client relationship has been formed when confidential information has been disclosed by a prospective client in an initial interview to obtain or provide professional services.

(2) **Property of the licensee:** In the absence of an express agreement between the licensee and the client to the contrary, all statements, records, schedules, working papers, and memoranda made by a licensee incident to or in the course of professional service to clients, except reports submitted by a licensee, are the property of the licensee.

(3) **Sale or transfer of client records:** No statement, record, schedule, working paper, or memorandum, including electronic records, may be sold, transferred, or bequeathed without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, shareholders, or new partners or new shareholders of the licensee, partnership, limited liability company, or corporation, or any combined or merged partnership, limited liability company, or corporation, or successor in interest.

(4) **Confidential client communication or information:** A licensee, certificateholder, firm owner, or employee of a licensee must not without the consent of the client or the heirs, successors or personal representatives of the client disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services.

This rule does not:

(a) Affect in any way a licensee's, certificateholder's, firm owner's, or employee's of a licensee's obligation to comply with a lawfully issued subpoena or summons;

(b) Prohibit disclosures in the course of a quality review of a licensee's attest services;

(c) Preclude a licensee, certificateholder, firm owner, or employee of a licensee from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board. However, a licensee, certificateholder, firm owner, or employee of a licensee must not disclose or use to their own advantage any confidential client information that comes to their attention in carrying out their official responsibilities; or

(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of a CPA's practice.

~~((3))~~ (5) **Client records:** Licensees, certificateholders, and firm owners must furnish to their client or heirs,

successors or personal representatives, upon request and reasonable notice:

(a) A copy of the licensee's, certificateholder's or firm owner's ~~((working papers, including))~~ records, schedules, and electronic documents, to the extent that such ~~((working papers include))~~ records ~~((that))~~ and schedules would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(b) Any accounting or other records belonging to, or obtained from or on behalf of, the client, that the licensee, certificateholder, or firm owner removed from the client's premises or received for the client's account, including electronic documents; but the licensee, certificateholder, or firm owner may make and retain copies of such documents of the client when they form the basis for work done by the licensee, certificateholder, or firm owner.

Licensees, certificateholders, and firm owners must not refuse to return client records, including electronic documents, pending client payment of outstanding fees.

(6) Audit and review record retention requirements: For a period of seven years after a licensee concludes an audit or review the licensee must retain the following records and documents, including electronic records unless hard copies of such exist:

(a) Records forming the basis of the audit or review;

(b) Records documenting audit or review procedures applied;

(c) Records documenting evidence obtained including financial data, analyses, conclusions, and opinions related to the audit or review engagement; and

(d) Records documenting conclusions reached by the licensee in the audit or review engagement.

NEW SECTION

WAC 4-25-670 What enforcement actions must be reported to the board? (1) A licensee, certificateholder, or nonlicensee firm owner must notify the board, on a form and in the manner prescribed by board policy, within **thirty days** of the issuance of:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, certificateholder, or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards.

(2) Sole practitioners are to report action taken against the sole practitioner, the sole practitioner's individual CPA license, the CPA firm, or the CPA firm license.

(3) Licensed CPA firms are not required to report on action taken against owners, principals, partners, or employees.

(4) If you hold a license or certificate issued through the foreign reciprocity provisions of the act, you must notify the board of any investigations undertaken, or sanctions imposed, by a foreign credentialing body against your foreign credential within thirty days of your receiving notice that an investigation has begun or a sanction was imposed.

AMENDATORY SECTION (Amending WSR 02-04-064, filed 1/31/02, effective 3/15/02)

WAC 4-25-750 What are the CPA firm licensing requirements? Attest services may only be offered or performed in a CPA firm licensed in Washington. An entity wishing to use "CPA(s)" or "certified public accountant(s)" in the firm name must first obtain a license from the board.

(1) **How may a CPA firm be organized?** A CPA firm may be organized as:

- (a) A proprietorship;
- (b) A partnership;
- (c) A professional corporation (PC) or professional service corporation (PS);
- (d) A limited liability company (LLC);
- (e) A limited liability partnership (LLP); or
- (f) Any other form of legal entity authorized by statute for use by a CPA firm.

(2) **What happens when a CPA firm alters its legal form?** A change in the legal form of a firm constitutes a new firm. Accordingly, the new entity must first obtain a CPA firm license from the board.

(3) **What are the ownership requirements for a CPA firm?**

- (a) All owners of a licensed CPA firm are required to:
 - (i) Be natural persons;
 - (ii) Fully comply with the provisions of chapter 18.04 RCW; and
 - (iii) Subject to discipline by the board for violations of chapter 18.04 RCW or 4-25 WAC;
- (b) A simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all partners, owners, or shareholders must be:
 - (i) Licensees in this state or holders of a valid license to practice public accountancy issued by another state;
 - (ii) Entitled to practice public accounting in this state; and
 - (iii) Principally employed by the corporation or actively engaged in its business.

(c) At least one general partner of a partnership, one shareholder of a corporation, and one manager of a limited liability company must be a licensee.

(d) Each CPA proprietor, partner, shareholder or manager who is either a resident or is entering the state and practicing public accountancy in this state must hold a valid Washington state license or practice privileges.

(e) The principal partner of the partnership and any partner having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accounting in this state.

(f) The principal officer of the corporation and any officer or director having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accountancy in this state.

(g) The principal manager or member of a limited liability company and any member having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accountancy in this state.

(h) A nonresident CPA owner must be licensed to practice public accountancy in at least one state.

(i) A nonlicensee owner must:

- (i) Be a natural person;
- (ii) Meet the good character requirements of RCW 18.04.105 (1)(a);
- (iii) Comply with the act and board rules; and
- (iv) Be an active individual participant in the licensed firm or affiliated entities as these terms are defined in WAC 4-25-410; and

(j) A resident nonlicensee firm owner must meet the requirements of WAC 4-25-752 and register with the board concurrent with submission of the firm license, or submission of an amendment to the firm license, to the board.

(4) **What are the requirements for the firm's main office and a branch office?** The firm's main office must be under the direct supervision of a resident licensee.

A branch office is an office of a licensed CPA firm which is physically separated from the main office. A branch office operates under the CPA firm license of the main office.

(5) **How do I apply for an initial CPA firm license?** To apply for an initial CPA firm license you must use the application form(s) provided by the board and submit the completed form(s), all applicable fees, all required documentation including the following to the board's office:

- (a) The firm name;
- (b) Address and telephone number of the main office and any branch offices of the firm;
- (c) Name of the managing licensee of the main office;
- (d) Licensee owners' names and the states in which they hold CPA licenses;
- (e) Name(s) of all nonlicensee owners;
- (f) Complete registration form(s), including the appropriate fee, for each resident nonlicensee owner;
- (g) Names of corporate directors, limited liability company managers, and all officers; and
- (h) Type of legal organization under which the firm operates.

An application is not complete and cannot be processed until all fees, required information, and required documentation is received by the board. Upon completion of processing, a CPA firm license will be mailed to the main office at the last address provided to the board.

The initial CPA firm license will expire on June 30 of the third calendar year following initial licensure.

(6) **How do I renew a CPA firm license?** To renew a CPA firm license you must use the form(s) provided by the board. In January of the year of expiration, a renewal form(s)

will be mailed to the main office at the last address provided to the board. You must submit a properly completed renewal form(s), all applicable fees and all required documentation to the board by April 30th of the year of expiration. Failure to file a complete renewal form for a firm license by April 30 of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on individual hardship. A renewal application is not complete and cannot be processed until all fees, required information, and required documentation is received by the board. Upon completion of processing, the CPA firm license will be mailed to the main office at the last address provided to the board.

The CPA firm license will expire on June 30 of the third calendar year following the date of renewal.

(7) When must I notify the board of changes in the CPA firm? A CPA firm must provide the board written notification of the following within ~~((thirty))~~ ninety days of its occurrence:

- (a) Dissolution of a CPA firm;
- (b) The occurrence of any event that would cause the firm to be in violation of ~~((the provisions of the Public Accountancy Act (chapter 18.04 RCW) or these rules;))~~ RCW 18.04.195 or this rule; or
- (c) An event that requires an amendment to a firm license.

(8) What events require a firm amendment? A CPA firm must provide written notification to the board, by submitting a firm amendment form and the appropriate amendment fee, within ~~((sixty))~~ ninety days of the following events' occurrence:

- (a) Admission or departure of an owner;
- (b) Any change in the name of the firm;
- (c) Change in the managing licensee of the main office; and
- (d) Opening, closing, or relocating of the main office or of any branch office.

(9) How long do I have to correct noncompliance with licensure requirements due to a change in ownership or an owner's credentials? A CPA firm must notify the board within ~~((sixty))~~ ninety days of any change in ownership or lapse of an owner's license, certificate, registration or practice privilege that has caused the firm's license to be out of compliance with licensure requirements and must correct the non-compliance within ninety days of the lapse, unless the board grants a longer time period due to individual hardship.

AMENDATORY SECTION (Amending WSR 02-04-064, filed 1/31/02, effective 3/15/02)

WAC 4-25-910 What are the bases for the board to impose discipline? RCW 18.04.055, 18.04.295, and 18.04.305 authorize the board to revoke, suspend, refuse to renew or reinstate an individual or firm license, certificate, practice privilege, or registration as a resident nonlicensee firm owner; impose a fine not to exceed ~~((ten))~~ thirty thousand dollars; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a nonlic-

ensee from holding an ownership interest in a licensed firm for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295 and 18.04.305. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in obtaining a license or in any filings with the board.

(2) Making a false or misleading statement in support of another's application for a license and/or certificate.

(3) Dishonesty, fraud, or negligence while representing oneself as a CPA, CPA firm, or a nonlicensee firm owner including but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license;

(b) Making misleading, deceptive, or untrue representations;

(c) Engaging in acts of fiscal dishonesty;

(d) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

(e) Unlawfully selling unregistered securities;

(f) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

(g) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties; or

(h) Withdrawing or liquidating, as fees earned, funds received by a CPA, CPA firm, or a nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(4) The following shall be prima facie evidence that a CPA, CPA firm, or a nonlicensee firm owner has engaged in dishonesty, fraud, or negligence while representing oneself as a CPA, CPA firm, or a nonlicensee firm owner:

(a) An order of a court of competent jurisdiction finding the CPA, CPA firm, or the nonlicensee firm owner to have committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on a CPA's, CPA firm's, or nonlicensee firm owner's fitness to represent himself or herself as a CPA, CPA firm, or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body finding the CPA, CPA firm, or nonlicensee firm owner to have committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on a CPA's, the nonlicensee firm owner's, or CPA firm's fitness to represent itself as a CPA, a nonlicensee firm owner, or a CPA firm;

(c) Cancellation, revocation, suspension, or refusal to renew the right to practice as a CPA or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

(d) Suspension or revocation of the right to practice before any state or federal agency.

(5) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(6) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from a client unless the client is in the business of making loans of the type obtained by the CPA, CPA firm, or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(7) A violation of the Public Accountancy Act or failure to comply with a board rule contained in chapter 4-25 WAC.

(8) Violation of one or more of the rules of professional conduct included in chapter 4-25 WAC or concealing another's violation of the Public Accountancy Act or board rules.

(9) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

(10) Failure to comply with an order of the board.

(11) A CPA's or nonlicensee firm owner's adjudication as mentally incompetent is prima facie evidence that the CPA or nonlicensee firm owner lacks the professional competence required by the rules of professional conduct.

(12) Failure of a licensee, certificateholder, or nonlicensee firm owner to notify the board, on a form and in the manner prescribed by board policy, within thirty days of the issuance of:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, certificateholder, or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards.

WSR 03-17-068

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF REVENUE

(By the Code Reviser's Office)

[Filed August 19, 2003, 8:37 a.m.]

WAC 458-20-135, proposed by the Department of Revenue in WSR 03-04-032 appearing in issue 03-04 of the State Reg-

ister, which was distributed on February 19, 2003, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Assistant Editor

Washington State Register

WSR 03-17-073

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed August 19, 2003, 11:14 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: Amend Sections 1.07, 3.04, 6.09, 9.03, 9.04, 9.08, 12.03 (Regulation I); Section 2.07 (Regulation III). Adopt Section 6.01 (Regulation I). Repeal Sections 6.03, 6.06, 6.07, 6.08 (Regulation I).

Purpose: The proposal would adopt Regulation I, Section 6.01 to reflect the agency's decision to adopt by reference the Washington State Department of Ecology's new source review (NSR) program under chapters 173-400 and 173-460 WAC, including the definitions used therein.

The proposal would amend Regulation I, Section 1.07 to remove definitions pertaining to the NSR program because the agency would use the definitions in ecology's regulations. There are also some minor housekeeping changes to make the remaining definitions consistent with the definitions in the WAC.

The proposal would repeal Regulation I, Sections 6.03, 6.06, 6.07, and 6.08 because they would be superceded by ecology's NSR program.

Cross references to the repealed sections would be amended accordingly.

Other Identifying Information: 1.07 Definitions; 3.04 RACT; 6.09 Notice of Completion; 9.03 Emission of Air Contaminant: Visual Standard; 9.04 Opacity Standards for Equipment with Continuous Opacity Monitoring Systems; 9.08 Fuel Oil Standards; 12.03 Continuous Emission Monitoring Systems; 2.07 Evaluating the Impacts of TAC; 6.01 Components of New Source Review Program; 6.03 Notice of Construction; 6.06 Public Notice; 6.07 Order of Approval - Order to Prevent Construction; and 6.08 Emission Reduction Credit Banking.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Summary: See Purpose above.

Reasons Supporting Proposal: EPA has informally requested that the state submit a revision to the state implementation plan containing approvable new source review (NSR) programs for all portions of the state. Adopting Department of Ecology's NSR program by reference would ensure a consistent statewide program and would be easier for EPA to approve.

Name of Agency Personnel Responsible for Drafting: Gerry Pade, 110 Union Street, #500, Seattle, WA 98101,

(206) 689-4065; Implementation: Dave Kircher, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4050; and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect the amendments, except Regulation I, Sections 3.04(e), 9.03 (d) and (e), 12.03 (b)(2); and Regulation III, 2.07.

Rule is necessary because of federal law, FCAA Section 110 (a)(2)(C), 40 C.F.R. 51.160 through 51.164.

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on September 25, 2003, at 9:15 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by September 18, 2003, TDD (800) 833-6388 or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, fax (206) 343-7522, by September 15, 2003.

Date of Intended Adoption: September 25, 2003.

August 18, 2003

G. S. Pade

Engineer - Compliance

life, or property, or which unreasonably interferes with enjoyment of life and property. Air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

~~((e)) ALLOWABLE EMISSIONS means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to a federally enforceable permit that limits the operating rate, or hours of operation, or both) and the most stringent of the following:~~

~~(1) Any applicable standard under 40 CFR Parts 60, 61, and 63;~~

~~(2) Any applicable emission standard under Regulation I, II, or III;~~

~~(3) Any applicable State Implementation Plan emission standard, including those with a future compliance date; or~~

~~(4) Any applicable emission standard specified in an Order of Approval or operating permit, including those with a future compliance date.)~~

~~((f)) (d) AMBIENT AIR means the ((portion of the atmosphere, external to buildings, to which the general public has access)) surrounding outside air.~~

~~((g)) BEST AVAILABLE CONTROL TECHNOLOGY means technology that will result in an emission standard, including a visible emission standard, based on the maximum degree of reduction which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such source through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each air contaminant. In no event shall application of the best available control technology result in emissions of any air contaminant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. The Agency may prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirements of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.)~~

~~((h)) (e) BOARD means the Board of Directors of the Puget Sound Clean Air Agency.~~

~~((i)) (f) COMBUSTIBLE REFUSE means solid or liquid combustible waste material.~~

~~((j)) COMMENCED CONSTRUCTION means that the owner or operator has all the necessary preconstruction approvals or permits and either has begun, or has caused to begin, a continuous program of actual on-site construction of the source or has entered into binding agreements or contractual obligations to undertake construction of the source which cannot be canceled or modified without substantial loss to the owner or operator.)~~

~~((k)) (g) CONTROL EQUIPMENT means any device which prevents or controls the emission of any air contaminant.~~

AMENDATORY SECTION

REGULATION I SECTION 1.07 DEFINITIONS

When used herein:

~~((a)) ACTUAL EMISSIONS means the average rate at which the source actually emitted air contaminants during the 2-year period preceding a specific date, and which is representative of normal source operations. To account for unusual circumstances such as strikes, the Control Officer may approve or require the use of another time period that is more representative of normal operations than is the immediately preceding 2-year period.)~~

~~((b)) (a) AGENCY means the Puget Sound Clean Air Agency.~~

~~((e)) (b) AIR CONTAMINANT means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.~~

~~((d)) (c) AIR POLLUTION means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal~~

PROPOSED

~~((h))~~ (h) CONTROL OFFICER means the Air Pollution Control Officer of the Puget Sound Clean Air Agency.

~~((m))~~ (i) EMISSION means a ~~(direct or indirect)~~ release of ~~(any)~~ air contaminants into the ambient air.

~~((n))~~ (j) EMISSION STANDARD means a requirement established under the Federal Clean Air Act (FCAA) or chapter 70.94 RCW that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction~~((;))~~ and any design, equipment, work practice, or operational standard adopted ~~((promulgated))~~ under the FCAA or chapter 70.94 RCW.

~~((o))~~ (k) EQUIPMENT or EMISSION UNIT means any part of a stationary source or source that emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter 70.94 or 70.98 RCW ~~((or portable device or any part thereof that emits or may emit any air contaminant into the atmosphere)).~~

~~((p))~~ FACILITY means the sum total of all of the pollutant emitting activities that belong to the same industrial grouping (as defined by major groups in the Standard Industrial Classification Manual, NTIS Order No. PB 87-100012), are located on one or more contiguous or adjacent properties, and are owned or operated by the same person or persons under common control.)

~~((q))~~ (l) FUEL BURNING EQUIPMENT means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.

~~((r))~~ FUGITIVE DUST means particulate matter or any visible air contaminant other than uncombined water that is not collected by a capture system and emitted from a stack, but is released to the atmosphere at the point of generation.

~~((s))~~ FUGITIVE EMISSION means an emission that does not pass and that could not reasonably pass through a stack, chimney, or other functionally equivalent opening.)

~~((t))~~ (m) GASOLINE means a petroleum distillate that is a liquid at standard conditions and has a true vapor pressure greater than 4 pounds per square inch absolute at 20°C, and is used as a fuel for internal combustion engines. Also any liquid sold as a vehicle fuel with a true vapor pressure greater than 4 pounds per square inch absolute at 20°C shall be considered "gasoline" for purpose of this regulation. ~~((volatile organic compound having a true vapor pressure greater than 1.5 pounds per square inch (10.3 kPa) at 68°F (20°C), that is a liquid at a temperature of 68°F (20°C) and a barometric pressure of 29.92 inches of mercury (101.325 kPa), and is used as a fuel for internal combustion engines.))~~

~~((u))~~ (n) GASOLINE STATION means any site dispensing gasoline into ~~((fuel tanks of))~~ motor vehicle~~((s))~~, marine vessel~~((s))~~, or aircraft fuel tanks from stationary storage tanks.

~~((v))~~ (o) HAZARDOUS AIR POLLUTANT means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. §7412.

~~((w))~~ INSTALLATION means the placement, assemblage, or construction of equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

~~((x))~~ LOWEST ACHIEVABLE EMISSION RATE means that rate of emissions that reflects either the most stringent emission standard that is contained in the implementation plan of any state for such class or category of source unless the owner or operator of the proposed source demonstrates that such emission standards are not achievable, or the most stringent emission standard that is achieved in practice by such class or category of source, whichever is more stringent.

~~((y))~~ MAJOR MODIFICATION means a modification of a major source that would increase the actual emissions of any air contaminant for which the area is designated nonattainment by more than the following:

Air Contaminant	Tons/Year
Carbon Monoxide	100.0
Volatile Organic Compounds	40.0
Nitrogen Oxides	40.0
PM ₁₀	15.0
Sulfur Dioxide	40.0
Lead	0.6

In determining whether the thresholds defining a major modification have been exceeded, the emissions permitted under Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emission increases that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility since the designation of nonattainment may be subtracted from this amount provided that any credits so applied are then considered to have been used. For modifications of an individual piece of equipment, the baseline shall be the source's actual emissions or allowable emissions, whichever is smaller. (Note: volatile organic compounds and nitrogen oxides are the air contaminants for which an area is designated nonattainment for ozone.)

~~((z))~~ MAJOR SOURCE means a facility that emits or has the potential to emit 100 tons per year or more of any air contaminant subject to regulation under the federal Clean Air Act. In determining whether the threshold defining a major source has been exceeded all fugitive emissions that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility may be subtracted from this amount provided that any credits so applied are then considered to have been used.

~~((aa))~~ MAJOR SOURCE OF HAZARDOUS AIR POLLUTANTS means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the U.S. EPA Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

~~((bb))~~ MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY EMISSION LIMITATION FOR NEW SOURCES means the emission limitation that is not less stringent than the emission limitation achieved in practice by

the best controlled similar source, and that reflects the maximum degree of reduction in emissions that the Agency, taking into consideration the cost of achieving such emission reduction, and any non air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

~~((ee))~~ **MODIFICATION** means any physical change in, or change in the method of operation of, a source, except an increase in the hours of operation or production rates (not otherwise prohibited) or the use of an alternative fuel or raw material that the source is approved to use under an Order of Approval or operating permit, that increases the amount of any air contaminant emitted or that results in the emission of any air contaminant not previously emitted.))

~~((dd))~~ **(p) MOTOR VEHICLE** means any operating vehicle or one capable of being operated that has its own self-contained sources of motive power, is designed for the transportation of people or property, and is of the type for which a license is required for operation on a highway.

~~((ee))~~ **(q) MULTIPLE CHAMBER INCINERATOR** means a furnace for the destruction of waste consisting of three or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned.

~~((ff))~~ **NONATTAINMENT AREA** means a geographic area designated by the United States Environmental Protection Agency that violates a primary or secondary national ambient air quality standard.))

~~((gg))~~ **(r) OWNER OR OPERATOR** means the person who owns, leases, supervises, or operates the equipment or control equipment.

~~((hh))~~ **PARTICULATE MATTER** means any material, except water in an uncombined form, that is, has been, or is likely to become airborne and exists as a liquid or a solid at a temperature of 68°F (20°C) and a barometric pressure of 29.92 inches of mercury (101.325 kPa.))

~~((ii))~~ **(s) PERSON** means ((and includes any)) an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government((al)) agency.

~~((jj))~~ **PM₁₀** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.))

~~((kk))~~ **POTENTIAL TO EMIT** means the maximum capacity of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit an air contaminant, including control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.))

~~((ll))~~ **(t) REASONABLY AVAILABLE CONTROL TECHNOLOGY** or **(RACT)** means the lowest emission standard that a particular source or source category is capable

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

~~((mm))~~ **(u) REFUSE BURNING EQUIPMENT** means equipment employed to burn any solid or liquid combustible refuse.

~~((nn))~~ **(v) SOURCE** means ((a building, structure, equipment, control equipment, or facility that emits or may emit any air contaminant into the atmosphere.)) all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same 2-digit code) as described in the *Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.*

~~((oo))~~ **STANDARD CONDITIONS** means a temperature of 68°F and a barometric pressure of 29.92 inches of mercury.

~~((pp))~~ **TOTAL ALLOWABLE EMISSIONS** means allowable emissions, including the emissions from all Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emissions that can be reasonably quantified.))

~~((qq))~~ **(w) TOXIC AIR CONTAMINANT** or **TAC** means ((an air contaminant listed in Appendix A of Regulation III.)) any Class A or Class B toxic air pollutant listed in WAC 173-460-150 and 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

~~((rr))~~ **(x) TRUE VAPOR PRESSURE** means the equilibrium partial pressure of ((an organic)) a petroleum liquid as ((f))determined by methods described in American Petroleum Institute Bulletin 2517, "Evaporative Loss from External Floating Roof Tanks", May 1996((g)).

~~((ss))~~ **(y) URBANIZED AREA** means those portions of King, Pierce, Kitsap, and Snohomish Counties designated as urbanized areas by the U.S. Department of Commerce, Bureau of the Census.

~~((tt))~~ **(z) VOLATILE ORGANIC COMPOUND** or **VOC** means an organic compound that participates in atmospheric photochemical reactions((~~-This excludes all compounds determined to have negligible photochemical reactiv-~~

ity by the U.S. Environmental Protection Agency and listed) as defined in 40 CFR 51.100(s) in effect ((July 1, 1998)) as of the federal regulation reference date listed in Section 3.25 of this regulation herein incorporated by reference.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

REGULATION I SECTION 3.04 REASONABLY AVAILABLE CONTROL TECHNOLOGY

(a) Reasonably Available Control Technology (RACT) is required for all existing sources.

(b) RACT for each source category containing 3 or more sources shall be determined by rule, except as provided in Section 3.04(c) of this regulation.

(c) Source-specific RACT determinations may be performed under any of the following circumstances:

(1) For replacement of existing control equipment under ((Section 6.07(e)(4))) Article 6 of this regulation;

(2) When required by the federal Clean Air Act;

(3) For sources in source categories containing fewer than 3 sources;

(4) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(5) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

(d) Under any of the circumstances listed in Section 3.04(c) of this regulation, the Control Officer or a duly authorized representative shall have the authority to perform a source-specific RACT analysis or to order the owner or operator to perform the analysis and submit the results to the Agency.

(e) In the event that the Agency performs a source-specific RACT analysis of a source, the Agency shall assess a fee against that source to cover the cost of performing the analysis. The fee for an analysis performed by the Agency shall be \$5,000.00. (Replacement of control equipment under Section 3.04 (c)(1) shall be subject to the notice of construction review fees under Section 6.04, in lieu of a RACT fee under this section.) This fee shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

(f) Where current controls are determined to be less than RACT, the Agency shall define RACT for that source or source category and issue a rule or a regulatory order under Section 3.03 of this regulation requiring the installation of RACT.

(g) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of permit issuance or renewal.

NEW SECTION

REGULATION I SECTION 6.01 COMPONENTS OF NEW SOURCE REVIEW PROGRAM

(a) In addition to the provisions of this regulation, the Agency adopts by reference and enforces the following provisions of the new source review program established by the Washington State Department of Ecology:

WAC 173-400-030

Definitions. (effective 9/15/01)

WAC 173-400-081

Startup and shutdown. (effective 9/20/93)

WAC 173-400-110

New source review. (effective 9/15/01)

WAC 173-400-112

Requirements for new sources in nonattainment areas. (effective 9/15/01)

WAC 173-400-113

Requirements for new sources in attainment or unclassifiable areas. (effective 9/15/01)

WAC 173-400-114

Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (effective 9/15/01)

WAC 173-400-117

Special protection requirements for federal Class I areas. (effective 9/15/01)

WAC 173-400-171

Public involvement. (effective 9/15/01)

WAC 173-400-200

Creditable stack height and dispersion techniques. (effective 3/22/91)

WAC 173-460-020

Definitions. (effective 2/14/94)

WAC 173-460-040

New source review. (effective 2/14/94)

WAC 173-460-050

Requirement to quantify emissions. (effective 2/14/94)

WAC 173-460-060

Control technology requirements. (effective 8/21/98)

WAC 173-460-070

Ambient impact requirement. (effective 9/18/91)

WAC 173-460-080

Demonstrating ambient impact compliance. (effective 2/14/94)

WAC 173-460-090

Second tier analysis. (effective 2/14/94)

(b) The Washington State Department of Ecology is the permitting agency for the Prevention of Significant Deterioration (PSD) program under WAC 173-400-141, and for primary aluminum smelters, kraft pulp mills, and sulfite pulp mills.

(c) The Washington State Department of Health is the permitting agency for radionuclides under chapter 246-247 WAC.

(d) The Energy Facility Site Evaluation Council (EFSEC) is the permitting agency for large natural gas and oil pipelines, electric power plants above 350 megawatts, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields under chapter 463-39 WAC.

REPEALER**REGULATION I SECTION 6.03 NOTICE OF CONSTRUCTION****REPEALER****REGULATION I SECTION 6.06 PUBLIC NOTICE****REPEALER****REGULATION I SECTION 6.07 ORDER OF APPROVAL - ORDER TO PREVENT CONSTRUCTION****REPEALER****REGULATION I SECTION 6.08 EMISSION REDUCTION CREDIT BANKING****AMENDATORY SECTION****REGULATION I SECTION 6.09 NOTICE OF COMPLETION**

Within 30 days of completion of the installation or modification of a stationary (~~(an air contaminant)~~) source subject to the provisions of (~~(Section 6.07)~~) Article 6 of this regulation, the owner or operator or applicant shall file a Notice of Completion with the Agency. Each Notice of Completion shall be submitted on a form provided by the Agency, and shall specify the date upon which operation of the stationary source has commenced or will commence.

AMENDATORY SECTION**REGULATION I SECTION 9.03 EMISSION OF AIR CONTAMINANT: VISUAL STANDARD**

(a) It shall be unlawful for any person to cause or allow the emission of any air contaminant for a period or periods aggregating more than 3 minutes in any 1 hour, which is:

(1) Darker in shade than that designated as No. 1 (20% density) on the Ringelmann Chart, as published by the United States Bureau of Mines; or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in Section 9.03 (a)(1).

(b) The density or opacity of an air contaminant shall be measured at the point of its emission, except when the point of emission cannot be readily observed, it may be measured at an observable point of the plume nearest the point of emission.

(c) This section shall not apply when the presence of uncombined water is the only reason for the failure of the emission to meet the requirements of this section.

(d) This section shall not apply to solid fuel burning devices, permitted fire training facilities, permitted obscurant usage during military training operations, outdoor fires, motor vehicles when operated on public roads, aircraft, or equipment subject to Section 9.04 of this regulation.

(e) This section shall not apply to equipment with an alternate opacity standard issued under Section 3.03 or Article 6 of this regulation (~~(Section 6.07)~~) that is based upon a correlation with the particulate concentration and that accurately indicates a violation of the applicable particulate emission standards in Section 9.09 of this regulation.

AMENDATORY SECTION**REGULATION I SECTION 9.04 OPACITY STANDARDS FOR EQUIPMENT WITH CONTINUOUS OPACITY MONITORING SYSTEMS**

(a) Applicability. This section shall apply to all equipment required to be equipped with a continuous emission monitoring system for opacity.

(b) It shall be unlawful for any person to cause or allow the operation of any of the following equipment unless equipped with a continuous emission monitoring system for opacity:

(1) Cement kilns;

(2) Clinker coolers;

(3) Glass furnaces, rated at greater than 1 ton per hour, that burn fuel;

(4) Fuel burning equipment, rated at 100 million Btu per hour or greater, that burns wood, coal, or residual oil; and

(5) Refuse burning equipment rated at greater than 12 tons per day.

(c) It shall be unlawful for any person to cause or allow the emission of any air contaminant from any equipment subject to this section during any hour that:

(1) Averages greater than 5% opacity; or

(2) Contains any consecutive 6-minute period averaging greater than 20% opacity.

(d) Section 9.04 (c)(1) shall not apply to:

(1) Glass furnaces that are tested annually for compliance with the applicable particulate emission standard in Section 9.09 of this regulation; or

(2) Equipment with an alternate opacity standard issued under Section 3.03 or Article 6 of this regulation (~~(Section 6.07)~~) that is based upon a correlation with the particulate concentration and that accurately indicates a violation of the applicable particulate emission standards in Section 9.09 of this regulation.

(e) This section shall not apply to sources controlled by a venturi scrubber, provided that:

(1) The source is tested annually for compliance with the applicable particulate emission standard in Section 9.09 of this regulation;

(2) The pressure drop across the scrubber is continuously monitored and recorded; and

(3) The scrubbing liquid flow rate and temperature are continuously monitored and recorded.

(f) This section shall not apply to fuel burning equipment that burns residual oil less than 31 days per year, provided that the source implements an alternate opacity monitoring plan issued under Section 3.03 or Article 6 of this regulation (~~(Section 6.07)~~).

AMENDATORY SECTION**REGULATION I SECTION 9.08 FUEL OIL STANDARDS**

(a) It shall be unlawful for any person to cause or allow the combustion of oil in fuel burning equipment or refuse burning equipment that exceeds any of the following limits unless that person has obtained an Order of Approval from the Agency in accordance with Article 6 of this regulation (~~(Section 6.07 of this Regulation)~~):

PROPOSED

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Ash	0.1% (maximum)
Sulfur.....	1.0% (maximum for used oil)
Sulfur.....	2.00% (maximum for fuel oil)
Lead.....	100 ppm (maximum)
Arsenic	5 ppm (maximum)
Cadmium.....	2 ppm (maximum)
Chromium.....	10 ppm (maximum)
Total Halogens	1,000 ppm (maximum)
Polychlorinated Biphenyls (PCBs).....	2 ppm (maximum)
Flash Point	100°F (minimum)

(b) It shall be unlawful for any person to sell or make available for sale any oil in excess of the limits of this section to any person who has not obtained an Order of Approval from the Agency in accordance with Article 6 of this regulation (~~Section 6.07 of this Regulation~~). Any person who sells or makes available for sale such oil shall submit a report to the Agency within 15 days of the end of the month that includes the name and address of the recipient, the amount of oil delivered, and the concentration of contaminants therein.

(c) The provisions of this section shall not apply to:

- (1) Ocean-going vessels;
- (2) Used oil burned in space heaters that have a maximum heat output of not greater than 0.5 million Btu per hour; and
- (3) Persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission.

**AMENDATORY SECTION
REGULATION I SECTION 12.03 CONTINUOUS EMISSION MONITORING SYSTEMS**

(a) Continuous Monitoring. It shall be unlawful for any person to cause or allow the operation of any equipment required to have a continuous emission monitoring system unless the emissions are continuously monitored in accordance with the requirements of this section.

(b) Data Recovery. The owner or operator shall recover valid hourly monitoring data for at least 95% of the hours that the equipment (required to be monitored) is operated during each calendar month except for:

(1) Periods of monitoring system downtime, provided that the owner or operator demonstrates to the Control Officer that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonably preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner; and

(2) Periods authorized under Section 3.03 or Article 6 of this regulation (~~Section 6.07~~).

(c) Quality Assurance. The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 in effect July 1, 1997, and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA 340/1-86-010).

(d) Data Recording. Monitoring data commencing on the clock hour and containing at least 45 minutes of monitoring data shall be reduced to 1-hour averages. Monitoring data for opacity shall also be reduced to 6-minute averages. All monitoring data shall be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit.

(e) Data Retention: The owner or operator shall retain all monitoring data averages for at least 2 years, including copies of all reports submitted to the Agency and records of all repairs, adjustments, and maintenance performed on the monitoring system. All such data collected after October 1, 1998 shall be retained for at least 5 years.

(f) Data Reporting. The owner or operator shall submit a monthly report to the Agency within 30 days after the end of the month in which the data were recorded. This report shall include:

- (1) The date, time period, magnitude (in the units of the standard) and cause of each emission that exceeded an applicable emission standard;
- (2) The date and time of all actions taken to correct the problem, including any actions taken to minimize the emissions during the exceedance and any actions taken to prevent its recurrence;
- (3) The number of hours that the equipment (required to be monitored) operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;
- (4) The date, time period, and cause of each failure to meet the data recovery requirements of Section 12.03(b) and any actions taken to ensure adequate collection of such data;
- (5) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90% of the hours that the equipment (required to be monitored) was operated each day;
- (6) The results of all cylinder gas audits conducted during the month; and
- (7) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(g) Relative Accuracy Tests. All relative accuracy tests shall be subject to the provisions of Section 3.07 of this regulation.

(h) Exemptions. The data recording and reporting requirements of Sections 12.03(d) and 12.03(f) shall not apply to continuous VOC monitoring systems required under Section 2.05 of Regulation II. Further, relative accuracy tests shall not be required of these monitoring systems and may be waived for any other monitoring system not otherwise subject to 40 CFR Part 60, Appendix F, provided that the owner or operator demonstrates to the Control Officer that the emissions are consistently below 10% of the applicable emission standard.

**AMENDATORY SECTION
REGULATION III SECTION 2.07 EVALUATING THE IMPACTS OF TOXIC AIR CONTAMINANTS**

(a) **Applicability.** This section describes the procedures that shall be used for quantifying emissions and analyzing

impacts of toxic air contaminants in order to meet the requirements for new or modified toxic air contaminant sources (see Article 6 (~~Section 6.07(e)~~) of Regulation I) and for existing toxic air contaminant sources (see Section 2.05 of this ~~r((R))~~egulation).

(b) Quantifying Emissions of Toxic Air Contaminants.

(1) The owner or operator of a new or modified toxic air contaminant source subject to Article 6 (~~Section 6.07(e)~~) of Regulation I shall quantify toxic air contaminant emissions that may be discharged to the atmosphere after applying the required control technology, and shall submit this information as part of a Notice of Construction and Application for Approval.

(2) The owner or operator of an existing toxic air contaminant source subject to Section 2.05 of this ~~r((R))~~egulation shall, upon request by the Agency, quantify toxic air contaminant emissions emitted by the facility and submit that information within 30 days.

(3) The following assumptions shall be made when quantifying toxic air contaminant emissions:

(A) Each toxic air contaminant is introduced into the atmosphere in an unaltered form continuously, at the maximum concentration known to exist at the source unless there is reliable data to the contrary or there is a physical or legal restriction.

(B) Dioxin and furan emissions shall be combined as one toxic air contaminant, equivalent in potency to 2,3,7,8-Tetrachlorodi-benzo-p-dioxin.

(C) Benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoran-thene, chrysene, dibenz(a,h)anthracene, indeno(1,2,3-cd)py-rene, and benzo(a)pyrene shall be combined as one toxic air contaminant, equivalent in potency to benzo(a)pyrene.

(c) Analyzing Impacts of Toxic Air Contaminants. The air quality impact analysis for toxic air contaminant sources shall be performed using one of the following procedures:

(1) The EPA guideline dispersion model, TSCREEN, shall be used to demonstrate that the predicted concentration of each contaminant is below the corresponding Acceptable Source Impact Level listed in Appendix A of this ~~r((R))~~egulation. Stack parameters shall be submitted with the notice of construction application, or, for existing sources, within 30 days after the Agency requests the information. The maximum 1-hour concentration calculated by the model shall be converted with a persistence factor of 0.4 to a 24-hour average concentration or 0.08 to an annual average concentration;

(2) The owner or operator shall submit a more comprehensive evaluation including the use of other EPA guideline models and more accurate emission estimation techniques to demonstrate that the predicted concentration of each contaminant is below the corresponding Acceptable Source Impact Level listed in Appendix A of this ~~r((R))~~egulation in all areas where the general public has access; or

(3) If predicted ambient concentrations are not below the Acceptable Source Impact Levels listed in Appendix A of this ~~r((R))~~egulation, the owner or operator shall submit a risk analysis following the procedures in WAC 173-460-090(4), which demonstrates that emissions from the source will not

cause air pollution. New or modified sources shall also comply with supplemental requirements of the Department of Ecology as specified in WAC 173-460-090 and 173-460-100.

**WSR 03-17-074
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY**
[Filed August 19, 2003, 11:19 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: Amend Regulation I, Sections 3.11 and 3.25.

Purpose: To adjust the maximum civil penalty amount for inflation and to update the federal regulation reference date in order to remain current.

Other Identifying Information: Section 3.11 pertains to Civil Penalties. Section 3.25 pertains to the Federal Regulation Reference Date.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141.

Summary: See Purpose above.

Reasons Supporting Proposal: Without the adjustment for inflation, the maximum civil penalty amount would effectively decrease each year. The federal regulation reference date needs to be kept current.

Name of Agency Personnel Responsible for Drafting and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053; Implementation: Dave Kircher, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4050.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect these amendments.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on September 25, 2003, at 9:15 a.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by September 18, 2003, TDD (800) 833-6388 or (800) 833-6385 (Braille).

PROPOSED

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, fax (206) 343-7522, by September 15, 2003.

Date of Intended Adoption: September 25, 2003.

August 18, 2003

James Nolan

Director - Compliance

PROPOSED

AMENDATORY SECTION

REGULATION I SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of Chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed (~~(\$13,977.00)~~) \$14,243.00 per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to Chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than (~~(\$13,977.00)~~) \$14,243.00 for each day of continued noncompliance.

(c) Within 15 days after receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Any such request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the appealing party;

(2) A copy of the Notice and Order of Civil Penalty appealed from;

(3) A short and plain statement showing the grounds upon which the appealing party considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the appealing party relies to sustain his or her grounds for appeal;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the appealing party has read the notice of appeal and believes the contents to be true, followed by the party's signature.

Upon receipt of the application, the Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(d) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to Chapter 43.21B RCW and Chapter 371-08 WAC if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt by the person penalized of the notice imposing the penalty or 30 days after receipt of the notice of disposition on the application for relief from penalty.

(e) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(f) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(g) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(h) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~(2002)~~) 2003.

WSR 03-17-078

PROPOSED RULES

FOREST PRACTICES BOARD

[Filed August 19, 2003, 3:26 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: Assisting small forest landowners with forest road maintenance and abandonment planning and implementation elements of the forest practices rules, Title 222 WAC.

Purpose: Adopt emergency rules to implement legislative directed changes in 2SHB 1095.

Other Identifying Information: The bill limits the impact on small forest landowners of forest road maintenance and abandonment planning requirements, and directs the Forest Practices Board to adopt emergency rules under RCW 34.05.090 by October 31, 2003, that are to remain in effect until permanent rules can be adopted.

Statutory Authority for Adoption: RCW 76.09.040 and chapter 34.05 RCW.

Statute Being Implemented: 2SHB 1095, chapter 311, Laws of 2003.

Summary: The rule changes will implement 2SHB 1095 which in part amends chapter 76.09 RCW, "Forest Practices." The statutory amendments make it necessary to amend Title 222 WAC by:

- Defining certain terms as they affect road maintenance and abandonment planning and implementation;

- Altering road maintenance and abandonment plan requirements for small forest landowners, including the creation of a simplified checklist plan;
- Exempting small forest landowners' checklist road maintenance and abandonment plans from continuing obligation requirements; and
- Establishing a cost share program to provide financial assistance to small forest landowners for the removal of fish blockages.

Reasons Supporting Proposal: The rule changes are proposed to make the forest practices rules consistent with 2SHB 1095.

Name of Agency Personnel Responsible for Drafting: Jed Herman, 1111 Washington Street S.E., Olympia, (360) 902-1684; Implementation and Enforcement: Lenny Young, 1111 Washington Street S.E., Olympia, (360) 902-1744.

Name of Proponent: Forest Practices Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule limits the impacts on small forest landowners of forest road maintenance and abandonment planning requirements of the forest practices rules (Title 222 WAC). It implements 2003 legislation, 2SHB 1095, which in part amends chapter 76.09 RCW.

Proposal Changes the Following Existing Rules:

Chapter 222-16 WAC, Definitions.

- A definition for "fish passage barrier" is added.
- Definitions of "forest landowner" and "forest road" are expanded for small forest landowner purposes.

Chapter 222-20 WAC, Application and notification.

- Application requirements and approval conditions for small forest landowners are added.
- Language is added to exempt small forest landowners from continuing obligations upon sale or transfer of their forest lands.

Chapter 222-24 WAC, Road construction and maintenance.

- Language is added to provide for a state led cost share program to assist small forest landowners with costs of removing or repairing fish passage barriers.
- An obsolete ownership threshold for planning requirements is deleted.
- Language is added to alter road maintenance and abandonment plan requirements for small forest landowners, including a simplified checklist plan.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making does not impose additional costs on businesses and alleviates some costs for small forestry businesses.

RCW 34.05.328 does not apply to this rule adoption. The content of these amendments to Title 222 WAC are dictated by statute, therefore are exempt from analysis described in RCW 34.05.328.

Hearing Location: Red Lion Hotel, 510 Kelso Drive, Kelso, WA, on September 25, 2003, at 4:00 p.m.; and at Community College of Spokane, 985 South Elm Street, Colville, WA, on September 29, 2003, at 4:00 p.m.

Assistance for Persons with Disabilities: Contact Forest Practices Division at (360) 902-1400 by September 12, 2003, TDD (360) 902-1125.

Submit Written Comments to: Patricia Anderson, Department of Natural Resources, Forest Practices Division, 1111 Washington Street S.E., P.O. Box 47012, Olympia, WA 98504-7012, fax (360) 902-1428, by September 29, 2003.

Date of Intended Adoption: October 15, 2003.

August 18, 2003

Pat McElroy

Chair

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the forest practices appeals board established in the act.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the Tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the floodplain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

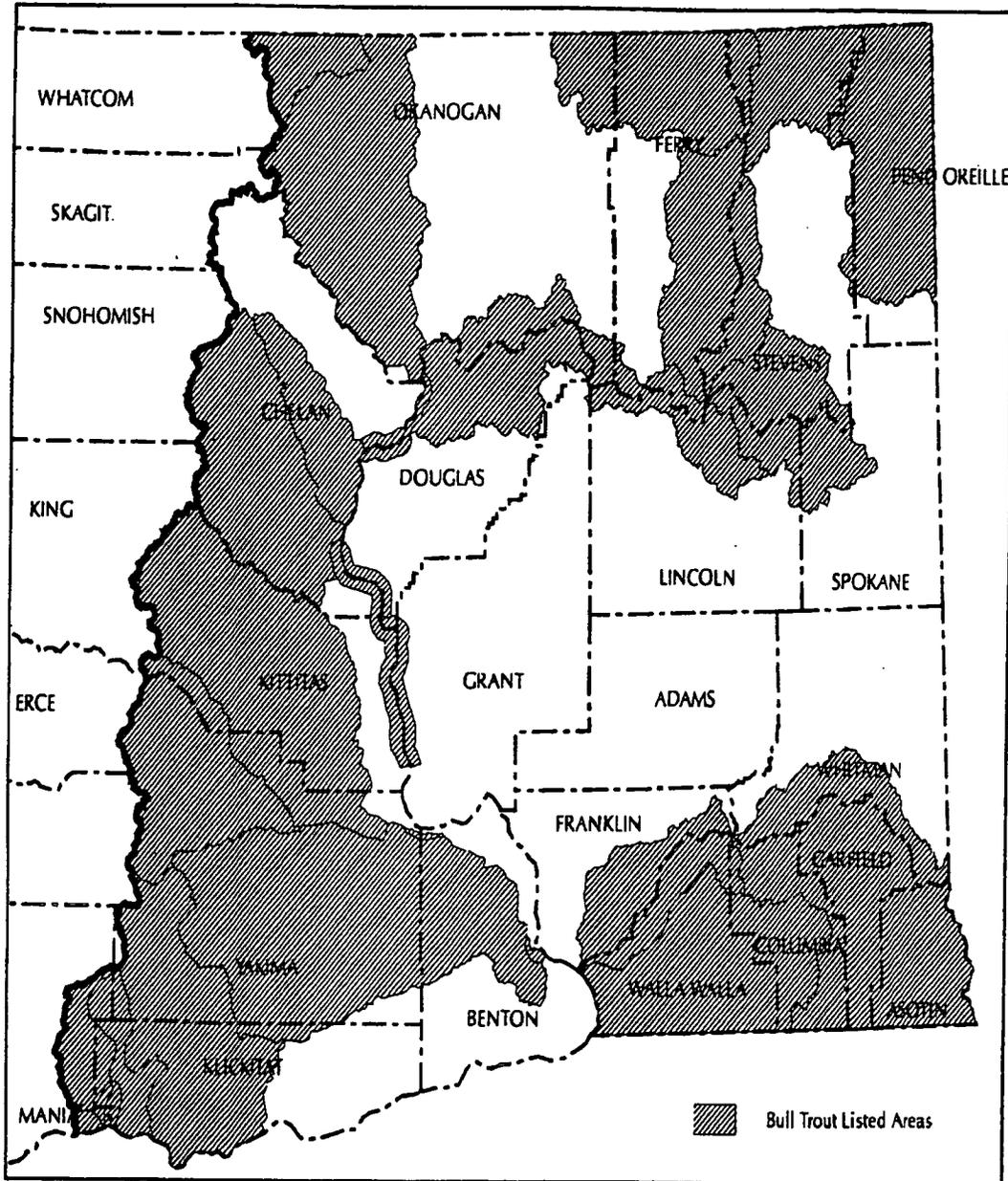
"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western Hemlock, lodgepole pine, cedar, whitepine, crabapple, or aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



PROPOSED

"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream. (See the board manual section 2 for descriptions and illustrations of CMZs, delineation guidelines), except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest.

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means teardrop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



PROPOSED

"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practice operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

- Clearcuts;
- Seed tree harvests in which twenty or fewer trees per acre remain after harvest;
- Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;
- Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;
- Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential hab-

it likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

"Flood level - 100 year." Is a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. For road maintenance and abandonment planning and implementation for small forest landowners, "forest land" excludes any of the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have a fixed structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner(~~(:-Provided, That)~~). However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(1) "Large forest landowner," for purposes of road maintenance and abandonment planning, means any forest landowner who is not a small forest landowner.

(2) "Small forest landowner" is a forest landowner who at the time of submitting a forest practices application or notification:

(a) Has harvested from his or her own forest lands in Washington state no more than an average timber volume of two million board feet per year during the three years prior to submitting the forest practices application or notification to the department; and

(b) Certifies that he or she does not expect to harvest from his or her own forest lands in the state more than an average timber volume of two million board feet per year during the ten years following the submission of a forest practices application or notification to the department.

(c) A landowner who exceeded the harvest threshold as described above, or expects to exceed the harvest limits dur-

ing any of the following ten years, will still be considered a "small forest landowner" if:

(i) He or she establishes to the department's reasonable satisfaction that the harvest limits were or will be exceeded in order to raise funds to pay estate taxes; or

(ii) There is an equally compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses.

(d) For the purposes of the forestry riparian easement program, "small forest landowner" is defined in WAC 222-21-010(13).

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices or forest management activities such as fire control. "Forest roads" does not include skid trails, highways, or county roads except where the county is a forest landowner or operator. "Forest road," as it applies to road maintenance and abandonment planning for small forest landowners, means a road or road segment that crosses forest lands owned by the small forest landowner, but excludes access roads to residential home sites not used as a part of a current forest practice involving harvest or salvage of trees.

"Forest trees" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: Provided, That Christmas trees are forest trees and: Provided further, That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial

deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Horizontal distance" means the distance between two points measured at a 0% slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

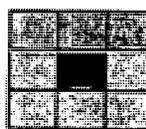
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local government entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



 Detection Section
 Detection Area

"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

PROPOSED

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"**Notice to comply**" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"**Occupied marbled murrelet site**" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(4) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(5) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"**Old forest habitat**" see WAC 222-16-085 (1)(a).

"**Operator**" shall mean any person engaging in forest practices except an employee with wages as his/her sole compensation.

"**Ordinary high-water mark**" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"**Other forest chemicals**" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"**Park**" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"**Partial cutting**" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"**Pesticide**" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"**Plantable area**" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"**Power equipment**" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"**Preferred tree species**" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type
 all hardwoods
 ponderosa pine
 western larch
 Douglas-fir
 western red cedar

Mixed conifer habitat type
 all hardwoods
 western larch
 ponderosa pine
 western red cedar
 white pine
 Douglas-fir
 lodgepole pine

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) **For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the 30 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means the establishment of any new sub-grade including widening, realignment, or modification of an existing road prism, with the exception of replacing

Western Washington Total RMZ Width

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

or installing drainage structures, for the purposes of managing forest land under Title 222 WAC.

"Road maintenance" means any road work specifically related to maintaining water control or road safety and visibility (such as; grading, spot rocking, resurfacing, roadside vegetation control, water barring, ditch clean out, replacing or installing relief culverts, cleaning culvert inlets and outlets) on existing forest roads.

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means an erosional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order

to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

PROPOSED

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right-of-way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least 40% of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local gov-

ernment, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-010 Applications and notifications—Policy. (1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application, which shall specify what information is needed for a notification, and the information required for the department to approve or disapprove the application.

(3) **Except as provided in subpart (4) below, applications and notifications** shall be signed by the landowner, the timber owner and the operator, or the operator and accompa-

nied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)).

(4) In lieu of a landowner's signature, where the timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign a forest practices application or notification for operations not converting to another use and the statement of intent not to convert for a set period of time. The holder of perpetual timber rights shall serve the signed forest practices application or notification and the signed statement of intent on the forest landowner. The forest practices application shall not be considered complete until the holder of perpetual timber rights has submitted evidence acceptable to the department that such service has occurred.

(5) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

(6) **Transfer of the approved application or notification** to a new landowner, timber owner or operator requires written notice by the original landowner or applicant to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices rules as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(7) **Applications and notifications** must be delivered to the department at the appropriate region office. Delivery should be in person or by registered or certified mail.

(8) **Applications and notifications** shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application.

(a) A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the CRGNSA special management area guidelines is necessary information for an application or notification within the CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate

the U.S. Forest Service received a complete plan application and failed to act within 45 days.

(b) An environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications.

(c) A local government entity clearing and/or grading permit is necessary information for all Class IV applications on lands that will be converted to a use other than commercial timber production or on lands which have been platted after January 1, 1960, if the local government entity has jurisdiction and has an ordinance requiring such permit.

(d) A road maintenance and abandonment plan as described in WAC 222-24-0511 shall be submitted with a small forest landowner's application or notification for harvest or salvage of trees, unless exempt under WAC 222-24-0512.

If a notification or application is delivered in person to the department by the operator or the operator's authorized agent, the department shall immediately provide a dated receipt. In all other cases, the department shall immediately mail a dated receipt to the applicant.

(9) **An operator's name**, if known, must be included on any forest practices application or notification. The landowner or timber owner must provide notice of hiring or change of operator to the department within 48 hours. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070. Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.

(10) **Financial assurances** may be required by the department prior to the approval of any future forest practices application or notification to an operator or landowner under the provisions of WAC 222-46-090.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-015 Multiyear permits. (1) Where a watershed analysis has been approved for a WAU under WAC 222-22-080, landowner(s) may apply for a multiyear permit. The information provided and level of detail must be comparable to that required for a two-year permit. At a minimum, the application must include:

(a) A description of the forest practices to be conducted during the period requested for the permit, and a map(s) showing their locations; and

(b) Prescriptions must be identified where operations are proposed within or include areas of resource sensitivity.

(2) A landowner may apply for a multiyear permit to perform road maintenance or abandonment if the landowner has an approved road maintenance and abandonment plan where the schedule for implementing the plan is longer than two years. The information provided and level of detail must be comparable to that required for two-year permits under WAC 222-24-050. A checklist road maintenance and abandonment plan does not qualify for a multiyear permit.

(3) A landowner may apply for a multiyear permit to perform an approved alternate plan.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-040 Approval conditions. (1) **Whenever an approved** application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department 2 business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

(3) **Local government entity conditions.**

(a) RCW 76.09.240(1) allows a local government entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local government entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to Class IV general applications on lands that will be converted to a use other than commercial timber production or to Class IV general applications on lands which have been platted after January 1, 1960.

(c) The department shall transmit the applications to the appropriate local government entity within two business days from the date the department receives the application.

(d) The department shall condition the application consistent with the request of the local government entity if:

(i) The local government entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local government entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local government entity has entered into an interagency agreement with the department consistent with WAC 222-50-030 addressing enforcement of forest practices.

(e) The local government entity conditions may only cover:

(i) The location and character of open space and/or vegetative buffers;

(ii) The location and design of roads;

(iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or

(iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) Local government entity conditions shall be filed with the department within twenty-nine days of the filing of the application with the department or within fourteen business days of the transmittal of the application to the local government entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local government entity conditions consistent with this subsection as conditions of the forest practices approval.

PROPOSED

(h) Any exercise of local government entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

(4) Lead agency mitigation measures.

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters 76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under SEPA. (See WAC 197-11-758.)

(c) The department shall transmit the application to the lead agency within two business days from the date the department receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within the later of (i) twenty-nine days of the receipt of the application by the department, (ii) fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local government entity; or (iii) one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must deny the application or require an EIS. (See WAC 197-11-738.)

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall deny the application.

(5) Small forest landowner approval conditions.

(a) The department shall not disapprove a forest practices application or notification filed by a small forest landowner solely on the basis that fish passage barriers have not been removed, replaced or repaired if:

(i) The landowner will remove, replace or repair fish passage barriers on the forest roads covered or affected by the forest practices application or notification, during the term of the forest practices application or notification; or

(ii) The landowner commits to the state led cost share program to remove, replace or repair all fish passage barriers on the forest roads covered or affected by the forest practices application or notification and the landowner's fish passage barriers are lower on the priority list for funding than current projects funded by the program.

(b) The department shall not approve applications or notifications for harvest or salvage of trees from small forest landowners who previously committed to:

(i) Participate in the cost share program, but failed to remove, replace or repair the fish passage barriers on their own lands when cost share funding became available; or

(ii) Remove, replace or repair fish passage barriers on their own lands as an identified part of a forest practice application but failed to do so.

(6) CRGNSA special management area.

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special management area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirement controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control. Copies of the guidelines can be obtained from the department Southeast and Southwest regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-055 Continuing forest land obligations. Continuing forest land obligations include reforestation, road maintenance and abandonment plans, and harvest strategies on perennial nonfish habitat waters in Eastern Washington.

(1) Prior to the sale or transfer of land or perpetual timber rights subject to continuing forest land obligations under the Forest Practices Act and rules, the seller must notify the buyer of the existence and nature of such a continuing obligation and the buyer must sign a notice of continuing forest land obligation indicating the buyer's knowledge of the obligations. The notice must be:

- (a) On a form prepared by the department;
- (b) Sent to the department by the seller at the time of sale or transfer of land or perpetual timber rights; and
- (c) Retained by the department.

(2) If the seller fails to notify the buyer about the continuing forest land obligation, the seller must pay the buyer's costs related to continuing forest land obligations, including all legal costs and reasonable attorneys' fees incurred by the buyer in enforcing the continuing forest land obligation against the seller.

(3) Failure by the seller to send the required notice to the department at the time of sale will be prima facie evidence in an action by the buyer against the seller for costs related to the continuing forest land obligation prior to sale.

(4) Small forest landowner checklist road maintenance and abandonment plans are exempt from the notice requirements of this section.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-24-050 *Road maintenance and abandonment. All forest roads must be maintained to prevent damage to public resources. The goals for road maintenance are established in WAC 222-24-010.

(1) All forest roads on lands owned by large forest landowners must be improved and maintained to the standards of this chapter within 15 years of the effective date of these rules. Guidelines for how to meet these goals and standards are in the board manual, section 3. Work performed toward meeting the standards must generally be even flow over the 15-year period with priorities for achieving the most benefit to public resources early in the period. Replacement will not be required for existing culverts functioning with little risk to public resources or for culverts installed under an approved forest practices application or notification if they have been properly maintained and are capable of passing fish, until the end of the culvert's functional life.

(2) Forest roads used as part of any forest practices applications or notifications on lands owned by small forest landowners must be maintained only to the extent necessary to prevent damage to public resources.

(a) A cost share program administered by the department is available to assist small forest landowners with the removal, replacement, or repair of fish passage barriers that were installed prior to October 31, 2003. The cost share program includes limits on landowner costs and the opportunity for in-kind contributions. A small forest landowner may qualify for full funding for fish passage barrier removal, replacement or repair under certain conditions.

(b) Small forest landowners who have committed to participate in the state led cost share program are not required to remove, replace or repair fish passage barriers until cost share funding is available and higher priority fish passage barriers on other lands in the watershed have been removed or funded.

(c) A small forest landowner not participating in the state led cost share program must remove, replace or repair any fish passage barriers on the forest roads within their ownership covered or affected by an active forest practices application or notification for harvest or salvage of trees.

(3) If any landowner is notified by the department that their road(s) has the potential to damage public resources, the landowner must, within 90 days, submit to the department for

review and approval a plan or plans for those drainages or road systems within the area identified by the department.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC *222-24-051 Large forest landowner road maintenance schedule. All forest roads must be covered under an approved road maintenance and abandonment plan within 5 years of the effective date of this rule or by December 31, 2005. This includes all roads that were constructed or used for forest practices after 1974. Inventory and assessment of orphan roads must be included in the road maintenance and abandonment plans as specified in WAC 222-24-052(4).

*~~(1)~~ Large forest landowners ((with 500 acres or more of forest land in a DNR region)) must maintain a schedule of submitting plans to the department that cover 20% of their roads or land base each year.

~~((2) Landowners with less than 500 acres of forest land in a DNR region must submit with their first forest practice application or notification a road maintenance and abandonment plan covering the roads that will be used by the application. Within one year of the date of submittal of the first forest practices application or notification or before the end of 2005, whichever comes first, the landowner must submit a road maintenance and abandonment plan for the rest of their ownership in that region. Once the plan is approved, the landowner must attach or reference the approved road maintenance and abandonment plan when submitting subsequent applications.~~

~~(3))~~ (2) For those portions of their ownership that fall within a watershed administrative unit covered by an approved watershed analysis plan, chapter 222-22 WAC, landowners may follow the watershed administrative unit-road maintenance plan, providing the roads they own are covered by the plan. A proposal to update the road plan to meet the current road maintenance standards must be submitted to the department for review on or before the next scheduled road maintenance plan review. If annual reviews are not required as part of the watershed analysis road plan, the plan must be updated by October 1, 2005. All roads in the planning area must be in compliance with the current rules by the end of calendar year 2015. See the board manual section 3 for road maintenance and abandonment plan outline.

*~~((4))~~ (3) Plans will be submitted by landowners on a priority basis. Road systems or drainages in which improvement, abandonment or maintenance have the highest potential benefit to the public resource are the highest priority. Based upon a "worst first" principle, work on roads that affect the following are presumed to be the highest priority:

(a) Basins containing, or road systems potentially affecting, waters which either contain a listed threatened or endangered fish species under the federal or state law or a water body listed on the current 303(d) water quality impaired list for road related issues.

(b) Basins containing, or road systems potentially affecting, sensitive geology/soils areas with a history of slope failures.

(c) Road systems or basins where other restoration projects are in progress or may be planned coincident to the implementation of the proposed road plan.

(d) Road systems or basins likely to have the highest use in connection with future forest practices.

~~(((5)))~~ (4) Based upon a "worst first" principle, road maintenance and abandonment plans must pay particular attention to:

- (a) Roads that block fish passage;
- (b) Roads that deliver sediment to typed water;
- (c) Roads with evidence of existing or potential instability that could adversely affect public resources;
- (d) Roads or ditchlines that intercept ground water; and
- (e) Roads or ditches that deliver surface water to any typed waters.

~~(((6)))~~ (5) Road maintenance and abandonment plans must include:

(a) Ownership maps showing all forest roads, including orphan roads; planned and potential abandonment, all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream adjacent parallel roads and an inventory of the existing condition; and

(b) Detailed description of the first years work with a schedule to complete the entire plan within fifteen years; and

(c) Standard practices for routine road maintenance; and

(d) Storm maintenance strategy that includes prestorm planning, emergency maintenance and post storm recovery; and

(e) Inventory and assessment of the risk to public resources or public safety of orphaned roads; and

(f) The landowner or landowner representative's signature.

~~(((7)))~~ (6) Priorities for road maintenance work within plans are:

(a) Removing blockages to fish passage beginning on roads affecting the most habitat first, generally starting at the bottom of the basin and working upstream;

(b) Preventing or limiting sediment delivery (areas where sediment delivery or mass wasting will most likely affect bull trout habitat will be given the highest priority);

(c) Correcting drainage or unstable sidecast in areas where mass wasting could deliver to public resources or threaten public safety;

(d) Disconnecting road drainage from typed waters;

(e) Repairing or maintaining stream-adjacent parallel roads with an emphasis on minimizing or eliminating water and sediment delivery;

(f) Improving hydrologic connectivity by minimizing the interruption of surface water drainage, interception of subsurface water, and pirating of water from one basin to another; and

(g) Repair or maintenance work which can be undertaken with the maximum operational efficiency.

~~(((8)))~~ (7) Initial plans for large forest landowners (~~with 500 acres or more of forest land in a DNR region~~) must be submitted to the department during the year 2001 as scheduled by the department.

~~(((9)))~~ (8) Each year on the anniversary date of the plan's submittal, landowners must report work accomplished for the previous year and submit to the department a detailed

description of the upcoming year's work including modifications to the existing work schedule. The department's review and approval will be conducted in consultation with the department of ecology, the department of fish and wildlife, affected tribes and interested parties. The department will:

(a) Review the progress of the plans annually with the landowner to determine if the plan is being implemented as approved; and

(b) The plan will be reviewed by the department and approved or returned to the applicant with concerns that need to be addressed within forty-five days of the plan's submittal.

(c) Additional plans will be signed by the landowner or the landowner's representative.

~~(((10)))~~ (9) The department will facilitate an annual water resource inventory area (WRIA) meeting with landowners, the department of fish and wildlife, the department of ecology, affected tribes, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, affected counties, local U.S. Forest Service, watershed councils, and other interested parties. The purpose of the meeting is to:

(a) Suggest priorities for road maintenance and abandonment planning; and

(b) Exchange information on road maintenance and stream restoration projects.

~~(((11)))~~ (10) A forest practice application with a detailed one to five year work plan associated with a submitted road maintenance and abandonment plan will be treated as a multiyear permit. The application will be reviewed, approved, conditioned and/or disapproved within 45 days of acceptance. The application will be reviewed in consultation with the department of ecology, department of fish and wildlife, affected tribes and interested parties.

~~(((12)))~~ (11) Regardless of the schedule for plan development, roads that are currently used or proposed to be used for timber hauling must be maintained in a condition that prevents potential or actual damage to public resources. If the department determines that log haul on such a road will cause or has the potential to cause material damage to a public resource, the department may require the applicant to submit a plan to address specific issues or segments on the haul route.

~~(((13)))~~ (12) If a landowner is found to be out of compliance with the work schedule of an approved road maintenance and abandonment plan and the department determines that this work is necessary to prevent potential or actual damage to public resources, then the department will exercise its authority under WAC 222-46-030 (notice to comply) and WAC 222-46-040 (stop work order) to restrict use of the affected road segment.

(a) The landowner may submit a revised maintenance plan for maintenance and abandonment and request permission to use the road for log haul.

(b) The department must approve use of the road if the revised maintenance plan provides protection of the public resource and maintains the overall schedule of maintenance of the road system or basin.

~~(((14)))~~ (13) If a landowner is notified by the department that their road(s) has the potential to damage public resources, the landowner must, within 90 days, submit to the department for review and approval a plan or plans for those

drainages or road systems within the area identified by the department.

NEW SECTION

WAC 222-24-0511 Small forest landowner road maintenance planning. (1) Small forest landowners other than those described in WAC 222-24-0512, must follow either of the options in (a) or (b) of this subsection when submitting a forest practices application or notification for harvest or salvage of trees, unless (c) of this subsection applies.

(a) Small forest landowners may submit with each forest practices application or notification a checklist road maintenance and abandonment plan for the forest roads covered or affected by the forest practices activity. A small forest landowner may, at any time, submit a checklist road maintenance and abandonment plan for their entire ownership.

(b) Small forest landowners may submit for approval road maintenance and abandonment plans as outlined in WAC 222-24-051. Approved road maintenance and abandonment plans must be attached to or referenced in subsequent forest practices applications or notifications.

(c) For those portions of their ownership that fall within a watershed administrative unit covered by an approved watershed analysis plan, chapter 222-22 WAC, small forest landowners may follow the watershed administrative unit-road maintenance plan, providing the roads they own are covered by the plan.

(2) A small forest landowner is not required to submit an annual report as described in WAC 222-24-051(8).

(3) Small forest landowners who have committed to participate in the cost share program are not required to remove, replace or repair fish passage barriers until funding is available and higher priority fish passage barriers on other lands in the watershed have been removed or funded.

NEW SECTION

WAC 222-24-0512 Forest landowners exempted from road maintenance and abandonment planning. Forest landowners owning 80 acres or less of forest land in Washington who are submitting a forest practices application or notification for a block of forest land that is 20 contiguous acres or less in area are not required to submit either a checklist road maintenance and abandonment plan or a road maintenance and abandonment plan.

WSR 03-17-086

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 19, 2003, 4:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-07-040 on March 13, 2003.

Title of Rule: WAC 388-410-0030 How does the department calculate and set up my food assistance overpayment?

Purpose: To correct a typographical error to the WAC reference in subsection (3) from WAC 388-468-0007 to 388-418-0007. To update the name of the food assistance program from food stamps or food assistance to basic food.

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

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

Summary: This rule corrects a typographical error in a WAC reference in subsection (3). The WAC reference is changed from 388-468-0007 to 388-418-0007. It also changes all references to food assistance or food stamps to the new basic food name.

Reasons Supporting Proposal: The current reference does not support the statements in subsection (3). The incorrect WAC reference will confuse the public. The old food stamp/food assistance program has been renamed as "basic food." All references to the older program are updated with this filing.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carole McRae, 1009 College S.E., Lacey, WA 98504, (360) 413-3074.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is necessary because of federal law, 7 C.F.R. 273.18 Claims against households.

Explanation of Rule, its Purpose, and Anticipated Effects: Rule: WAC 388-410-0030 How does the department calculate and set up my food assistance overpayment?

Purpose and Effect: See Title of Rule and Summary above.

Proposal Changes the Following Existing Rules: See Title of Rule and Summary above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "(t)his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." This rule adopts federal rules mandated by Title 7 of the Code of Federal Regulations Part 273.18 regarding department claims for overpaid benefits for which a client was not eligible.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on September 23, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by September 19, 2003, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, mail to P.O. Box 45850, Olympia, WA 98504-5850, deliver to 4500 10th Avenue S.E., Lacey, WA, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., September 23, 2003.

PROPOSED

Date of Intended Adoption: No earlier than September 24, 2003.

August 8, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

WSR 03-17-087
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 19, 2003, 4:20 p.m.]

AMENDATORY SECTION (Amending WSR 03-01-005, filed 12/4/02, effective 2/1/03)

WAC 388-410-0030 How does the department calculate and set up my Basic Food ((assistance)) overpayment? (1) The department calculates the amount of your Basic Food ((assistance)) overpayment by counting the difference between:

- (a) The benefits your assistance unit (AU) received; and
 - (b) The benefits your AU should have received.
- (2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

- (a) Had correct and complete information; and
- (b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC ((388-468-0007)) 388-418-0007, you do not get the earned income disregard under WAC 388-450-0185 when we calculate your overpayment amount.

(4) If you were underpaid Basic Food ((assistance)) benefits for a period of time, we will use these benefits to reduce your overpayment if:

- (a) We have **not** already issued you benefits to replace what you were underpaid; and
- (b) We have **not** used this amount to reduce another overpayment.

(5) We set up an inadvertent household error or administrative error overpayment if:

- (a) We discovered the overpayment through the quality control process;
 - (b) You currently get Basic Food ((assistance)) benefits;
- or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently get Basic Food ((assistance)) benefits.

(6) We do not set up inadvertent household error or administrative error overpayment if:

- (a) We cannot find the responsible AU members; or
- (b) We have referred your inadvertent household error for prosecution or an administrative disqualification hearing and collecting the overpayment could negatively impact this process.

(7) We set up an intentional program violation overpayment based on the results of an administrative hearing (chapter 388-02 WAC) unless:

- (a) Your AU has repaid the overpayment;
- (b) We cannot find the responsible AU members; or
- (c) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-13-035 on June 10, 2003.

Title of Rule: **Part 1 of 2 chapter 388-418 WAC.** WAC 388-418-0005 What type of changes must I report for cash, food, and medical assistance?, 388-418-0007 When do I have to report changes in my circumstances?, and 388-418-0020 How does the department determine the date a change affects my benefits?

See Part 2 of 2 for related rules in chapters 388-450 and 388-490 WAC.

Purpose: Amend the rules to comply with federal requirements for the food stamp program and rewrite the text of the rules to be more easily understood.

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

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510.

Summary: These rules explain what changes department clients must report, when changes impact a client's benefits, and how the department budgets income to determine if clients are eligible for benefits and calculate monthly benefits.

Reasons Supporting Proposal: These changes are necessary to implement mandatory changes to the basic food program required by the FNS final rule on anticipating income and reporting changes. The changes also amend the text of the rules to be more easily understood.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 413-3232.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is necessary because of federal law, Title 7 of the Code of Federal Regulations, Part 273 - 273.2, 273.10, and 273.12.

Explanation of Rule, its Purpose, and Anticipated Effects: Rule: WAC 388-418-0005 What type of changes must I report for cash, food, and medical assistance?, 388-418-0007 When do I have to report changes in my circumstances?, and 388-418-0020 How does the department determine the date a change affects my benefits?

Purpose and Effect: See Title of Rule and Summary above.

Proposal Changes the Following Existing Rules: See Title of Rule and Summary above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by modifying reporting requirements and budgeting rules for food assistance benefits.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "(t)his section does not apply to...rules of the department of social and health ser-

vices relating only to client medical or financial eligibility and rules concerning liability for care of dependents." This rule adopts federal requirements mandated by Title 7 of the Code of Federal Regulations, Part 273, 273.2 regarding office operations, 273.10 regarding determining financial eligibility and benefit level, and 273.12 regarding requirements for change reporting households for federal food stamp benefits. The department also applies the same requirements for cash assistance.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on September 23, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by September 19, 2003, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, mail to P.O. Box 45850, Olympia, WA 98504-5850, deliver to 4500 10th Avenue S.E., Lacey, WA, fax (360) 664-6185, e-mail fernax@dshs.wa.go [fernaax@dshs.wa.gov], by 5:00 p.m., September 23, 2003.

Date of Intended Adoption: No earlier than September 24, 2003.

August 18, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-11-109, filed 5/21/01, effective 7/1/01)

WAC 388-418-0005 What type of changes must I report for cash, Basic Food, and medical assistance? For purposes of this section, an "assistance unit" or "AU" is a group of people who live together and whose income or resources we count to decide what benefits the AU gets. Even if someone in your AU is not eligible to get a benefit, we still count that person's income or resources if they are financially responsible for you or someone in your AU, such as a common child. If you are a parent of a child who gets long-term care benefits, you need only report changes in income or resources that are actually contributed to the child. Tables one, two and three below show the types of changes you must report based on the type of assistance you get. Use table one to see if you must report a change for cash or Basic Food (assistance). Use table two to see if you must report a change for children's, pregnant women's, or family medical assistance. Use table three to see if you must report a change for SSI-related medical or long-term care medical assistance.

Table 1 - Cash Assistance and Basic Food (Assistance)

Type of change to report when you or anyone in your assistance unit AU):	Do I have to report this change for cash assistance?	Do I have to report this change for <u>Basic Food</u> (<u>assis-tance</u>)?)
(1) Starts to get money from a new source;	Yes	Yes

Type of change to report when you or anyone in your assistance unit AU):	Do I have to report this change for cash assistance?	Do I have to report this change for <u>Basic Food</u> (<u>assis-tance</u>)?)
(2) Has unearned income that changed by more than ((twenty-five)) <u>fifty</u> dollars from amount we budgeted;	Yes	Yes
(3) Moves into or out of your home, including new-borns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
(4) Moves to a new residence;	Yes	Yes
(5) Has a change in shelter costs;	Yes, but only if you went from having no shelter costs to having a shelter cost, or from having shelter costs to not having to pay anything. You don't have to report a change in the amount you pay.	Yes, report the change at your recertification. If your shelter costs go up, you could get more ((food-assistance)) benefits. Report the change sooner to see if you will get more benefits.
(6) Gets married, divorced, or separated;	Yes	Yes
(7) Gets a vehicle;	Yes	Yes
(8) Has a disability that ends;	Yes	Yes
(9) Has countable resources that are more than the resource limits under WAC 388-470-0005;	Yes	Yes
(10) Gets a job or changes employers;	Yes	Yes, <u>but only if it causes a change in the person's income.</u>

PROPOSED

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Table 1 - Cash Assistance and <u>Basic Food</u> ((Assistance))		
Type of change to report when you or anyone in your assistance unit AU):	Do I have to report this change for cash assistance?	Do I have to report this change for <u>Basic Food</u> ((assis-tance))?
(11) Changes from part-time to full-time or full-time to part-time work. We use your employer's definition of part-time and full-time work;	Yes	Yes
(12) Has a change in hourly wage rate or salary;	Yes	Yes
(13) Stops working;	Yes	Yes
(14) Has a pregnancy that begins or ends;	Yes	No
(15) Has a change in uncovered medical expenses;	No	Yes, report this change only at your next eligibility review. If you are elderly or disabled and you have an increase in uncovered medical expenses, report this change sooner as you may be eligible to get more benefits.

Table 2 - Medical Assistance		
Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for family medical assistance (i.e., TANF/SFA-related) or <u>Children's Medical</u> ?	Do I have to report this change for ((children's medical and/or)) <u>Pregnancy Medical</u> ?
(16) <u>A change in work hours to below 20 hours per week averaged monthly.</u>	No	Yes, but only if there are no children in your AU and the person is a nonexempt ABAWD under WAC 388-444-0030 and 388-444-0035.

Table 2 - Medical Assistance		
Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for family medical assistance (i.e., TANF/SFA-related) or <u>Children's Medical</u> ?	Do I have to report this change for ((children's medical and/or)) <u>Pregnancy Medical</u> ?
(17) <u>A change in legal obligation to pay child support.</u>	No	Yes
(18) Starts to get money from a new source;	Yes	No
((17)) (19) Has unearned income that changed;	Yes	No
((18)) (20) Moves into or out of your home, including new-borns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
((19)) (21) Moves to a new residence;	Yes	Yes
((20)) (22) Has a change in shelter costs;	No	No
((21)) (23) Gets married, divorced, or separated;	Yes	No
((22)) (24) Gets a vehicle;	No	No
((23)) (25) Has a disability that ends;	No	No
((24)) (26) Has countable resources that are more than the resource limits under WAC 388-470-0005;	No	No
((25)) (27) Gets a job or changes employers;	Yes	No

Table 2 - Medical Assistance

Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for family medical assistance (i.e., TANF/SFA-related) or <u>Children's Medical</u> ?	Do I have to report this change for ((children's medical and/or)) <u>Pregnancy Medical</u> ?
((26)) (28) Changes from part-time to full-time or full-time to part-time work. We use your employer's definition of part-time and full-time work;	Yes	No
((27)) (29) Has a change in hourly wage rate or salary;	Yes	No
((28)) (30) Stops working;	Yes	No
((29)) (31) Has a pregnancy that begins or ends;	Yes	Yes
((30)) (32) Has a change in uncovered medical expenses.	No	Yes, but only if an AU member has a spenddown.

Table 3 - SSI-Related Medical Assistance and Long-Term Care

Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for SSI-related medical assistance?	Do I have to report this change for long-term care (i.e., COPEs, CAP, or nursing home)
((31)) (33) Starts to get money from a new source;	Yes	Yes
((32)) (34) Has unearned income that changed;	Yes	Yes
((33)) (35) Has a change in earnings or stops working	Yes	Yes

Table 3 - SSI-Related Medical Assistance and Long-Term Care

Type of change to report when you or anyone in your assistance unit (AU):	Do I have to report this change for SSI-related medical assistance?	Do I have to report this change for long-term care (i.e., COPEs, CAP, or nursing home)
((34)) (36) Moves into or out of your home, including newborns or if an AU member dies. This also includes when someone temporarily moves in or out;	Yes	Yes
((35)) (37) Moves to a new residence;	Yes	Yes
((36)) (38) Has a change in shelter costs;	No, unless you went from paying rent to not paying any rent. You do not need to report if your rent amount changes.	Yes, if client or community spouse live in their own home
((37)) (39) Gets married, divorced, or separated;	Yes	Yes
((38)) (40) Gets a vehicle;	Yes, but only if that person or their spouse gets SSI-related medical	Yes, but only if that person gets long-term care
((39)) (41) Has a disability that ends;	Yes	Yes
((40)) (42) Has countable resources that are more than the resource limits, under WAC 388-470-0005 or 388-513-1350;	Yes, but only if that person or their spouse get SSI-related medical	Yes, but only if that person gets long-term care
((41)) (43) Has a change in uncovered medical expenses.	Yes, but only if an AU member has a spenddown.	Yes.

PROPOSED

AMENDATORY SECTION (Amending WSR 01-11-109, filed 5/21/01, effective 7/1/01)

WAC 388-418-0007 When do I have to report changes in my circumstances? (1) If you are applying for cash and/or Basic Food (~~(assistance)~~) and have had a change:

(a) After the date you applied but before your interview, you must report the change at the time of your interview; or
(b) After you have been interviewed, you must report the change within ten days of the date of your approval notice.

(2) If you get TANF/SFA, you must report within five calendar days from the day you learn that a child in the AU will be gone from your home longer than ninety days. If you do not report this within five days:

(a) You are not eligible for cash benefits for one month; and

(b) All of your countable income as described in WAC 388-450-0162 is budgeted against the cash benefits for the remaining AU members.

(3) If you receive cash (~~(and)~~) or Basic Food (~~(assistance, all other)~~), you must report changes described in WAC (~~(388-417-0005 must be reported)~~) 388-418-0005 within ten days from the day you become aware of the change.

(4) If you receive medical assistance you must report the changes described in WAC 388-418-0005 within twenty days from the day you become aware of the change.

(5) If you report changes late, you may get the wrong amount or wrong type of benefits. If you get more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

AMENDATORY SECTION (Amending WSR 02-14-086, filed 6/28/02, effective 7/1/02)

WAC 388-418-0020 How does the department determine the date a change affects my benefits? (1) Unless otherwise specified, the rules in this chapter refer to cash, (~~food and~~) medical assistance, and Basic Food benefits.

(2) If you report a change that happened between the date you applied for benefits and the date we interview you under WAC 388-452-0005, we take this change into consideration when we process your application for benefits.

(3) If you report a change in your income that we expect to continue at least a month beyond the month when you reported the change, we recalculate the income we estimated under WAC 388-450-0215 based on this change.

(4) When a change causes an increase in benefits, (~~the client~~) you must provide proof of the change before we adjust (~~the benefit amount~~) your benefits.

(a) If you give us the proof within ten days from the date we requested it, we increase your benefits starting the month after the month you reported the change.

(b) If you give us the proof more than ten days after the date we requested it, we increase your benefits starting the month after the month we got the proof.

(c) If you are (~~entitled to get~~) eligible for more benefits and we have already sent you benefits for that month, we (~~must send them to you~~) provide you the additional benefits within ten days of the day we got the proof.

(~~(3)~~) (5) When a change causes a decrease in benefits, we change your benefit amount before we ask for proof:

(a) If you report the change within the time limits in WAC 388-418-0007, we decrease your benefits starting the first month following the advance notice period. The advance notice period:

(i) Begins on the day we send you a letter about the change, and

(ii) Is determined according to the rules in WAC (~~(388-458-0010)~~) 388-458-0025.

(b) If you do not report the change within the time limits in WAC 388-418-0007:

(i) We figure out the effective date as if you had reported it on time. This includes:

(A) Ten days for you to report the change, and

(B) Ten days for the advance notice period to begin, if required under (~~chapter 388-458~~) WAC 388-458-0030.

(ii) If the effective date should have been a past month:

(A) We establish an overpayment claim according to the rules in chapter 388-410 WAC for all the appropriate months; and

(B) Decrease your benefits starting the following month.

(iii) We establish an overpayment claim and decrease your benefits starting the month after next when:

(A) The effective date should have been next month; and

(B) It is less than ten days away; and

(C) We (~~were supposed to~~) must give you ten days notice under WAC 388-458-0030.

(iv) If the effective date should have been next month or the following month and we have time to give you ten-days notice, we decrease your benefits starting that month.

(c) We have until your next recertification/eligibility review to ask for proof.

(~~(4)~~) (6) If we are not sure how the change will affect your benefits, we send you a letter as described in WAC 388-458-0020 requesting information from you.

(a) We give you ten days to provide the information. If you need more time, you can ask for it.

(b) If you do not give us the information in time, we will stop your benefits after giving you advance notice, if required, as described in WAC 388-458-0030.

(~~(5)~~) (7) Within ten days of the day we learn about a change, we:

(a) Send advance notice according to the rules in chapter 388-458 WAC; and

(b) Take necessary action to correct the benefit. We wait to take action on a change if you request a hearing about a proposed decrease in benefits before the effective date or within the advance notice period as described in WAC 388-458-0040.

(~~(6)~~) (8) If you disagree with a decision we made to change your benefits, you may request a fair hearing under chapter 388-02 WAC. The fair hearing rules in chapter 388-02 WAC do not apply for a "mass change." A mass change is when we change the rules that impact all recipients and applicants.

(9) When you request a hearing and get continued benefits:

(a) We keep giving you the same benefits you got before the advance notice of reduction until the earliest of the following events occur:

(i) For Basic Food ((assistance)) only, your certification period expires;

(ii) The end of the month the fair hearing decision is mailed;

(iii) You state in writing that you do not want continued benefits;

(iv) You withdraw your fair hearing request in writing; or

(v) You abandon your fair hearing request; or

(vi) An administrative law judge issues a written order that ends continued benefits prior to the fair hearing.

(b) We establish an overpayment claim according to the rules in chapter 388-410 WAC when the hearing decision agrees with the action we took.

((7)) (10) Some changes have a specific effective date as follows:

(a) When cash assistance benefits increase because a person is added to your assistance unit, we use the effective date rules for applications in WAC 388-406-0055.

(b) When cash assistance benefits increase because you start paying shelter costs, we use the date the change occurred.

(c) When a change in law or regulation changes the benefit amount, we use the date specified by the law or regulation.

(d) When institutional medical assistance participation changes, we calculate the new participation amount beginning with the month your income or allowable expense changes.

WSR 03-17-088

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 19, 2003, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-13-035 on June 10, 2003.

Title of Rule: **Part 2 of 2 chapters 388-350 and 388-490 WAC.** WAC 388-450-0215 How the department estimates income to determine your eligibility and benefits, 388-450-0225 How the department calculates the benefit amount for the first month of eligibility for cash assistance, 388-450-0230 What income does the department count in the month I apply for food assistance when my assistance unit is destitute?, 388-450-0245 When are my benefits suspended?, and 388-490-0005 The department requires proof before authorizing benefits for cash, medical, and food assistance.

See Part 1 of 2 for related rules in chapter 388-418 WAC.

Purpose: Amend the rules to comply with federal requirements for the food stamp program and rewrite the text of the rules to be more easily understood.

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

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510.

Summary: These rules explain what changes department clients must report, when changes impact a client's benefits, and how the department budgets income to determine if clients are eligible for benefits and calculate monthly benefits.

Reasons Supporting Proposal: These changes are necessary to implement mandatory changes to the basic food program required by the FNS final rule on anticipating income and reporting changes. The changes also amend the text of the rules to be more easily understood.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 413-3232.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is necessary because of federal law, Title 7 of the Code of Federal Regulations, Part 273 - 273.2, 273.10, and 273.12.

Explanation of Rule, its Purpose, and Anticipated Effects: Rule: WAC 388-450-0215 How the department estimates income to determine your eligibility and benefits, 388-450-0225 How the department calculates the benefit amount for the first month of eligibility for cash assistance, 388-450-0230 What income does the department count in the month I apply for food assistance when my assistance unit is destitute?, 388-450-0245 When are my benefits suspended?, and 388-490-0005 The department requires proof before authorizing benefits for cash, medical, and food assistance.

Purpose and Effect: See Title of Rule and Summary above.

Proposal Changes the Following Existing Rules: See Title of Rule and Summary above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by modifying reporting requirements and budgeting rules for food assistance benefits.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "(t)his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." This rule adopts federal requirements mandated by Title 7 of the Code of Federal Regulations, Part 273, 273.2 regarding office operations, 273.10 regarding determining financial eligibility and benefit level, and 273.12 regarding requirements for change reporting households for federal food stamp benefits. The department also applies the same requirements for cash assistance.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on September 23, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by September 19, 2003, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance

Unit, mail to P.O. Box 45850, Olympia, WA 98504-5850, deliver to 4500 10th Avenue S.E., Lacey, WA, fax (360) 664-6185, e-mail fernaax@dshs.wa.go [fernaax@dshs.wa.gov], by 5:00 p.m., September 23, 2003.

Date of Intended Adoption: No earlier than September 24, 2003.

August 18, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

PROPOSED

AMENDATORY SECTION (Amending WSR 99-23-083, filed 11/16/99, effective 1/1/00)

WAC 388-450-0215 How does the department ((estimates)) estimate my assistance unit's income to determine ((your)) my eligibility and benefits((?))? The department uses prospective budgeting to determine ((eligibility and)) if your Assistance Unit (AU) is eligible and to calculate your benefits.

(1) ~~((The department determines the amount of)) We determine if your AU is eligible for benefits ((an assistance unit can receive each month based on an estimate of your income and circumstances)) and calculate your monthly benefits based on an estimate of your AU's income and expenses for that month. This is known as prospective budgeting.~~

(2) We base this estimate on what can be reasonably expected based on your current, past and future circumstances.

(3) We determine if our estimate is reasonable by looking at documents, statements, and other verification.

(4) ~~((There are)) We use two methods ((of estimating a client's)) to estimate your AU's income:~~

(a) **Anticipating monthly income:** We estimate the actual amount of income you expect to receive in the month; and

(b) **Averaging income:** We estimate your income based on adding the total income you expect to receive for a period of time and dividing by the number of months in the time period.

(5) When we use the anticipating monthly method, we estimate the actual amount of income your AU expects to receive in the month. Your benefits will vary based on the income that is expected for that month.

(6) In general, you can choose which method we use to estimate your income. However, we must use the anticipating monthly method:

(a) For all your AU's income in the following circumstances:

~~((a))~~ (i) If you receive SSI-related medical benefits under WAC 388-450-0150; or

(ii) If you are a destitute migrant or destitute seasonal farmworker ((as defined in)) under WAC 388-406-0021((;)), we must use the anticipating monthly method for the month your AU applied for benefits.

(b) ~~((If you are receiving SSI, Social Security, or SSI-related medical benefits;~~

~~(e) If you have)) For the income of any member of your AU who has income allocated to someone receiving SSI-related medical benefits under WAC 388-450-0150; ((or~~

~~(d) If you have))~~

(c) For the following sources of income to your AU:

(i) SSI;

(ii) Social Security benefits; or

(iii) Income your AU already received ((income)) in the month that you ((apply)) applied for benefits((-

~~(6) When using)). If we do not have to use the anticipating monthly method((-we estimate the actual amount of income you expect to receive in the month. Your benefits will vary based on the income that is expected for that month)) for any other reason, we may average this income for the remaining months of your certification or review period.~~

(7) When ((using)) we use the averaging method, we take the expected changes in your AU's income ((are taken)) into consideration so your benefits do not change as much:

(a) ~~((Clients that)) If you receive ((their)) your income weekly or every other week ((will have their)), we convert this income converted to a monthly amount. If you are paid: If you are paid:~~

(i) Weekly, we multiply your expected pay by 4.3; or

(ii) Every other week, we multiply your expected pay by 2.15.

(b) ~~((Clients that)) In most cases if you receive ((their)) your income other than weekly or every other week ((will have their)), we estimate your monthly income ((estimated)) by:~~

(i) ~~Adding the total amount of income ((expected to be received for the)) we expect you to receive for your certification or review period ((of time)); and~~

(ii) ~~Dividing by the number of months in the period of time.~~

(c) If you receive your yearly income over less than a year because you are self employment or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

(8) If you report a change in your AU's income, and we expect the change to last for at least a month beyond the month you reported the change, we recalculate your AU's income based on this change.

(9) If your actual income is different than the income we estimated, we ((will)) do not make you repay an overpayment under chapter 388-410 WAC or increase your benefits ((if your actual income is different than your estimated income)) unless:

(a) ~~((The information)) You provided ((was)) incomplete or false information; or~~

(b) We made an error in calculating your benefits.

AMENDATORY SECTION (Amending WSR 99-24-008, filed 11/19/99, effective 1/1/00)

WAC 388-450-0225 How ~~((the department calculates the benefit amount for the first month of eligibility)) are my assistance unit's benefits calculated for the first month I am eligible for cash assistance((?))~~ (1) To ((determine the client's)) calculate your AU's cash benefit ((amount for the first month of eligibility for cash assistance, the department compares the)) for your first month's benefits, we

compare your AU's countable income to the payment standard as described in WAC 388-450-0162.

(2) Even if your AU has countable income (~~((exceeds))~~) over the payment standard, you (~~((can))~~) may still receive additional requirements.

(3) (~~((When))~~) If your countable income is less than the payment standard, we prorate your grant amount based on the date you are eligible.

(4) We do not prorate (~~((the))~~) any approved additional requirements.

(5) We prorate your grant by:

(a) Dividing (~~((the))~~) your AU's grant amount by the number of days in the first month of eligibility; and

(b) Multiplying the (~~((figure))~~) result in (5)(a) of this section by the number of days from the date of eligibility to the last day of the month.

AMENDATORY SECTION (Amending WSR 02-17-028, filed 8/12/02, effective 10/1/02)

WAC 388-450-0230 What income does the department count in the month I apply for Basic Food (~~((assistance))~~) when my assistance unit is destitute? (1) If your assistance unit (AU) (~~((includes a))~~) meets the requirements of a destitute migrant or seasonal farmworker (~~((and your AU is destitute))~~) under WAC 388-406-0021, we may exclude some of your income in the month you apply for Basic Food (~~((assistance))~~).

(2) In the month of application, we:

(a) Count only income your AU received between the first of the month and the date you apply for Basic Food (~~((assistance))~~); and

(b) Disregard any income from a new source that you expect to receive after the date you apply for Basic Food (~~((assistance))~~).

AMENDATORY SECTION (Amending WSR 00-01-012, filed 12/3/99, effective 1/1/00)

WAC 388-450-0245 When are my benefits suspended? (1) (~~((In the))~~) For TANF/SFA, RCA, GA and Basic Food (~~((assistance programs, the word))~~), "suspend" means (~~((that))~~) the department stops your benefits for one month.

(2) We suspend your AU's benefits for one month when your expected total countable income (~~((as defined in))~~) under WAC 388-450-0162:

(a) (~~((Exceeds))~~) Is more than the dollar (~~((limits for your household size))~~) limit for your AU; and

(b) (~~((Exceeds those))~~) If over these limits for only that one month((-

~~((3) We end your benefits when your expected countable income exceeds the limits for your household size for two or more consecutive months.~~

(4) ~~If your expected income drops below the limits for your household size, you may be eligible if you reapply for benefits).~~

AMENDATORY SECTION (Amending WSR 00-08-091, filed 4/5/00, effective 5/6/00)

WAC 388-490-0005 The department requires proof before authorizing benefits for cash, medical, and Basic Food (~~((assistance))~~). This rule applies to cash, medical, and Basic Food (~~((assistance))~~).

(1) When you first apply for benefits, the department may require you to provide proof of things that help us decide (~~((your eligibility))~~) if you are eligible for benefits. This is also called "verification." The types of things that need to be proven are different for each program.

(2) After that, we will ask you to give us proof when:

(a) You report a change;

(b) We find out that your circumstances have changed; or

(c) The information we have is questionable (~~((or))~~), confusing, or outdated.

(3) Whenever we ask for proof, we will give you a notice as described in WAC (~~((388-458-0001))~~) 388-458-0020.

(4) You must give us the proof within the time limits described in:

(a) WAC 388-406-0030 (~~((and 388-406-0035))~~) if you are applying for benefits; and

(b) WAC (~~((388-458-0001))~~) 388-458-0020 if you currently receive benefits.

(5) We will accept any proof that you can easily get when it reasonably supports your statement or circumstances. The proof you give to us must:

(a) Clearly relate to what you are trying to prove;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(6) We cannot make you give us a specific type or form of proof.

(7) If the only type of proof that you can get costs money, we will pay for it.

(8) If the proof that you give to us is questionable or confusing, we may:

(a) Ask you to give us more proof (~~((or provide))~~), which may include providing a collateral (~~((contact))~~) statement. A "collateral (~~((contact))~~) statement" is (~~((a statement))~~) from someone outside of your residence (~~((that))~~) who knows your situation(~~((s))~~);

(b) Schedule a visit to come to your home and verify your circumstances; or

(c) Send an investigator from the Division of Fraud Investigations (DFI) to make an unannounced visit to your home to verify your circumstances.

(9) By signing the application, eligibility review, or change of circumstances form, you give us permission to contact other people, agencies, or institutions.

(10) If you do not give us all of the proof that we have asked for, we will determine if you are eligible based on the information that we already have. If we cannot determine that you are eligible based on this information, we will deny or stop your benefits.

WSR 03-17-089
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 19, 2003, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-13-034 on June 10, 2003.

Title of Rule: WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for food assistance?, 388-450-0190 How does the department figure my shelter cost income deduction for food assistance?, 388-450-0195 Utility allowances for food assistance programs, 388-478-0060 What are the income limits and maximum benefit amounts for food assistance?, 388-492-0040 Can I choose whether I get WASHCAP or regular food assistance?, and 388-492-0070 How are my Washington state combined application program (WASHCAP) benefits calculated?

Purpose: Amend the rules to update income, benefit, and deduction standards for basic food and WASHCAP to comply with federal requirements.

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

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

Summary: These rules explain the income standards, benefits standards, and deductions for the Washington basic food program and WASHCAP. The department uses these standards when determining a client's eligibility for benefits and monthly benefit amount.

Reasons Supporting Proposal: The United States Department of Agriculture, food and nutrition service (FNS) publishes new income standards, maximum benefit amounts, standard deduction, and maximum shelter standards at the end of each federal fiscal year to be used in the next federal fiscal year. In addition, FNS requires the department to adjust the standard utility allowance and WASHCAP standards each year.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 413-3232.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is necessary because of federal law, Title 7 of the Code of Federal Regulations, Part 273 - 273.9 (d)(6)(iii).

Explanation of Rule, its Purpose, and Anticipated Effects: Rule: WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for food assistance?, 388-450-0190 How does the department figure my shelter cost income deduction for food assistance?, 388-450-0195 Utility allowances for food assistance programs, 388-478-0060 What are the income limits and maximum benefit amounts for food assistance?, 388-492-0040 Can I choose whether I get WASHCAP or regular food assistance?, and 388-492-0070 How are my Washington state combined application program (WASHCAP) benefits calculated?

Purpose and Effect: See Title of Rule and Summary above.

Proposal Changes the Following Existing Rules: See Title of Rule and Summary above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by modifying reporting requirements and budgeting rules for food assistance benefits.

RCW 34.05.328 does not apply to this rule adoption. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "(t)his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." This rule adopts federal requirements mandated by Title 7 of the Code of Federal Regulations, Part 273, 273.9 (d)(6)(iii) concerning financial eligibility for federal food stamp benefits. This also adopts annual adjustments to income standards, benefit standards, and WASHCAP standards as required by the United States Department of Agriculture.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on September 23, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Andy Fernando, DSHS Rules Coordinator, by September 19, 2003, phone (360) 664-6094, TTY (360) 664-6178, e-mail FernAX@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, mail to P.O. Box 45850, Olympia, WA 98504-5850, deliver to 4500 10th Avenue S.E., Lacey, WA, fax (360) 664-6185, e-mail fernaax@dshs.wa.gov, by 5:00 p.m., September 23, 2003.

Date of Intended Adoption: No earlier than September 24, 2003.

August 18, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-22-044, filed 10/30/02, effective 12/1/02)

WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food ((assistance))? We subtract the following amounts from your assistance unit's (AU's) countable income before we determine your Basic Food ((assistance)) benefit amount:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

Eligible and ineligible AU members	Standard deduction
1	\$134
2	\$134
3	\$134
4	\$134
5	\$((147)) 149
6 or more	\$((168)) 171

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(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense as described below:

(a) The dependent care must be needed for AU member to:

- (i) Keep work, look for work, or accept work;
- (ii) Attend training or education to prepare for employment; or
- (iii) Meet employment and training requirements under chapter 388-444 WAC.

(b) We subtract allowable dependent care expenses that are payable to someone outside or your AU:

- (i) Up to two hundred dollars for each dependent under age two; and
- (ii) Up to one hundred seventy-five dollars for each dependent age two or older.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled (~~household member as described~~) person in your AU as allowed under WAC 388-450-0200.

(5) Legally obligated current or back child support paid to someone outside of your AU:

- (a) For a person who is not in your AU; or
- (b) For a person who is in your AU to cover a period of time when they were not living with you.

(6) A portion of your shelter costs as described in WAC 388-450-0190.

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 02-22-045, filed 10/30/02, effective 12/1/02)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food (~~assistance~~)? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or any amount you pay ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost:

- (a) Ongoing rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for Basic Food (~~assistance~~) purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of three hundred (~~sixty-seven~~) seventy-eight dollars if no one in your AU is elderly or disabled and you were found eligible for benefits or were recertified for benefits either on or after March 1, 2001; or

(b) The entire amount if someone in your AU is elderly or disabled, even if the amount is over three hundred (~~sixty-seven~~) seventy-eight dollars.

AMENDATORY SECTION (Amending WSR 02-22-045, filed 10/30/02, effective 12/1/02)

WAC 388-450-0195 Utility allowances for Basic Food (~~assistance~~) programs. (1) For Basic Food (~~assistance programs~~), "utilities" include the following:

- (a) Heating and cooking fuel;
- (b) Cooling and electricity;
- (c) Water and (~~sewerage~~) sewer;
- (d) Garbage and trash collection; and
- (e) Basic telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food (~~assistance~~) benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$ (275) <u>287</u>
2	\$ (283) <u>295</u>
3	\$ (294) <u>304</u>
4	\$ (300) <u>313</u>
5	\$ (308) <u>321</u>
6 or more	\$ (316) <u>330</u>

(b) If your AU does not qualify for the SUA and you have utility costs other than telephone costs, you get a limited utility allowance (LUA) of two hundred (~~fifteen~~) twenty-three dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~thirty-five~~) thirty-six dollars.

AMENDATORY SECTION (Amending WSR 02-21-050, filed 10/14/02, effective 12/1/02)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food (~~assistance~~)? If your assistance unit (AU) meets all other eligibility requirements for Basic Food (~~assistance~~), your AU must

have income at or below the limits in column B and C to get Basic Food ((~~assistance~~)), unless you meet one of the excep-

tions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE ((~~10-1-2002~~)) 10-1-2003

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$((960)) <u>973</u>	\$((739)) <u>749</u>	\$((139)) <u>141</u>	\$((1,219)) <u>1,235</u>
2	((1,294)) <u>1,313</u>	((995)) <u>1,010</u>	((256)) <u>259</u>	((1,642)) <u>1,667</u>
3	((1,628)) <u>1,654</u>	((1,252)) <u>1,272</u>	((366)) <u>371</u>	((2,066)) <u>2,099</u>
4	((1,961)) <u>1,994</u>	((1,509)) <u>1,534</u>	((465)) <u>471</u>	((2,489)) <u>2,530</u>
5	((2,295)) <u>2,334</u>	((1,765)) <u>1,795</u>	((553)) <u>560</u>	((2,913)) <u>2,962</u>
6	((2,629)) <u>2,674</u>	((2,022)) <u>2,057</u>	((663)) <u>672</u>	((3,336)) <u>3,394</u>
7	((2,962)) <u>3,014</u>	((2,279)) <u>2,319</u>	((733)) <u>743</u>	((3,760)) <u>3,826</u>
8	((3,296)) <u>3,354</u>	((2,535)) <u>2,580</u>	((838)) <u>849</u>	((4,183)) <u>4,257</u>
9	((3,630)) <u>3,695</u>	((2,792)) <u>2,842</u>	((943)) <u>955</u>	((4,607)) <u>4,689</u>
10	((3,964)) <u>4,036</u>	((3,049)) <u>3,104</u>	((1,048)) <u>1,061</u>	((5,031)) <u>5,121</u>
Each Additional Member	+((334)) <u>341</u>	+((257)) <u>262</u>	+((105)) <u>106</u>	+((424)) <u>432</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food ((~~assistance~~)) your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

- (a) Rent or mortgage;
 - (b) Property taxes;
 - (c) Homeowner's insurance (for the building only); or
 - (d) Mandatory homeowner's association or condo fees.
- (2) Your out-of pocket medical expenses are more than thirty-five dollars a month;
- (3) You would get more benefits from being in the ((~~regular~~)) Basic Food ((~~assistance~~)) program; or
- (4) You are waiting to receive WASHCAP benefits.

AMENDATORY SECTION (Amending WSR 03-01-045, filed 12/10/02, effective 1/10/03)

WAC 388-492-0040 Can I choose whether I get WASHCAP or ((~~regular~~)) Basic Food ((~~assistance~~))? You can choose to have ((~~regular~~)) Basic Food ((~~assistance~~)) benefits instead of WASHCAP benefits when:

(1) Your shelter costs are more than ((~~four~~)) five hundred ((~~ninety-nine~~)) fourteen dollars a month. We count the following items as a shelter cost:

AMENDATORY SECTION (Amending WSR 03-01-045, filed 12/10/02, effective 1/10/03)

WAC 388-492-0070 How are my Washington state combined application program (WASHCAP) benefits calculated? We calculate your WASHCAP benefits as follows:

- (1) We begin with your gross income. (Social Security Administration (SSA) tells us how much income you have.)
- (2) We subtract one hundred thirty-four dollars from your gross income to get your countable income.
- (3) We figure your shelter cost as follows:
 - (a) If SSA tells us you pay three hundred two dollars or more a month for shelter, we use three hundred ((~~twelve~~)) twenty-one dollars as your shelter cost; or

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(b) If SSA tells us you pay less than three hundred ~~((one)) two~~ dollars ~~((a month or less))~~ for shelter, we use one hundred fifty-five dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income.

(6) We figure your WASHCAP benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, your assistance unit will get at least ten dollars food benefits each month.

WSR 03-17-091
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Orthotics and Prosthetics)
 [Filed August 20, 2003, 8:37 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: WAC 246-850-990 Orthotic and prosthetic fees.

Purpose: WAC 246-850-990 sets orthotic and prosthetic fees. The proposed amendment would reduce fees for licensed orthotists and prosthetists.

Other Identifying Information: RCW 43.70.250 requires fee supported programs to be fully supported by licensees.

Statutory Authority for Adoption: RCW 43.70.250, 18.200.050(1).

Statute Being Implemented: RCW 43.70.250.

Summary: Reduce fees for orthotic and prosthetic application, orthotic and prosthetic renewal, late renewal penalty fee, expired credential reissuance fee, inactive credential renewal fee, late inactive renewal fee, retired active credential renewal fee and late retired active credential renewal fee.

Reasons Supporting Proposal: Revenue from orthotic and prosthetic fees exceed expenditures.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, P.O. Box 47870, Olympia, WA 98504-7870, (360) 236-4947.

Name of Proponent: Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 246-850-990 sets the fees for obtaining and maintaining orthotics and prosthetics licensure. The proposal reduces fees for orthotic and prosthetic application, orthotic and prosthetic renewal, late renewal penalty fee, expired credential reissuance fee, inactive credential renewal fee, late inactive renewal fee, retired active credential renewal fee and late retired active credential renewal fee. Reducing fee will

bring revenue in balance with expenditures of the program. The reduction in fees will assure that revenues do not exceed the funding levels necessary to support the program.

Proposal Changes the Following Existing Rules: The proposal reduces licensure and renewal fees for orthotic and prosthetic practitioners.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.025 exempts from the small business economic impact statement (SBEIS), rules described under RCW 34.05.310(4). An SBEIS is not required for this proposal under RCW 34.05.310 (4)(f) because it sets or adjusts fees pursuant to legislative standards.

RCW 34.05.328 does not apply to this rule adoption. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees pursuant to legislative standards. For this reason, the department has not completed a significant rules analysis.

Hearing Location: Department of Health, 310 Israel Road, Room 211, Tumwater, WA 98501, on September 24, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Judy Haenke by September 19, 2003, TDD 1-800-833-6388 or (360) 236-4052.

Submit Written Comments to: Judy Haenke, Program Manager, P.O. Box 47870, Olympia, WA 98504-7870, (360) 236-4947, fax (360) 586-4359, by September 19, 2003.

Date of Intended Adoption: September 24, 2003.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 98-21-086, filed 10/21/98, effective 11/21/98)

WAC 246-850-990 Orthotic and prosthetic fees. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Orthotic application	\$ ((600.00)) <u>250.00</u>
Prosthetic application	((600.00)) <u>250.00</u>
Orthotic renewal	((575.00)) <u>150.00</u>
Prosthetic renewal	((575.00)) <u>150.00</u>
Late renewal penalty fee	((287.50)) <u>75.00</u>
Expired credential reissuance fee	((287.50)) <u>75.00</u>
Inactive credential renewal fee	((350.00)) <u>125.00</u>
Late inactive renewal fee	((175.00)) <u>62.50</u>
Retired active credential renewal fee	((350.00)) <u>125.00</u>

Title of Fee	Fee
Late retired active credential renewal fee	((175.00)) <u>62.50</u>
Duplicate credential or wall certificate	15.00
Certification	25.00

WSR 03-17-092
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed August 20, 2003, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-03-136.

Title of Rule: Chapter 246-650 WAC, Newborn screening.

Purpose: This chapter identifies the list of mandatory disorders for newborn screening conducted by the Department of Health. The current list of disorders includes PKU, congenital hypothyroidism, congenital adrenal hyperplasia and hemoglobinopathies such as sickle cell disease. The purpose of the screening is to identify disorders that if not detected can cause severe mental and physical defects or death.

Other Identifying Information: The proposed changes reflect the recommendations made by the Newborn Screening Advisory Committee. The legislature granted funding for the addition of the proposed disorders during the 2003 legislative session.

Statutory Authority for Adoption: Chapters 70.83, 43.20 RCW.

Summary: The proposed changes add five disorders to the list of mandatory disorders. The additional disorders are: Biotinidase deficiency, galactosemia, homocystinuria, maple syrup urine disease, and medium chain acyl-coA dehydrogenase deficiency. In addition, the proposal sets out privacy and security requirements for the handling and storage of the dried blood spots that are used to identify the disorders listed in chapter 246-650 WAC.

Reasons Supporting Proposal: The disorders required to be screened for by these rules have not been updated since 1991. Medical and technological advances in recent years have made it possible to screen newborns for an increasing number of disorders. These disorders, if not detected early can cause severe mental and physical defects or death. The proposed privacy and security requirements, will allow the department to better assure parents and families of the security of this health information.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mike Glass, 1610 N.E. 150th, Shoreline, WA 98155-9701, (206) 361-2890.

Name of Proponent: Washington State Board of Health and Washington State Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed changes add five disorders to the list

of mandatory disorders. The additional disorders are: Biotinidase deficiency, galactosemia, homocystinuria, maple syrup urine disease, and medium chain acyl-coA dehydrogenase deficiency. The proposal also establishes privacy and security measures for the storage and retention of specimens. The department of health tests for these disorders using the blood specimen that is routinely collected on all newborn infants before discharge from the hospital. The current list of disorders includes PKU, congenital hypothyroidism, congenital adrenal hyperplasia and hemoglobinopathies such as sickle cell disease. Expanding the list of disorders will assure that infants with these disorders are diagnosed early enough to prevent severe mental and physical defects and/or unexpected death.

In addition, the proposal sets out privacy and security requirements for the handling and storage of the dried blood spots that are used to identify the disorders listed in chapter 246-650 WAC. As a result, the department will be better able to assure parents and families of the security of this health information.

Proposal Changes the Following Existing Rules: WAC 246-650-001 Purpose, is expanded to reflect the addition of privacy provisions to the chapter. WAC 246-650-010 Definitions, add definitions for biotinidase deficiency, galactosemia, homocystinuria, maples syrup urine disease, medium chain acyl-coA dehydrogenase deficiency, and newborn screening specimen/information form. WAC 246-650-020 Performance of screening tests incorporates references to the new section on specimen retention and security, and references to the additional screening requirements. WAC 246-650-030 Implementation of screening sets a January 2004 date to begin the new screening requirements. WAC 246-650-040 Report to the board, includes minor editorial changes.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 requires agencies to prepare a small business economic impact statement if a proposed rule imposes more than minor costs on businesses within an industry. This proposal imposes no new costs on small businesses; for this reason, the agency did not complete a small business economic impact statement.

RCW 34.05.328 does not apply to this rule adoption. The proposed rule is significant under RCW 34.05.328 (5)(c)(iii)(C) because it significantly amends policy and the newborn screening program by adding to the list of mandatory disorders for newborn screening.

Hearing Location: Yakima Convention Center, Yakima, Washington 98901, on October 15, 2003, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact Desiree Robinson by October 8, 2003, TDD (800) 833-6388 or (360) 236-4107.

Submit Written Comments to: Mike Glass, 1610 N.E. 150th, Shoreline, WA 98155-9701, or via the internet at <http://www3.doh.wa.gov/policyreview>, fax (206) 361-4996, by October 10, 2003.

Date of Intended Adoption: October 15, 2003.

August 19, 2003

Don Sloma

Executive Director

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-650-001 Purpose. The purpose of this chapter is to establish board rules to detect, in newborns, congenital disorders leading to developmental impairment or physical disabilities as required by RCW 70.83.050 and to provide protections for the confidentiality of information and human biological specimens submitted pursuant to these requirements.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-650-010 Definitions. For the purposes of this chapter:

(1) "Board" means the Washington state board of health.

(2) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

(3) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

~~((3))~~ (4) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

~~((4))~~ (5) "Department" means the Washington state department of health.

~~((5))~~ (6) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose in the blood. If undetected and untreated, accumulated galactose may cause significant tissue and organ damage often leading to sepsis and death.

(7) "Homocystinuria" means deficiency of enzymes necessary to breakdown the amino acid methionine resulting in a buildup of methionine in the blood and excretion of homocystine in the urine. If undetected and untreated may cause thromboembolism, mental and physical disabilities.

(8) "Maple syrup urine disease" (MSUD) means deficiency of enzymes necessary to breakdown the branch chained amino acids leucine, isoleucine, and valine resulting in a buildup of these and metabolic intermediates in the blood. If undetected and untreated may result in mental and physical retardation or death.

(9) "Medium chain acyl-coA dehydrogenase deficiency" (MCADD) means deficiency of an enzyme (medium chain acyl-coA dehydrogenase) necessary to breakdown medium chain length fatty acids. If undetected and untreated, fasting, infection or stress may trigger acute hypoglycemia leading to physical and neurological damage or death.

(10) "Newborn" means an infant born in a hospital in the state of Washington prior to discharge from the hospital of birth or transfer.

~~((6))~~ (11) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing

patient information is "Health care information" as defined by the Uniform Healthcare Information Act, RCW 70.02.010 (6).

(12) "Phenylketonuria" (PKU) means a ~~((metabolic disorder characterized by abnormal phenylalanine metabolism causing impaired mental functioning if undetected and untreated))~~ deficiency of an enzyme necessary to convert the amino acid phenylalanine into tyrosine resulting in a buildup of phenylalanine in the blood and excretion of phenylketones in the urine. If undetected and untreated may cause severely impaired mental functioning.

~~((7))~~ (13) "Hemoglobinopathy" means a hereditary blood disorder caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

~~((8))~~ (14) "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

AMENDATORY SECTION (Amending Order 225B, filed 12/23/91, effective 1/23/92)

WAC 246-650-020 Performance of screening tests.

(1) Hospitals providing birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders,

(ii) Disorders of concern as listed in WAC 246-650-020(2),

(iii) The requirement for newborn screening, and

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020, and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn prior to discharge from the hospital or, if not yet discharged, no later than five days of age.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form ~~((attached to the specimen))~~ following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn ~~((metabolic))~~ screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal ~~((with the attached identifying forms))~~ to the Washington state public health laboratory no later than the day after collection or refusal signature.

(2) Upon receipt of specimens, the department shall:

(a) Perform appropriate screening tests for:

(i) Phenylketonuria, congenital hypothyroidism, congenital adrenal hyperplasia, and hemoglobinopathies,

(ii) Biotinidase deficiency, galactosemia, homocystinuria, maple syrup urine disease and medium chain acyl-coA dehydrogenase deficiency according to the schedule in WAC 246-650-030;

(b) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

(c) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-650-030 Implementation of ((hemoglobinopathy)) screening to detect biotinidase deficiency, galactosemia, homocystinuria, maple syrup urine disease and medium chain acyl-coA dehydrogenase deficiency. The department shall((:

~~(1) Begin performing appropriate screening tests for hemoglobinopathy on all newborn screening specimens received from Pierce County by May 1, 1991;~~

~~(2) Expand screening by performing appropriate screening tests on all newborn screening specimens received from King County along with those received from Pierce County by August 1, 1991;~~

~~(3) Fully implement screening by performing appropriate screening tests on all newborn screening specimens received by November 1, 1991;~~

~~(4) On or before January 31, 1991, and annually thereafter, report to the board the following information concerning tests conducted pursuant to this section:~~

~~(a) The costs of tests as charged by the department;~~

~~(b) The results of each category of tests, by county of birth and ethnic group, as reported on the newborn screening form and, if available, birth certificates;~~

~~(c) Follow-up procedures and the results of such follow-up procedures)) implement screening tests for biotinidase deficiency, galactosemia, homocystinuria, maple syrup urine disease and medium chain acyl-coA dehydrogenase deficiency beginning in January 2004. Screening for these disorders shall be fully implemented as quickly as feasible and not later than June 2004.~~

NEW SECTION

WAC 246-650-040 Report to the board. The department shall report to the board annually the following information concerning tests conducted pursuant to this section:

(1) The costs of tests as charged by the department;

(2) The results of each category of tests, by county of birth and ethnic group, as reported on the newborn screening form and, if available, birth certificates; and

(3) Follow-up procedures and the results of such follow-up procedures.

NEW SECTION

WAC 246-650-050 Privacy and security of screening specimen/information forms. The specimen/information form submitted to the department pursuant to WAC 246-650-020 becomes the property of the state of Washington upon receipt by the Washington state public health laboratory. The department shall protect the privacy of newborns and their families and assure that all specimen/information forms submitted for screening are protected from inappropriate use or access.

(1) Storage: The specimen/information forms shall be kept at ambient temperature in secured storage to preserve their confidentiality and prevent access by unauthorized persons.

(2) Retention/destruction: The specimen/information form shall be retained until the child is twenty-one years old in accordance with the requirements for hospitals specified in RCW 70.41.190. After this time the form will be destroyed.

EXCEPTION FOR PARENTAL REQUEST: Upon request of a parent or guardian (or a patient who is over the age of eighteen years), the department will destroy the specimen/information form only after all required screening tests have been performed and if the patient's screening/clinical status related to these tests is not in question.

(3) Access: Access to stored specimen/information forms shall be restricted to department employees and those contractors or others approved by the department as necessary to meet specific program needs. Access is contingent upon compliance with all applicable federal and state laws, regulations, and policies safeguarding the privacy and confidentiality of medical information. The department shall assure that those granted access understand the confidentiality requirements and have a signed confidentiality agreement on file.

(4) Release: Dried blood spot samples and specimen information may only be released under the following conditions:

(a) A sample from a specimen and copies of associated information (patient information and testing results, if requested) may be released to:

(i) A health care provider at the request of the patient or their legal representative after completing and signing a written request form approved by the department. The release form must be provided to the director of newborn screening before the request will be fulfilled.

(ii) A researcher with the written, informed consent of the patient or their patient's legal representative as part of a research project that has been reviewed and approved by the DOH/DSHS human subjects research review board and the secretary or designee of the department of health.

(iii) A named person in a legally executed subpoena following review and approval of the state attorney general.

(iv) A person to whom release is mandated by order of a court of competent jurisdiction.

(b) Anonymous samples may be released if the department determines that the intended use has significant potential health benefit and that each of the following criteria have been met:

(i) The investigation design is adequate to assure anonymity will be preserved.

(ii) All newborn screening tests have been completed and the status of the infant is resolved.

(iii) At least one fully adequate spot will remain after the anonymous sample has been taken.

(iv) Sufficient resources (personnel) are available for extracting the samples.

(v) The DOH/DSHS human subjects research review board has reviewed and approved the investigation. This requirement may be waived by the department for a very small (i.e., less than 100 sample) pilot study where the intent is to evaluate a testing tool, as opposed to an evaluation where the intent is to measure some characteristic of a population.

(5) Notification: The department shall notify parents of the specimen storage, retention/destruction and access requirements through the department's newborn screening informational pamphlet.

WSR 03-17-094

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed August 20, 2003, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-14-095.

Title of Rule: WAC 308-90-040 Vessel dealer registration application form.

Purpose: To solidify the integrity of the vessel industry and the license application process by requiring submission of a criminal history with the application for an original vessel dealer registration.

Statutory Authority for Adoption: RCW 88.02.100.

Summary: A criminal history will be required as part of the application packet submitted by those wishing to apply for a vessel dealer license.

Reasons Supporting Proposal: The director may order that the vessel dealer license application of those who have been adjudged guilty of a felony that directly relates to the marine trade business be denied. The criminal history is an aid to meet the scrutiny obligations of the Department of Licensing before issuance of a license to sell vessels such as personal watercraft, yachts, etc.

Name of Agency Personnel Responsible for Drafting and Implementation: Chuck Coach, 2000 4th Avenue West, Olympia, WA 98502, (360) 664-6453; Enforcement: Mykel D. Gable, 2000 4th Avenue West, Olympia, WA 98502, (360) 664-6451.

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

Explanation of Rule, its Purpose, and Anticipated Effects: To solidify the integrity of the vessel industry and the license application process by requiring submission of a criminal history with the application for an original vessel dealer registration.

Proposal Changes the Following Existing Rules: Adds the criminal history requirement to the current rule.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No economic impact to the marine industry.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Department of Licensing, 2000 4th Avenue West, 1st Floor Conference Room, Olympia, WA 98502, on October 22, 2003, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Linda Mason by October 17, 2003, TDD (360) 664-8885.

Submit Written Comments to: Gail Saul, Dealer and Manufacturer Services, P.O. Box 9039, Olympia, WA 98507, fax (360) 586-6703, by October 17, 2003.

Date of Intended Adoption: November 5, 2003.

August 19, 2003

Fred Stephens

Director

AMENDATORY SECTION (Amending WSR 02-05-073, filed 2/20/02, effective 3/23/02)

WAC 308-90-040 Dealer registration application form. How do I apply for a vessel dealer registration?

((+)) Any firm making application for registration as a vessel dealer under chapter 88.02 RCW shall, on a form provided by the department, provide the following information:

((+)) (1) The name and business address of the firm and a list of additional business addresses of the firm, if any.

((+)) (2) The name of all owners of ten percent or more of the assets of the firm and title(s) of office held, if any.

((+)) (3) The firm's business structure and place of organization.

((+)) (4) The uniform business identification number issued by the department of licensing.

(5) Whether the applicant has been adjudged guilty of a crime which directly relates to the marine trade industry and the time elapsed since the conviction is less than ten years, and in the case of a corporation, partnership, or limited liability company all directors, officers, partners or members.

(6) Any other information the department may reasonably require.

WSR 03-17-095

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed August 20, 2003, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-18-111 and 02-22-093.

Title of Rule: WAC 16-228 WAC, General pesticide rules.

Purpose: Update language, remove outdated sections, correct language and spelling errors, move and/or combine sections for clarity and accuracy, modify sections on phenoxy herbicides for clarification, add requirement for positive identification for purchase of restricted use pesticides, clarify record-keeping requirements and modify pesticide licensing examination requirements to meet new legislation statutes.

Other Identifying Information: Review of agency rules requested every four years by executive order.

Statutory Authority for Adoption: Chapters 17.21, 15.58, 34.05 RCW.

Statute Being Implemented: Chapters 17.21, 15.58 RCW.

Summary: Update of general pesticide rules, chapter 16-228 WAC.

Reasons Supporting Proposal: Remove outdated sections, add wording to address new concerns such as Homeland Security, modify language to meet requirements of new legislation.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ann Wick, 1111 Washington Street S.W., Olympia, WA 98504-2560, (360) 902-2051.

Name of Proponent: Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: (1) Change section headings to question format and update language, all sections.

(2) WAC 16-228-1010 Modifications.

- Remove "agricultural emergency," "substantial economic loss" now in chapter 16-233 WAC, Worker protection standards.

- Modify "complete wood destroying organism inspection," "limited wood destroying inspection," "specific wood destroying organism inspection," "structural pest inspector," "wood destroying organisms," and "wood destroying organism inspection" to meet new legislative requirements.

- Modify "bait box" definition to reflect cancellation of higher toxicity products.

- Clarify use of "person" versus "individual."

- Define "positive identification."

(3) WAC 16-228-1020.

- Define department's responsibilities.

(4) WAC 16-228-1030.

- Clarify department's responsibilities.

- Clarify timeline.

- Clarify request must be in writing.

(5) WAC 16-228-1130.

- Correct spelling error.

(6) WAC 16-228-1200.

- Add requirements for securing valves.

- Clarify the department is responsible for notifying the Department of Health.

(7) WAC 16-228-1220.

- Add restrictions on methyl parathion and pollen shedding corn. This will allow WAC 16-230-082 through 16-230-088 to be eliminated.

- Update subsection (4) to specify that application of all pesticides by aircraft or airblast sprayers to property abutting and adjacent to occupied schools in session, hospitals, nursing homes or other similar establishments under conditions that may result in contamination is prohibited.

- Specify a minimum of three successive rinsings.

(8) WAC 16-228-1225.

- Add 2 (ee) federal wording defining "use inconsistent with its labeling" exceptions.

(9) WAC 16-228-1231.

- Clarify wording regarding the restricted use status of dicamba and phenoxy hormone-type herbicides.

- Allow dry formulations of dicamba and phenoxy hormone-type herbicides used on turf to be general use in Eastern Washington.

- Move section on record-keeping requirements for pesticide dealers to WAC 16-228-1300, combine general use sales and restricted use sales record-keeping requirements.

- Require dealers to conduct annual (or individual sales if the purchaser is unknown) positive identification for restricted use pesticide purchases.

(10) WAC 16-228-1250.

- Clarify that pesticide dealers need to provide rules only in the areas under order.

(11) WAC 16-228-1270.

- Add crops and alternate names.

- Clarify and add wording on disposal records.

(12) WAC 16-228-1300.

- Combine record-keeping requirements for general and restricted use for dealers.

- Require dealers to list the crop(s) for restricted use pesticides.

(13) WAC 16-228-1320.

- Allow geographical positioning coordinates to be used.

- Clarify that wind recording is not required for drip or subsurface irrigation.

- Readings must be in close proximity to the application site.

- Allow for chemigation records in "inches of water."

- Clarify details of records required (ex. full name, area treated, etc.).

(14) WAC 16-228-1400.

- Allow for alternate language on adjuvants and 25(b) [of FIFRA] pesticides.

(15) WAC 16-228-1460.

- Clarify rules on experimental use permits.

(16) WAC 16-228-1530.

- Modify expiration dates of pesticide licenses. All licenses except dealers (RCW 15.58.180) would expire on December 31st.

- Clarify all fees must be paid before licenses are issued.

(17) WAC 16-228-1540.

- Specify that all fees must be paid before licenses are issued.

(18) WAC 16-228-1545.

- Add new wording to conform to new legislation on structural pest inspectors.

- Add new wording to areas covered for the "rights of way weed" exam.

- Add new wording on wood destroying organism/structural pest inspector exams.

- Allow recognition of Canadian programs for pesticide licenses.

(19) WAC 16-228-1546.

- Allow recognition of Canadian programs for private applicator licenses.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Additional costs are not anticipated or are expected to be minor. Changes to the general rules clarify existing requirements, allow for more flexibility or were made to comply with changes in law except for: (a) Requirement for positive identification - minimal expense is anticipated. Positive identification is not required each time a restricted use purchase is made. Dealers are not required to keep records. (b) Changing the expiration date for licenses - licenses that formerly expired in February will lose two months on their license for a one-year period. The department anticipates making a change to the fee by policy for this period to offset this.

The rule change to eliminate airblast applications does not change department enforcement, as any application that would contaminate premises specified is currently a violation. The change eliminates reference to any specific pesticide.

RCW 34.05.328 does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

Hearing Location: Washington State Department of Agriculture Conference Room, 21 North 1st Avenue, Suite 236, Yakima, WA 98902, on September 23, 2003, at 6:00 p.m.; at the WSU Spokane County Extension, North 222 Havana Street, Room A Lower Level, Spokane, WA 99202, on September 24, 2003, at 6:00 p.m.; and at the Washington State Department of Agriculture, Room 259, 1111 Washington Street S.W., Olympia, WA 98504, on September 29, 2003, at 6:00 p.m.

Assistance for Persons with Disabilities: Contact Laurie Mauerman by September 15, 2003, TDD (360) 902-1996.

Submit Written Comments to: Laurie Mauerman, Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2093, e-mail lmauerman@agr.wa.gov, by September 30, 2003.

Date of Intended Adoption: October 28, 2003.

August 20, 2003

Bob Arrington

Assistant Director

AMENDATORY SECTION (Amending WSR 00-22-073, filed 10/30/00, effective 11/30/00)

WAC 16-228-1010 ((Definitions.)) What are the definitions that apply to this chapter? The definitions ((set forth)) in this section ((shall)) apply throughout this chapter, unless the context requires otherwise ((requires)):

(1) "Agricultural commodity" means any plant, or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily

for sale, consumption, propagation, or other use by people or animals.

(2) (~~"Agricultural emergency" means a sudden occurrence or set of circumstances which the agricultural employer could not have anticipated and over which the agricultural employer has no control, and which requires entry into a pesticide-treated area during a restricted entry interval, when no alternative practices would prevent or mitigate a substantial economic loss.~~)

((3)) "Authorized agent" is any ((person)) individual who is authorized to act on behalf of a certified applicator for the purpose of purchasing pesticides.

((4)) (3) "Bait box" for rodenticides is a box constructed of durable metal, wood, plastic, or other treated ((synthetic)) material. It shall be designed to hold rodent bait securely, allow rodents to enter and leave, and prevent unauthorized ((persons)) individuals and nonpest domestic animals from gaining access to the bait. ((The cover shall be provided with a lock that can be unlocked only by a combination, key, special tool, or forced entry.)) Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper resistant bait boxes. Fragile materials are unacceptable.

((5)) (4) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

((6)) (5) "Blossoming plants" means:

(a) When there are five or more open blooms per square yard on average in a given field; or

(b) When there are one or more open blooms per tree or vine in an orchard or vineyard; or

(c) When there are five or more open weed blooms per square yard on average for the area being measured for groundcover in orchards or vineyards, fence lines, ditch banks, or field, vineyard or orchard edges (~~provided that~~). This definition shall not apply to plants that are not attractive to bees (e.g., lentils, ((white blossomed peas, second bloom of)) hops, peas (Pisum sp.), pears (second bloom) and potatoes ((and hops))). For the purposes of this definition, "bloom" means a flower head, raceme or spike with one or more open flowers.

((7)) (6) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

((8)) (7) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators only.

((9)) (8) "Chemigation" means the application of any substance or combination of substances intended as a pesticide, plant or crop protectant or a system maintenance compound applied with irrigation water.

((10)) (9) A "complainant" is defined as a person who has requested an inspection of an area in which a pesticide violation is believed to have occurred.

PROPOSED

~~((11)) "Complete wood destroying organism inspection" means (a) an inspection of a structure for the purpose of determining (i) evidence of infestation(s), and (ii) damage, and (iii) conducive conditions; or (b) any wood destroying organism inspection which is conducted as the result of a telephone solicitation by an inspection firm or pest control business, even if the inspection would otherwise fall within the definition of a limited wood destroying organism inspection.~~

~~((12)) "Conducive conditions" means those conditions which may lead to or enhance an infestation of wood destroying organisms.~~

~~((13)) (10) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections must also include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspector, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.~~

((11)) "Controlled disposal site" means any place where solid or liquid waste is disposed of: Provided((;-) that the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency((;- Provided further, That)). The site ((is)) must be fenced, barricaded or otherwise enclosed or attended by some person in charge to ((facilitate)) control((-) the access of domestic animals, pets, and unauthorized persons.

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

((15)) (13) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to ((field strength)) the application rate for adequate coverage (such as water).

((16)) (14) "Director" means the director of the department or a duly authorized representative.

((17)) (15) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

((18)) (16) "EPA" means the United States Environmental Protection Agency.

((19)) (17) "EPA restricted use pesticide" means any pesticide ((with restricted uses as)) classified for restricted use by the administrator, EPA.

((20)) (18) "Fertilizer" as included in this ((order)) chapter means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

((21)) (19) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 et seq.).

((22)) (20) "Floor level" ((is considered to be)) means the floor upon which people normally walk—not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

((23)) (21) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial-feeding establishment; retail grocery; retail food market; retail meat market; retail bakery; private, public, or

nonprofit organization routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

((24)) (22) "Fumigant" means any substance or combination of substances that produce gas, fumes, vapors, or smoke, and is used to kill pests in some kind of enclosure.

((25)) (23) "Highly toxic pesticide" for the purpose of this chapter, means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity Category I due to oral, inhalation or dermal toxicity.

((26)) (24) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

~~((27)) "Limited wood destroying organism inspection" means the inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms.~~

((28)) (25) "Person" is defined as any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

((29)) (26) A "person aggrieved" by a violation is defined as a person who has reasonable grounds to believe that he or she has been subjected to harm or an unreasonable risk by such a violation.

((30)) (27) "Pollen shedding corn" means that stage of growth when ten percent or more of the corn plants in any one quarter portion of the field are showing spike anthers.

~~((31)) (28) "Positive identification" means a photo identification document issued by a U.S. government agency or affiliated jurisdiction (states, tribes, territories). Acceptable photo identification documents are: A driver's license, a passport, a military ID card or an immigration green card. Exception: Nonphoto identification documents may be allowed for religious groups that prohibit members from having their picture taken. In this case, two forms of identification are required, one of which must be a government issued document with a signature (e.g., Social Security card). Other nonphoto identification must identify the holder by name and address (e.g., utility bill).~~

(29) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of ((a)) any ((EPA restricted use)) pesticide((;- or (b) any state)) classified by the EPA or the director as a restricted use pesticide ((restricted to use only by certified applicators by the director)) for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the private applicator or the applicator's employer or if applied without compensation other than trad-

ing of personal services between producers of agricultural commodities on the land of another person.

~~((32))~~ (30) "Private-commercial applicator" means a certified applicator who uses or supervises the use of ~~((a))~~ any ~~(EPA restricted use)~~ pesticide ~~(; or (b) any)~~ classified by the EPA or the director as a restricted use pesticide ~~((restricted to use only by certified applicators))~~ for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

~~((33))~~ (31) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

(32) "State restricted use pesticide" means any pesticide determined to be a restricted use pesticide by the director under the authority of chapters 17.21 and 15.58 RCW ~~((that are restricted to use only by certified applicators)).~~

~~((34))~~ "Substantial economic loss" means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement cannot be considered in determining the loss.

~~((35))~~ (33) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

(34) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((36))~~ (35) "Waste pesticide" is any pesticide formulation which cannot be used according to label directions in Washington state because of cancellation or suspension of its federal or state registration, or deterioration of the product or its label, and any pesticide formulation whose active ingredients are not clearly identifiable because of label deterioration or because the pesticide is not stored in its original container.

~~((37))~~ "Wood destroying organisms" means those organisms including, but not limited to, subterranean termites, dampwood termites, carpenter ants, wood boring beetles of the family anobiidae (deathwatch beetle), and wood decay fungus (rot). Wood destroying organisms shall not include such organisms which occurred prior to the manufacturing or processing of the lumber, e.g., pocket rot.

(38) "Wood destroying organism inspection" means the service of inspecting a building for the presence of wood destroying organism pests destructive to its structural components, and/or their damage, and/or conducive conditions. For purposes of these rules a wood destroying organism inspection shall be either a "complete wood destroying organism inspection" or a "limited wood destroying organism inspection."

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1020 What are the rights of complainants? If an inspection is conducted by the department of an area in which a pesticide violation is believed to have occurred, a complainant shall:

(1) Be promptly provided by the department, with the department's decision, as set forth in the "notice of intent to assess civil penalty and/or deny, suspend, or revoke a license," or in any document issuing a warning or ~~((determining))~~ determination of no action. The department will endeavor to provide notice concurrently with the department's service of ~~((such))~~ the document on the alleged violator.

(2) Be entitled, upon written request to the department, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available pursuant to chapter 17.21 RCW: Provided ~~((;))~~ that in any adjudicative proceeding under chapter 34.05 RCW the identity of complainant shall be disclosed to the alleged violator upon written request of the alleged violator.

(3) Be otherwise entitled to those rights of persons aggrieved as set forth in WAC 16-228-1030 ~~((; if aggrieved;))~~ except that the complainant shall be provided, automatically without request, a copy of the final ~~((order referred to therein))~~ department decision.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1030 What are the rights of person aggrieved? A person aggrieved shall:

(1) Be entitled to be notified promptly of any final action taken by the department ~~((pursuant to))~~ concerning an investigation under chapter 17.21 RCW ~~((;))~~. The department will provide notice ~~((concurrently with))~~ at the same time as a service of notice on the violator: Provided ~~((;))~~ that such person has made timely written application to the department requesting such notice. Written application to the department requesting such notice shall be received no later than the date of service of a final order.

(2) Within thirteen calendar days of the date of mailing of a final order to a person aggrieved, the person aggrieved may request in writing that the director reconsider the matter, shall specify in writing why ~~((said person))~~ they believe ~~((s))~~ the penalty decision is inappropriate, and ~~((shall))~~ the department will serve ~~((such))~~ the request on the violator.

(3) ~~((Upon reconsideration))~~ Following the request in writing, the director will reconsider the entire matter including any written statement submitted by any party, and may adjust the penalty decision set forth in the final order if the director finds that the penalty was inappropriate.

(4) If such person is aggrieved by the director's order on reconsiderations, within twenty calendar days of service of the order he or she may request in writing an adjudicative proceeding under chapter 34.05 RCW, shall specify in writing why ~~((the person))~~ he or she believes the penalty decision is inappropriate, and the department shall serve ~~((such))~~ the request on the alleged violator. The subject of such proceed-

ing shall be limited to the appropriateness of the penalty decision of the director on reconsideration based on a review of the record as supplemented by any new evidence received by the presiding officer. The alleged violator shall be given notice and an opportunity to participate in the proceeding by the department. The proceeding shall be heard by a presiding officer who has not heard the adjudicative proceeding on the merits against the alleged violator. Chapter 34.05 RCW and chapter 16-08 WAC shall govern the conduct of such proceeding and any review (~~thereon~~).

(5) Upon the filing of any request for proceeding pursuant to subsection (2) of this section, any final order of the director shall be automatically stayed pending resolution of such request and expiration of any time period for pursuing additional relief. The director shall provide written notice to the alleged violator of any such resolution, thereby reinstating the rights of the alleged violator to seek further relief.

AMENDATORY SECTION (Amending WSR 00-22-073, filed 10/30/00, effective 11/30/00)

WAC 16-228-1040 (~~Investigative response time~~)

How soon must the department respond to a complaint?

Upon receipt of a verified report of loss as set forth in RCW 17.21.190 or alleged violation of chapters 17.21 or 15.58 RCW or the accompanying rules, the department shall initiate an investigation. Investigation of a complaint concerning immediate acute pesticide exposure to humans or animals shall be initiated immediately. Other complaint investigations shall be initiated no later than forty-eight hours after receipt of the verified report of loss.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1100 (~~Statement of purpose—Penalty assignment~~) **What is the basis for penalties?** For the purpose of fair, uniform determination of penalty as set forth in WAC 16-228-1110 through 16-228-1150, the director hereby declares:

(1) Regulatory action is necessary to deter violations of the pesticide laws and rules, and to educate persons about the consequences of such violation(s); and

(2) Any regulatory action taken by the department against any person who violates the provisions of chapter 17.21 RCW, chapter 15.58 RCW, and/or rules adopted thereunder shall be commensurate with the seriousness of the violation under the circumstances; and

(3) Each person shall be treated fairly in accordance with the rules set forth in this chapter.

AMENDATORY SECTION (Amending WSR 01-01-058, filed 12/12/00, effective 1/12/01)

WAC 16-228-1110 (~~Definitions—Penalty assignment~~) **What are the definitions specific to penalties?** In addition to the definitions set forth in RCW 17.21.020, 15.58.030, and WAC 16-228-1010, the following shall apply to WAC 16-228-1100 through 16-228-1150:

(1) "Adverse effect(s)" means that the alleged activity actually causes, or creates the possibility of damage, injury or

public health threat, to humans, animals, plants, property or the environment. In those situations involving a wood destroying organism inspection, adverse effects exist when the inspection has been performed in a faulty, careless or negligent manner.

(2) "Level of violation" means that the alleged violation is a first, second, third, fourth, or more violation(s).

(a) First violation. This means the alleged violator has committed no prior incident(s) which resulted in a violation or violations within three years of committing the current alleged violation.

(b) Second violation. This means the alleged violator committed one prior incident which resulted in a violation or violations within three years of committing the current alleged violation.

(c) Third violation. This means the alleged violator committed two prior incidents which resulted in a violation or violations within three years of committing the current alleged violation.

(d) Fourth violation. This means the alleged violator committed three prior incidents which resulted in a violation or violations within three years of committing the current alleged violation.

(e) For purposes of calculating the level of violation, prior incidents will be measured from the date that a final order or stipulated order resolved the prior violation(s), and not from the date that the incident(s) occurred.

(3) "Not probable" means that the alleged violator's conduct more likely than not would not have an adverse effect.

(4) "Probable" means that the alleged violator's conduct more likely than not would have an adverse effect.

(5) "Violation" means commission of an act or acts prohibited by chapter 17.21 RCW, chapter 15.58 RCW, and/or rules adopted thereunder.

(6) "Civil penalty" means a monetary penalty administratively issued by a regulatory agency for noncompliance with state or federal law, or rules. The term does not include any criminal penalty, damage assessment, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

(7) "Notice of Correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 15.58 or 17.21 RCW, or the rules adopted under the authority of chapter 15.58 or 17.21 RCW and is not subject to civil penalties as provided for in RCW 43.05.110. A notice of correction is not a formal enforcement action, is not subject to appeal and is a public record.

(8) "Notice of intent" means a document issued by the department that alleges specific violations of chapter 15.58 or 17.21 RCW, or any rules adopted under the authority of those chapters. A notice of intent is a formal enforcement document issued with the intent to assess civil penalties to the alleged violator and/or to suspend, deny or revoke the alleged violator's pesticide license.

AMENDATORY SECTION (Amending WSR 01-01-058, filed 12/12/00, effective 1/12/01)

WAC 16-228-1115 (~~(Application of RCW 43.05.100 and 43.05.110—Issuance of)~~ **When can the department issue a civil penalty without first issuing a notice of correction?**) (1) Pursuant to RCW 43.05.100 a notice of correction may be issued by the department when they become aware of conditions and/or conduct that are not in compliance with the applicable laws and rules enforced by the department. The issuance of a notice of correction by the department shall not constitute a previous violation for purposes of WAC 16-228-1110(2), but may, at the discretion of the department, be considered as an aggravating factor for the purposes of WAC 16-228-1120(2).

(2) Prior to issuing a civil penalty for a violation of chapter 15.58 or 17.21 RCW, and the rules adopted under the authority of chapter 15.58 or 17.21 RCW the department shall comply with the requirements of RCW 43.05.110. RCW 43.05.110 provides that the department of agriculture may issue a civil penalty provided for by law without first issuing a notice of correction if: (1) The person has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule; or (2) compliance is not achieved by the date established by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date; (3) the violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or (4) the violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months.

AMENDATORY SECTION (Amending WSR 01-01-058, filed 12/12/00, effective 1/12/01)

WAC 16-228-1120 (~~(Calculation of penalty.)~~ **How are penalties calculated?**) (1) Median penalty selection. In the disposition of administrative cases, the department shall use the penalty assignment schedule listed in WAC 16-228-1130 to determine appropriate penalties. The department shall calculate the appropriate penalty based on the level of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present. The median penalty as listed in WAC 16-228-1130 may be proportionately adjusted and/or aggravated to a level more than the maximum penalty listed for the violation in the penalty assignment schedule table. The median penalty under the penalty assignment schedule may not be proportionately adjusted and/or mitigated to a level less than the minimum penalty listed for the violation.

(2) Proportionate adjustment of median penalty.

(a) The department reserves the right to proportionately increase the civil penalty and proportionately decrease the

licensing action under certain circumstances(~~(f-)~~). Such circumstances include situations where licensing action(s) as a deterrent are ineffective and include, but are not limited to:

(i) Violations by persons who are not licensed; and

(ii) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation.

(b) The department also reserves the right to proportionately decrease the civil penalty and increase the licensing action in circumstances that demonstrate the ineffectiveness of a civil penalty as a deterrent. Nothing shall prevent the department from proportionally adjusting a licensing action to a level greater than the maximum licensing action listed in the penalty assignment schedule.

(3) Aggravating factors. The department may consider circumstances enhancing the penalty based on the seriousness of the violation. Aggravating factors include, but are not limited to, the following:

(a) The number of separate alleged violations contained within a single notice of intent.

(b) The high magnitude of the harm, or potential harm, including quantity and/or degree, to humans, animals, plants, property or the environment caused by the violation(s).

(c) The similarity of the current alleged violation to previous violations committed within the last three years.

(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(4) When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the level of violation or may, in its discretion, increase the penalty to a level greater than the maximum penalty, including but not limited to revocation of the license.

(5) Mitigating factors. The department may consider circumstances reducing the penalty based upon the seriousness of the violation. Mitigating factors include but are not limited to, the following:

(a) Voluntary disclosure of a violation.

(b) The low magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation.

(c) Voluntary taking of remedial measures that will result in increased public protection, or that will result in a decreased likelihood that the violation will be repeated.

(6) When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation from the penalty schedule.

(7) The department considers each violation to be a separate and distinct event. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties are added together.

(8) Violation(s) committed during the period when an individual's license is suspended or revoked shall be subject to the maximum civil penalty of seven thousand five hundred dollars and/or revocation of the license for a period of up to five years. Violation(s) committed by unlicensed individuals are subject to the provisions of this chapter, including the penalty provision.

AMENDATORY SECTION (Amending WSR 01-01-058, filed 12/12/00, effective 1/12/01)

WAC 16-228-1125 (~~Revocation and denial of licenses—Actions against licenses only~~) When can the department revoke or deny a license? (1) The department retains the sole discretion to determine when an individual license should be revoked rather than suspended. Revocation of a license shall be an option for the department in those circumstances where:

- (a) The penalty schedule allows for revocation;
- (b) One or more aggravating factors are present; and/or
- (c) The duration of the licensure action exceeds six months.

In circumstances where the department determines revocation to be appropriate, the period of revocation shall be determined at the discretion of the department, but in no instance shall the revocation exceed five years.

(2) The department may deny an applicant a license when the applicant has committed a violation(s) of chapters 15.58 and 17.21 RCW and/or the rules adopted under those chapters. The duration of denial shall be determined based upon the penalty provisions of this chapter. In circumstances

where the department determines denial to be appropriate, the period of denial shall not exceed five years.

(3) Nothing shall prevent the department from denying an applicant a license when the applicant has an outstanding civil penalty owed to the department from a previous violation(s).

(4) The department may, at its discretion, suspend a license without also seeking a civil penalty. Such circumstances include, but are not limited to, those incidents where a civil penalty is not available as an appropriate penalty pursuant to RCW 43.05.110. The appropriate period of suspension shall be determined from the penalty schedule.

AMENDATORY SECTION (Amending WSR 01-01-058, filed 12/12/00, effective 1/12/01)

WAC 16-228-1130 What is the penalty assignment schedule((+))? This assignment schedule shall be used for violations of chapter 17.21 or 15.58 RCW or chapter 16-228 WAC. (See WAC 16-228-1150 for other dispositions of alleged violations, including Notice of Corrections.)

LEVEL OF VIOLATION	ADVERSE EFFECTS NOT PROBABLE			ADVERSE EFFECTS PROBABLE		
	MINIMUM	MEDIAN	MAXIMUM	MINIMUM	MEDIAN	MAXIMUM
FIRST	\$200 and or 2 days license suspension	\$300 and or 3 days license suspension	\$500 and or 6 days license suspension	\$350 and or 5 days license suspension	\$450 and or 7 days license suspension	\$550 and or 9 days license suspension
SECOND	\$350 and or 3 days license suspension	\$500 and or 6 days license suspension	\$1000 and or 9 days license suspension	\$600 and 10 days license suspension denial or revocation	\$1300 and 20 days license suspension denial or revocation	\$2000 and 30 days license suspension denial or revocation
THIRD	\$700 and or 4 days license suspension	\$1000 and or 9 days license suspension	\$2000 and or 12 days license suspension	\$800 and 30 days license suspension denial or revocation	\$2400 and 40 days license suspension denial or revocation	\$4000 and 50 days license suspension denial or revocation
(FOURTH) FOURTH OR MORE	\$900 and or 5 days license suspension denial or revocation	\$2000 and or 12 days license suspension denial or revocation	\$3000 and or 15 days license suspension denial or revocation	\$1000 and 50 days license suspension denial or revocation	\$4250 and 70 days license suspension denial or revocation	\$7500 and 90 days license suspension denial or revocation

AMENDATORY SECTION (Amending WSR 01-01-058, filed 12/12/00, effective 1/12/01)

WAC 16-228-1150 What are the other dispositions of alleged violations((+)) that the department may choose? Nothing herein shall prevent the department from:

- (1) Choosing not to pursue a civil penalty, license suspension or license revocation.
- (2) Issuing a notice of correction in lieu of pursuing a civil penalty, license suspension or license revocation((+)).
- (3) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate. Prior violation(s) covered by a prior settlement agreement may be used by the department for the purpose of determining the appropriate penalty for the current alleged violation(s) if not prohibited by the agreement.
- (4) Referring violations or alleged violations, to any federal, state or county authority with jurisdiction over the activities in question, including but not limited to the Environmen-

tal Protection Agency (EPA) and the Federal Aviation Administration (FAA).

AMENDATORY SECTION (Amending WSR 00-22-073, filed 10/30/00, effective 11/30/00)

WAC 16-228-1200 What are the restrictions on pesticide distribution, transportation, application, storage and disposal((+))? (1) No person shall handle, transport, store, display, apply, dispose of or distribute pesticides in such a manner as to endanger humans and their environment or to endanger food, feed, or any other product that may be transported, stored, displayed, or distributed with such pesticides. Toxicities of pesticides shall be considered in distribution, storage, handling, and merchandising practices.

(2) Highly toxic pesticides shall not be transported in the same compartment of the vehicle or other equipment together with clothes, food, feed, or any other material intended for consumption by humans or animals. Any vehicle or other

PROPOSED

equipment shall be inspected by the owner or authorized agent for contamination before reuse. In instances where leakage or spillage has occurred, the shipper of the pesticides shall be immediately notified for instructions concerning the best method to be employed for the removal of the contamination. Vehicles or other equipment which have been contaminated shall not be returned to service until the contamination has been removed.

(3) Pesticide containers shall be secured during transit by use of side or end racks, bracing, chocks, tiedowns, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(4) Valves shall be tightly closed and manhole covers shall be secured on cargo ~~((or))~~, portable and permanent tanks used for transporting, storage and application of pesticides, whether tanks are full or empty.

(5) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(6) Pesticides shall not be delivered to a pesticide consignee unless the consignee or authorized agent is present to accept delivery of the pesticides and signs a delivery slip ~~((and))~~ or the pesticides are secured in a proper storage.

(7) Pesticides shall not be stored and/or displayed over or adjacent to meat or vegetable cases, other human foods, animal feeds, or drugs, or in any manner that may result in contamination of food, feed, or clothing. Pesticides intended for sale or distribution shall only be stored and displayed within an enclosed area of a building or fence and shall not be displayed on sidewalks.

(8) Pesticide dealers shall not sell, offer for sale, or hold for sale highly toxic pesticides in the same department where food for human consumption is displayed or sold. The ~~((use of the))~~ same "checkstand" or food packaging area ~~((is prohibited))~~ may not be used for the distribution of highly toxic pesticides and food for human consumption.

(9) All pesticide incidents involving undesirable impacts on human health shall be reported to the Washington state department of health by the department.

(10) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale, or transported and shall be handled or disposed of in a manner that would not contaminate the environment or cause injury to humans and/or animals. Pesticides with obscured, illegible or damaged labels shall not be displayed or offered for sale.

(11) No person shall distribute or sell any pesticide unless it is in the registrant's or the manufacturer's unbroken, immediate container and ~~((there))~~ the registered pesticide label is affixed to the container ~~((its registered pesticide label))~~.

(12) A user of a pesticide may distribute a properly labelled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter 70.105 RCW.

(13) The distribution and use of DDT and DDD shall be prohibited in this state except for uses allowed by the Environmental Protection Agency or the Center for Disease Control of the United States Department of Health and Human Services.

AMENDATORY SECTION (Amending WSR 00-22-074, filed 10/30/00, effective 11/30/00)

WAC 16-228-1220 What are the restrictions applying to any person holding, handling, using, or disposing of pesticides and their containers~~((?))~~? (1) Any person handling, applying, or disposing of pesticides or pesticide containers shall do so in such a manner to minimize hazard to commercially important pollinating insect species. Due care shall be taken to regulate the timing and technique of pesticide applications to or around blossoming plants and pollen shedding corn. The use or application of microencapsulated methyl parathion, either directly or through drift, shall be prohibited on all blossoming plants and on pollen shedding corn.

(2) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container or apparatus in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, ~~((including))~~ humans, desirable plants and animals, or wildlife~~((?))~~. Provided~~((;))~~ that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection: ~~((Provided further, That))~~ Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(3) No person shall pollute streams, lakes, and other water supplies in pesticide loading, mixing, and application. Adequate, functioning devices and procedures to prevent backsiphoning shall be used.

(4) ~~((None of the following))~~ No pesticides shall be applied by aircraft or airblast sprayers ~~((immediately))~~ to property abutting and adjacent to occupied schools in session, hospitals, nursing homes or other similar establishments under conditions that may result in contamination of these establishments or their premises~~((+))~~

~~((a))~~ Disulfoton (DiSystem) Liquid

~~((b))~~ Parathion

~~((c))~~ Phorate (Thimet) Liquid~~((;))~~

(5) No person shall apply pesticides if weather conditions are such that physical drift or volatilization may cause damage to adjacent land, ~~((including))~~ humans, desirable plants or animals.

(6) Requirements for unattended pesticides and their containers:

(a) Good generally accepted housekeeping practices shall be maintained for all pesticides and their containers.

(b) The provisions of (d) and (e) of this subsection and subsection (7) of this section shall not apply to empty pesticide containers when adequately decontaminated (e.g., a minimum of three successive rinsings); and shall not apply to categories 2, 3, and 4 pesticide formulations labeled for home and garden use only.

(c) For the purposes of (d) and (e) of this subsection and subsection (7) of this section, pesticides and their containers at the loading area shall not be considered unattended during the spraying operation if the operator maintains either visual control or repeatedly returns at closely spaced intervals.

(d) Pesticides labeled with the signal word "danger/poison" and their containers shall be stored in one of the following enclosures which, when unattended, shall be so constructed and locked (except (v) below) to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

- (i) Closed vehicle.
- (ii) Closed trailer.
- (iii) Building or room or fenced area with a fence at least six feet high.
- (iv) Foot locker or other container which can be locked.
- (v) Unattended trucks or trailers which have solid sideracks and secured tailgate at least six feet above ground, ramp or platform level.
- (vi) Bulk storage containers fifty gallons and larger with tight screw-type bungs and/or secured or locked valves.

(e) Pesticides labeled with the signal word "danger" when not accompanied by the signal word "poison," pesticides labeled with the signal word "warning" and pesticides labeled with the signal word "caution" and their containers shall be stored in secured storage out of the reach of children in one of the enclosures listed in (d) of this subsection: Provided((;)) that metal containers, twenty-eight gallons and larger, with tight screw-type bungs and/or secured or locked valves (~~(and sealed five-gallon containers (requiring tool to unseal))~~) shall be considered secured storage.

(7) Requirements for posting of storage area for pesticides (~~(and their containers labeled with the signal words "danger/poison")~~) and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (or Pesticide or Chemical) Storage Area/Keep Out" in letters large enough to be legible at a distance of thirty feet.

(b) Warning signs shall be posted:

(i) On enclosures specified in subsection (6)(d) of this section, when such enclosures are unattended;

(ii) At each entrance or exit from a storage area and on each exterior wall, so that a sign is visible from any direction;

(iii) If the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each exterior wall of the structure within thirty feet of the pesticide storage area and from the main entrance to the larger structure: Provided((;)) that posting of the main entrance shall not be required, if a sign is visible from the entrance which clearly identifies the possibility that pesticides may be stored on the premises, (i.e., XYZ Pest Control or XYZ Wood Treatment, Inc.);

(8) No person shall disperse a pesticide or pesticide rinseate from any aircraft while in flight except over the target field and at the customary application height for that crop: Provided((;)) that emergency dumping shall not be considered a violation of this section.

NEW SECTION

WAC 16-228-1225 What are exceptions to label requirements? The term "to use any registered pesticide in a manner inconsistent with its labeling" means to use any registered pesticide in a manner not permitted by the labeling, except that the term shall not include:

(1) Applying a pesticide at any dosage, concentration or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration or frequency;

(2) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling, unless the department or EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling;

(3) Employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may only be applied only by the methods specified on the labeling, (chemigation applications are prohibited unless the label has chemigation use directions); and

(4) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.

AMENDATORY SECTION (Amending WSR 03-05-034, filed 2/11/03, effective 3/14/03)

WAC 16-228-1231 What are state restricted use pesticides for distribution by licensed pesticide dealers and for use by certified applicators only((;))? (1) Pesticides defined by the following categories or active ingredients are hereby declared state restricted use pesticides and shall be distributed only by licensed pesticide dealers to certified applicators or to their duly authorized agents. The certified applicator must have a valid certification, license or permit to use or purchase the kind and quantity of such pesticide sold or delivered. These pesticides shall be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category.

(a) Any EPA restricted use pesticide.

(b) ~~((2, 4-D— all dry formulations and all liquid amine or salt formulations))~~ All formulations, except for low volatile esters, of dicamba and phenoxy hormone-type herbicides (e.g., 2,4-D, MCPA, MCP), distributed in quantities larger than one gallon((; that are used)) in counties located east of the crest of the Cascade Mountains.

(c) Low volatile ester formulations of dicamba and phenoxy hormone-type herbicides (e.g., 2,4-D, MCPA, MCP) distributed in quantities of one gallon or larger in counties located east of the crest of the Cascade Mountains.

(d) Strychnine and its salts.

~~((d))~~ (e) Aquatic pesticides. All pesticides formulations labeled for application onto or into water to control pests on or in water except as provided in subsection (2) of this section.

~~((e))~~ (f) Pesticides containing the following active ingredients and their isomers are hereby declared state restricted use pesticides for the protection of groundwater.

atrazine
bromacil

dcpa
disulfoton
diuron
hexazinone
metolachlor
metribuzin
picloram
prometon
simazine
tebuthiuron

(2) Pesticides which are not classified as EPA restricted use pesticides and which are labeled and intended only for the following uses shall be exempt from the requirements of this section:

- (a) Swimming pools
- (b) Wholly impounded ornamental pools or fountains
- (c) Aquariums
- (d) Closed plumbing and sewage systems
- (e) Enclosed food processing systems
- (f) Air conditioners, humidifiers, and cooling towers
- (g) Industrial heat exchange, air washing and similar industrial systems
- (h) Disinfectants
- (i) Aquatic environments in states other than Washington
- (j) Animal pets
- (k) Use within wholly enclosed structures (with floors) or fumigation chambers.

Greenhouses are not considered as wholly enclosed structures for the purposes of this section

~~((1))~~ (i) Home and garden control of mosquito larvae.

~~((2))~~ (ii) Products listed in subsection (1)~~((e))~~(f) of this section ~~((and dry formulations of 2, 4-D))~~ which are labeled and intended only for Home & Garden use are exempt from the requirements of this section.

~~((4))~~ (iii) Dry formulations of dicamba, 2,4-D, MCPA, MCPP and other phenoxy hormone-type herbicides labeled and intended only for home and garden use or turf, are exempt from the requirements of this section.

(iv) Distribution of pesticides bearing combined labeling of uses onto or into water plus ~~((non-aquatic))~~ nonaquatic general uses, may be made by licensed pesticide dealers to noncertified applicators if the dealer indicates on the sales slip or invoice that the purchaser of the pesticide agrees that it will not be applied into or onto water. If requested by the department, dealers shall furnish records on the sales of pesticides labeled for application onto or into water, whether sold for that use or not. Records shall include the name and address of the purchaser, the complete product name and/or EPA registration number of the pesticide and the amount purchased. Records shall be kept for seven years from the date of distribution.

~~((5)) Licensed pesticide dealers shall keep records of distribution of state restricted use pesticides for a period of seven years from the date of distribution. Records shall be furnished to the director immediately upon request. The records shall contain the following information:~~

- (a) Name and address of certified applicator;
- (b) Name of authorized agent (if applicable);
- (c) Product name and EPA registration number;

~~(d) Quantity in pounds or gallons of the pesticide distributed;~~

~~(e) Date of distribution;~~

~~(f) Certified applicator's license number;~~

~~(g) Crop or site to which the pesticide will be applied.~~

~~(6))~~ (v) Certified applicators may designate authorized agent(s) for the purpose of purchasing or receiving restricted use pesticides by making previous arrangements with the pesticide dealer, or the authorized agent may provide written authorization by the certified applicator to the dealer at the time of purchase. At the time of purchase by an authorized agent the pesticide dealer shall require the certified applicator's name and license number and positive identification of the authorized agent.

(vi) Pesticide dealers must positively identify purchasers of restricted use pesticides. Positive identification may be annually at the time of verification of the certified applicator's license number or for each individual purchase if the applicator is unknown to the dealer. Dealers must verify the identification of the purchaser of restricted use pesticides for telephone or electronic purchases either by fax (photo identification) or at the time of delivery.

NEW SECTION

WAC 16-228-1238 What are the restrictions on application of ziram to Bosc pears? All dry formulations (such as wettable powders or water dispersible granules) of ziram labeled for use on pears are hereby declared state restricted use pesticides because of dermal effects to persons exposed while working in Bosc pear orchards.

(1) Growers shall observe the Environmental Protection Agency restricted entry interval label requirements following any treatment with dry wettable formulations of ziram before entering or allowing persons to enter pear orchards without personal protective clothing.

(2) Any entry during the restricted entry interval shall follow chapter 16-233 WAC, Worker protection standards, regarding handler, farm worker safety, and early-entry handler requirements.

(3) Growers shall observe an additional fourteen days after an application before entering or allowing workers to enter Bosc pear orchards without personal protective clothing as defined below.

(4) For the purposes of this section, minimum personal protective clothing shall consist of: A long-sleeved shirt; long-legged pants; socks; and chemical resistant gloves.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1250 What are the restrictions on phenoxy herbicides ~~((restrictions))~~? (1) The distribution, use and application of all high volatile ester and dust formulations of phenoxy herbicides shall be prohibited throughout the state.

(2) In the areas under order, pesticide dealers shall make available to the purchaser a copy of the rules pertaining to the use of dicamba and/or phenoxy hormone-type herbicides, including 2,4-D and MCPA, in the area in which the material will be applied.

PROPOSED

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1260 What are the restrictions on the distribution of tributyltin(†) products? (1) The distribution for use in Washington state of paint, stain, paint additives, or similar products containing any chemical form of tributyltin for use in interiors of inhabited structures (i.e., residences, office buildings, institutions, recreational vehicles, and retail stores) shall be prohibited: Provided(†) that this section shall not apply to specialty products, such as tile grout additives or cooling tower biocides.

(2) No tributyltin-containing paint, stain, paint additives, or similar products as specified in subsection (1) of this section may be registered for distribution unless its label clearly indicates that it shall not be used on interior surfaces of inhabited structures or that it shall be used on exterior surfaces only.

AMENDATORY SECTION (Amending WSR 00-22-073, filed 10/30/00, effective 11/30/00)

WAC 16-228-1270 What are the restrictions on the use of pesticides on small seeded vegetable seed crops (and), seed alfalfa(†) and seed clover? (1) For purposes of pesticide registration, the following crops, when grown to produce seed specifically for crop reproduction purposes, are considered nonfood and nonfeed sites of pesticide use:

Common Name	Synonyms
alfalfa	
arugula	Mediterranean salad, rucola, roquette, Ghargir
beet	<u>garden and sugar</u>
<u>broccoli</u>	
broccoli raab	Rapani, Choy Sum, Chinese flowering cabbage
Brussels sprouts	
cabbage	
carrot	
cauliflower	
<u>Chinese cabbage (Bok Choy)</u>	<u>Pak Choi (Choy), Bok Choi (Choy), Taisai, celery mustard, spoon cabbage</u>
Chinese cabbage (<u>napa</u>)	Pe-tsai
Chinese ((kale) <u>broccoli</u>)	Chinese ((broccoli) <u>kale, Gailon</u>)
((Chinese mustard)	<u>Pak Choi (Choy), Bok Choi (Choy) Taisai, celery mustard, spoon cabbage</u>)
clover	
collard	
coriander	cilantro
dill	
endive	<u>escarole</u>
kale	bore kale

Common Name	Synonyms
kohlrabi	
leek	
lettuce	
<u>mizuna</u>	
mustard (<u>including Chinese and Indian</u>)	
onion (bulb)	
onion (bunching)	
parsley	
parsnip	
radish (other than daikon)	
rape	
rutabaga	
spinach	
spinach mustard	
swiss chard	spinach beet
turnip	

(2) For the seed crops listed in subsection (1) of this section, the following conditions shall be met:

(a) All seed screenings shall be disposed of in such a way that they cannot be distributed or used for human food or animal feed. The seed conditioner shall keep records of screening disposal for three years from the date of disposal and shall furnish the records to the director ((~~forthwith~~) immediately upon request. Conditioner disposal records shall consist of documentation ((~~from~~) of on-farm disposal, disposal at a controlled dump site, incinerator, composter, or other equivalent disposal site and shall ((~~show~~) include the lot numbers, amount of material disposed of, ((~~its~~) the grower(s), and the date of disposal.

(b) No portion of the seed plant, including but not limited to green chop, hay, pellets, meal, whole seed, cracked seed, roots, bulbs, leaves and seed screenings may be used or distributed for food or feed purposes.

(c) All seed from the crops listed in subsection (1) of this section grown or conditioned in this state shall bear a tag or container label which forbids use of the seed for human consumption or animal feed.

(d) No seed from the crops listed in subsection (1) of this section grown or conditioned in this state may be distributed for human consumption or animal feed.

(3) Violation of any condition listed in subsection (2) of this section is declared to be a violation of chapters 17.21 and 15.58 RCW.

(4) Any seed crop certified under provisions of RCW 15.86.070, the Organic Food Products Act, shall be exempt from the requirements of this section.

AMENDATORY SECTION (Amending WSR 00-22-074, filed 10/30/00, effective 11/30/00)

WAC 16-228-1300 ((~~Distribution records~~) What are the recordkeeping requirements for pesticide dealers? (1) Pesticide dealers shall keep and furnish records to

PROPOSED

the director immediately upon request on the distribution of any pesticide except those labeled only for home and garden. ~~((These))~~ Records shall be kept for a period of seven years from the date of distribution. General use distribution requests shall be limited to records necessary for investigations of suspected violations, damage complaints, inspections, monitoring distribution and use under provisions of special local needs registrations, emergency exemptions from federal registration and experimental use permits, and monitoring of any pesticide suspected of unreasonable adverse effects on the environment. The records shall contain the following information:

- (a) Full name and address of purchaser;
- (b) Full name and address of certified applicator (if different from (a) above ~~((if applicable))~~ for restricted use pesticides);
- (c) Certified applicator's pesticide license number (for restricted use pesticides);
- ~~((d))~~ (d) Full name of authorized agent ~~((if applicable))~~ for restricted use pesticides;
- ~~((e))~~ (e) Brand and specific pesticide name and ~~((EPA))~~ EPA registration number;
- ~~((f))~~ (f) Number of pounds or gallons of the pesticide distributed;
- ~~((g))~~ (g) Date of distribution;
- ~~((g))~~ ~~Certified applicator number (if applicable);~~
- (h) Crop and/or site to which pesticide will be applied ~~((if known))~~ mandatory for restricted use pesticides, if known for general use pesticides.

AMENDATORY SECTION (Amending WSR 00-22-074, filed 10/30/00, effective 11/30/00)

WAC 16-228-1320 ((Applicator requirements))
What are the recordkeeping requirements for pesticide applicators? (1) Certified applicators and all persons applying pesticides to more than one acre of agricultural land in a calendar year including public entities engaged in roadside spraying, and all persons making landscape applications of pesticides to types of property listed in RCW 17.21.410 (1), (b), (c), (d) and (e) shall keep records for each application which shall include the following:

- (a) The full name and full address of the person for whom the pesticide was applied.
- (b) The address or exact location of the land where the pesticide was applied. If the application is made to one acre or more of agricultural land, the field must be located on the map on the adopted form. Location of agricultural land shall be made using section, township and range, geographical positioning system coordinates, or by irrigation block and farm unit numbers.
- (c) The year, month, day and start and stop time the pesticide was applied.
- (d) The product name used on the registered label and the United States Environmental Protection Agency registration number, if applicable, of the pesticide which was applied.
- (e) The direction from which the wind is blowing and estimated velocity of the wind in miles per hour (mph) and the temperature in degrees Fahrenheit at the time the pesti-

cide was applied: ~~Provided((;)) that this subsection (e) shall not apply to applications of baits in bait stations ((and)), pesticide applications within structures and drip or subsurface irrigation applications. Wind and temperature readings shall be obtained in close proximity to the application site.~~

(f) The total amount of pesticide applied such as pounds, gallons, ounces, etc.

(g) The amount of pesticide applied per acre or one thousand square feet or other appropriate measure.

(i) For PCO classification or residential ornamental applications, the amount shall be recorded to the nearest ounce of product or to the nearest gallon of liquid spray per site.

(ii) Fumigation records shall include the pounds of gas released per one thousand cubic feet of space, the temperature, and the duration of the exposure period.

(h) The concentration of pesticide that was applied. Liquid applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., 1%). For chemigation applications record "inches of water applied" or other appropriate measure. ((Examples include, but are not limited to, the amount of formulation per one hundred gallons of water, percent formulation in the tank mix (i.e.) 1%, or gallons per acre of output volume.))

(i) The pests to be controlled (for PCO classification only).

(j) Specific crop or site to which pesticide was applied.

(k) Apparatus license plate number.

(l) The licensed applicator's full name, certified pesticide applicator license number, complete address, telephone number, and the full name and license number(s) if applicable of the individual or individuals making the application.

(m) The number of acres or other appropriate measure to which the pesticide was applied.

(2) Application records shall be completed and available to the department the same day the pesticides were applied.

(3) Application records shall be kept for a period of seven years from the date of the application of the pesticide to which such records refer. The director shall, upon request in writing, be furnished with a copy of such records ~~((forthwith))~~ immediately by the licensee.

(4) Upon written request, the applicator shall provide the customer with a record of each application of pesticides to his/her land, for the current season, which shall contain the information listed in WAC 16-228-1320(1).

(5) Except as stated in subsection (6) of this section, the information required in subsection (1) of this section shall be provided upon request on the appropriate page of the pesticide record form (figures 1-8): ~~Provided((;)) that computerized records may be maintained as long as the records can be produced in the form and format prescribed by the department.~~

(6) The department may allow by written permit the information required in subsection (1) of this section to be kept in a different form and format than that described in figures 1-8: ~~Provided((;)) that the following criteria are met:~~

(a) The pesticide application ~~((record-keeping))~~ record-keeping system is computerized;

PROPOSED

(b) The pesticide application ((~~record-keeping~~) record-keeping system contains all the information required by subsection (1) of this section, and can be produced in a form and format acceptable to the department.

(7) All apparatus shall be kept in good repair and only that apparatus capable of performing all functions necessary to ensure proper and thorough application of pesticides shall be used. Apparatus shall be cleaned so that no residue remains which may cause injury to land, ((~~including~~) humans, desirable plants and animals, from subsequent applications.

(8) On demand of the director, the applicator shall make immediately available for inspection the pesticides being

applied and the apparatus used for the application: Provided((;)) that this inspection is made at the site of application or where the apparatus is located.

(9) The applicator shall make available necessary safety equipment in proper working order and advise employees on its use to meet the safety requirements of the pesticide label.

(10) Maintain a uniform mixture at all times in operating apparatus when applying pesticides.

(11) All containers used for prepared mixtures, other than those in an apparatus, shall have a label identifying the contents as a pesticide, the active ingredient, and appropriate cautions.

((~~State of Washington~~
Department of Agriculture
Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 1)

NOTE: ~~This form must be completed same day as the application and it must be retained for 7 years (Ref. chapter 17.21 RCW)~~

1. Date of Application - Year: Month: Day: Time:

2. Name of person for whom the pesticide was applied:

Firm Name (if applicable):

Street Address: City: State: Zip:

3. Licensed Applicator's Name (if different from #2 above): License No.:

Firm Name (if applicable): Tel No.:

Street Address: City: State: Zip:

4. Name of person(s) who applied the pesticide (if different from #3 above):

License No(s) - If applicable:

5. Application Crop or Site:

6. Total Area Treated (acre, sq. ft., etc.):

7. Was this application made as a result of a WSDA Permit? No Yes (If yes, give Permit No.) #

8. Pesticide Information (please list all information for each pesticide in the tank mix):

a) Product Name	b) EPA Reg. No.	e) Total Amount of Pesticide Applied in Area Treated	d) Pesticide Applied/Acre (or other measure)	e) Concentration Applied
			t	
			t	
			t	
			t	
			t	

9. Address or exact location of application. NOTE: If the application is made to one acre or more of agricultural land, the field location must be shown on the map on page two of this form.

10. Wind direction and estimated velocity during the application:

11. Temperature during the application:

12. Apparatus license plate number (if applicable):

13. Air Ground Chemigation

14. Miscellaneous Information:

AGR 4226 (Rev. 4/00)

Location of Application: If the application covers more than one township or range, please indicate the township & range for the top left section of the map only:

Township:

N

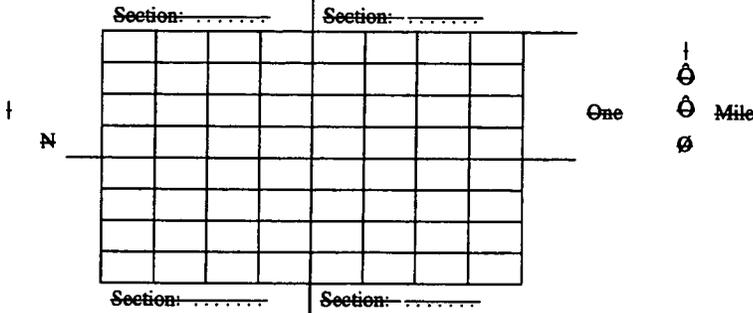
Range: E OR W (please indicate):

Section(s):

County:

PLEASE NOTE:

The map is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.



Miscellaneous Information:

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State of Washington
Department of Agriculture
Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 2)

NOTE: Application information must be completed same day as the application and must be retained for seven years (Ref. chapter 17.21 RCW)

1. Name & Address of Person for Whom Pesticide was Applied _____ _____ _____ _____	2. Applicator Name and Address (if different from # 1) _____ _____ _____ _____ Tel. No. _____ Lic. No. _____
3. Address or exact location of application (NOTE: If the application is made to one acre or more of agricultural land, the field location must be shown on the map on page two of this form)	
4. Misc. Info: _____	

5. Date and Time of Application	6. Crop or Site Treated	7. Acres Treated (or other measure)	8. PRODUCT NAME	9. EPA Registration Number	10. Amount of Product Applied		11. Concentration	12. Weather Conditions, Apparatus License Plate No. and Name and License No. of person(s) who applied pesticide
					Rate per acre (or other measure)	Total Product Applied		
	<input type="checkbox"/> Air <input type="checkbox"/> Ground <input type="checkbox"/> Chemigation							
	<input type="checkbox"/> Air <input type="checkbox"/> Ground <input type="checkbox"/> Chemigation							
	<input type="checkbox"/> Air <input type="checkbox"/> Ground <input type="checkbox"/> Chemigation							

PROPOSED

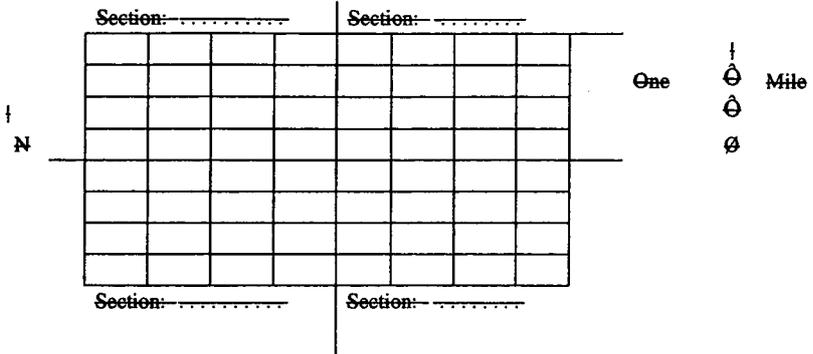
	<input type="checkbox"/> Air <input type="checkbox"/> Ground <input type="checkbox"/> Chemigation						
--	---	--	--	--	--	--	--

AGR 4236 (Rev. 4/00)

PROPOSED

Location of Application (If the application covers more than one township or range, please indicate the township & range for the top left section of the map only:

Township: _____ N
 Range: E OR W (please indicate) ..
 Section(s): ..
 County: ..



PLEASE NOTE:

The map is divided into 4 sections with each section divided into quarter quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.

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State of Washington
 Department of Agriculture
 Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 3)

NOTE: This form must be completed same day as the application and it must be retained for 7 years (Ref. chapter 17.21 RCW)

1. Date of Application Year: _____ Month: _____ Day(s): _____
2. Name of person for whom the pesticide was applied: _____
 Firm Name (if applicable): _____
 Street Address: _____ City: _____ State: _____ Zip: _____
3. Licensed Applicator's Name (if different from #2 above): _____ License No.: _____
 Firm Name (if applicable): _____ Tel. No.: _____
 Street Address: _____ City: _____ State: _____ Zip: _____
4. Air Ground Chemigation
5. Application Crop or Site: _____
6. Total Area Treated (acre, sq. ft., etc.) _____
7. Was this application made as a result of a WSDA Permit? No Yes (If yes, give Permit No.) # _____
8. Pesticide Information (please list all information for each pesticide in the tank mix):

a) Product Name	b) EPA Reg. No.	c) Total Amount of Pesticide Applied in Area Treated	d) Pesticide Applied/Acre (or other measure)	e) Concentration Applied
			†	
			†	
			†	
			†	
			†	

9. Address or exact location of application. NOTE: If the application is made to one acre or more of agricultural land, the field location must be shown on the map on page two of this form.

Street Address: _____ City: _____ State: _____ Zip: _____

C. Name of person(s) who applied the pesticide: _____

License No(s): _____

D. Pesticide Information (please list all information for each pesticide in the tank mix):

Concentration
Amount: (Lbs., Qts., etc.) of brand per 100 gallons
of tank mix. Amount and unit must be specified.

Product Name

EPA Reg. No.

Product Name	EPA Reg. No.	Concentration Amount: (Lbs., Qts., etc.) of brand per 100 gallons of tank mix. Amount and unit must be specified.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. Application crop or site: _____

F. Apparatus License Plate No. _____

G. Record the following information for the specific conditions during each application:

	CUSTOMER a) full name (b) location of application — street address	AMOUNT APPLIED (gals. of mix)	AREA TREATED (sq. ft., etc.)	TIME	TEMP F*	WIND
						DIR VEL (mph)
1-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____
2-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____
3-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____
4-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____
5-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____
6-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____
7-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____
8-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____
9-a)	_____	_____	_____	_____	_____	_____
b)	_____	_____	_____	_____	_____	_____

AGR 4234 (Rev. 4/00)

DAILY PESTICIDE APPLICATION RECORD (Version 5)

For Commercial Pest Control Operators Only

NOTE: This form must be completed same day as the application and retained for seven years (Ref. chapter 17.21 RCW)

A. firm name and address: _____

telephone number: _____

B. applicator name: _____

license no. _____

C. person making application: _____

license no. _____

D. date: _____

E. apparatus license no: _____

customer (a) full name (b) location of application (c) target pest	(a) epa reg. no. product name(s) (b) concentration (c) total amount used	(a) time (in/out) (b) temp. (c) wind dir./ VELOCITY	application site (e&e, spot, void, injec- tions, etc.	pesticide APPLIED/ACRE OR OTHER MEASURE
1-a)	_____	_____	_____	_____
b)	_____	_____	_____	_____
c)	_____	_____	_____	_____
2-a)	_____	_____	_____	_____
b)	_____	_____	_____	_____
c)	_____	_____	_____	_____

PROPOSED

PROPOSED

3-a) _____ t
 b) _____ t
 c) _____ t

4-a) _____ t
 b) _____ t
 c) _____ t

5-a) _____ t
 b) _____ t
 c) _____ t

6-a) _____ t
 b) _____ t
 c) _____ t

7-a) _____ t
 b) _____ t
 c) _____ t

AGR 4237 (Rev. 4/00) OPTIONAL: MILEAGE START mileage end))

State of Washington
Department of Agriculture
Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 1)

NOTE: This form must be completed same day as the application and it must be retained for 7 years (Ref. chapter 17.21 RCW)

- Date of Application - Year: _____ Month: _____ Day: _____ Start Time: _____
 Stop Time: _____
- Name of person for whom the pesticide was applied: _____
 Firm Name (if applicable): _____
 Street Address: _____ City: _____ State: _____ Zip: _____
- Licensed Applicator's Name (if different from #2 above): _____ License No.: _____
 Firm Name (if applicable): _____ Tel No.: _____
 Street Address: _____ City: _____ State: _____ Zip: _____
- Name of person(s) who applied the pesticide (if different from #3 above): _____
 License No(s). If applicable: _____
- Application Crop or Site: _____
- Total Area Treated (acre, sq. ft., etc.): _____
- Was this application made as a result of a WSDA Permit? No Yes (If yes, give Permit No.) # _____
- Pesticide Information (please list all information for each pesticide, including adjuvants (buffer, surfactant, etc.), in the tank mix):

a) Full Product Name	b) EPA Reg. No.	c) Total Amount of Pesticide Applied in Area Treated	d) Pesticide Applied/Acre (or other measure)	e) Concentration Applied
			L	
			L	
			L	
			L	
			L	

- Address or exact location of application. NOTE: If the application is made to one acre or more of agricultural land, the field location must be shown on the map on page two of this form.
- Wind direction and estimated velocity (mph) during the application: _____
- Temperature during the application: _____
- Apparatus license plate number (if applicable): _____
- Air Ground Chemigation
- Miscellaneous Information: _____

AGR 4226 (Rev. 5/03)

PROPOSED

Location of Application: If the application covers more than one township or range, please indicate the township & range for the top left section of the map only:

Township: N

Range: E OR W (please indicate:)

Section(s):

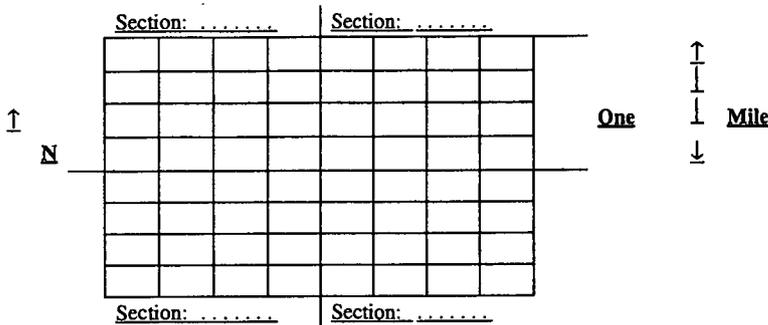
Block: Farm Unit:

or GPS:

County:

PLEASE NOTE:

The map is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.



Miscellaneous Information:

INSTRUCTIONS

Pesticide Application Record (Version 1) AGR 4226 (Rev. 5/03)

1. Date may be spelled out or indicated numerically. Time must be indicated as start and stop times.
2. Include first and last name.
3. If the person's name is the same as No. 2, write "same" in the space for the licensed applicator's name and include the license number (if applicable) and telephone number.
4. Include first and last name(s).
5. Indicate type of land or site treated, not location. Examples: Wheat, apples, rights of way, lawn, trees and shrubs, crawl space, wall voids, etc.
6. May also be stated in terms such as linear feet, cubic feet, etc. (Specify the term to which the number refers.) If spot treatment, write spot treatment.
7. If the application was made under permit, but no permit number was issued, indicate the date the permit was issued.
- 8.a) Brand name found on the pesticide label including adjuvants (buffer, surfactant, dye, etc.).

INSTRUCTIONS

- b) This number is found on the pesticide container label. If the material is being applied under a federal experimental use permit and no EPA Reg. No. exists, list the federal experimental use permit number. If the material is a spray adjuvant (buffer, spreader, sticker, etc.) write "adjuvant" in this space.
- c) Indicate the amount of pesticide formulation (product) applied to the total area listed on line 6.
- d) Other measures may include amount/sq. ft., amount/cu. ft., amount/linear ft., etc.
- e) This may be listed in various ways, such as: Amount of product/100 gallons water, percent formulation in the tank mix (i.e., 1%), gallons per acre of output volume, ppm (or other measure), or inches of water applied (chemigation). Specify the term to which the number refers.
9. Agricultural land includes such areas as forest lands and range lands. It does not include transportation and utility rights of way.

INSTRUCTIONS

INSTRUCTIONS

10. Indicate the direction from which the wind is blowing. Measure wind velocity in mph. If the wind varies in direction and velocity during the application, indicate the range of variance (i.e., S-SW 3-7 mph). Wind readings shall be obtained in close proximity to the application site.

13. Check one.

14. Depth of application/inches of water (chemigation).

15. This space is available for any additional information you may wish to include.

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11. Indicate temperature in degrees Fahrenheit. (It may be indicated as the range encountered during application.) Temperature readings shall be obtained in close proximity to the application site.

12. This does not apply to private applicators or public agencies.

State of Washington
Department of Agriculture
Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 2)

NOTE: Application information must be completed same day as the application and must be retained for seven years (Ref. chapter 17.21 RCW)

PROPOSED

1. Name & Address of Person for Whom Pesticide was Applied

2. Applicator Name and Address (if different from # 1)
Tel. No. Lic. No.

3. Full, complete address or exact location of application (NOTE: If the application is made to one acre or more of agricultural land, the field location must be shown on the map on page two of this form)

4. Misc. Info:

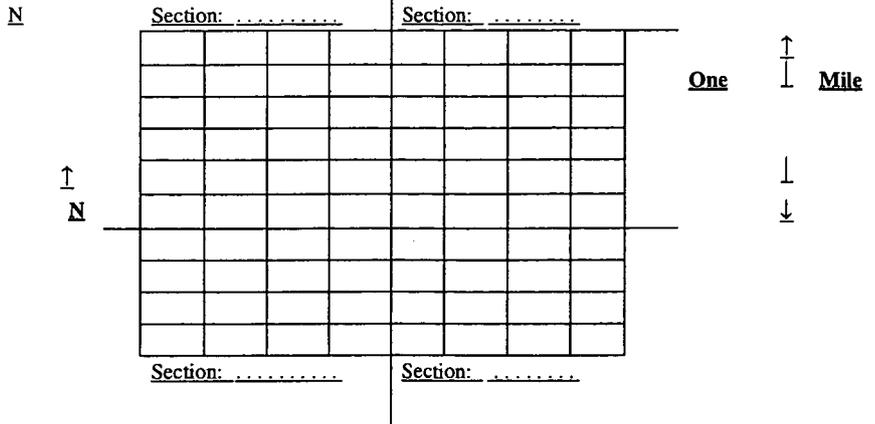
Table with 8 columns: 5. Date and Time of Application, 6. Crop or Site Treated, 7. Acres Treated, 8. FULL PRODUCT NAME, 9. EPA Registration Number, 10. Amount of Product Applied, 11. Concentration, 12. Weather Conditions. Includes checkboxes for Air, Ground, and Chemigation.

AGR 4235 (Rev. 5/03)

Location of Application (If the application covers more than one township or range, please indicate the township & range for the top left section of the map only)

PROPOSED

Township:
 Range: E OR W (please indicate) ..
 Section(s):
 Block: Farm Unit:
 or GPS:
 County:



PLEASE NOTE:

The map is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.

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INSTRUCTIONS

Pesticide Application Record (Version 2) AGR 4235 (Rev. 5/03)

1. Include first and last name.
2. If the person's name is the same as No. 1, write "same" in the space for the licensed applicator's name and include the license number (if applicable) and telephone number.
3. Agricultural land includes such areas as forest lands and range lands. It does not include transportation and utility rights of way.
4. This space is available for any additional information you may wish to include.
5. Date may be spelled out or indicated numerically. Application start and stop times must be indicated.
6. Indicate type of land or site treated, not location. Examples: Wheat, apples, rights of way, lawn, trees and shrubs, crawl space, wall voids, etc.
7. May also be stated in terms such as linear feet, cubic feet, etc. (Specify the term to which the number refers.) If spot treatment, write spot treatment.
8. Brand name found on the pesticide label including adjuvants (buffer, surfactant, etc.).
9. This number is found on the pesticide container label. If the material is being applied under a federal experimental use permit and no EPA Reg. No. exists, list the federal experimental use permit number. If the material is a spray adjuvant (buffer, spreader, sticker, etc.) write "adjuvant" in this space.

INSTRUCTIONS

10. Rate per acre: Other measures may include amount/sq. ft., amount/linear ft., etc. Specify the term to which the number refers. Total product applied is the total product applied between start and stop times.
11. This may be listed in various ways, such as: Amount of product/100 gallons water, percent formulation in the tank mix (i.e., 1%), gallons per acre of output volume, ppm (or other measure), or inches of water applied (chemigation). Specify the term to which the number refers.
12. Weather conditions must include the direction from which the wind is blowing, measure velocity in mph. If the wind varies in direction and velocity during the application, indicate the range of variance (i.e., S-SW 3-7 mph). Temperature must also be indicated in degrees Fahrenheit and may be listed as the range encountered during the application. Wind and temperature readings shall be obtained in close proximity to the application site. The apparatus license plate number does not apply to private applicators or public agencies. Include first and last name(s) of person(s) who applied the pesticide. Include license number(s) if applicable.

State of Washington
 Department of Agriculture
 Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 3)

NOTE: This form must be completed same day as the application and it must be retained for 7 years (Ref. chapter 17.21 RCW)

PROPOSED

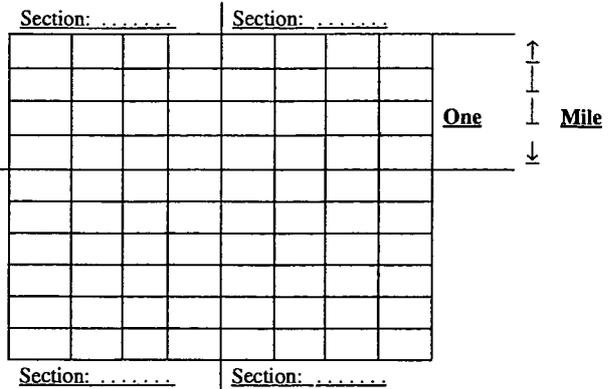
Location of Application (If the application covers more than one township or range, please indicate the township & range for the top left section of the map only.

Township:
Range: E OR W (please indicate):
Section(s):
Block: Farm Unit:
or GPS:
County:

N

↑

N



PLEASE NOTE:

The map is divided into 4 sections with each section divided into quarter-quarter sections. Please complete it by marking the appropriate section number(s) on the map and indicate as accurately as possible the location of the area treated.

Miscellaneous Information:

AGR 4236 Pg. 2

INSTRUCTIONS

Pesticide Application Record (Version 3) AGR 4236 (Rev. 5/03)

1. Date may be spelled out or indicated numerically.
2. Include first and last name.
3. If the person's name is the same as No. 2, write "same" in the space for the licensed applicator's name and include the license number (if applicable) and telephone number.
4. Check one.
5. Indicate type of land or site treated, not location. Examples: Wheat, apples, rights of way, lawn, trees and shrubs, crawl space, wall voids, etc.
6. May also be stated in terms such as linear feet or cubic feet. (Specify the term to which the number refers.) If spot treatment, write spot treatment.
7. If the application was made under permit, but no permit number was issued, indicate the date the permit was issued.
- 8.a) Brand name found on the pesticide label including adjuvants (buffer, surfactant, dye, etc.).
b) This number is found on the pesticide container label. If the material is being applied under a federal experimental use permit and no EPA Reg. No. exists, list the federal experimental use permit number. If the material is a spray adjuvant (buffer, spreader, sticker, etc.) write "adjuvant" in this space.
- c) Indicate the amount of pesticide formulation (product/adjuvant) applied to the total area listed on line 6.
- d) Other measures may include amount/sq. ft., amount/cu. ft., amount/linear ft., etc.

INSTRUCTIONS

- e) This may be listed in various ways, such as: Amount of product/100 gallons water, percent formulation in the tank mix (i.e., 1%), gallons per acre of output volume, ppm (or other measure), or inches of water applied (chemigation). Specify the term to which the number refers.
- f) Depth of application (chemigation).
9. Agricultural land includes such areas as forest lands and range lands. It does not include transportation and utility rights of way.
10. List the date of application.
11. Indicate first and last name(s).
12. List license number(s) if applicable.
13. This does not apply to private applicators or public agencies.
14. Application start and stop times must be indicated. Indicate a.m. or p.m.
15. The total of all entries in this column should equal the total listed on line 6.
16. Indicate the direction from which the wind is blowing. Measure wind velocity in mph. If the wind varies in direction and velocity during the application, indicate the range of variance (i.e., S-SW 3-7 mph). Wind readings shall be obtained in close proximity to the application site.
17. Indicate temperature in degrees Fahrenheit. (It may be indicated as the range encountered during the application.) Temperature readings shall be obtained in close proximity to the application site.

PROPOSED

State of Washington
Department of Agriculture
Olympia, Washington 98504

PESTICIDE APPLICATION RECORD (Version 4)

NOTE: This form must be completed same day as the application
and it must be retained for 7 years (Ref. chapter 17.21 RCW)

A. Date of Application - Year: Month: Day:

B. Firm Name: Telephone No.:

Commercial Applicator's Name: License No.:

Street Address: City: State: Zip:

C. Name of person(s) who applied the pesticide:

License No(s):

D. Pesticide Information (list all information for each pesticide including spray adjuvants (buffer, surfactant, dye, etc.) in the tank mix):

	<u>Concentration</u>
	Amount: (Lbs., Qts., etc.) of brand per 100 gallons of tank mix. Amount and unit must be specified.
<u>Full Product Name</u>	<u>EPA Reg. No.</u>

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. Application crop or site: F. Apparatus License Plate No.

G. Record the following information for the specific conditions during each application:

<u>CUSTOMER</u>	<u>AMOUNT APPLIED</u>	<u>AREA TREATED</u>	<u>START AND</u>	<u>TEMP</u>	<u>WIND</u>
(a) full name (b) complete address	(gals. of mix)	(sq. ft., etc.)	STOP TIME	F°	DIR VEL (mph)
1. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____
2. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____
3. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____
4. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____
5. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____
6. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____
7. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____
8. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____
9. a) _____	_____	_____	_____	_____	_____
b) _____	_____	_____	_____	_____	_____

AGR 4234 (Rev. 5/03)

INSTRUCTIONS

Pesticide Application Record (Version 4) AGR 4234 (Rev. 5/03)

This form may only be used for commercial residential ornamental and lawn applications. It may not be used to satisfy the application record requirements for agricultural employers.

A. Date may be spelled out or indicated numerically.

B. Include first and last name of the commercial applicator.

C. Include first and last name(s).

INSTRUCTIONS

D. Product name: Brand name found on the pesticide label including adjuvants (buffer, surfactant, dye, etc.).

E. Indicate type of land treated, not location. Examples: Rights of way, lawn, trees and shrubs, driveways, etc.

F. List the number of the license plate affixed to the apparatus.

G. Customer's name and application information should be listed on line A. Street address should be listed on line B, including city. Additional pages may be added for additional customers on the same day, so long as the information in A through F remains the same.

**DAILY PESTICIDE APPLICATION RECORD (Version 5)
For Commercial Pest Control Operators Only**

NOTE: This form must be completed same day as the application and retained for seven years (Ref. chapter 17.21 RCW)

PROPOSED

A. FIRM NAME AND ADDRESS: _____ TELEPHONE NUMBER: _____
 B. APPLICATOR NAME: _____ LICENSE NO. _____
 C. PERSON MAKING APPLICATION: _____ LICENSE NO. _____
 D. DATE: _____ E. APPARATUS LICENSE NO: _____

CUSTOMER (a) FULL NAME (b) FULL ADDRESS OR LOCATION OF APPLICATION (c) TARGET PEST	(a) EPA REG. NO./FULL PRODUCT NAME(S) (b) CONCENTRATION (c) TOTAL AMOUNT USED	(a) TIME (IN/OUT) (b) TEMP. (c) WIND DIR./ VELOCITY	APPLICATION SITE (C&C, SPOT, VOID, INJECTIONS, ETC.)	PESTICIDE APPLIED/ACRE OR OTHER MEASURE
1. a) _____	_____	_____	_____	L _____
b) _____	_____	_____	_____	L _____
c) _____	_____	_____	_____	L _____
2. a) _____	_____	_____	_____	L _____
b) _____	_____	_____	_____	L _____
c) _____	_____	_____	_____	L _____
3. a) _____	_____	_____	_____	L _____
b) _____	_____	_____	_____	L _____
c) _____	_____	_____	_____	L _____
4. a) _____	_____	_____	_____	L _____
b) _____	_____	_____	_____	L _____
c) _____	_____	_____	_____	L _____
5. a) _____	_____	_____	_____	L _____
b) _____	_____	_____	_____	L _____
c) _____	_____	_____	_____	L _____
6. a) _____	_____	_____	_____	L _____
b) _____	_____	_____	_____	L _____
c) _____	_____	_____	_____	L _____
7. a) _____	_____	_____	_____	L _____
b) _____	_____	_____	_____	L _____
c) _____	_____	_____	_____	L _____

AGR 4237 (Rev. 5/03) OPTIONAL: MILEAGE START MILEAGE END

Reviser's note: The spelling 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 00-22-074, filed 10/30/00, effective 11/30/00)

WAC 16-228-1322 What are the requirements for removal of landscape markers ((removal schedule)) and notification of restricted entry? (1) The marker shall remain in place for a minimum of twenty-four hours from the time the landscape application is originally posted as required by RCW 17.21.410.

(2) In the event the pesticide label requires a restricted entry interval greater than twenty-four hours, the certified applicator shall provide the property owner or tenant with the restricted entry interval times consistent with the label requirements. Markers shall remain in place consistent with the restricted entry interval times as required by the label.

(3) The property owner or tenant shall remove the marker of any landscape posted under the requirements of RCW 17.21.410 consistent with this schedule.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1330 ((Compliance with federal)) What are the pilot and aircraft requirements((s)) for pesticide applicators? (1) All pilots and aircraft, used for or engaged in the commercial application of pesticides shall comply fully with the appropriate rules and regulations of the Federal Aviation Administration.

(2) All applicants for an aerial applicators license shall comply with FAA certification requirements. The department may require a current copy of the FAA operating certificate prior to issuance of a license.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1370 What are the department requirements for a waste pesticide disposal((s)) program? Under authority of chapter 15.58 RCW, the department may

establish a waste pesticide disposal program for farmers, or other parties regulated under chapter 17.21 RCW or licensed under chapter 15.58 RCW.

(1) Upon review and determination that a pesticide is no longer useable, the department may declare a pesticide to be a "waste pesticide."

(2) The department may take possession of a waste pesticide with the owner's written consent for the purpose of disposal.

(3) For the purpose of waste pesticide disposal, the department may:

(a) Become identified as a hazardous waste generator;

(b) Enter into contracts or cooperative agreements to carry out portions of or all of the waste pesticide disposal program. The department may also enter into cooperative agreements to carry out portions of or all of the development of education programs relating to waste pesticide disposal and programs for dissemination of information concerning the department's disposal program.

(4) The department may accept pesticides whose active ingredients are not clearly identifiable for disposal. These pesticides may be analyzed by either the department or a private laboratory. If upon analysis the material is not a pesticide, not identified or not acceptable for disposal, it shall be returned to the owner and/or not accepted for disposal.

AMENDATORY SECTION (Amending WSR 00-22-073, filed 10/30/00, effective 11/30/00)

WAC 16-228-1380 Regulation of application of vertebrate control pesticides. Vertebrate control pesticides shall be used only under the following conditions:

(1) Vertebrate control pesticides shall be placed only in locations that are not readily accessible to nonpest animals, children, and unauthorized persons, and in a manner that shall preclude contamination of food, feed, drugs, and other consumer commodities. Exposure of rodenticides baits within buildings shall not be above floor levels.

(2) Baits shall be colored or otherwise formulated so that they will be identifiable from foods common to the establishment in which the bait is placed.

(3) When the use of bait boxes is necessary to ensure that baits are not readily accessible to nonpest animals, children, and unauthorized persons, the bait boxes shall be of sturdy construction and tamper resistant. Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper resistant bait boxes and such bait boxes shall be secured in such a way that nonpest animals, children and unauthorized persons cannot displace or remove the baits out of such bait boxes. Bait boxes shall be labeled clearly with letters on contrasting background showing the following information:

(a) Any information required by the EPA or Washington state registered label for the bait or the concentrate from which it was formulated.

(b) The name of the active ingredient(s).

(c) The name of the firm and/or certified applicator, address, and the telephone number.

(4) Containers used for exposing vertebrate control baits to pests shall be composed of tough, nonabsorbent, corrosion

resistant materials and designed so they cannot be readily overturned or carried off by pest animals. Those containers that are used for exposing vertebrate control pesticides outside of bait boxes shall bear a legible warning label with wording not less restrictive than requirements on bait boxes being used as per WAC 16-228-1380(3), (except for the size of lettering). Food containers, such as "meat boats" and "souffle cups" are unacceptable. Containers used for liquid bait exposure shall be water and/or liquid impervious.

(5) All vertebrate control pesticide stocks, when not in use or when unattended, shall be kept in locked storage or locked service vehicles.

(6) All containers used for storing or transporting vertebrate control pesticides shall bear an EPA or department registered label.

(7) ~~((Service men's))~~ Applicator's kits which contain vertebrate control pesticides shall be handled with extra caution and shall not be left where children or other unauthorized persons or nontarget animals might remove contents.

(8) Upon completion of a baiting operation, all bait boxes, containers, and/or throw bags, if they may become readily accessible to the public, shall be recovered for disposal in an approved manner.

(9) Wherever poisoned carcasses jeopardize public sanitation, or create a health hazard to wildlife, domestic animals, or the public, they shall be recovered and disposed of by burning, burying not less than three feet below the soil surface, or placed in proper waste containers and delivered to an approved disposal site.

~~((10) Thallium-containing compounds shall not be used for vertebrate control.))~~

GENERAL PESTICIDE ((REGULATIONS)) RULES—REGISTRATION

AMENDATORY SECTION (Amending WSR 00-22-074, filed 10/30/00, effective 11/30/00)

WAC 16-228-1400 What are the requirements for pesticide ((labeling requirements.)) labels? (1) In addition to the requirements set forth in (2) through (5) below, pesticide labeling shall meet the standards or criteria of FIFRA.

(2) Any pesticide exempted from registration under the provisions of section 18 of FIFRA must be labeled as follows:

(a) Pesticides distributed under section 18 of FIFRA must be accompanied by a label approved by the department prior to distribution. All conditions set forth in the document granting the emergency exemption and all other requirements determined to be necessary by the department must be included on the label.

(b) In situations where a label cannot be developed and approved prior to the intended use period, the department may allow the use of the document granting the emergency exemption in lieu of labeling. Conditions set forth as part of the granting document, and any attached or associated documentation from the department shall be considered labeling for purposes of enforcement.

(3) Labels for spray adjuvants must include the following:

(a) The product brand name.

(b) The type or function of principal functioning agents. Terms used to describe adjuvant functions must be consistent with American Society for Testing and Materials (ASTM) Standard E 1519, unless ASTM has not defined a term. In the absence of an ASTM definition, the department will determine the appropriate term(s). Functions claimed must be consistent with the principal functioning agents. If two or more functions are claimed, then the functions must be listed in descending order (starting with the primary function).

(c) An ingredient statement that shall include the following:

(i) "Principal functioning agents." The principal functioning agents must be listed by chemical name in descending order of composition with either individual or total percentage(s). If more than 3 functioning agents are present, only the 3 principal agents need to be listed;

(ii) The percentage of "Constituents ineffective as spray adjuvants," and

(iii) The total percentage of all ingredients which must equal 100%.

(d) Directions for use that must include a description of intended uses and recommended use rates.

(e) Precautionary statements adequate to protect people and the environment that shall include the following:

(i) The statement "Keep Out Of Reach Of Children."

(ii) A signal word (danger, warning or caution) and precautionary statements (including requirements for personal protective equipment, if applicable) consistent with product toxicity data; and

(iii) A statement prohibiting aquatic use, unless the registrant provides data to demonstrate that the proposed use will not cause unreasonable adverse effects to fish and aquatic invertebrates.

(f) An appropriate storage and disposal statement.

(g) The name and address of the registrant or manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, then the name must be qualified by appropriate wording such as "Packaged for" or "Distributed by."

(h) The weight or measure of the contents.

(i) In situations where the department deems it appropriate, the use of alternative language and/or statements may be allowed or required.

(j) Optional information: The spray adjuvant label may also include an exemption from tolerance statement (if applicable), an unsulfonated residue (UR) value (if applicable), the Washington registration number and a label identification code (such as the revision date).

(4) Special local need (SLN) labels issued under section 24c of FIFRA must include the following:

(a) A federal or state Restricted Use Pesticide (RUP) designation statement (when applicable).

(b) The statement "FOR DISTRIBUTION AND USE ONLY WITHIN THE STATE OF WASHINGTON."

(c) The product brand name.

(d) The EPA and SLN registration numbers of the product.

(e) The statement: "It is a violation of federal law to use this product in a manner inconsistent with its labeling."

(f) The statement: "This labeling must be in the possession of the user at the time of application."

(g) One of the following statements:

(i) For agricultural use SLN labels the statement: "Follow all applicable directions, restrictions, worker protection standard requirements, and precautions on the EPA registered label"; or

(ii) For nonagricultural use SLN labels the statement: "Follow all applicable directions, restrictions, and precautions on the EPA registered label."

(h) Directions for use that must include the following: crop or site to be treated, pest(s) to be controlled, application rate and concentration, method of application, frequency and timing of application, and pre-harvest interval.

(i) All restriction or precaution statements (e.g. pollinator protection, herbicide drift, aquatic toxicity, chemigation, seed crop requirements) applicable to the use.

(j) ~~(The statement)~~ An expiration date statement such as: "This label for (Product name) expires and must not be distributed or used in accordance with this SLN registration after December 31, (Fifth year)." Fifth year means the fifth year after issuance of the SLN label.

(k) The name and address of the SLN registrant.

(l) A label identification code (such as the revision date).

(m) Any other applicable information required by the EPA or the department.

(n) In situations where the department deems it appropriate, the use of alternative language and/or statements may be allowed or required.

(o) Optional information: The SLN label may also include a waiver of liability statement (if applicable). The waiver of liability statement must be consistent with EPA requirements.

(5) Labels for minimum risk pesticides exempted from federal registration under section 25(b) of FIFRA must include the following:

(a) The product brand name.

(b) The product function. The function(s) claimed must be consistent with product ingredients.

(c) An ingredient statement that shall include the following:

(i) "Active ingredients." These ingredients must be listed by name (in descending order of composition) with individual percentage(s). Only active ingredients listed in 40 CFR 152.25(g) are permitted;

(ii) "Inert ingredients" or "Other ingredients." These ingredients must be listed by name with the cumulative percentage of all inert ingredients stated on the label. Only inert ingredients on EPA Inerts List 4A (40 CFR 180.950) are permitted; and

(iii) The total percentage of all ingredients which must equal 100%.

(d) Directions for use that must include a description of intended uses and use rates. The label must not bear claims either to control or mitigate microorganisms that pose a threat to human health.

(e) Precautionary statements adequate to protect people and the environment that shall include the following:

(i) The statement "Keep Out Of Reach Of Children," and

(ii) A signal word (danger, warning or caution) and precautionary statements (including requirements for personal protective equipment, if applicable) consistent with product toxicity data.

(f) An appropriate storage and disposal statement.

(g) The name and address of the registrant or manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer, then the name must be qualified by appropriate wording such as "Packaged for" or "Distributed by."

(h) The weight or measure of the contents.

(i) In situations where the department deems it appropriate, the use of alternative language and/or statements may be allowed or required.

(j) Optional information: The minimum risk pesticide label may also include the Washington registration number and a label identification code (such as the revision date).

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1410 What pesticides are considered home and garden ((products—Definition:)) use only pesticides? For purposes of this section, "home and garden use only" means any pesticide determined by the department to be packaged and labeled solely for use by the general public in and around a residence. In making this determination, the department shall consider, but not be limited to, the following criteria:

- (a) Packaging;
- (b) Package size;
- (c) Label instructions;
- (d) Application method;
- (e) Equipment to be used;
- (f) Rates of application.

AMENDATORY SECTION (Amending WSR 00-22-074, filed 10/30/00, effective 11/30/00)

WAC 16-228-1420 What are the requirements for complete pesticide formula((+))? The complete pesticide formula shall include a listing of each active and inert ingredient and the percentage of each ingredient. This information will be kept confidential and is exempt from disclosure as a public record as provided by RCW 15.58.065 except for names of inert ingredients of pesticides exempt under section 25b of FIFRA which according to CFR 152.25 (g)(3)(i) must have this information on the label. Information required by this section may be submitted on company letterhead marked "confidential" in red ink on each sheet or each "EPA confidential statement of formula" information sheet.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1430 What is an adequate pesticide container((s))? Containers, i.e., packages, cartons, bags, cans, barrels, bins, etc., in which pesticides are sold, offered for sale, or transported within the state of Washington shall be of sufficient strength and of such construction as to alleviate danger of spillage or breakage. Pesticides found to be

packaged in unsafe containers shall be placed under "stop sale" order. Containers shall meet the minimum federal specifications.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1440 ~~((Artificial coloring.))~~ What pesticides must be artificially colored or have an odor added?

(1) No highly toxic pesticide in powdered or granular form or highly toxic pesticide baits having a label recommendation for use in any building, ship, or similar enclosure shall be sold within the state of Washington unless it is distinctly colored or discolored in such a way that it does not resemble any food.

(2) A pesticide in liquid form with colors resembling a beverage or liquid food, which does not have a distinctive odor, shall have an odorous substance added that is distinctly different from any beverage or liquid food.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1450 What are the requirements for pesticide-fertilizer registration and labeling((+))? (1) Each pesticide-fertilizer mix containing different pesticide active ingredients and/or percentages must be registered with the director: Provided((;)) that the fertilizer portion shall be considered an inert ingredient for the purpose of this order(~~((+ And provided further, That))~~). Such registrations may be to the nearest one-tenth of one percent by weight of all active ingredient/s, except for nitrification inhibitor-pesticide mixes as stated in (4) below.

(2) A specimen pesticide-fertilizer label shall be registered with the director before distribution or sale. These labels shall bear the following items:

(a) A pesticide ingredient statement identifying the active ingredient(s) and showing the percent by weight of each active ingredient;

(b) EPA registration number of each pesticide used to formulate the pesticide-fertilizer mix;

(c) Crop(s) on which the pesticide-fertilizer mix may be used and the amount of pesticide-fertilizer mix to be applied per acre;

(d) Timing of application (for instance, preplant) and the preharvest interval;

(e) Net weight of the shipment;

(f) Name and address of the registrant or manufacturer;

(g) Any other information required by the director.

(3) Labeling bearing all of the information specified in (2) above and a complete specimen label for each pesticide product used to formulate the pesticide-fertilizer mix shall accompany each pesticide-fertilizer mix shipment. All or portions of the information required in (2) above may occur on the invoice of a custom mix: Provided((;)) that an appropriate specimen invoice has been registered by the director as pesticide labeling.

(4) Pesticide-fertilizer mixes containing nitrification inhibitors or agents intended for nitrogen stabilization only, and no other pesticide active ingredients, may be registered without specifying the percentage of active ingredient. The

amount of active ingredient in the mix must be stated on the label that accompanies each shipment.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1455 What are the requirements on dry pesticide-fertilizer ((mix restrictions)) mixes? No person shall distribute, sell, offer for sale, or hold for sale any dry pesticide incorporated in a dry blended bulk fertilizer mix.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1460 What are the requirements for experimental use permits((s))? (1) Pesticides shall not be distributed or used for experimental purposes unless a written permit has been obtained from the director. All distribution and use of pesticides for experimental purposes shall be subject to restrictions and conditions described in the experimental use permit. Applications for experimental use permits shall be submitted on forms prescribed by the director.

(2) For individual experimental use permits that are product and site specific, the application shall include the following (when applicable):

(a) Name of the active ingredient and/or product name and/or EPA registration number of the product to be used;

(b) Person responsible for carrying out provisions of the experimental use permit and means of locating this person in case of emergency;

(c) Target pest(s);

(d) Crop or site and location(s) to which the pesticide is to be applied;

(e) Disposition of any treated food or feed and of subsequent crops from treated sites;

(f) Rate of application of formulation or active ingredient and number of applications;

(g) Timing and duration of the proposed program;

(h) Area (acres, sq. ft., etc.) to which the pesticide is to be applied;

(i) Total amount of pesticide to be applied;

(j) Federal experimental use permit number and text;

(k) Labeling to accompany the pesticide in the field;

(l) Any other information required by the director.

~~((2))~~ (3) An individual experimental use permit shall not be issued for use of a pesticide on a food or feed unless a tolerance greater than residues anticipated from the treatment or exemption from the requirement of a tolerance has been obtained from the Environmental Protection Agency, provisions for destruction of the treated food or feed and any crop residue have been made, or adequate demonstration has been made to the department that no detectable pesticide residue from the experimental program will be present in food or feed. The director may require evidence to substantiate any of the above.

~~((3))~~ (4) Collective experimental use permits may be issued by the director for experimental programs conducted on terrestrial sites by recognized research institutions, organizations, pesticide registrants, or persons licensed by the department to conduct demonstration and research activities

on land (~~owned or controlled by the institution~~) they own or control. For the purposes of this section, "control" means:

(a) The person responsible for carrying out the provisions of the experimental use permit owns or leases the land on which the pesticide is being applied; or

(b) The person responsible for carrying out the provisions of the experimental use permit has received documented permission from the landowner or manager to conduct such activities.

(5) An application for a collective experimental use permit shall include the following:

(a) The name, address and phone number of the person responsible for carrying out the provisions of the collective experimental use permit, and means of locating the person in case of emergency;

(b) A signed statement that:

(i) Use will not exceed one acre per active ingredient per year;

(ii) No applications will be made to aquatic sites (experimental applications to aquatic sites must be performed under an individual experimental use permit);

(iii) No applications will be made to residential sites (experimental applications to residential sites must be performed under an individual experimental use permit);

(iv) All treated food and feed crops will be destroyed after harvest unless a tolerance greater than the residues anticipated from the treatment or exemption from the requirement of a tolerance has been obtained from the Environmental Protection Agency. "Destroyed" means rendered unusable for food or feed or used for research purposes only;

(v) Any adverse environmental effects will be immediately reported to the department;

(vi) All applicable use directions and restrictions on the federal, state or experimental use pesticide label will be followed.

~~((4))~~ (6) The director may monitor the implementation of any experimental use permit. This may include collection of samples, inspection of premises, records and equipment, and any other related activities specified by the director. The conditions of any experimental use permit may require notification of a designated department office prior to application and/or presence of a departmental representative at the application. Experimental use permits shall be considered labeling for purposes of enforcement. Violations of these permits shall be considered use inconsistent with the label.

~~((5))~~ (7) Summaries of experimental results, date and method of disposal of treated food or feed crop (if applicable), and any adverse environmental effects resulting from the application shall be retained by the holder of the permit for three years and shall be submitted to the department upon request of the director.

~~((6))~~ (8) Pesticides intended for experimental use must be contained in secure containers, the labeling of which must present such precautions as are known to be necessary to protect the health of persons who may come in contact with the pesticide and to prevent unreasonable adverse effects on the environment. Any unused experimental use pesticide that does not have a registered use in the state must be returned to the manufacturer or disposed of properly. Individual experimental use permits shall be considered labeling for the pur-

poses of enforcement. Violations of these permits shall be considered use inconsistent with the label.

~~((7))~~ (9) The director may limit the amount of pesticide, acres or areas to be treated, licensing, or qualifications of persons exercising the permit, or any other condition of an experimental use permit. The director may deny, amend, suspend or revoke any experimental use permit if it is found to be in violation of applicable federal regulations, in violation of chapters 15.58 and 17.21 RCW or rules adopted thereunder, or if the director deems such action necessary to protect public health and the environment.

GENERAL PESTICIDE (~~(REGULATIONS)~~) RULES— LICENSING

AMENDATORY SECTION (Amending WSR 00-24-013, filed 11/27/00, effective 12/28/00)

WAC 16-228-1500 When can a pesticide license be denied, revoked or suspended~~((+))~~? (1) The director may deny, suspend, or revoke any provision of a license, registration, permit or certification issued under chapters 17.21 and 15.58 RCW if ~~((he finds))~~ it is found that the applicant or the holder of the license, permit, or certification has committed any of the following acts each of which is declared to be a violation:

- (a) Made false or fraudulent claims through any media misrepresenting the effect of materials or methods to be utilized;
- (b) Made a pesticide recommendation or gave advice or used a pesticide inconsistent with the labeling, the EPA or Washington state registration for that pesticide, an EPA or Washington state experimental use permit for that pesticide, an exemption from registration under provisions of section 18 of FIFRA, or in violation of the EPA or Washington state restrictions on the use of that pesticide;
- (c) Applied known ineffective or improper pesticides or materials;
- (d) Operated a faulty or unsafe apparatus;
- (e) Operated in a faulty, careless or negligent manner;
- (f) Refused or neglected to comply with the provisions of the applicable sections of chapters 15.58 and 17.21 RCW, the rules adopted thereunder, or of any lawful order of the director;
- (g) Refused or neglected to keep and maintain records required by chapters 15.58, 17.21 RCW, and rules adopted thereunder, or to make reports when and as required;
- (h) Made false or fraudulent records, invoices, reports, and/or recommendations;
- (i) Caused the application of a pesticide without having a licensed or certified applicator or operator in direct supervision as applicable;
- (j) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus as provided for in chapter 17.21 RCW or failed to locate the apparatus license plate on the apparatus in a manner required by the department;
- (k) Failed to properly display, when required, a department issued certified commercial ground applicator vehicle sticker;

(l) Used, or supervised the use of a pesticide which is restricted to use by certified applicators without having qualified as a certified applicator;

(m) Used fraud or misrepresentation in making an application for a license, permit, or certification or renewal of a license, permit or certification;

(n) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification;

(o) Aided or abetted a certified applicator, or licensed person or an uncertified or unlicensed person to evade the provisions of chapters 17.21 and 15.58 RCW, conspired with such a certified applicator or licensed person or an uncertified or unlicensed person to evade the provisions of chapters 17.21 and 15.58 RCW or allowed one's license, permit, or certification to be used by another person;

(p) Made false, misleading or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land or in connection with any pesticide complaint or department investigation;

(q) Impersonated any state, county, or city inspector or official;

(r) Is not qualified to perform as a pest control consultant or pesticide dealer manager or certified applicator in the classifications in which he/she is licensed to operate or has operated, regardless of whether or not he/she has previously passed an examination provided for in chapter 15.58 RCW;

(s) To have in his/her possession a department pesticide licensing examination or to remove or cause to remove any said examination or its contents from the department without expressed consent from the department;

(t) To violate the testing policies set forth by department representatives prior to the start of an examination session; or

(u) Made or failed to make an inspection, statement, or report in violation of WAC ~~((16-228-2000))~~ 16-228-2005 through ~~((16-228-2040))~~ 16-228-2060.

(2) A penalty fee assessed as a result of a late license or registration renewal does not prevent the department from taking additional regulatory action against the violator.

(3) No pesticide dealer or dealer manager license shall be denied, suspended, or revoked, simply because a pesticide purchased from that dealer was applied in violation of chapters 15.58, 17.21 RCW or rules adopted thereunder, unless the department finds the dealer or dealer manager in violation of chapters 15.58, 17.21 RCW or rules adopted thereunder.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1520 What are the requirements for the commercial applicator's financial responsibility insurance certificate~~((+))~~? (1) A commercial pesticide applicator's license shall not be issued until a properly executed financial responsibility insurance certificate is filed with the department which shall certify: (Forms to be supplied by the department).

(a) Name of insured (identical to name on application form)

(b) Address of insured

(c) Policy number

(d) Plane number(s) covered by the insurance (if applicable)

(e) Effective period

(f) Amount of insurance. Minimum requirements are:

(i) Public liability (personal injury) fifty thousand dollars; and property damage fifty thousand dollars; or

(ii) Alternately providing both public liability (personal injury), and property damage liability coverage within the same limit, providing such policy is issued in an amount of not less than one hundred thousand dollars.

(iii) Amount of deductible (if applicable): Maximum deductible, five thousand for all applicators.

(g) List of any pesticides or group of pesticides not covered by the policy.

(h) Acknowledgement of provisions for ten days' prior written notice of cancellation or reduction of the insurance coverage.

(2) The department may waive the requirements of this section, wholly or in part, if a properly executed surety bond in a form prescribed by the director is offered as evidence of financial responsibility, as provided for in RCW 17.21.160 and 17.21.170.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1530 What are the requirements for pesticide license~~((s—Renewal dates—))~~ renewals and penalties~~((r))~~? (1) ~~((The following))~~ Except for the pesticide dealer license required under RCW 15-58-180, all pesticide licenses shall expire on the December 31st following their issuance:

~~((a)) Commercial pesticide applicator licenses issued under the authority of RCW 17.21.070;~~

~~((b)) Commercial pesticide operator licenses issued under the authority of RCW 17.21.110;~~

~~((c)) Private applicator licenses issued under the authority of RCW 17.21.126;~~

~~((d)) Public operator licenses issued under the authority of RCW 17.21.220.~~

~~((e)) Private commercial applicator licenses issued under the authority of RCW 17.21.122;~~

~~((f)) Pesticide dealer manager licenses issued under the authority of RCW 15.58.200;~~

~~((g)) Demonstration and research licenses issued under the authority of RCW 17.21.129.~~

~~((2)) The following pesticide licenses shall expire on the final day of February of each year:~~

~~((a)) Pest control consultant licenses issued under the authority of RCW 15.58.210;~~

~~((b)) Public pest control consultant licenses issued under the authority of RCW 15.58.220.~~

~~((3))~~ (2) Pesticide renewal applications for licenses issued under the authority of chapter 17.21 RCW shall be filed on or before January 1st of the appropriate year.

~~((4))~~ (3) If an application for renewal of any pesticide license issued under the authority of chapter 17.21 RCW is not filed on or prior to January 1st following the expiration date of the license, a penalty shall be assessed as provided in

RCW 17.21.140 and added to the original fee, and shall be paid by the applicant before the renewal license is issued.

~~((5))~~ (4) If an application for renewal of a pesticide dealer license issued under the authority of chapter 15.58 RCW is not filed on or before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license is issued.

~~((6))~~ (5) If an application for renewal of any license issued under the authority of chapter 15.58 RCW, other than the pesticide dealer license, is not filed on or before the expiration date of the license, penalty equivalent to the license fee shall be assessed and added to the original fee, and shall be paid by the applicant before the renewal license is issued.

~~((7))~~ (6) Nothing herein shall be construed to limit the department's ability, as otherwise provided by law, to deny a license, to condition license renewal, or to enforce violations of applicable laws, subsequent to the expiration of a license.

~~((8)) An applicant shall complete the application form for a pesticide license and pay the required license application fee prior to being given pesticide examinations, unless prior arrangements have been made.~~

AMENDATORY SECTION (Amending WSR 00-22-073, filed 10/30/00, effective 11/30/00)

WAC 16-228-1540 ~~((Examination))~~ What are the requirements~~((r))~~ for pesticide examinations? (1) An examination fee of ten dollars shall be paid prior to administration of any pesticide license examination at other than a regularly scheduled examination session. Scheduled exam sessions occur every Tuesday at the Olympia and Yakima pesticide management division offices and at other offices as scheduled. The department reserves the right to restrict the number of applicants examining at any given time.

(2) Any individual who fails any pesticide licensing examination twice shall be required to wait at least fourteen days before retaking that examination a third time. Subsequent testing shall be at the director's discretion.

(3) An applicant shall complete the application form for a pesticide license and pay the required license application fee prior to being given pesticide examinations, unless prior arrangements have been made.

(4) Pesticide examination scores shall not be released by the department until the license application fee has been paid.

AMENDATORY SECTION (Amending WSR 00-24-013, filed 11/27/00, effective 12/28/00)

WAC 16-228-1545 What are the pesticide ~~((examination))~~ licensing requirements~~((r))~~? (1) All individuals licensed or required to be licensed as commercial pesticide applicators, commercial pesticide operators, private-commercial applicators, demonstration and research applicators, public operators, structural pest inspectors, pest control consultants and public pest control consultants must be certified, through examination, in all pest control classifications defined in subsection (3)(a) through (x) of this section in which they operate, inspect or consult. Additionally, commercial pesticide applicators must be licensed in all classifications that the business operates. Licensed applicators may

directly supervise unlicensed applicators only in those classifications in which they have a valid certification.

(2) To qualify for any pesticide license listed in subsection (1) of this section, applicants, except the structural pest inspector, must pass a "laws and safety" examination or equivalent, that includes, but is not limited to, the following: The state and federal laws governing pesticide use and the regulating agencies; general pesticide uses and application techniques; safe use of pesticides; general pesticide labeling comprehension; environmental fate of pesticides, and appropriate storage and disposal of pesticides and their containers. Individuals holding valid, passing scores on the private applicator or dealer manager exam are exempt from this examination requirement. Structural pest inspectors conducting complete wood destroying organism inspections must pass a "structural pest inspector laws and standards" examination or equivalent that includes, but is not limited to, the legal requirements governing structural pest inspectors and the standards for conducting complete wood destroying organism inspections.

(3) License classifications.

(a) Agricultural weed: The control of weeds, except with soil fumigants, in all agricultural crops including forest environments, and in former agricultural lands now in a noncrop status.

(b) Rights of way weed: The control of weeds, including cut stumps, on, but not limited to, ~~((the following))~~ terrestrial rights of way locations ~~((City, county, state and federal))~~ such as roads and/or highways, railroads, power lines and irrigation ditches and to industrial sites, including, but not limited to, airports, industrial parks, and large parking areas.

(c) Turf and ornamental weed: The control of weeds (and moss), including cut stumps, in ornamental and turf situations, which includes, but is not limited to, golf courses, parks, schools, lawns, yards, gardens, ~~((and))~~ hospitals, vacant lots and open noncrop waste areas.

(d) Structural and turf demossing: The control of moss on structures and turf.

(e) Stump treatment: The use of herbicides on cut stumps to control resprouting.

(f) Soil fumigation: The use of soil-applied fumigants on agricultural crops and noncrop land to control pests including weeds, insects and diseases.

(g) Sewer root: Control of roots in sewer lines.

(h) Agricultural insect and disease: The control of insects and diseases, except with soil fumigants, in agricultural crops including forest environments.

(i) Ornamental insect and disease: The control of insects and diseases in ornamental, turf and rights of way situations including, but not limited to, golf courses, parks, schools, lawns, yards, gardens, greenhouses, hospitals and rest homes. This includes, but is not limited to, the use of insecticides, miticides, fungicides, bacteriocides, molluscides and nematocides.

(j) Interior plantscaping: The control of insects and diseases in interior plantscapes.

(k) PCO general: The control of insects, spiders, birds, rodents and animal pests in and around, but not limited to, the following situations: Residences, public buildings and grounds, commercial buildings and grounds, disposal sites,

animal feed lots and farmsteads, including buildings and transportation equipment.

(l) PCO structural: The control of structurally destructive pests including, but not limited to, fungus, termites, carpenter ants, carpenter bees and wood-boring beetles. This classification allows a licensee to perform specific wood destroying organism inspections.

(m) Structural pest inspector: Allows for the commercial inspection of buildings for structurally destructive pests, their damage and conditions conducive to their development. This classification is required to perform complete wood destroying organism inspections.

(n) Stored grain: The use of pesticides (including fumigants and rodenticides) in grain storing facilities and railcars.

(o) Fumigant: The use of fumigants only (such as methyl bromide and aluminum phosphide) on stored commodities.

(p) Seed treatment: The application of pesticides to seeds to control destructive insects and diseases.

(q) Sprout inhibitor: Use of a pesticide to control sprouting in stored potatoes.

(r) Livestock pest: The control of external and internal pests of animals, with the exception of viruses, including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats and poultry, and also treatment of livestock premises.

(s) Pest animal: The control of pest animals in agricultural situations.

(t) Aquatic: The control of aquatic pests ~~((ef))~~ in water areas including, but not limited to, canals, rivers, streams, lakes, ponds, marshes and pipe lines.

(u) Aquatic irrigation: Limited to the control of aquatic pests ~~((ef))~~ in irrigation district water delivery systems where the pesticide is applied directly into the water or enters the water due to the application of the pesticide. Pests include, but are not limited to, moss, algae, cattails, pond weeds and other emersed and submersed aquatic weeds.

(v) Public health: ~~((This))~~ Application of pesticides by governmental employees and certain others in public health programs such as, but not limited to, mosquito control, rodent control and insect control in situations having medical and public health importance.

(w) Aquatic antifouling: Use of antifouling paints to control fouling organisms on marine vessels.

(x) Wood treatment: Use of wood preservatives for the control of wood damaging pests.

(4) All examinations required under this section shall be written and taken without the aid of any materials that contain information relevant to the exam content. Reading of exams by an individual other than the applicant is not permitted.

(5) A passing score of seventy percent is established for all the examinations required under this section. The department may establish separate passing scores for the examinations if a validated process is used. Passing scores are valid for obtaining a license in the calendar year in which the examination is taken plus the following calendar year.

(6) The department may waive any of the examination requirements contained in this section for any person holding a valid certification with similar classifications from an EPA or Canadian approved federal, state or ~~((federal))~~ provincial

certification program with comparable examination and recertification standards.

AMENDATORY SECTION (Amending WSR 00-24-013, filed 11/27/00, effective 12/28/00)

WAC 16-228-1546 What are the requirements for a private applicator (~~(examination requirement)~~) license?

(1) To qualify for a private applicator license, an individual must pass a private applicator examination. The examination shall be written and taken without the aid of any materials that contain information relevant to the exam content. Reading of exams by an individual other than the applicant is not permitted. Individuals holding valid, passing scores on the laws and safety examination, or equivalent, or the dealer manager exam, and one of the classifications in WAC 16-228-1545 (3)(a) or (h) or the now retired statewide classification, are exempt from this examination requirement.

(2) Private applicators making aquatic applications to water that moves off their own or their employer's agricultural land must obtain the aquatic classification described in WAC 16-228-1545 (3)(t).

(3) A passing score of seventy percent is established for the examinations required under this section. The department may establish separate passing scores for the examinations if a validated process is used. Passing scores are valid for obtaining a license in the calendar year in which the examination is taken plus the following calendar year.

(4) The department may waive the examination requirements contained in this section for any person holding a valid certification with similar classifications from an EPA or Canadian approved federal, state or (~~(federal)~~) provincial certification program with comparable examination and recertification standards.

AMENDATORY SECTION (Amending WSR 00-24-013, filed 11/27/00, effective 12/28/00)

WAC 16-228-1547 What are the requirements for a dealer manager (~~(examination requirement)~~) license?

(1) To qualify for a dealer manager license, an individual must pass a dealer manager examination. The examination shall be written and taken without the aid of any materials that contain information relevant to the exam content. Reading of exams by an individual other than the applicant is not permitted.

(2) A passing score of seventy percent is established for the examination required under this section. The department may establish a separate passing score for the examination if a validated process is used. Passing scores are valid for obtaining a license in the calendar year in which the examination is taken plus the following calendar year.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1550 What are the requirements for apparatus display signs(~~(s)~~)? (1) A certified applicator making a landscape application shall display the name and telephone number of the applicator or applicator's employer on any power equipment.

(2) A certified applicator making a right of way application shall display the name and telephone number of the applicator or the applicator's employer and the words "VEGETATION MANAGEMENT APPLICATION."

(3) Apparatus display signs shall be attached to and prominently displayed on the application apparatus and shall be clearly visible.

(4) Lettering of the apparatus display signs shall be, at a minimum, two inches in height and shall be printed in color contrasting to the background.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1555 (~~(Requirements on placement of)~~) Where must commercial applicator apparatus license plates and windshield identification(~~(s)~~) be placed?

(1) Apparatus license plates, as provided for in chapter 17.21 RCW, shall be attached to and prominently displayed on the apparatus for which they have been issued: Provided(~~(s)~~) that an apparatus license plate may be affixed to a vehicle which contains the particular apparatus. Attached plates shall be clearly visible and in a location easily accessible for inspection by the department.

(2) Each vehicle involved in the operations of a certified commercial ground application business, which does not prominently display a department issued apparatus license plate on its exterior or on the specific apparatus when that apparatus is exteriorly visible, shall be required to have a department issued sticker affixed to the lower left side of the windshield.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1570 What are the circumstances when certification permits(~~(s)~~) are used? (1) Private applicator certification, demonstration and research applicator certification, user permits and private-commercial applicator licenses shall be considered as certified applicator permits as provided for in RCW 17.21.030 and 15.58.040 (2)(h).

(2) User permits may be issued by the director as temporary applicator certification in emergency situations. User permits will be issued in a form prescribed by the director, which shall include the following:

- (a) Permit number
- (b) Date of issuance
- (c) Expiration date, which shall be not longer than one year from the date of issuance
- (d) Name and address of certified applicator
- (e) Crop or site and area to which the pesticide will be applied
- (f) Amount of pesticide obtained
- (g) Any other information prescribed by the director.

(3) Pesticide dealers shall keep user permits for a period of one year from the date of issuance, and the director shall have access to these records upon request.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1585 ~~Are ground maintenance ((on an occasional basis—Exempt from licensing requirements.)) persons exempt from licensing?~~ Grounds maintenance persons are exempt from licensing requirements as a commercial pesticide applicator, as provided under chapter 17.21 RCW, only if they perform ground maintenance on an occasional basis not amounting to a regular occupation. Exempted persons shall only perform pesticide applications to the grounds of residential dwellings and shall only use home and garden products.

AMENDATORY SECTION (Amending WSR 99-22-002, filed 10/20/99, effective 11/20/99)

WAC 16-228-1590 ~~((Pesticide dealer and dealer manager licenses.))~~ **What are the licensing requirements for pesticide dealers and dealer-mangers?** (1) When more than one pesticide dealer is engaged in the business from the same outlet or location, each pesticide dealer shall obtain a license for said outlet or location.

(2) A licensed pesticide dealer manager shall be available to the staff, customers, and department representatives at all times that an outlet or location distributes pesticides. A dealer manager may be the designated dealer manager of more than one outlet or location only if the dealer manager can be physically present at both outlets or locations during all times of pesticide distribution and handling.

WSR 03-17-100

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Filed August 20, 2003, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-12-053.

Title of Rule: The proposed rules would reorganize and revise chapter 480-04 WAC, Public access to information and documents, and would repeal and replace chapter 480-09 WAC, Procedure, with new chapter 480-07 WAC, Procedure.

Purpose: See Explanation of Rule below.

Other Identifying Information: Docket No. A-010648.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, and 81.04.160.

Summary: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Dennis J. Moss, Senior Review Judge, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1164; Implementation and Enforcement: Carole J. Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposal would reorganize and revise chapter 480-04 WAC to make the rules governing public access to commission information and documents easier for members of the public to use and understand.

The proposal would repeal and replace chapter 480-09 WAC, the commission's procedural rules, with new chapter 480-07 WAC that is better organized, easier to understand, and easier to use. New chapter 480-07 WAC also eliminates some rules, and includes revisions to existing rules and new rules that reflect practices the commission and those who do business with the commission recognize as improving and streamlining procedures for formal proceedings and informal interaction between the commission and members of the public.

Both chapters are revised consistent with the requirements of Executive Order No. 97-02 regarding regulatory improvement. Thus, the proposed revisions reflect the executive order's criteria of need, effectiveness and efficiency, clarity, intent and statutory authority, coordination, cost, and fairness.

Proposal Changes the Following Existing Rules: The affected WACS are: See Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules streamline the processes by which persons conduct business with the commission. Because there will not be any increase in cost resulting from the proposed rules, a small business economic impact statement is not required.

RCW 34.05.328 does not apply to this rule adoption. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

Hearing Location: Commission Hearing Room 206, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on September 24, 2003, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Mary DeYoung by September 19, 2003, TDD (360) 586-8203 or (360) 664-1133.

Submit Written Comments to: Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504 or e-mail to <records@wutc.wa.gov>, fax (360) 586-1150, by September 10, 2003. Please include Docket No. A-010648 in your communication.

Date of Intended Adoption: September 24, 2003.

August 20, 2003

Carole J. Washburn

Secretary

by C. Robert Wallis

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-020 Definitions. (1) ~~((Public records.))~~ "Public record" includes any writing ~~((containing))~~ (defined in subsection (5) of this section) prepared, owned, used, or retained by the commission, which contains information

PROPOSED

relating to the conduct of government or the performance of any governmental or proprietary function (~~(prepared, owned, used or retained by the commission regardless of physical form or characteristics)).~~

(2) (~~Writing. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation. "Writing" includes letters; words; pictures; sounds; symbols; telefacsimile copies; papers; maps; magnetic or paper tapes; photographic films and prints; magnetic or punched cards; diskettes; drums; and other documents.~~

(3) ~~Washington utilities and transportation commission. The Washington utilities and transportation commission, referred to as "the commission" in these rules, is the commission appointed by the governor under RCW 80.01.010.~~

~~Where appropriate, the term "commission" also refers to the staff and employees of the Washington utilities and transportation commission.~~

(4) ~~Secretary.)) "Public records officer" means the official responsible for the commission's compliance with the Public Records Act, chapter 42.17 RCW, and for the implementation of this chapter. The commission's secretary is designated as its public records officer. The secretary may designate one or more persons to assist in the implementation and application of this rule.~~

(3) ~~"Secretary," also referred to as "executive secretary," means the secretary of the commission appointed pursuant to RCW 80.01.030. Unless otherwise restricted, the term "secretary" also refers to the acting secretary and to the secretary's designee.~~

(4) ~~"Washington utilities and transportation commission," referred to in this chapter as "the commission," is the commission appointed by the governor under RCW 80.01.010. Where appropriate, the term "commission" also refers to the staff and employees of the Washington utilities and transportation commission.~~

(5) ~~"Writing" means any information (e.g., words, numbers, symbols, images, and sounds) recorded in any media (e.g., handwritten, typewritten, printed, electronic, photographic, and video and audio recording), as defined in RCW 42.17.020(42).~~

~~((5) You.)) (6) The word "you," or "your," when used in this chapter ((means)), refers to a person who requests access to public records.~~

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-030 Organization of the Washington utilities and transportation commission. (1) The Washington utilities and transportation commission consists of three members appointed by the governor under RCW 80.01.010. The governor designates one member as the commission chair.

(2) ~~((The administrative office of the commission, also known as the headquarters office, is located at 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Its mailing address is Washington Utilities & Transportation Commission, 1300 S Evergreen Park Dr SW, PO Box 47250, Olym-~~

~~pia WA 98504 7250. Its telephone number is (360) 753-6423. The commission maintains no other offices.~~

(3)) The commission is organized into the following principal ~~((parts))~~ sections and divisions: Regulatory services ~~((division))~~; safety and consumer protection; policy and public information; administrative law; knowledge management; financial and budget services ((division)); ~~((policy planning and research section; public affairs section; and legal, accounting, and policy development section))~~ and employee services. The head of each section or division is directly responsible ~~((directly))~~ to the commissioners.

NEW SECTION

WAC 480-04-035 Physical address—Telephone—Facsimile—E-mail—Internet. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the commission's Internet site, in person at the commission's offices, or by telephone call to the commission's main public number.

Physical address; address for U.S. mail or hand-delivery	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone (general)	360-664-1160
Telephone (records center)	360-664-1234
Telefacsimile (records center)	360-586-1150
Electronic mail (records center)	records@wutc.wa.gov
Internet	www.wutc.wa.gov

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-050 Public information; public submissions or requests other than requests for public documents. ~~((1))~~ Anyone who wishes to obtain general information concerning topics within the commission's jurisdiction ((is available through the commission's administrative office; and)) may find such information on the commission's Internet ((home page. The home page address at the time this rule is adopted is <http://www.wute.wa.gov>.

~~((2) Anyone may request information from the commission administrative office, concerning whether a common or contract carrier of solid waste or household goods currently has operating authority; the scope of that authority; and the carriers' current tariffs.~~

~~((3))~~ site or may contact the commission by letter, telephone, or e-mail, as described in this section. The commission will route all inquiries to staff who can best respond to the inquiry.

~~((1))~~ Written requests for information should be ((submitted)) sent to the ((office of the secretary of the commission))

commission's public records officer at the commission's mailing address.

~~((4) Requests)~~ (2) Electronic mail and telefacsimile requests for information ((may also be made by telephone or electronic mail. The commission will do its best to route the inquiry to staff who can assist the requester)) should be sent to the commission's records center.

(3) Telephone requests for information may be made by contacting the commission's records center, or by call to the commission's general telephone number.

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-060 Public records available; hours for inspection and copying. (1) ~~((Except as otherwise provided by RCW 42.17.310 (exempt records), RCW 42.17.260(6) (lists of individuals requested for commercial purposes), RCW 80.04.095 (records containing commercial information), WAC 480-09-015, these rules, and other provisions of the law, all public records of the commission, as defined in WAC 480-04-020(1), are available for public inspection and copying.))~~ All of the commission's public records are available for inspection and copying unless the public record is exempt from disclosure under chapter 42.17 RCW (the Public Records Act), protected from disclosure under RCW 80.04.095 (records that contain valuable commercial information), WAC 480-07-160 (Confidential information), WAC 480-07-420 (Discovery—Protective orders), or under other provision of law. Except as provided in RCW 42.17.260(6), the commission will not give, sell, or provide access to lists of individuals if the information is requested for commercial purposes.

(2) The commission ((shall act)) will promptly ((en)) respond to requests for inspection and copying of public records.

(3) ((The commission will respond in accordance with these rules to requests received by mail for identifiable public records.

(4)) Public records are available for inspection and copying during the commission's customary office hours which are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding ((legal)) official state holidays as defined in RCW 1.16.050 (legal holidays and legislatively recognized days).

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-065 Records index. The commission will publish and index its significant adjudicative decisions; declaratory orders; interpretive statements; and policy statements.

(1) ((Each month,)) The commission will publish and make available to ((subscribers)) the public its adjudicative orders ((entered the prior month which)) that resolve contested issues or which it believes will be of interest or significance, its declaratory orders, its interpretive statements, and its policy statements. The commission will publish these documents by the means it deems best suited to achieve broad availability, consistent with staff resources and technology,

including distribution of paper copies, electronic mail, and Internet website posting. ((Each publication will include declaratory orders and; interpretive and policy statements; and will include)) The commission will contemporaneously publish a summary of the decisions, orders, and statements.

(2) The commission will annually publish indices of the principles ((which)) that are applied in the text of published decisions, orders, and statements ((entered during the prior year)).

(3) The ((publications)) commission will ((be available)) make paper copies of its indices available for sale at the commission's estimated actual cost of reproduction and distribution. ((They will also be available for inspection during office hours in the commission branch of the Washington state library, at the commission's office in Olympia.))

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-090 Requests for public records. (1) Many requests for public records can be handled quickly and informally without the need for a formal written request. You may ask orally, in person, or by telephone to look at a document, or get a copy of a document. ~~((You may ask orally, in person or by telephone.))~~ You may also ask informally in writing, by letter or electronic mail. Requests may be made by electronic mail to ~~((<records@wate.wa.gov>))~~ the commission records center. Commission staff will advise you if a formal written request, as described in subsection (4) of this section, is required.

(2) The commission ((normally requires)) may require any person who seeks access to public records to present a formal written request. The commission may require a formal written request, for example, ((a)) if you ask for large quantities of information((- or have a list of)) or make an unusual request((-;)). The formal written request helps the commission ((may need a written record to)) make sure that you get all the information you have requested((- or to make sure)) and that ((the)) any charges for copies are proper.

~~((b-f))~~ (3) The commission may require a formal written request if the information ((that)) you ((want)) ask for might be within one of the exceptions to the law requiring disclosure((- the commission may need a written request to make sure that the decision is made properly, by the right person, and that you get the response you are entitled to)). In this situation, your formal written request helps the commission make sure that its decision to disclose or withhold the information is made properly and that you get the public records you are entitled to receive. Examples of information that might be exempt from disclosure include documents that have been designated "confidential" by the person providing them to the commission, documents containing private or personal information, and documents that may be involved in litigation or hearings.

~~((3))~~ (4) If you need to make a formal written request for information, you may use a "public records request" form provided by the commission or you may write a letter that contains the information listed below. If you want to use the form, you can get a copy at the commission's Internet site or office, or you can ask to have it sent to you.

~~((4)) You should take or send written requests for documents to the secretary of the commission. You may give the request to the receptionist or to any other available commission staff member, except that a request for a record which has been designated as confidential under the provisions of RCW 80.04.095 or WAC 480-09-015 must be submitted to the secretary of the commission as required by WAC 480-09-015(5).))~~

(5) ~~((A))~~ Formal written requests ~~((shall))~~ must include the following information:

(a) Your name, address, and ~~((address))~~ telephone number.

(b) ~~((When you are making the))~~ The date on which you submit your request.

(c) ~~((For whom (the individual, business, or other organization))~~ The identity of any individual, business, or other organization for whom you are making the request, if not only for yourself personally.

(d) A clear indication, ~~((f))~~ such as ~~((in))~~ a document heading or title that you are requesting public records, to help make sure that the request is handled properly.

(e) Whether you want to inspect the ~~((document))~~ public records or get ~~((a copy of it))~~ copies, or both.

(f) A clear description of the public records you want. ~~((that is clear enough))~~ so that commission staff can find the records. If you know how ~~((it is))~~ the public records are described in the index maintained by the commission, ~~((that would be helpful in identifying it))~~ provide that description to assist the commission to identify the public records you want to review.

(g) A statement of whether ~~((a purpose of))~~ you are making the request ~~((is))~~ in order to obtain a list of individuals to be used for any commercial purposes.

(6) Commission staff will make a reasonable effort to assist in identifying and providing ~~((the))~~ all public records that you request.

(7) The commission may waive the need for a completed form when doing so supports the commission's administrative convenience and is not inconsistent with legal requirements or public policies.

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-095 Disclosure procedure. (1) The ~~((secretary))~~ public records officer will promptly notify you if ~~((commission staff finds that the))~~ your request is found to be incomplete, and will tell you what the problem is. The ~~((secretary))~~ public records officer will assist you ~~((in completing))~~ to complete or ~~((correcting))~~ correct your request. Notifying you of a deficiency is not a denial of your request. The ~~((secretary))~~ public records officer may act on a deficient request to the extent that doing so is reasonable.

(2) Upon receiving a complete request, the ~~((secretary))~~ public records officer will review the requested record to determine whether the record or a portion of it is exempt from disclosure under ~~((any provision of law. The review shall also determine whether any of the requested records include confidential information, as defined in pertinent law))~~ the Public Records Act, chapter 42.17 RCW, protected from disclosure

under RCW 80.04.095 (records that contain valuable commercial information), WAC 480-07-160 (Confidential information), WAC 480-07-420 (Discovery—Protective orders), or under another provision of law.

(3) ~~((To the extent required))~~ The commission will delete identifying details from a public record to protect the personal privacy interests ~~((protected by RCW 42.17.310 and 42.17.315, the commission will delete identifying details from a public record))~~ as provided by law when it makes the record available or publishes it. ~~((Whenever that happens,))~~ The commission will explain the reasons for ~~((the))~~ any such deletion.

(4) Only the ~~((secretary))~~ public records officer is authorized to deny requests for public records. Any action other than granting access to public records, when taken by a person other than the ~~((secretary))~~ public records officer, is a deferral of action~~((;))~~ and not a denial of a request. Any commission staff member who does not grant access to a public record when a complete written request is made must immediately take or send the requested document, together with the written request, to the ~~((secretary))~~ public records officer for a prompt decision granting or denying the request.

(5) If the ~~((secretary refuses to))~~ public records officer does not grant access to all or part of a requested public record, the ~~((secretary shall))~~ public records officer will give you a written statement identifying the exemption authorizing the action and how it applies to the requested record. Any portion of the record that is not subject to exemption shall be promptly disclosed.

(6) ~~((Records containing "confidential information."))~~

~~((a))~~ If ~~((a requested))~~ you request a public record that contains information that has been designated confidential under RCW 80.04.095 ~~((and WAC 480-09-015)), WAC 480-07-160, or a protective order, and you have not specifically asked~~ ~~((for))~~ to be provided with confidential information, the ~~((secretary shall))~~ public records officer will tell you that material has been designated confidential, and ~~((make sure that you do))~~ ask whether you want the confidential information, before processing ~~((the))~~ your request.

~~((b))~~ A) The commission will process any request for a record designated as confidential under RCW 80.04.095 ~~((and WAC 480-09-015 shall be processed in accordance with the provisions of WAC 480-09-015))~~ or WAC 480-07-160 in accordance with those provisions of law.

(7) ~~((After receiving))~~ If the public records officer denies your public records request in whole or in part, the ~~((secretary's))~~ public records officer will provide you a written explanation of the basis for ~~((nondisclosure under this rule, if))~~ the denial. If you ~~((still want disclosure))~~ want to contest the denial, you may request a review under WAC 480-04-120.

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-100 Copying and service charges. The commission will provide copies of public records upon request.

(1) The commission ~~((shall))~~ may charge a published fee for copying ~~((and providing information))~~ public records, if

you request copies. The commission may, by order, within the requirements of RCW 42.17.300, establish and change prices and establish the maximum number of various kinds of copies that will be provided without charge.

(2) ~~The commission's charges for copies at the time this rule is adopted are as follows, except as provided in WAC ((480-09-125 for producing for internal distribution, copies that parties to a proceeding have failed to file, the charges for services at the time this rule is adopted are as follows:~~

(a) ~~Photocopies, fifteen cents per page for fifty one or more copies.~~

(b) ~~Certified copies, three dollars per certified sheet.~~

(c) ~~Telefacsimile (fax) transmissions, fifty cents per page, for transmissions of six or more pages.~~

(d) ~~Computer lists or printouts, fifty cents per page for six or more pages.~~

(e) ~~Computer data copied onto floppy diskettes shall cost five dollars per diskette.~~

(f) ~~Audio tapes, five dollars each.~~

(g) ~~Video tapes, five dollars each.~~

(h) ~~Color copies, one dollar per page.~~

(i) ~~No charge is made for documents provided by electronic mail.~~

(3) Sales tax, at the current rate, shall be added to the price of each item.)) 480-07-145 (3)(b). Out-of-state customers and governmental agencies are not charged sales tax.

Charges for Copies

DESCRIPTION	CHARGES
Photocopies	\$0.15 per page + 8.0% sales tax—150 pages or less are free.
Photocopies - City and County Agencies, plus all other exempt institutions	\$0.07 per page—300 pages or less are free. (There is no tax charged.)
Certified Copies	\$3.00 per certification sheet + 8.0% sales tax. Photocopies sent with certification are in addition to certification charge, at appropriate rate for photocopies.
Fax Copies	\$0.50 per page + 8.0% sales tax—5 pages or less are free.
Computer Runs	\$0.50 per page + 8.0% sales tax—5 pages or less are free.
Colored Copies - 8 1/2 x 11	\$1.00 per page + 8.0% sales tax. No minimum - all colored copies are chargeable.
Colored Copies - 8 1/2 x 14	\$1.50 per page + 8.0% sales tax. No minimum - all colored copies are chargeable.
Computer Disks	\$5.00 per disk + 8.0% sales tax. No minimum - all disks are chargeable.

Charges for Copies

DESCRIPTION	CHARGES
Audio Tapes	\$5.00 per tape + 8.0% sales tax. No minimum - all tapes are chargeable.
Video Tapes	\$5.00 per tape + 8.0% sales tax. No minimum - all tapes are chargeable.
GIS Maps - Premade	\$15.00 per map + 8.0% sales tax. No minimum.
GIS Maps - Custom	\$25.00 per map + 8.0% sales tax. No minimum.
Black & White Maps	\$5.00 per map + 8.0% sales tax. No minimum - excluding BPA* maps, which are provided free by BPA.
Washington & Northern Idaho Exchange Area Maps	\$2.00 per map + 8.0% sales tax. No minimum - all WNIEA maps are chargeable.
Gas Incident Report	\$13.00 per report + 8.0% sales tax. No minimum.
Gas Incident Photographs	\$1.00 per photograph + 8.0% sales tax. No minimum - all photographs are chargeable.

PUBLICATIONS	CHARGES
Final Utility Orders	\$72.00 per year + 8.0% sales tax.
Final Transportation Orders	\$20.00 per year + 8.0% sales tax.
Telecommunication Comm. Digest	\$25.00 + 8.0% sales tax.
Publication Safety Manual	\$5.50 + 8.0% sales tax.
Cost Assessment Guidelines for Local Solid Waste Management Planning	\$7.70 + 8.0% sales tax.

The commission's charges for copies are also published in Administrative Policy 1.60c, except for charges made under WAC 480-07-145 (3)(b). If there is a discrepancy between the charges stated in this rule and those stated in Administrative Policy 1.60c, the Administrative Policy 1.60c charges will apply. The commission will provide you with a copy of Administrative Policy 1.60c on request.

(3) WAC 480-07-145 (3)(b) fixes the charge for copies when a party to an adjudicative proceeding fails to file the

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number of copies required to meet the commission's internal distribution needs.

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

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WAC 480-04-120 Review of denials of public records requests. (1) If ~~((you are denied disclosure of a public document and disagree with the denial))~~ the commission does not disclose a public record that you have requested and you disagree with the denial, you may ask the ((secretary)) public records officer, in writing, for a review of the denial. ((The)) Your written request for review must describe or enclose the ((secretary's)) public records officer's written statement ((explaining)) that explains the reasons for the denial, as provided in WAC 480-04-095(5).

(2) ~~((A request for review must be made in writing. It may be made))~~ You may hand deliver, or have a courier deliver, your written request for review in person at the commission's administrative office or you may send it by mail or electronic mail.

(3) ~~The public records officer will promptly ((after receiving a written request for review the secretary shall)) review ((the decision. He or she)) your written request. The public records officer may personally reconsider the denial decision, or may refer the request to the commission for review ((at a commission meeting)).~~

(4) ~~The ((commission's review of a decision denying disclosure is)) public records officer's initial denial becomes final ((at the end of the second business day following the secretary's initial denial decision, unless the commission provides a revised decision to you during that period. This does not prevent the commission from reversing)) unless the commission modifies the decision within two days after the commission receives your request for review. The commission, however, still may modify a denial ((after the end of the second business day following the initial denial)) decision at a later time. Once the public records officer's initial denial decision becomes final or is modified by the commission, you may seek judicial review under RCW 42.17.340.~~

AMENDATORY SECTION (Amending Order R-446, Docket No. A-970591, filed 12/29/97, effective 1/29/98)

WAC 480-04-130 Protection of public records. (1) Only commission staff may copy public documents unless the ~~((secretary))~~ public records officer decides that copying by others will not disrupt commission ~~((administration))~~ business operations or pose any risk to the integrity and safety of the documents.

(2) No person may take any ~~((document))~~ public record from the area ~~((designated by))~~ the ~~((secretary))~~ public records officer designates for ~~((the))~~ public inspection of ((documents)) public records unless expressly authorized to do so by the ((secretary authorizes doing so)) public records officer.

(3) When a member of the public asks to examine an entire file or group of ~~((documents))~~ public records, as distinguished from specific ~~((documents))~~ public records that can be individually identified and ~~((supplied))~~ made available, the commission may take a reasonable time ~~((for inspection))~~

to inspect the file or group of public records to remove any material designated as confidential and any information protected from disclosure by ((RCW 42.17.310)) chapter 42.17 RCW, or other provision of law.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-04-070	Public records officer.
WAC 480-04-110	Information for commercial purposes.

Chapter 480-07 WAC

PROCEDURAL RULES

NEW SECTION

WAC 480-07-010 Scope of this chapter. This chapter includes rules that explain how to conduct business with the Washington utilities and transportation commission (the commission). The commission interacts both informally and formally with the public and with the businesses it regulates.

Part I of this chapter includes basic information about the commission such as the agency's office hours, its physical address and other contact information, and general requirements for communicating with the commission.

Part II includes provisions that relate specifically to rule-making proceedings, such as how a person may submit comments that will be taken into account when the commission considers making changes to its rules.

Part III concerns adjudicative proceedings including hearings on formal complaints, general rate proceedings, applications for authority, petitions for relief, and abbreviated proceedings that may be used in some circumstances.

Part IV concerns other types of commission proceedings including regular and special open public meetings, interpretive and policy statements, declaratory orders, and informal complaints.

These rules are authorized by and supplement the Administrative Procedure Act, chapter 34.05 RCW, and the principal statutes that define the commission's authority and responsibility. These statutes are found principally in Titles 80 and 81 of the Revised Code of Washington (RCW). These procedural rules should be read and understood in conjunction with the Administrative Procedure Act and Titles 80 and 81 RCW. Certain of these statutes establish procedural requirements for conducting particular types of business with the commission.

PART I: GENERAL PROVISIONS

NEW SECTION

WAC 480-07-100 Scope of Part I. Part I of this chapter contains information about the commission, and general rules that apply in rule-making, adjudicative, and other proceedings described in this chapter.

NEW SECTION

WAC 480-07-110 Exceptions from and modifications to the rules in this chapter; special rules. (1) **Exceptions and modifications.** The commission may modify the application of these rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) **Special rules.** When statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, apply to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings, those statutes or special rules govern if they conflict with the rules in this chapter.

NEW SECTION

WAC 480-07-120 Office hours. "Business day," as used in this chapter, means any day when the commission's offices are open to the public. Commission offices are open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except on official state holidays, as defined in RCW 1.16.050, Legal holidays and legislatively recognized days.

NEW SECTION

WAC 480-07-125 Physical address; telephone; facsimile; e-mail; Internet. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the commission's Internet site, in person at the commission offices, or by a telephone call to the commission's main public number.

Physical address; address for U.S. mail or hand-delivery	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone (general)	360-664-1160
Telephone (commission records center)	360-664-1234
Telefacsimile (commission records center)	360-586-1150
Electronic mail (commission records center)	records@wutc.wa.gov
Internet	www.wutc.wa.gov

NEW SECTION

WAC 480-07-130 Time periods specified for acts governed by this chapter. (1) **Computation of time.** "Day" means calendar day whenever used in this chapter, unless otherwise specified. The period of time for doing an act governed by this chapter is determined by excluding the first day and including the last day, unless the last day is an official state holiday, Saturday, or Sunday, in which event the period runs until the end of the next day that is not an official state

holiday, Saturday, or Sunday. For example, if a formal complaint is served on the first day of the month, any answer to the complaint must be filed by the twenty-first day of the same month, unless the twenty-first day is an official state holiday, in which case the answer will be timely if filed on the next business day after the holiday.

(2) **Variation from time limits.** The commission may modify the time limits stated in chapter 34.05 RCW, subject to the requirements of RCW 34.05.080. The commission may modify the time limits stated in a commission rule, subject to other requirements of law. WAC 480-07-385 sets out procedures for and governs when the commission will grant continuances or extensions of time in adjudicative proceedings.

NEW SECTION

WAC 480-07-140 Communicating with the commission. (1) **Scope of rule.** This rule includes general requirements for effective communication with the commission. Communications that concern rule-making proceedings, adjudicative proceedings, or public records requests must also conform to specific requirements as follows:

(a) In rule-making proceedings, WAC 480-07-143 and Part II of this chapter.

(b) In adjudicative proceedings, WAC 480-07-145 and Part III of this chapter.

(c) For public records requests, chapter 42.17 RCW and chapter 480-04 WAC.

(2) **Content of letters and electronic mail messages to the commission.** Letters and electronic mail messages to the commission should include only one subject.

(3) **Where to send letters and electronic mail messages.** WAC 480-07-125 includes the commission's mailing address and other contact information current at the time of rule publication. The commission's Internet site includes current and additional contact information.

(4) **Identification of sender; identification of permit, license, or certificate; identification of proceeding.**

(a) **Identification of sender.** Persons who communicate with the commission must provide their name and a mailing address. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, the name of the entity on whose behalf the communication is sent, and provide a mailing address. Persons who communicate with the commission are also encouraged to provide their electronic mail address and any other contact information that may assist the commission to respond.

(b) **Identification of permit, license, or certificate held by sender.** Any person or entity that holds a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) **Identification of proceeding.** Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify

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the proceeding to the best of their ability, including the docket number and name of the proceeding, if known.

(5) **Electronic mail file attachment format requirements.** Electronic submissions may be provided by electronic mail (e-mail) file attachment addressed to the commission's records center, or submitted to the records center on a 3 1/2 inch IBM formatted high-density disk or compact disc (CD) labeled with the docket number of the proceeding, the name of the company and/or the name of the individual submitting the document. The commission prefers to receive electronic documents in Word or WordPerfect file format supplemented by a copy in Adobe Acrobat (i.e., .pdf) file format created directly from the word processing software used for the original document. Parties that cannot create Adobe Acrobat files directly are requested to provide a copy of the document converted to Adobe Acrobat via scanning or other available technology.

NEW SECTION

WAC 480-07-143 Submitting documents in rule-making proceedings. (1) **Scope of rule.** This section governs communications to the commission in rule-making proceedings (including letters, electronic mail messages, comments, and other documents). These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

(2) **Submitting comments.** All written comments submitted in a rule making must be addressed to the commission secretary.

(3) **Methods for delivering comments and other communications.**

(a) **By electronic mail message or telefacsimile.** A person may submit comments in rule-making proceedings by electronic mail message (e-mail), e-mail file attachment, or telefacsimile transmission without supplementation by paper copy.

(i) **Where to send electronic documents.** All electronic mail and telefacsimile transmissions made under this rule should be directed to the commission's records center. Courtesy or informational copies may be sent to other electronic mail addresses or telefacsimile numbers for individual commission staff members. When a person files a document by e-mail or telefacsimile, the document should not be sent more than once except to cure transmission or receiving errors.

(ii) **When deemed received.** A document submitted by electronic mail or telefacsimile is deemed received only when the entire electronically mailed document successfully reaches the commission's records center electronic mailbox or telefacsimile machine. Documents received electronically in the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(b) **By mail or hand delivery (e.g., courier delivery service).** A person may submit comments or otherwise communicate with the commission concerning rule-making proceedings by mail or by hand delivery (e.g., courier delivery service).

(i) **When deemed received/ filed.** A document submitted in a rule-making proceeding by mail or hand delivery is

deemed received or filed when physically received by the commission records center and stamped with the date and time. Documents delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(ii) **Electronic file supplement.** The commission encourages parties who submit written comments in rule-making proceedings to supplement any paper filing delivered by mail or courier with an electronic version, as specified in WAC 480-07-140(5).

NEW SECTION

WAC 480-07-145 Filing documents in adjudicative proceedings. (1) **Scope of rule.** This section governs communications to the commission by parties in adjudicative proceedings (including letters and electronic mail messages, pleadings, and other documents). These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140.

(2) **Mail or hand delivery service is required for all documents.** Parties to adjudicative proceedings before the commission must file original, signed documents and paper copies by mail or hand delivery (e.g., courier delivery service) as provided in this rule to satisfy official filing requirements and meet the commission's administrative needs. The commission may provide for the expedited exchange of documents among parties and the commission by electronic mail and telefacsimile transmission when necessary for process requirements in individual adjudicative proceedings.

(a) **When deemed received/ filed.** A document submitted in an adjudicative proceeding is officially received for filing only when the original document, including the required certificate of service under subsection (6) of this section, and the required number of copies, are physically received at the commission's records center by mail or in-hand delivery and stamped with the date and time. The date-stamped time will determine whether a document meets any deadline that applies and will determine the timing of any later deadlines based on filing. Documents that are delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(b) **Exception for documents offered and received at hearing.** When authorized by the presiding officer in an adjudicative proceeding before the commission, a document may be officially received for purposes of the proceeding when the presiding officer receives the document for the record at hearing. The presiding officer may also require that a copy be filed in the commission records center.

(c) **Where to mail/deliver.** All written communications mailed or hand-delivered to the commission must be addressed to the commission's secretary at the address specified in WAC 480-07-125.

(d) **Filings must be supplemented by an electronic version of the document.** Parties filing pleadings, motions, pre-filed testimony and exhibits, and briefs must supplement their filing by submitting the document in electronic form, as spec-

ified in WAC 480-07-140(5), unless excused from the obligation by the presiding officer.

(3) Number of copies; failure to file sufficient number of copies.

(a) **Number of copies.** Unless the commission specifies a different number of copies, every pleading, motion, response, and brief submitted to the commission by mail or courier must be filed with nineteen copies. A party for whom providing the required number of copies would be a hardship may describe the hardship and request permission to file fewer copies.

(b) **Failure to file sufficient number of copies.** If a person files fewer than the required number of copies of a document, the commission may reject the filing or the commission may make the additional copies for distribution and processing within the commission. If the commission makes copies to meet the total number required, the commission will bill the filing person at a rate of thirty cents per page, plus sales tax. This rate compensates for the loss of the worker's attention to assigned duties, the unscheduled use of equipment, and the cost of materials.

(4) **Filing and service are separate requirements.** Filing documents with the commission under this rule and service of the documents to parties under WAC 480-07-150 are both required in all adjudicative proceedings. Filing a document with the commission does not constitute service upon the assistant attorney general or any other party. Likewise, service upon the assistant attorney general does not constitute a filing with the commission.

(5) **Service and certificate of service are required.** Filing a pleading, motion, response, or brief with the commission in an adjudicative proceeding is not complete unless service has been made upon all parties to the proceeding pursuant to WAC 480-07-150. Service must be confirmed by submitting with the filing a valid certificate of service, or its equivalent, as provided in WAC 480-07-150(9).

(6) Electronic mail or telefacsimile transmission may be used to expedite the filing process, when authorized.

(a) **When permitted; paper copy supplementation is required.** The presiding officer may, when necessary because of the demands of schedule or other sufficient reason, provide a one-day extension of the filing requirement by authorizing electronic mail or telefacsimile delivery of documents on the date established for filing under the procedural schedule in an adjudicative proceeding subject to the following conditions:

(i) **Paper copy supplementation is required.** The commission must physically receive the original and required number of copies by 12:00 noon on the first business day following the filing deadline established under the procedural schedule.

(ii) **Exact copy is required.** The original and paper copies of the document delivered to the commission on the day following the filing deadline must conform exactly in form and content to the electronic version or the document will not be considered to have been timely filed and may be rejected on that basis.

(iii) **Authorization for electronic submission must be indicated.** All electronic documents submitted to the commission by electronic mail message or facsimile transmission

on a filing deadline date must be accompanied by an electronic message or facsimile cover sheet that states the basis for authority to effect timely filing and service by electronic mail or telefacsimile transmission.

(iv) **Simultaneous delivery to all parties is required.** All electronic documents submitted to the commission by electronic mail message or facsimile transmission on a filing deadline date must be simultaneously delivered to all parties by electronic message or telefacsimile. Service by other required means is not excused, subject to the requirements of WAC 480-07-150.

(b) **Where to send electronic mail message or telefacsimile transmission.** All electronic mail and telefacsimile transmissions made under this rule should be directed to the commission's records center. Courtesy or informational copies may be sent to other electronic mail addresses or telefacsimile numbers for individual commission staff members. When a person files a document by telefacsimile or e-mail, the document should not be sent more than once except to cure transmission or receiving errors.

(c) **When deemed received.** A document submitted by electronic mail or telefacsimile is deemed received when the entire document successfully reaches the commission's records center electronic mailbox or telefacsimile machine.

(7) **Additional rules regarding adjudicative proceedings.** Rules relating to general rate proceedings (subpart B of this chapter) and abbreviated adjudicative proceedings (subpart C of this chapter) govern filing requirements in those proceedings.

NEW SECTION

WAC 480-07-150 Service of documents in adjudicative proceedings. (1) **Service defined.** Service means sending or delivering, in accordance with pertinent law and rule, documents relating to commission adjudications, to parties and any other persons to whom service may be required by statute. Service includes the formal exchange of documents among parties to adjudicative proceedings.

(2) Designation of person to receive service.

(a) Each party in an adjudicative proceeding must designate one person to receive service of documents relating to the adjudication.

(b) When any party has appeared by an attorney or other authorized representative in a proceeding before the commission, the party must name the representative, or one of the representatives if there is more than one, to receive service of documents. Service on the representative is valid service upon the party. When an individual party appears on his or her own behalf, she or he must be the person to receive service.

(c) The commission may order different arrangements for service in individual proceedings.

(3) Person to receive service of orders.

(a) The commission will serve orders in adjudicative proceedings upon the party's representative and also on the party. Therefore, all parties must provide their names and mailing addresses for purposes of service.

(b) In addition, parties that are a partnership, corporation, association, governmental subdivision or other entity

PROPOSED

other than an individual person must designate one individual person within their business, government unit, or organization to receive service of commission orders.

(4) **Contact information.** Each party must supply the following information about every individual that it names to receive service:

- (a) Name.
- (b) Mailing address.
- (c) Telephone number.
- (d) Facsimile number, if any.
- (e) Electronic mail address, if any.
- (f) Relationship to party (e.g., executive director, etc.).

(5) **Waiver of service by statutory means.**

(a) A party may choose to waive service of process by means of personal delivery, United States mail or parcel delivery service, in whole or in part, and elect to receive service by electronic means.

(b) Waiver must be made in writing, filed with the commission, and must specify alternative methods of communication to effect service. Alternates may include telefacsimile or electronic mail.

(c) Waiver excuses other parties and the commission from the obligation to use methods of service specified in rule or statute.

Neither the commission nor any party is foreclosed from making service by statutory means upon a party that has waived such service, and timely service by a method specified in the statute will satisfy legal requirements for service when it is used.

(6) **Service by parties.** Parties must serve documents by delivering one copy to each other party by one of the following methods:

- (a) In person.
- (b) By mail, properly addressed with first class postage prepaid.
- (c) By delivering to a commercial parcel delivery company and making or arranging payment of the pertinent fee.
- (d) By telefacsimile transmission, if other forms of service are waived.
- (e) By electronic mail, if other forms of service are waived.

(7) **Service by commission.** All notices, complaints, petitions, findings of fact, opinions, and orders required to be served by the commission may be served by one of the following methods:

- (a) In person.
- (b) By mail, properly addressed with first class postage prepaid.
- (c) By commercial parcel delivery company.
- (d) By telefacsimile transmission, when a paper copy is simultaneously mailed or tendered to a commercial parcel delivery company.
- (e) By electronic mail if originals are simultaneously mailed or sent by commercial parcel delivery company.

(8) **When service is deemed complete.** Unless otherwise ordered by the commission in a particular proceeding, service is complete as follows:

(a) Service by mail is complete when a copy of the document is properly addressed, stamped, and deposited in the United States mail.

(b) Service by commercial parcel delivery is complete when the parcel delivery company accepts a copy of the document for delivery.

(c) Service by telefacsimile transmission is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by telefacsimile transmission, and the document being served has been entirely received in the recipient's telefacsimile machine.

(d) Service by electronic mail is complete when the party receiving service has filed a waiver of service by statutory methods and requested service by electronic mail, and the document being served has been entirely received at the recipient's designated electronic mail address.

(e) Proof of service by electronic means. Parties effecting service by electronic means are encouraged to secure electronic return receipts or otherwise confirm successful delivery.

(9) **Certificate of service.** Each person filing a pleading, motion, response, or brief with the commission must include with or on the original of the document either an acknowledgment of service or the following certificate:

"I hereby certify that I have this day served this document upon all parties of record in this proceeding, by (state the authorized method of service selected under WAC 480-07-150)"

Dated at this day of

(signature of person who served the document)

NEW SECTION

WAC 480-07-160 Confidential information. The commission will provide special handling and limited access to confidential information submitted in compliance with this rule. This rule applies to any information submitted under a claim of confidentiality. See also, WAC 480-07-420 regarding protective orders in adjudicative proceedings.

(1) **Implementation.**

(a) **Designated official.** The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter 42.17 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

(b) **Provider.** Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule is a "provider," as that term is used in this rule.

(c) **Requester.** Any person who submits a request for public records under the Public Records Act, chapter 42.17 RCW, or a data request in an adjudicative proceeding is a "requester," as that term is used in this rule.

(2) **Confidential information defined.** Confidential information is information that meets any of the following criteria:

(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.17 RCW.

(b) Information protected under the terms of a protective order in an adjudicative proceeding.

(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095.

(3) **How to designate and seek protection of confidential information under this section.** A provider may claim the protection of this rule only by strict compliance with the following requirements. Any failure to comply with these requirements may result in the submission not being accepted as one including confidential information and its return to the provider for correction and resubmission.

(a) **Contents.** The provider must submit the claim of confidentiality in writing, in the same form (i.e., paper or electronic) and at the same time the information claimed to be confidential is submitted. The provider must state the basis upon which the information is claimed to be confidential under this rule, and must identify any person (other than the provider) that might be directly affected by disclosure of the confidential information.

(b) **Marking.**

(i) **Paper copies.** When the document is in paper format, the provider must clearly mark each copy with the designation "confidential per WAC 480-07-160." The provider must place this mark on the first page of a multipage document and each specific page where the provider claims there is confidential information.

(ii) **Electronic copies.** When the document is in electronic format, such as an electronic mail message, or a word processing or spreadsheet file, the "confidential per WAC 480-07-160" mark must be inserted on the first page in the file and on each page that the provider claims contains confidential information.

(iii) **Protective order, if any, must be cited.** If the provider submits confidential information under the provisions of a protective order, the "confidential" mark on each page that includes confidential information must state: "Confidential per protective order in WUTC Docket No. [insert docket number]."

(c) **Unredacted version under seal; redacted version.** The provider must submit a version of the document as to which confidentiality is claimed as a complete document (unredacted version) and a version of the document with the information claimed to be confidential masked (redacted version). The unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping. Each page of the unredacted version that includes information claimed to be confidential must be printed on yellow or canary paper. The redacted version must be submitted in the same manner as a document as to which confidentiality is not claimed. The redacted version will be available for public disclosure if requested. The redacted and unredacted versions must have the same pagination and line numbering.

(4) **Challenges to claims of confidentiality.** The commission or a party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from

disclosure under chapter 42.17 RCW, RCW 80.04.095, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

(5) **Requests for "confidential" information.** Subject to subsections (6) and (7) of this section, the commission will release information designated confidential in response to a request properly filed under the following requirements:

(a) The requester must submit a written request to the commission's secretary on a form provided by the commission or in a letter containing equivalent supporting information, including the requester's name and address and the name and address of any organization on whose behalf or for whose benefit the request is being made. The requester must state whether the information sought is to be used for a commercial purpose.

(b) The request must be sufficiently specific to allow the secretary to readily identify the document or other material that contains the requested information. Following receipt of a request for confidential information, the secretary will notify the requester of any deficiency in the request. The requester is required to correct the request and resubmit it pursuant to this rule. The commission will take no action pending resubmission.

(c) If a requester wants copies of any documents identified in response to a request, the requester must make arrangements with the commission's secretary to pay the designated copying fees, if any.

(6) **Informal resolution.** When the secretary and the requester agree that the requester's need for information can be satisfied without disclosing confidential information, the secretary will make the information available.

(7) **Notice of request for information designated confidential; release of information designated confidential.** The commission will provide written notice of any request for information designated confidential to the provider and any person identified by the provider as a person who might be directly affected by release of the information. This is to permit any person asserting confidentiality or who might be affected by the release of the information to invoke the statutory procedures for securing a court order to protect the records from disclosure or to take similar steps in compliance with a protective order in an adjudicative proceeding. The commission will issue such notice not more than two days after the requested materials are located and it determines that they contain information claimed to be confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.

If the provider consents in writing to the release of the information, or does not restrain disclosure by way of court order within ten days following notice, the commission will consider the information public, remove the confidential designation from its files, and release the information to the requester.

(8) **Judicial intervention by the commission.** The commission need not assist any person in seeking or resisting judicial intervention, but may participate in any such proceeding.

(9) **Designation or redesignation of confidential information in adjudications.** At the conclusion of an adjudica-

tion in which confidentiality was asserted as to documents or portions of the record, the party originally asserting confidentiality must, no later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record, do the following:

(a) Verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and submit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final and will be changed only if the party asserting confidentiality voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the designation that is least restrictive to public access will be adopted.

(b) File a redacted and unredacted copy of any document as to which confidentiality was asserted during the proceeding but which is not reflected in the record or exhibit list as a document designated confidential.

(c) File an unredacted version of any document designated as confidential during the proceeding, but as to which the party claiming confidentiality wishes to remove the confidential designation, or as to which the confidential designation was terminated by order. In the case of briefs, testimony, and similar documents, the authoring party must file the unredacted version.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 480-07-170 Official communications from the commission. A communication from the commission is not an "official communication" unless the commissioners, the commission's secretary, or the secretary's designee signs it. In addition, the presiding administrative law judge or the administrative law judge's designee may sign official communications relating to an adjudicative proceeding.

NEW SECTION

WAC 480-07-180 Incorporated and referenced materials in commission rules and orders. Any document that is incorporated by reference in a commission rule or order is available for public inspection at the commission unless exempt from the public disclosure requirements in chapter 42.17 RCW, or under a protective order in an adjudicative proceeding. The commission's secretary will provide a copy of a referenced document upon request, allowing reasonable time for any necessary copying, subject to any pertinent charge, and subject to copyright restrictions or statutory exemptions from public disclosure. The commission incorporates or references the version of the incorporated or referenced material that is current on the day the commission adopts a rule or enters an order that makes the incorporation or reference, unless the commission specifies another version or unless another version is apparent from the reference. In most instances, such information is available to the public on the commission's website (see WAC 480-07-125).

PART II: RULE-MAKING PROCEEDINGS

NEW SECTION

WAC 480-07-200 Scope of Part II. The rules in this part apply to all rule-making proceedings before the commission.

NEW SECTION

WAC 480-07-210 Administrative Procedure Act requirements. The commission conducts rule-making proceedings in compliance with the requirements of RCW 34.05.310 through 34.05.395.

NEW SECTION

WAC 480-07-220 Monitoring rule-making proceedings; lists of interested persons. (1) **Internet.** The commission's Internet website includes information about pending rule-making proceedings.

(2) **Mail or electronic mail.** The commission maintains lists of persons interested in potential rule-making proceedings that concern particular regulated industries and other areas of potential interest. The commission sends notice of rule-making proceedings to persons on these lists. Any person may request in writing that the commission's records center include them on the relevant list or lists for the person's area(s) of interest. The commission may establish a fee for this service.

NEW SECTION

WAC 480-07-230 Inquiring about rule-making proceedings. Persons who wish to inquire about rules being proposed or considered by the commission may contact the commission's rules coordinator, whose contact information is available on the commission's Internet website.

NEW SECTION

WAC 480-07-240 Petitions for rule making, amendment, or repeal. Any interested person may petition the commission to request that the commission adopt, amend, or repeal any rule. RCW 34.05.330 and chapter 82-05 WAC govern petitions for new rules or for the amendment or repeal of existing rules.

PART III: ADJUDICATIVE PROCEEDINGS

SUBPART A: RULES OF GENERAL APPLICABILITY

NEW SECTION

WAC 480-07-300 Scope of Part III. (1) **Scope.** The rules in this subpart apply to all adjudicative proceedings described in this chapter, except to the extent of any conflict with special rules that govern general rate proceedings (subpart B of this chapter) or abbreviated adjudicative proceedings (subpart C of this chapter). An "adjudicative proceed-

ing," for purposes of this chapter, is a proceeding in which an opportunity for hearing is required by statute or constitutional right before or after the commission enters an order, or as to which the commission voluntarily enters an adjudication, and as defined and described in chapter 34.05 RCW.

(2) **Examples of adjudicative proceedings before the commission.** The following are examples of proceedings that are adjudicative proceedings for purposes of this chapter, if set for hearing:

- (a) Formal complaint proceedings commenced pursuant to RCW 80.04.110 or 81.04.110.
- (b) General rate proceedings.
- (c) Applications for authority (e.g., certificates, licenses, and permits).
- (d) Petitions for enforcement of interconnection agreements.
- (e) Objections to closures of highway-railroad grade crossings.
- (f) Declaratory order proceedings.

NEW SECTION

WAC 480-07-305 Commencement of an adjudicative proceeding. (1) **Commencement.** The commission may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction and within the scope of its authority. An adjudicative proceeding begins when the commission or presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

(2) **Who may file a pleading seeking to initiate an adjudicative proceeding.** A person involved in an actual case or controversy subject to the commission's jurisdiction may apply to the commission for an adjudicative proceeding by filing the appropriate form of pleading.

(3) **Types of pleadings that may initiate an adjudicative proceeding.** The following pleadings, when properly and timely filed, constitute applications for adjudicative proceedings:

- (a) Formal complaints.
- (b) Petitions, when the action sought requires adjudication.
- (c) Petitions for declaratory orders under RCW 34.05-240, when the commission determines that an adjudicative process is necessary to provide parties the opportunity to resolve contested issues.
- (d) Filings for general rate increases, as defined in this chapter.
- (e) Applications for authority that are not protested, if the commission is required by law to conduct a hearing or determines, in its discretion, that it should set the matter for hearing.
- (f) Petitions for review of the denial of unprotested authority and petitions for mitigation of penalties assessed without hearing.
- (g) Protests to applications for authority.

The commission will not initiate an adjudicative proceeding in response to such an application when contrary to statute or rule, when the application is presented during an existing adjudication (except pursuant to the commission's discretion

under RCW 34.05.413(1)), or when the subject raised by the application is not required to be resolved in an adjudicative proceeding, as defined in chapter 34.05 RCW.

(4) **Commission notification of any deficiencies in a pleading.** Within thirty days after receiving an application for an adjudicative proceeding, the commission may notify the applicant of any obvious errors or omissions, request any additional information it requires regarding the application for adjudicative proceeding, and notify the applicant of the name, mailing address, and telephone number of a person on the commission staff that may be contacted regarding the application.

(5) **Commission determination to conduct adjudicative proceeding.** Within ninety days after a party files and serves a pleading or a party files and serves a response, whichever comes later, the commission will:

(a) Commence an adjudicative proceeding by serving the parties with a notice of hearing pursuant to RCW 34.05.434; or

(b) Decide not to conduct an adjudicative proceeding and furnish the applicant with a copy of its written decision, which will include a brief statement of reasons and notice of any administrative review available.

NEW SECTION

WAC 480-07-310 Ex parte communication. (1) **General.** RCW 34.05.455 and this section govern ex parte communications. After an adjudicative proceeding begins and before a final determination, no person who has a direct or indirect interest in the outcome of the proceeding, including the commission's advocacy, investigative, or prosecutorial staff, may directly or indirectly communicate about the merits of the proceeding with the commissioners, the administrative law judge, or the commissioners' staff assistants, legal counsel, or consultants assigned to advise the commissioners in that proceeding, unless reasonable notice is given to all parties to the proceeding, so that they may participate in, or respond to, the communication.

(2) **Communications not considered ex parte for purposes of this section.** The following communications are not considered ex parte:

(a) **Procedural aspects.** Communications necessary to procedural aspects of maintaining an orderly process, such as scheduling, are not ex parte communications prohibited by RCW 34.05.455, or by this section.

(b) **Commissioners.** The commissioners may communicate with one another regarding the merits of any adjudicative proceeding.

(c) **Commission employees and consultants.** A presiding officer may receive legal counsel, or consult with staff assistants or consultants who are subject to the presiding officer's supervision or who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(3) **Communication prior to service as presiding officer.** If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving,

the presiding officer must disclose the communication as prescribed in subsection (4) of this section promptly after starting to serve.

(4) **What is required if an ex parte communication occurs.** A presiding officer who receives any communication that appears to violate RCW 34.05.455, or this section, will place on the record of the pending matter any such written communication received, any written response to the communication, and a memorandum stating the substance of any such oral communication received, any response made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer will advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party who wants to respond to the communication may place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the proceeding unless a party moves to admit any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(5) **Sanctions.** The commission may prescribe appropriate sanctions, including default, for any violation of RCW 34.05.455 or this section. The commission will, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law.

NEW SECTION

WAC 480-07-320 Consolidation of proceedings. The commission, in its discretion, may consolidate two or more proceedings in which the facts or principles of law are related. Parties may request consolidation or may request the severance of consolidated matters by motion to the commission. The commission may act on its own motion to consolidate matters for hearing, or to sever consolidated matters.

NEW SECTION

WAC 480-07-330 Presiding officers. (1) **Commissioners.** The commissioners may preside in any adjudicative proceeding with or without the assistance of an administrative law judge. When the commissioners preside, they are "presiding officers" as that term is used in chapter 34.05 RCW and in this chapter. When the commissioners preside with the assistance of an administrative law judge, the administrative law judge also is a presiding officer, except for purposes of making final decisions on substantive matters in the proceeding. The administrative law judge may enter procedural and other interlocutory orders. When the commissioners preside, they may enter procedural and other interlocutory orders and will enter one or more final orders in the proceeding to resolve the substantive matters presented.

(2) **Administrative law judge.** The supervisor of the administrative law judge function within the agency will designate one or more administrative law judges to preside in individual proceedings, subject to the commissioners' approval. An administrative law judge may be designated to assist the commissioners in their role as presiding officers as described in subsection (1) of this section, or may be desig-

nated to serve alone as presiding officer. When serving alone as the presiding officer, the administrative law judge will enter one or more initial orders, unless the parties and the commission agree to waive an initial order, or law prohibits entry of an initial order. The commissioners will enter a final order following the opportunity for administrative review of an initial order, upon waiver of an initial order, or as otherwise provided by law.

NEW SECTION

WAC 480-07-340 Parties—General. (1) **Defined; appearance requirement.** A "party" is a person (meaning an individual, partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character) that has complied with all requirements for establishing and maintaining party status in any proceeding before the commission. The commission will not grant party status to a person who fails to appear at the earliest prehearing conference, if one is held, or hearing session, if there is no prehearing conference, unless the party is excused from appearing by the presiding officer or shows good cause for failing to timely appear. The commission staff and the public counsel section of the attorney general's office become parties to an adjudicative proceeding for all purposes upon entering an appearance. When the commission's regulatory staff appears as a party it will be called "commission staff" or "staff." When the public counsel section of the office of the Washington attorney general appears as a party, it will be called "public counsel."

(2) **Classification of parties.** Parties to proceedings before the commission will be called applicants, complainants, petitioners, respondents, intervenors, or protestants, according to the nature of the proceeding and the relationship of the parties, as follows:

(a) **Applicants.** Persons applying for any right or authority that the commission has jurisdiction to grant are "applicants."

(b) **Complainants.** Persons who file a formal complaint with the commission are "complainants." When the commission commences an adjudicative proceeding on its own complaint seeking to impose a penalty or other sanction based upon alleged acts or omissions of the respondent, the commission is the "complainant."

(c) **Petitioners.** Persons petitioning for relief other than by complaint are "petitioners."

(d) **Movants.** Persons filing a motion for relief are "movants" or "moving parties."

(e) **Respondents.** Persons against whom any formal complaint, petition, or motion is filed are "respondents." In general rate proceedings that are set for hearing on the commission's motion or complaint, the party seeking to increase rates is a "respondent," but bears the burden of proof in the proceeding pursuant to RCW 80.04.130 or 81.04.130.

(f) **Intervenors.** Persons, other than the original parties, that are permitted to appear and participate as parties are "intervenors."

(g) **Protestants.** Persons that file a protest to oppose an application are "protestants."

NEW SECTION

WAC 480-07-345 Appearance and practice before the commission. (1) **Minimum qualifications.** No person may appear before the commission as a representative of a party to an adjudicative proceeding without meeting one of the following qualifications:

(a) Membership in good standing in the Washington State Bar Association;

(b) Admission to practice, in good standing, before the highest court of any other state or the District of Columbia;

(c) Status as an officer or employee of a party or person seeking party status, if granted permission by the presiding officer to represent the party;

(d) Status as a legal intern admitted to limited practice under Rule 9 of the Washington state supreme court's admission to practice rules. No legal intern, however, may appear without the presence of a supervising lawyer unless the presiding officer approves the intern's appearance in advance.

The presiding officer may refuse to allow a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

(2) **Written notice of appearance and withdrawal by counsel or other representative is required.** Attorneys or other authorized representatives that wish to appear on behalf of a party or person seeking party status, or to withdraw from a proceeding, must immediately provide separate written notice to the commission and all parties to the proceeding. A party's initial pleading filed in the proceeding must designate the party's representative. Later changes to the designation of authorized representative must be made by written notice to the commission, and a copy must be served on each other party in the proceeding. The party's initial pleading must also designate one person as its representative to accept service for the party itself.

(3) **Unethical conduct is not permitted.** Persons appearing in proceedings before the commission in a representative capacity must conform to the standards of ethical conduct required of attorneys before the courts of Washington. Representatives are required to be familiar with, and conform to, the requirements of the rules of professional conduct that are part of the Washington court rules. If any representative fails to conform to those standards, the commission may exclude the person from the proceeding, may report the ethical violation to any appropriate licensing authority, and may refuse to permit the person to appear before it in a representative capacity in any future proceeding.

(4) **Former employees.** Former employees of the commission are subject to the provisions of RCW 42.52.080, which governs employment after public service.

NEW SECTION

WAC 480-07-350 Access for limited-English speakers and hearing-impaired persons. (1) **Interpreters.** The commission incorporates WAC 10-08-150 (rules of procedure governing interpreters) by reference in this rule so that limited-English-speaking and hearing-impaired persons have equal access to the administrative process and the opportunity for full and equal participation in adjudicative proceedings.

(2) **Notice to limited-English-speaking parties.** When the commission knows that a limited-English-speaking person is a party in an adjudicative proceeding, it will serve on that party a version of all notices concerning the hearing, including notices of hearing, continuances, and dismissals, in the primary language of the party or will include in the service of each notice a supplemental notice in the party's primary language that describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

NEW SECTION

WAC 480-07-355 Parties—Intervention. (1) **Petition to intervene.**

(a) **Who may petition; when petitions must be filed.** Any person (other than the original parties to any proceeding before the commission, commission staff, and public counsel) who desires to appear and participate as a party should file a written petition for leave to intervene at least three business days before the initial hearing date or prehearing conference date, whichever occurs first. A person may petition orally for leave to intervene at the time of the initial hearing or prehearing conference, unless the commission requires written petitions to intervene in a notice prior to the first hearing or prehearing date. The commission may extend the period for filing timely petitions to intervene.

(b) **Late-filed petition to intervene.** Any petition to intervene made after the deadline for filing or presenting the petition is a "late-filed petition to intervene." The commission will grant a late-filed petition to intervene only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition.

(c) **Contents of petition.** Any petition to intervene must disclose:

(i) The petitioner's name and address.

(ii) The petitioner's interest in the proceeding.

(iii) The petitioner's position(s) with respect to the matters in controversy.

(iv) Whether the petitioner proposes to broaden the issues in the proceeding and, if so, a statement of the proposed issues and an affidavit or declaration that clearly and concisely sets forth the facts supporting the petitioner's interest in broadening the issues.

(v) The name and address of petitioner's attorney or other representative, if any. Attorneys and other party representative must separately file their notice of appearance as required by WAC 480-07-345(2).

(2) **Response.** Parties may respond to any petition to intervene. Responses may be written, or may be heard orally at a prehearing conference or at hearing. A party's written response to a petition to intervene must be filed and served at least two business days before the next prehearing conference or hearing date, or at such other time as the commission may establish by notice.

(3) **Disposition of petitions to intervene.** The commission may consider petitions to intervene at hearings or prehearing conferences, or, if persons have responded to a petition, before or after a hearing or prehearing conference. If the petition discloses a substantial interest in the subject matter

of the hearing or if the petitioner's participation is in the public interest, the presiding officer may orally grant the petition at a hearing or prehearing conference, or in writing at any time. The presiding officer may impose limits on an intervenor's participation in accordance with RCW 34.05.443(2). If the commission grants intervention, the petitioner becomes a party to the proceeding as an "intervenor."

(4) **Dismissal of intervenor.** The commission may dismiss an intervenor from a proceeding after notice and a reasonable opportunity to be heard if the commission determines at any time that the intervenor has no substantial interest in the proceeding, or that the public interest will not be served by the intervenor's continued participation.

(5) **Interlocutory review by commission.** The commission may review a decision regarding a petition to intervene or dismissal of an intervenor pursuant to WAC 480-07-810.

NEW SECTION

WAC 480-07-360 Parties—Master service list. The commission will maintain a master service list for each adjudicative proceeding, which will be available upon request and which will to the extent feasible be available on the commission's website. The list will contain the name, mailing address, e-mail address, telephone number, and telefacsimile number of each party to the proceeding and of each party's representative. The commission will provide a courtesy copy to the parties of contact information provided by each party at the initial prehearing conference. Each party must also designate one person to receive service of all documents that are required to be served and may request that additional representatives receive courtesy service. Parties that are individuals will be individually served with all commission orders entered in the proceeding. Parties that are a partnership, corporation, association, governmental subdivision or unit, or public or private organization or entity of any character, must designate an individual within their organization for purposes of service of commission orders.

NEW SECTION

WAC 480-07-370 Pleadings—General. (1) **Types of pleadings permitted.** Pleadings include formal complaints, petitions, answers, replies, counterclaims, answers to counterclaims, cross-claims, answers to cross-claims, third-party complaints, answers to third-party complaints, applications for authority, and protests. The commission may allow other pleadings upon written motion or on the commission's own motion.

(a) **Formal complaints.**

(i) **Defined.** "Formal complaints" are complaints filed in accordance with RCW 80.04.110 and 81.04.110, complaints filed under RCW 80.54.030, and commission complaints in proceedings designated by the commission as formal commission proceedings.

(ii) **Contents.** A formal complaint must be in writing and must clearly and concisely set forth the ground(s) for the formal complaint and the relief requested. A formal complaint must state:

(A) The name and address of the complainant and the name and address of complainant's attorney or other representative, if any;

(B) The full name and address of the person complained against;

(C) Facts that constitute the basis of the formal complaint, including relevant dates; and

(D) Citations to relevant statutes or commission rules.

(iii) **Proceedings under RCW 80.04.110 or 81.04.110.** In proceedings under RCW 80.04.110 or 81.04.110, the provisions of the respective statute will also apply.

(b) **Petitions.**

(i) **Defined.** Except for formal complaints and applications, as defined in this section, all original pleadings that seek relief and all pleadings that seek relief from a commission order are "petitions." Examples of petitions are petitions to intervene, petitions for declaratory orders that the commission converts into adjudications under RCW 34.05.310, petitions for enforcement of interconnection agreements under WAC 480-07-650, petitions for accounting orders, petitions for crossing or alteration of railroad crossings under RCW 81.53.030 and 81.53.060 and petitions for exemptions from or waiver of commission rules. Petitions that seek relief from a commission order include petitions for administrative review of an initial order, petitions for reconsideration of a final order, petitions for rehearing of a final order, and petitions for stay of the effectiveness of a final order. The commission may undertake an action that would be the proper subject of a party's petition, such as authorizing exemption from a commission rule, without receiving a petition from a party. The commission will provide written notice and allow for appropriate process when it acts in the absence of a party's petition.

(ii) **Contents.** A petition must be in writing and must clearly and concisely set forth the ground(s) for the petition and the relief requested. A petition must state:

(A) The petitioner's name and address and the name and address of the petitioner's attorney or other representative, if any;

(B) Facts that constitute the basis of the petition, including relevant dates;

(C) Citations to relevant statutes or commission rules.

(c) **Answer to formal complaint or petition.**

(i) **Defined.** A response to a formal complaint or petition is an answer. Answers must admit or deny specifically, and in detail, all material allegations of the formal complaint or petition and must fully and completely disclose the nature of the respondent's affirmative defenses, if any. A respondent must separately state and number each affirmative defense asserted.

(ii) **When required.** A named respondent must file an answer to a complaint brought by any party other than the commission.

(iii) **When optional; when prohibited.** A party may file an answer in any case, but an answer may not be filed in response to petition for reconsideration unless the commission expressly requests an answer be filed.

(iv) **Timing of answer.** A respondent must answer a formal complaint within twenty days after the commission serves the formal complaint on the respondent or such shorter

time as the commission specifies in its notice. A person who desires to respond to a petition must file the answer within twenty days after the petition is filed. The presiding officer will establish the time for answers to interlocutory petitions. The commission may alter the time allowed for any answer to be filed.

(d) Reply.

(i) *Defined.* The pleading responding to an answer is a "reply." A party must not file a reply without authorization from the commission, upon a showing of cause.

(ii) *Motion for permission to reply.* A party that wishes to respond to an answer must file a motion requesting permission to reply within five business days after the answer is served. Motions for permission to reply should address whether the answer raises new material requiring a response, or state other reason(s) why a reply is necessary. A party may file a proposed reply as an attachment to its motion. If the commission grants a motion to file a reply and no reply is attached to the motion, the commission will set the time for filing the reply. Unless the commission grants a motion for permission to reply within five business days after filing, it is deemed denied.

(iii) *Commission direction or invitation for a reply.* The commission may require or invite a party to file a reply.

(e) *Application.* An "application" is a request for authority, license, or a certificate authorizing a person to provide a service regulated by the commission. The term also includes a request to transfer or amend any such authority, license, or certificate. Examples of applications are requests for certificates of convenience and necessity under Title 81 RCW and requests for transfers of property under chapter 80.12 or 81.12 RCW.

(f) *Protest.* A person who asserts that its interests would be adversely affected if an application is granted may file a "protest." A protest to an application must conform to the requirements of any special rules that apply to the type of application being protested. A protestant must serve a copy of the protest upon the applicant.

NEW SECTION

WAC 480-07-375 Motions. (1) **Defined.** A party's written or oral request for commission action in the context of an adjudicative proceeding is a "motion." Persons who file motions are "movants" or "moving parties." Motions should be in writing unless made during a hearing session before the presiding officer. The commission may require an action that would be the proper subject of a party's motion, such as the rejection of proffered evidence without receiving a motion from a party. The commission will provide oral or written notice and allow for appropriate process when it acts in the absence of a party's motion. The commission recognizes four basic categories of motion:

(a) *Dispositive motions.* Dispositive motions request the commission to determine one or more of the issues in a proceeding or to terminate a party's participation. Examples of dispositive motions are motions to dismiss all or part of a complaint, petition, or application (see WAC 480-07-380(1)); motions for summary determination (see WAC 480-07-380(2)); and motions to dismiss an intervenor (see WAC

480-07-355(4) and 480-07-450) or find a party in default (see WAC 480-07-450).

(b) *Procedural motions.* Procedural motions request establishment of or modifications to process or the procedural schedule in a proceeding. Examples of procedural motions are motions for continuance (see WAC 480-07-385), motions for extensions of time (see WAC 480-07-385), and motions to reopen the record (see WAC 480-07-830).

(c) *Discovery motions.* Discovery motions are requests to promote or limit the exchange of information among parties during the discovery phase of a proceeding. Examples of discovery motions are motions to compel (see WAC 480-07-405(3) and 480-07-425), motions for sanctions (see WAC 480-07-425), and motions for protective orders (see WAC 480-07-420).

(d) *Evidentiary motions.* Motions related to evidence are requests to limit or add to the record in a proceeding. Examples of motions related to evidence are motions to strike, motions in limine, and motions requesting authority to file supplemental or additional testimony.

(2) **Written motions must be filed separately.** Parties must file motions separately from any pleading or other communication with the commission. The commission will not consider motions that are merely stated in the body of a pleading or within the text of correspondence. The commission may refer to the Washington superior court rules for civil proceedings as guidelines for handling motions.

(3) **Oral motions.** A party may bring an oral motion during a hearing, unless foreclosed from doing so by rule or in the presiding officer's discretion. The presiding officer will provide an opportunity for other parties to respond to any oral motion. The presiding officer may require that an oral motion be reduced to writing and may provide an opportunity for written response.

(4) **Responses to written motions.** A party who opposes a written motion, other than a dispositive motion (WAC 480-07-380) or a motion for continuance (WAC 480-07-385), may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the presiding officer may set.

NEW SECTION

WAC 480-07-380 Motions that are dispositive—Motion to dismiss; motion for summary determination; motion to withdraw. (1) **Motion to dismiss.**

(a) *General.* A party may move to dismiss another party's claim or case on the asserted basis that the opposing party's pleading fails to state a claim on which the commission may grant relief. The commission will consider the standards applicable to a motion made under CR 12 (b)(6) and 12(c) of the Washington superior court's civil rules in ruling on a motion made under this subsection. If a party presents an affidavit or other material in support of its motion to dismiss, and the material is not excluded by the commission, the commission will treat the motion as one for summary determination as provided in subsections (2) and (3) of this section.

(b) **Time for filing motion to dismiss.** A party that opposes a pleading must file any motion directed to the pleading no later than the time the responsive pleading is due, or within twenty days after the pleading is served, whichever time is less, unless the party shows good cause for delay. Filing a motion to dismiss a pleading, or seeking a similar remedy, does not extend the time for answering the pleading.

(c) **Response.** A party who opposes a written motion to dismiss may file a response within ten days after service of the motion, or at such other time as may be set by the commission or the presiding officer. The commission may allow oral argument.

(2) Motion for summary determination.

(a) **General.** A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the commission will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

(b) **Time for filing motion for summary determination.** A party must file any motion for summary determination at least thirty days before the next applicable hearing session, unless the commission establishes by order a different specific date for any such motion to be filed.

(c) **Response.** A party that answers a motion for summary determination must file its answer and any cross-motion for summary determination within twenty days after the motion is served, unless the commission establishes by order a different specific date for a response to be filed.

(d) **Continuance not automatic.** Filing a motion for summary determination will not automatically stay any scheduled procedures. The commission may order a continuance of any procedure and may order that an oral or written response to a motion for summary determination be made at a time that is consistent with any established hearing schedule in the proceeding.

(3) **Motion to withdraw.** A party may withdraw from a proceeding only upon permission granted by the commission in response to a written motion if:

(a) In the case of a matter initiated by a tariff filing, the commission has entered a complaint and order suspending the filing; or

(b) In all other cases, the commission has issued a hearing notice or otherwise commenced an adjudicative proceeding pursuant to chapter 34.05 RCW.

The commission will grant a party's motion to withdraw from a proceeding when the party's withdrawal is in the public interest.

NEW SECTION

WAC 480-07-385 Motion for continuance, postponement, or extension of time. (1) Definitions.

(a) "Continuance," means any postponement or extension of time.

(b) A continuance to which all parties agree is an "agreed request."

(2) **Procedure.** Any party may request a continuance by oral or written motion. The commission may require a confirmation letter if a party makes an oral request. The presiding officer may rule on such motions orally at a prehearing conference or hearing session, or by letter, notice, or order. The commission will grant a continuance if the requesting party demonstrates good cause for the continuance and the continuance will not prejudice any party or the commission. The commission will grant a timely request to which all parties expressly agree unless it is inconsistent with the public interest or the commission's administrative needs.

(3) Timing.

(a) A party must file any written motion for continuance at least five business days prior to the deadline as to which the continuance is requested and must serve the motion by means that ensure its receipt by other parties the next business day after filing. Parties must file any written response within three business days after the motion is served, or two days prior to the deadline that is sought to be continued, whichever is earlier. Parties may orally respond when a hearing session is held prior to the stated deadline for a written response.

(b) A party must make any oral request for continuance on the record in a proceeding at least two business days prior to the deadline as to which the continuance is requested. The commission will permit oral responses at the time the oral request is made.

(c) The commission may consider requests for continuance that are made after the deadlines stated in this rule if the requester demonstrates good cause that prevented a timely request.

(4) **Date certain.** The commission will grant continuances only to a specified date.

NEW SECTION

WAC 480-07-390 Briefs; oral argument; findings and conclusions. The commission may require the parties to a proceeding to present their arguments and authority orally at the close of the hearing, by written brief, or both. The commission may require parties to file proposed findings of fact and conclusions of law. The first brief filed following the close of hearing, if any, should be captioned "initial brief of [party]." A responding brief, if any, should be captioned "reply brief of [party]."

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 480-07-395 Pleadings, motions, and briefs—Format requirements; citation to record and authorities; verification; errors; construction; amendment. (1) Format. All pleadings, motions, and briefs must meet the following format requirements:

(a) **Paper size; legibility; margins.** All pleadings, motions, and briefs must be:

- Submitted on three-hole punched 8 1/2 x 11 inch paper.

- Presented in double-spaced, 12 point type, Palatino, Times New Roman, or an equally legible serif font, with footnotes in the same font and of at least 10 point type.

- Printed with margins at least one inch from each edge of the page.

Documents that are electronically filed must meet these requirements when printed.

(b) **Length.** Pleadings, motions, and briefs must not exceed sixty pages (exclusive of exhibits, appended authorities, supporting affidavits and other documents). The presiding officer may alter the page limitation, either shortening or lengthening the number of pages allowed, considering the number and complexity of the issues.

(c) **Organization.** Every pleading, motion, and brief must be organized as follows:

(i) **Caption.** At the top of the first page must appear the phrase, "before the Washington utilities and transportation commission." On the left side of the page, the caption of the proceeding must be set out or, if no caption exists, the following: "In the matter of the (complaint, petition, motion, etc.) of (name of the pleading party) for (identify relief sought)." On the right side of the page, opposite the caption, the pleading party must identify the name of the document (e.g., petition, motion, answer, reply, etc., of (role of party: e.g., petitioner, respondent, protestant, etc., and name of the party if more than one party has the same role in the proceeding)). The caption also must briefly state the relief sought (e.g., "petition for an accounting order"; "motion for continuance").

(ii) **Body of pleading.** The body of the pleading must be set out in numbered paragraphs. The first paragraph must state the pleading party's name and address and if it is the party's initial pleading, the name and address of its representative, if any. The second paragraph must state all rules or statutes that the pleading puts in issue. Succeeding paragraphs must set out the statement of facts relied upon in a form similar to complaints in civil actions before the superior courts of this state. The concluding paragraphs must state the relief the pleading party requests.

(iii) **Body of motion.** A motion must include the following information:

(A) **Relief requested.** A statement of the specific relief the commission is requested to grant or deny.

(B) **Statement of facts.** Succinct statements of the facts that the moving party contends are material to the requested remedy.

(C) **Statement of issues.** A concise statement of the legal issue or issues upon which the commission is requested to rule.

(D) **Evidence relied upon.** Any evidence on which the motion or opposition is based must be specified. Any affidavits, depositions or portions of affidavits or depositions relied upon must be specified. If a party relies on affidavits, deposition transcripts, or documentary evidence, the party must quote the cited material verbatim or attach a photocopy of relevant pages to an affidavit that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence upon which they place substantial reliance.

(iv) **Body of brief.** The commission may require the parties to organize their briefs according to a common outline. The presiding officer, in consultation with the parties, will establish the elements of the common outline taking into account the issues in the proceeding, the parties' preferences, and the commission's needs.

(v) **Citation to record.** Portions of the record relied on or quoted in the body of a brief must be cited using footnotes.

(A) **Transcript.** Transcript references should be as follows: TR. [page]: [line(s)], ([witness's surname]). If the transcript reference spans multiple pages, the reference should be as follows: TR. [page]: [line] - [page]: [line] ([witness's surname]).

(B) **Exhibits.** Exhibit references should be as follows: Exh. No. [insert number assigned at hearing]. In the case of prefiled testimony offered or received as an exhibit, page number(s), line number(s), and the witness's surname should be added following the style specified in this section for transcript references. In other exhibits, references to page(s), line(s) for text, row(s) and column(s) for tables, or other specific references may be added to clarify the information cited.

(vi) **Citation to authority.** Parties must use the citation formats specified in the current edition of the style sheet of the Washington supreme court reporter of decisions. The presiding officer may require parties to file copies of non-Washington authorities that are cited in parties' briefs and upon which parties place substantial reliance.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion must be dated and signed by at least one attorney or representative of record in his or her individual name, stating his or her address, or by the party, if the party is not represented. Parties who are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief. Parties who bring certain complaints under RCW 80.04.110 or 81.04.110 that challenge the reasonableness of the rates or charges of jurisdictional utilities must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

(4) **Liberal construction of pleadings and motions.** The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.

(5) **Amendments.** The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

PROPOSED

NEW SECTION**WAC 480-07-400 Discovery. (1) General.**

(a) **No limitation on commission authority to audit and inspect.** Nothing in this section imposes any limitation on the commission's ability to audit or obtain the books and records of public service companies, or the public service companies' obligation to provide information to the commission, whether or not in the context of an adjudicative proceeding.

(b) **Informal discovery procedures.** Parties in an adjudicative proceeding may agree to informal discovery procedures in addition to, or in place of, the procedures contained in this section.

(c) **Definitions.** For purposes of WAC 480-07-400 through 480-07-425, the following terms have the following meanings:

(i) **Party.** Any party as defined by WAC 480-07-340.

(ii) **Data.** As used in this section, "data" means information of any type, in any form.

(iii) **Data request.** A party's written request that calls for another party to produce data in connection with an adjudicative proceeding is a "data request." Generally, data requests seek documents, an analysis, compilation or summary of documents into a requested format, a narrative response explaining a policy, position, or a document, or the admission of a fact asserted by the requesting party. If a party relies on a cost study, it is expected that the party will, on request, rerun the study based on different assumptions, subject to the standards in subsection (5) of this section. The commission will not order a party to respond to a data request that seeks production of a new cost study unless there is a compelling need for such production.

(iv) **Record requisition.** A request for data made on the record during a conference or hearing session or during a deposition is a "record requisition."

(v) **Bench request.** A request for data made by or on behalf of the presiding officer is a "bench request."

(vi) **Depositions.** Depositions are described in WAC 480-07-410.

(2) When discovery available.

(a) **Subpoenas always available.** The only discovery procedure available in all adjudicative proceedings before the commission is the subpoena, including a subpoena duces tecum. A commissioner, an administrative law judge, or the attorney of any party to the proceeding may issue a subpoena. Witnesses are required to comply with subpoenas in the manner prescribed in Title 80 or 81 RCW and chapter 34.05 RCW. Witnesses will be paid as provided in RCW 34.05.446 (7). Each subpoena must bear the name of the party requesting or issuing the subpoena and the party responsible for paying witness fees.

(b) **When other discovery methods available.** If the commission finds that an adjudicative proceeding meets one of the following criteria, the methods of discovery described in subsections (1)(c)(iii) through (vi) of this section and in WAC 480-07-410 and 480-07-415 will be available to parties:

(i) Any proceeding involving a change in the rate levels of an electric company, natural gas company, pipeline company, telecommunications company, water company, solid

waste company, low-level radioactive waste disposal site, or a segment of the transportation industry;

(ii) Any proceeding that the commission declares to be of a potentially precedential nature;

(iii) Any complaint proceeding involving claims of discriminatory or anticompetitive conduct, unjust or unreasonable rates, violations of provisions in Titles 80 and 81 RCW; or

(iv) Any proceeding in which the commission, in its discretion, determines that the needs of the case require the methods of discovery specified in this rule.

(3) **Signature on discovery requests.** A party, or the party's attorney or other representative, must sign each discovery request or group of requests issued. The signature constitutes a certification that the request complies with the standards of CR 26(g) of the Washington superior court civil rules and that no request made substantially duplicates a request previously made by the requesting party to the same party in the same proceeding, unless the duplication is reasonably necessary and the reason for duplication is clearly stated.

(4) **Frequency, extent, and scope of discovery.** Data requests must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant. A party may not object to a data request on grounds that the information sought will be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to discovery of admissible evidence. Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources, scope of the responding party's interest in the proceeding, and the importance of the issues at stake in the adjudicative proceeding.

(5) **Schedule.** The commission may establish and set forth in a prehearing order a schedule for discovery. Any such schedule will provide deadlines sufficient to allow a timely opportunity for responses and for disputes to be resolved. The presiding officer may impose or modify time limits to the extent necessary to conform to the commission's hearing schedule.

NEW SECTION

WAC 480-07-405 Discovery—Data requests, record requisitions, and bench requests. (1) Grouping and numbering.

(a) **Grouping.** Parties must group their data requests by subject or witness and present data requests in an electronic format agreed upon by the parties whenever possible, unless the parties agree to a different procedure or the presiding officer orders a different procedure. Requests not presented in electronic format must include no more than one request per page. Parties with similar interests are encouraged, and

may be required, to coordinate their issuance of data requests to avoid duplication.

(b) **Numbering.** Each party must number sequentially its data requests, as submitted. The presiding officer will ensure that record requisitions and bench requests are adequately described on the record and consecutively numbered.

(2) **Service of data requests, records requisitions, and responses to parties.** Written data requests must be sent to the party to whom the request is made, with copies to all other parties. The commission staff copy must be sent to the assistant attorney general who represents the commission staff. The commission encourages parties to agree to exchange data in electronic format by e-mail, on diskette, or by other mutually acceptable electronic means.

(3) **Motion to compel; filing data requests, objections, and responses.** Parties must not file data requests and responses to data requests with the commission or provide them to any presiding officer, except when a party files a motion to compel. A party's motion to compel must include the relevant data request, any objection, and any response.

(4) **Limitation on numbers of data requests.** The presiding officer may limit the number of data requests that a party may submit and may require parties to certify that they have coordinated discovery with other parties of similar interest and that no substantial duplication exists with other parties' submissions.

(5) **Responding party to seek clarification.** If a party to whom a data request is submitted finds the meaning or scope of a request to be unclear the responding party must immediately initiate a clarification call to the requesting party. Lack of clarity is not a basis for objection to a data request unless the responding party has made a good faith effort to obtain clarification.

(6) **Objections; consequence of failure to object.**

(a) **Data request.** A party that wishes to object to a data request must present the objection to the requesting party in writing by the time the response is due, or at such other time as may be ordered. A party that fails to interpose a timely objection to providing a full response to a data request waives any right to object for purposes of discovery and must provide a full response. A party that fails to make an objection when responding to data requests does not lose the opportunity to raise an objection at hearing if another party seeks to introduce as evidence all or part of the party's response to a data request.

(b) **Records requisition.** A party to whom a record requisition is addressed may object to the request at the time it is made or, if it later discovers a reason for objection not reasonably known at the time of the record requisition, within five days thereafter. A party may object to the admission of its response to a records requisition at the time the response is offered into evidence.

(7) **Responses.**

(a) **Data requests and records requisitions.** Parties must send responses to data requests and record requisitions to the requesting party and to any other party who requests a copy, consistent with the terms of any protective order entered in the proceeding. Parties must send the commission staff copy to the assistant attorney general who represents the commission staff unless the attorney requests an alternative method.

(b) **Timing.** A party to whom a data request is directed must provide a full response to the data request within ten business days after the request is received. If the data cannot be supplied within ten business days, the responding party must give written notice to the requesting party no later than two business days before the response is due. The notice must state why the ten-day limit cannot be met. The responding party must also provide a schedule by which it will produce the requested data and must explain why any portion of the data cannot be supplied. The presiding officer may modify these time limits.

(c) **Identification of respondent and witness.** Each data response must state the date the response is produced, the name of the person who prepared the response, and the name of any witness who is knowledgeable about and can respond to questions concerning the response.

(d) **Bench requests.** Parties must file responses to bench requests with the commission and serve all parties within ten business days after the request is made, unless the presiding officer specifies another schedule.

(8) **Supplementation.** Parties must immediately supplement any response to a data request, record requisition, or bench request upon learning that the prior response was incorrect or incomplete when made or upon learning that a response, correct and complete when made, is no longer correct or complete.

(9) **Use of responses to data requests, record requisitions or bench requests.** The commission will not consider or treat as evidence any response to a data request, record requisition, or bench request unless and until it is entered into the record.

NEW SECTION

WAC 480-07-410 Discovery—Depositions. (1) **Who may be deposed.** A party may depose any person identified by another party as a potential witness. A party may depose a person who has not been identified as a potential witness, if the presiding officer approves the deposition on a finding that the person appears to possess information significant to the party's case.

(2) **Required notice; deposition conference.** A party who intends to depose one or more persons must give notice to the commission and all parties. The presiding officer will consult with the parties and may schedule a deposition conference to facilitate the deposition process. The deposition conference schedule will be adjusted as needed considering any changes in the case schedule. Deposition conferences will be convened at the commission's offices in Olympia unless the parties and the presiding officer agree to another location.

(3) **How conducted.** Parties should use CR 30 of the Washington superior court civil rules as a guide when conducting depositions. Parties must limit the scope of questioning in a deposition to the same standard set forth in WAC 480-07-400(4). A court reporter provided by the party requesting the deposition will record the deposition. Each party will be responsible for the attendance of any of its prospective witnesses, or any of its employees, who have been scheduled for deposition. A party may interrupt a deposition,

if necessary, to present a dispute regarding the deposition process to the presiding officer. However, to avoid interruption, such disputes should be reserved to the conclusion of the deposition, if possible.

(4) **Use of depositions.** Parties may use depositions for any lawful purpose, subject to the requirements of this subsection. A party may use a deposition to impeach a witness. If a party seeks to offer into evidence the deposition of a witness who is available to testify to the matters addressed in the witness's deposition, the party must do the following:

(a) Offer only those portions of the deposition on which the party intends to rely; and

(b) Provide five business-days' written notice to other parties and to the presiding officer prior to the hearing session at which the witness is expected to appear. The party must attach to the notice the portion(s) of the deposition that the party proposes to offer so that the presiding officer can mark it for identification as in the case of all other proposed hearing exhibits.

If portions of a deposition are admitted into evidence, other parties may offer additional portions of the deposition when necessary to provide a balanced representation of the witness's testimony.

(5) **Correcting/supplementing deposition testimony.**

(a) **Correction.** A party may file a motion to correct a transcription error in a deposition transcript within ten days after the deposition transcript is delivered.

(b) **Supplementation.** Every witness must supplement any response given in a deposition immediately upon learning that the prior response was incorrect or incomplete when made, or upon learning that a response, correct and complete when made, is no longer correct or complete.

NEW SECTION

WAC 480-07-415 Discovery conference. The purpose of a discovery conference is to allow witnesses and others who have knowledge relating to the proceeding (e.g., consultants or employees) to talk directly and informally, to reduce or avoid the need for written data requests and time for their preparation, to allow discussions of potential stipulations regarding individual facts and settlement of individual issues to occur in an informal setting, to discuss the availability of supporting information, and to enhance the parties' ability to acquire or expand their knowledge about the case of one or more designated other parties. The commission may request or require the parties to attend a discovery conference along with designated witnesses to discuss with each other questions about the party's position or evidence and the availability of supporting information. Discovery conferences will not be reported and statements made by participants at discovery conferences are not admissible as evidence unless the parties agree otherwise. The commission may designate a person to facilitate a discovery conference. The designated facilitator must not be associated with any party or with a member of the commission advisory staff who is involved in the proceeding.

NEW SECTION

WAC 480-07-420 Discovery—Protective orders. (1) Standard form. The commission may enter a standard form of protective order designed to promote the free exchange of information when parties reasonably anticipate that discovery in a proceeding will call for the production of confidential information.

(2) **Amendment.** The commission may, upon motion by a party, or on its own initiative, amend its standard form of protective order to meet the parties' and the commission's needs in individual cases.

(3) **Special order.** Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may make any order, including one or more of the following, that:

(a) The discovery will not be allowed;

(b) The discovery will be allowed only on specified terms and conditions;

(c) The discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery;

(d) Certain matters may not be inquired into, or that the scope of the discovery will be limited to certain matters;

(e) Discovery will be conducted with no one present except persons designated by the commission or the presiding officer;

(f) The contents of a deposition will not be disclosed or will be disclosed only in a designated way;

(g) A trade secret or other confidential research, development, or commercial information will not be disclosed or will be disclosed only in a designated way; or

(h) The parties must file specified documents or information enclosed in sealed envelopes to be opened as directed by the commission or the presiding officer.

The presiding officer may order that any party or person provide or permit discovery on such terms and conditions as are just, if the commission denies a motion for a protective order in whole or in part.

NEW SECTION

WAC 480-07-423 Discovery—Protective orders—Submission requirements for documents. Protective orders entered in individual proceedings may allow for parties to designate portions of documents exchanged during discovery or submitted during a proceeding (e.g., by filing, or by offering as an exhibit) as "confidential" or "highly confidential." In general, parties must strictly limit the amount of information they designate as confidential or highly confidential. Designation of documents as highly confidential is not permitted under the commission's standard form of protective order, and may only occur if the commission so orders.

(1) **Designations.**

(a) The "confidential" designation is intended to protect information that might compromise a company's ability to compete fairly or that otherwise might impose a business risk if disseminated without the protections provided in the commission's protective order.

(b) The "highly confidential" designation is reserved for information the dissemination of which, for example, imposes a highly significant risk of competitive harm to the disclosing party without enhanced protections provided in the commission's protective order. A party that wishes to designate information as highly confidential must first file a motion for an amendment to the standard protective order, supported by a sworn statement that sets forth the specific factual and/or legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and sworn statement must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions.

(2) Submission.

(a) **Confidential information.** The first page and individual pages of a document determined in good faith to include confidential information must have the legend that reads: "Confidential per protective order in WUTC Docket No. [insert]." Placing a confidential legend on the first page of an exhibit indicates only that one or more pages contain confidential information and will not serve to protect the entire contents of the multipage document. Each page that contains confidential information must be marked separately to indicate where confidential information is redacted. Confidential information must be submitted on yellow or canary paper with contrasting highlighter (e.g., gray or blue) used to mark the confidential portions.

(b) **Highly confidential information.** The first page and individual pages of a document determined in good faith to include highly confidential information must be marked by a stamp that reads: "Highly confidential per protective order in WUTC Docket No. [insert]." A "highly confidential" stamp on the first page of a document indicates only that one or more pages contain highly confidential information and will not serve to protect the entire contents of a multipage document. Each page that contains highly confidential information must be highlighted to indicate where highly confidential information is redacted. The unredacted versions of each page containing highly confidential information, and provided under seal, also must be marked with the "highly confidential. . ." stamp and must be submitted on light blue paper with contrasting highlighter (e.g., gray or yellow) used to mark the highly confidential portions.

(c) **Redacted version.** A separate version of each document that is designated as confidential or highly confidential must be provided on white paper with all of the confidential or highly confidential information redacted either by blacking out the information or replacing it with brackets and blank space. The first page must be marked as required in subsections (a) and (b) of this section, and additionally must be marked "redacted."

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 480-07-425 Discovery disputes. (1) Procedure for resolving disputes. Parties must make good faith efforts to resolve informally all discovery disputes. The commission

may designate a person to assist the parties to resolve discovery issues, at the request or with the consent of the disputants. A party may file a written motion, or move orally at prehearing conference, to compel discovery if a dispute cannot be informally resolved. The presiding officer will hear discovery disputes, on shortened notice, at the earliest reasonable time. The presiding officer may conduct telephone hearings or conferences for the argument of discovery disputes. The presiding officer may make discovery rulings orally on the record or by written order. The presiding officer's discovery rulings are subject to review under WAC 480-07-810.

(2) **Sanctions for failure to comply.** Any party may by motion, or the commission may on its own motion, propose that sanctions be imposed if a party fails or refuses to comply with an oral or written order resolving a dispute under this section. The commission may impose sanctions including, but not limited to, default, dismissal, striking of testimony, evidence, or cross-examination, or monetary penalties as provided by law.

NEW SECTION

WAC 480-07-430 Prehearing conferences. (1) General. The commission may require, by written notice or by oral notice on the record of the hearing, that all parties and all persons who seek to intervene attend a prehearing conference. The following topics are proper subjects for discussion at a prehearing conference:

- (a) Identification and simplification of the issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations of fact and to documents that might avoid unnecessary proof;
- (d) Limitations on the number of witnesses;
- (e) Coordinated examination of witnesses;
- (f) Procedure at the hearing;
- (g) The need for, and timing of, distribution of written testimony and exhibits to the parties and the bench prior to the hearing;
- (h) Disposition of petitions for leave to intervene;
- (i) Resolution of discovery disputes;
- (j) Resolution of pending motions; and
- (k) Any other matters that may aid in the disposition of the proceeding, whether by commission decision or by settlement.

(2) **Notice.** The commission will provide reasonable notice of the time and place established for a prehearing conference and the matters to be addressed. The notice may provide that failure to attend may result in a party being dismissed, being found in default, or the commission's refusal to consider a later petition for intervention except upon a showing of good cause for the failure to attend. A party's failure to attend a prehearing conference constitutes the party's waiver of all objections to any order or ruling arising out of the conference or any agreement reached at conference, unless the party shows good cause for its failure to attend.

(3) **Oral statement or written order.** The presiding officer may make an oral statement on the record or may enter an order describing the actions taken at the prehearing conference and agreements among the parties concerning all

of the matters considered. Parties may object to the oral statement on the record at the time the oral statement is made, or may object to any written prehearing conference order within ten days after the date the order is served. The results of the prehearing conference will control the course of the proceeding unless modified by subsequent order or decision of the presiding officer to accommodate the needs of the case.

(4) **Prehearing conferences to facilitate evidentiary hearing.** The presiding officer may require parties to attend a prehearing conference prior to an evidentiary or other hearing session, or may recess an evidentiary or other hearing session to conduct a prehearing conference.

NEW SECTION

WAC 480-07-440 Hearing notice. (1) **Initial hearing notice.**

(a) **Timing.** The commission will set the time and place of the first hearing session or prehearing conference in any adjudication in a notice served to all parties twenty days before the hearing or conference. The commission may shorten the notice period to seven days, as provided by RCW 34.05.434. The commission will set all hearings sufficiently in advance so that all parties will have a reasonable time to prepare, considering the procedural schedule, other pending matters, and the need to minimize continuances.

(b) **Provisions for appointment of interpreter.** The initial notice of hearing must state that if a limited-English-speaking or hearing-impaired party needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice will include a form for a party to indicate whether an interpreter is needed and to identify the primary language or hearing-impaired status of the party.

(2) **Notice of continued hearing sessions.**

(a) **Permitted forms of notice.** When a hearing is not concluded as scheduled, the time and place for continued hearing sessions may be set:

(i) On the record without further written notice to the parties;

(ii) By letter or formal notice from the secretary of the commission; or

(iii) By letter or formal notice from the presiding officer.

(b) **Timing.** There are no specific timing requirements for giving prior notice of continued hearing sessions.

NEW SECTION

WAC 480-07-450 Hearing—Failure to appear. (1) **Dismissal or default.** The commission may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. The presiding officer may recess a hearing for a brief period to provide an additional opportunity for the party to appear. If the party is not present or represented when the hearing resumes, the commission may dismiss the party or find the party in default. When the commission dismisses a party or finds a party in default, it will implement the dismissal or default by a written order. When a party is found in default, the commission's order stating that finding may also dispose of the issues in the proceeding, as provided by RCW 34.05.440.

(2) **Review of order of dismissal or default.** A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten days after service of the order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

NEW SECTION

WAC 480-07-460 Hearing—Predistribution of exhibits and prefiled testimony. (1) **Predistribution of evidence.** The commission may require parties to distribute their proposed evidence to other parties before the start of the evidentiary hearing. In general rate proceedings for electric, natural gas, pipeline, and telecommunications companies, the petitioner must prefile its proposed direct testimony and exhibits at the time it files its rate increase request, in accordance with WAC 480-07-510. The commission may convene a prehearing conference shortly before a scheduled hearing and require all parties to predistribute their proposed cross-examination exhibits.

(a) **Number of copies to be filed or submitted; service.** When predistribution of evidence other than proposed exhibits for use in cross-examination is required, each party must file the original plus ten copies of its evidence with the commission unless the commission specifies a different number. When the commission requires parties to predistribute their proposed exhibits for use in cross-examination, each party must submit six copies to the bench if the commissioners are sitting as presiding officers and three copies if the commissioners are not sitting. The presiding officer may change the number of copies required. All proposed evidence must be served on all other parties to a proceeding whenever predistribution of evidence is required.

(b) **Changes or corrections.**

(i) **Substantive corrections.** Prefiled testimony may be revised to correct mistakes of fact asserted by a witness. Such mistakes may arise from a variety of causes such as scrivener's error, error in calculation, or error of misreported fact. Each party must advise all other parties of substantive corrections to any prefiled evidence as soon as the need for correction is discovered.

(ii) **Substantive changes.** Parties must seek leave from the presiding officer by written motion if they wish to submit testimony that includes substantive changes other than to simply correct errors of fact asserted by a witness. A party proposing such changes may submit the proposed revisions with its motion.

(iii) **Minor corrections.** Minor revisions to prefiled testimony and exhibits may be made to correct typographical errors, printing errors, and nonsubstantive changes (e.g., a change in a witness's address or employment). Counsel should not ask a witness on the stand to correct obvious typographical errors in the prefiled testimony or to make more than three minor substantive changes. If more than three minor revisions are required, parties must prepare an errata sheet or a revised exhibit for submission at least one business day prior to the hearing to show such corrections to the prefiled evidence. Parties that submit revisions to predistributed

or previously admitted testimony or exhibits must prominently label them "REVISED" and indicate the date of the revision. The revised portions must be highlighted, in legislative style or other manner that clearly indicates the change from the original submission. This practice must be followed even with minor changes that involve only one page of an exhibit. Counsel must identify partial revisions by page and date when an exhibit is presented for identification, sponsored, or offered into evidence, as appropriate.

(c) **Distribution at hearing.** When a party offers new exhibits, revised exhibits, or errata sheets at a hearing, the party must provide sufficient copies for all parties and for the commission's distribution requirements. When the commission requires parties to predistribute their exhibits, a party may be required to establish good cause for any failure to predistribute a proposed exhibit, other than an exhibit offered solely for impeachment of the witness's testimony on the stand, or the exhibit may be excluded.

(2) **Prefiled testimony.**

(a) **Exhibit numbers—Official record.** The presiding officer will assign exhibit numbers to all prefiled testimony and exhibits at the final prehearing conference prior to hearing, or at hearing. These assigned numbers will be the exhibit numbers for purposes of the official record in the proceeding.

(b) **Parties are required to mark prefiled testimony and exhibits for identification.** Parties must mark all written testimony and exhibits for identification in the upper right-hand corner of the first page prior to submission as follows:

(i) State "Exhibit No.," followed by a blank underline. Then, on the same line, identify the sponsoring witness by including the witness's initials.

(ii) Place a hyphen after the witness's initials and insert a number, beginning with Arabic numeral 1, and sequentially number each subsequent exhibit (including any subsequent written testimony) throughout the proceeding.

(iii) Place the capital letter "C" after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding.

(iv) Place the capital letter "T" after the number if the exhibit is a witness's prefiled testimony.

For example, John Q. Witness's prefiled testimony and accompanying exhibits must be marked as follows:

Testimony or Exhibit	Marked for Identification
John Q. Witness's prefiled direct testimony	Exhibit No. ____ (JQW-1T)
First exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exhibit No. ____ (JQW-2)
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exhibit No. ____ (JQW-3C)
Third exhibit to John Q. Witness's prefiled direct testimony (nonconfidential)	Exhibit No. ____ (JQW-4)

Testimony or Exhibit	Marked for Identification
John Q. Witness's prefiled rebuttal testimony (with portions marked confidential)	Exhibit No. ____ (JQW-5CT)
First exhibit to John Q. Witness's prefiled rebuttal testimony (nonconfidential)	Exhibit No. ____ (JQW-6)

Counsel and other party representatives who are unfamiliar with this method of identification may ask the presiding officer for further guidance.

(c) **Summary of testimony.** Each witness must present a short summary of his or her prefiled testimony on the opening page or two of the testimony. Counsel or other party representative will be expected to ask as a foundation question when the witness takes the stand the subjects that will be covered by the witness. This foundation question should request, and the witness's response should include, only a statement of the subject(s) to be covered by the witness (e.g., rate of return on equity, cost of debt, prudence) and not a summary of the witness's positions on the subject(s) identified.

(d) **Form of testimony and exhibits.** All prefiled testimony and exhibits must be paginated. In addition, line numbers must be set out on all prefiled testimony to facilitate transcript or exhibit references. All copies of prefiled testimony and exhibits must be provided on 8 1/2 x 11 inch, three-hole punched paper, with margins of at least one inch on all sides. Oversized documents may be used at the hearing for illustrative purposes but must be provided on 8 1/2 x 11 inch paper if offered into evidence and reduction to that format is feasible.

NEW SECTION

WAC 480-07-470 Hearing guidelines. These guidelines are of a general nature and are provided to assist the presiding officer in regulating the course of the proceeding. The presiding officer may suspend or modify the guidelines or use measures not specified in this rule.

(1) **Starting times.** Starting times will be strictly observed. The proceeding may go forward in the absence of counsel, parties, or witnesses who are late. Counsel may advise the bench by message to the records center when an emergency prevents timely arrival.

(2) **Appearances.** All persons who will be representing a party in a formal proceeding must give their names and addresses in writing to the court reporter immediately before the first hearing session in which they appear. The presiding officer conducting the hearing or prehearing conference will require appearances to be stated orally at the initial prehearing or hearing session, and may also ask for oral appearances at subsequent sessions in the same proceeding, so that all persons attending the hearing will know the identity and interest of all parties present. Oral appearance at hearing does not substitute for the requirement for written notice of appearance in WAC 480-07-345(2).

(3) **Matters to be handled at beginning of session.** Parties must notify the presiding officer no later than the start of the hearing session of any motion that a party anticipates

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may be presented during the hearing, such as one that may require foundation regarding the admissibility of evidence. The presiding officer will give the parties an appropriate opportunity to state and argue any motions related to evidence or to the procedural course of the hearing.

(4) **Summary by public counsel.** At the beginning of a hearing session during which the commission will hear testimony from members of the public, the commission may provide public counsel an opportunity to inform the public of the major contested issues and to state public counsel's positions on those issues. The commission will give other parties an opportunity to respond.

(5) **Evidence; exhibits; stipulations of fact.** The presiding officer may receive evidence as provided by RCW 34.05.452.

(6) **Order of presentation.** Evidence will ordinarily be received in the following order:

- (a) Party having the burden of proof;
- (b) Parties supporting the party having the burden of proof;
- (c) Parties opposing the party having the burden of proof;
- (d) Rebuttal by the party having the burden of proof;

The presiding officer may direct a modified order of presentation considering the needs of the parties, the commission, and the proceeding, and the parties' preferences.

(7) **Testimony under oath.** The presiding officer will administer an oath or affirmation to each witness before the witness testifies in an adjudicative proceeding. When members of the public testify, they will be sworn in the same fashion as other witnesses.

(8) **Addressing the presiding officer or witnesses.** All counsel and other party representatives must address all comments, objections, and statements to the presiding officer and not to other counsel. Questions that concern testimony or exhibits sponsored by a witness must be addressed to the witness and not to counsel or other party representatives.

(9) **Resolving matters off the record.** Counsel or other party representatives who request off-the-record discussions must ask leave to go off the record and state the purpose for the request. Extended colloquies regarding procedural issues may be conducted off the record, but will be summarized for the record by the presiding officer subject to comments from party representatives.

(10) **Witness panels.** The commission may direct or allow two or more witnesses to take the stand simultaneously when doing so allows a benefit such as the integrated response to a line of questions, minimizing referral of questions from one witness to another, or comparing witnesses' positions. The presiding officer will also allow cross-examination of each witness upon matters within the witness's direct evidence.

(11) **Cross-examination.** Counsel and other party representatives should be prepared to provide time estimates for cross-examination of witnesses. The presiding officer will limit cross-examination to one round unless good cause exists for allowing additional questions. Witnesses must not be asked to perform detailed calculations or extract detailed data while on the stand. Any such questions must be provided to the witness at least two business days prior to the

date the witness is expected to testify, must ask the witness to provide the answer for the record later in the hearing session, or must provide an answer and ask the witness to accept it "subject to check." When a witness accepts information "subject to check," the witness must perform the "check" as soon as possible. A response given "subject to check" will be considered accurate unless the witness disputes it by filing an affidavit, stating reasons, within five business days following the witness's testimony.

(12) **Redirect examination.** A party whose witness has been cross-examined may conduct redirect examination of the witness on those issues raised during cross-examination.

(13) **Post-hearing planning.** The presiding officer will confer with the parties concerning post-hearing process. The presiding officer will determine whether oral argument, briefs, or both will be required, taking into consideration the needs of the commission and the parties' preferences. The presiding officer may determine a common format or outline to be used by all parties if briefs are required. Briefs must comply with the requirements of WAC 480-07-395.

(14) **Transcript.** Each party will bear its own costs for transcripts or tape recordings, including charges for expedited service when a party requests it.

NEW SECTION

WAC 480-07-480 Hearing—Stipulation of facts. A stipulation is an agreement among parties intended to establish one or more operative facts in a proceeding. The commission encourages parties to enter stipulations of fact. The parties to any proceeding or investigation before the commission may agree to all of the facts or any portion of the facts involved in the controversy. The parties to a stipulation may file it in writing or enter it orally into the record. A stipulation, if accepted by the commission, is binding on the stipulating parties. The parties may present the stipulation as evidence at the hearing. The commission may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.

NEW SECTION

WAC 480-07-490 Hearing—Exhibits and documentary evidence. (1) **Designation of part of document as evidence.** A party who offers evidence that consists of a portion of a document must designate the portion that is offered. If irrelevant matter included in the document would unnecessarily encumber the record, the document will not be received in evidence, but the relevant or material matter may be read into the record, or the presiding officer may receive a copy of the excerpt as an exhibit. If only a portion is offered or received, other parties may examine the document and offer other portions into evidence.

(2) **Official records.** An official document prepared and issued by any governmental authority may be introduced in the form of a certified copy. Official records contained in official publications or nationally recognized reporting service publications that are in general circulation and readily accessible to all parties may be introduced by reference, provided that the party offering the document clearly identifies the record and its source. The presiding officer may require

the party offering such evidence to provide a copy for the record and to each party.

(3) **Commission's files.** The presiding officer may receive documents on file with the commission by reference to number, date, or by any other method of identification satisfactory to the presiding officer. If only a portion of a document is offered in evidence, the part offered must be clearly designated. The presiding officer may require the party offering the evidence to provide a copy to the record and to each party.

(4) **Records in other proceedings.** A portion of the record of any other commission proceeding that is otherwise admissible may be received as an exhibit in the form of a copy; by citation to the transcript or exhibit number; or by incorporation into the transcript of the current proceeding, as determined by the presiding officer.

(5) **Documents from the public.** When a member of the public presents a document in conjunction with his or her testimony, the commission may receive the document as an illustrative exhibit. The commission may receive as illustrative exhibits any letters that have been received by the secretary of the commission and by public counsel from members of the public regarding a proceeding. Documents a public witness presents that are exceptional in their detail or probative value may be separately received into evidence as proof of the matters asserted after an opportunity for cross-examination.

(6) **Resolutions.** The presiding officer may receive in evidence authenticated resolutions of the governing bodies of municipal corporations and of chambers of commerce, boards of trade, commercial, mercantile, agricultural, or manufacturing societies and other civic organizations. Any recital of facts contained in a resolution may not be considered as proof of those facts.

(7) **Objections.** Any evidence offered is subject to appropriate and timely objection. The presiding officer need not specifically ask each representative whether that party objects to an offer of evidence or other motion or proposed action. Parties that have objections must state them. Failure to object constitutes a waiver of the right to object.

NEW SECTION

WAC 480-07-495 Hearing—Rules of evidence; official notice. (1) **Admissibility; exclusion; offer of proof.** All relevant evidence is admissible if the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness. The presiding officer will consider, but is not required to follow, the rules of evidence governing general civil proceedings in non-jury trials before Washington superior courts when ruling on the admissibility of evidence.

The presiding officer may exclude evidence that is irrelevant, repetitive, or inadmissible, whether or not a party objects to the evidence. Parties objecting to the introduction of evidence must state the grounds for the objection at the time the evidence is offered. The presiding officer may permit the party offering rejected evidence to describe briefly for the record its nature and purpose as an offer of proof. A written offer of proof may be required.

(2) **Official notice.**

(a) The commission may take official notice of:

(i) Any judicially cognizable fact. Examples of such facts include, but are not limited to:

(A) Rules, regulations, administrative rulings and orders, exclusive of findings of fact, of the commission and other governmental agencies;

(B) Contents of certificates, permits, and licenses issued by the commission; and

(C) Tariffs, classifications, and schedules regularly established by or filed with the commission as required or authorized by law.

(ii) Technical or scientific facts within the commission's specialized knowledge; and

(iii) Codes or standards that have been adopted by an agency of the United States, or this state or of another state, or by a nationally recognized organization or association.

(b) The commission may, in its discretion upon notice to all parties, inspect physical conditions that are at issue and take official notice of the results of its inspection.

(c) The presiding officer will notify parties of material officially noticed and its source. The presiding officer will afford parties an opportunity to contest facts and material so noticed. The presiding officer may require a party proposing that official notice be taken to provide copies of officially noted matter to the record and to all other parties.

NEW SECTION

WAC 480-07-498 Hearing—Public comment. The commission will receive as a bench exhibit any public comment filed, or otherwise submitted by nonparties, in connection with an adjudicative proceeding. The exhibit will be treated as an illustrative exhibit that expresses public sentiment received concerning the pending matter. The commission may convene one or more public comment hearing sessions to receive oral and written comments from members of the public who are not parties in the proceeding. When the commission conducts a public comment hearing, the presiding officer will make an opening statement explaining the purpose of the hearing and will briefly summarize the principal issues in the matter. The presiding officer will administer an oath to those members of the public that indicate a desire to testify concerning their views on the issues. The presiding officer will call each member of the public who wishes to testify, will inquire briefly into the identity and interests of the witness, and will provide an opportunity for a brief statement by the party. Typically, public witnesses may expect to have three to five minutes to make an oral statement. Oral statements may be supplemented by written comments.

SUBPART B: GENERAL RATE PROCEEDINGS

NEW SECTION

WAC 480-07-500 General rate proceedings—Statement of policy. (1) **Scope of this subpart.** This subpart explains the special requirements for certain rate increase filings by electric, natural gas, pipeline, telecommunications, and water companies, low-level radioactive waste sites, and solid waste collection companies.

(2) **Inconsistencies with subpart A requirements.** If there is any inconsistency between the requirements in subpart B and those in subpart A, the requirements in subpart B control.

(3) **Purpose of special rules.** The special requirements in subpart B are designed to standardize presentations, clarify issues, and speed and simplify processing.

(4) **Summary rejection for failure to comply.** The commission may summarily reject any filing for a general rate proceeding that does not conform to the requirements of subpart B. If the commission summarily rejects a filing for a general rate, it will provide a written statement of its reasons and will provide an opportunity for the case to be refiled in conformance with these rules.

(5) **Less than statutory notice.** The commission may grant requests to alter tariffs on less than statutory notice for good cause shown, in accordance with RCW 80.28.060 and 81.28.050. A company that seeks to implement general rate proceeding tariff changes on less than statutory notice must include with its filing a complete explanation of the reasons that support such treatment.

NEW SECTION

WAC 480-07-505 General rate proceedings—Definition. (1) **Rate filings that are considered general rate proceedings.** A general rate proceeding filing is a filing by any regulated company specified in WAC 480-07-500 for an increase in rates that meets any of the following criteria:

(a) The amount requested would increase gross annual revenue of the company from activities regulated by the commission by three percent or more.

(b) Tariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more.

(c) The company requests a change in its authorized rate of return on common equity or a change in its capital structure.

(d) The company is a solid waste company regulated under chapter 81.77 RCW, except for filings specified under subsection (3)(a) of this section.

(2) **Rate filings under Title 80 RCW that are not considered general rate proceedings.** The following proceedings are not considered general rate increases even though the revenue requested may exceed three percent of the company's gross annual revenue from Washington regulated operations:

(a) Periodic rate adjustments for electric and natural gas companies that may be authorized by the commission (e.g., power cost adjustments and purchased gas cost adjustments).

(b) Emergency or other short-notice increases caused by disaster or weather-related conditions unexpectedly and substantially increasing a public service company's expense.

(c) Rate increases designed to recover government-imposed increases in costs of doing business such as changes in tax laws or ordinances.

(d) Other increases designed to recover increased expenses arising on short notice and beyond a public service company's control.

(3) **Rate filings under chapter 81.77 RCW that are not considered general rate proceedings.** The following

filings are not considered general rate proceedings for solid waste companies regulated under chapter 81.77 RCW even though the request may meet one or more criteria identifying general rate proceedings:

(a) Filings by companies that provide neither traditional residential or commercial solid waste operations. This category includes specialized carriers generally hauling specific waste products for specific customers and carriers providing only on-call or nonscheduled service (i.e., "class C" companies, as defined in WAC 480-70-041).

(b) Disposal fee pass-through charges for drop-box service, provided there are no affiliated interest relationships.

(c) Filings for collection of per-customer pass-through surcharges and taxes imposed by the jurisdictional local government based on the current year customer count either as a specified dollar amount or percentage fee amount.

(d) Filings by existing solid waste companies for the implementation of new solid waste collection programs.

(4) **Commission discretion.** The commission may require that any filing or proposal by a regulated company to increase rates for any customer class, or to restructure rates, is subject to the procedures and protections of subpart B of these rules.

NEW SECTION

WAC 480-07-510 General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies. General rate proceeding filings for electric, natural gas, pipeline, and telecommunications companies must include the information described in this section. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section. The company must provide:

(1) **Testimony and exhibits.** Ten paper copies of all testimony and exhibits that the company intends to present as its direct case if the filing is suspended and a hearing held. In addition, the company must provide one electronic copy of the testimony and exhibits in a format or formats authorized in these rules or by the commission secretary. Material that has not been produced under the company's direction and control and is not reasonably available to it in electronic format, such as generally available copyrighted published material, need not be provided in electronic format. A copy of the testimony and exhibits filed under this section must be served on public counsel at the time of filing with the commission.

(2) **Tariff sheets.** Three copies of the proposed new or revised tariff sheets in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted.

(3) **Work papers and accounting adjustments.** Three copies of all supporting work papers as described in this subsection. If the testimony, exhibits, or work papers refer to a document, including, but not limited to, a report, study, analysis, survey, article or decision, that document must be provided as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided with the filing but must be made avail-

able if requested. The following information must be included in the company's work papers, if it is not included in the testimony or exhibits:

(a) A detailed portrayal of the development of the company's requested rate of return.

(b) A detailed portrayal of restating actual and pro forma adjustments that the company uses to support the filing, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, supporting testimony, and exhibits. If the company proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the company, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(c) A detailed portrayal of revenue sources during the test year and a parallel portrayal, by source, of changes in revenue produced by the filing, including an explanation of how the changes were derived.

(d) If the public service company has not achieved its authorized rate of return, an explanation of why it has not and what the company is doing to improve its earnings in addition to its request for increased rates.

(e) A representation of the actual rate base and results of operation of the company during the test period, calculated in the manner used by the commission to calculate the company's revenue requirement in the commission's most recent order granting the company a general rate increase.

(f) Supplementation of the annual affiliate and subsidiary transaction reports as provided in rules governing reporting requirements for each industry, as necessary, to include all transactions during the test period. The company is required to identify all transactions that materially affect the proposed rates.

(4) **Summary document.** A summary document that briefly states the following information on an annualized basis, if applicable. In presenting the following information, the company must itemize revenues from any temporary, interim, periodic, or other noncontinuing tariffs. The com-

pany must include in its rate change percentage and revenue change calculations any revenues from proposed general rate change tariffs that would supersede revenue from noncontinuing tariffs.

(a) The date and amount of the latest prior general rate increase authorized by the commission, and the revenue realized from that authorized increase in the test period, based on the company's test period units of revenue.

(b) Total revenues at present rates and at requested rates.

(c) Requested revenue change in percentage, in total, and by major customer class.

(d) Requested revenue change in dollars, in total, and by major customer class.

(e) Requested rate change in dollars, per average customer, by customer class, or other representation, if necessary to depict representative effect of the request. Filings must also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.

(f) Most current customer count, by major customer class.

(g) Current authorized overall rate of return and authorized rate of return on common equity.

(h) Requested overall rate of return and requested rate of return on common equity, and the method or methods used to calculate rate of return on common equity.

(i) Requested capital structure.

(j) Requested net operating income.

(k) Requested rate base and method of calculation, or equivalent.

(l) Requested revenue effect of attrition allowance, if any is requested.

(5) **Required service of summary document.** The company must mail the summary document required in subsection (4) of this section to the persons designated below on the same date it files the summary document with the commission:

(a) Public counsel;

(b) All intervenors on the commission's master service list for the company's most recent general rate proceeding;

(c) All intervenors on the master service list for any other rate proceeding involving the company during the five years prior to the filing, if the rates established or considered in that proceeding may be affected in the company's proposed general rate filing;

(d) All persons who have informed the company in writing that they wish to be provided with the summary document required under this section. The company must enclose a cover letter stating that the prefiled testimony and exhibits and the accompanying work papers, diskettes, and publications specified in this rule are available from the company on request or stating that they have been provided. This provision does not create a right to notice in persons named to receive the summary.

(6) **Cost studies.** The company must include any cost studies it performed or relied on to prepare its filing, identify all cost studies conducted in the last five years for any of the company's services, and describe the methodology used in such studies.

(7) **Other.** The company must include its most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders; the most recent FERC Form 1 and FERC Form 2, if applicable; and the company's Form 10K's, Form 100's, any prospectuses for any issuances of securities, and quarterly reports to stockholders, if any, for the most recent two years prior to the filing date.

NEW SECTION

WAC 480-07-520 General rate proceedings—Solid waste collection companies. General rate increase filings by class A and B haulers as defined in WAC 480-70-041 must include the information described in this rule. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.

(1) **Proposed tariff.** Two copies of the proposed tariff, in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted.

(2) **Local government ordinances and notices.** A copy of every local government ordinance related to the request, and a copy of the customer notices issued in compliance with the provisions of WAC 480-149-120.

(3) **Transmittal letter.** A transmittal letter prepared in compliance with the provisions of WAC 480-149-120 and 480-70-326.

(4) **Work papers.** All supporting work papers for the test period, which is the most recent or most appropriate consecutive twelve-month period for which financial data are available. Work papers must include:

(a) A detailed pro forma income statement separated among solid waste, single family residential recycling, multi-family recycling, and yard waste, with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(b) A calculation of the revenue impact of proposed tariff revisions.

(c) An income statement listing all revenue and expense accounts by month.

(d) If nonregulated revenue represents more than ten percent of total company test period revenue, a detailed separa-

tion of all revenue and expenses between regulated and non-regulated operations.

(e) A detailed list of all nonregulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.

(f) Detailed price-out information that reconciles within five percent, without adjustment, to the test period booked revenue, including the test period customer count by tariff item.

(g) A consolidated balance sheet, including the percentage of equity and the percentage of debt, and the cost of that debt by component.

(h) A detailed depreciation schedule listing all used and useful assets held by the company during the test period, including the date of purchase, the cost at purchase, the depreciable life, the salvage value, depreciation expense, and accumulated depreciation expense at the end of the test period.

(i) Computed average investment. Average investment is the net book value of allowable assets at the beginning of the test period plus the net book value of allowable assets at the end of the test period, divided by two. Investor supplied working capital may be included, provided a work sheet is submitted detailing the calculations.

(j) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: A full description of the relationship, terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

(5) **Annual report.** The most recent consolidated annual report to shareholders, if any.

NEW SECTION

WAC 480-07-530 General rate proceedings—Water companies. General rate increase filings by water companies must include the information described in this section. The commission may summarily reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section.

(1) **Cover letter.** The cover letter must:

(a) Provide a description of the filing, and the requested action, in understandable terms;

(i) Technical terms are acceptable, but descriptions must use common terms so the public can easily understand the impact of the filing;

(ii) Acronyms, if used, must be defined before they are used in the text of the letter;

(b) State why the filing is being made (e.g., increased costs for water testing);

(c) Describe each service that is impacted and the dollar and percentage change for each service as well as the net impact of all changes on the company's total regulated revenue.

(2) **Tariff.** The proposed tariff must include explanatory markings.

(3) **Customer notice.** A copy of the notice mailed to customers.

(4) **Work papers.** The supporting work papers for the test period including:

(a) A calculation of the revenue impact of proposed rates by each class affected;

(b) Balance sheet and statement of revenues and expenses;

(c) Depreciation schedule;

(d) Adjustments proposed including a schedule showing adjustments to the statement of revenues and expenses, including any restating adjustments and/or pro forma adjustments including the effect of proposed rates;

(e) Work papers that explain both restating and pro forma adjustments that the company proposes, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, and its supporting testimony and exhibits.

(i) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results, which can distort test period earnings. Restating actual adjustments are also used to adjust from an as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

(ii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The filing must identify dollar values and underlying reasons for each proposed pro forma adjustment.

(f) Usage statistics verifying test year revenues and proposed revenues.

(g) Public water system identification number assigned by the Washington department of health for each system that the new rates will affect.

(h) Schedule showing separation of revenues and expenses between regulated and nonregulated operations.

(i) Information about every transaction with an affiliated interest or subsidiary that directly or indirectly affects the proposed rates. This must include: A full description of the relationship, terms and amount of the transaction, the length of time the relationship has been ongoing, and an income statement and balance sheet for every affiliated entity.

NEW SECTION

WAC 480-07-540 General rate proceedings—Burden of proof. Public service companies bear the burden of proof in general rate proceedings that propose changes that would increase any rate, charge, rental, or toll, as provided in RCW 80.04.130 or 81.04.130. The burden of proof includes the burden of going forward with evidence and the burden of persuasion. The commission will consider the company's prefiled evidence to be its full direct case in support of its rate filing for purposes of deciding any prehearing motion to dismiss under WAC 480-07-380.

NEW SECTION

WAC 480-07-550 General rate proceedings—Compliance filings and other resulting filings. WAC 480-07-880 and 480-07-883 govern compliance filings and other filings that the commission authorizes or requires in a general rate proceeding.

SUBPART C: ABBREVIATED AND SPECIALIZED FORMS OF ADJUDICATIVE PROCEEDINGS

NEW SECTION

WAC 480-07-600 Scope. Subpart C of this chapter establishes rules for abbreviated and specialized adjudicative proceedings, including brief adjudicative proceedings, emergency adjudicative proceedings, proceedings under the Telecommunications Act of 1996, and proceedings concerning the closure of highway-railroad grade crossings.

NEW SECTION

WAC 480-07-610 Brief adjudicative proceedings. (1) When permitted. The commission may use brief adjudicative proceedings under RCW 34.05.482 when doing so is consistent with other provisions of law, when protection of the public interest does not require the commission to give notice and an opportunity to participate to persons other than the parties, and when the commission believes that the brief adjudication is consistent with the public interest. In exercising its discretion to conduct a brief adjudication, the commission will consider the preferences of the parties, the possible benefits to be gained from a brief adjudication, and the nature of issues involved.

(2) **Matters suitable for brief adjudication.** Categories of proceedings suitable for brief adjudication include, but are not necessarily limited to:

(a) Review of denials or partial denials of applications that are not protested.

(b) Contested applications for temporary authority.

(c) Proceedings that could lead to suspension, cancellation, or revision of authority for failure to maintain tariffs, pay fees, or file required documents.

(d) Formal complaints in which notice and an opportunity to participate in the proceeding need not be given to persons other than the parties.

(e) Petitions for mitigation of penalty assessments under RCW 80.04.405 and 81.04.405, including any challenge to the validity of a penalty assessment or the existence of an underlying violation.

(3) **How to request brief adjudication.** Any person may apply for a brief adjudicative proceeding by filing with the secretary of the commission a letter stating reasons why a brief adjudication should be used and a certificate of service upon all other identified or necessary parties. The commission may set a matter for brief adjudication on its own motion when doing so will not prejudice the rights of any person. Each applicant for a brief adjudicative proceeding must submit a written explanation of its view of the issues along with its application. Parties may file written submissions as pro-

vided in the commission's notice that it will conduct the brief adjudicative proceeding.

(4) **Assignment of presiding officer.** If the commission grants the request for a brief adjudication, it will designate a person to serve as a presiding officer consistent with the requirements of RCW 34.05.485.

(5) **Requesting and presenting oral comments.**

(a) **Request.** A party to a brief adjudicative proceeding may request to make an oral statement in the application or in a response to the application. The presiding officer may grant a request to make an oral statement or may ask the parties to make oral statements if the presiding officer believes an oral statement will help in reaching a decision.

(b) **Notice.** The commission will serve upon the parties a notice of the time and place for the brief adjudicative proceeding and the name and telephone number of the designated presiding officer at least seven days before the proceeding.

(6) **Initial order.** The presiding officer may make an oral statement of the reasons for the decision during the brief adjudication if the party affected is present at the proceeding. The presiding officer will enter an initial order that addresses the issues raised by the application within ten days after the date of the brief adjudication. The initial order will be served on the parties pursuant to WAC 480-07-150 (3) and (7).

(7) **Review of initial orders.**

(a) **Timing.** Any party may file a written petition for review of an initial order in a brief adjudication within twenty-one days after service of the initial order and the commission will review the initial order. The commission may review an initial order on its own motion.

(b) **Format for petition for review.** The commission encourages written petitions for review so parties will have the greatest opportunity to state reasons for their views. A written request for review of an initial order must contain an explanation of the party's view of the matter, with a statement of reasons why the initial order is incorrect, and a certificate of service. Oral petitions for review are permitted under RCW 34.05.488.

(c) **Response.** The commission encourages written responses. Any written response to a petition for review must be filed with the commission and served to the other parties within seven days after service of the petition for review, or on a schedule set by the presiding officer. The commission may hear orally any response to an oral petition for review.

(8) **Final order on review.** The commission may adopt, modify, reject, or remand the initial order for further proceedings consistent with the terms of its final order. The final order on review will be in writing, will include a brief statement of the reasons for the decision, and will be entered within twenty days after the deadline for requesting review or of the request for review, whichever is later. The order must include a notice of any further available administrative review or, if none is available, a notice that judicial review may be available.

(9) **Final order without review.** If no party seeks review of the initial order, the commission may enter an order adopting the initial order, as its final order.

(10) **Record.** The record in a brief adjudicative proceeding consists of any documents regarding the matter that were

considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency's record need not constitute the exclusive basis for action, unless otherwise required by law.

NEW SECTION

WAC 480-07-620 Emergency adjudicative proceedings. (1) **When permitted.** The commission may conduct an emergency adjudicative proceeding pursuant to RCW 34.05.479 to suspend or cancel authority, to require that a dangerous condition be terminated or corrected, or to require immediate action in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate action by the commission. Such situations include, but are not limited to:

(a) Inadequate service by a public service company when the inadequacy involves an immediate danger to the public health, safety, or welfare; and

(b) Violations of law, rule, or order related to public safety, when the violation involves an immediate danger to the public health, safety, or welfare.

(2) **Who presides.** The commissioners will sit as presiding officers, hear the matter, and enter an order, if a majority of the commissioners are available. Any available commissioner will sit as presiding officer, hear the matter, and enter an order, if a majority of the commissioners is not available. The supervisor of the commission's administrative law judge function will assign an administrative law judge to sit as presiding officer, hear the matter, and enter an order, if no commissioner is available.

(3) **Record and decision.** The official record will include any written submissions of the parties; oral comments by the parties, if the presiding officer has allowed oral comments; and any documents regarding the matter that were considered or prepared by the commission. The agency's record need not constitute the exclusive basis for action, unless otherwise required by law.

(4) **Emergency order.** The presiding officer will enter an emergency order as soon as practicable under the circumstances. The order will include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order is effective when entered. The commission will serve the order pursuant to WAC 480-07-150 (3) and (7).

(5) **Post-order process.** After entering an emergency order under this section, the commission will proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger to the public health, safety, or welfare, and will enter a final order.

(6) **Review or reconsideration of emergency order.** Any party to an emergency adjudicative proceeding may seek immediate review by the full commission in the case of any order entered by a single commissioner or by an administrative law judge. In the case of any order entered by a majority of the commissioners, any party may seek immediate reconsideration. If either review or reconsideration is requested, the commission will establish appropriate process to com-

plete its review or reconsideration within ten days of the date of any petition for review or reconsideration. A party seeking immediate review or reconsideration is not automatically entitled to a stay of the emergency order.

NEW SECTION

WAC 480-07-630 Telecommunications companies—Arbitration under the Telecommunications Act of 1996.

(1) **Scope.** This rule implements the arbitration provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Nature of the proceeding.** Arbitrations that the commission conducts pursuant to 47 U.S.C. § 252 are subject to judicial review. Arbitration under this section, however, is not an adjudicative proceeding under the Washington Administrative Procedure Act, chapter 34.05 RCW. Arbitration decisions are binding only upon the parties to the arbitration. Arbitration under this section should be characterized by fairness, cooperation and openness between or among the parties, and is designed to resolve disputes efficiently and economically.

(3) **Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The public counsel section of the office of attorney general may elect to participate pursuant to RCW 80.04.510.

(4) Filing and service of a petition for arbitration.

(a) **When allowed.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. § 252(b)(1), any party to the negotiation may petition the commission to arbitrate all issues that remain unresolved. Parties may continue to negotiate in good faith and may continue to participate in mediation to resolve the disputed issues after arbitration is requested.

(b) **Filing.** Parties must file petitions for arbitration under section 252(b)(2) as provided for other petitions under WAC 480-07-145, and must follow the format requirements for pleadings in WAC 480-07-395.

(c) **Service.** A party that files a petition for arbitration must deliver a complete copy of the petition and all accompanying documentation to the other party or parties to the negotiation on the same day that the petition is filed with the commission.

(6) **Contents of petition and documentation.** A petition for arbitration filed under this section must:

(a) State the date on which the original request for negotiation was received, and the dates one hundred thirty-five days and one hundred sixty days after the request was received;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the petitioner;

(d) State any conditions that the petitioning party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252(b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the petitioner relies on to support its positions or that it intends to introduce as exhibits at the hearing.

(7) Filing and service of an answer to a petition for arbitration.

(a) **When allowed.** Any party to the negotiation may respond to a petition for arbitration and may file with the commission such additional information as it wishes within twenty-five days after the petition is filed.

(b) **Filing.** Answers to petitions for arbitration under section 252(b)(2) must be filed with the commission in the manner provided for answers to other petitions under WAC 480-07-145, and must follow the format requirements for pleadings under WAC 480-07-395.

(c) **Service.** A party responding to a petition for arbitration must deliver to the petitioner and any other party or parties to the negotiation a complete copy of the answer and all accompanying documentation on the same day that the response is filed with the commission.

(8) **Contents of answer and required documentation.** An answer to a petition for arbitration filed under this section must:

(a) State whether the respondent disputes the date the petitioner asserts was the date on which the respondent received the original request for negotiation, or disputes any subsequent dates stated in the petition in conformance with subsection (6)(a) of this section;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the respondent;

(d) State any conditions that the responding party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252(b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available and different from any draft agreement submitted with the petition, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the respondent relies on to support its positions or that it intends to introduce as exhibits at the hearing.

(9) **Verification.** The petition, answer, and all documentation filed must be verified as provided by WAC 480-10-390, or submitted by affidavit or declaration.

(10) **Confidentiality; protective order.** Petitions, answers, and any documents a party provides to the commission pursuant to a request under section 252(b)(4)(B) are subject to Washington's public disclosure laws, including chapter 42.17 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or answer is subject to the protections and procedures set out in WAC 480-07-160. A party may include in its petition or response a request that the commission enter a protective order.

(11) **Discovery.** Parties must cooperate in good faith in the voluntary, prompt and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. A party's failure to cooperate in discovery may be treated as a failure to negotiate in good faith. The arbitrator will schedule a discovery conference for a date ten days after the deadline for responses to the petition for arbitration, subject to rescheduling or cancellation if all parties agree. During the conference, the arbitrator will review the asserted need for any additional discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. § 252(b)(4)(B). Parties may submit to the arbitrator any discovery requests not responded to by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 U.S.C. § 252(b)(4)(B) at any time.

(12) **Appointment and authority of arbitrator.**

(a) **Appointment.** One or more commissioners, one or more commission employees appointed by the commission, or one or more persons under contract with the commission may be designated as arbitrator(s) when a petition for arbitration is filed. The commission will not appoint an arbitrator who previously mediated a dispute between the same parties concerning the same interconnection agreement, unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the selection of the arbitrator.

(b) **Authority.** Arbitrators will exercise all authority reasonable and necessary to conduct arbitration under the provisions of this rule, the commission's orders on arbitration procedure, and other provisions of law. Other members of the

commission's staff may assist an arbitrator, but a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties may not be consulted. The arbitrator will issue the arbitrator's report within one hundred ten days after the date on which the petition for arbitration was filed. The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. § 252(b)(4)(C).

(13) **Consolidation.** The commission or an arbitrator may consolidate arbitration proceedings to reduce burdens on telecommunications carriers, parties to arbitration proceedings, and the commission.

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 480-07-640 Telecommunications companies—Review and approval of interconnection agreements under the Telecommunications Act of 1996. (1) **Scope.** This rule implements the commission review and approval process provisions of section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 252.

(2) **Review and approval of agreements by the commission.**

(a) **Filing and service of agreements for approval.**

(i) **Negotiated agreements.** Parties to a negotiated interconnection agreement must submit a complete, signed copy of their agreement to the commission for approval under 47 U.S.C. § 252(e) within thirty days after the agreement is signed. Any appendices or attachments to the agreement must be included. The request for approval must summarize the agreement's main provisions. The request for approval must confirm that the agreement does not discriminate against nonparty carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The timelines established for commission review of requests for approval under 47 U.S.C. § 252 do not begin until a complete request is properly filed.

(ii) **Arbitrated agreements—Petition for review; answer.** Any party may petition for commission review of an arbitrator's report and decision within thirty days after the arbitrator's report is issued, or at such other time as is established by notice or order. Other parties to the arbitration proceeding must file an answer within ten days after the petition is served, or at such other time as is established by notice or order. Both petition and answer must be in the form of a brief of the issues, and must address all legal and factual bases in support of the parties' respective arguments that the arbitrator's report and decision should, or should not, be modified.

(iii) **Arbitrated agreements—Request for approval.** The parties must also file, on the date established for answering any petition for review, their request for approval of an arbitrated interconnection agreement and a complete, signed copy of their interconnection agreement including all negotiated terms, all terms requested under section 252(i) of the Telecommunications Act of 1996, and all terms drafted to implement the arbitrator's report and decision. Arbitrated

terms must be in bold font style and identify by footnote the arbitrated issue that relates to the text. Any appendices or attachments to the agreement must be included. The request for approval must summarize the agreement's main provisions. The request for approval must confirm that the agreement does not discriminate against nonparty carriers, is consistent with state and federal law, and is in the public interest. The commission will reject a request for approval that does not include all of the information required in this section but will allow it to be refiled when complete. The timelines established for commission review of requests for approval do not begin until a complete request is properly filed.

(iv) *Filing and service.* Parties must file requests for approval with the commission secretary, as provided in WAC 480-07-145. Parties must serve the request for approval on all other parties not filing jointly, as provided in WAC 480-07-150.

(b) *Commission consideration of requests for approval and petitions for review.* The commission will consider a request for approval of an interconnection agreement and any petition for review of an arbitrator's report and decision at a regularly or specially scheduled open public meeting. The commission may hear oral argument by the parties, oral comment from members of the public, or both. The commission will enter an order approving or rejecting a fully negotiated agreement within ninety days after the date on which the request for approval and interconnection agreement are filed. The commission will enter an order resolving a partially or fully arbitrated agreement within thirty days after the request for approval and interconnection agreement are filed.

NEW SECTION

WAC 480-07-650 Petitions for enforcement of telecommunications company interconnection agreements. The purpose of this rule is to provide a speedy and enforceable means to resolve disputes when one party to an interconnection agreement contends that the other party is violating the terms of the agreement.

(1) **Petitions for enforcement.** A telecommunications company that is party to an interconnection agreement with another telecommunications company may petition under this rule for enforcement of the agreement.

(a) *What the petition must contain.* Each petition for enforcement must contain the following elements:

(i) A statement, including specific facts, demonstrating that the petitioner engaged in good faith negotiations to resolve the disagreement, and that despite those negotiations the parties failed to resolve the issue.

(ii) A copy of the provision of the interconnection agreement that the petitioner contends is not being complied with.

(iii) A description of facts demonstrating failure to comply with the agreement. One or more affidavits, declarations, or other sworn statements, made by persons having personal knowledge of the relevant facts must support the description.

(b) *How to serve the petition.* The petitioner must serve the petition for enforcement on the responding party on the same day the petition is filed with the commission. If the petitioner chooses to serve the respondent by mail or parcel delivery service, it must deliver a copy of the petition and all

supporting documents by hand delivery, telefacsimile, or electronic mail (to the e-mail address specified by the recipient for the purpose of receiving a copy of the petition) on the same day as filed with the commission. For purposes of this section, service must be effected on:

(i) The responding party's authorized representative, attorney of record, or designated agent for service of process;

(ii) The responding party's representatives with whom the petitioner conducted the negotiations addressed in (a)(i) of this subsection; and

(iii) All parties designated in the interconnection agreement to receive notices.

(c) *Prefiling notice of petition.* The petitioner must give at least ten days' written notice to the respondent that the petitioner intends to file a petition for enforcement. The notice must identify the contract provision the petitioner alleges was violated, and the exact behavior or failure to act that petitioner alleges violates the agreement. The written notice must be served as provided in (b) of this subsection. The petitioner must include a copy of this notice with its petition for enforcement.

(2) **Answering a petition.** The respondent may answer the petition. The respondent waives the opportunity to present any matter that is not raised in the answer, except that the answer may be amended under subsection (3) of this section.

(a) *Contents of the answer.* The answer to a petition for enforcement must respond to each allegation of failure to comply with the terms of the interconnection agreement, stating relevant facts. Any facts relied upon must be supported by affidavits, declarations, or other sworn statements by persons having personal knowledge of the facts.

(b) *Filing and service of the answer.* The respondent must file the answer with the commission and serve it on the petitioner within five business days after service of the petition for enforcement. Service must be accomplished so that a copy of the response to the petition for enforcement and all supporting documents reach the petitioner's attorney, or the person who signed the petition if petitioner has no attorney, on the same day the answer is filed with the commission. If the respondent chooses to serve the petitioner by mail, a copy of the petition for enforcement and all supporting documents must be delivered to the person identified above on the same day as filed with the commission.

(3) **Amendment of petition and answer.** The presiding officer may permit the responding party to amend its answer for good cause shown, and to avoid substantial prejudice to the responding party that is not caused by the fault of the responding party. The presiding officer may permit either party to amend its petition or answer to conform to the evidence presented during the proceeding. The presiding officer may refer to, but is not bound by, CR 15(b) of the Washington superior court civil rules, when determining whether to permit amendment of the petition or answer to conform to the evidence.

(4) **Prehearing conference.** The commission will conduct a prehearing conference regarding each petition for enforcement of an interconnection agreement.

(a) *Schedule; mandatory attendance.* The presiding officer will issue notice of a prehearing conference within

five business days after the petition is filed. Both the petitioner and the respondent must attend the prehearing conference. The prehearing conference may be conducted by telephone.

(b) **Procedural determination.** The presiding officer will determine at the prehearing conference whether the issues raised in the petition can be determined on the pleadings, submissions, and any oral statements without further proceedings. When determining whether to schedule an oral enforcement hearing session, the presiding officer will consider the parties' preferences and the reasons they advance, the need to clarify statements by asking questions, whether the issues are largely factual, largely legal, or involve questions of fact and law, the apparent complexity of facts and issues, the need for speedy resolution, and the completeness of information presented. The presiding officer may require the parties to submit written briefs on the issues.

(c) **Means of obtaining additional information.** If the presiding officer determines that further proceedings are necessary, the presiding officer will establish a schedule for receiving additional facts or evidence and may schedule an enforcement hearing session to explore the facts and issues raised in the petition and the answer. The party filing the complaint or answer may file with the complaint or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue. The presiding officer may allow limited discovery requiring only the disclosure of facts relating directly to matters at issue, and only if discovery is shown to be essential to the requesting party. The presiding officer will establish a shortened discovery schedule to comply with the timelines of this rule.

(5) **Powers of the presiding officer; conversion of proceeding; recommended or final decision.**

(a) **Conduct of proceeding.** The presiding officer has broad discretion to conduct the proceeding in a manner that best suits the nature of the petition, including, but not limited to, converting the proceeding into a complaint proceeding under RCW 80.04.110. Matters may be appropriate for conversion when their complexity requires that they cannot be completed on the schedule provided in this rule; when the petitioner requires discovery beyond a disclosure of facts directly related to the matters at issue; when extensive policy argument or legal briefing is required; or when participation by parties other than the petitioner and the respondent is necessary. The presiding officer may limit the record to written submissions or may schedule an enforcement hearing session. The presiding officer may limit the number of exhibits and witnesses and the time for their presentation.

(b) **Recommended decision.** The presiding officer, if other than the commissioners, will serve a recommended decision on the parties within seventy-five days of the date the petition for enforcement was filed, or twenty-one days after the last hearing session or submission, whichever is later. The recommended decision is subject to approval by the commission. If the commissioners preside over the enforcement proceeding, they may enter a final decision within the time requirements applicable to recommended decisions.

(c) **Review of the recommended decision.** The commission may hear the parties' arguments or comments regarding

any recommended decision during a regular or special open public meeting. The parties may file written comments prior to the meeting on a schedule established in the recommended decision. The commission may request commission staff to make a presentation at the meeting. The commission will conduct this session within ten days after the date of the recommended decision, or as soon thereafter as the commissioners' schedules permit.

(7) **Commission decision on petition for enforcement.**

(a) **Extent of commission discretion.** The commission will serve a final decision on the parties in the form of a commission order resolving the issues. The commission may adopt, modify, or reject all or part of any recommended decision.

(b) **Time of service.** The commission will enter its order on the petition for enforcement no later than ninety days after the date the petition is filed or fifteen days after the meeting at which it reviews the recommended decision, whichever is later. The commission may extend this time for lack of resources or for other good cause.

(c) **Petition for reconsideration.** The parties may petition for reconsideration within ten days after the commission serves its order on the petition for enforcement. If a party petitions for reconsideration, the commission may request that an answer be filed. The commission may request additional comments, briefing, evidence, or argument from the parties. Filing a petition for reconsideration of the order does not stay the effect of the order. A petition for reconsideration is deemed denied unless the commission grants or denies it by written order within ten days after the date on which petition for reconsideration is filed or the date established for filing an answer or additional comments, briefing, evidence, or argument, whichever is later. The commission may alter the time for entering its order on a petition for reconsideration by notice or letter.

(d) **Failure to comply with the order.** Any party who fails to comply with the terms of the commission's final order on a petition for enforcement is subject to penalties under RCW 80.04.380 and any other penalties or sanctions as provided by law. A company against whom a penalty is assessed may challenge the penalty or the facts on which it is based, or seek mitigation of the penalty, pursuant to pertinent law and commission rules.

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 480-07-660 Railroad grade-crossing closures—Objections. (1) **Filing.** Anyone who objects to a highway-railroad grade crossing closure under RCW 81.53.060 must file an objection in writing within twenty days after publication of notice of the proposed closure. The objection must:

(a) Identify the person or persons who object by full name and mailing address;

(b) Identify the particular crossing that is the subject of the objection;

(c) State the commission docket number, if known; and

(d) Explain the basis for the objection.

If a communication does not meet these requirements, the commission will not treat the communication as an objection when determining whether a hearing is required under RCW 81.53.060.

(2) **Party status; appearances; service of final order.** Filing an objection does not make a person a party to a proceeding under RCW 81.53.060. A person who wishes to participate as a party must enter an appearance at the first hearing session, as prescribed by WAC 480-07-340. A person who fails to establish party status by appearance may file a "late-filed petition to intervene" as provided in WAC 480-07-355. A person must establish party status to be entitled to service of any initial order or the commission's final order in the matter. Persons who are not parties may receive a courtesy copy of any initial or final order on request.

(3) **Other interested persons.** Interested persons who are not parties will be provided an opportunity to be heard and offer evidence, as required by RCW 81.53.060. Interested persons who are not parties may not call witnesses, cross-examine witnesses, or otherwise participate as a party. Interested persons who are not parties do not have standing to file petitions for administrative review of initial orders or to file petitions for reconsideration of final orders.

SUBPART D: ALTERNATIVE DISPUTE RESOLUTION

NEW SECTION

WAC 480-07-700 Alternative dispute resolution. The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest, and subject to approval by commission order. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

(1) **No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission retains and will exercise its authority in every adjudicative proceeding to consider any proposed settlement or agreement for approval.

(2) **Forms of ADR.** Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight. The commission may direct parties to meet or consult as provided in subsection (3) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720. The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties. The commission may assign a settlement judge to assist the parties in appropriate circumstances. The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

(3) **Settlement conference.** The commission may invite or direct the parties to confer among themselves, or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties. Any result-

ing settlement or stipulation must be submitted to the commission in writing and is subject to commission approval.

(4) **ADR guidelines.** In any negotiation, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider the commission's guidelines for negotiations, set out in a policy statement adopted pursuant to RCW 34.05.230, and determine the ground rules governing the negotiation;

(b) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

(c) Parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential, subject to the requirements of RCW 5.60.070; and

(d) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward settlement. Participants must immediately advise the commission if a commission-sanctioned ADR process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that an impasse has been reached or an impasse is declared by any neutral third party who is assisting the participants in the ADR process).

(e) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding, unless all parties consent in writing.

NEW SECTION

WAC 480-07-710 Mediation. (1) **Scope.** This rule applies generally to settlement negotiations in which the commission agrees to assign a qualified mediator to assist the parties. This rule applies specifically to implement the mediation provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Commission participation.** The parties to a negotiation, including a negotiation under 47 U.S.C. §§ 251 and 252, may ask the commission to mediate any differences that arise during the negotiation. A request for mediation must include a brief statement of the nature of the dispute and the names, postal and electronic mail addresses, telephone and fax numbers of the parties and their representatives. Copies of the request must be served on all parties to the negotiation. All parties are required to participate in good faith if the commission agrees to mediate.

(3) **Mediators.** The commission may assign one or more qualified employees to serve as mediator(s). The commission may require the parties to retain the services of a professional mediator acceptable to all parties.

(4) **Process.** Mediators have discretion to regulate the course of the mediation, including scheduling mediation sessions, in consultation with the parties. The following general procedures apply:

(a) The mediator may not impose a settlement but may offer proposals for settlement;

(b) The mediator may meet individually with the parties or attorneys during mediation;

(c) Only the parties to the negotiation and the mediator may attend the mediation session(s), unless all parties consent to the presence of others;

(d) Parties must provide the mediator with a brief statement of position and relevant background information prior to the first mediation session;

(e) The mediator may ask for supplemental information;

(f) The mediator should not provide legal advice to the parties, nor are any mediator's statements as to law or policy binding on the commission, unless later adopted by the commission;

(g) The mediation process is confidential to the extent permitted by law, subject to the requirement for a written agreement as required under RCW 5.60.70; and

(h) No stenographic record will be kept.

(5) **Fees and costs.** Each party must bear its own fees and costs. Each party must pay any fees imposed by commission rule or statute.

(6) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-640 (commission approval of interconnection agreements) or WAC 480-07-740, as appropriate. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-640 or 480-07-740.

NEW SECTION

WAC 480-07-720 Collaboratives. (1) **Defined; membership.** A collaborative is a commission-sanctioned negotiation in which interested persons work with each other and representatives of commission staff to achieve consensus on one or more issues, within the commission's jurisdiction, assigned to or identified by the collaborative participants. Any person whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the commission and seek approval if a collaborative seeks to change its membership or redefine the issues it will address.

(2) **Procedure.** Participants must develop procedural guidelines for their negotiations when beginning a collaborative and should refer to any commission policy statement(s) that relate to ADR for guidance.

(3) **Communication with commission.** Communication between the commission and collaborative participants may be through commission staff assigned to serve as a neutral third party in the collaborative, or through the commission secretary, subject to agreement among the participants to the form and substance of any such communication.

NEW SECTION

WAC 480-07-730 Settlement. A settlement is an agreement among two or more parties to a proceeding that is filed with the commission as a proposed resolution of one or more issues.

(1) **Full settlement.** An agreement of all parties that would resolve all issues in a proceeding may be presented as a full settlement for commission review. Parties that file a full settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

(2) **Partial settlement.** An agreement of all parties on some issues may be presented as a partial settlement for commission review, and remaining matters may be litigated. Parties that file a partial settlement should file supporting evidence at the same time as the settlement agreement, or within a reasonable time following filing of the settlement agreement.

(3) **Multiparty settlement.** An agreement of some, but not all, parties on one or more issues may be offered as their position in the proceeding along with the evidence that they believe supports it. Nonsettling parties may offer evidence and argument in opposition.

(4) **Notice to commission.** Parties must advise the commission if they reach a full, partial, or multiparty settlement and may suggest preferred procedural alternatives for review of the settlement, subject to the requirements of WAC 480-07-740. The commission will determine the appropriate procedure in each proceeding consistent with the requirements of WAC 480-07-740.

NEW SECTION

WAC 480-07-740 Settlement consideration procedure. The commission must determine whether a proposed settlement meets all pertinent legal and policy standards. The commission must have a reasonable opportunity to hear parties' views on why the settlement should be approved and adopted, to ask questions of the parties, and to conduct its processes in an orderly fashion. Parties must, therefore, consider the timing and the content of the settlement presentation to the commission.

(1) **Settlement presentation timing.** Parties must file a proposed settlement with a recommended effective date that allows the commission sufficient time to schedule a formal settlement hearing and provide an opportunity for public comment when the commission, after consulting the parties, determines that such comment is needed. The commission must have sufficient time to deliberate and to prepare an order responding to the proposal. The parties must allow sufficient time for the filing, review, and approval of any required compliance filing.

(a) **General rate proceedings.** In general rate proceedings or matters of comparable complexity, parties must allow at least thirty days between filing a proposed settlement agreement and the requested effective date of any tariff changes or other terms and conditions of the settlement.

(b) **Less complex matters.** In matters that are less complex, parties must allow at least twenty-one days between filing a proposed settlement agreement and the requested effective date for any tariff changes or other terms and conditions of the settlement.

(c) **Notice to commission; inquiries regarding arrangements for review.** Parties should inform the commission at the earliest opportunity when it appears that they may reach a

settlement and ask the commission to make tentative arrangements for review. Parties may direct informal inquiries to the supervisor of the commission's administrative law function or the supervisor's designee.

(d) **Hearing.** The commission will schedule a hearing to consider a proposed settlement if the commission believes that a hearing will assist it to decide whether to adopt the proposal.

(e) **Timing; requested effective date.** The commission will endeavor to meet the parties' requested effective date, but cannot guarantee that it will be able to do so.

(2) **Settlement presentation contents.** When filing a proposed settlement agreement, parties must also file supporting documentation sufficient to demonstrate to the commission that the proposal is consistent with law and the public interest and that it is appropriate for adoption.

(a) **Narrative.** Supporting documentation should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and the public interest; and a summary of legal points that bear on the proposed settlement. The documentation may be in the form of a memorandum, supporting pre-filed testimony, brief, or other form that serves the same functions.

(b) **Testimony.** Each party to a settlement agreement must offer to present one or more witnesses to testify in support of the proposal and answer questions concerning the settlement agreement's details, and its costs and benefits. Proponents of a proposed settlement must present sufficient evidence to support its adoption under the standards that apply to its acceptance. Counsel must make a brief presentation of the settlement, and address any legal matters associated with it. Counsel must be available to respond to questions from the bench regarding those subjects.

(c) **Rights of opponents of a proposed settlement.** Parties opposed to the commission's adoption of a proposed settlement retain the following rights: The right to cross-examine witnesses supporting the proposal; the right to present evidence opposing the proposal; the right to present argument in opposition to the proposal; and the right to present evidence or, in the commission's discretion, an offer of proof, in support of the opposing party's preferred result. The presiding officer may allow discovery on the proposed settlement in the presiding officer's discretion.

NEW SECTION

WAC 480-07-750 Commission discretion to accept settlement, impose conditions, or reject a proposed settlement. (1) The commission may decide whether or not to consider a proposed settlement. The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.

(2) If the commission considers a proposed settlement, it may accept the proposed settlement, with or without conditions, or may reject it.

(a) If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement.

(b) If the commission accepts a proposed settlement upon conditions not proposed in the settlement, the parties may seek reconsideration of the decision and the settling parties must within the time for reconsideration state their rejection of the conditions. If a party rejects a proposed condition, the settlement is deemed rejected and (a) of this subsection applies.

SUBPART E: ORDERS AND POST-ORDER PROCESS

NEW SECTION

WAC 480-07-800 General; definitions. (1) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective. Each order will state the date on which it is entered.

(2) An order is effective when entered, unless an effective date other than the date the order is entered is specified in the order.

(3) "Service" of an order means placing copies of the order in the U.S. mail, postage prepaid, addressed to all parties and any other persons required by law to be served. Each order will state the date on which it is served. The service date of an order governs the determination of time limits for further administrative procedure or for judicial review.

NEW SECTION

WAC 480-07-810 Interlocutory orders. (1) **Defined.** Orders entered during the course of an adjudicative proceeding are "interlocutory orders," as distinguished from initial orders that may be entered by an administrative law judge at the conclusion of a proceeding and final orders entered by the commission at the conclusion of a proceeding. Examples of interlocutory orders are orders concerning a party's participation in a proceeding, orders concerning discovery, and orders that relate to proposed evidence.

(2) **When review is available.** Interlocutory review is discretionary with the commission. The commission may accept review of interim or interlocutory orders in adjudicative proceedings if it finds that:

(a) The ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;

(b) A review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or

(c) A review could save the commission and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.

(3) **Process for seeking review.** Any party may petition for review of an interlocutory order. Petitions for interlocu-

tory review must be filed and served on other parties within ten days after service of the order or issuance of the ruling for which review is requested. The petition must state why the ruling is in error or should be changed and why interlocutory review is necessary, and must cite reasons that support the petition. Answers must be filed within ten days after the petition is filed. The commission may alter these filing deadlines when doing so is consistent with the public interest.

NEW SECTION

WAC 480-07-820 Initial and final orders. (1) Defined.

(a) **Initial orders.** "Initial orders" dispose of the merits in a proceeding that is conducted before an administrative law judge and are entered over the signature of the administrative law judge. Initial orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. All initial orders are subject to further action by the commission as provided in WAC 480-07-825.

(b) **Final orders.** "Final orders" dispose of the merits of a proceeding following consideration by the commissioners and are entered over the signatures of a majority of the commissioners. Final orders include those that grant dispositive motions (e.g., motions to dismiss and motions for summary determination) and orders that resolve contested issues on the basis of the official record in a proceeding. Final orders may be entered whenever:

- (i) The commissioners personally preside over a proceeding;
- (ii) The commissioners enter an order following administrative review of an initial order in response to a timely petition for administrative review;
- (iii) The commissioners enter an order after the period available for petitions for administrative review and no such petition has been filed;
- (iv) All of the parties to a proceeding waive their right to an initial order; or
- (v) The commissioners enter an order following the timely filing of a petition for reconsideration of a final order or a petition for rehearing of a final order.

(2) **Service.** The commission will serve a copy of any initial order and the commission's final order to each party of record and to the party's attorney or other authorized representative pursuant to RCW 34.05.461(9) and WAC 480-07-150(3).

(3) **Timing.** The presiding officer will enter an initial order within sixty days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), initial briefs are filed, or reply briefs are filed, whichever occurs last. The commission will enter its final order within ninety days after the commission receives transcripts following the close of the record, hears oral argument (if allowed or required), initial briefs are filed, or reply briefs are filed, or the commission receives a petition for administrative review or an answer to a petition for review, whichever occurs last. The presiding officer or the

commission may alter the time for entry of an initial or final order by notice to the parties.

NEW SECTION

WAC 480-07-825 Initial orders—Petitions for administrative review. (1) When a petition for administrative review is appropriate. A party who wishes to challenge any finding of fact, conclusion of law, remedy, or result proposed by an initial order may file a petition for administrative review. A party also may file a petition for administrative review to challenge the reasons stated in support of any result reached in an initial order. The commission will accept only one petition for administrative review from any party.

(2) **Timing of petition.** Any party to an adjudicative proceeding may file and serve a petition for administrative review within twenty days after the initial order is served. The commission may extend the time on a showing of good cause.

(3) **Contents; length.** Petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific. The petitioner must separately state and number every contention. A petition that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding of fact. A petition that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law. A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision. Petitions for administrative review must not exceed sixty pages, without prior permission from the commission.

(4) **Answers.**

(a) **Who may answer.** Any party to the adjudication may answer another party's petition for administrative review.

(b) **Filing and service.** An answer to a petition for administrative review must be filed and served within ten days after the petition is filed. The commission may designate a different time for filing answers to petitions.

(c) **Challenge to order in answer.** A party who did not file a petition for administrative review of an initial order may challenge the order or portions of the order in its answer to the petition of another party.

(5) **Reply.**

(a) **By right.** A party has the right to reply to new challenges to the order that are raised under subsection (c) of this section.

(b) **By leave of commission.** A party otherwise has no right to reply to an answer, but may petition for leave to reply, citing new matters raised in the answer and stating why those matters were not reasonably anticipated and why a reply is necessary. The petitioner may attach a reply to the petition for leave to accept the reply.

(c) **Timing.** A reply under (a) of this subsection, or a petition for leave to reply under (b) of this subsection, must be filed no later than five days after service of the answer. The commission may extend the time upon a showing of good cause.

(6) **Oral argument.** The commission may hear oral argument on a petition for administrative review at a time and place the commission designates by notice to all parties to the proceeding. A party who desires to present oral argument may request argument, stating why oral argument is necessary to assist the commission in making its decision and why written presentations will be insufficient.

(7) **Final order.** The commission may by final order adopt, modify, or reject an initial order after reviewing the initial order and any petitions for review, answers, replies, briefs, and oral arguments, and the record. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer. The statutory time for filing a petition for judicial review commences when the commission serves its final order. However, if a party timely files a petition for reconsideration of the final order, and complies with the commission's procedural rules governing reconsideration, the time for filing a petition for judicial review does not commence until the date on which the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470.

NEW SECTION

WAC 480-07-830 Motion to reopen the record prior to entry of a final order. Any party may file a motion to reopen the record at any time after the close of the record and before entry of the final order. The commission may reopen the record in a proceeding on its own motion. In uncontested proceedings, the commission may exercise its discretion to reopen the record to allow receipt of written evidence when otherwise lawful. In contested proceedings, the commission may reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the hearing or for any other good and sufficient cause. The commission will give all parties an opportunity to respond to any evidence received after the record is closed. The commission may enter a final order or may return the matter to the presiding officer for further consideration, including further hearing or other process when appropriate.

NEW SECTION

WAC 480-07-835 Clarification of final order by motion. (1) **Motion - when appropriate.** Any party who does not seek to change the outcome with respect to an issue may file a motion for clarification of a final order within ten days after the order is served. The purpose of a motion for clarification is to ask for clarification of the meaning of an order so that compliance may be enhanced, so that any compliance filing may be accurately prepared and presented, to suggest technical changes that may be required to correct the application of principle to data, or to correct patent error without the need for parties to request reconsideration and

without delaying post-order compliance. A motion for clarification may also request that obvious or ministerial errors in orders be corrected by letter from the secretary or by subsequent order, consistent with WAC 480-07-875.

(2) **Motion - when not appropriate.** If a party seeks to change an outcome with respect to one or more issues resolved by a final order, or challenge a finding of fact or conclusion of law stated in the order, it may not do so by motion for clarification, but must file a petition for reconsideration pursuant to WAC 480-07-850.

(3) **Response.** No party may file a response to a motion for clarification unless requested by the commission.

(4) **Tolling.** Filing a petition for clarification tolls the time for judicial review but does not toll the time for compliance with the final order of which clarification is sought.

NEW SECTION

WAC 480-07-840 Clarification of a final order by conference. The commission may schedule an order conference on its own motion or at a party's request. The commissioners may personally attend the conference or may designate one or more persons to attend on their behalf. The commission will determine whether an order conference will be recorded.

(1) **Purpose.** The purpose of an order conference is to clarify the meaning of a final order when parties disagree about the order's meaning or requirements. Parties to an order conference may ask for clarification of the meaning of an order to:

- (a) Explore and resolve any barriers to compliance;
- (b) Ensure that any compliance filing can be accurately prepared and presented;
- (c) Propose technical changes that may be required to correct the application of principle to data; or
- (d) Correct patent error.

The conference is not a forum for discussing or challenging the evidentiary, legal, or policy decisions expressed in the order. Parties may pursue those remedies through a petition for reconsideration or other means.

(2) **Effect.** An order conference will not stay the effect of an order, the time for compliance, the time for securing post-order review, or the time for petitioning for judicial review, unless the conference results in a supplemental commission order, which then becomes a final order subject to review. An order conference does not constitute a formal interpretation of an order. The final order that is the subject of an order conference will remain the sole expression of the commission's decision unless supplemented through an additional order.

NEW SECTION

WAC 480-07-850 Reconsideration of a final order by petition. (1) **Petition - timing.** Any party may petition for reconsideration of a final order within ten days after the order is served. The purpose of a petition for reconsideration is to request that the commission change the outcome with respect to one or more issues determined by the commission's final order.

(2) **Petition - contents.** The petitioner must clearly identify each portion of the challenged order that it contends is erroneous or incomplete, must cite those portions of the record and each law or commission rule that the petitioner relies on to support its petition, and must present brief argument in support of its petition.

(3) **Answer.** No party may file an answer to a petition for reconsideration unless requested by the commission. If the commission requests answers to a petition for reconsideration, it will issue a notice stating the date by which answers must be filed and the date by which the commission intends to enter an order resolving the petition.

(4) **Oral argument.** The commission will not hear oral argument on a petition for reconsideration unless the commission determines on its own motion that oral argument is required.

(5) **Disposition.** A petition for reconsideration is deemed denied twenty days after the date the petition is filed, unless the commission either:

(a) Enters an order resolving the petition; or

(b) Serves the parties with a written notice specifying the date by which it will act on the petition.

(6) **Action.** If the commission grants a petition, the commission may modify its prior order or take other appropriate action. If the commission denies the petition, no further action will be taken in the matter with respect to the final order. No party may petition for reconsideration of an order on reconsideration.

(7) **Stay.** Filing a petition for reconsideration does not automatically stay the effect of an order or serve as a request for a stay. A party may request that the commission stay the effectiveness of an order pending reconsideration by filing a petition for stay pursuant to WAC 480-07-860.

(8) **Judicial review.** Filing a petition for reconsideration is not a prerequisite for seeking judicial review of a commission final order. If a proper petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470. An order denying reconsideration, or a notice of the time for disposition under subsection (5)(b) of this section is not subject to judicial review.

NEW SECTION

WAC 480-07-860 Stay. Any party may petition to stay of the effectiveness of a final order within ten days after its service, unless otherwise provided by statute or stated in the final order. The commission may stay the effect of a final order on its own initiative. The effect of a final order is not automatically stayed when a party files a motion for clarification, a petition for reconsideration, or a petition for rehearing.

NEW SECTION

WAC 480-07-870 Rehearing. Any person affected by a final order may file a petition for rehearing. Public service companies may seek rehearing under RCW 80.04.200 or 81.04.200.

NEW SECTION

WAC 480-07-875 Amendment, rescission, or correction of order. (1) **Amendment or rescission.** The commission may alter, amend, or rescind any order that it has entered, after notice to the public service company or companies affected and to all parties in the underlying proceeding, and after allowing an opportunity for hearing as in the case of complaints. Any order altering, amending, or rescinding a prior order will have the same effect as any other final order when served upon the public service company or companies affected.

(2) **Correction.** The commission may act on its own initiative or on the motion of any party to correct obvious or ministerial errors in orders. The commission may enter a corrected order or effect any corrections by notice or letter. The commission may direct the secretary to effect any corrections by notice or letter. The time for any available post-hearing review begins with the service of the correction, as to the matter corrected.

NEW SECTION

WAC 480-07-880 Compliance filing; subsequent filing; reporting requirement. (1) **Compliance filing; compliance order.** When the commission enters a final order that authorizes or requires a party to make a filing to implement specific terms of the order with respect to the issues resolved in an adjudicative proceeding by implementing a precisely defined result, the filing is a "compliance filing." For example, a commission final order in a general rate proceeding may authorize or require a party to file original or substitute tariff sheets to implement the terms of the final order. A compliance filing is made under the docket number of the final order to which it relates. A compliance order is an order approving or rejecting a compliance filing.

(2) **Subsequent filing.** When the commission enters a final order that authorizes or requires a party to make a filing to implement general instructions (e.g., the formulation of policy, or filing of tariffs other than to implement a precisely defined result), the filing initiates a new proceeding that will be assigned a new docket number, and the filing is deemed a "subsequent filing." For example, a commission final order in a complaint proceeding may authorize or require a party to make a tariff filing by a date certain.

(3) **Reporting requirement.** The commission may enter a final order that requires a party to report periodically to the commission with respect to designated subject matter. The reports must be filed under the docket number of the proceeding in which the final order is entered, unless otherwise specified in the order establishing the requirement or by later letter from the secretary of the commission.

NEW SECTION

WAC 480-07-883 Compliance filing—Filing requirements; timing; commission action. A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. If the commission finds that a compliance filing varies from the requirements or conditions of the order authorizing or requiring it, either by fall-

ing short of or by exceeding the authorization, conditions, or requirements of the order, the commission may reject the filing unless it has preapproved the variance.

(1) **Filing requirements.** A compliance filing must include the following:

(a) A cover letter that identifies the order to which the filing relates;

(b) All required tariff sheets; and

(c) Work papers that clearly demonstrate the derivation of the proposed tariffs.

(2) **Service requirement.** A party who makes a compliance filing must serve it on each party to the proceeding in which the compliance filing is authorized or required. Service must be initiated on the same day as the filing.

(3) **Timing; effective date.**

(a) The commission will state in its final order authorizing or requiring a compliance filing the date by which the compliance filing must be made and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may state the amount of time it will require to examine any proposed compliance tariff sheets between their filing and their proposed effective date.

(b) A compliance filing does not become effective automatically on its stated effective date. Commission action is required before any compliance filing can be effective. The commission may enter an order approving a compliance filing or taking other appropriate action. The commission may delegate to the secretary, by written authorization in individual proceedings, the authority to approve or take other appropriate action with respect to a compliance filing.

(4) **Commission action on compliance filing.**

(a) The commission may enter an order in any proceeding in which a compliance filing is authorized or required that:

(i) Approves the compliance filing; or

(ii) Rejects a compliance filing or any portion of the filing that apparently fails to comply.

(b) If the commission rejects all or part of a compliance filing, the party may refile. The commission may impose conditions on refiling.

(c) If the commission approves a compliance filing, but later discovers that it failed to recognize that the compliance filing was, in fact, incomplete or did not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance.

NEW SECTION

WAC 480-07-885 Subsequent filing—Filing requirements; timing; commission action. (1) **Filing and service requirements.**

(a) A person who makes a subsequent filing must provide a cover letter that identifies the order and the docket in which the commission required the subsequent filing. The commission will assign a new docket number to a subsequent filing.

(b) A person who makes a subsequent filing that includes tariff sheets must comply with all pertinent requirements for

tariff filings of the industry, including the required statutory notice period, unless the commission authorizes the subsequent filing to become effective on less than statutory notice.

(c) A person who makes a subsequent filing must serve a copy of the filing on all parties to the proceeding in which the filing was authorized or required.

(2) **Timing.** A final order that authorizes or requires a subsequent filing may state the date by which the subsequent filing must be made. If no date for the subsequent filing is specified in the final order, the commission may establish the date by order or by letter from the commission secretary.

(3) **Commission action on subsequent filing.** The commission will act on a subsequent filing that includes tariff sheets in the same manner that it would act on an original tariff filing of the industry.

PART IV: OTHER COMMISSION PROCEEDINGS

NEW SECTION

WAC 480-07-900 Open public meetings. (1) **Regular meetings.** The commission will hold regular meetings to conduct business under chapter 42.30 RCW, the Open Public Meetings Act. The meetings will begin at 9:30 a.m., on the second, fourth, and fifth Wednesday of each month in the commission's office in Olympia, Washington. If the regular meeting day is a legal holiday, the regular meeting will be held on the next business day or on an alternate schedule published in the *Washington State Register*.

(2) **Changes to regular meetings.** Regular meetings may be canceled. The commission may change the time and place of regular meetings from the information set out in this section. The current times and places are published, as required, in the *Washington State Register*, on the commission's Internet website, and are available through telephone inquiry.

(3) **Special meetings.** The commission may convene special meetings under RCW 42.30.080.

(4) **Agenda.** The commission secretary will distribute an agenda for each open public meeting. The commission will make its best effort to compile and publish a complete agenda, but may amend its agenda after it is published, and may take up matters that do not appear on its published agenda. The agenda is posted to the commission's Internet site at www.wutc.wa.gov. Persons without Internet access capability may request the commission records center to provide a copy of the agenda via U.S. mail.

(a) **"Discussion" agenda.** In general, the agenda will identify each item scheduled for discussion and action, as relating to utility regulation under Title 80 RCW; as relating to transportation regulation under Title 81 RCW; or "other." The secretary will group similarly identified items together on the agenda.

(b) **"No action" agenda.** Any request, proposal, or other filing that can take effect without commission action may be placed on a "no action required" portion of the agenda. Any item on this portion of the agenda will be discussed at any commissioner's request, and the commission may take such action on the item as it deems appropriate.

(c) **"Consent" agenda.** The secretary may place any item that the secretary believes to be noncontroversial on a "consent agenda" portion of the open meeting agenda. The commission will ask at the meeting if any person wants to address any consent agenda item, and an item will be removed from the consent agenda for individual discussion and action at the request of any commissioner. Items on the consent agenda may be collectively moved for approval by a single motion and may be collectively approved by a single vote of the commission.

(5) **Staff contact.** A commission staff member is ordinarily assigned to analyze and, if appropriate, present each open meeting item to the commission at the open meeting. The staff person and a contact number are identified in the draft agenda. Persons interested in open meeting agenda items may discuss them with staff, subject to time availability. Any person interested in an item on the open meeting agenda may address the item during the meeting.

(6) **Orders.** The commission may direct the secretary to enter any order or sign any document necessary to implement an open meeting decision by the commissioners.

(7) **Modifications.** The commission may exercise its discretion to modify the procedures in this section when appropriate to the conduct of its business.

NEW SECTION

WAC 480-07-910 Informal complaints. (1) **How to make an informal complaint.** Any person may make an informal complaint to the commission about any business that the commission regulates. A person may make an informal complaint by telephone, correspondence, facsimile transmission, or electronic mail.

(2) **Contents.** An informal complaint must identify the business or person to whom the complaint pertains. An informal complaint should:

(a) Present all facts that are needed for the commission to understand the nature of, and reason(s) for, the complaint;

(b) Describe the acts or omissions that led to the complaint, with all relevant dates;

(c) Cite all relevant statutes or rules, if the person who files the complaint knows them.

(3) **Commission response; result.** Commission employees assigned to assist consumers may discuss an informal complaint with the affected persons, by correspondence or otherwise. The commission will try to assist the parties to resolve the informal complaint by agreement without the need for a formal complaint, hearing, and order. The commission encourages the informal resolution of disputes whenever possible. An informal complaint will not result in a hearing or in an order that compels a person to do something or forbids a person from doing something.

(4) **Conversion of informal complaint to formal complaint.** Making an informal complaint does not prevent any party from filing a formal complaint, which may constitute an application for an adjudicative proceeding. The commission may initiate a formal complaint proceeding on its own initiative.

NEW SECTION

WAC 480-07-920 Interpretive and policy statements.

(1) **General.** Upon the petition of any person, or upon its own motion, the commission may make and issue interpretive and policy statements to advise the public of its current opinions, approaches, and likely courses of action.

(2) **Roster of interested persons.** The commission will maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by the commission. The commission will periodically update the roster. When the commission issues an interpretive or policy statement, it will send a copy of the statement to each person on the roster.

(3) **Index of current statements.** The commission maintains a file and an index of all currently effective interpretive and policy statements. The statements are available for inspection and copying at the records center in the commission's Olympia headquarters office and are posted on the commission's Internet website.

NEW SECTION

WAC 480-07-930 Declaratory orders under RCW

34.05.240. (1) **Petition.** Any interested person may petition the commission for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the commission, as provided by RCW 34.05.240. Petitions for declaratory orders under RCW 34.05.240 must conform in style and substance to the requirements for other forms of pleading as specified in Part III, subpart A of this chapter.

(2) **Notice.** The commission will give notice of any petition for declaratory order within fifteen days after the commission receives the petition. The notice will be served on all persons who are required by law to be given notice and on any other person to whom the commission deems notice to be desirable.

(3) **Response.** Any person may respond to a petition for declaratory order by filing an answer within twenty days after the petition is filed or at such other time as the commission may establish by notice. The commission will not enter a declaratory order under RCW 34.05.240 if any person asserts in response to a petition for declaratory order filed pursuant to RCW 34.05.240 that their rights might be substantially prejudiced by entry of a declaratory order, supports such assertion by sworn affidavit demonstrating the potential for substantial prejudice, and does not consent in writing to the determination of the matter by a declaratory order proceeding under RCW 34.05.240.

(4) **Conversion of proceeding.** The commission may convert the form of a declaratory order proceeding as provided under RCW 34.05.070 and conduct the matter as an adjudicative proceeding under Part III, subpart A of this chapter.

(5) **Commission action on petition.** Within thirty days after it receives a petition for declaratory order, the commission will:

(a) Enter a declaratory order;

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(b) Notify the petitioner that the commission will not enter a declaratory order under RCW 34.05.240, and state reasons for its action;

(c) Set a specified time, no later than ninety days after the day the petition was filed, by which the commission will enter a declaratory order; or

(d) Set a reasonable time and place for a hearing. If a hearing is held on a petition for declaratory order under RCW 34.05.240, it must be held no more than ninety days after receipt of the petition. If a hearing is held, the commission will give at least seven days' notice to the petitioner, to all persons to whom notice is required by law, and to any other person it deems desirable. The notice will include the time, place, and a statement of the issues involved.

(6) **Extension of time.** The commission may extend the times specified in subsection (5)(c) and (d) of this section.

(7) **Commission action after hearing.** If a hearing is held as provided in subsection (5)(d) of this section, the commission will within a reasonable time:

(a) Enter a declaratory order; or

(b) Notify the petitioner that the commission will not enter a declaratory order and state the reasons for its action.

(8) **Service.** The commission will serve its order or notice upon all persons who are required to receive notice under subsection (2) of this section.

NEW SECTION

WAC 480-07-940 Conversion of proceedings. The commission will consider whether to convert a proceeding pursuant to RCW 34.05.070 upon application by any person or upon its own motion.

NEW SECTION

WAC 480-07-950 Joint hearings with other administrative bodies. (1) **Federal.** The rules of practice and procedure of the federal agency govern in any proceeding in which the commission participates jointly with a federal agency.

(2) **State.** The rules of the state in which the hearing is held govern in any proceeding in which the commission participates jointly with the administrative body of another state or states, unless otherwise agreed by the participating agencies.

(3) **Who may appear.** Any person entitled to appear in a representative capacity before any of the agencies involved in a joint hearing may appear in the joint hearing.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 480-09-005 Scope of this chapter—How to communicate with the commission.
- WAC 480-09-010 When this chapter applies—Exceptions.
- WAC 480-09-012 Incorporated and referenced materials.

- WAC 480-09-015 Submission of "confidential" information.
- WAC 480-09-100 Sending communications to the commission.
- WAC 480-09-101 When communications are received; required identification of sender; communications from the commission.
- WAC 480-09-110 Office hours.
- WAC 480-09-115 Procedure at open public meetings.
- WAC 480-09-120 Filing and service filing by telefacsimile; number of copies.
- WAC 480-09-125 Failure to file sufficient copies—Costs of copying.
- WAC 480-09-130 Computation of time.
- WAC 480-09-135 Variation from time limits.
- WAC 480-09-140 Ex parte communications.
- WAC 480-09-150 Informal complaints.
- WAC 480-09-200 Interpretive and policy statements.
- WAC 480-09-210 Rule-making procedures—Rules coordinator.
- WAC 480-09-220 Petitions for rule making, amendment, or repeal.
- WAC 480-09-230 Declaratory orders.
- WAC 480-09-300 Filing requirements—Statement of policy.
- WAC 480-09-310 Filing requirements—Definition.
- WAC 480-09-320 Filing requirements—Master service.
- WAC 480-09-330 Filing requirements—General rate increases.
- WAC 480-09-335 Filing requirements—General rate increases solid waste collection companies.
- WAC 480-09-337 Filing requirements—General rate increases water companies.
- WAC 480-09-340 Compliance filings.
- WAC 480-09-390 Objections to closures of highway-railroad grade crossings.
- WAC 480-09-400 Applications for adjudicative proceedings.
- WAC 480-09-410 Parties.

WAC 480-09-420	Pleadings and briefs—Applications for authority—Tests.	WAC 480-09-745	Exhibits and documentary evidence.
WAC 480-09-425	Pleadings—Verification, time for filing, responsive pleadings, liberal construction, amendments.	WAC 480-09-750	Rules of evidence; official notice; resolutions.
WAC 480-09-426	Motion for summary disposition.	WAC 480-09-751	Witness panels.
WAC 480-09-430	Intervention.	WAC 480-09-760	Interlocutory orders.
WAC 480-09-440	Continuances—Extensions of time.	WAC 480-09-770	Briefs.
WAC 480-09-450	Interpreters.	WAC 480-09-780	Entry of initial and final orders—Administrative review.
WAC 480-09-460	Prehearing and other conferences.	WAC 480-09-800	Stay.
WAC 480-09-465	Alternate dispute resolution.	WAC 480-09-810	Reconsideration.
WAC 480-09-466	Settlement conference; settlements.	WAC 480-09-815	Amendment, rescission or correction of order.
WAC 480-09-467	Collaboratives.	WAC 480-09-820	Rehearing or reopening.
WAC 480-09-470	Stipulation as to facts.		
WAC 480-09-475	Subpoenas.		
WAC 480-09-480	Methods for obtaining data in adjudicative proceedings.		
WAC 480-09-500	Brief adjudicative proceedings.		
WAC 480-09-510	Emergency adjudicative proceedings.		
WAC 480-09-520	Formal investigation and fact-finding.		
WAC 480-09-530	Petitions for enforcement of interconnection agreements.		
WAC 480-09-600	Conversion of proceedings.		
WAC 480-09-610	Consolidation of proceedings.		
WAC 480-09-620	Joint hearings.		
WAC 480-09-700	Hearings—Notice and failure to appear.		
WAC 480-09-705	Notice to limited-English-speaking parties.		
WAC 480-09-710	Appearance and practice before commission.		
WAC 480-09-720	Appearances—Party status.		
WAC 480-09-730	Conduct at hearings.		
WAC 480-09-735	Order of procedure.		
WAC 480-09-736	Hearing guidelines.		
WAC 480-09-740	Evidence.		

WSR 03-17-102
PROPOSED RULES
GAMBLING COMMISSION

[Filed August 20, 2003, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-16-034.

Title of Rule: Increasing betting limits for house-banked card rooms, WAC 230-40-120 Limits on wagers in card games.

Purpose: To increase betting limits for house-banked card rooms from \$100 to \$300.

Statutory Authority for Adoption: RCW 9.46.070.

Summary: At the August 15, 2003, commission meeting, the commissioners filed a petition for rule change submitted by the Recreational Gaming Association (RGA). The RGA represents numerous card rooms. The petitioner requests that betting limits for house-banked card rooms be increased from \$100 to \$300.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Lacey, (360) 486-3466; Implementation: Rick Day, Lacey, (360) 486-3446; and Enforcement: Bob Berg, Lacey, (360) 486-3452.

Name of Proponent: Staff, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose and Summary above.

Proposal Changes the Following Existing Rules: See Purpose and Summary above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2), therefore, a small business economic impact statement is not required.

RCW 34.05.328 does not apply to this rule adoption. This agency does not choose to make section 201, chapter 403, Laws of 1995, apply to this rule adoption.

Hearing Location: Double Tree Hotel, Spokane City Center, 322 North Spokane Falls Court, Spokane, WA 99201, (509) 744-2310, on October 10, 2003, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Shirley Corbett by October 1, 2003, TDD (360) 486-3637 or (360) 486-3447.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, fax (360) 486-3625, by October 1, 2003.

Date of Intended Adoption: October 10, 2003.

August 20, 2003

Susan Arland

Rules Coordinator

AMENDATORY SECTION [(Amending Order 403, filed 6/19/01, effective 7/20/01)]

WAC 230-40-120 Limits on wagers in card games. Social and public card room licensees shall not allow wagering limits set by the commission to be exceeded in any card game. The number and value of wagers in card games are limited as follows:

Nonhouse-banked card games.

(1) Poker:

(a) There shall be no more than five betting rounds in any one game;

(b) The maximum number of wagers in any betting round shall be four, comprised of an initial wager plus three raises; and

(c) The maximum amount of a single wager shall not exceed twenty-five dollars.

(2) Games based on achieving a specific number of points - each point shall not exceed five cents in value.

(3) An ante, except for panguingue (pan), shall not be more than the maximum wager allowed for the first betting round for any game. The ante may, by house rule, be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round. An ante, by house rule, may be used as part of a player's wager.

(4) Panguingue (pan) - the maximum value of a chip for a payoff shall not exceed ten dollars. An ante will not exceed one chip. Doubling of conditions is prohibited. Players going out may collect not more than two chips from each participating player.

House-banked card games.

(5) Licensees authorized to conduct house-banked card games shall not allow a single wager to exceed twenty-five dollars;

(6) Licensees authorized to conduct Phase II house-banked card games shall not allow a single wager to exceed ~~(one)~~ three hundred dollars;

(7) A single wager may be made on each separate element of chance. In addition, for blackjack, an additional wager may be placed for doubling down or splitting pairs; and

(8) Bonus wagers for house-banked progressive jackpots shall not exceed one dollar. Bonus wagers with a predetermined prize amount based upon a separate element of chance within the same game shall not exceed the authorized maximum table limits as described in subsections (5) and (6) of this section.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 03-17-103
PROPOSED RULES
GAMBLING COMMISSION**

[Filed August 20, 2003, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-06-021.

Title of Rule: Promotions for gambling activities and transporting bingo players: Repealing WAC 230-20-052 Transportation provided to bingo players and 230-20-190 Bingo card prices; and amending WAC 230-12-050 Extension of credit, loans, or gifts prohibited—Limited exception, 230-20-050 Use of proceeds, and 230-20-242 Activities conducted as part of bingo games—Authorization—Restrictions.

Purpose: To streamline promotion rules and remove restrictions on transporting bingo players.

Statutory Authority for Adoption: RCW 9.46.070.

Summary: In 2000, a rules package was adopted by the commission to streamline promotions related to gambling activities. At that time, WAC 230-12-045 was adopted and outlined restrictions relating to promotions related to gambling activities. This package includes several rules [that] were not included in that rules package to further streamline the requirements related to promotions. Amendments also include removing restrictions on bingo operators transporting bingo players.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Lacey, (360) 486-3466; Implementation: Rick Day, Lacey, (360) 486-3446; and Enforcement: Bob Berg, Lacey, (360) 486-3452.

Name of Proponent: Staff, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose and Summary above.

Proposal Changes the Following Existing Rules: See Purpose and Summary above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2), therefore, a small business economic impact statement is not required.

RCW 34.05.328 does not apply to this rule adoption. This agency does not choose to make section 201, chapter 403, Laws of 1995, apply to this rule adoption.

Hearing Location: Double Tree Hotel, Spokane City Center, 322 North Spokane Falls Court, Spokane, WA 99201, (509) 744-2310, on October 10, 2003, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Shirley Corbett by October 1, 2003, TDD (360) 486-3637 or (360) 486-3447.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, fax (360) 486-3625, by October 1, 2003.

Date of Intended Adoption: October 10, 2003.

August 20, 2003

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 413, filed 5/16/02, effective 7/1/02)

WAC 230-12-050 Extension of credit, loans, or gifts prohibited—Limited exception. No licensee, member or employee thereof shall extend credit, make a loan, or grant a gift to any person playing in an authorized gambling activity, or which enables a person to play in an authorized gambling activity.

Gifts prohibited—Exceptions.

(1) Gifts are items licensees give away to its customers and are not connected to gambling activities regulated by the commission. Licensees shall not offer gifts in conjunction with gambling activities, with the following exceptions:

(a) Promotions are allowed as authorized by WAC 230-12-045;

(b) Transportation services provided to and from gambling activities;

(c) Free or discounted food, drink or merchandise may be provided under the following conditions:

(i) The actual cost of any individual item may not exceed five hundred dollars;

(ii) The merchandise shall not be traded back to the licensee for cash or be used to further participate in an authorized gambling activity;

~~((e))~~ (d) For each individual gift with an actual cost over one hundred dollars, charitable and nonprofit organizations shall prepare and maintain a written record with the following information:

(i) How the recipients of the gifts were selected;

(ii) The number of gifts awarded; and

(iii) The total cost of each gift given.

Credit and loans prohibited—Exceptions.

(2) The consideration required to participate in the gambling activity shall be collected in full, by cash, check, or electronic point-of-sale bank transfer, prior to participation, with the following exceptions:

Punch boards/pull-tabs.

(a) The consideration paid for the opportunity to play a punch board or pull-tab series may be collected immediately after the play is completed only when such consideration is ten dollars or less;

Charitable/nonprofit organization's billing system for members.

(b) When a bona fide charitable or bona fide nonprofit organization conducting any of the activities authorized by chapter 9.46 RCW or commission rules has a regular billing system for all of the activities of its members with such organization, such billing system may be utilized in connection with the playing of any of the activities authorized hereunder if:

(i) The playing of such activity is limited to regular members of such organization who have become regular members prior to the commencement of such activity and whose qualifications for membership were not dependent upon, or in any way related to, the playing of such activity; and

(ii) The director has given prior written consent to the use of such billing system in connection with the conduct of activities authorized under these rules.

Raffle tickets purchased with credit cards.

(c) Charitable or nonprofit organizations utilizing credit cards, issued by a state and/or federally regulated financial institution, for payment to participate in raffles.

AMENDATORY SECTION (Amending WSR 96-07-078, filed 3/19/96, effective 7/1/96)

WAC 230-20-050 Use of proceeds. No part of the proceeds of any (~~bingo game, raffle, or amusement game~~) gambling activity conducted by a bona fide charitable or bona fide nonprofit organization, except qualified agricultural fairs, shall be used for the benefit of any specific person (~~(other than the organization conducting the activity; except that if the activity is conducted by a licensee for the charitable benefit of a specific person or persons who have been listed as recipients of the proceeds, or a specified portion thereof, on the application for a license to conduct the activity, then the proceeds or specified portion thereof, may be used for the benefit of such specific person or persons so designated if commission approval has been obtained prior to the organization conducting the activity for that purpose. Provided, That for the purposes of this section, a licensee providing transportation to bingo players under the guidelines of WAC 230-20-052 shall not be deemed in violation of this rule)~~) without the organization obtaining prior approval from the commission.

AMENDATORY SECTION (Amending Order 371, filed 5/18/99, effective 7/1/99)

WAC 230-20-242 Activities conducted as a part of bingo games—Authorization—Restrictions. Bingo licensees may award prizes to winners of activities authorized by this section when such activities are conducted as a part of bingo games. Such activities shall be deemed to be bingo games if all players paying to participate are allowed to compete equally and all prizes awarded are treated as bingo game prizes for purposes of compliance with WAC 230-20-059.

(1) Drawings. Each licensee shall be allowed to award prizes that are determined by a random drawing of tickets or by other random selection methods involving the numbering system on such tickets if the requirements of WAC 230-20-105 are followed: Provided, That upon approval by commis-

sion staff, a licensee may use bingo cards in place of tickets if the requirements of WAC 230-20-107 are followed, and:

(a) All rules regarding these drawings, including requirements to qualify for participation, time and date of the drawing, and whether a player must be present to win, are clearly posted and distinctly explained to the players;

(b) Tickets or other facsimiles used to enter such drawings are awarded only to players purchasing cards to play in bingo games;

(c) Tickets, from which the winners of any such drawing are selected, shall not be accumulated for a period that is longer than thirty days. Drawings may be conducted using tickets that accumulate during any bingo occasion, week, or any other period that does not exceed thirty consecutive days;

(d) Players may only be awarded or otherwise receive tickets to participate in drawings at bingo games by meeting the following criteria:

(i) Pay an amount not to exceed one dollar per ticket. If a licensee elects to charge for entry into drawings, such drawings shall not be combined with other means of entry allowed by this subsection, and the gross gambling receipts, prizes, and expenses shall be recorded and reported as bingo activities: Provided, that if players are required to purchase tickets to enter the drawing, they shall not be required to be present to win if the drawing is not held at the same session as tickets are purchased;

(ii) Be a winner of a bingo game during the session;

(iii) Be a "good neighbor" winner, as defined by subsection ((3)) (2) of this section; or

(iv) Meet other specific and predetermined criterion that has been approved by the director;

(e) The criterion for granting tickets, and the number of tickets awarded during each session, shall be recorded in the daily bingo record for each session. All winning tickets and other records shall be maintained as a part of the daily bingo records.

~~(2) ((Creativity and originality contests. A bingo licensee may conduct contests in which players may demonstrate their creativity and originality skills on up to eight occasions annually. The following rules must be observed in conducting these contests:~~

~~(a) The total value of prizes shall not exceed five hundred dollars during any occasion;~~

~~(b) Only players who have paid to participate in bingo games during the current session may participate in the contest; and~~

~~(c) A record shall be completed for each contest setting out the criterion for selecting the winners, the number of participants in the contest, and all details required by WAC 230-08-080 and 230-20-102. Such records shall be maintained as a part of the daily bingo records.~~

(3)) "Good neighbor" prize schemes. A licensee may award prizes based upon the seating location of a player or players in regards to a winner of a bingo game or other approved criteria. The following requirements must be observed prior to awarding "good neighbor" prizes:

(a) All rules regarding these prizes, including the amount to be awarded to each "good neighbor" or group of "good neighbors" and all requirements to qualify for a prize, must be clearly posted and distinctly explained to the players; and

(b) A record shall be completed setting out the criterion for awarding such prizes, the number of such prizes awarded during each session, and all details required by WAC 230-08-080 and 230-20-102. Such record shall be maintained as a part of the daily bingo records.

~~((4)) (3) Second element of chance schemes. Licensees may use these schemes to increase the minimum prize for a bingo game after the winner(s) of the game has been determined by calling numbers and symbols if:~~

~~(a) The schemes do not involve the use of gambling devices specifically prohibited by public policy or commission rules;~~

~~(b) A player's minimum odds of winning the highest prize is equal to or greater than one winner out of one hundred twenty-five chances or the probability of winning the highest prize is .008 or greater;~~

~~(c) The scheme does not require the player to risk any portion of a prize already won;~~

~~(d) Every possible outcome of the scheme provides the player with an additional prize;~~

~~(e) All rules regarding play of the game are clearly posted and distinctly explained to the players. At least the following information shall be disclosed:~~

~~(i) The players minimum odds of winning the highest prize;~~

~~(ii) How a winner is determined;~~

~~(iii) Any contingencies or special requirements that may affect the outcome;~~

~~(iv) The cash value of the highest prize available; and~~

~~(v) Any financial burden that must be borne by the winner, such as taxes or registration fees.~~

~~(f) All requirements of WAC 230-20-010 are met before cards are purchased; and~~

~~(g) The scheme and supporting records contain control factors necessary for commission audit.~~

~~((5) Birthday bonus prizes. Licensees may offer birthday bonus prizes to players who win a bingo game subject to the following restrictions:~~

~~(a) The maximum bonus prize is fifty dollars;~~

~~(b) The player's birthday must be within the calendar week that the winning combination occurred and the bonus is paid;~~

~~(c) A licensee may award only one birthday bonus to any player during any calendar year;~~

~~(d) In addition to all requirements of WAC 230-20-102, the prize receipt for such prizes must include:~~

~~(i) The address of the winner;~~

~~(ii) The player's date of birth; and~~

~~(iii) The type of identification provided by the player to verify the winner's date of birth.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-20-052

Transportation provided to bingo players.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-20-190 Bingo card prices.

WSR 03-17-104
PROPOSED RULES
GAMBLING COMMISSION
 [Filed August 20, 2003, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-06-021.

Title of Rule: Card room tournaments: Amending WAC 230-40-055 Card tournaments for fee and prizes—Reporting requirements.

Purpose: Currently, pretournament play requirements to enter a customer appreciation tournament cannot exceed a \$50 entry fee and licensees using the rake method to collect fees cannot require pretournament play to exceed ten hours. At the June study session, staff proposed an amendment to limit pretournament play for house-banked card rooms offering customer appreciation tournaments to ten hours. This would have brought the rule up-to-date with current policy. At that meeting, a licensee requested that restrictions on pretournament play be further reviewed.

Statutory Authority for Adoption: RCW 9.46.070.

Summary: Staff further reviewed this rule and reduced limitations on customer appreciation pretournament entry requirements. At the August commission meeting, the commission filed an amendment to increase the maximum player buy-in from \$50 to \$100 and the total buy-in from \$200 to \$400. These figures have not changed since 1986. Pretournament play restrictions were removed, as players regulate the activity and there isn't a need to have the restrictions in a rule. Language was added to require licensees to clearly post pretournament play requirements so players are fully informed.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Lacey, (360) 486-3466; Implementation: Rick Day, Lacey, (360) 486-3446; and Enforcement: Bob Berg, Lacey, (360) 486-3452.

Name of Proponent: Staff, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose and Summary above.

Proposal Changes the Following Existing Rules: See Purpose and Summary above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2), therefore a small business economic impact statement is not required.

RCW 34.05.328 does not apply to this rule adoption. This agency does not choose to make section 201, chapter 403, Laws of 1995, apply to this rule adoption.

Hearing Location: Double Tree Hotel, Spokane City Center, 322 North Spokane Falls Court, Spokane, WA 99201, (509) 744-2310, on October 10, 2003, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Shirley Corbett by October 1, 2003, TDD (360) 486-3637 or (360) 486-3447.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, fax (360) 486-3625, by October 1, 2003.

Date of Intended Adoption: October 10, 2003.

August 20, 2003

Susan Arland
 Rules Coordinator

AMENDATORY SECTION (Amending Order 403, filed 6/19/01, effective 7/20/01)

WAC 230-40-055 Card tournaments for fee and prizes—Reporting requirements. A card tournament wherein a fee is charged to the participants and prizes are awarded to the winning players shall be licensed by the commission.

License not required.

(1) Card room licensees with a Class A, B, E, F or house-banked license may conduct a card tournament for a fee without obtaining a card tournament license: Provided, That licensees are limited to only those card games authorized under their license class.

Class D licensees.

(2) Card room licensees with a Class D license must first obtain a card tournament license before they can conduct a card tournament in which the players are charged a fee to enter.

Notification.

(3) The licensee shall notify the commission ten days in advance of any card tournament where the single or multiple buy-in exceeds fifty dollars.

Length of tournament.

(4) A card tournament shall not exceed ten consecutive calendar days.

Entry fees.

(5) The fee for a player to enter a card tournament for prizes shall not exceed ~~((fifty))~~ one hundred dollars. The ~~((fifty-dollar))~~ fee shall include all separate fees which might be paid by a player for various phases, events of the tournament, food and drink offerings, and promotional material.

Posting entry fee requirements.

(6) The fee to enter a tournament and a description of all goods and services to be provided as a part of the tournament must be fully disclosed to each entrant prior to their paying such fee. Such disclosure must be posted conspicuously on the premises at the time payment is received and remain posted until the tournament is complete.

Customer appreciation.

(7) Operators may offer customer appreciation tournaments (~~Provided, That the pretournament play requirements do not exceed the fifty dollar entry fee limitation. Provided, That licensees collecting fees using the rake method (WAC 230-40-050) cannot require pretournament play to exceed ten hours~~). The licensee shall conspicuously post entry and buy-in requirements.

(a) Entrants in such tournaments must initially be provided with the same number of chips or points and the same opportunity for rebuys.

(b) All prizes awarded for customer appreciation tournaments may be deducted as prizes for determining adjusted net gambling receipts.

Fees are gross gambling receipts - exception for food and gifts.

(8) All fees paid to enter a tournament shall be reported as gross gambling receipts: Provided, That if an operator prepares and provides food and drink items to all tournament entrants on the licensed premises as a part of their entry fee, the fair market value of the food and drink provided, not to exceed twenty-five dollars or fifty percent of the entry fee, which ever is greater, shall be treated as sales of food and drink for on premises consumption and not included as gross gambling receipts. Such sales, must be properly supported by records: Provided further, That if an operator provides items promoting the tournament or licensed business, such as hats, t-shirts, etc., to all participants as a part of their entry fee, the actual cost of such items, supported by invoices and other such records, shall be deducted as prizes in determining adjusted net gambling receipts.

Buy-in.

(9) In addition to the entry fee, a minimum buy-in of chips may be required. The total buy-in per player shall not exceed ~~((two))~~ four hundred dollars per tournament and may be either a single or multiple buy-in during the course of the tournament. A record of the buy-ins for each participant will be maintained by the licensee in a format provided by the commission. All buy-ins of chips are not gross gambling receipts and shall be returned to the participants in the form of prizes. Prizes from buy-ins are not deductible for commercial stimulant purposes.

Prizes.

(10) The chips used in card tournaments shall have no monetary value and may be redeemed only for prizes established by the licensee. The licensee may award prizes in excess of those entry fees collected as authorized in subsection (5) of this section. The licensees actual cost, including any cash, for prizes awarded to the players may be deducted as prizes for determining adjusted net gambling receipts generated by the entry fees.

Posting and approval of rules.

(11) The licensee shall adopt tournament rules to facilitate the operation of card tournaments: Provided, That all tournament rules for tournaments where the single or multi-

ple buy-in exceeds ((fifty)) one hundred dollars must be submitted to commission staff for approval: Provided, That once a tournament format is approved, notification will be sufficient for all subsequent tournaments identical in format and play. All tournament rules must be conspicuously posted where all tournament participants can see and read the rules.

Recording fees and players.

(12) The licensee shall maintain a record of all such fees collected and the number of participant for each tournament conducted. This information shall be entered in a format approved by the commission. The total gross gambling receipts for the tournament shall be entered on the card room daily control sheet for the time and date the tournament begins and the record of participants shall be attached and maintained with that daily control sheet.

Prize records.

(13) The licensee shall maintain a record of all prizes awarded to include the amount the licensed operator actually paid for each prize and the name and complete address of each winning participant: Provided, That the name and address of each participant receiving promotional items as set forth in subsection (8) of this section shall not be required on the prize record. The record shall be attached to the daily control sheet used on the date the majority of the prizes are awarded.

PROPOSED



WSR 03-17-072
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 19, 2003, 9:48 a.m.]

Title of Rule: Department vocational rehabilitation referrals, WAC 296-19A-045 Which rules under "department vocational rehabilitation referrals" apply only to the department?, 296-19A-080 How often must written progress reports be completed and submitted during assessment activities?, and 296-19A-120 What reports does the department require when vocational rehabilitation plan implementation and monitoring services are provided at its request?

Purpose: WAC 296-19A-045, corrects the rule to reference two WACs adopted in May 2003 (WAC 296-19A-135 and 296-19A-137). WAC 296-19A-080 and 296-19A-120, the words "calendar" and "electronic" are to be added to specify that progress reports during assessment and plan referrals are required every thirty calendar days from the date of the electronic referral.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110.

Statute Being Implemented: Not applicable, RCW 51.32.095, 51.36.100, 51.36.110.

Summary: See Purpose above.

Reasons Supporting Proposal: 1. Clarifications were requested in public commentary during the rule-making process for the vocational rehabilitation rules adopted May 12, 2003 (WSR 03-11-009).

2. Reporting requirements for vocational rehabilitation counselors will be clear and reflect current interpretation and practice.

3. Self-insured employers and their workers will know exactly which rules apply to them.

4. Department of Labor and Industries audit staff will have clear audit guidelines for enforcing reporting expectations.

Name of Agency Personnel Responsible for Drafting: Mary Kaempfe, Medical Program Specialist, Tumwater, Washington, (360) 902-4202; Implementation and Enforcement: Sandra Dzedzic, Program Manager, (360) 902-4300, or Roy Plaeger-Brockway, Program Manager, Tumwater, Washington, (360) 902-6699.

Name of Proponent: Department of Labor and Industries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed revision to existing WAC 296-19A-045 will correct a technical oversight from the previous rule-making process. The anticipated effect is that self-insured employers and their workers will know that two of the WACs adopted in May 2003 do not apply to them.

Proposed revisions to WAC 296-19A-080 and 296-19A-120 provide technical clarification of progress reporting requirements for vocational rehabilitation counselors. The anticipated effects of these amendments are that vocational rehabilitation counselors will provide timely services to injured workers and the department can more appropriately

hold vocational providers accountable for timely progress [reporting].

Proposal does not change existing rules.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Carmen Moore, Rules Coordinator, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, AND RECEIVED BY October 21, 2003.

August 19, 2003

Paul Trause

Director

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-045 Which rules under "department vocational rehabilitation referrals" apply only to the department? WAC 296-19A-050 through ((296-19A-130)) 296-19A-137 pertain to referrals for vocational rehabilitation services made by the department.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-080 How often must written progress reports be completed and submitted during assessment activities? The provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative, every thirty calendar days from the date of the electronic referral summarizing progress during the most recent reporting period. The written progress report must include:

(1) A detailed explanation why the AWA was not completed as of the date of the report;

(2) A summary of all activities taken in the past thirty days, including progress on previously recommended actions;

(3) Identification and analysis of any barriers preventing completion of the referral; and

(4) A description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-120 What reports does the department require when vocational rehabilitation plan implementation and monitoring services are provided at its request? (1) Progress reports. The vocational rehabilitation

provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative, every thirty calendar days from the date of the electronic referral summarizing progress during the most recent reporting period. The progress report must include the following:

(a) Review of the industrially injured or ill worker's compliance with the vocational rehabilitation plan;

(b) A list of the dates the provider contacted the industrially injured or ill worker and training site;

(c) Description of the skills the worker has acquired so far and a comparison with the vocational rehabilitation plan;

(d) Summary of all actions taken in the past thirty days, including progress on previously recommended actions;

(e) Identification and analysis of any barriers preventing completion of the referral;

(f) Statement of whether the industrially injured or ill worker will complete the plan by the target plan end date.

(2) Closing report. If the industrially injured or ill worker successfully completes the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An assessment of the industrially injured or ill worker's employability status at the time of closure;

(b) An assessment of the skills acquired by the industrially injured or ill worker as compared to the vocational rehabilitation plan;

(c) A statement as to whether or not the industrially injured or ill worker has returned to gainful employment; and

(d) The barriers, if any, to the industrially injured or ill worker's return to gainful employment.

(3) If the industrially injured or ill worker does not successfully complete the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) Explain why the vocational rehabilitation plan cannot be completed;

(b) Assess the industrially injured or ill worker's employability status at the time the plan stopped;

(c) Assess what skills the industrially injured or ill worker acquired and compare them to the vocational rehabilitation plan;

(d) Indicate whether or not the industrially injured or ill worker has returned to work. If so, list the job title, employer, and monthly salary; and

(e) Describe any remaining barriers that may keep the industrially injured or ill worker from returning to work.

and 16-470-917 Schedule of fees and charges—Fees for post entry inspection services.

Purpose: This proposal amends the strawberry plant certification fees, caneberry plant certification fees, nursery inspection fees, and plant pathology testing fees by repealing fee schedules that were only in effect for one day (June 30, 2003) and were superceded on July 1, 2003, by the current fee schedules.

Statutory Authority for Adoption: Chapters 15.13, 15.14, 17.24, 34.05 RCW.

Statute Being Implemented: Chapters 15.13, 15.14, 17.24 RCW.

Summary: A rule-making order took effect on June 30, 2003, increasing fees within the fiscal growth factor for fiscal year 2003, and a rule-making order took effect on July 1, 2003, increasing fees within the fiscal growth factor for fiscal year 2004. The fee schedules effective until June 30, 2003, are no longer necessary.

Reasons Supporting Proposal: The rule language will be more readable without obsolete fee language.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These sections of rule specify the fees for strawberry plant certification, caneberry plant certification, nursery inspection, and plant pathology testing. Amending these sections by deleting fee schedules that were only in effect for one day (June 30, 2003) and were superceded on July 1, 2003, by the current fee schedules will make the rules easier to understand.

Proposal Changes the Following Existing Rules: It amends WAC 16-328-011 Strawberry plant certification fees, 16-333-041 Caneberry certification fees, 16-401-027 Schedule of fees and charges—Applicable rates and charges, 16-401-041 Nursery dealer license fees, 16-470-912 Schedule of fees and charges—Applicable fees and charges, and 16-470-917 Schedule of fees and charges—Fees for post entry inspection services by deleting fee schedules no longer in use.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO George Huffman, Rules Coordinator, Washington State Department of Agriculture,

WSR 03-17-075

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed August 19, 2003, 11:56 a.m.]

Title of Rule: WAC 16-328-011 Strawberry plant certification fees, 16-333-041 Caneberry certification fees, 16-401-027 Schedule of fees and charges—Applicable rates and charges, 16-401-041 Nursery dealer license fees, 16-470-912 Schedule of fees and charges—Applicable fees and charges,

P.O. Box 42560, Olympia, WA 98504-2560, AND RECEIVED BY October 21, 2003.

August 19, 2003
 Mary A. Martin Toohey
 Assistant Director

AMENDATORY SECTION (Amending WSR 03-10-080, filed 5/6/03, effective 6/30/03)

WAC 16-328-011 Strawberry plant certification fees.
 The strawberry plant certification fees are as follows:

	((Effective until June 30, 2003	Effective July 1, 2003
Application fee	\$136.34	\$140.70
Hourly inspection rate	\$27.26))	\$28.10

(1) Certification application fee. The applicant must furnish all information requested on the application for inspection, including, but not limited to, the crop, variety, class planted, date planted, source of seed or plants, acreage, field number, applicant's name and address, applicant's signature, and date of application. The applicant must allow the department to take plants or plant parts from any planting for inspection or testing purposes. A separate application is required for each cultivar and/or lot entered for certification. Applications for inspection must be filed with the Plant Services Program, P.O. Box 42560, Olympia, Washington, 98504-2560 by June 15 of each year and be accompanied by the application fee.

(2) Inspection fees. The department will conduct certification inspections at the hourly inspection rate plus mileage charged at a rate established by the state office of financial management. Testing fees will be charged at the rate established in chapter 16-470 WAC. Inspection and testing fees are payable upon completion of work. Billing may be arranged subject to department policies and processes.

(3) The department will remove any applicant from the certification program for failing to pay fees when due.

(4) The department will not accept applications from growers owing the department for previous fees.

AMENDATORY SECTION (Amending WSR 03-10-081, filed 5/6/03, effective 6/30/03)

WAC 16-333-041 Caneberry certification fees. The caneberry certification fees are as follows:

	((Effective until June 30, 2003	Effective July 1, 2003
Application fee	\$136.34	\$140.70
Hourly inspection rate	\$27.26))	\$28.10

(1) Certification application fee. The applicant must furnish all information requested on the application form furnished by the department, including, but not limited to, the crop, variety, class planted, date planted, source of seed or plants, acreage, field number, applicant's name and address, applicant's signature, and date of application. The applicant

must allow the department to take plants or plant parts from any planting for inspection and testing purposes. A separate application is required for each cultivar and/or lot entered for certification. Applications must be filed with the Plant Services Program, P.O. Box 42560, Olympia, Washington 98504-2560 by May 15 each year and be accompanied by the application fee.

(2) Inspection fees. The department will conduct certification inspections at the hourly inspection rate plus mileage charged at a rate established by the state office of financial management. Testing fees will be charged at the rate established in chapter 16-470 WAC. Inspection and testing fees are payable upon completion of work. Billing may be arranged subject to department policies and processes.

(3) The department will remove any applicant from the certification program for failing to pay fees when due.

(4) The department will not accept applications from growers owing the department for previous fees.

AMENDATORY SECTION (Amending WSR 03-10-083, filed 5/6/03, effective 6/30/03)

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges. The following rates apply for requested inspection services:

(1) Fee or Charge:	Effective ((Date))	
	((Until June 30, 2003	July 1, 2003
Hourly rate—business hours	\$29.33	\$30.20
Hourly rate—nonbusiness hours	\$37.49	\$38.60
Certificate issued at time if inspection	No-charge	No charge
Certificate issued more than twenty-four hours after the inspection	\$14.04	\$14.40
Additional certificates	\$4.54	\$4.60
Fumigation lot or container fee	\$11.72	\$12.05
Certificate of plant health for non-commercial movement	\$5.83	\$6.00
Compliance agreement	\$29.33	\$30.20
Inspection tags or stickers (lots of 250)	\$5.83-per-lot	\$6.00 per lot
Inspection tags or stickers (minimum 10)	\$0.278-each))	\$0.28 each

(2) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calen-

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dar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

(5) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.

(6) The department may issue a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge.

AMENDATORY SECTION (Amending WSR 03-10-083, filed 5/6/03, effective 6/30/03)

WAC 16-401-041 Nursery dealer license fees. Annual license fees as established below, must accompany the application for nursery dealer license:

(1) Retail nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars \$37.67

(b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is \$80.72

(c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$161.45

(2) Wholesale nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars \$80.72

(b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$161.45

(3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.

(4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270.

((a) Effective until June 30, 2003 \$5.83

(b)) Effective July 1, 2003 \$6.00

AMENDATORY SECTION (Amending WSR 03-10-082, filed 5/6/03, effective 6/30/03)

WAC 16-470-912 Schedule of fees and charges—Applicable fees and charges. (1) Hourly rate.

	((Effective until June 30, 2003	Effective July 1, 2003
Hourly rate - business hours	\$29.33	\$30.20
Hourly rate - nonbusiness hours	\$37.49))	\$38.60

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) Plant pathology laboratory diagnostic fees are as follows:

((Effective until June 30, 2003

Identity Determination	1 sample	5 samples	10 samples	50 samples	100+ samples
virus (ELISA)	At cost	At cost	\$9.70 ea	\$4.85 ea	\$2.84 ea
bacteria	38.83 ea	37.49 ea	35.17 ea	33.98 ea	33.98 ea
fungus	41.05 ea	35.17 ea	33.98 ea	32.84 ea	30.47 ea
nematode	30.47 ea	28.09 ea	25.77 ea	25.71 ea	23.44 ea

Note: ~~To receive volume rates, samples must be submitted as a unit and identification requests must be for one specific virus, bacterium, fungus, or nematode. Samples tested for multiple pathogens will be considered as multiple samples unless all pathogens can be detected in a single test without additional inputs.)~~

Effective July 1, 2003

Identity Determination	1 sample	5 samples	10 samples	50 samples	100+ samples
virus (ELISA)	At cost	At cost	\$10.00 ea	\$5.00 ea	\$2.90 ea
bacteria	40.05 ea	38.65 ea	36.25 ea	35.05 ea	35.05 ea
fungus	42.35 ea	36.25 ea	35.05 ea	33.85 ea	31.40 ea
nematode	31.40 ea	28.95 ea	26.55 ea	25.90 ea	24.15 ea

Note: To receive volume rates, samples must be submitted as a unit and identification requests must be for one specific virus, bacterium, fungus, or nematode. Samples tested for multiple pathogens will be considered as multiple samples unless all pathogens can be detected in a single test without additional inputs.

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

- (a) Projects greater than one hundred samples;
- (b) Projects requiring materials not readily available; or
- (c) Projects requiring special handling or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 03-10-082, filed 5/6/03, effective 6/30/03)

WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services. (1) Post entry site inspection and/or permit review and approval;

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~~((a) Effective until June 30, 2003 \$58.66~~
~~(b)) Effective July 1, 2003..... \$60.50~~

(2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

WSR 03-17-096
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed August 20, 2003, 10:37 a.m.]

Title of Rule: WAC 458-07-020 Revaluation of real property—Multiyear counties.

Purpose: To provide information about the revaluation of real property.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Statute Being Implemented: RCW 84.41.030, 84.41.041, and 84.40.045.

Summary: This rule provides information about the revaluation of real property for purposes of property taxation in counties that do not revalue all real property each year. It provides information about when an assessor is authorized to revalue real property using appraisal judgment, outside of the approved revaluation cycle. It also provides information about incomplete revaluations and the requirement to provide taxpayers with a revaluation notice when there is any change in the assessed value of real property.

Reasons Supporting Proposal: This rule cites a statute (RCW 90.60.160) that was decodified in September 2001.

Name of Agency Personnel Responsible for Drafting: Mark Mullin, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6112; Implementation and Enforcement: Gary O'Neil, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule provides important information to county assessors, their staff, Department of Revenue personnel, and the public about the revaluation of real property for purposes of property taxation in counties that do not revalue all real property each year. The rule provides information about when an assessor is authorized to revalue real property, using appraisal judgment, outside of the approved revaluation cycle. It also explains what happens when the area of the county being physically inspected and revalued is not completed in that year. Finally, the rule explains requirement that assessors provide taxpayers with a revaluation notice when there is any change in the assessed value of real property.

WAC 458-07-020 contains a citation in subsection (2)(a) to RCW 90.60.160, a statute that was decodified in September 2001. This rule is being amended to delete the citation to RCW 90.60.160, which will increase the accuracy of the rule and reduce the potential for confusion.

Proposal Changes the Following Existing Rules: This is a revision to WAC 458-07-020, as explained above. An introduction is being added to explain the purpose of the rule.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail MarkM@dor.wa.gov, AND RECEIVED BY October 20, 2003.

To Obtain a Copy of this Form and Rule in an Alternative Format: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

August 20, 2003

Alan R. Lynn

Rules Coordinator

Legislation and Policy Division

AMENDATORY SECTION (Amending WSR 00-01-043, filed 12/7/99, effective 1/7/00)

WAC 458-07-020 Revaluation of real property—Multiyear counties. (1) Introduction. This rule provides information about the revaluation of real property in a county where all real property is not revalued each year. It explains when an assessor is authorized to revalue real property using appraisal judgment outside of the approved revaluation cycle. It also explains what happens when the area of the county being physically inspected and revalued in a particular year is not completed in that year. Finally, this rule explains the requirement that revaluation notices be mailed by the assessor to the taxpayer when there is any change in the assessed value of real property.

(2) **Revaluation cycles.** In a county where all real property is not revalued each year, all real property must be physically inspected and revalued at current true and fair market value on a proportional basis within the county each year of a two, three, or four-year cycle. Approximately equal portions of the taxable property of the county must be physically inspected and revalued each year of the cycle. Alternatively, the department may approve a plan whereby the county assessor physically inspects and revalues all real property in the county once every two years.

~~((2))~~ (3) **Revaluation outside of approved cycle.** In certain circumstances the assessor is authorized to revalue real property, using appraisal judgment, outside of the approved revaluation cycle. These revaluations must not be arbitrary or capricious, nor violate the equal protection clauses of the federal and state Constitutions, nor the uniformity clause of the state Constitution. The assessor may disre-

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gard the revaluation cycle and change a property valuation, as appropriate, in the following situations:

(a) If requested by a property owner, when a notice of decision pertaining to the value of real property is received under RCW 36.70B.130 (Notice of decision—Distribution; local project review), (~~RCW 90.60.160 (Final permit decision—Notice forwarded to county assessor; environmental permit assistance);~~) chapter 35.22 RCW (First Class Cities), chapter 35.63 RCW (Planning Commissions), chapter 35A.63 RCW (Planning and Zoning in Code Cities), or chapter 36.70 RCW (Planning Enabling Act);

(b) When the owner or person responsible for payment of taxes on any real property petitions the assessor for a reduction in the assessed value in accordance with RCW 84.40.039, within three years of adoption of a restriction by a government entity;

(c) When there has been a "definitive change of land use designation" by an authorized land use authority, and the revaluation is in accordance with RCW 84.48.065;

(d) When a bona fide mistake has been made by the assessor in a prior valuation made within the current valuation cycle. The change in property valuation is not retroactive to the prior year;

(e) When property has been destroyed, in whole or in part, and is entitled to a reduction in value in accordance with chapter 84.70 RCW; or

(f) When property has been subdivided or merged.

~~((3))~~ **(4) Revaluation areas—Incomplete revaluation.** In any year, when the area of the county being physically inspected and revalued is not completed in that year, the portion remaining must be completed before beginning the physical inspection and revaluation of another area in the succeeding year. For any portion of a revaluation area that was not completed in the year intended, the value of real property in that portion is still determined as of January 1st of the assessment year originally intended, but the new appraised value is placed on the assessment rolls, and is subject to appeal by the taxpayer, in the assessment year the property is actually inspected and revalued. All areas of the county must be physically inspected and revalued within the cycle established in the revaluation plan filed with the department.

~~((4))~~ **(5) Change of value notice.** In a county that revalues all real property on a multiyear cycle, revaluation notices must be mailed by the assessor to the taxpayer when there is any change in the assessed value of real property, not later than thirty days after an appraisal. For additional information about revaluation notices, refer to WAC 458-12-360.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Statute Being Implemented: RCW 36.21.080, 36.21.090, 84.40.040, 84.40.042, and 84.56.340.

Summary: This rule provides information about the listing and valuing of real property for purposes of property taxation, including specific information about the valuation of subdivisions of real property. It also provides information about paying property taxes on a partial interest in real property.

Reasons Supporting Proposal: To incorporate recent legislation, chapter 23, Laws of 2003.

Name of Agency Personnel Responsible for Drafting: Mark Mullin, 1025 Union Avenue S.E., Suite #400, Olympia, WA, (360) 570-6112; Implementation and Enforcement: Gary O'Neil, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule provides important information to county assessors, their staff, Department of Revenue personnel, and the public about the listing and valuing of real property for purposes of property taxation. This rule provides specific information about the valuation of subdivisions of real property. It also provides information about paying property taxes on a partial interest in real property.

RCW 84.56.340 allows a person to apply to the county assessor to pay taxes on any part or parts of real property, assessed as one parcel, upon the person's undivided fractional interest in the property. With certain exceptions, the assessor may not segregate property for purposes of allowing a person to pay taxes on the person's undivided fractional interest in a parcel of real property unless all delinquent taxes and assessments on the entire parcel are paid in full. Chapter 23, Laws of 2003, amended RCW 84.56.340 to require that, in addition to all delinquent taxes and assessments, all taxes and assessments for the current year must be paid in full before property can be segregated for purposes of allowing a person to pay taxes on the person's undivided fractional interest in a parcel of real property.

This proposal incorporates the revision to RCW 84.56.340 by chapter 23, Laws of 2003. The revised rule will therefore be consistent with the statutes that the rule implements.

Proposal Changes the Following Existing Rules: This proposal incorporates a revision to RCW 84.56.340 by chapter 23, Laws of 2003, as explained above. An introduction is being added to explain the purpose of the rule.

WSR 03-17-097

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed August 20, 2003, 10:38 a.m.]

Title of Rule: WAC 458-07-035 Listing of property—Subdivisions and segregation of interests.

Purpose: To provide information about the listing and valuation of real property for purposes of property taxation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THE USE OF

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THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Mark Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail MarkM@dor.wa.gov, AND RECEIVED BY October 20, 2003.

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August 20, 2003

Alan R. Lynn

Rules Coordinator

Legislation and Policy Division

AMENDATORY SECTION (Amending WSR 00-01-043, filed 12/7/99, effective 1/7/00)

WAC 458-07-035 Listing of property—Subdivisions and segregation of interests. (1) **Introduction.** This rule explains when the assessor must begin the listing and valuation of property in the county. It also provides information relating to the listing and valuation of subdivisions of real property. Finally, this rule explains when a person will be allowed to pay property taxes on their partial interest in a parcel of real property.

(2) **Listing of property.** The assessor must begin the listing and valuation of all property in the county, except new construction and mobile homes not previously assessed in this state, not later than December 1st of each year, and complete the listing and valuation not later than May 31st of the succeeding year. The listing and valuation of new construction and mobile homes not previously assessed in this state must be completed by August 31st of each year.

((2)) (3) **Valuation of subdivisions.** The assessor must list and value all subdivisions of real property at one hundred percent of true and fair value as follows:

(a) If an advance tax deposit was paid in accordance with RCW 58.08.040, each lot of a subdivision must be valued by October 30th of the year following the recording of the plat, replat, altered plat, or binding site plan. The value established ((shall)) will be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, ((shall)) must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, ((shall)) must be placed on the roll for the succeeding assessment year; and

(b) If no advance tax deposit was paid, each lot of a subdivision must be valued by the end of the calendar year following the recording of the plat, map, subdivision, or replat. The value established ((shall)) must be the value of the lot as of January 1st of the year the original parcel was last revalued. Each lot of a subdivision that is valued on or before May 31st, or the closing of the assessment roll, whichever is later, ((shall)) must be placed on the roll for that assessment year. Each lot of a subdivision that is valued after May 31st, or the closing of the assessment roll, whichever is later, ((shall))

must be placed on the roll for the succeeding assessment year.

((3)) (4) **Petition for payment of taxes on partial interest.** Any person desiring to pay taxes on only their interest in a parcel of real property, whether their interest is a divided interest or an undivided interest, may do so by applying to the assessor of the county where the property is located. The assessor ((shall)) must determine the value of the applicant's interest and certify that value to the county treasurer ((who)) will shall accept payment of taxes for the applicant's interest in the property. No segregation of the property ((shall)) can be made unless all current year and delinquent taxes and assessments on the entire parcel have been paid in full, except for the following situations, in which all current year and delinquent taxes and assessments on the entire parcel need not first be paid in full:

- (a) When property is being acquired for public use; and
- (b) When a person or financial institution desires to pay the taxes and any penalties and interest on a mobile home upon which they have a lien by mortgage or otherwise.

EXPEDITED



WSR 03-16-015
PERMANENT RULES
SEATTLE COMMUNITY COLLEGES

[Filed July 28, 2003, 10:59 a.m.]

Date of Adoption: July 10, 2003.

Purpose: To update and clarify administrative rules on appointing authority for employees, board of trustees meetings and procedures, and procedures for adjudicative proceedings (chapters 132F-01, 132F-104 and 132F-108 WAC), and to repeal the existing chapter on student policies and procedures (chapter 132F-120 WAC) and replace it with new chapter 132F-121 WAC, Student activities, rights, and discipline.

Citation of Existing Rules Affected by this Order: Repealing chapter 132F-120 WAC; and amending chapters 132F-01, 132F-104, and 132F-108 WAC.

Statutory Authority for Adoption: RCW 28B.50.100, [28B.50].130, and/or [28B.50].140.

Adopted under notice filed as WSR 03-06-067 on March 3, 2003.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 132F-104-010 was changed to remove the suggestion of an ambiguity that does not exist regarding the board of trustees' meeting dates. The word "normally" was deleted from new language in the second sentence.

2. WAC 132F-121-020(1) was changed to identify the role of the entire district community in supporting a learning environment. The word "district" was substituted for the word "academic" in the fifth sentence.

3. WAC 132F-121-020(2) was changed to include the prohibition of expressions or conduct which create a hostile educational environment and, by deleting reference to just three types of discrimination, eliminate the implied minimization of other forms of discrimination based on age, religion, disability or other characteristics. After the phrase "However, students' rights of classroom expression do not include..." at the beginning of the third sentence, the phrase "expression of racist, sexist, homophobic, and other views which create a hostile work environment under" was deleted and replaced with "expressions or conduct which create a hostile educational environment or violate."

4. WAC 132F-121-020(5) was changed to recognize existing protection for students to support causes lawfully. The phrase "and lawful" was inserted in the third sentence between "orderly" and "means."

5. WAC 132F-121-030(2) was changed to clarify the conditions under which membership lists for student organizations may be required and the limited conditions under which disclosure of these lists may occur. This proposed subsection was modified (particularly in the first two sentences) to read:

"A college may require, as a condition of access to campus funds and/or facilities, demonstration or proof of the student enrollments of a student organization's members. However, any list of members compiled for such purposes shall not be publicly disclosed except in accordance with applicable law. A college may, in its discretion, permit others, such as students' spouses, to participate in a student organization's activities under appropriate conditions."

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 26, Amended 12, Repealed 36.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 26, Amended 9, Repealed 36.

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.

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

July 24, 2003

Carin Weiss

Rules Coordinator

AMENDATORY SECTION (Amending Order 41, filed 6/15/83)

WAC 132F-01-010 Appointing authority. (1) The board of trustees of Community College District VI is the appointing authority for employees of the district, pursuant to RCW 28B.50.140, ~~(, is the appointing authority for employees of the district, and)~~ RCW 28B.10.528 provides that the board may delegate any of its powers and duties to the district president or his designee(;), and RCW 28B.50.140(14) provides that the board may delegate any of its powers and duties to the district president. ~~((The district president has designated the three campus presidents as appointing authorities for their respective campuses.))~~ In District VI, the district president also carries the title of "chancellor."

(2) The board of trustees of Community College District VI delegates to the district president (or any acting district president or interim district president) the appointing authority for the campus presidents and the district office personnel.

(3) The president of Community College District VI designates, and the board of trustees delegates to the campus presidents (or any acting campus president or interim campus president) the appointing authority for their respective campuses.

(4) The chancellor or a campus president may designate another person to act as the respective appointing authority in his or her absence.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132F-01-020 Written contracts.

AMENDATORY SECTION (Amending Order 50, filed 9/21/87)

WAC 132F-104-010 Regular meetings of the Community College District VI board of trustees. The board of

trustees will hold ((a)) regular meetings in accordance with the Open Public Meetings Act, chapter 42.30 RCW, and other applicable law. These meetings will be held during eleven months of the year (except August) on the ((first Tuesday)) second Thursday ((of each month for eleven months of the year)), unless that day is a legal holiday, in which case the meeting will be on the next business day, or unless the date is otherwise modified by board action. The dates, times, and places for such regular meetings shall be specified by motions, resolutions, or other appropriate actions of the board, or otherwise in accordance with applicable law. ((In the event that the board of trustees is unable to meet on the regular meeting date, the chairman of the board may order that the meeting be rescheduled or that no regular meeting of the board be held that month. The board shall maintain and announce a tentative meeting schedule approximately six months in advance showing the date, time[,] and location of each meeting. Advance notice of meetings shall be given in accordance with the Open Public Meetings Act of 1971, as amended.))

AMENDATORY SECTION (Amending Order 48, filed 10/7/85)

WAC 132F-104-020 Special meetings ((schedule)). ((The action session of the board of trustees meeting will begin at 6:00 p.m. in accordance with the published meeting schedule. The report session of the agenda will commence following the conclusion of the action session. During this time reports will be given to the board and resource people will be invited to provide detailed background information. These meetings are open to the public according to the Open Public Meetings Act of 1971, as amended.)) The board of trustees may also hold special meetings in accordance with Chapter 42.30 RCW and other applicable law.

AMENDATORY SECTION (Amending Order 40, filed 7/1/81)

WAC 132F-104-810 Submission of items for board consideration. Any individual, group of individuals, or organization may submit any item of concern to the board ((for consideration)), in writing and/or verbally, in accordance with applicable policies and procedures and such restrictions as the board or its secretary may impose in the interests of fairness and efficient board operations. Any such written item, and notice of any intent to submit an item verbally, should be provided to the district chancellor or other board secretary at least ten days before the next regular board meeting. ((; however, normal administrative channels are recommended to assure adequate background information.))

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132F-104-030 Location of meeting.
- WAC 132F-104-801 Board operational policies relative to meetings.

- WAC 132F-104-811 Review of agenda items.
- WAC 132F-104-812 Deadlines.
- WAC 132F-104-813 Submission routes.
- WAC 132F-104-814 Informational materials.
- WAC 132F-104-815 Board distribution list.
- WAC 132F-104-816 Advance mailings for special meetings.
- WAC 132F-104-817 Old business.
- WAC 132F-104-818 New business.
- WAC 132F-104-819 Notification to board office.

**Chapter 132F-108 WAC
((RULES OF)) PROCEDURES FOR ((CONTESTED-
CASE HEARING/ADMINISTRATIVE DISPUTES))
ADJUDICATIVE PROCEEDINGS**

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94)

WAC 132F-108-020 Appointment of presiding officers. The district president/chancellor or president of one of the district's institutions, or a designee of either, shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, ((or a)) member in good standing of the Washington State Bar Association, ((or)) a panel of individuals, the district president/chancellor or his or her designee, or any combination of the above. When more than one individual is designated to be the presiding officer, one such person shall be designated ((by the district president/chancellor's or designee)) to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters. These designations may also be made by separate rule.

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94)

WAC 132F-108-050 Brief adjudicative procedures. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. ((These b)) Brief adjudicative procedures shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the district chancellor, the affected campus president, or a designee of either, in ((all matters related)) regard to:

- (1) Parking violations.
- (((2)) Student conduct proceedings.))
- (((3)) (2) Outstanding debts owed by students or employees.
- (((4)) (3) Use of college facilities.
- (((5)) (4) Residency determinations.
- (((6)) (5) Use of library—fines.
- (((7)) (6) Challenges to contents of education records.
- (((8)) (7) Loss of eligibility for participation in institution sponsored athletic events.

PERMANENT

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94)

WAC 132F-108-070 Adjudicative proceedings open. Adjudicative proceedings shall be open to the public, except as may be provided otherwise by law or legal requirement. ~~((for student disciplinary matters, in compliance with 20 U.S.C. Sec. 1232g, the Family Educational Rights and Privacy Act, unless the student chooses to have the hearing open to the public; and faculty and administrative exempt disciplinary proceedings, unless the person subject of the proceedings chooses to have the hearing open to the public.))~~

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94)

WAC 132F-108-080 Procedure for closing parts of the hearings. A party may apply for a protective order to close part of a hearing. The party making the request should state the ~~((reasons))~~ justification for ~~((making))~~ the application to the presiding officer. If the other party opposes the request, that party may provide a written response ~~((to the request shall be made))~~ to the presiding officer within 10 days of the request ~~((to the presiding officer))~~. The presiding officer shall determine which, if any, parts of the proceeding shall be closed, and state the reasons therefore, in writing, within 20 days of receiving the request.

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94)

WAC 132F-108-100 Petitions for stay of effectiveness. Disposition of a petition for stay of effectiveness of a final order shall be made by the official, officer, or body of officers~~((;))~~ who entered the final order.

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94)

WAC 132F-108-120 Absence of president. The district president/chancellor or president of one of the district's institutions may designate another employee of the college to act in his/her place on a temporary basis during his/her absence. An employee appointed under this provision shall only have the authority to act upon matters which require a decision by the president within ~~((a))~~ the limited period of time ~~((and))~~ when the president, due to his/her absence, ~~((would be))~~ is unable to decide such matter.

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94)

WAC 132F-108-130 Appearance and practice before agency. No person may appear in a representative capacity before the agency other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if ~~((the))~~ attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) Persons otherwise qualified as possessing the requisite skill to appear and expertly represent others who have applied to the agency and have been duly authorized by the agency to appear in a representative capacity before the agency.

(4) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership or corporation.

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94)

WAC 132F-108-140 Definition of issues before hearing. In all proceedings the issues to be adjudicated shall be ~~((made))~~ identified initially as precisely as possible, in order that the agency may proceed promptly to conduct the hearings on relevant and material matters only.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 132F-120 WAC Seattle community college student policies and procedures.

Chapter 132F-121 WAC STUDENT ACTIVITIES, RIGHTS AND DISCIPLINE

NEW SECTION

WAC 132F-121-010 Definitions and general provisions. For purposes of this chapter:

(1) The terms "college" and "campus" are used interchangeably, and each refers to any of the district's three colleges, North Seattle Community College, Seattle Central Community College, and South Seattle Community College. The Seattle Vocational Institute is considered to be part of Seattle Central Community College.

(2) "Day" means calendar day, unless specified otherwise, and deadlines shall be computed in accordance with WAC 10-08-080.

(3) "District" means the sixth state college district, the district administrative offices (Siegal Center), North Seattle Community College, Seattle Central Community College, South Seattle Community College, the Seattle Vocational Institute, and/or every other District VI educational facility, each separately and all together.

(4) "District community" includes, but is not limited to, the district itself and all enrolled students, employees, officers, and invitees of the district.

(5) "District property" includes all real property, buildings, and other facilities that are owned, leased, or controlled by the district or by the state for district purposes.

(6) "Vice-president for student services" means the person whom a college president has appointed to that position or has otherwise designated to perform the functions ascribed to that position in this chapter.

(7) An action or activity that may be authorized or taken by the district chancellor, a vice chancellor, a campus president, or a campus vice-president may also be authorized or taken by any other person whom that officer has specifically designated to perform that function on his/her behalf, but this officer retains responsibility for the function.

(8) After the adoption of these rules, if a statute or rule to which they refer is re-numbered or otherwise amended, these rules shall be interpreted to the fullest extent possible to incorporate such amendment while still giving effect to their original purposes.

(9) Service of any document, notice, or copy under this chapter shall be made (a) by personal delivery, (b) by mailing to the recipient's last known address, which service shall be regarded as complete upon deposit in the U.S. mail properly stamped and addressed, or (c) as otherwise authorized by law or rule.

NEW SECTION

WAC 132F-121-020 Student rights, freedoms, and responsibilities. (1) Preamble. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the district community.

(2) Classroom freedom of expression. The district recognizes the rights of students to freedom of discussion and free expression of views. However, students' rights of classroom expression do not include expressions or conduct which create a hostile educational environment or violate Chapter 49.60 RCW or other applicable law. It is the responsibility of the instructor to insure and encourage the realization not only of the fact but of the spirit of free inquiry. Instructors have the responsibility to maintain order, but this authority shall not be used to inhibit the expression of views contrary to their own. Students have the right to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they cannot do so in a disruptive manner that interferes with the educational process. Students are responsible for learning the content of any course of study for which they are enrolled. It also is the responsibility of the student to comply with the instructor's efforts to assure freedom of expression and to maintain order.

(3) Protection against improper evaluation. Instructors shall give their students fair and consistent evaluations of the students' course performance. Toward this end, instructors

are also responsible for establishing appropriate standards of academic performance for each course. Fair and consistent grading is a legitimate classroom experience.

(4) Protection against improper disclosure. Information about student views, beliefs, and political associations which is acquired by instructors in the course of their work as faculty or advisors, under circumstances which clearly indicate that it is intended to be confidential, shall be treated as confidential and shall not be disclosed to others, unless it relates to the apparent or intended commission of a crime or disclosure is required by law. Protection against improper disclosure of student education record information is a serious professional obligation incurred by the teaching profession and district administrators. However, evaluations of student ability and character may be provided to third parties with the student's consent or in accordance with applicable law.

(5) Nonacademic expression and inquiry. Students and student organizations are free to examine and to discuss all questions of interest to them and to express opinions publicly and privately, in accordance with law. They are free to support causes by orderly and lawful means which do not disrupt the operation of the institution and which comply with the district's policies regarding these activities.

(6) The district shall respect students' right to privacy. It will not inquire into the off-campus activities of its students without legal justification.

NEW SECTION

WAC 132F-121-030 Student organizations. (1) Student organizations may be established and recognized whether their aims are educational, cultural, recreational, social, athletic, religious, political, or economic. Affiliation with an external organization shall not in and of itself disqualify a campus-based student organization from recognition. Membership in a student organization shall be open to any student who subscribes to the stated aims of the organization. To operate as such, a student organization must be recognized by the approved student government organization. The student organization shall abide by all governing federal and state laws and district and campus rules, policies and procedures.

(2) A college may require, as a condition of access to campus funds and/or facilities, demonstration or proof of the student enrollments of a student organization's members. However, any list of members compiled for such purposes shall not be publicly disclosed except in accordance with applicable law. A college may, in its discretion, permit others, such as students' spouses, to participate in a student organization's activities under appropriate conditions.

(3) Each year, before a student organization may be recognized or function as such, or may use services and activities funds, a college employee must agree to serve as its advisor and his/her name must be provided to and approved by the vice-president for student services. No campus employee may serve as the advisor for more than two student organizations at the same time.

(4) Where funds are allocated to a student organization, financial accountability is required. Student organizations' funds shall be maintained at the college, in college accounts.

The organizations shall keep detailed written records of their income and expenditures and shall assure that these can be reconciled with the campus budget and accounting system. Student organizations' financial records must be made available upon request to the student government organization and to any administrative officer designated by the college president.

(5) A college president may withdraw a student organization's recognition and funding for good cause. Such cause shall include, but not be limited to, (a) failure to comply with this rule or other district requirements or (b) hazing.

NEW SECTION

WAC 132F-121-040 Journalistic freedom and responsibility. (1) A primary purpose of student publications is to promote free and responsible discussion of campus and community issues.

(2) Each campus president shall establish a board of publications composed of representatives of students, faculty, and staff. This board shall serve as the publisher of all student publications and shall have general authority over them.

(3) The board of publications may adopt, subject to modification by the campus president, such journalistic, editorial, and advertising guidelines as it deems appropriate to govern student publications. Unless specifically stated by the board and approved by the campus president otherwise, these guidelines shall be deemed to include all applicable federal and state laws, all district rules, policies and procedures, and relevant codes of journalistic, editorial and advertising ethics and practices as adopted by national trade and professional organizations, including but not limited to the *Statement of Principles* as adopted by the American Society of Newspaper Editors.

(4) Student newspapers shall be free of censorship. However, student newspapers and other student publications shall follow the board's guidelines as described above. Student editors shall be free to develop their own editorial policies within these guidelines.

(5) Staff members of student newspapers shall not be subject to arbitrary discipline or dismissal because of student, faculty, administrative or community disapproval of editorial policy or content.

(6) Good cause for discipline or dismissal of a student publication staff member shall include, but not be limited to, violation of the board's guidelines. Any discipline or dismissal of a student staff member shall be subject to review under the student complaint procedure.

NEW SECTION

WAC 132F-121-050 Student use of the district/college name. (1) No individual student, student group, or student organization may act or make any representation in the name of the district or of any campus without specific authorization from the vice-president for student services.

(2) No individual student, student group or student organization shall falsely indicate or represent that his, her, or its own position on any policy or issue is that of the district or of any campus.

NEW SECTION

WAC 132F-121-060 Student complaints generally.

(1) The procedures in this chapter are to be used for the processing and disposition of complaints by students (complainants) against college employees or other students, except to the extent that a complaint is against a college employee and the processing is dictated otherwise by a collective bargaining agreement or other applicable process. These procedures are available to all students and are intended to protect the rights of both the complainant and the respondent.

(2) For the purposes of this chapter, a "complaint" is a good faith claim, based on personal knowledge, that the respondent employee or student (a) has violated a specific legal or district requirement or has otherwise acted without reasonable care (b) on district property or during an event or activity that the district conducts, participates in, or sponsors, (c) in a manner that had or has a significant detrimental effect on the complainant. However, an objection to disciplinary action under the student conduct code is only appealable under that code, and cannot constitute a complaint.

(3) Each college president shall appoint a complaints officer to handle student complaints. This position shall be filled by an employee whose position is below the level of vice-president. The district chancellor shall designate a complaints officer to handle complaints against Siegal Center employees. If the president or chancellor determines, upon request, that the complaints officer has a disqualifying personal interest in a particular matter, s/he may appoint a substitute complaints officer for that matter.

(4) The complaints officer shall be responsible for taking appropriate actions to try to resolve complaints. Information on the identity and location of the complaints officer(s) and about this procedure shall be readily available within each college.

(5) A complaint may be initiated under either the informal process or the formal process, as set forth below.

(6) No respondent or district employee shall take adverse action or otherwise retaliate against a student because that student initiated a complaint or assisted another student with a complaint.

(7) If more than one type of complaint or more than one respondent is included in one complaint, the complaints officer may, upon request, provide for appropriate modification(s) of these procedures.

(8) If a respondent employee is unavailable, or otherwise fails or refuses to participate timely in a complaint proceeding, the respondent's supervisor may, upon request and in her/his discretion, act or designate another person to act in the complaint proceeding on that employee's behalf. However, no action by a substitute may subject the respondent employee to discipline.

NEW SECTION

WAC 132F-121-070 Informal processing of complaints.

(1) This informal process is intended to facilitate prompt and amicable resolution of a complaint apart from the formal complaint process.

(2) A student who has a complaint is encouraged to discuss the matter directly with the respondent to attempt to resolve it.

(3) If the complainant believes that discussion with an employee respondent will not achieve or has not achieved a satisfactory result, the complainant may communicate about the matter with the respondent's supervisor, if any. If the complainant identifies the matter as a complaint under this procedure, the supervisor shall, within the earlier of five days following that communication or any deadline established in an applicable collective bargaining agreement, appropriately notify the respondent of the complaint. The supervisor also shall, within the earlier of fifteen days following that communication or any deadline established in an applicable agreement, meet or attempt to meet with the respondent and otherwise attempt to resolve the complaint.

(4) Any participant in the informal process may request the complaint officer's assistance in obtaining a resolution.

(5) This informal process shall be deemed to be terminated if the complainant files a timely formal complaint related to the same matter.

NEW SECTION

WAC 132F-121-080 Formal processing of complaints. (1) This formal process applies to student complaints that are made to the complaints officer in writing. The complaints officer may extend any deadline herein for good cause.

(2) To be considered under this formal process, a complaint must be filed with the complaints officer in writing within ninety days of when the complainant knew or reasonably should have known that he/she had cause for a complaint, except as otherwise provided in WAC 132F-121-090 for a grade complaint. The written complaint shall be designated as a complaint under these rules and shall fully specify the facts and other grounds on which it is based. The complainant should attach copies of relevant supporting documents when feasible.

(3) Upon receipt of the complaint, the complaints officer shall determine whether it qualifies as such. If the officer determines that it does not qualify as a complaint, she/he shall serve notice to that effect on the complainant within five days. The complainant may obtain review of that notice of complaint disqualification by filing a written request with the complaints officer under subsection (7) below.

(4) If the complaints officer determines that the complaint does qualify as such, that officer shall serve copies of the complaint and any supporting documentation on the respondent and the respondent's supervisor (if any) within five days. After service of such a copy of the complaint, the respondent shall serve a written response on the complaints officer, and a copy thereof on the respondent's supervisor (if any), within fifteen days.

(5) Within five days of service of that response, or, absent a response, within five days of when one was due, the complaints officer shall serve on the complainant either the response or a statement that none has been received, together with notice of the complainant's rights under the following subsection.

(6) Within five days of this service, if the complainant finds that the response or nonresponse is unsatisfactory she/he may serve written notice of such dissatisfaction on the complaints officer. Within five days of service of such notice, the complaints officer shall schedule a conference and invite the complainant, the respondent, and the respondent's supervisor (if any). This conference shall be held within fifteen days of service of the complainant's notice, or as soon thereafter as feasible. During this conference the complaints officer shall try to facilitate resolution. The complaints officer shall produce a written statement summarizing this conference and serve copies on each of the invited attendees within ten days after the conference.

(7) Within five days after service of either a notice of complaint disqualification or a conference summary, the complainant may obtain review thereof by filing a written request for such review with the complaints officer. Within five days of receiving this request for review, the complaints officer shall forward it, together with the complaint and other relevant documents, either to the vice-president of instruction (if the officer determines that the complaint is predominantly an instructional matter) or to the vice-president for student services (if the officer determines that the complaint is predominantly noninstructional in nature). If the respondent is a Siegal Center employee, the complaints officer shall forward the matter to a vice chancellor.

(8) This reviewing administrator shall review the complaint and documentation, and may also interview knowledgeable persons as appropriate. The administrator should render a written decision within fifteen days after receiving the complaint and documents, or as soon thereafter as feasible. The administrator may accept, reject, or modify any of the previous action(s) in the matter, and/or take other action(s). This decision shall be in writing and shall be served on the complainant, respondent, and others deemed appropriate.

(9) This decision of the reviewing administrator shall be the final decision of the district on that complaint.

NEW SECTION

WAC 132F-121-090 Additional provisions for grade complaints. (1) For student complaints regarding grades received for course work, this section shall apply in addition to the above-described informal and formal procedures.

(2) A student may formally grieve only the final grade received in a course, but that complaint may include any or all of the components of that final grade. For a grade complaint, the respondent(s) shall be, or include, the instructor who issued the grade.

(3) Instead of the deadline in WAC 132F-121-080, a formal complaint regarding a grade must be filed not later than the last day of the quarter which follows the quarter for which the disputed grade was received, except that a complaint regarding a spring quarter grade may be filed through the last day of the following fall quarter.

(4) In specifying the facts and other grounds on which it is based, the formal complaint shall specify the grade that is being challenged and should attach copies of relevant documents. The response on behalf of the respondent shall

include, to the extent feasible, the applicable evaluation criteria, copies of the course syllabus and relevant grading records, and the faculty member's explanation for the grade.

(5) Ordinarily the evaluation of course mastery is exclusively within the province of the instructor of a particular course, and so a grade change may be initiated only by that instructor. However, if a formal grade complaint is ultimately reviewed by the vice-president of instruction, and she/he finds that the grade was issued for an improper reason or was arbitrary and capricious or otherwise unlawful, that vice-president may change the grade in the records of the college.

(6) Nothing in these rules shall be construed to limit the separate authority of the vice-president of instruction to change a grade when required by a judicial order or a legal settlement agreement entered into by the district, regardless of whether a complaint has been filed.

NEW SECTION

WAC 132F-121-100 Student conduct generally. (1) Pursuant to the authority granted by RCW 28B.50.140 and other applicable law, the district board of trustees hereby establishes the following rules on student conduct and student discipline as the district's student conduct code.

(2) This student conduct code applies to every person who is enrolled as a student in the district.

(3) Expectations of students. Admission to the district presumes that students will conduct themselves as responsible members of the district community. When students enroll in any of the colleges or facilities operated by the district, they assume the obligation to observe standards of conduct which are appropriate to the pursuit of their educational goals.

(4) Student responsibility. Students have the obligations to:

(a) Maintain high standards of academic and personal honesty and integrity;

(b) Respect the rights of others and cooperate with all parts of the district community to insure that such rights are guaranteed, whether or not the views of those exercising such rights are consistent with their own;

(c) Refrain from actions which would interfere with campus functions or endanger the health, safety, welfare or property of others;

(d) Comply with district rules and regulations; and

(e) Comply with duly constituted civil authority, and obey all applicable laws.

NEW SECTION

WAC 132F-121-110 Student misconduct. Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

(1) Any act of course-related dishonesty, including but not limited to cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining,

without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(2) Any other act of college-related dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

(b) Tampering with an election conducted by or for district students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a district officer or employee.

(3) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

(4) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of any student, any district officer or employee, or any other person who is on district property or is participating in a district activity.

(5) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

(6) Failure to comply with the direction of a district officer or employee who is acting in the legitimate performance of his or her duties, or failure to properly identify oneself to such a person when requested to do so.

(7) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

(8) Possession or use, without express authorization by the district chancellor or a campus president, of any explosive, incendiary device, dangerous chemical, weapon, or other device or substance which can be used to inflict bodily harm or to damage real or personal property.

(9) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, consuming, or selling any alcoholic beverage, except as permitted by law and authorized by the chancellor or a college president.

(11) Being observably under the influence of any narcotic drug or controlled substance as defined in Chapter 69.50 RCW, or otherwise using, possessing, consuming, or selling any such drug or substance, except (a) in accordance with a lawful prescription for that student by a licensed health care professional or (b) as permitted by law and authorized by the chancellor or a college president.

(12) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

(13) Conduct which is disorderly, lewd, or obscene.

(14) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

(15) Discriminatory action which harms or adversely affects any student or district employee because of her/his race, color, national origin, mental or physical disability, gender, sexual orientation, age, creed, or religion.

(16) Sexual harassment of a student or district employee. This includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature where such behavior offends or would offend a reasonable and prudent person.

(17) Other harassment of a student or district employee. This includes, but is not limited to, repeated and unwelcome following (stalking) or contacting of such a person or making a threat which places that person in reasonable fear of bodily harm.

(18) Smoking inside a campus building or in or on any other property where smoking is not authorized.

(19) Theft or other misuse of computer time or other electronic information resources of the district. Such misuse includes but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the district's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law; or

(h) Adding to or otherwise altering the infrastructure of the district's electronic information resources without authorization.

(20) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to district property, or unauthorized entry onto or into district property.

(21) Abuse or misuse of any of the procedures relating to student complaints or misconduct, including but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(22) Operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(23) Violation of any other district rule, requirement, or procedure, including but not limited to any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

(24) Violation of any federal, state, or local law, rule, or regulation.

(25) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

NEW SECTION

WAC 132F-121-120 Instructor sanctions for course work dishonesty or classroom misconduct. (1) An instructor need not give credit for course work that is the product of cheating, plagiarism, or other dishonesty. For any act of dishonesty that occurs during an instructional course, the instructor may adjust the student's grade accordingly for the particular examination, paper, or other work product where that dishonesty occurred. Any such grade adjustment shall not limit or preclude disciplinary sanction(s) for the same act of dishonesty.

(2) An instructor may take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course. If a student is so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum, that action may include removing that student from that day's class session.

(3) With regard to any act of course-related dishonesty, classroom misconduct, or other academic misconduct, the faculty member involved may notify his/her dean, with supporting documentation. The dean shall then determine whether to refer the matter to the vice-president for student services for possible disciplinary action.

(4) A student who has received a grade adjustment by the instructor on the basis of dishonesty may grieve that adjustment under the student complaint procedure. However, any disciplinary sanction that is imposed instead of or in addition to an instructor's grade adjustment may be imposed and reviewed only under the student disciplinary procedure.

NEW SECTION

WAC 132F-121-130 Disciplinary jurisdiction. (1) Disciplinary action may be instituted against a student for any misconduct that is a violation of this student code, regardless of whether there is a related civil or criminal court

proceeding. Proceedings under these rules may precede, accompany, or follow any such court proceeding.

(2) Except as provided in subsection (3), a student is subject to disciplinary action under these rules for any act of misconduct which (a) occurs on or damages district property or (b) occurs during any event or activity that the district conducts, participates in, or sponsors, regardless of where it occurs.

(3) The district reserves jurisdiction and authority to take disciplinary action for student misconduct beyond that described in subsection (2) when the misconduct demonstrates such flagrant disregard for the safety or well-being of others that it endangers the district community.

NEW SECTION

WAC 132F-121-140 Initiation of discipline. (1) The vice-president for student services at each campus is responsible for investigating possible violations of this student conduct code at that campus and initiating any appropriate disciplinary actions. If that officer is a respondent in a complaint initiated by the subject student, the college president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) Any member of the district community may make a complaint against a student whom she/he believes has violated this student conduct code. Such a complaint should ordinarily be filed in writing with the vice-president for student services. However, no such complaint is required in order for that vice-president to take action on any matter that comes to his/her attention.

NEW SECTION

WAC 132F-121-150 Vice-president's review and action. (1) After conducting such initial investigation of possible misconduct as she/he deems appropriate, the vice-president for student services shall meet, or make a reasonable effort to meet, with the subject student. At that meeting, or if there is no meeting in a document served on the student, the vice-president shall describe the complaint and/or information that has been received and identify the rule violations that appear to have occurred. In order that any informality not mislead the student as to the seriousness of the matter, the vice-president shall also inform the student of the sanction(s) that may be imposed for the alleged misconduct. The vice-president shall give the student an opportunity to respond to the allegations before a disciplinary decision is made.

(2) After considering the information that has been obtained through investigation and/or from the student, the vice-president may take any of the following actions:

- (a) Terminate the proceeding, exonerating the student;
- (b) Give any appropriate counseling or advice and then terminate the proceeding;
- (c) Impose disciplinary sanction(s), subject to any right of appeal as described herein; or
- (d) Refer the matter to the student conduct committee for such action as it deems appropriate. Such referral shall be in writing, to the attention of the committee chair, with a copy served on the student.

(3) A "respondent" as referred to hereinafter is a student upon whom a disciplinary sanction has been imposed or whose case has been referred to the student conduct committee.

NEW SECTION

WAC 132F-121-160 Disciplinary actions. (1) Any of the following disciplinary sanctions may be imposed for violation of one or more specified provisions of this student conduct code:

(a) Warning: Oral notice to the student of the violation(s). There shall be no appeal from a warning.

(b) Reprimand: Written notice to the student of the violation(s). A reprimand indicates, and usually states, that other or further misconduct, especially any continuation or repetition of the misconduct in question, may or will result in more serious disciplinary action. There shall be no appeal from a reprimand.

(c) Probation: Placement of one or more conditions on the student's continued attendance, as specified in the written notice to the student. The time period of the probation will ordinarily be stated in the notice; if not stated at all, or if so stated, the probation shall be for an indefinite period, concluding only with the end of the student's enrollment.

(d) Suspension from activities: Disqualification of the student, for a stated or indefinite period of time, from participation in specified (or all) privileges, services, or activities that are provided or sponsored by the district.

(e) Suspension of enrollment: Termination, for a stated or indefinite period of time, of all rights as an enrolled student in the college and/or the district, subject to the student's right to seek reinstatement as provided in WAC 132F-121-240.

(f) Expulsion: Permanent termination of a student's enrollment, and right to enroll, at any college or other educational facility in the district.

(g) Grade change: Lowering of a student's grade in a course below that awarded by the instructor.

(2) The conditions or terms of probation or suspension may include, without limitation:

- (a) Restriction of future contact or communication with designated persons;
- (b) Restriction of the student's access to district property; and/or
- (c) Payment for personal injury, property damage, or other expenses related to the violation.

Failure to comply with a condition or term of probation or suspension shall be cause for further disciplinary sanction.

(3) A respondent's record of past misconduct may be considered in determining the appropriate disciplinary action.

(4) A summary suspension and/or an emergency suspension under WAC 132F-121-250 may be combined with or added to another suspension or an expulsion.

(5) A suspension or expulsion may include a provision stating whether all or any part of the respondent's tuition and other fees will be refunded.

(6) A disciplinary sanction, except a warning, shall be imposed through written notice served on the respondent. Each notice of disciplinary action shall state:

- (a) A reasonable description of the facts on which the action is based;
- (b) The provision(s) of this student conduct code found to have been violated;
- (c) The sanction(s) imposed; and
- (d) The respondent's right to appeal, i.e., to request an adjudicative proceeding, under these rules (except for a reprimand).

A copy of these student conduct rules should be included with the notice.

NEW SECTION

WAC 132F-121-170 Appeals and referrals generally.

(1) Except as otherwise provided herein, a respondent who has received notice of disciplinary sanction(s) imposed by the vice-president for student services may appeal such sanction(s) by filing a written notice of appeal with that officer within twenty days. The notice of appeal may include any statement that the respondent wishes to make of the grounds for her/his appeal.

(2) If the vice-president has referred the matter to the student conduct committee for action, no appeal is required, but the student may file a written response with the vice-president within twenty days of service of that referral.

(3) The vice-president shall promptly transmit any notice of appeal or response to referral, together with a copy of any notification of discipline, to the chair of the student conduct committee, described below. The vice-president should serve a copy of that transmittal on the respondent.

(4) Except through a summary suspension and/or emergency suspension under WAC 132F-121-250, a respondent's enrollment status and rights as an enrolled student shall not be altered, on the basis of a disciplinary sanction imposed by the vice-president, until (a) the appeal period has run without a proper appeal being filed or (b) if there is an appeal, either that appeal has been withdrawn or the final order has been entered.

(5) If a respondent files a timely appeal of a probation or suspension that includes restrictions on contacts, communications, or campus access, the vice-president will ordinarily modify those restrictions as necessary to facilitate the respondent's preparation for the hearing.

NEW SECTION

WAC 132F-121-180 Student conduct committee. (1)

A student conduct committee at each college will hear all disciplinary cases at that college which are referred to it by the vice-president for student services or appealed to it by a student. For purposes of WAC 132F-108-020 and any other requirements, the district trustees and chancellor and each college president designate (a) the committee provided for herein to serve as presiding officer to hear the described student disciplinary matters and (b) the committee chair both to handle and decide procedural matters (as provided herein) and to preside at the hearing.

(2) This committee shall be composed of the following three members:

(a) One administrator or exempt employee, appointed by the college president;

(b) One member of the faculty, appointed by the college president; and

(c) One student, appointed by the president of the recognized student government organization.

(3) Each appointment shall be accompanied by the appointment of two alternates. Each member and alternate shall serve for the academic year or until a replacement is appointed, whichever is longer. When a member is not available for a hearing, the committee chair shall designate an alternate to replace him/her for that hearing. If a member or alternate ceases to serve, a successor shall be promptly appointed. A member or alternate may be re-appointed in any role.

(4) The administrator or exempt employee shall be the committee chair.

(5) No employee who reports to, or is subject to the authority of, the vice-president who handles student disciplinary matters may be a committee member, as further provided in RCW 34.05.458. A committee member is subject to disqualification for bias, prejudice, interest, or as further provided in RCW 34.05.425.

NEW SECTION

WAC 132F-121-190 Student conduct committee hearings—In general. (1) A respondent student has a right to a prompt, fair, and impartial hearing before the student conduct committee on a referral for, or timely appeal of, a disciplinary sanction, except as otherwise provided in these rules.

(2) Chapter 34.05 RCW and Chapter 10-08 WAC govern committee proceedings and control in the event of any conflict with these rules. The district's Chapter 132F-108 WAC also governs committee proceedings.

(3) The chair of the committee shall give not less than seven days advance written notice of the hearing to all parties, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause.

(4) The committee chair may provide to the committee members in advance of the hearing copies of (a) the vice-president for student services' notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(5) The committee chair is authorized to conduct pre-hearing conferences and/or to make pre-hearing decisions, except as overridden by majority vote of the committee, concerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

(6) Upon request made at least five days before the hearing by either the respondent or the vice-president, the two of them shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present in their respective cases, except impeachment or rebuttal evidence. Failure to participate in good faith in such a requested exchange may

be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(7) The respondent and the vice-president may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(8) The vice-president shall provide reasonable assistance to the respondent, upon request, in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between committee members and other persons regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(10) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney, but will be deemed to have waived that right unless, at least four days before the hearing, written notice of the attorney's identity and participation is served on both the chair and the vice-president. If the respondent is represented by an attorney, the vice-president may also be represented by an attorney. If both the respondent and vice-president have counsel, the committee will ordinarily be advised by a separate assistant attorney general.

NEW SECTION

WAC 132F-121-200 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the committee may either (a) proceed with the hearing and issuance of its order or (b) serve an order of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be open to the public, as further provided in RCW 34.05.449. However, if the respondent requests that some or all of it be closed, pursuant to WAC 132F-108-070 and 132F-108-080 or otherwise, the chair shall determine any extent to which the hearing will be closed. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to the respondent upon request. The chair shall assure maintenance of the proceeding record that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by the respondent. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The vice-president for student services (unless represented by an attorney) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 132F-121-210 Student conduct committee initial order. (1) At the conclusion of the hearing, the committee shall permit the vice-president for student services and the respondent to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or an order for its consideration.

(2) Within thirty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial order in accordance with RCW 34.05.461 and WAC 10-08-210. This order shall include findings of fact on all material issues of fact and conclusions of law on all material issues of law-including which, if any, specific provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's order shall also include a determination on appropriate discipline, if any. If the matter was a referral from the vice-president, the committee shall determine any disciplinary sanction. If the matter was an appeal by the respondent, the committee may affirm, reverse, or modify the discipline imposed by the vice-president and/or impose any other disciplinary sanction authorized herein.

(4) The committee chair shall cause copies of its order to be served on the respondent, the vice-president, the college president, and any legal counsel who have appeared. The committee chair shall also promptly transmit the record of the committee's proceedings to the college president.

NEW SECTION

WAC 132F-121-220 President's review and final college order. (1) The college president shall review the record and enter the final college order, in accordance with RCW 34.05.461(2) and 34.05.464.

(2) If either the respondent or the vice-president for student services wishes to file written argument with the president, she/he must file that argument and serve a copy on the other within fifteen days after service of the committee's order. Within seven days after service of any such argument, the other party may file and serve a written response. The president shall have discretion to modify these deadlines and/or to allow oral arguments. However no new evidence, not already part of the record, may be introduced in any argument, except as expressly authorized by the president upon a showing of compelling legal justification and after any appropriate fact-finding.

(3) The president shall personally consider the whole record or such portions of it as may be cited by the parties. A party's failure to present any argument shall mean that the party is citing "none" of the record.

(4) If the committee's order includes a provision for expulsion, the president must consult with and obtain the agreement of the district chancellor. If the committee's order

includes a provision for suspension from any other college(s) of the district, the president must consult with and obtain the agreement of the president(s) of such college(s).

(5) Within ninety days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the president shall either remand the matter for further proceedings, with instructions to the committee, or enter a final order in the matter. The president shall have all of decision-making power that he/she would have had if presiding over the hearing, including the power to affirm, reverse, or modify any disciplinary sanction.

(6) The president's final order shall include, or incorporate by reference to the committee's initial order, all matters required by RCW 34.05.461, in accordance with RCW 34.05.464. It shall also include notice to the respondent of his/her right to seek judicial review under RCW 34.05.510 et seq.

(7) Copies of the final order shall be served on the respondent, the vice-president, any legal counsel who have appeared, and the committee chair.

(8) The decision of the president shall be the final district action in the matter.

NEW SECTION

WAC 132F-121-230 Reestablishment of academic standing after successful appeal. When a student has missed classes and/or course work due to a disciplinary suspension or expulsion, but that disciplinary sanction was appealed and not upheld, the student shall be given a reasonable opportunity to reestablish his/her academic standing and the alternative of a withdrawal and refund of tuition and fees. Depending on the circumstances, reestablishing academic standing may include opportunities to take examinations and otherwise complete course offerings that were missed due to the disciplinary sanction or to retake the class(es).

NEW SECTION

WAC 132F-121-240 Reinstatement after suspension or expulsion. (1) Any student who has been suspended as a disciplinary sanction shall be reinstated, upon the student's written request, after (a) expiration of the stated time period of the suspension and (b) satisfaction of all conditions of the suspension, if any.

(2) Before a suspension has ended, or if a student has been expelled, the student may petition for reinstatement as an enrolled student. Any such petition shall be submitted in writing to the vice-president for student services, showing facts and circumstances constituting good cause for such reinstatement. No such reinstatement shall be granted unless it is approved by both that vice-president and the college president.

NEW SECTION

WAC 132F-121-250 Summary and emergency suspensions. (1) As part of a suspension or expulsion, a summary suspension and/or an emergency suspension may be imposed in accordance with this section. All, or specified, rights as an enrolled student may be suspended.

(2) A summary suspension may be imposed when necessary to prevent or avoid immediate disruption, danger, or other harm to the educational process or to the health, safety, or welfare of any member(s) of the public, including the district community. The summary suspension may be ordered only after the respondent has been given oral or written notice of the charge(s) and, if s/he denies them, an explanation of the evidence and an opportunity to respond. The order shall be effective when served. A summary suspension may be ordered:

(a) For ten days or less, by the vice-president; and/or

(b) For any time period through the final determination of a respondent's appeal, by the student conduct committee, upon the written request of the vice-president. The vice-president shall serve a copy of this request on the respondent. Before entering its order, the committee shall hold an initial hearing, as it determines is appropriate.

(3) An emergency suspension may be ordered by the vice-president under RCW 34.05.479 when necessary to prevent or avoid immediate danger to the health, safety, or welfare of any member(s) of the public, including the district community.

(a) Before ordering an emergency suspension, the vice-president shall make reasonable effort to give the respondent oral or written notice of the charge(s) and, if the respondent denies such, an explanation of the evidence and an opportunity to respond.

(b) The vice-president may order the emergency suspension only to the extent, and only for the time period, necessary to prevent or avoid the immediate danger, and only in compliance with RCW 34.05.479. The vice-president shall serve the order on the respondent, or otherwise give him/her such notice as is practicable, and shall also serve a copy on the student conduct committee.

(c) After the emergency suspension order is served, the vice-president and the committee shall proceed as quickly as feasible to complete the appeal proceeding.

NEW SECTION

WAC 132F-121-260 Maintenance of student discipline records. Records of all completed disciplinary cases shall be maintained and disposed of by the vice-president for student services in accordance with applicable records retention requirements and student education record confidentiality requirements.

WSR 03-16-035

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed July 30, 2003, 11:27 a.m.]

Date of Adoption: July 24, 2003.

Purpose: To clarify Washington State University's requirements for student conduct. Rules will also streamline the hearing and disciplinary process and provide for parental notification under revised FERPA rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 504-25-004, 504-25-012 and 504-25-231;

and amending WAC 504-25-001, 504-25-025, 504-25-030, 504-25-035, 504-25-040, 504-25-050, 504-25-085, 504-25-137, 504-25-138, 504-25-200, 504-25-201, 504-25-205, 504-25-215, 504-25-222, 504-25-224, 504-25-226, 504-25-227, 504-25-228, 504-25-229, 504-25-230, 504-25-245, 504-25-310, 504-25-315, 504-25-320, 504-25-325, 504-25-330, 504-25-335, 504-25-340, 504-25-350, 504-25-355, and 504-25-360.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 0307-012 [03-10-060] on May 5, 2003.

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 2, Amended 35, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 35, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 35, Repealed 2.

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

July 24, 2003

Kirsten Pauli

Rules Coordinator

WASHINGTON STATE UNIVERSITY: STANDARDS OF CONDUCT FOR STUDENTS

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-001 Terms of enrollment. Washington State University (~~is guided by a commitment to excellence. The university~~) aims to create an environment that cultivates individual virtues and institutional integrity in the university community. The mission of the university is supported when students take responsibility for their conduct both in and out of the classroom. Under the terms of enrollment, students acknowledge the university's authority to take disciplinary action for conduct on or off university property (~~that is~~). Off-campus conduct may be addressed when it is detrimental to the university's mission.

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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 504-25-004 Scope of the standards of conduct.

WAC 504-25-012 Effect of alcohol or drugs.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-025 Sexual offenses. (1) Sexual offenses of any kind, including, but not limited to acquaintance rape, indecent liberties, assault of a sexual nature, and/or other unwanted sexual contact are prohibited.

(a) Rape is defined under state law (~~as~~) as sexual intercourse with a person who did not consent by his or her words or conduct. Consent to sexual activity means actual words or conduct indicating the person has freely and voluntarily agreed to have sexual intercourse.

(i) Silence or mere passivity from a state of intoxication or unconsciousness does not imply consent to sexual intercourse.

(ii) Lack of consent is implied if violence is threatened or used.

(b) Indecent liberties means knowingly causing sexual contact with a person by forcible compulsion or when the person is incapable of consent by reason of mental defect, mental incapacitation, or physical helplessness. Sexual contact is defined as any nonconsensual touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.

(c) The university prohibits sexual contact when such contact amounts to assault under Washington law. Assault includes harmful and offensive contact with another person.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-030 Physical (~~assault~~) abuse or threatened physical (~~assault~~) abuse. (~~No person may intentionally strike, shove, hit, punch, kick or otherwise sub-ject~~) Attempting or causing injury to an individual is prohibited. Causing or provoking physical contact with another (~~person to physical contact, or threaten bodily harm without the consent of the person~~) is prohibited when the person knows or should reasonably believe that the other person will consider the contact offensive.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-035 Hazing is prohibited. (~~is~~) (1) No student or other person enrolled at Washington State University may conspire to engage in hazing or participate in hazing of another.

(a) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger, physical harm, or serious mental or emotional harm to any student or other person attending a public or private institution of higher education or other postsecondary educational institution of higher education or other postsecondary educational institution in this state.

(b) Hazing does not include customary athletic events or other similar contests or competitions.

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AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-040 Harassment. ~~((Intentional-e))~~ Conduct ~~((directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and serves no legitimate or lawful purpose))~~ by physical, verbal, graphic, written, or electronic means that is sufficiently severe, pervasive or persistent so as to threaten an individual or limit the individual's ability to work, study or participate in the activities of the university is prohibited.

NEW SECTION

WAC 504-25-043 Abuse of self or others. Prohibited behavior includes but is not limited to:

- (1) Inflicting mental or bodily harm upon any person (including one's self);
- (2) Engaging in any intentional or reckless action that may result in mental or bodily harm (including to one's self);
- (3) Causing a person to believe that the offender may cause mental or bodily harm.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-050 Alcohol. ~~((1))~~ Illegal use, manufacture, possession, or sale of intoxicating beverages is prohibited by local, state, and federal law.

~~((2))~~ Consumption, possession, sale, or distribution of alcohol by students in public areas of any university-owned or controlled property or at university functions must comply with all local, state and federal laws.

NEW SECTION

WAC 504-25-051 Effect of alcohol or drugs. Any conduct that may have been influenced by alcohol or drugs will not limit or excuse the student's responsibility for his or her action.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-085 Computer abuses. Conduct that violates the university's electronic use policy is prohibited and includes:

- (1) Copying university-owned or licensed software or data for personal or external use without prior approval;
- (2) Copying another computer user's software or data without permission of its owner, even if it is readily accessible by electronic means;
- (3) Knowingly accepting or using software or data which has been obtained by unauthorized means.
- (4) Modifying or damaging, attempting to modify or damage, computer equipment, software, ~~((data bases))~~ data bases, or communication~~((s))~~ lines without permission;
- (5) Disrupting or attempting to disrupt computer operations;
- (6) Invading the privacy of an individual by using electronic means to ascertain confidential information, even if an

individual or department inadvertently allows access to such information;

- (7) Abusing or harassing another computer user through electronic means;
- (8) Using the university's computing facilities in the commission of a crime;
- (9) Using computer services without authorization;
- (10) Allowing another individual to use one's computer identity/account or using another individual's computer identity/account.

(a) This includes, but is not limited to, logging on to the account, accessing programs, and reading or altering computer records. The university, through information technology, must authorize and allocate time on the mainframe computers.

~~((11) Violation of any written policy, regulation or law concerning use of computers.))~~

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-137 Misuse of keys or access cards. Unauthorized possession, ~~((duplication, or use of keys or cards that permit access to any))~~ including but not limited to lending, selling, processing, duplicating, or using university-~~((related services, housing, vehicles, or premises))~~ issued key or access card is prohibited.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-138 Misuse of ~~((university-issued student))~~ identification. Unauthorized possession~~((, including but not limited to lending, selling, processing, duplicating,))~~ or ~~((using))~~ use of university- or state-issued ~~((student))~~ identification is prohibited, which includes but is not limited to: lending, selling, processing, or duplicating the identification.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-200 Disciplinary action. The university's disciplinary process is educational, but ~~((sanctions))~~ students can be suspended or dismissed for serious violations ~~((can include temporary or permanent dismissal from the university))~~ of the standards of conduct. University disciplinary action is independent of any civil or criminal proceeding and is not influenced by the outcome of those proceedings. The university shall address allegations of student misconduct in a timely manner in its sole discretion.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-201 Student rights. (1) A student or student organization that has allegedly violated the standards of conduct has the following rights:

- (a) The right to notice and the basis for the allegation.
- (b) The right to remain silent and not incriminate oneself if the allegation may lead to criminal liability.
- (c) The right to a hearing.

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(d) The right to seven calendar days' notice prior to a hearing (the student may waive this notice period).

(e) The right to present written information to the university officer or the conduct board prior to the hearing, including signed witness statements.

(f) The right to consult an adviser and have one adviser present at the hearing. The adviser may advise the student or student organization during the hearing, but is not permitted to directly address the university officer or the conduct board. The adviser is prohibited from examining witnesses.

(g) The right to one (~~administrative~~) appeal. However, no appeal is available if the conduct board finds the student responsible for multiple violations of the university's drug/alcohol policy.

~~((h) The right to seek judicial review in a court of law after the university enters its final order.)~~

(2) A student or student organization has the following additional rights if the conduct board hears the matter:

(a) The right to request the removal of a conduct board member for prejudice. The request must be made in writing and support the basis for the alleged prejudice.

(b) The right to review any written material to be presented to the conduct board at least 48 hours prior to the hearing, including the names of witnesses expected to testify. Any new information or evidence shall be released to the accused student or student organization within 24 hours of receipt.

(c) The right to hear the testimony of all witnesses.

(d) The right to question witnesses (~~by submitting written questions~~) subject to the chairperson's discretion.

(e) The right to have an audio recording made of the hearing.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-205 Types of hearings. (1) An administrative hearing is an informal process conducted by a university officer (~~that will not result in suspension or dismissal~~).

(2) Conduct board hearings are more formal proceedings that may result in suspension, dismissal or loss of a student organization's recognition or charter.

(3) Student conduct hearings are conducted as brief adjudicative proceedings pursuant to RCW 34.05.482 through 34.05.494

(4) Two or more students or organizations may be required to participate in a joint hearing if they are alleged to have taken part in the same incident, act, event, or series of related acts.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-215 University officer, conduct board, and appeal board. (1) The university officer is a student affairs staff member or a graduate assistant in the office of student affairs.(;-)

(2) (~~(H)~~) The vice president for student affairs appoints the university conduct board members (are recommended by the vice president for student affairs and appointed by the president of the university). This board is generally com-

posed of two faculty members, two students, and a faculty or staff chairperson. The chairperson is appointed by the vice president for student affairs and conducts the proceedings.

(3) In matters involving an academic integrity violation, the faculty members shall be teaching faculty. If the accused student is a graduate student, at least one graduate student shall be on the conduct board.

(4) The appeal board is composed of three university administrators appointed by the vice president ((of the university)) for student affairs.

(5) (~~((All university officers and hearing board members shall be impartial.))~~) All university officers and hearing board members shall be impartial.

(a) Impartial means the person is not personally involved in the alleged act or does not have a personal interest in the outcome of the disciplinary proceeding.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-222 Preliminary conference. (1) The preliminary conference is an opportunity to evaluate the student's or student organization's alleged involvement in the matter. The university officer shall:

(a) Inform the student of the nature of the complaint;

(b) Educate the student about the university's disciplinary process;

(c) Notify the student of his or her rights and responsibilities; and

(d) Encourage the student to submit a written explanation of the alleged incident.

(2) (~~((If a student or student organization admits responsibility for the alleged incident and the violation will not result in suspension or expulsion, t))~~) The student or student organization may waive the notice requirement and resolve the matter with a university officer ((at that time)).

~~((3) If there is no admission of responsibility, the matter will be set for a administrative or conduct board hearing.)~~

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-224 Service of notice. (1) Notice of a hearing with a university officer or the conduct board is sent by regular mail and/or electronic mail((-

~~(2) Notice of a conduct board hearing is sent by certified mail return receipt requested and by regular mail))~~ to the student's or student (~~(or))~~ organization's last known local address. If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address.

~~((3))~~ (2) The student or student organization is responsible for keeping an updated address on file.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-226 Administrative hearing. (1) Administrative hearings are informal hearings conducted by a university officer.

(a) The university officer has the sole discretion to send the matter to a conduct board at any time before a ~~((n initial~~

PERMANENT

~~order~~) decision is issued. A student may request that a conduct board hear the case, but the final decision on the matter is made by the university officer and is not subject to appeal.

(2) If the student or student organization fails to appear at a hearing after proper notice, the university officer has the discretion to proceed in the student or organization's absence and determine responsibility and appropriate sanctions.

(3) The hearings are closed to the public in conformity with federal privacy law.

(4) The administrative hearing is not a legal proceeding.

(5) The university officer is not bound by the rules of evidence and may admit any relevant information, but shall exclude immaterial or unduly repetitious information. A student's adviser is not permitted to directly address the university officer.

(6) The university must prove the allegation by a preponderance of the evidence.

(a) Preponderance of the evidence means evidence that would lead a reasonable person to conclude that it is more likely than not that a violation occurred.

(7) A hearing may be continued to another time if any person disrupts the proceedings.

(8) At the conclusion of the hearing the student is informed in writing of the university officer's decision, the reasons for the decision, the sanction, and the right to appeal the decision.

(9) The written decision is the initial order. ~~((Any sanction imposed is effective from the date of the initial order.))~~

(10) If the student does not appeal the university officer's ~~((initial))~~ decision within twenty-~~((five))~~one calendar days from the date of the decision letter, it becomes the university's final order.

(11) Administrative hearing decisions involving individual students are confidential. However, the university may disclose the outcome of a disciplinary decision in compliance with the Family Educational Right to Privacy Act (FERPA) under the following exemptions:

(a) Disclosure to other university officials with a legitimate educational interest;

(b) Disclosure to an alleged victim of any crime of violence;

(c) Disclosure in connection with a health or safety emergency; and

(d) Future exemptions that may apply as amended by federal law. Students will be notified annually of any new exemptions that may apply.

(12) The university officer shall keep a written record of the hearing. This record shall include all documents relevant to the university officer's decision.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-227 Administrative hearing appeal. (1) ~~((Any student or student organization found responsible for a violation of the standards of conduct has the right to one appeal.))~~ The appeal is a review of the record and the appeal letter~~((s));~~ it not a new hearing.

(2) The university officer's written decision is the university's initial order.

(3) The university officer's ~~((initial order))~~ decision may be appealed to the vice president for student affairs or designee.

(4) If the student does not appeal the university officer's ~~((initial))~~ decision within twenty-~~((five))~~one calendar days from the date of the decision letter, it becomes the university's final order.

(5) An appeal letter shall be in writing and filed with the office of student affairs. The university officer may ~~((also submit))~~ address the appeal letter by submitting a written ~~((arguments on behalf of))~~ response to the reviewing official. ~~((b))~~ The university officer's response, if any, will be copied to the appellant.

(6) ~~((On))~~ The appeal ~~((the student must prove that he or she is not responsible for a violation.~~

~~((7))~~ letter shall clearly state the basis for appeal. The following shall be the basis for an appeal:

(a) ~~((A))~~ The university's disciplinary process was not properly followed and that procedural error ~~((that materially))~~ would have substantially affected the decision;

(b) New information not ~~((previously))~~ available at the time of the hearing ~~((that))~~ would have ~~((materially))~~ substantially affected the decision;

(c) There was not enough evidence to justify the decision ~~((was not supported by substantial evidence)).~~

~~((d))~~ The standards of conduct do not apply to the alleged violation.

~~((e))~~ (d) The sanction ~~((is))~~ was too severe or inappropriate for the violation.

~~((8))~~ (7) The student bears the burden of proof on appeal.

(a) Burden of proof means the student or student organization must prove he, she, or it is not responsible for the violation of the standards of conduct.

~~((9))~~ (8) The vice president for student affairs or designee shall review the record and make one of the following determinations within twenty calendar days from the date of the appeal letter:

(a) Affirm the ~~((conduct board))~~ university officer's decision;

(b) Reverse the ~~((conduct board))~~ university officer's decision;

(c) Affirm, reverse or modify the sanctions imposed by the ~~((conduct board))~~ university officer.

~~((10))~~ (9) The ~~((university appeals board's))~~ decision letter is the university's final order and shall advise the student or student organization ~~((of the right to))~~ that judicial review may be available.

~~((a))~~ The request for judicial review of a final university order must be filed with the court within thirty five calendar days of the date of the university appeals board's decision letter.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-228 Conduct board hearing. (1) Conduct board hearings are more formal proceedings that may result in suspension or dismissal. The student or student organization is responsible for presenting his, her, or its own case.

(a) A student may request an administrative hearing, but the final decision on the matter is made by the university officer and is not subject to appeal.

(2) If the student or student organization fails to appear at a hearing after proper notice, the university conduct board has the discretion to proceed in the student or student organization's absence and determine responsibility and appropriate sanctions.

(3) The hearings are closed to the public in conformity with federal privacy law.

(4) The conduct board hearing is not a legal proceeding.

(5) The conduct board is not bound by the rules of evidence and may admit any relevant information, but shall exclude immaterial or unduly repetitious questions or information.

(6) The university and the student or student organization have the right to ~~((have))~~ verbally examine witnesses ~~((testify))~~ about the alleged incident~~((-))~~, but the chairperson has the authority to limit a party to written questions. A student adviser may consult with the student or student organization during the hearing, but is not permitted to directly address the conduct board. The adviser is prohibited from examining witnesses.

(7) The university must prove the allegation by a preponderance of the evidence.

(a) Preponderance of the evidence means evidence that would lead a reasonable person to conclude that it is more likely than not that a violation occurred.

(b) The conduct board's decision is made by a simple majority vote.

~~((8))~~ Conduct board hearings are generally held between the hours of 5:00 p.m. and 10:00 p.m. Deliberations may continue after 10:00 p.m. at the discretion of the board.

~~((9))~~ The chairperson presides over the hearing and may recess a hearing or order a continuance on a different day and time as the circumstances may require.

~~((10))~~ The student or student organization may request a recess, but recesses should be kept short and to a minimum. The chairperson may approve or deny a request for a recess.

~~((11))~~ (8) Any person may be excluded from the proceeding for disruptive behavior.

~~((12))~~ (9) The decision process is closed to everyone except the members of the conduct board. In some cases, an assistant attorney general may advise the conduct board on procedural matters.

~~((13))~~ (10) Conduct board decisions involving individual students are confidential. However, the university may disclose the outcome of a disciplinary decision in compliance with the Family Educational Right to Privacy Act (FERPA) under the following exemptions:

(a) Disclosure to university officials with a legitimate educational interest;

(b) Disclosure to an alleged victim of any crime of violence;

(c) Disclosure is in connection with a health or safety emergency; and

(d) Future exemptions that may apply as amended by federal law. Students will be notified annually of any new exemptions that may apply.

~~((14))~~ (11) Decisions involving student groups or living groups may be disclosed to the public pursuant to a Public Records request without violating individual students' privacy rights.

(a) Personally-identifiable student information shall be redacted.

~~((15))~~ (12) The student or student organization may be informed of the outcome of the hearing prior to receiving written notification.

~~((16))~~ (13) The student or student organization shall be notified of the conduct board's decision within ten calendar days from the date the matter is heard (if the university is not in session, this period may be reasonably extended). The student or student organization shall receive written notice of the decision, the reasons for the decision, the sanction, and the right to appeal.

~~((17))~~ (14) ((W)) The conduct board's written ((notice of the)) decision is sent by ((certified and)) regular and/or electronic mail to the student's or the president of the student organization's last known address.

~~((18))~~ (15) The written decision is the university's initial order. ((Any sanction imposed is effective from the date of the initial order.))

~~((19))~~ (16) If the student or student organization does not appeal the conduct board's decision within twenty-((five))one calendar days from the date of the decision letter, it becomes the university's final order.

~~((20))~~ (17) The conduct board hearing record shall include:

(a) All documents relevant to the conduct board's decision, and

(b) An audio recording of the proceedings.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-229 Conduct board appeal. (1) ((Any student or student organization found responsible for a violation of the standards of conduct has the right to one appeal.)) The appeal is a review of the record and the appeal letter, it is not a new hearing. No appeal is available if the conduct board finds the student responsible for multiple violations of the university's drug/alcohol policy.

(2) The conduct board's written decision is the university's initial order.

(3) The university conduct board's ~~((initial order))~~ decision may be appealed to the university appeal board.

(4) If the student does not appeal the conduct board's ~~((initial order))~~ decision within twenty-~~((five))~~one calendar days from the date of the decision letter, it becomes the ~~((final))~~ university's final order.

(5) An appeal letter shall be in writing and filed with the office of student affairs. The university officer may ~~((also submit))~~ address the appeal letter by submitting a written ((arguments on behalf)) response to the board. ((of t)) The university officer's response, if any, will be sent to the appellant.

(6) The following shall be the basis for an appeal:

(a) ~~((A))~~ The university's disciplinary process was not properly followed and that procedural error ~~((that materi-ally))~~ would have substantially affected the decision;

(b) New information not ~~((previously))~~ available at the time of the hearing ~~((that))~~ would ~~((materially))~~ have substantially affected the decision.

(c) There was not enough evidence to justify the decision ~~((was not supported by substantial evidence));~~

(d) The standards of conduct do not apply to the alleged conduct.

(e) The sanction ~~((is))~~ was too severe or inappropriate for the violation.

(7) The student bears the burden of proof. Burden of proof means the student must prove they are not responsible for the violation of the standards of conduct.

(8) The university appeal board shall review the record and make one of the following determinations:

(a) Affirm the conduct board's decision;

(b) Reverse the conduct board's decision;

(c) Affirm, reverse or modify the sanctions imposed by the conduct board.

(9) The student or student organization shall be notified of the appeal board's decision within ~~((ten))~~ twenty calendar days from the date ~~((the matter is heard))~~ of the appeal letter. The university appeal board's decision letter is the final order and shall advise the student or student organization ~~((of the right to))~~ that judicial review may be available.

~~((a))~~ The request for judicial review of a final university order shall be filed with the court within thirty five calendar days of the date of the university appeal board's decision letter.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-230 Sanctions. ~~((+))~~ Any of the following sanctions or any combinations of sanctions may be imposed on a student or student organization for a violation of the standards of conduct. ~~((Sanctions imposed by the university officer or university conduct board are effective from the date of the initial order.))~~

~~((a))~~ (1) Warning. A letter notifying the student that the allegation is not a violation under the standards of conduct, but repeated behavior may result in a violation.

~~((b))~~ (2) Education ~~((at project))~~. The university has the discretion to require the student ~~((is required))~~ to seek specific education or complete an educational project designed to create an awareness ~~((about))~~ of the student's ~~((behavior))~~ misconduct.

(3) Assessment. The student is required to have an alcohol and/or drug assessment by a certified professional and to comply with the professional's recommendations.

~~((c))~~ ~~((b))~~ (4) Community service ~~((at project))~~. Assignment of labor or responsibilities to any student or student organization within the university or local community may be imposed up to a maximum of eighty hours per student or per member of an organization.

~~((d))~~ (5) Disciplinary probation. Disciplinary probation means formal conditions are imposed on a student's continued attendance at the university for a specific period of

time. Disciplinary probation serves as a warning that future misconduct may result in more severe sanctions. Students on disciplinary probation are not eligible to run for or hold office in any student groups or organizations (although they can be members of any group or organization); they are not eligible for certain jobs on campus (including but not limited to resident advisor or orientation counselor), and they are not eligible to serve on the University Conduct Board.

~~((e))~~ (6) Restitution. Restitution may include reimbursement for damaged or stolen property and any medical expenses incurred by a person injured as a result of the student's or student organization's misconduct.

~~((f))~~ (7) No contact order. This may include a prohibition of direct or indirect physical and/or verbal contact with another individual or group.

~~((g))~~ (8) Loss of privileges. Loss of the right to reside in a specific housing unit or in any university-owned or approved housing, or loss of the right to participate in extracurricular activities for a specific period of time.

~~((h))~~ (9) Loss of recognition or charter. A student organization's recognition or charter may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen.

~~((i))~~ (10) Hold on transcript and/or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold shall be released.

~~((j))~~ (11) Revocation of degree. A student's degree may be revoked if it was falsely or fraudulently obtained, or if the student was dismissed from the university based on his or her misconduct.

~~((k))~~ (12) Suspension. The student is suspended for a specific period of time. ~~((Upon satisfactory completion of stated conditions, reinstatement shall be granted.))~~ A student may be excluded from specific areas of campus for safety reasons. Upon satisfactory completion of stated conditions, the university may grant reinstatement at its discretion.

(a) The suspension is effective immediately if the conduct board determines that the student poses a safety risk to himself/herself or to the university community.

(b) Students shall be automatically suspended for a minimum of one semester for multiple violations of the university's alcohol/drug policy.

~~((l))~~ (13) Dismissal. The student's enrollment is immediately terminated. Dismissal means that a student's academic relationship with the university is permanently ended.

~~((m))~~ (14) Special sanctions for hazing. Pursuant to RCW 28B.10.902, additional sanctions will be imposed in cases where there is a finding of responsibility for hazing as provided in RCW 28B.10.900 and WAC 504-25-035 as amended:

(a) A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a specific period of time.

(b) Any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by Washington State University.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 504-25-231 Reconsideration of final orders.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-245 Records. (1) Disciplinary records will be maintained for a minimum of seven years in accordance with the university's retention schedule.

(2) The disciplinary record is confidential.

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student affairs.

(a) Personally-identifiable student information shall be redacted to protect another student's privacy rights.

(4) A student may authorize the release of his/her own disciplinary record to a third party in compliance with the Federal Educational Rights and Privacy Act (FERPA) by making a written request to the office of student affairs.

(a) Identifying student information shall be redacted to protect another student's privacy rights.

(5) The university may inform an alleged victim of the outcome of any disciplinary proceeding involving a crime of violence as defined by Federal Educational Rights and Privacy Act (FERPA).

(6) The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law.

(a) The student's parents or legal guardians may review ~~((these records) [a student's disciplinary record])~~ these records if the student is a minor or a dependent for tax purposes as defined by the Federal Educational Rights and Privacy Act (FERPA).

(b) The university provides annual notification of a student's privacy rights in accordance with federal law.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-310 Definitions. (1) Academic dishonesty. Academic dishonesty includes cheating, falsification, fabrication, multiple submission, plagiarism, abuse of academic materials, complicity, or misconduct in research, all of which are defined below.

(2) Cheating. Cheating is the intentional use of, or attempt to use, unauthorized material, information, or study aids in any academic activity to gain advantage. Cheating includes, but is not limited to, communicating improperly with others, especially other students, during tests or the preparation of assignments for classes; copying from books, notes or other sources during a test when this is not permitted;

copying from another student's work (reports, laboratory work, computer programs, files, etc.); making improper use of calculators or other devices during a test; illegitimately procuring or using copies of current examinations; allowing a substitute to take an examination or write a paper for oneself.

(3) Falsification. Falsification is the intentional and unauthorized alteration of information in the course of an academic activity. Falsification includes, but is not limited to, altering the record of data, experimental procedures, or results; falsely describing the source of information (e.g., reproducing a quotation from a book review as if it had been obtained from the book itself); altering academic records; altering a returned examination paper and then seeking a higher grade based on the result.

(4) Fabrication. Fabrication is the intentional invention or counterfeiting of information in the course of an academic activity without proper authorization. Fabrication includes, but is not limited to, counterfeiting data, research results, information, or procedures with inadequate foundation in fact; counterfeiting a record of internship or practicum experiences; submitting a false excuse for absence or tardiness.

(5) Multiple submission. Multiple submission includes, but is not limited to, submitting the same paper or oral report for credit in two courses without the responsible instructor's permission; making minor revisions in a paper or report for which credit has already been received and submitting it again as a new piece of work.

(6) Plagiarism. Plagiarism is knowingly representing the work of another as one's own, without proper acknowledgment of the source. The only exceptions to the requirement that sources be acknowledged occur when the information, ideas, etc., are common knowledge. Plagiarism includes, but is not limited to, submitting as one's own work the work of a "ghost writer" or work obtained from a commercial writing service; quoting directly or paraphrasing closely from a source without giving proper credit; using figures, graphs, charts, or other such material without identifying the sources.

(7) Abuse of academic materials. Abuse of academic materials occurs when a student intentionally or knowingly destroys, steals, mutilates, or otherwise makes inaccessible library or other academic resource material that does not belong to him or her. Abuse of academic materials includes, but is not limited to, stealing, destroying, or mutilating library materials; stealing or intentionally destroying another student's notes or laboratory data; hiding resource materials so others may not use them; destroying computer programs or files needed in others' academic work; copying computer software in ways that violate the terms of the licensing agreement that comes with the software.

(8) Complicity in academic dishonesty. A student is guilty of complicity in academic dishonesty if he or she intentionally or knowingly helps or attempts to help another or others to commit an act of academic dishonesty of any of the types defined above. Complicity in academic dishonesty includes, but is not limited to, knowingly allowing another to copy from one's paper during an examination or test; distributing test questions before the time scheduled for the test; collaborating on academic projects when students are expected to work independently; taking a test for another stu-

dent((;)); or signing a false name on a piece of academic work.

(9) Misconduct in research. Graduate and undergraduate students on research appointments for the university are responsible for compliance with the university's *Policy and Procedural Guidelines for Misconduct in Research and Scholarship* found in the faculty manual(~~(under the title of "Faculty Code of Professional Ethics.")~~). Misconduct in research is treated as academic dishonesty.

(10) Responsible instructor. The responsible instructor in the academic integrity process is the person who assigns the grades, supervises students' work, or is responsible for teaching operations in the course of study in which the alleged violation occurred. The term "responsible instructor" can include, but is not limited to, instructors, graduate assistants, another instructor, and clinical supervisors. If the conduct does not relate to a particular course, the role of instructor for these procedures may be a department chair or academic advisor.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-315 Academic integrity processes. (1) Every act of academic dishonesty affects academic evaluation of the student and also is a violation of the university's standards of conduct. Responsible instructors retain the authority and responsibility to assign grades to students, considering from an academic standpoint the nature of the student's action. This is the case even when the case is referred to the university academic integrity process. Students have recourse to appealing the responsible instructor's assignment of grades according to usual academic policy. See academic regulation 104.

(2) All clear instances of academic dishonesty shall be reported to the office of student ~~((affairs))~~ conduct as outlined in WAC 504-25-335(2). The first reported instance at WSU of academic dishonesty by a student will be treated as purely an academic matter unless, in the judgment of the responsible instructor, more serious action should be taken through the disciplinary process. Any allegation of subsequent academic dishonesty will be treated as a matter to be referred to the office of student ~~((affairs))~~ conduct.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-320 Reports of academic dishonesty. Any member of the university community who witnesses an apparent act of academic dishonesty shall report the act either to the instructor responsible for the course or activity or to the office of student ~~((affairs))~~ conduct.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-325 ((Judicial)) Conduct officer and hearing boards. (1) ~~((Judicial))~~ Conduct officer. ~~((Judicial))~~ Conduct officers are assistants in the office of student ~~((affairs))~~ conduct and serve as the investigators and prosecutors. ~~((Judicial))~~ Conduct officers are appointed for each

Washington State University campus. The ~~((judicial))~~ conduct officer for a particular case prepares the case and the materials after notification of a violation by an instructor. The ~~((judicial))~~ conduct officer also serves as the secretary ~~((of the academic integrity))~~ for conduct board hearings.

(2) ~~((Academic integrity-e))~~ Conduct board. The ~~((academic integrity))~~ conduct board ~~((is a subcommittee of the university conduct board whose))~~ members are ~~((recommended))~~ appointed by the vice~~((-provost))~~ president for ~~((academic))~~ student affairs ~~((and appointed by the president)).~~ ~~((The academic integrity conduct board shall consist of at least five teaching faculty and four students.))~~ A hearing panel comprised of three faculty and two student members of the ~~((academic integrity))~~ conduct board will hear all cases regarding academic dishonesty in which a finding of responsibility could result in expulsion or suspension. In a case involving allegations of misconduct in research by a graduate student, at least one member shall be a member of the graduate faculty.

(3) ~~((Academic integrity-e))~~ Conduct board chair. One faculty member of the ~~((academic integrity))~~ conduct board shall be appointed the chair by the vice president for student affairs. ~~((The chair shall serve on all academic integrity conduct board hearing panels.))~~

(4) Faculty hearing officers. Faculty hearing officers are faculty members of the ~~((academic integrity))~~ conduct board. Faculty hearing officers are appointed for each Washington State University campus. A case may be heard by a faculty hearing officer when, in the judgment of the university ~~((judicial))~~ conduct officer, the offense is such that the sanction to be imposed shall not include suspension or expulsion.

(5) University appeals board. The university appeals board hears appeals of action taken by the ~~((academic integrity))~~ conduct board in accordance with WAC 504-25-360.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-330 Acts of academic dishonesty that violate the conduct regulations and the academic integrity standards. Whenever the ~~((judicial))~~ conduct officer determines that an alleged violation could constitute a violation of both the conduct regulations, chapter 504-25 WAC, Part I, and the academic integrity standards, chapter 504-25 WAC, Part III, the alleged violation will be handled under the procedures of chapter 504-25 WAC, Part II. The ~~((judicial))~~ conduct officer shall assign such cases to either an administrative hearing officer or the university conduct board in the manner described in WAC 504-25-210.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-335 Academic integrity procedures. (1) Initial evaluation of evidence.

(a) A responsible instructor assembles the available evidence when he or she acquires evidence of a student violation of the academic integrity standards. The instructor determines whether the case warrants further investigation or action.

(b) In cases of misconduct in research by students, the initial evaluation will be conducted in accordance with the university's policy on misconduct in research. If it is determined that misconduct has occurred, the matter will be referred to the office of student ~~((affairs))~~ conduct. Referral to student ~~((affairs))~~ conduct does not affect the ability of the university independently to terminate employment if the misconduct relates to the student's appointment.

(2) Grading by instructor ~~((referral for conduct action))~~. If the responsible instructor finds that a violation of academic integrity has occurred, the instructor should proceed to assign a grade, or take other appropriate action, considering the academic nature of the violation.

The instructor shall notify the office of student ~~((affairs))~~ conduct of any finding that a violation has occurred. The office of student ~~((affairs))~~ conduct shall notify the instructor of whether or not the alleged violation is a first offense.

If the violation is a first offense, the office of student ~~((affairs))~~ conduct will take no additional action, unless the instructor deems the violation serious enough as to warrant further action. In such serious first offense cases, the office of student ~~((affairs))~~ conduct shall review the case and handle it according to the procedures set forth in this chapter.

If the offense is not a first violation, the office of student ~~((affairs))~~ conduct shall review the case and handle it according to the procedures set forth in this chapter.

If the responsible instructor's grade is appealed and a department chair ~~((,))~~ or dean ~~((, or the provost))~~ subsequently finds that a violation did not occur, or that the academic sanction was too severe, ~~((this finding should be conveyed to the instructor. A))~~ a report shall be filed with the office of student ~~((affairs))~~ conduct indicating the finding ~~((and the accompanying action, if any))~~ or the modified grade.

(3) University conduct process.

(a) The university ~~((judicial))~~ conduct officer for the campus where the violation occurred shall prepare cases for a hearing when an alleged violation of academic integrity standards is referred to the university conduct process.

(b) The university ~~((judicial))~~ conduct officer shall contact and interview the accused student.

(c) During the interview, the student is informed of the charge(s) and asked to make a written statement about the incident.

(d) The student is informed of the ~~((individual's))~~ rights and responsibilities in the academic integrity process.

(e) The ~~((judicial))~~ conduct officer may interview other people involved.

(f) Evaluation of the allegation.

(i) The ~~((judicial))~~ conduct officer may discontinue any investigation when the allegation is deemed to be without basis. Before discontinuing the investigation, the ~~((judicial))~~ conduct officer shall contact the responsible instructor.

(ii) In the event the ~~((judicial))~~ conduct officer finds there is any basis to the allegation, the student may be officially charged with violation of the standards of conduct.

(g) Assignment of the type of hearing.

(i) The ~~((judicial))~~ conduct officer will evaluate the seriousness of the charge and assign the case to either a faculty hearing officer or the ~~((academic integrity))~~ conduct board.

(ii) Any alleged violation which could result in suspension or expulsion shall be referred to the ~~((academic integrity))~~ conduct board, unless the student requests and is granted a hearing by a faculty hearing officer.

(iii) Every other violation shall be assigned to a faculty hearing officer at the campus where the student attends.

(h) Notice. When any student is charged by the ~~((judicial))~~ conduct officer with a violation of the academic integrity standards, the accused party must be notified at least seven calendar days in advance of the hearing. The notice must be in writing and include the following:

(i) The specific charges, citing the appropriate university policy or regulation allegedly violated;

(ii) The time and place of the alleged act(s) insofar as may be reasonably known; and

(iii) The time and place of the hearing.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-340 Rights of students charged with violations of the academic integrity standards. Students charged with violations of the academic integrity standards shall have the same rights afforded students in disciplinary procedures for violations of the standards of conduct. These rights are codified as WAC 504-25-~~((220))~~201.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-350 Hearing guidelines. The guidelines established for administrative hearings and hearings before the university conduct board for violations of standards of conduct shall apply for hearings of alleged violations of the academic integrity standards. These guidelines are codified in WAC 504-25-~~((225))~~226 and WAC 504-25-228.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-355 Sanctions. (1) The hearing officer or ~~((academic integrity))~~ conduct board may impose any of the following sanctions or any combination of the sanctions for violations of the academic integrity standards:

(a) A formal warning.

(b) Addition of a notation to the grade recommended by the instructor. The notation shall indicate that the student was found responsible for an act of academic dishonesty in the course for which the grade was given.

(c) Academic assignment or other creative interventions designed to promote the ethical development of the student. Such assignments or interventions shall not be devised to embarrass or unduly burden the student.

(2) The ~~((academic integrity))~~ conduct board ~~((, or the hearing officer if the student has elected not to go before the board;))~~ may impose the following additional sanctions for violations of the academic integrity standards:

(a) Suspension from the university for a specified interval of time.

(b) ~~((Expulsion))~~ Dismissal from the university.

AMENDATORY SECTION (Amending WSR 95-07-001, filed 3/2/95, effective 4/2/95)

WAC 504-25-360 Appeals. (1) Who may appeal.

(a) Any student charged with any violation(s) of the academic integrity standards and found responsible for any violation(s) by a hearing (~~(panel))~~ board or administrative hearing officer is entitled to one administrative appeal.

(b) The (~~(judicial))~~ conduct officer, after consulting with the responsible instructor, is entitled to one administrative appeal when a student is found not responsible or the (~~(judicial))~~ conduct officer deems the sanction inappropriate.

(2) Types of appeals.

(a) Appeals of findings by a faculty hearing officer go to the vice-provost for academic affairs.

(b) Appeals of findings by the (~~(academic integrity))~~ conduct board go to the university appeals board. Membership of the university appeals board is defined by WAC 504-25-215.

(3) Procedure for filing an appeal.

(a) An appeal must be filed within twenty-one calendar days of the date the student received the decision.

(b) All requests to review decisions must be in writing and delivered to the (~~(vice provost for))~~ office of student affairs.

(c) The request must state the grounds for appeal.

(d) Students may request an appeal based on the following:

(i) There was a procedural error which (~~(materially))~~ substantively affected the decision;

(ii) New evidence has been found which was not previously available and which would have (~~(materially))~~ substantively affected the decision;

(iii) The decision was not supported by substantial evidence; or

(iv) The sanction is too severe or not appropriate.

(e) The (~~(judicial))~~ conduct officer may only request an appeal based on the following:

(i) The decision was not supported by substantial evidence; or

(ii) The sanction is too severe, not severe enough, or not appropriate.

(4) Appeal process.

(a) During the appeal process, the burden of proof shifts to the appealing party.

(b) The appeal is a review of the record of the hearing plus the letter of appeal, including any written argument(s) submitted by the appealing party and nonappealing party and a statement of the new evidence if that is the ground for the appeal.

(c) An appeal is not a new hearing.

(d) The vice-provost for (~~(student))~~ academic affairs or the university appeals board may permit oral argument. The student and the (~~(judicial))~~ conduct officer shall be notified at least three days in advance of the argument.

WSR 03-17-007
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-187—Filed August 7, 2003, 4:46 p.m.]

Date of Adoption: August 2, 2003.

Purpose: Amend coastal spot shrimp rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-88B-050; and amending WAC 220-88B-010, 220-88B-020, and 220-88B-030.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 03-13-030 on June 10, 2003.

Changes Other than Editing from Proposed to Adopted Version: Add subsection (4) from WAC 220-88B-050 as new subsection (10) to WAC 220-88B-030.

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 3, 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.

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

August 7, 2003

J. P. Koenings

Director

by Larry Peck

AMENDATORY SECTION (Amending Order 98-257, filed 12/22/98, effective 1/22/99)

WAC 220-88B-010 Emerging commercial fishery—Coastal—Purpose. The purpose of this chapter is to establish the coastal spot shrimp pot (~~(and coastal spot shrimp trawl fisheries))~~ fishery as an emerging commercial (~~(fisheries, specify the qualification for obtaining experimental fishery permits to participate in these fisheries, limit the transferability of fishery permits))~~ fishery, and to set time, place, and manner for participation in (~~(these fisheries))~~ this fishery.

AMENDATORY SECTION (Amending Order 98-257, filed 12/22/98, effective 1/22/99)

WAC 220-88B-020 Designation of the coastal spot shrimp pot fishery (~~(and coastal shrimp trawl))~~ as an emerging commercial (~~(fisheries))~~ fishery. (1) The director designates the coastal spot shrimp pot fishery as an emerging commercial fishery for which use of a vessel is required. It is unlawful to fish for, possess, or deliver spot shrimp taken for commercial purposes from Washington territorial waters

west of the Bonilla-Tatoosh line or from waters of the Exclusive Economic Zone unless the ~~((owner of the vessel))~~ fisher has a valid emerging commercial fishery license and a valid coastal spot shrimp pot experimental fishery permit.

~~(2) The ((director designates the coastal spot shrimp trawl fishery as an emerging commercial fishery for which a vessel is required. It is unlawful to fish for, possess, or deliver spot shrimp taken for commercial purposes from Washington territorial waters west of the Bonilla-Tatoosh line or from waters of the Exclusive Economic Zone unless the owner of the vessel has a valid emerging commercial fishery license and a valid coastal spot shrimp trawl experimental fishery permit.~~

~~(3) After January 1, 1999, the))~~ following licenses may not be used to fish for, possess, or deliver spot shrimp taken in Washington territorial waters west of the Bonilla-Tatoosh line or waters of the Exclusive Economic Zone: Shellfish pot fishery license, nonlimited entry delivery license, salmon troll delivery license, salmon delivery license, crab pot fishery license, Dungeness crab—coastal fishery license.

AMENDATORY SECTION (Amending Order 01-287, filed 12/27/01, effective 1/27/02)

WAC 220-88B-030 Emerging commercial fishery—Eligibility for coastal experimental fishery permits—Terms and conditions of use—Renewal—Vessel restriction—Incidental catch. (1) No individual may hold more than one Washington coastal spot shrimp experimental fishery permit.

(2) Coastal spot shrimp experimental fishery permits are not transferable. Only the vessel designated ~~((in))~~ on the emerging commercial fishery license and coastal spot shrimp experimental fishery permit may be used to fish for or deliver spot shrimp.

(3) A coastal spot shrimp experimental fishery permit will be issued only to ~~((the))~~ a natural person who:

(a) Held such a permit the previous year; and

(b) ~~((Beginning January 1, 2001,))~~ Can demonstrate by valid Washington fish receiving tickets that at least 1,000 cumulative round weight pounds of spot shrimp taken from waters of the Pacific Ocean adjacent to the state of Washington were landed from the person's designated vessel or vessels during the previous two calendar years. Landings of spot shrimp reported as "tails" on fish receiving tickets will be converted to round pounds by multiplying the reported weight of tails by two.

~~(4) ((Effective January 1, 2003, all coastal spot shrimp experimental trawl fishery permits shall be converted to coastal spot shrimp experimental pot fishery permits.~~

~~(5))~~ Coastal spot shrimp experimental fishery permits may be revoked by the director, and future permits denied by the director, for failure to comply with conditions specified in the permits or violations of other fishing regulations. A coastal spot shrimp experimental fishery permit ~~((shall))~~ will not be ~~((revoked))~~ renewed if the emerging commercial fishery license is revoked or future fishing privileges of the licensee are suspended.

~~((6))~~ (5) The director may issue a coastal spot shrimp experimental fishery permit to another person if a permittee

fails to make the requisite landings, if the person's experimental coastal spot shrimp experimental fishery permit is revoked, or if no application for an emerging commercial fishery license is received by March 31st of each year. The total number of permits issued, including replacement permits, shall not exceed ~~((the number of permits issued in 1999))~~ fifteen. Selection of persons to receive replacement permits shall be by gear or gear replacement type, and replacement permits will be offered in descending order first to persons who made the largest total of Washington coastal spot shrimp landings in each gear type during the original qualifying period, and then in descending order to persons who made the largest total of Washington coastal spot shrimp landings in each gear type. If no persons with coastal spot shrimp landings wish to participate, the director may offer a replacement permit by random drawing.

~~((7))~~ (6) Coastal spot shrimp experimental fishery permits are only valid for the year issued and expire on December 31st of the year issued with the expiration of the emerging commercial fishery license.

~~((8))~~ (7) The total allowable catch of spot shrimp taken from Washington territorial waters west of the Bonilla-Tatoosh line and from adjacent waters of the Pacific Ocean during a calendar year is 250,000 pounds round weight provided that not more than 100,000 pounds may be taken south of 47°04.00' N. latitude.

~~((9) The allowable catch shall be equally divided between trawl and pot gear permits in 2002, except that the allowable catch may be reallocated between gear types if the allowable catch of a gear type is unlikely to be taken during that year.)~~ (8) Beginning January 1, 2003, through December 31, 2005, the allowable catch shall be allocated as follows: 175,000 pounds available to all permit holders and 75,000 pounds available to fishers who were converted from trawl to pot permits. Beginning January 1, 2006, the allowable catch is available to all permit holders.

(9) Vessel restriction: A coastal spot shrimp experimental fishery permit will not be issued to a person who designates a vessel greater than ten feet longer than the vessel designated as of March 31, 2003, provided that if the vessel designated as of March 31, 2003, is ten or more feet greater than the vessel used by the person to initially qualify for a coastal spot shrimp experimental fishery permit, the person may not designate a vessel greater in length than the vessel designated as of March 31, 2003.

(10) Incidental catch:

(a) It is unlawful to retain more than 50 pounds round weight of other shrimp species. It is lawful to retain octopus and squid.

(b) It is unlawful to retain salmon.

(c) It is unlawful to retain any bottomfish species except as provided for in WAC 220-44-050.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-88B-050

Coastal spot shrimp trawl experimental fishery—Sea-

PERMANENT

son and gear—Trawl gear restriction-pot gear restriction—Species restriction.

WSR 03-17-008
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-188—Filed August 8, 2003, 10:12 a.m.]

Date of Adoption: August 2, 2003.

Purpose: Amend fish ticket reporting rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 03-13-030 on June 10, 2003; and WSR 03-13-087 on June 16, 2003.

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.

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

August 7, 2003

Susan Yeager

for Will Roehl, Chair

Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 03-28, filed 2/18/03, effective 3/21/03)

WAC 220-69-240 Duties of commercial purchasers and receivers. (1) Every person originally receiving or purchasing fresh or iced food fish or shellfish or parts thereof, or frozen food fish or shellfish or parts thereof that have not been previously landed in another state, territory, or country from fishers, firms, or individuals, except purchases or receipts made by individuals or consumers at retail, is required to be a licensed wholesale fish dealer or fish buyer, and must immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket regarding each and every purchase or receipt of such commodities. Except, preparation of a fish receiving ticket is not required for fish or shellfish purchased from a fisher who holds either a wholesale dealer's license or a direct retail endorsement and who has previously completed a fish receiving ticket because product was offered for sale to someone

other than a licensed wholesale dealer. Purchases from such persons by wholesale fish dealers must be documented by sales receipts or invoices, and the product received must be maintained separately until the product is resold or processed.

(2) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its branch plant locations shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business or firm shall be responsible for the accuracy and legibility of all such documents initiated in its name. Each delivery must be recorded on a separate state of Washington fish receiving ticket.

(3) State of Washington fish receiving tickets are required for:

(a) Fresh food fish and shellfish landed in the state of Washington including fish or shellfish not purchased, which fish shall be recorded as weigh back or take home fish or shellfish.

(b) Fresh food fish and shellfish previously landed in another state, territory, or country and shipped or transported into the state of Washington to an original receiver.

(c) Frozen food fish or shellfish not previously landed in another state, territory, or country and shipped or transported into the state of Washington to an original receiver.

(4) State of Washington fish receiving tickets are not required for:

(a) Purchases or receipts from any person possessing a valid Washington wholesale dealer's license or direct retail endorsement except that a wholesale dealer purchasing fish from a commercial fisher shall complete the appropriate fish receiving ticket if the fisher has not previously completed a fish receiving ticket. It is the purchaser's responsibility to obtain the name, address, and Washington wholesale dealer's license or direct retail endorsement number, together with such sales receipt documents or information as may be required, to show the deliverer's name, quantity of fish, and date of the transaction and retain these with the food fish or shellfish.

(b) Fresh or frozen food fish or shellfish that are in transit through the state of Washington, if no storage, handling, processing, or repackaging occurs within the state.

(c) Private sector cultured aquatic products.

(d) Processed fish or shellfish.

(5) Fishers, fisher-wholesalers, and wholesalers shall determine the weight of baitfish contained in an average and normal brail and multiply the number of such brailers of baitfish by this weight factor and report such baitfish in both dozens and total weight: Provided, That it is lawful for such fishers, fisher-wholesalers, and wholesalers, when receiving herring, candlefish, anchovy, or pilchards for bait purposes, to delay completing that portion of the fish receiving ticket which indicates number of herring received, only if the herring, candlefish, anchovy, or pilchards are sold individually or counted as dozens. Such counts must be entered on the fish tickets immediately. An estimate of herring, candlefish, anchovy, or pilchards caught but not sold due to mortality must be included on the fish ticket as "loss estimate."

(6) It is lawful for an original receiver, when receiving purse seine-caught herring taken from Areas 20A, 20B, 21A,

and 21B during the period April 16 through May 31, to delay completing that portion of the fish receiving ticket which indicates the weight of herring received only until the herring are off-loaded from the original receiver's vessel. The herring must then be weighed and the weight immediately entered in the appropriate space on the ticket. A separate state of Washington fish receiving ticket must be initiated at the time of each individual receipt of herring from the purse seine catching vessel.

(7) The original receiver of herring taken from Puget Sound Marine Fish-Shellfish Catch Areas 20A, 20B, 21A, and 21B, during the period April 16 through May 31 must report each calendar day's receipts by noon of the following day to the Department of Fish and Wildlife, LaConner, Washington; telephone 360-466-4345 ext. 243.

(8) It is unlawful for any person receiving or purchasing geoducks from fishers, firms, or individuals, regardless of whether or not the purchaser or receiver holds a license as required under Title 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual landing of geoducks from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoducks from the department of natural resources harvest tract to the point of landing.

(9) It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the landing. The exact weights of whiting, by grade, and all incidental species in the landing must be entered on the fish receiving ticket within twenty-four hours of the landing.

(10) It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by voice 360-466-4345 extension 245, or facsimile 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by voice ((360-796-4604)) 1-866-859-8439, extension ((800)) 600, or facsimile 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, and the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and species listed on each ticket. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect.

(a) Every person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 23A, shall record either 23A-E, 23A-W or 23A-S on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051.

(b) Every person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26A, shall record either 26A-E or 26A-W on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051.

(c) Every person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26B, shall record either 26B-1 or 26B-2 on shellfish receiving

tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051.

(d) Every person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, shall record either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051.

(11) It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by voice 360-466-4345 extension 245, or facsimile 360-466-0515. For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by voice ((360-796-4604)) 1-866-859-8439, extension ((800)) 600, or facsimile 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, and the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area, and species listed on each ticket. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect.

(12) It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by nontreaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. Reports must be made to the Point Whitney Shellfish Laboratory by facsimile 360-586-8408 or by telephone number 1-866-859-8439 extension 500 and must specify the dealer name, dealer phone number, and total number of pounds of crab caught by nontreaty fishers by Crustacean Management Region. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect.

(13) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket immediately upon receipt of any portion of a commercial catch. Should the unloading of a catch take more than one day, the date that the unloading is completed shall be entered on the fish receiving ticket as the date of landing. If, for any purpose, the vessel leaves the unloading site, the original receiver must immediately enter the current date on the fish receiving ticket.

((13)) (14) During any fishery opening designated by rule as "quick reporting required," it is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report a summary of all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement holder to fail to report a summary of all salmon offered for retail sale on the previous calendar day. The summary must include dealer name and purchasing location, date of purchase, list of fish ticket numbers used on the purchasing date, and the following summary catch data for each species purchased: Gear, catch area, species, number and total weight of fish. When quick reporting is required, it is unlawful to fail to comply with the following reporting requirements:

(a) Puget Sound summary reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-902-2949
- (ii) E-mail to psfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1279

(b) Coastal troll summary reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-902-2949
- (ii) E-mail to trollfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1279

(c) Grays Harbor and Willapa Bay summary reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-664-0689
- (ii) E-mail to harborfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1280

(d) Columbia River summary reports must be reported by 10:00 a.m. on the day after the purchase date by either:

- (i) Fax transmission to 360-906-6776 or 360-906-6777
- (ii) E-mail to crfishtickets@dfw.wa.gov or
- (iii) Telephone to 1-866-791-1281

~~((14))~~ (15) It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day. For red sea urchins the report must specify the number of pounds received from each sea urchin district. For green sea urchins and sea cucumbers the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area. The report must be made by facsimile (fax) transmission to ~~((360-586-8408))~~ 360-902-2943 or by toll-free telephone to ~~((360-796-4601))~~ 866-207-8223, extension ~~((500))~~ 866. Additionally, it is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken, and it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket the name of the port of landing where the sea urchins were landed ashore.

~~((15))~~ (16) It is unlawful for any original receiver of crab to fail to record all crab aboard the vessel making the delivery to the original receiver. The poundage of any crab deemed to be unmarketable, discards, or weigh backs must be shown on the fish receiving ticket, but a zero dollar value may be entered for such crab.

(17) It is unlawful for any original receiver of spot shrimp taken from Marine Fish Management and Catch Reporting Area 60A-1 to fail to record separately on the fish receiving ticket spot shrimp taken north or south of 47°04.00' north latitude.

WSR 03-17-013
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed August 12, 2003, 8:05 a.m.]

Date of Adoption: August 11, 2003.

Purpose: (1) The Division of Child Support (DCS) is adopting new rules in chapter 388-14A WAC dealing with administrative orders and appeals therefrom, determining when the Office of Administrative Hearings issues an initial order, which is subject to review, or final order, which is not subject to review. Also, DCS is making minor amendments to existing rules regarding the finality of orders and other related rules. (2) DCS is adopting rules to bring the regulations and procedures of the DSHS Division of Child Support into agreement with statutory changes in the 2002 legislative session, namely changes to the Uniform Parentage Act (chapter 302, Laws of 2002) and changes regarding the jurisdiction of DCS (chapter 199, Laws of 2002).

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-3100, 388-14A-3102, 388-14A-3110, 388-14A-3115, 388-14A-3120, 388-14A-3131, 388-14A-3132, 388-14A-3133, 388-14A-3370, 388-14A-3600, and 388-14A-3810.

Statutory Authority for Adoption: RCW 34.05.220(1), 74.08.090, 74.20A.056, and 74.20A.310.

Other Authority: RCW 26.26.315, 26.26.320, 26.26.330, 26.26.335, and 74.20A.055; chapter 302, Laws of 2002; chapter 199, Laws of 2002.

Adopted under notice filed as WSR 03-13-092 on June 16, 2003.

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 11, 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 6, 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 11, Repealed 0.

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

August 7, 2003

Brian H. Lindgren, Manager
 Rules and Policies Assistance Unit

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 03-18 issue of the Register.

WSR 03-17-014
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Office of the Secretary)
 [Filed August 12, 2003, 8:07 a.m.]

Date of Adoption: August 11, 2003.

Purpose: The department is adopting amended WAC 388-01-030 What DSHS records are available? The

amended rule clarifies which DSHS records are available to the public; which records are not generally available and are confidential; that an individual may have access to a confidential record about him or herself or that an authorized representative of the individual may have such access; and which DSHS records are available without a public disclosure request.

Citation of Existing Rules Affected by this Order: Amending WAC 388-01-030.

Statutory Authority for Adoption: RCW 41.17.020 and 41.17.260.

Other Authority: RCW 41.17.300.

Adopted under notice filed as WSR 03-14-063 on June 25, 2003.

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.

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

August 7, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 99-15-065, filed 7/19/99, effective 8/19/99)

WAC 388-01-030 What ~~((department))~~ **DSHS records are** ~~((considered public))~~ **available?** (1) ~~((Public records are those records that are not confidential or otherwise exempt from release to the public.))~~ DSHS prepares and keeps public records that relate to the programs it administers. All records DSHS uses to conduct business are public records.

~~((2) Different types of))~~ DSHS public records may include ~~((:))~~ documents, audio and video recordings, pictures, ~~((electronic disks, and magnetic tapes))~~ e-mail, computer disks and electronic data.

(2) DSHS records are available to the public unless a law exempts them from disclosure. Some DSHS records contain confidential information that is not available to everyone.

(3) You, or someone authorized to act for you or by you, may have access to confidential records about you that would otherwise be exempt from disclosure to the public.

(4) Upon your request, DSHS may give you records such as rules, policies, indexes, interpretive statements, pamphlets, forms and other publications at cost under WAC 388-01-180 without using the public records disclosure process.

WSR 03-17-022
PERMANENT RULES
STATE BOARD OF HEALTH

[Filed August 13, 2003, 9:47 a.m.]

Date of Adoption: July 9, 2003.

Purpose: Clarify and correct reference in WAC 246-100-036 to 17th edition, 2000 of the Control of Communicable Disease Manual, published by the American Public Health Association (APHA). Manual provides guidance to local health officers on conducting disease investigations and instituting disease control measures. Recently adopted rules change cited incorrect edition number and year publication.

Citation of Existing Rules Affected by this Order: Amending WAC 246-100-036 Responsibilities and duties—Local health officers.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 03-09-066 on April 15, 2003.

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.

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

August 12, 2003

Don Sloma
Executive Director

AMENDATORY SECTION (Amending WSR 03-05-048, filed 2/13/03, effective 2/13/03)

WAC 246-100-036 Responsibilities and duties—Local health officers. (1) The local health officer shall establish, in consultation with local health care providers, health facilities, emergency management personnel, law enforcement agencies, and any other entity he or she deems necessary, plans, policies, and procedures for instituting emergency measures necessary to prevent the spread of communicable disease or contamination.

(2) Local health officers shall:

(a) Notify health care providers within the health district regarding requirements in this chapter;

(b) Ensure anonymous HIV testing is reasonably available;

(c) Make HIV testing, AIDS counseling, and pretest and post-test counseling, as defined in this chapter, available for voluntary, mandatory, and anonymous testing and counseling as required by RCW 70.24.400;

PERMANENT

(d) Make information on anonymous HIV testing, AIDS counseling, and pretest and post-test counseling, as described under WAC 246-100-208 and 246-100-209, available;

(e) Use identifying information on HIV-infected individuals provided according to chapter 246-101 WAC only:

(i) For purposes of contacting the HIV-positive individual to provide test results and post-test counseling; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention; and

(f) Destroy documentation of referral information established in WAC 246-100-072 and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first.

(3) Local health officers shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the ((18th)) 17th edition, ((2002)) 2000 of the *Control of Communicable Disease Manual*, published by the American Public Health Association, or other measures he or she deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information.

(4) A local health department may make agreements with tribal governments, with federal authorities or with state agencies or institutions of higher education that empower the local health officer to conduct investigations and institute control measures in accordance with WAC 246-100-040 on tribal lands, federal enclaves and military bases, and the campuses of state institutions. State institutions include, but are not limited to, state-operated colleges and universities, schools, hospitals, prisons, group homes, juvenile detention centers, institutions for juvenile delinquents, and residential habilitation centers.

WSR 03-17-031

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Order 02-07—Filed August 14, 2003, 8:12 a.m.]

Date of Adoption: August 14, 2003.

Purpose: The Health Care Authority (HCA) reviewed chapters 182-08 and 182-12 WAC and is adopting amendments to those chapters to clarify the eligibility and administrative rules affecting PEBB-sponsored insurance coverages for active and retired public employees and to streamline administration of the PEBB program.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-08-020; and amending WAC 182-08-015, 182-08-095, 182-08-120, 182-08-125, 182-08-175, 182-08-180, 182-08-190, 182-08-210, 182-08-220, 182-12-111, 182-12-115, 182-12-117, 182-12-119, 182-12-132, 182-12-145, and 182-12-220.

Statutory Authority for Adoption: RCW 41.05.160 and 41.05.165.

Adopted under notice filed as WSR 03-16-033 on July 29, 2003.

Changes Other than Editing from Proposed to Adopted Version: In addition to editing proposed rules, HCA adopted new WAC 182-12-124. This new rule permits persons to apply for PEBB retiree medical and dental coverages within sixty days after Department of Retirement Services makes a retroactive determination of eligibility for state pension benefits.

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 2, Amended 16, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 16, 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 2, Amended 16, Repealed 1.

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

August 14, 2003

Melodie Bankers, Director
Legal and Contract Services

AMENDATORY SECTION (Amending WSR 96-08-042, filed 3/29/96, effective 4/29/96)

WAC 182-08-015 Definitions. The following definitions apply throughout ((these rules)) this Title 182 WAC unless the context clearly indicates other meaning:

(1) "Administrator" means the administrator of the HCA or designee.

(2) (("Public employees benefits board" (PEBB):)) "Board" means the public employees benefits board established under provisions of ((chapter 41.05 RCW)) RCW 41.05.055. The ((PEBB)) board is created within the HCA and the administrator of the HCA shall serve as the chair of the board.

(3) "Open enrollment" means a time period designated by the administrator during which enrollees may apply to transfer their enrollment from one health plan to another, enroll in a medical plan if the enrollee had previously waived coverage or add dependents.

(4) "Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is

enrolled in a PEBB plan, and for whom applicable premium payments have been made.

(5) "Subscriber" or "insured" means the enrollee who has been designated by the HCA as the individual to whom the HCA and the health plan will issue all notices, information, requests and premium bills on behalf of all enrolled family members.

(6) "Effective date of enrollment" means the first date (~~as established by the PEBB~~) on which an enrollee is entitled to receive covered services (~~from the enrollee's respective health plan system~~).

(7) "PEBB plan" means one or more insurance programs established by the public employees benefits board for eligible enrollees and their dependents.

AMENDATORY SECTION (Amending Order 01-05, filed 11/29/01, effective 12/30/01)

WAC 182-08-095 Waiver of coverage for active employees. (1) Active employees eligible for PEBB health care coverage have the option of waiving medical coverage for themselves and any or all dependents if they are covered by another medical plan. In order to waive medical coverage, the employee must complete an enrollment form that identifies the individuals for whom coverage is being waived. If an employee waives medical coverage for him/herself, coverage is automatically waived for all eligible dependents. An employee may choose to enroll only him/herself, and waive medical coverage for any or all dependents.

(2) Employees whose medical coverage is waived (~~with~~) must remain enrolled in a PEBB dental plan. Employees (~~with~~) must also remain enrolled in PEBB life and long term disability coverage.

(3) If PEBB medical coverage is waived, an otherwise eligible person may not enroll in a PEBB plan until the next open enrollment period, or within 31 days of loss of other medical coverage. Proof of other medical coverage (~~is required to~~) during the period of waived coverage must demonstrate that:

(~~4~~) (a) Medical coverage was continuous from the date PEBB coverage was waived; and

(~~2~~) (b) The period between loss of coverage and application for PEBB coverage is 31 days or less. The employee and dependents may have an additional opportunity to enroll (~~in the event~~) only as a result of acquisition of a new dependent (~~as a result of~~) due to marriage, birth, adoption, or placement for adoption, provided that enrollment is requested within 31 days of marriage or within 60 days of birth, adoption or placement for adoption of a child.

AMENDATORY SECTION (Amending WSR 96-08-042, filed 3/29/96, effective 4/29/96)

WAC 182-08-120 Employer contribution. The (~~PEBB has utilized the~~) employers' contribution must be used to provide coverage for the basic life insurance benefit, a basic long term disability benefit, medical coverage, and dental coverage, and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverages.

AMENDATORY SECTION (Amending Order 01-05, filed 11/29/01, effective 12/30/01)

WAC 182-08-125 PEBB-sponsored medical and dental benefit is limited to one enrollment per individual member. (1) Effective January 1, 2002, individuals that have more than one source of eligibility for enrollment in PEBB (~~sponsored~~) medical and dental benefits (called "dual eligibility") are limited to one enrollment.

(2) One insurance-eligible employee may waive medical coverage for him/herself and enroll as a spouse or dependent on the coverage of his/her eligible spouse. This waiver option is not available for other insurance coverages.

(3) The following (~~three~~) examples describe typical situations of dual eligibility. These are not the only situations where dual eligibility may arise (~~and~~). These examples are provided as illustrations only.

(a) A husband and wife who are both insurance-eligible and employed by PEBB-participating employers, such as state agencies, may enroll only in medical or dental as an employee (~~and~~) but not also as a dependent. That is, the husband may enroll only under his employing agency and the wife may enroll only under her employing agency but not also as dependents of each other. In the alternative, one spouse may waive medical coverage as an employee and enroll as a dependent on the medical coverage of the other spouse.

(b) A dependent child that is eligible for coverage under two or more parents or stepparents who are employed by PEBB-participating employers, may be enrolled as a dependent under the coverage of one parent or stepparent, but not more than one.

(c) An employee employed in an insurance-eligible position by more than one PEBB-participating employer may enroll only under one employer. The employee may choose to enroll in insurance under the employer that:

- (i) Offers the most favorable cost-sharing arrangement; or
- (ii) Employed the employee for the longer period of time.

AMENDATORY SECTION (Amending WSR 97-21-126, filed 10/21/97, effective 11/21/97)

WAC 182-08-175 Group coverage while on family and medical leave. Employees on leave under the federal Family and Medical Leave Act of 1993, and regulations implementing that act, (~~shall~~) may continue to receive up to twelve weeks of employer-paid group medical, dental, basic life, and basic long-term disability insurance while on family and medical leave and may (~~self-pay their~~) also continue current optional life and long-term disability on a self-pay basis. All premiums that come due during the period of family and medical leave shall be paid monthly as they become due. If premiums are more than sixty days delinquent, coverage will be terminated as of the last day of the month of fully paid coverage. If an employee fails to return to work after expiration of family and medical leave for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstance beyond the control of the employee, the employer may recover the premiums paid to

maintain the employee's insurance coverage from the employee.

AMENDATORY SECTION (Amending WSR 96-08-042, filed 3/29/96, effective 4/29/96)

WAC 182-08-180 (~~(Reimbursement payment of miscalculated premiums.)~~) **Premium payments and refunds.**

(1) Within ninety days after an event affecting eligibility, the subscriber or a dependent or beneficiary of a subscriber must notify HCA of any change in eligibility status, such as for example: Death, divorce, or when no longer a dependent as defined at WAC 182-12-119. Premium paid after such an event will be refunded in accordance with subsection (4) of this section.

(2) Premiums miscalculated will be adjusted by returning the excess charged premium, if any, to the employer ((or)), subscriber, or beneficiary, as appropriate. Errors producing an underpayment ((will)) must be reimbursed by the employer or subscriber((-)) to the HCA. Upon request of an employer, subscriber, or beneficiary, as appropriate, the HCA will develop a repayment plan ((that will)) designed not to create undue hardship on the employer or subscriber.

(3) Premium is due for the entire month of coverage and will not be prorated during the month of death or loss of eligibility of the enrollee.

(4) Premium refunds requested by a subscriber or a dependent or beneficiary must be presented to HCA within ninety days of the event. Refunds will not be made for more than three months of premium. Examples of such events include, but are not limited to, divorce, death of an employee or retiree, or death of a dependent of an employee or retiree, or situations where premium was paid on behalf of enrollees or dependents.

AMENDATORY SECTION (Amending Order 02-03, filed 9/3/02, effective 10/4/02)

WAC 182-08-190 Employer contribution. (1) Every department, division, or agency of state government, and such county, municipal or other political subdivisions as are covered under the PEBB plans, shall (~~(provide))~~ pay premium contributions to the HCA for insurance benefits for all of its insurance-eligible employees and their dependents.

((State)) (a) Employer contributions shall be set by the HCA and are subject to the approval of the governor.

(b) Employer contributions shall include an amount determined by the HCA to pay administrative costs to administer the plans for employees of these groups.

(c) Each eligible ((state)) employee in pay status for eight or more hours during a calendar month or for each eligible employee on family and medical leave shall be eligible for the employer contribution. The entire employer contribution is due and payable to HCA even if medical coverage is waived.

(d) Coverage for any county, municipality or other political subdivision or any K-12 school district may be terminated by HCA if the premium contributions are delinquent more than ninety days.

(2) For the period of July 1, 2002, to June 30, 2003, eligible state employees placed on temporary unpaid leave in

order to implement the 2002 supplemental appropriations act are not required to have eight hours of pay status in order to maintain eligibility for the employer contribution for each month that they are on mandatory leave.

NEW SECTION

WAC 182-08-196 Health plan no longer available. Active employees and retirees for whom the chosen health plan becomes unavailable must select a new health plan within thirty-one days after notification by HCA. Any person that fails to select a new plan within the prescribed time period will be enrolled in the Uniform Medical Plan by default. Any person defaulted to the Uniform Medical Plan may not change health plans until the next open enrollment.

AMENDATORY SECTION (Amending WSR 96-08-042, filed 3/29/96, effective 4/29/96)

WAC 182-08-210 Termination of employer paid insurance benefit programs. Coverage for a terminated employee, spouse (~~(and)~~ or dependent (~~(children))~~ child under the PEBB (~~(coverage))~~ medical, dental, and life insurance coverages ceases at 12:00 midnight, the last day of the month in which the employee is in pay status. Basic long term disability coverage ceases at 12:00 midnight the date ((year)) employment terminates or immediately upon the death of the employee.

AMENDATORY SECTION (Amending WSR 96-08-042, filed 3/29/96, effective 4/29/96)

WAC 182-08-220 Advertising or promotion of PEBB sponsored benefit plans. (1) In order to assure equal and unbiased representation of PEBB (~~(sponsored or approved benefit))~~ plans, any promotion of these plans shall comply with all of the following:

((1)) (a) All materials describing PEBB plan benefits ((are to)) shall be prepared by or approved by the HCA prior to use.

((2)) (b) Distribution or mailing of all plan benefit descriptions ((is to)) shall be performed by or under the direction of the HCA.

((3)) (c) All media announcements or advertising by a carrier which include any mention of the "Public Employees Benefits Board," "health care authority" or any reference to coverage for "state employees or retirees" or any group of employees covered by PEBB plans, must receive the advance written approval of the HCA.

(2) Failure to comply with any or all of these requirements by a PEBB contracted ((plan)) carrier or ((plan)) subcontractor may result in contract termination by the HCA ((and/or HCA)), refusal to ((consider continued or renewed contracting)) continue or renew a contract with the noncomplying party, or both.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-08-020 Duties and responsibilities.

AMENDATORY SECTION (Amending Order 02-02, filed 9/3/02, effective 10/4/02)

WAC 182-12-111 Eligible entities and individuals.

The following entities and individuals shall be eligible to participate in PEBB insurance plans subject to the terms and conditions set forth below:

(1) State agencies. Every department, division, or separate agency of state government, including all state higher education institutions, ~~((including))~~ the higher education coordinating board, and the state board for community and technical colleges is ~~((eligible and))~~ required to participate in all PEBB approved plans. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.-270.

(a) Employees of technical colleges previously enrolled in a benefits trust may terminate PEBB coverage by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees electing to terminate PEBB coverage have a one-time re-enrollment option after a five year wait. Employees of a bargaining unit may terminate PEBB participation only as an entire bargaining unit. All administrative or managerial employees may terminate PEBB participation only as an entire unit.

(b) Technical colleges with employees enrolled in a benefits trust shall remit to the HCA a retiree remittance as specified in the omnibus appropriations act, for each full-time employee equivalent. The remittance may be prorated for employees receiving a prorated portion of benefits.

(2) Employee organizations. Employee organizations representing state civil service employees, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, may participate in PEBB-sponsored benefits at the option of each employee organization provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB plan coverage as a unit. If the group meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group, and the nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB medical plans ~~((are))~~ must be the only employer sponsored medical plans available to ~~((all))~~ eligible employees.

(c) The legislative authority ~~((of the entity))~~ or the board of directors ~~((submits))~~ of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity ~~((to the HCA))~~. The application to participate in the PEBB plans is subject to the approval of the HCA.

(d) The legislative authority or the board of directors ~~((agrees to))~~ must maintain its PEBB plan participation for a minimum of one full year, and ~~((then through))~~ may terminate participation only at the end of ~~((the))~~ a plan year.

(e) The terms and conditions for the payment of the insurance premiums shall be set forth in the provisions of the bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes ~~((will))~~ must be submitted to HCA.

(f) The eligibility requirements for dependents ~~((shall))~~ must be the same as the requirements for dependents of the state employees and retirees as defined in WAC 182-12-119.

(g) The legislative authority or the board of directors shall provide the HCA with written notice of its intent to terminate PEBB plan participation no ~~((later))~~ fewer than thirty days prior to the effective date of termination. If the employee organization terminates coverage in PEBB insurance plans, retired and disabled employees who began participating after September 15, 1991, ~~((will no longer be))~~ are not eligible to participate in PEBB insurance plans beyond the mandatory extension requirements specified in WAC 182-12-215.

(3) Blind vendors as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB insurance programs.

(a) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the health care authority or the first day of the month following loss of other coverage.

(b) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB insurance programs.

(c) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees and retirees as defined in WAC 182-12-119.

(4) Local governments: Employees of a county, municipality, or other political subdivision of the state may participate in PEBB insurance programs provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB plan coverage as a unit. If the employer group meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group, and the nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB medical plans ~~((are))~~ must be the only employer sponsored medical plans available to ~~((all))~~ eligible employees.

(c) The legislative authority ~~((of the entity))~~ or the board of directors ~~((submits))~~ of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity ~~((to the~~

HCA)). The application to participate in the PEBB plans is subject to the approval of the HCA.

(d) The legislative authority or the board of directors ~~((agrees to))~~ must maintain its PEBB plan participation for a minimum of one full year, and ~~((then through))~~ may terminate participation only at the end of the plan year.

(e) The terms and conditions for the payment of the insurance premiums ~~((shall))~~ must be set forth in the provisions of the bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes ~~((will))~~ must be submitted to HCA.

(f) The eligibility requirements for dependents of local government employees ~~((shall))~~ must be the same as the requirements for dependents of the state employees and retirees as defined in WAC 182-12-119.

(g) The legislative authority or the board of directors shall provide the HCA with written notice of its intent to terminate PEBB plan participation no ~~((later))~~ fewer than thirty days prior to the effective date of termination. If a county, municipality, or political subdivision terminates coverage in PEBB insurance plans, retired and disabled employees who began participating after September 15, 1991, ~~((will no longer be))~~ are not eligible to participate in PEBB insurance plans beyond the mandatory extension requirements specified in WAC 182-12-215.

(5) K-12 school districts and educational service districts: Employees of school districts or educational service districts may participate in PEBB insurance programs provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB plan coverage as a unit. If the K-12 school district or educational service district meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group. For the purpose of enrolling by bargaining unit, all nonrepresented employees will be considered a single bargaining unit.

(b) The school district or educational service district must submit an application together with employee census data and, if available, prior claims experience of the entity to the HCA. The application to participate in the PEBB plans is subject to the approval of the HCA.

(c) The school district or educational service district ~~((obligates itself))~~ must agree to participate in all PEBB insurance plans. The PEBB medical plans ~~((are))~~ must be the only employer sponsored medical plans available to ~~((all))~~ eligible employees.

(d) The school district or educational service district ~~((agrees to))~~ must maintain its PEBB plan participation for a minimum of one full year, and ~~((then through))~~ may terminate participation only at the end of the plan year.

(e) Beginning September 1, 2003, the health care authority will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by plan and family size as would be charged to state employees for each participating school district(s) or educational service district(s that begin participation on or after

~~September 1, 2002, will pay the same composite rate as state agencies. The premium charged to eligible employees will be the same as that charged to state employees)). Each participating school district or educational service district must agree to collect an employee premium by plan and family size that is not less than that paid by state employees. The eligibility requirements for employees will be the same as those for state employees as defined in WAC 182-12-115.~~

(f) The eligibility requirements for dependents of K-12 school district and educational service district employees ~~((shall))~~ must be the same as the requirements for dependents of the state employees and retirees as defined in WAC 182-12-119.

(g) The school district or educational district ~~((shall))~~ must provide the HCA with written notice of its intent to terminate PEBB plan participation no ~~((later))~~ fewer than thirty days prior to the effective date of termination, and may terminate participation only at the end of a plan year.

(6) Eligible nonemployees:

(a) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB medical and dental plan coverage while enrolled in that program.

(b) School board members or students eligible to participate under RCW 28A.400.350 may participate as long as they remain eligible under that section.

AMENDATORY SECTION (Amending WSR 96-08-043, filed 3/29/96, effective 4/29/96)

WAC 182-12-115 Eligible employees. The following employees of state government, higher education, K-12 school districts, educational service districts, political subdivisions and employee organizations representing state civil service workers are eligible to apply for PEBB insurance coverage ((by PEBB plans)). For purposes of defining eligible employees of school districts(;) and educational service districts, ~~((the))~~ a collective bargaining agreement will supersede all definitions provided under this ~~((rule))~~ chapter 182-12 WAC only if approved by the ~~((PEBB and/or))~~ the HCA.

(1) "Permanent employees." Those who work at least half-time per month and are expected to be employed for more than six months. Coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of a month, coverage begins on the date of employment.

(2) "Nonpermanent employees." Those who work at least half-time and are expected to be employed for no more than six months. Coverage begins on the first day of the seventh month following the date of employment.

(3) "Seasonal employees." Those who work at least half-time per month during a designated season for a minimum of three months but less than nine months per year and who have an understanding of continued employment season after season. Coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of a month, coverage begins on the date of employment. However, seasonal employees are not eligible for the employer contribution during the break between sea-

sons of employment but may be eligible to continue coverage by self-paying premiums.

(4) "Career seasonal/instructional year employees." Employees who work half-time or more on an instructional year (school year) or equivalent nine-month seasonal basis. Coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of the month, coverage begins on the date of employment. These employees are eligible to receive the employer contribution for insurance during the off-season following each period of seasonal employment.

(5) "Part-time faculty." Faculty who are employed on a quarter/semester to quarter/semester basis (~~become~~) are eligible to apply for coverage beginning with the second consecutive quarter/semester of half-time or more employment at one or more state institutions of higher education. Coverage begins on the first day of the month following the beginning of the second quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, coverage begins at the beginning of the second consecutive quarter/semester.

Employers of part-time faculty must:

(a) Consider spring and fall as consecutive quarters/semesters when determining eligibility; and

(b) Determine "halftime or more employment" based on each institution's definition of "full-time"; and

(c) At the beginning of each quarter/semester notify, in writing, all current and newly hired part-time faculty of their potential right to benefits under this section. ~~((The employee shall have the responsibility, each quarter, to notify the employers))~~

(d) Part-time faculty members employed at more than one institution are responsible for notifying each employer quarterly, in writing, of the employee's multiple employment. In no case will ~~((there be a requirement for))~~ retroactive coverage be permitted or employer contribution paid to HCA if a part-time faculty member fails to inform all of his/her employing institutions about employment at all institutions within the current quarter; and

~~((e))~~ (e) Where concurrent employment at more than one state higher education institution is used to determine total part-time faculty employment of half-time or more, the employing institutions will arrange to prorate the cost of the employer insurance contribution based on the employment at each institution. However, if the part-time faculty member would be eligible by virtue of employment at one institution, that institution will pay the entire cost of the employer contribution regardless of other higher education employment. In cases where the cost of the contribution is prorated between institutions, one institution will forward the entire contribution monthly to HCA; and

~~((e))~~ (f) Once enrolled, if a part-time faculty member does not work at least a total of half-time in one or more state institutions of higher education, eligibility for the employer contribution ceases.

(6) "Appointed and elected officials." Legislators are eligible to apply for coverage on the date their term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligi-

ble to apply for coverage on the date their term begins or they take the oath of office, whichever occurs first. Coverage for legislators begins on the first day of the month following the date their term begins. If the term begins on the first working day of the month, coverage begins on the first day of their term. Coverage begins for all other elected and full-time appointed officials of the legislative and executive branches of state government on the first day of the month following the date their term begins, or the first day of the month following the date they take the oath of office, whichever occurs first. If the term begins, or oath of office is taken, on the first working day of the month, coverage begins on the date the term begins, or the oath of office is taken.

(7) "Judges." Justices of the supreme court and judges of ~~((the))~~ courts of appeals and the superior courts become eligible to apply for coverage on the date they take the oath of office. Coverage begins on the first day of the month following the date their term begins, or the first day of the month following the date they take oath of office, whichever occurs first. If the term begins, or oath of office is taken, on the first working day of a month, coverage begins on the date the term begins, or the oath of office is taken.

AMENDATORY SECTION (Amending Order 01-01, filed 8/9/01, effective 9/9/01)

WAC 182-12-117 Eligible retirees. (1) Eligible employees who terminate state service after becoming vested in a Washington state sponsored retirement system are eligible for retiree medical and dental coverages provided all of the following requirements are met:

(a) If the retiree ~~((and))~~ or covered dependent(s) ~~((are eligible for))~~ is entitled to Medicare ~~((elects Medicare Parts A and B if))~~ and the retiree retired after July 1, 1991 the Medicare-entitled retiree or Medicare-entitled dependent must enroll in Medicare Parts A and B; and

(b) The person submits an application form to enroll or ~~((waive))~~ defer PEBB medical and dental coverage within sixty days after active employer or continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends and is eligible for retiree benefits under one or more of the programs described in (c), (d), (e), (f), or (g) of this subsection;

(c) Except as provided in (c)(vii) of this subsection, the person immediately begins receiving a monthly retirement income benefit from one or more of the following retirement systems:

(i) Law enforcement officers' and fire fighters' retirement system plan 1 or 2;

(ii) Public employees' retirement system plan 1 or 2;

(iii) School employees' retirement system plan 2;

(iv) State judges/judicial retirement system;

(v) Teachers' retirement system plan 1 or 2; or

(vi) Washington state patrol retirement system.

(vii) Provided, however, that a lump-sum payment may be received in lieu of a monthly retiree income benefit payment under RCW 41.26.425(1), 41.32.762(1), 41.32.870(1), 41.35.410(1), 41.35.670(1), 41.40.625(1) or 41.40.815(1).

(d) The person is at least fifty-five years of age with at least ten years service credit and a member of one of the following retirement systems:

- (i) Public employees' retirement system plan 3;
- (ii) School employees' retirement system plan 3; and
- (iii) Teachers' retirement system plan 3.

(e) The person is a member of state of Washington higher education retirement plan, and is:

- (i) At least fifty-five years of age with at least ten years service; or
- (ii) At least sixty-two years of age; or
- (iii) Immediately begins receiving a monthly retirement income benefit.

(f) If not retiring under the public employees' retirement system, the person would have been eligible for a monthly retirement income benefit because of age and years of service had the person been employed under the provisions of public employees retirement system 1 or 2 for the same period of employment.

(g) The person is an elected official as defined under WAC 182-12-115(6) who has voluntarily or involuntarily left a public office, whether or not they receive a benefit from a state retirement system.

(2) Eligible employees who participate in the public employees' benefits board (PEBB) sponsored life insurance as an active employee and meet qualifications for retiree medical benefits as provided in subsection (1) of this section are eligible for PEBB sponsored retiree life insurance if they apply to the health care authority within sixty days after the date their active PEBB life insurance terminates and their premium is not being waived for any PEBB life insurance plan at the time of application for retiree life insurance.

(3) The following retired and disabled school district and educational service district employees are eligible to participate in PEBB medical and dental plans only, provided they meet all of the enrollment criteria stated below and if ((eligible for)) they are entitled to Medicare, are also enrolled in Medicare Parts A and B:

(a) Persons receiving a retirement allowance under chapter 41.32, 41.35 or 41.40 RCW as of September 30, 1993, and who enroll in PEBB plans not later than the end of the open enrollment period established by the authority for the plan year beginning January 1, 1995;

(b) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35 or 41.40 RCW. Such persons must enroll in PEBB plans not later than the end of the open enrollment period established by the authority for the plan year beginning January 1, 1995, or sixty days following retirement, whichever is later.

~~(4) ((Employees who are permanently and totally disabled and eligible for a deferred monthly retirement income benefit are eligible for medical, dental and life insurance benefits as provided in subsection (2) of this section, provided they apply for retiree coverage before their PEBB active employee coverage ends.~~

~~(5))~~ With the exception of the Washington state patrol, retirees and disabled employees are not eligible for an employer premium contribution.

~~((6))~~ (5) The Federal Civil Service Retirement System shall be considered a Washington state sponsored retirement system for Washington State University cooperative extension service employees who hold a federal civil service appointment and who are covered under the PEBB program at the time of retirement or disability.

(6) Employees who do not elect enrollment in PEBB retiree coverage within sixty days of retirement, or who terminate PEBB retiree coverage within sixty days of retirement, or who terminate PEBB retiree coverage after retirement, are not eligible to reenroll in PEBB retiree coverage, unless they retired and deferred PEBB retiree coverage pursuant to WAC 182-12-132 or retired and deferred PEBB retiree coverage pursuant to WAC 182-12-200.

(7) If a retiree's coverage terminates for any reason, coverage will not be reinstated at a later date. Examples of termination include, but are not limited to, any one or more of the following:

(a) Failure to continue to meet eligibility requirements;

(b) Failure to pay the premium when due;

(c) Fraud, intentional misrepresentation or withholding of information the enrollee knew or should have known was material or necessary to accurately determine eligibility or the correct premium;

(d) Failure to provide information requested by the due date or knowingly providing false information;

(e) Abusive or offensive conduct repeatedly directed to an HCA employee, a health plan or other HCA contractor providing coverage on behalf of the PEBB program, its employees, or other persons; or

(f) Intentional misconduct.

(8) Enrollees may not enroll in retiree PEBB dental coverage unless they also enroll in retiree PEBB medical coverage.

(9) In order to continue retiree term life coverage, an election must be made within sixty days of retirement and premiums must be paid whether or not the retiree is otherwise employed. Election of retiree term life coverage may not be waived or deferred during periods of other coverage or otherwise.

AMENDATORY SECTION (Amending Order 02-02, filed 9/3/02, effective 10/4/02)

WAC 182-12-119 Eligible dependents. "Eligible dependents." The following are eligible as dependents under the PEBB eligibility rules:

(1) Lawful spouse or "qualified domestic partner" (same sex domestic partner qualified through the declaration certificate issued by the health care authority).

(2) Dependent children through age nineteen. The term "children" includes the subscriber's natural children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support of a child in anticipation of adoption of the child, children of the subscriber's qualified domestic partner, or children specified in a court order or divorce decree. Married children who qualify as dependents of the subscriber under the Internal Revenue Code, and extended dependents approved by the HCA are included. To qualify for HCA

approval, the subscriber must demonstrate legal custody for the child with a court order, and the child:

(a) Must be living with the subscriber in a parent-child relationship; and

(b) ~~((Be dependent upon the subscriber for financial support; and~~

~~((e))) Must not be a foster child for whom support payments are made to the subscriber through the state department of social and health services (DSHS) foster care program.~~

(3) ~~Dependent children age twenty through age twenty-three ((who are dependent upon the employee/retiree for maintenance and support,)) and who are registered students ((in full-time attendance)) at an accredited secondary school, college, university, vocational school, or school of nursing. Dependent student eligibility continues year-round for those who attend three of the four school quarters or two semesters and ((for) and continues during the ((quarter) three-month period following graduation provided the employee/retiree is covered at the same time((;)), the dependent ((limiting age has not been exceeded;)) has not reached age twenty-four, and the dependent meets all other eligibility requirements.~~

(4) ~~Dependent children of any age who are incapable of self-support due to developmental or physical disability, provided such condition occurs prior to age twenty or during the time the dependent was covered under a PEBB plan as a ((full-time)) registered student. Proof of such disability must be furnished prior to the dependent's attainment of age twenty or loss of eligibility for student coverage, and as periodically requested thereafter.~~

(5) ~~Dependent parents.~~

(a) ~~Dependent parents covered under a PEBB medical plan before July 1, 1990, may continue enrollment on a self-pay basis as long as:~~

~~((a)) (i) The parent maintains continuous coverage in a PEBB-sponsored medical plan;~~

~~((b)) (ii) The parent ((continues to qualify)) qualifies under the Internal Revenue Code as a dependent of an eligible subscriber;~~

~~((c)) (iii) The subscriber who claimed the parent as a dependent continues enrollment in a PEBB program; and~~

~~((d)) (iv) The parent is not covered by any other group medical insurance.~~

~~(b) Dependent parents may be enrolled in a different PEBB plan than that selected by the eligible subscriber; however, dependent parents may not add additional family members to their coverage.~~

(6) ~~Surviving dependents.~~

(a) ~~The following surviving dependents may continue their medical and dental coverages on a self-pay basis:~~

(i) ~~If a dependent loses eligibility under a PEBB plan due to the death of the employee, the dependent(s) may continue coverage under a retiree plan provided the dependent(s) will immediately begin receiving a monthly benefit from any state of Washington-sponsored retirement system ((f)). The Federal Civil Service Retirement System shall be considered a Washington sponsored retirement system for Washington State University cooperative extension service employees who held a federal civil service appointment and who were covered under the PEBB program at the time of death((g)).~~

(ii) ~~If a surviving dependent of a PEBB employee is not eligible for a monthly retirement income benefit, or lump-sum payment because the monthly pension payment would be less than (((\$50)) the minimum amount established by the department of retirement systems, the dependent may be eligible for continued coverage under COBRA.~~

(iii) ~~Dependents of retirees enrolled in the retiree's PEBB plan or ((waiving)) that waived coverage under a PEBB plan while eligible for an employer sponsored medical plan at the time of the retiree's death are eligible to continue PEBB retiree coverage.~~

(iv) ~~Surviving spouses and/or eligible dependent children of a deceased school district or educational service district employee who were not enrolled in a PEBB plan at the time of death may continue coverage provided the employee died on or after October 1, 1993 and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32 or 41.40 RCW.~~

(b) ~~Application for surviving dependent(s) coverage must be made in writing on the enrollment form approved by the health care authority within ((sixty)) ninety days from the date of death of the employee or retiree. Coverage is retroactive to the date the employee or retiree coverage terminated subject to the payment of the premium. In order to avoid duplication of group medical coverage, surviving dependents may defer or waive their enrollment in the PEBB coverage each full calendar month in which they maintain coverage under ((an)) another employer sponsored medical plan. Notice of intent to waive PEBB coverage must be sent in writing to the Washington state health care authority within ninety days from date of death. When an employer sponsored medical plan ends, surviving dependent(s) must submit an application to enroll in a PEBB plan within sixty days of the last day of coverage under the employer sponsored medical plan. Satisfactory evidence of continuous enrollment in an employer sponsored medical plan will be required by the Washington state health care authority prior to enrollment in a PEBB plan. The employee's or retiree's spouse or qualified domestic partner may continue coverage indefinitely; other dependents may continue coverage only until they lose eligibility under PEBB rules.~~

NEW SECTION

WAC 182-12-124 Determination by department of retirement systems of retroactive eligibility for PEBB pension. (1) When the Washington state department of retirement systems (DRS) makes a formal determination that a person is retroactively eligible for pension benefits, that person may apply for PEBB retiree medical and dental benefits only if application is made within sixty days after the date of notice from DRS.

(2) All premium due from the date of eligibility established by DRS, or the date of the DRS decision letter, at the option of the retiree, must be sent with the application to HCA.

(3) The administrator may make an exception to the date PEBB retiree benefits commence or payment of premiums; however, such requests must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending Order 02-02, filed 9/3/02, effective 10/4/02)

WAC 182-12-132 (~~(Waiving or)~~ **Deferring coverage at or following retirement.** (1)(a) Beginning January 1, 2001, retirees may (~~(waive)~~) defer enrollment in PEBB medical and dental coverage for themselves and all dependents at or following retirement if they are covered under another comprehensive employer sponsored medical plan as an active employee or as the spouse or same sex domestic partner of an active employee, or as a retiree or dependent of the spouse's or employee's retirement coverage from a federal retiree plan. (~~(((Other coverage may be attained through the retiree's reemployment or the spouse's employment.))~~) In order to continue retiree term life coverage, coverage must be selected upon retirement and premiums must continue to be paid during reemployment status.))

(b) In order to (~~(waive)~~) defer medical and dental coverage, the retiree must submit to the health care authority a PEBB enrollment form indicating (~~(their)~~) a desire to (~~(waive)~~) defer coverage (~~(to the health care authority).~~) (~~(This)~~) The notice of deferral must be (accomplished) received by the HCA prior to the date coverage is (waived) deferred or within sixty days of the date (~~(they are)~~) the retiree is eligible to apply for PEBB sponsored retiree benefits.

(c) When the retiree again ceases active employment, the retiree may enroll in PEBB medical and dental coverage with satisfactory evidence of continuous comprehensive employer-sponsored coverage within sixty days (~~(of the less of)~~) after the last day of the retiree's other coverage.

(d) PEBB coverage will become effective the first of the month following the date other coverage ended.

(2) Election of retiree term life coverage may not be deferred during periods of other coverage or otherwise.

(3) Retirees and their eligible dependents who defer PEBB medical and dental coverage while enrolled as a retiree or dependent in a federal retiree plan will have a one-time opportunity to reenroll in PEBB medical and dental coverage. To reenroll in PEBB medical and dental coverage, retirees or their surviving dependents, must submit an enrollment form and proof of continuous enrollment in a federal retiree medical plan to the HCA either: (a) During any open enrollment period determined by the HCA; or (b) within sixty days after the date their other coverage ends.

AMENDATORY SECTION (Amending WSR 96-08-043, filed 3/29/96, effective 4/29/96)

WAC 182-12-145 Insurance eligibility for higher education. For the purpose of insurance eligibility, the (~~(PEBB)~~) HCA considers the higher education personnel board, the council for post secondary education, and the state board for community colleges to be higher education agencies.

AMENDATORY SECTION (Amending Order 02-03, filed 9/3/02, effective 10/4/02)

WAC 182-12-220 Eligibility during appeal of dismissal. (1) Employees awaiting hearing of a dismissal action

before the personnel appeals board, higher education personnel board or court may continue their PEBB coverages by self-payment of premium on the same terms as an employee who is granted leave without pay.

(2) If the hearing board or court upholds the dismissal, all coverages shall terminate at the end of the month in which the board or court's decision is made or the date to which premiums have been paid, whichever is earlier.

(3)(a) If the hearing board or court sustains the employee in the appeal and directs reinstatement of employer paid coverages retroactively, the employer must forward to the HCA the full employer contribution for the period directed by the hearing board or court and collect from the employee the employee's share of premiums due, if any.

(~~(PEBB)~~) (b) The HCA will refund to the employee any premiums the employee paid that will be provided for by the reinstatement of the employer contribution provided the employee makes retroactive payment of any employee contribution amounts associated with the coverage.

(c) All optional life and long term disability insurance which was in force at the time of dismissal shall be reinstated retroactively, provided the employee makes retroactive payment of premium for any such optional coverage which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive premium, evidence of insurability will be required to obtain such optional coverage.

WSR 03-17-037

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 03-186—Filed August 14, 2003, 4:02 p.m.]

Date of Adoption: August 1, 2003.

Purpose: Amend public safety cougar removal rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-12-243.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 03-13-142 on June 18, 2003.

Changes Other than Editing from Proposed to Adopted Version: In subsection (3)(b) add "except in game management units 101 and 204, public safety cougar removal(s) will be conducted annually between January 1 and March 15 for a cougar capture-recapture study."

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.

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

August 11, 2003

Susan Yeager

for Will Roehl, Chair

Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 02-183, filed 8/9/02, effective 9/9/02)

WAC 232-12-243 Public safety cougar removals. (1)

Definitions:

As used in this section and in the context of public safety cougar removals, the following definitions apply:

(a) "Confirmed" means qualified department staff is led to believe a cougar(s) was at the scene of the incident by interview of the complainant or observation of evidence at the scene.

(b) "Human-cougar safety incident" means aggressive or unusual behavior by a cougar which presents an actual or perceived threat to an individual.

(c) "Livestock or pet depredation" means incidents where livestock and/or pets are killed and/or injured by cougar.

(d) "Marginal cougar habitat" means those areas usually dominated by urban/suburban, developed lands with relatively high human densities.

(e) "Nuisance activity" means incidents associated with property disturbance, property damage, or livestock/pet harassment.

(f) "Preferred cougar habitat" means those areas usually dominated by rural, undeveloped lands with relatively low human densities.

(g) "Public safety need" means there exists a reasonable threat to human safety or property by one or more cougar, as indicated by the level of confirmed human-cougar safety incidents or livestock/pet depredations, and confirmed cougar sightings or nuisance activities.

(h) "Removal" means the act of killing one or more cougar with the aid of dogs.

(i) "Sighting" means a direct observation of one or more cougar, in urban or rural settings, near individuals or residences; typically more than chance observations.

(j) "Human-cougar interaction" means a human-cougar safety incident, livestock or pet depredation, cougar nuisance activity, or cougar sighting event.

(k) "Dog hunter" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

(2) Public safety cougar removal authorization: The commission authorizes the director to issue public safety cougar removal permits consistent with this rule. Prior to issuing public safety cougar removal permits, the department shall use other practical alternatives to address a public safety need, including livestock or pet depredations. Other practical alternatives may include, but are not limited to, general cougar hunting seasons, general public information, educational

programs, information to recreational hunters, cougar depredation/kill permits, and department capture and relocation/euthanasia of specific cougars.

(3) Public safety cougar removal criteria:

(a) The commission determines that when the above practical alternatives have been utilized within a game management unit, eleven confirmed human-cougar interactions per year, of which at least four must be confirmed human-cougar safety incidents or livestock/pet depredations, therein demonstrating that the practical alternatives have been inadequate to address the public safety need. The director then is authorized by the commission to remove one or more cougar, with the aid of dogs, in a selected area of that game management unit or nearby geographic area suitable for the use of dogs. The commission authorizes the director to remove one cougar per one hundred twenty square kilometers of complaint area in preferred cougar habitat, and one cougar per four hundred thirty square kilometers of complaint area in marginal cougar habitat.

(b) If warranted by conditions of this rule, public safety cougar removal(s) will be conducted annually between December 1st and March 15th in selected areas of game management units designated by the director to address a public safety need presented by one or more cougar except in game management units 101 and 204, public safety cougar removal(s) will be conducted annually between January 1 and March 15 for a cougar capture-recapture study.

(c) The department shall not target more than one hundred nine cougar during a public safety cougar removal period unless otherwise authorized by the commission.

(4) Public safety cougar removal permit issuance procedure.

(a) To participate in a public safety cougar removal, individuals must request that his/her name be placed on a list of available participants (participant list) by mailing their request to Washington Department of Fish and Wildlife, Enforcement Program - Public Safety Cougar Removal, 600 Capitol Way North, Olympia, WA 98501-1091. The request must include the individual's name, address, phone number, and game management units being applied for. Individuals may apply for no more than four game management units. An individual's request to be placed on a participant list for a removal period must be postmarked no later than October 1, or be received at the department's Olympia office no later than 5:00 p.m. on October 1, during the year the removal period begins.

(b) To be eligible for a public safety cougar removal permit (permit), the participant must be a Washington resident dog hunter who, at the time of application for a permit, possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a public safety cougar removal.

(c) Individuals eligible for participation in a public safety cougar removal will be randomly selected from the participant list. The department will issue a permit to the person whose name is selected from the participant list. Individuals selected will be notified by telephone or mail. Individuals selected must contact the department's enforcement program in Olympia and accept the public safety cougar removal permit within fifteen days of being notified. Failure to contact

the department will result in forfeit of the permit and the individual will be placed on the participant list for later selections. Permits may not be sold or reassigned.

(d) Permit holders and all individuals who will accompany the permit holder must complete the department's public safety cougar removal education course prior to participating in a public safety cougar removal.

(5) Public safety cougar removals: Quota system and participation in cougar removal.

(a) The cougar removal period will be based on a quota system, where permit holders may hunt cougar until the allotted numbers of cougar have been removed from each game management unit or March 15, whichever is first.

(b) Permit holders who harvest a cougar before January 15 may continue hunting for a second cougar with dogs. The permit holder must purchase an additional cougar transport tag to hunt and harvest one additional cougar and the permit holder will be issued a second permit. Permit holders who harvest a cougar after January 15 are not eligible to harvest a second cougar with dogs.

(c) To verify if the cougar removal season is open or closed in each game management unit, the permit holders shall notify the department's enforcement program in Olympia at least twenty-four hours prior to exercising a public safety cougar removal permit.

(d) No more than four total individuals may participate per public safety cougar removal, including the permit holder(s). Only the permit holder, whose name appears on the permit, may take a cougar.

(e) Hunters killing a cougar during a public safety cougar removal must notify the department's enforcement program in Olympia within twenty-four hours after harvesting the cougar.

(f) The department reserves the right to accompany permit holders while participating in a public safety cougar removal.

(6) Public safety cougar removal general requirements.

(a) A valid big game hunting license which includes cougar as a species option is required to hunt cougar. One cougar transport tag is included with a big game license that has cougar as a species option. A second cougar transport tag must be purchased to take a second cougar. Individuals may participate in multiple public safety cougar removals, but must purchase a cougar transport tag for each cougar removed. Purchases in excess of two cougar transport tags must be made at department offices.

(b) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens. Individuals selected for a public safety cougar removal permit may take one cougar per permit and must take the first legal cougar available.

(c) Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting cougar. The use of dogs to hunt cougar is prohibited except during a public safety cougar removal.

(d) Any person who takes a cougar must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar must be sealed by an authorized department employee within sev-

enty-two hours of the notification of kill. Any person who takes a cougar must present the cougar skull, in such a manner that teeth and biological samples can be extracted, to an authorized department employee at the time of sealing.

(e) The public safety cougar removal permit (permit) belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

WSR 03-17-041

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed August 15, 2003, 9:27 a.m., effective September 30, 2003]

Date of Adoption: July 25, 2003.

Purpose: To set transition and conditioning requirements to facilitate the move to a computer-based exam format.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-720 How do I apply to take the CPA examination?

Statutory Authority for Adoption: RCW 18.04.105(2).

Adopted under notice filed as WSR 03-09-051 on April 11, 2003; [and WSR 03-10-036 on April 30, 2003].

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.

Effective Date of Rule: September 30, 2003.

August 12, 2003

Dana M. McInturff, CPA, CFE

Executive Director

AMENDATORY SECTION (Amending WSR 02-04-064, filed 1/31/02, effective 3/15/02)

WAC 4-25-720 How do I apply to take the CPA examination? (1) Application form and due dates:

(a) For examinations held prior to January 1, 2004:

(i) Your application to take the CPA examination must be made on a form provided by the board's designee and filed with the board's designee on or before March 1 for the May examination and September 1 for the November examination. Applications, including all required documentation, for the May examination must be postmarked by March 1 (and received by March 10). Applications, including all required documentation, for the November examination must be postmarked by September 1 (and received by September 10). An application is not considered filed until the ~~(examination fee has been received by the)~~ board's designee has received the examination fee.

(ii) **Proctoring CPA exam candidates:** The board may agree to request the assistance of another accountancy board in proctoring Washington's applicants at out-of-state exam sites and may agree to proctor another accountancy board's applicants at a Washington exam site, both subject to space and staffing constraints. The board will not arrange for out-of-state proctoring for applicants domiciled out-of-state who wish to take the uniform CPA exam as Washington candidates. Such applicants must take the CPA exam in Washington on a space available basis.

(b) **For examinations held after December 31, 2003:** Your application to take the CPA examination must be made on a form provided by the board's designee and filed with the board's designee by the due date specified by the board on the application form. Your application is not considered filed until all of the following are received by the board's designee:

- A fully completed application form;
- Fee(s);
- Proof that you have met the education requirements;
- Your proof of identity as determined by the board and specified on the application form;
- Other required supporting documents; and
- Proof from NASBA's National Candidate Data Base that you have not previously taken, or applied to take, the exam during the current examination period.

(2) **Failure to attend the exam:** If you fail to appear for examination ~~((or reexamination))~~, you forfeit the fees charged for examination ~~((and reexamination))~~.

(3) **Notice of admittance to the examination or denial of your application:**

(a) **For examinations held prior to January 1, 2004:** Notice of the denial of your application, or notice of your admittance to the examination along with the time and place of the examination, will be mailed to you at least ten days prior to the date set for the examination.

~~((4))~~ (b) **For examinations held after December 31, 2003:** Notice of the denial of your application, or notice of your eligibility to take the examination will be mailed to you by the board's designee. You will contact the board's designee or the approved test site to schedule the time and location for your examination. Your notice of eligibility to take the examination will be valid for one taking of the examination

within the six months following the date of your notice of eligibility to take the examination.

(4) **Examination content:** The CPA examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. The examination will consist of the following four sections: Auditing and attestation; financial, accounting and reporting; regulation; and business environment and concepts.

(5) **Examination, grading and conditioning:**

(a) **For examinations held prior to January 1, 2004:** The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants. Seventy-five or better is a passing grade for each section of the examination. Each time you sit for the examination you must take all sections you have not previously passed. You are required to pass all sections of the examination in order to qualify for a license. If at a given sitting of the examination you pass two or more, but not all sections of the examination, then you will receive credit for those sections that you pass and you will not be required to take those sections again provided:

~~((a))~~ (i) You took all unpassed sections of the examination at that sitting;

~~((b))~~ (ii) You attained a minimum grade of fifty on each section of the examination not passed at that sitting;

~~((c))~~ (iii) You pass the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;

~~((d))~~ (iv) At each subsequent sitting you take all sections not yet passed and you attain a minimum grade of fifty on those sections taken but not passed at that sitting; and

~~((e))~~ (v) In order to receive credit for passing additional sections in a subsequent sitting you attain a minimum grade of fifty on sections taken but not passed at that sitting.

~~((5))~~ (b) **For examinations held after December 31, 2003:** The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants.

(i) To qualify to apply for a license you must attain the national uniform passing grade, approved by the board by policy, on all four sections of the examination.

(ii) You may take the required four sections individually and in any order. Credit for any section(s) taken and passed after December 31, 2003, will be valid for eighteen months from the actual date you took the passed section, without having to attain a minimum score on any failed section(s) and without regard to whether you have taken other sections.

(iii) You must pass all four sections of the examination within a rolling eighteen-month period, which begins on the date that the first section(s) is passed. When determining the date that a section is passed the date that is used is the date that you took the exam section and not the date that your grade(s) is released.

(iv) You may not retake a failed section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in

which the examination will not be offered while routine maintenance is performed and the item bank is refreshed).

(v) In the event you do not pass all four sections of the examination within the rolling eighteen-month period, credit for any section(s) passed prior to the eighteen-month period will expire and you must retake that section(s).

(c) Transitioning for candidates obtaining conditional credits under the provisions of (a) of this subsection:

(i) If you earned conditional credit(s) under the provisions of (a) of this subsection and as of February 15, 2004, those conditional credits remained valid under the provisions of (a) of this subsection, you will retain conditional credit for the corresponding sections of the examination as follows:

<u>Examination section taken prior to January 1, 2004</u>	<u>Examination section taken after December 31, 2003</u>
<u>Auditing</u>	<u>Auditing and Attestation</u>
<u>Financial Accounting and Reporting (FARE)</u>	<u>Financial Accounting and Reporting</u>
<u>Accounting and Reporting (ARE)</u>	<u>Regulation</u>
<u>Business Law and Professional Responsibilities (LPR)</u>	<u>Business Environment and Concepts</u>

(ii) If you qualify for conditional credit(s) for a section of the examination under (c)(i) of this subsection, you will lose the conditional credit(s) for the section unless you complete all remaining section(s) of the examination within the transition period which is the lesser of:

- The maximum number of testing opportunities that you had remaining to complete all sections of the examination under the provisions of (a) of this subsection; or

- The number of remaining testing opportunities you had remaining to complete all sections of the examination under the provisions of (a) of this subsection multiplied by six months.

(iii) If you do not pass all remaining sections during the transition period, the conditional credit for the section(s) you passed under the provision of (a) of this subsection will become invalid. Any section you pass after December 31, 2003, will be subject to the provisions of (b) of this subsection with the following exception:

- You will not lose conditional credit for any section passed during the transition period, even though more than eighteen months may have elapsed from the date the section is passed, until the end of your transition period.

(iv) You will retain credit for any and all sections of an examination passed in another state if credit would have been given under the Washington state requirements in effect on the date you took the examination.

(v) If you pass a section of the examination, the date you took the section of the examination is the date you receive credit for passing the section.

(6) Ethics exam: Upon passing the CPA examination, applicants for licensure are required to attain and demonstrate a passing grade of ninety percent or better on the AICPA professional code of conduct examination.

~~((6) Proctoring CPA exam candidates: The board may agree to request the assistance of another accountancy board in proctoring Washington's applicants at out of state exam sites and may agree to proctor another accountancy board's applicants at a Washington exam site, both subject to space and staffing constraints. The board will not arrange for out of state proctoring for applicants domiciled out of state who wish to take the uniform CPA exam as Washington candidates. Such applicants must take the CPA exam in Washington on a space available basis.))~~

WSR 03-17-042

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed August 15, 2003, 9:28 a.m., effective September 30, 2003]

Date of Adoption: July 25, 2003.

Purpose: The uniform certified public accountant (CPA) examination is moving to a computer-based format in 2004. The rule making is necessary to transition to a computer-based format.

Citation of Existing Rules Affected by this Order: Amending WAC 4-25-721 What does the board consider to be cheating...

Statutory Authority for Adoption: RCW 18.04.105(2).

Adopted under notice filed as WSR 03-09-052 on April 11, 2003.

Changes Other than Editing from Proposed to Adopted Version: Changed the word "writing" to "taking" in subsection (2)(b).

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.

Effective Date of Rule: September 30, 2003.

August 12, 2003

Dana M. McInturff, CPA, CFE
Executive Director

AMENDATORY SECTION (Amending WSR 02-04-064, filed 1/31/02, effective 3/15/02)

WAC 4-25-721 What does the board consider to be cheating on the CPA examination, what actions may the board take if cheating is suspected, and what sanctions

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may the board impose if cheating occurs? (1) Cheating includes, but is not limited to:

~~((a))~~ ~~(Communication between candidates inside or outside of the examination room during the examination;~~

~~((b))~~ Unauthorized communication with others inside or outside of the examination room ((during the examination)) while the examination is in progress;

~~((c))~~ ~~(b) Substitution by a candidate of another person to ((write one or more of the examination papers for him/her)) sit in the test site and take the examination on behalf of the candidate;~~

~~((d))~~ ~~(c) Referencing crib sheets, text books, (or other unauthorized material or electronic media inside or outside the examination room ((during the examination)) while the examination is in progress;~~

~~((e))~~ ~~(d) Copying or attempting to copy another candidate's answers;~~

~~((f))~~ ~~(Taking, removing, copying, transmitting, attempting to take, attempting to remove, attempting to copy, or attempting to transmit an examination booklet or paper, answer sheet, essay question paper, or notes from the examination site;~~

~~((g))~~ ~~(e) Disclosing or attempting to disclose examination questions and/or answers to others;~~

~~((h))~~ ~~(f) Bringing unauthorized prohibited items into the examination site(;) or ((h)) possessing unauthorized prohibited items in the examination site;~~

~~((i))~~ ~~(g) Retaking or attempting to retake a section by an individual who holds a license or who has unexpired credit for passing the section, unless the individual has been expressly authorized by the board to participate in a "secret shopper" program.~~

(2) Cheating on the CPA examination is dishonesty directly related to the professional responsibilities of a CPA and demonstrates a lack of good character. When determining appropriate sanctions for cheating, the board may impose one or more of the following penalties:

(a) Enter a failing grade for any or all parts of the candidate's examination;

(b) Bar a candidate from ~~((writing))~~ taking future examinations; or

(c) Notify other jurisdictions of the board's conclusions and order.

(3) If a candidate is suspected of cheating, ~~((a))~~ the board or its representative(s) may expel the candidate from the examination(;) or move the candidate suspected of cheating ((away from other candidates and/or confiscate unauthorized prohibited items)) to a position in the test center that is away from other examinees or where the candidate may be more closely observed. The board or its representatives may require a candidate suspected of cheating, or a candidate who may have observed cheating, to respond to board inquiry. The board may schedule a hearing to determine the validity of the charge of cheating.

WSR 03-17-044

PERMANENT RULES

GAMBLING COMMISSION

[Order 422—Filed August 15, 2003, 1:58 p.m.]

Date of Adoption: August 15, 2003.

Purpose: Currently, house-banked card rooms open with \$25 betting limits. After six months of operation, betting limits may be increased to \$100 if the operator successfully passes a Phase II review by staff and is formally approved by the commission. Initially, our agency and the industry were new to the activity. Phase II was designed to ensure house-banked card rooms were in compliance before increasing their betting limits. It also allowed staff the opportunity to learn more about regulating house-banked activities.

Phase II reviews no longer serve a regulatory purpose. Therefore, this rule package removes the formal Phase II review and allows card rooms to open with \$100 betting limits. Applicants for house-banked card room licenses will continue to come before the commission for initial approval. However, they will no longer come before the commission for a formal Phase II review. Staff does not have any regulatory concerns with card rooms opening with \$100 betting limits. This amendment streamlines agency processes.

Citation of Existing Rules Affected by this Order: Repealing WAC 230-40-803; and amending WAC 230-40-825 and 230-40-120.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 03-13-137 on June 18, 2003.

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 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

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

August 15, 2003

Susan Arland

Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-40-803

Phase II wager limits—
Restrictions—Procedures.

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AMENDATORY SECTION (Amending Order 403, filed 6/19/01, effective 7/20/01)

WAC 230-40-120 Limits on wagers in card games. Social and public card room licensees shall not allow wagering limits set by the commission to be exceeded in any card game. The number and value of wagers in card games are limited as follows:

Nonhouse-banked card games.

(1) Poker:

(a) There shall be no more than five betting rounds in any one game;

(b) The maximum number of wagers in any betting round shall be four, comprised of an initial wager plus three raises; and

(c) The maximum amount of a single wager shall not exceed twenty-five dollars.

(2) Games based on achieving a specific number of points - each point shall not exceed five cents in value.

(3) An ante, except for panguingue (pan), shall not be more than the maximum wager allowed for the first betting round for any game. The ante may, by house rule, be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round. An ante, by house rule, may be used as part of a player's wager.

(4) Panguingue (pan) - the maximum value of a chip for a payoff shall not exceed ten dollars. An ante will not exceed one chip. Doubling of conditions is prohibited. Players going out may collect not more than two chips from each participating player.

House-banked card games.

~~(5) ((Licensees authorized to conduct house-banked card games shall not allow a single wager to exceed twenty-five dollars;~~

~~(6))~~ Licensees authorized to conduct ~~((Phase II))~~ house-banked card games shall not allow a single wager to exceed one hundred dollars;

~~((7))~~ ~~(6)~~ A single wager may be made on each separate element of chance. In addition, for blackjack, an additional wager may be placed for doubling down or splitting pairs; and

~~((8))~~ ~~(7)~~ Bonus wagers for house-banked progressive jackpots shall not exceed one dollar. Bonus wagers with a predetermined prize amount based upon a separate element of chance within the same game shall not exceed the authorized maximum table limits as described in subsection~~((s))~~ ~~(5) ((and (6)))~~ of this section.

AMENDATORY SECTION (Amending Order 418, filed 4/16/03, effective 7/1/03)

WAC 230-40-825 Closed circuit television system—House-banking. Critical activities related to the operation of house-banked card games shall be closely monitored by the use of a closed circuit television (CCTV) system and recorded using analog and/or digital recording equipment. Each house-banked card room licensee shall install and maintain a CCTV system that meets the following requirements.

Camera coverage.

(1) The following areas are required to be viewed by the CCTV system:

(a) All gaming at each table including, but not limited to, the following:

- (i) Cards;
- (ii) Wagers;
- (iii) Chip tray;
- (iv) Drop box openings;
- (v) Card shoe;
- (vi) Shuffling devices; and
- (vii) Players and dealers.

(b) All activity in the pits.

(c) All activity in the cashier's cage including, but not limited to, the:

- (i) Outside entrance;
- (ii) Fill/credit dispenser;
- (iii) Customer transactions;
- (iv) Cash and chip drawers;
- (v) Vault/safe;
- (vi) Storage cabinets;
- (vii) Fill or credit transactions; and
- (viii) Floor.

(d) All activity in the count room including, but not limited to, the:

- (i) Count table;
- (ii) Floor;
- (iii) Counting devices;
- (iv) Trolley;
- (v) Drop boxes;
- (vi) Storage shelves/cabinets; and
- (vii) Entrance and exits.

(e) The movement of cash, gaming chips, and drop boxes.

(f) Entrances and exits to the card room.

Camera requirements.

(2) The CCTV system shall consist of light sensitive cameras including those with pan, tilt, and zoom (PTZ) capabilities having the ability to determine card and chip values and the configuration of wagers at each gaming table. Each video camera shall be capable of having its images displayed on a video monitor and recorded. Cameras shall be installed in a manner that will prevent them from being readily obstructed, tampered with, or disabled by patrons or employees. PTZ cameras shall be placed behind a smoked dome, one-way mirror or similar materials that conceal the camera from view. Installed cameras shall cover the areas required by this rule and shall include at a minimum:

(a) At least one fixed camera focused over each gaming table covering the entire layout;

(b) A sufficient number of fixed and/or PTZ cameras permanently programmed for the purposes of monitoring players and dealers at each gaming table. The PTZ cameras must be capable of viewing each patron and dealer at each gaming position at least once every five minutes;

(c) A sufficient number of PTZ cameras for the purpose of determining the configuration of wagers and card values at each gaming table. Any time a winning wager, including jackpot or bonus payouts in excess of five hundred dollars are

won, surveillance shall utilize this camera to verify the winning hand, the amount of the wager, and the player who won the prize. Each licensee shall have documented procedures in their internal controls stipulating the manner in which this will be carried out;

(d) A sufficient number of fixed and/or PTZ cameras in the cage(s);

(e) A sufficient number of fixed and/or PTZ cameras in the count room; and

(f) Any other location as deemed necessary by commission staff.

Video recording equipment requirements.

(3) Video recording equipment shall meet the following requirements:

(a) **Analog recording**, including audio recording where required, using a video cassette recorder, shall comply with the following requirements:

(i) Images shall be recorded at a rate of not less than twenty frames per second on standard VHS format; and

(ii) Recorded images shall accurately reflect the time and date of the video recording. If multiple time and date generators are used, they shall be synchronized to the same time and date; or

(b) **Digital recording**, including audio recording where required, using a hard drive storage system, shall comply with the following requirements:

(i) All images shall be recorded on a hard drive;

(ii) Recording systems shall be locked by the manufacturer to disable the erase and reformat functions to prevent access to system data files;

(iii) The system must provide uninterrupted recording of surveillance, this shall include during playback or copying;

(iv) Recording systems shall be capable of copying original images maintaining the original native format;

(v) Images shall be stored at a rate of not less than twenty-five images per second;

(vi) Resolution shall be 640 x 480 or higher;

(vii) Images shall be stored in a format that is readable by commission computer equipment;

(viii) Images shall be stored in a format that contains a method to verify the authenticity of the original recording and copies;

(ix) Recorded images shall include the accurate time and date the video was originally recorded;

(x) Previously recorded material may be overwritten after seven continuous days of gaming; and

(xi) Recording systems shall be equipped with an uninterruptible power source to allow a proper system shutdown.

Use of multiplexing and quad recording devices.

(4) Multiplexing/quad recording devices may only be used for external surveillance, movement of drop boxes between tables and the count room, and on entrances and exits: Provided, That split screen devices may be utilized for areas not required to have surveillance coverage.

Recording of illegal or suspicious activities.

(5) Illegal or suspicious activities within the monitored portion of the licensed premises shall be reported to commis-

sion staff, pursuant to WAC 230-40-815 (3)(a)(v) through (vi). Additionally, licensees shall ensure two copies of the entire recorded image sequence are made reflecting the questioned activity. One copy shall be provided to commission staff or other law enforcement representatives upon demand and the other copy maintained by the licensee for a period of thirty days.

Activities to be recorded.

(6) Video signals from all cameras shall be recorded when:

(a) Gaming tables are in operation;

(b) Drop boxes or chip trays are stored on the gaming tables;

(c) Drop boxes are being transported; or

(d) Drop box contents are being counted.

Video monitors.

(7) The CCTV system shall include a sufficient number of video monitors to simultaneously view multiple gaming tables, the cashier's cage, and count room activities.

Surveillance room.

(8) The licensee shall maintain one or more surveillance rooms with the following minimum requirements:

(a) The surveillance room shall have controlled access and be used solely by the employees of the surveillance department assigned to monitor activities: Provided, That this restriction does not apply to owners or approved supervisory or management personnel.

(b) Commission agents and law enforcement personnel shall be provided immediate access to the surveillance room upon request.

(c) Entrances to surveillance rooms shall not be readily observable from the gaming operation area.

(d) The licensee shall ensure a surveillance employee is present in the surveillance room and monitoring the activities of the operation, via the surveillance room equipment, any time the card room is open to conduct gaming and during the count process: Provided, That the licensee may allow the surveillance room to operate without staff for a period not to exceed thirty minutes per shift for the purpose of routine breaks.

~~((Surveillance staff not required.~~

~~(9) Licensees that are licensed for five or fewer tables and not operating under Phase II limits, shall not be required to maintain a staffed surveillance room.))~~

Surveillance activity log.

~~((10))~~ (9) The licensee shall maintain a record of all surveillance activities in the surveillance room. A surveillance log shall be maintained by surveillance personnel and shall include, at a minimum, the following:

(a) Date and time of surveillance;

(b) Person initiating surveillance;

(c) Time of termination of surveillance;

(d) Summary of the results of the surveillance; and

(e) A record of any equipment or camera malfunctions.

Employee sign-in log.

((11)) (10) A surveillance room sign-in log shall be maintained to document the time each surveillance employee monitors the card room. The surveillance sign-in log shall be available for inspection at any time by commission staff or law enforcement personnel.

Labeling and storing video and audio recordings.

((12)) (11) Video and audio recordings shall be marked to denote the activity recorded and retained for a period necessary to afford commission staff or law enforcement personnel reasonable access. The following minimum retention periods apply to recordings:

- (a) Recordings shall be retained for a minimum of seven complete gaming days;
- (b) Recordings of evidentiary value shall be maintained as requested by commission staff; and
- (c) Tapes documenting jackpot payouts over three thousand dollars shall be retained for at least thirty days; and
- (d) Commission staff may increase any of the retention requirements noted in this section by notifying the licensee.

Dispute resolution.

((13)) (12) In the event there is not sufficient clarity due to violations of the above requirements, the burden will be on the licensee to prove any action taken was warranted. Otherwise, all disputes shall be resolved in favor of the player: Provided, That a review by commission staff may be requested if the licensee feels circumstances warrant, for example, cheating has occurred.

WSR 03-17-066
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 18, 2003, 4:34 p.m.]

Date of Adoption: August 18, 2003.

Purpose: Correction of a typographical error by changing the reference listed in WAC 388-408-0005(2) from WAC 388-480-0010 to WAC 388-408-0010.

Citation of Existing Rules Affected by this Order: Amending WAC 388-408-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057.

Adopted under notice filed as WSR 03-13-090 on June 16, 2003.

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.

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

August 18, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-03-121, filed 1/22/01, effective 3/1/01)

WAC 388-408-0005 What is a cash assistance unit?

(1) For all sections of this chapter:

(a) "We" means the department of social and health services.

(b) "You" means a person that is applying for or getting benefits from the department.

(c) "Assistance unit" or "AU" is the group of people who live together and whose income or resources we count to decide your eligibility for benefits and the amount of benefits you get.

(2) For GA-U, we decide who is in the AU under WAC ((388-480-0010)) 388-408-0010.

(3) For TANF or SFA, we decide who is in the AU by taking the following steps:

(a) We start with who must be in the AU under WAC 388-408-0015;

(b) We add those you choose to have in the AU under WAC 388-408-0025; and

(c) We remove those who are not allowed in the AU under WAC 388-408-0020.

WSR 03-17-071
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 19, 2003, 9:46 a.m., effective November 1, 2003]

Date of Adoption: August 19, 2003.

Purpose: Chapter 296-45 WAC, Safety standards for electrical workers, the purpose of this project was to eliminate the confusion on the location of standby employees when required and length of a hot stick. The department also described what constitutes a multi-phase electrical feed, updated national consensus standards, and corrected references.

Amended Sections:**WAC 296-45-045 NESC applicable.**

- Updated a national consensus standard reference and address.

WAC 296-45-255 Protective equipment.

- Updated national consensus standard references.

WAC 296-45-325 Working on or near exposed energized parts.

((New York, NY 10017-2394)) Piscataway, NJ 08855-1331

- Corrected references and added a note for clarity, which specified a hot stick cannot be more than twelve feet in length. This allows the standby employee to be stationed at the lower lift controls when a worker is installing or removing a hot line clamp on a multi-phase system, provided the connection or disconnection does not pick up a load. Requires that the hot line clamp and connecting jumper be constructed so it cannot come in contact with any other energized part.

Citation of Existing Rules Affected by this Order: Amending WAC 296-45-045, 296-45-255, and 296-45-325.

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

Adopted under notice filed as WSR 03-10-067 on May 6, 2003.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-45-325 Protective equipment, update the publication date of the American standard testing materials (ASTM).

WAC 296-45-045 NESC Applicable, update the publication date of the National electrical safety code (NESC).

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 3, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Effective Date of Rule: November 1, 2003.

August 19, 2003

Paul Trause

Director

AMENDATORY SECTION (Amending WSR 99-09-080, filed 4/20/99, effective 8/1/99)

WAC 296-45-045 NESC applicable. (1) All electric utilities and entities operating transmission and distribution facilities within the state of Washington must design, construct, operate, and maintain their lines and equipment according to the requirements of the ((1997)) 2002 National Electrical Safety Code (NESC) (ANSI-C2), parts (1), (2), and (3).

Note: The department has copies of the NESC available for review at each service location across the state. To purchase a copy, write to:
The Institute of Electrical and Electronics Engineers, Inc. (IEEE, Inc.)
((345 East 47th Street)) 445 Hoes Lane

- (2) The employer must ensure that climbing space is provided on all poles and structures. The climbing space must meet the requirements of the ((1997)) 2002 National Electrical Safety Code (NESC) (ANSI-C2), except that Rule 236H does not apply.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

WAC 296-45-255 Protective equipment. (1) Rubber protective equipment ((shall)) must be in accordance with and tested as follows:

Item	Standard
Rubber Insulating Gloves	(ASTM) D 120-((87)) <u>2002</u>
Rubber Matting for Use Around Electrical Apparatus	(ASTM) D 178-((88)) <u>2001</u>
Rubber Insulating Blankets	(ASTM) D ((1046-88a)) <u>1048-1999</u>
Rubber Insulating Hoods	(ASTM) D ((1049-88)) <u>1049-2002</u>
Rubber Insulating Line Hose	(ASTM) D 1050-((90)) <u>1999</u>
Rubber Insulating Sleeves	(ASTM) D 1051-((87)) <u>2002</u>

- (2) No protective equipment or material other than rubber shall be used: Provided, That such other nonconductive equipment may be used if it provides equal or better (dielectric) electrical and mechanical protection than rubber protective equipment: Provided, That the employer obtain before placing in service, manufacturer's data or other data to demonstrate that such nonrubber protective equipment provided equal or better electrical and mechanical protection than approved rubber equipment.

- (3) Protective equipment shall not be used at voltages in excess of that for which the manufacturer has supplied data to the employer demonstrating that it is fit for such voltages.

- (4) No protective equipment shall be modified, altered, or used for purposes other than those for which it is designed unless and until the manufacturer has, in writing, agreed or suggested that there be such modification, alteration, or use.

- (5) Each rubber glove before it is used shall be inspected for defects and an approved air test performed. If, upon inspection, rubber gloves are either defective or appear to be defective, they shall not be used.

- (6) Before being placed in service, all rubber protective equipment shall be numbered and records kept for test purposes and assignment.

- (7) Rubber protective equipment shall not be used unless it has been dielectrically tested within six months and bears marking or identification of the date of the test or the expiration date.

- (8) Protector gloves must be worn over insulating gloves.

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Exception: Protector gloves need not be used with Class 0 gloves, under limited-use conditions, where small equipment and parts manipulation necessitate unusually high finger dexterity.

Note: Extra care is needed in the visual examination of the glove and in the avoidance of handling sharp objects.

(9) Rubber gloves when not in use shall be carried in an approved bag provided and designed for that purpose. It shall be provided by the employer and made available to the employees.

(10) Approved rubber gloves and carrying bag shall be assigned to each employee who works with, or is exposed to energized parts.

(11) Rubber protective equipment shall not be vulcanized or patched.

(12) A compartment or box shall be provided on each electric line truck, which box or compartment shall be used for storing rubber protective equipment. No equipment shall be stored in said compartment or box which can or could cause damage to the rubber equipment or goods placed in the compartment or box. Additionally, a separate container or compartment shall be provided for rubber blankets.

(13) Line hose shall not be doubled on themselves at any time. All blankets before storage must be wiped clean and rolled, not folded, before being placed in the container or box.

(14) Protective line equipment of material other than rubber shall be kept clean and visually inspected before each use.

(15) If protective line equipment of material other than rubber is found to be substantially defective or unsuitable for the purpose for which it is designed and intended, said protective line equipment shall not be used for personal protection of employees as may be required in Table 1 of this chapter. Said protective line equipment shall be marked defective but may be otherwise used unless the defect or damage to said protective line equipment creates additional safety hazards.

AMENDATORY SECTION (Amending WSR 99-09-080, filed 4/20/99, effective 8/1/99)

WAC 296-45-325 Working on or near exposed energized parts. This section applies to work on exposed live parts, or near enough to them, to expose the employee to any hazard they present.

(1) General. Only qualified employees may work on or with exposed energized lines or parts of equipment. Only qualified employees may work in areas containing unguarded, uninsulated energized lines or parts of equipment operating at 50 volts or more. Electric lines and equipment shall be considered and treated as energized unless the provisions of WAC 296-45-175 through 296-45-17565 or 296-45-335 have been followed.

(2) Except as provided in subsection (3) of this section, at least two qualified employees shall be present while the following types of work are being performed:

(a) Installation, removal, or repair of lines that are energized at more than 600 volts;

(b) Installation, removal, or repair of de-energized lines if an employee is exposed to contact with other parts energized at more than 600 volts;

(c) Installation, removal, or repair of equipment, such as transformers, capacitors, and regulators, if an employee is exposed to contact with parts energized at more than 600 volts;

(d) Work involving the use of mechanical equipment, other than insulated aerial lifts, near parts energized at more than 600 volts; and

(e) Other work that exposes an employee to electrical hazards greater than or equal to those posed by operations that are specifically listed in subsection (2)(a) through ~~((e))~~ (d) of this section.

Note 1: One employee ~~((shall))~~ will serve principally as a standby person who ~~((shall))~~ must be so located that they may physically reach the other employee in the event of an accident either with their hand or with a hot stick twelve feet or less in length. The stand-by ~~((shall))~~ will be so positioned as to be able to observe the other employee, their bodily movements, and verbally warn of any impending dangers. In no case when working in pairs ~~((shall))~~ will employees work simultaneously on energized wires or parts of different phases or polarity;

Note 2: When installing or removing a hot line clamp connection on a multiphase system, it is permissible for the second employee to stand by at the lower controls of the aerial lift provided the connection or disconnection does not interrupt or pick up load. The hot line clamp and connecting jumper must be constructed so it cannot make contact with any other energized parts. The work must not be performed above lines or apparatus energized at more than 600 V.

Note ((2)) 3: In cases of necessity the stand-by person may temporarily assist the other employee provided that they both work on wires or parts of the same phase or polarity. Both employees shall so position themselves so that the presence of the second person does not increase the hazard.

(3) The provisions of WAC 296-45-325(2) do not apply in the following circumstances:

(a) When re-fusing circuits or equipment with a hot stick.

(b) When operating switches by means of operating handle or switch sticks.

(c) When installing or removing a hot line clamp connection with an approved hot stick on a single-phase line or apparatus, providing that the connection or disconnection does not interrupt or pick up a load.

Note 1: The hot line clamp and connecting jumper must be constructed so that it cannot make contact with any other energized parts.

Note 2: On a multiphase feed this applies only when one single-phase line or apparatus is present on the load side.

(d) When installing or removing by hot stick simple load metering devices provided the connection does not interrupt or pickup load.

(e) Emergency repairs to the extent necessary to safeguard the general public.

(4) "Minimum approach distances." The employer shall ensure that no employee approaches or takes any conductive object closer to exposed energized parts than set forth in Table 1 through Table 4, unless:

The employee is insulated from the energized part (insulating gloves or insulating gloves and sleeves worn in accor-

dance with subsection ((7)) (6) of this section are considered insulation of the employee only with regard to the energized part upon which work is being performed); or

The energized part is insulated from the employee and from any other conductive object at a different potential.

Note 1: WAC 296-45-475 (5)(a) and 296-45-48525(1) contain requirements for the guarding and isolation of live parts. Parts of electric circuits that meet these two provisions are not considered as "exposed" unless a guard is removed or an employee enters the space intended to provide isolation from the live parts.

Note 2: When an employee is required to work on or within reach of any unprotected conductors that are or may become energized at more than 50 volts and less than 600 volts between phases, they shall take the following precautions:

- 1: They shall wear approved insulating gloves or insulating gloves and sleeves during the time they are working on such conductor, or
- 2: They shall cover, with approved devices, any adjacent unprotected conductor that could be touched by any part of their body, and use insulated tools.
- 3: Cables which are properly insulated for the voltages to which they are energized, shall be considered as an effective barrier to protect the employees and Table 1 need not apply.

(5) Initial determination.

(a) Before any work is performed, the location of energized lines and their condition, the location and condition of energized equipment, the condition of the poles, the location of circuits and equipment including power communication lines, CATV and fire alarm circuits, shall be determined as shall any other particular hazard of a particular work site.

(b) No work shall be performed on energized lines or parts until the voltage of such equipment and lines is determined.

(6) Type of insulation. If the employee is to be insulated from energized parts by the use of insulating gloves (under subsection (4)((a))) of this section), insulating sleeves shall also be used. However, insulating sleeves need not be used under the following conditions:

(a) If exposed energized parts on which work is not being performed are insulated from the employee; and

(b) If such insulation is placed from a position not exposing the employee's upper arm to contact with other energized parts.

(7) Working position. The employer shall ensure that each employee, to the extent that other safety-related conditions at the worksite permit, works in a position from which a slip or shock will not bring the employee's body into contact with exposed, uninsulated parts energized at a potential different from the employee.

(8) Making connections. The employer shall ensure that connections are made as follows:

(a) In connecting de-energized equipment or lines to an energized circuit by means of a conducting wire or device, an employee shall first attach the wire to the de-energized part;

(b) When disconnecting equipment or lines from an energized circuit by means of a conducting wire or device, an employee shall remove the source end first; and

(c) When lines or equipment are connected to or disconnected from energized circuits, loose conductors shall be kept away from exposed energized parts.

(9) Rubber gloves can only be used on 5,000 volts or less between phases.

(10) It shall not be permissible to consider one part of a high voltage switch or disconnect as de-energized for the purpose of doing work on it if the remainder of the switch or disconnect remains energized unless approved barriers are erected which will prevent employees who are doing the work on such equipment from coming in direct contact with the energized parts.

(11) Conductor support tools such as link sticks, strain carriers, and insulator cradles may be used: Provided, That the clear insulation is at least as long as the insulator string or the minimum distance specified in Table 1 for the operating voltage.

(12) Apparel.

(a) When work is performed within reaching distance of exposed energized parts of equipment, the employer shall ensure that each employee removes or renders nonconductive all exposed conductive articles, such as key or watch chains, rings, or wrist watches or bands, unless such articles do not increase the hazards associated with contact with the energized parts.

(b) The employer shall train each employee who is exposed to the hazards of flames or electric arcs in the hazards involved.

(c) The employer shall ensure that each employee who is exposed to the hazards of flames or electric arcs does not wear clothing that, when exposed to flames or electric arcs, could increase the extent of injury that would be sustained by the employee.

Note: Clothing made from the following types of fabrics, either alone or in blends, is prohibited by this subsection, unless the employer can demonstrate that the fabric has been treated to withstand the conditions that may be encountered or that the clothing is worn in such a manner as to eliminate the hazard involved: Acetate, nylon, polyester, rayon.

(d) Workers shall wear clothing appropriate to the season and the kind of work being performed. Shirts or jumpers must have full length sleeves that are rolled down. Protective hard hats and eye protection shall be worn when working on or near live parts or while climbing poles.

(13) Fuse handling. When fuses must be installed or removed with one or both terminals energized at more than 300 volts or with exposed parts energized at more than 50 volts, the employer shall ensure that tools or gloves rated for the voltage are used. When expulsion-type fuses are installed with one or both terminals energized at more than 300 volts, the employer shall ensure that each employee wears eye protection meeting the requirements of WAC 296-45-25505(1), uses a tool rated for the voltage, and is clear of the exhaust path of the fuse barrel.

(14) Covered (noninsulated) conductors. The requirements of this section which pertain to the hazards of exposed live parts also apply when work is performed in the proximity of covered (noninsulated) wires.

(15) Noncurrent-carrying metal parts. Noncurrent-carrying metal parts of equipment or devices, such as transformer cases and circuit breaker housings, shall be treated as energized at the highest voltage to which they are exposed, unless the employer inspects the installation and determines that these parts are grounded before work is performed.

(16) Opening circuits under load. Devices used to open circuits under load conditions shall be designed to interrupt the current involved.

Table 1: AC Live Work Minimum Approach Distance

Voltage in kilovolts phase to phase*	Distance to employee			
	Phase to ground		Phase to Phase	
	(m)	(ft-in)	(m)	(ft-in)
0 to 0.050	not specified		not specified	
0.051 to 0.300	avoid contact		avoid contact	
0.301 to 0.750	0.31	1-0	0.31	1-0
0.751 to 15	0.65	2-2	0.67	2-3
15.1 to 36.0	0.77	2-7	0.86	2-10
36.1 to 46.0	0.84	2-9	0.96	3-2
46.1 to 72.5	1.00**	3-3**	1.20	3-11
72.6 to 121	0.95**	3-2**	1.29	4-3
138 to 145	1.09	3-7	1.50	4-11
161 to 169	1.22	4-0	1.71	5-8
230 to 242	1.59	5-3	2.27	7-6
345 to 362	2.59	8-6	3.80	12-6
500 to 550	3.42	11-3	5.50	18-1
765 to 800	4.53	14-11	7.91	26-0

*For single-phase systems, use the highest voltage available.

For single-phase lines off three phase systems, use the phase-to-phase voltage of the system.

**The 46.1 to 72.5 kV phase-to-ground 3-3 distance contains a 1-3 electrical component and a 2-0 inadvertent movement component while the 72.6 to 121 kV phase-to-ground 3-2 distance contains a 2-2 electrical component and a 1-0 inadvertent movement component.

- Note 1: These distances take into consideration the highest switching surge an employee will be exposed to on any system with air as the insulating medium and the maximum voltages shown.
- Note 2: The clear live-line tool distance shall equal or exceed the values for the indicated voltage ranges.
- Note 3: See Appendix B to this section for information on how the minimum approach distances listed in the tables were derived.

WSR 03-17-093
PERMANENT RULES
DEPARTMENT OF HEALTH
 (Orthotics and Prosthetics)

[Filed August 20, 2003, 8:40 a.m., effective December 1, 2003]

Date of Adoption: July 25, 2003.

Purpose: The purpose of the continuing competency program is to maintain and enhance the professional competency of services provided by licensed orthotists and prosthetists so that the practitioner remains competent to provide safe and quality care. These rules set forth a continuing competency program for orthotists and prosthetists consisting of credible categories of continuing competency activities, establishing minimum requirements for each category and a three-year reporting cycle.

Statutory Authority for Adoption: RCW 18.200.050 (13).

Adopted under notice filed as WSR 03-12-088 on June 4, 2003.

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 4, 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 4, Amended 0, Repealed 0.

Effective Date of Rule: December 1, 2003.

Mary C. Selecky
Secretary

**ORTHOTICS AND PROSTHETICS CONTINUING
 COMPETENCY RULES**

NEW SECTION

WAC 246-850-130 Continuing competency scope and purpose. The purpose of continuing competency requirements is to maintain and enhance the professional competency of services provided by licensed orthotists and prosthetists. A successful continuing competency program focuses on all aspects of the practice to ensure that the practitioner is competent to provide safe and quality care to patients.

NEW SECTION

WAC 246-850-140 Continuing competency requirements for orthotists and prosthetists. (1) Beginning on January 1, 2004, all orthotists and prosthetists shall report continuing competency activities every three years. The reporting cycle begins at the first license renewal following initial licensing.

(2) Each licensed orthotist and prosthetist shall complete a professional enhancement plan describing the goals the licensee will develop to maintain proficiency in their practice. A professional enhancement plan must be completed in the first year of each three-year reporting period on forms provided by the secretary. The plan may focus on one specific area of practice or broader areas as determined by the individual's goals.

(3) All licensed orthotists and prosthetists must accumulate continuing competency hours as follows:

(a) Licensed orthotists must accumulate a minimum of forty-five continuing competency hours every three years in the area of orthotics.

(b) Licensed prosthetists must accumulate a minimum of forty-five continuing competency hours every three years in the area of prosthetics.

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(c) Individuals who are licensed as both an orthotist and as a prosthetist must accumulate a minimum of sixty continuing competency hours every three years.

(4) For individuals licensed in one discipline, a maximum of eighteen Category 2 continuing competency hours may be earned in any three-year reporting period.

(5) For individuals licensed in both disciplines, a maximum of twenty-four Category 2 continuing competency hours may be earned in any three-year reporting period.

(6) Refer to chapter 246-12 WAC, Part 7 for additional requirements.

NEW SECTION

WAC 246-850-150 Classification of categories of continuing competency. Continuing competency activities are distinguished between activities which are sponsored by those organizations listed in subsection (1) of this section and those which are generally independent and/or unsupervised listed in subsection (2) of this section.

(1) Category 1. Courses offered or approved by the following organizations are presumed to qualify as Category 1 continuing competency activities. Category 1 activities receive one continuing competency credit hour for every fifty minutes spent in a course or other activity. Licensees must maintain documentation of attendance at courses. Acceptable documentation includes certificates or receipts with an authorized signature, stamp or seal.

(a) American Board for Certification in Orthotics and Prosthetics, Inc.

(b) Board for Orthotist/Prosthetist Certification.

(c) American Academy of Orthotists and Prosthetists.

(d) American Orthotic and Prosthetic Association.

(e) International Association of Orthotics and Prosthetics.

(f) International Society of Prosthetics and Orthotics.

(g) Association of American Children's Orthotics and Prosthetics Clinics.

(h) Canadian Orthotic and Prosthetic Association.

(i) Any school or college of orthotics or prosthetics whose standards are deemed sufficient by the secretary under RCW 18.200.050(5).

(j) Relevant school or college courses from an institution accredited by a recognized regional accrediting body.

(k) Relevant courses or seminars offered by organizations or associations such as the American Society of Orthopedic Surgeons, the American Academy of Physical Medicine and Rehabilitation, the American College of Sports Medicine, the American Medical Association, the American Occupational Therapy Association, the American Physical Therapy Association, the American Osteopathic Association, and the American Podiatric Medical Association.

(l) Manufacturer courses approved/sponsored by organizations listed in subsections (1)(a) through (k) of this section.

(2) Category 2. Category 2 continuing competency activities are primarily independent and/or unsupervised and consistent with the goals specified in the individual licensee's professional enhancement plan. Licensees must maintain documentation of completion of Category 2 activities. The following activities, and designated continuing competency

credit hours, are considered Category 2 continuing competency:

(a) Relevant allied health seminars not identified as Category 1 activities. A credit hour is fifty minutes spent in a course or other activity. A maximum of five continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation includes certificates or receipts with an authorized signature, stamp or seal.

(b) Practice management. For the purpose of this section, practice management includes only those activities which are directly related to patient care. A credit hour is fifty minutes spent in this activity. A maximum of three continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation includes verification of completion of a course or seminar, or a written certification by the licensee describing the activity, the total time required to complete the activity and the date completed.

(c) Journal reading, including electronic publications that are consistent with the goals specified in the individual licensee's professional enhancement plan.

(i) Scientific journals with required examination: Each examination qualifies for two continuing competency credit hours. A maximum of six continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation is a certificate issued by the sponsoring organization or author showing successful completion of the examination.

(ii) Scientific journals not requiring an examination: Each report qualifies for one continuing competency credit hour. A maximum of three continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation for each article is a written report identifying the publication source, author, publication date, and a summary of at least five points from the article.

(iii) Business journals: Each report qualifies for one continuing competency credit hour. A maximum of three continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation for each article, is a written report identifying the publication source, author, publication date, and a summary of at least five points from the article.

(d) Instruction video, videodisc or internet courses: A credit hour is fifty minutes spent in this activity. A maximum of three continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation is a written report identifying the source of the instruction, the release date, and summarizing at least five points presented in the instruction.

(e) Manufacturer courses sponsored by organizations not identified as Category 1 activities: A credit hour is fifty minutes spent in this activity. A maximum of three continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation includes certificates or receipts with an authorized signature, stamp or seal.

(f) Participating in peer review: For the purpose of this section, peer review means either serving on a formal peer

review panel, committee or individual review of a sole provider, where the purpose of the review is to determine whether appropriate treatment was rendered, or whether the services rendered were within accepted standards. Each occurrence qualifies for three credit hours. A maximum of nine continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation is a certification signed by the facilitator of the peer review providing the date and the total time spent in the peer review process.

(g) Mentoring:

(i) Student mentoring. Each four-hour period spent in this activity qualifies for one credit hour. A maximum of three continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation is a copy of the mentoring contract or agreement and a certification from the student substantiating the date(s) engaged in mentoring and the total mentoring time.

(ii) Peer mentoring. Each four-hour period spent in this activity qualifies for one credit hour. A maximum of three continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation is a certification summarizing the subject of the mentoring, the date, and total mentoring time and signed by the licensee and at least one other practitioner participating in the mentoring activity.

(h) Documented group study: A credit hour is fifty minutes spent in this activity. A maximum of six continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation is a summary of the group study topics, the date, and total group study time, signed by the facilitator or other authorized personnel.

(i) Grand rounds: Each report qualifies for one credit hour. A maximum of three continuing competency credit hours may be earned in this activity in any three-year reporting period. Acceptable documentation is a report summarizing the cases presented, the location, date, and total time spent in the grand rounds activity and signed by the facilitator or other authorized personnel.

(j) Presentation or lecture to professional group: Each presentation or lecture qualifies for two credit hours. A maximum of six continuing competency credit hours may be earned in this activity in any three-year reporting period. Credit for subsequent presentations will only be considered if the licensee can demonstrate that substantial additional preparation was required. Acceptable documentation is a course outline and a certification from the licensee providing the location, date and total presentation time.

(k) Other activities that enhance or expand the practice may be submitted to the secretary for consideration.

secretary may require additional information as needed to assess the compliance audit.

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NEW SECTION

WAC 246-850-160 Auditing for compliance.

Licensed orthotists and prosthetists must comply with auditing and documentation requirements as required in chapter 246-12 WAC, Part 7. If audited, the licensee will be required to submit the professional enhancement plan and documentation of completion of the activities projected in the plan. The

WSR 03-16-046
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)

[Filed July 31, 2003, 8:11 a.m., effective August 1, 2003]

Date of Adoption: July 29, 2003.

Purpose: To comply with requirements of the 2003-2005 State Omnibus Operating Budget, effective July 1, 2003, the department is incorporating, into emergency rule the 25% reduction in adult dental benefits. The timeframe for implementing the budget does not allow the department to implement the necessary reductions through the regular rule-making process.

This order includes adoption of new WAC 388-535-1255, 388-535-1265, 388-535-1270, 388-535-1280, and 388-535-1290.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-535-1120; and amending WAC 388-535-1050, 388-535-1060, 388-535-1065, 388-535-1070, 388-535-1080, 388-535-1100, 388-535-1200, 388-535-1220, 388-535-1230, 388-535-1240, 388-535-1350, 388-535-1400, and 388-535-1450.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.530.

Other Authority: Section 209, Part II, chapter 25, Laws of 2003 1st sp.s., (the 2003-2005 State Omnibus Operating Budget, ESSB 5404).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: In adopting chapter 25, Laws of 2003 1st sp.s., the legislature reduced funding for adult dental benefits by 25%. These emergency rules are needed to carry out the legislature's directive while the department adopts permanent rules. Proposed rules have been filed and a public hearing is scheduled for August 26, 2003.

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 5, Amended 13, Repealed 1.

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 5, Amended 13, Repealed 1.

Effective Date of Rule: August 1, 2003.

July 29, 2003

Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1050 Dental-related definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 apply to this chapter. The medical assistance administration (MAA) also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT-3) and the American Medical Association's Physician's Current Procedural Terminology 2002 (CPT™ 2002). Where there is any discrepancy between the CDT-2 or CPT 2002 and this section, this section prevails. (CPT™ is a trademark of the American Medical Association.)

"**Access to baby and child dentistry (ABCD)**" is a program to increase access to dental services in targeted areas for Medicaid eligible infants, toddlers, and preschoolers up through the age of five. See WAC 388-535-1300 for specific information.

"**Adult**" for the general purposes of the medical assistance administration's (MAA) dental program, means a client twenty-one years of age or older (MAA's payment structure changes at age nineteen, which affects specific program services provided to adults or children).

"**American Dental Association (ADA)**" is a national organization for dental professionals and dental societies.

"**Anterior**" means teeth and tissue in the front of the mouth.

(1) "**(Lower) Mandibular anterior teeth**," - incisors and canines: permanent teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven; and primary teeth M, N, O, P, Q, and R.

(2) "**(Upper) Maxillary anterior teeth**," - incisors and canines: permanent teeth six, seven, eight, nine, ten, and eleven; and primary teeth C, D, E, F, G, and H.

"**Asymptomatic**" means having or producing no symptoms.

"**Base metal**" means dental alloy containing little or no precious metals.

"**Behavior management**" means managing the behavior of a developmentally disabled client ((during)) or a client age eighteen or younger to facilitate the delivery of dental treatment ((using)) with the assistance of one additional dental professional staff((, and professionally accepted restraints or sedative agent, to protect the client from self-injury)).

"**By report**" - a method of ((payment for a covered service, supply, or equipment which:

(1) Has no maximum allowable established by MAA,

(2) Is a variation on a standard practice, or

(3) Is rarely provided)) reimbursement in which MAA determines the amount it will pay for a service when the rate for that service is not included in MAA's published fee schedules. Upon request the provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"**Caries**" means tooth decay through the enamel or decay of the root surface.

"**Child**" for the general purposes of the medical assistance administration's (MAA) dental program, means a client twenty years of age or younger. (MAA's payment structure

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changes at age nineteen, which affects specific program services provided to children or adults.)

"Comprehensive oral evaluation" means a thorough evaluation and recording of ~~((the)) a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft ((tissues in and around the mouth, including the evaluation and recording of the client's dental and medical history and a general health assessment)) tissue anomalies, and oral cancer screening.~~

"Conscious sedation" is a drug-induced depression of consciousness during which clients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is usually maintained.

"Coronal" is the portion of a tooth that is covered by enamel, and is separated from the root or roots by a slightly constricted region, known as the cemento-enamel junction.

"Coronal polishing" is a procedure limited to the removal of plaque and stain from exposed tooth surfaces.

"Crown ~~((artificial))~~" means a restoration covering or replacing the major part, or the whole of, the clinical crown of a tooth.

"Current dental terminology (CDT), third edition (CDT-3)," a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

"Current procedural terminology (CPT) 2002 (CPT 2002)," means a description of medical procedures and is available from the American Medical Association of Chicago, Illinois.

"Decay" See "caries".

"Deep sedation" is a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

"Dental general anesthesia" ~~((means the use of agents to induce loss of feeling or sensation, a controlled state of unconsciousness, in order to allow dental services to be rendered to the client.))~~ See **"general anesthesia."**

"Dentures" ~~((are a set of artificial teeth, including overdentures. See WAC 388-535-1240 for specific information))~~ means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

"Endodontic" means ~~((a))~~ disease and injuries to the pulp requiring root canal ~~((treatment))~~ therapy and related follow-up.

"EPSDT" means the department's early and periodic screening, diagnosis, and treatment program for clients twenty years of age and younger as described in chapter 388-534 WAC.

"Extraction" See **"simple extraction"** and **"surgical extraction."**

"Flowable composite resin" is a light-cured, low viscosity composite resin that is used in cervical lesions and other small, low stress bearing restorations.

"Fluoride varnish or gel" means a substance containing dental fluoride, applied to teeth.

"General anesthesia" is a drug-induced loss of consciousness during which clients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"High noble metal" means a dental alloy containing at least sixty percent pure gold.

"Limited oral evaluation" means an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

"Limited visual oral assessment" means a screening of the hard and soft tissues in the mouth.

"Major bone grafts" means a transplant of solid bone tissue(s).

"Medically necessary" see WAC 388-500-0005.

"Minor bone grafts" means a transplant of nonsolid bone tissue(s), such as powdered bone, buttons, or plugs.

"Noble metal" means a dental alloy containing at least twenty-five percent but less than sixty percent pure gold.

"Oral evaluation" ~~((is a comprehensive oral health and developmental history; an assessment of physical and oral health development and nutritional status; and health education, including anticipatory guidance))~~ See **"Comprehensive oral evaluation"**.

~~((**"Oral health assessment or screening"** means a screening of the hard and soft tissues in the mouth.))~~

"Oral hygiene instruction" means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

~~((**"Oral health status"** refers to the client's risk or susceptibility to dental disease at the time an oral evaluation or assessment is done by a dental practitioner. This risk is designated as low, moderate or high based on the presence or absence of certain indicators.))~~

"Oral prophylaxis" means the preventive dental procedure of scaling and polishing which includes removal of calculus, soft deposits, plaque, and stains.

"Partials" or **"partial dentures"** means a removable appliance replacing ~~((one or more))~~ missing teeth in one ~~((jaw))~~ arch, and receiving its support and retention from both the underlying tissues and some or all of the remaining teeth. ~~((See WAC 388-535-1240 for specific information.))~~

"Periodic oral evaluation" means an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation. This includes a periodontal charting at least once per year.

"Periodontal maintenance" means a procedure for clients who have previously been treated for periodontal disease and starts after completion of active (surgical or nonsurgical)

periodontal therapy. It includes removal of the supra and subgingival microbial flora and calculus.

"Periodontal scaling and root planing" means instrumentation of the crown and root surfaces of the teeth to remove plaque, calculus, microbial flora, and bacterial toxins.

"Posterior" means teeth and tissue towards the back of the mouth. ((Specifically, only these permanent teeth:))

(1) "Mandibular posterior teeth" ((one, two, three, four, five, twelve, thirteen, fourteen, fifteen, sixteen;)) = molars and premolars: permanent teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two; and primary teeth K, L, S, and T.

(2) "Maxillary posterior teeth" - molars and premolars: permanent teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen; and primary teeth A, B, I, and J.

"Proximal" means the surface of the tooth near or next to the adjacent tooth.

"Reline" means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

"Root canal" is a portion of the pulp cavity inside the root of a tooth and the chamber within the root of the tooth that contains the pulp.

"Root canal therapy" is the treatment of disease and injuries of the pulp and associated periradicular conditions.

"Root planing" ((is)) means a procedure ((designed)) to remove microbial flora, bacterial toxins, calculus, and diseased cementum or dentin ((from the teeth's)) on the root surfaces and in the pockets.

"Scaling" ((means the removal of calculus material from the exposed tooth surfaces and that part of the teeth covered by the marginal gingiva)) is a procedure to remove plaque, calculus, and stain deposits from tooth surfaces.

"Sealant" is a material applied to teeth to prevent dental caries.

"Simple extraction" means routine removal of tooth structure.

"Standard of care" means what reasonable and prudent practitioners would do in the same or similar circumstances.

"Surgical extraction" means removal of tooth structure with cutting of gingiva and bone, including soft tissue extractions, partial boney extractions, and complete boney extractions.

"Symptomatic" means having symptoms (e.g., pain, swelling, and infection).

"Temporomandibular joint dysfunction (TMJ/TMD)" means an abnormal functioning of the temporomandibular joint or other areas secondary to the dysfunction.

"Therapeutic pulpotomy" means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

"Usual and customary" means the fee that the provider usually charges non-Medicaid customers for the same service or item. This is the maximum amount that the provider may bill MAA.

"Wisdom teeth" means teeth one, sixteen, seventeen, and thirty-two.

"Xerostomia" means a dryness of the mouth.

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.

~~((COVERAGE))~~

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1060 Clients who are eligible for dental-related services. ((1) Subject to the specific limitations described in WAC 388-535-1080, Covered services;)) The following clients who receive services under the ((following)) medical assistance programs listed in this section are eligible for ((the)) covered dental-related services ((described in this chapter)), subject to the restrictions and specific limitations described in this chapter and other applicable WAC:

(1) Children eligible for the:

(a) Categorically needy program (CN or CNP);

(b) Children's health insurance program (CNP-CHIP);

and

(c) ((Qualified Medicare beneficiary (CNP-QMB);

(d)) Limited casualty program((f)) = medically needy program (LCP-MNP)((;

(e) Medically needy program - qualified Medicare beneficiary (MNP-QMB);

(f) Children's health (the state funded only program) through September 30, 2002 only; and

(g) Pregnant undocumented aliens.

(2) Clients who receive services under the following state funded only programs are covered as described in WAC 388-535-1120:

(a) General assistance unemployable (GAU); and

(b) Alcohol and drug abuse treatment and support act (ADATSA).

(3) Clients who receive services under the medically indigent (MI) program are covered for only those medical conditions that are acute and emergent and treated in a hospital).

(2) Adults eligible for the:

(a) Categorically needy program (CN or CNP); and

(b) Limited casualty program - medically needy program (LCP-MNP).

(3) Clients eligible for medical care services under the following state-funded only programs are eligible only for the limited dental-related services described in WAC 388-535-1065:

(a) General assistance - Unemployable (GA-U); and

(b) General assistance - Alcohol and Drug Abuse Treatment and Support Act (ADATSA) (GA-W).

(4) Clients who are enrolled in a managed care plan are eligible for medical assistance administration (MAA)-covered dental services that are not covered by their plan, under fee-for-service, subject to the provisions of chapter 388-535 WAC and other applicable WAC.

NEW SECTION

WAC 388-535-1065 Coverage limits for dental-related services provided under state-only funded pro-

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grams. (1) Clients who receive medical care services under the following state-funded only programs receive only the limited coverage described in subsection (2) of this section:

- (a) General assistance unemployable (GA-U); and
- (b) Alcohol and Drug Abuse Treatment and Support Act (ADATSA) (GA-W).

(2) The medical assistance administration (MAA) covers the dental-related services described and limited in this chapter for clients eligible for GA-U or GA-W only when those services are provided as part of a medical treatment for apical abscess verified by clinical examination, and treated by:

- (a) Open and drain palliative treatment;
- (b) Tooth extraction; or
- (c) Root canal therapy for permanent anterior teeth only.

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1070 Dental-related services provider information. (1) The following providers are eligible to enroll with the medical assistance administration (MAA) to furnish and bill for dental-related services provided to eligible clients:

(a) Persons currently licensed by the state of Washington to:

- (i) Practice dentistry or specialties of dentistry;
- (ii) ~~((Practice medicine and osteopathy for: (A) Oral surgery procedures; or (B) Providing fluoride varnish under EPSDT; (iii)))~~ Practice as dental hygienists;
- ~~((iv) Provide denture services;~~
- ~~(v) Practice anesthesia; or (vi) Provide))~~
- (iii) Practice as denturists;
- (iv) Practice anesthesia by:

(A) Providing conscious sedation((, when certified by the department of health and when providing that service in dental offices for dental treatments)) with parenteral or multiple oral agents, deep sedation, or general anesthesia as an anesthesiologist or dental anesthesiologist;

(B) Providing conscious sedation with parenteral or multiple oral agents, deep sedation, or general anesthesia as a Certified Registered Nurse Anesthetist (CRNA), when the performing dentist has the appropriate conscious sedation permit or general anesthesia permit from the department of health (DOH); or

(C) Providing conscious sedation with parenteral or multiple oral agents, deep sedation, or general anesthesia as a dentist, when the dentist has a conscious sedation permit or general anesthesia permit from DOH.

(v) Practice medicine and osteopathy for:

- (A) Oral surgery procedures; or
- (B) Providing fluoride varnish under EPSDT.

(b) Facilities that are:

- (i) Hospitals currently licensed by the department of health;
- (ii) Federally-qualified health centers (FQHCs);
- (iii) Medicare-certified ambulatory surgical centers (ASCs);
- (iv) Medicare-certified rural health clinics (RHCs); or

(v) Community health centers.

(c) Participating local health jurisdictions(~~(; and)~~).

(d) Border area or out-of-state providers of dental-related services who are qualified in their states to provide these services.

(2) Subject to the restrictions and limitations in this section and other applicable WAC, MAA pays licensed providers participating in the MAA dental program for only those services that are within their scope of practice.

(3) See WAC 388-502-0020 for provider documentation and record retention requirements. MAA ~~((may require))~~ requires additional dental documentation under specific sections in this chapter and as required by chapter 246-817 WAC.

(4) See WAC 388-502-0100 and 388-502-0150 for provider billing and payment requirements.

(5) See WAC 388-502-0160 for regulations concerning charges billed to clients.

(6) See WAC 388-502-0230 for provider review and appeal.

(7) See WAC 388-502-0240 for provider audits and the audit appeal process.

CHILDREN'S DENTAL-RELATED SERVICES

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1080 Covered dental-related services—Children. (1) The medical assistance administration (MAA) pays for covered dental and dental-related services for children listed in this section only when they are:

- (a) Within the scope of an eligible client's medical care program;
- (b) Medically necessary; and
- (c) Within accepted dental or medical practice standards and are:

(i) Consistent with a diagnosis of dental disease or condition; and

(ii) Reasonable in amount and duration of care, treatment, or service.

(2) MAA covers the following dental-related services for eligible children:

(a) Medically necessary services for the identification of dental problems or the prevention of dental disease, subject to the limitations of this chapter(~~(;)~~).

(b) Oral health evaluations and assessments, which must be documented in the client's file according to WAC 388-502-0020, as follows:

(i) MAA allows a comprehensive oral evaluation once per provider as an initial examination, and it must include:

- (A) An oral health and developmental history;
- (B) An assessment of physical and oral health status; and
- (C) Health education, including anticipatory guidance.

(ii) MAA allows a periodic oral ~~((evaluations))~~ evaluation once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(iii) MAA allows a limited oral ~~((evaluations))~~ evaluation only when the provider performing the limited oral eval-

uation is not providing pre-scheduled dental services for the client. The limited oral evaluation must be:

(A) To provide limited or emergent services for a specific dental problem; or

(B) To provide an evaluation for a referral.

(c) Radiographs (~~((X-rays) for children and adults,))~~ as follows:

(i) Intraoral (complete series, including bitewings), allowed ~~((-))~~ once in a three-year period;

(ii) Bitewings ~~((-))~~, total of four allowed every twelve months; and

(iii) Panoramic, for oral surgical purposes only, as follows:

(A) Not allowed with an intraoral complete series; and

(B) Allowed once in a three-year period, except for pre-operative or postoperative surgery cases. Preoperative ~~((X-rays))~~ radiographs must be provided within fourteen days prior to surgery, and postoperative ~~((X-rays))~~ radiographs must be provided within thirty days after surgery.

(d) Fluoride treatment (either gel or varnish, but not both) as follows for clients through age eighteen (additional applications require prior authorization):

(i) ~~((For children through age eighteen,))~~ Topical application of ~~((:~~

~~((A)))~~ fluoride gel, once every six months; or

~~((B)))~~ (ii) Topical application of fluoride varnish, up to three times in a twelve-month period.

~~((iii) For adults age nineteen through sixty-four, topical application of fluoride gel or varnish for xerostomia only; this requires prior authorization.))~~

(iii) See subsection (3) of this section for clients of the division of developmental disabilities ~~((:~~

~~((iii) For adults age sixty-five and older, topical application of fluoride gel or varnish for only:~~

~~((A) Rampant root surface decay; or~~

~~((B) Xerostomia)).~~

(e) Sealants ~~((for children only)),~~ once per tooth in a three-year period:

(i) The occlusal surfaces of:

(A) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one only; and

(B) Primary teeth A, B, I, J, K, L, S, and T only.

(ii) The lingual pits of teeth seven and ten ~~((:))~~ ~~((and))~~

(iii) Teeth with no decay.

(f) Prophylaxis treatment, which is allowed:

(i) ~~((Once every twelve months for adults age nineteen and older, including nursing facility clients;~~

~~((ii)))~~ Once every six months for children age eight through eighteen;

~~((iii)))~~ (ii) Only as a component of oral hygiene instruction for children through age seven; and

~~((iv)))~~ (iii) For clients of the division of developmental disabilities, see subsection (3) of this section.

(g) Space maintainers, for children through age eighteen only, as follows:

(i) Fixed (unilateral type), one per quadrant;

(ii) Fixed (bilateral type), one per arch; and

(iii) Recommendation of space maintained, once per quadrant or arch.

(h) Amalgam or composite restorations, as follows:

(i) Once in a two-year period; and

(ii) For the same surface of the same tooth.

(i) Crowns as described in WAC 388-535-1230, Crowns ~~((:))~~.

(j) Restoration of teeth and maintenance of dental health, subject to limitations of WAC 388-535-1100 and as follows:

(i) Multiple restorations involving the proximal and occlusal surfaces of the same tooth are considered to be a multi surface restoration, and are reimbursed as such; and

(ii) Proximal restorations that do not involve the incisal angle in the anterior tooth are considered to be a two-surface restoration, and are reimbursed as such ~~((:))~~.

(k) Endodontic (root canal) therapies for permanent teeth except for wisdom teeth ~~((:))~~.

(l) Therapeutic pulpotomies, once per tooth, on primary teeth only ~~((:))~~.

(m) Pulp vitality test, as follows:

(i) Once per day (not per tooth);

(ii) For diagnosis of emergency conditions only; and

(iii) Not allowed when performed on the same date as any other procedure, with the exception of an emergency examination or palliative treatment.

(n) Periodontal scaling and root planing as follows:

(i) ~~((For clients age nineteen and older only.))~~ See subsection (3) of this section for clients of the division of developmental disabilities;

(ii) Only when the client has radiographic ~~((X-ray))~~ evidence of periodontal disease. There must be supporting documentation, including complete periodontal charting and a definitive periodontal diagnosis;

(iii) Once per quadrant in a twenty-four month period; and

(iv) Not allowed when performed on the same date of service as ~~((adult))~~ prophylaxis, gingivectomy, or gingivoplasty.

(o) Subject to WAC 388-535-1240 and as follows, complete and partial dentures, and necessary modifications, repairs, rebasing, relining, and adjustments of dentures (includes partial payment in certain situations for laboratory and professional fees for dentures and partials as specified in WAC 388-535-1240(5)). MAA covers:

(i) One set of dentures per client in a ten-year period, with the exception of replacement dentures which may be allowed as specified in WAC 388-535-1240(4); and

(ii) Partial dentures as specified in WAC 388-535-1240(2), once every five years.

(p) Complex orthodontic treatment for severe handicapping dental needs as specified in chapter 388-535A WAC, Orthodontic services ~~((:))~~.

(q) Occlusal orthotic appliance for temporomandibular joint disorder (TMJ/TMD) or bruxism, one in a two-year period ~~((:))~~.

(r) Medically necessary oral surgery when coordinated with the client's managed care plan (if any) ~~((:))~~.

(s) Dental services or treatment necessary for the relief of pain and infections, including removal of symptomatic wisdom teeth. MAA does not cover routine removal of asymptomatic wisdom teeth without justifiable medical indications ~~((:))~~.

(t) Behavior management for ~~((children))~~ clients through age eighteen only, whose documented behavior requires the assistance of more than one additional dental professional staff to protect the client from self-injury during treatment. See subsection (3) of this section for clients of the division of developmental disabilities.

(u) Nitrous oxide for children through age eighteen only, when medically necessary. See subsection (3) of this section for clients of the division of developmental disabilities.

(v) Professional visits, as follows:

(i) Bedside call at a nursing facility or residence, at the physician's request ~~((--))~~, allowed one per day (see subsection (7) of this section).

(ii) Hospital call, including emergency care ~~((--))~~, allowed one per day.

(w) Emergency palliative treatment, as follows:

(i) Allowed only when no other definitive treatment is performed on the same day; and

(ii) Documentation must include tooth designation and a brief description of the service.

(3) For clients of the division of developmental disabilities, MAA allows services as follows:

(a) Fluoride application, either varnish or gel, but not both ~~((--))~~, allowed three times per calendar year;

(b) Periodontal scaling and root planing ~~((--))~~, allowed once every six months;

(c) Prophylaxis ~~((--))~~, allowed three times per calendar year;

(d) Nitrous oxide;

(e) Behavior management that requires the assistance of more than one additional dental professional staff and the use of advanced behavior techniques; and

(f) Panoramic radiographs, with documentation that behavior management is required.

(4) MAA covers medically necessary services provided in a hospital under the direction of a physician or dentist for:

(a) The care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization; and

(b) Short stays when the procedure cannot be done in an office setting. See WAC 388-550-1100(6), Hospital coverage.

(5) MAA covers anesthesia for medically necessary services as follows:

(a) The anesthesia must be administered by:

(i) An oral surgeon;

(ii) An anesthesiologist;

(iii) A dental anesthesiologist;

(iv) A Certified Registered Nurse Anesthetist (CRNA);

or

~~((iv))~~ (v) A general dentist who has a current conscious sedation permit from the department of health (DOH).

(b) MAA ~~((reimburses))~~ pays for anesthesia services ~~((per))~~ according to WAC 388-535-1350.

(6) For clients residing in nursing facilities or group homes:

(a) Dental services must be requested by the client or a referral for services made by the attending physician, the director of nursing or the nursing facility supervisor, or the client's legal guardian;

(b) Mass screening for dental services of clients residing in a facility is not permitted; and

(c) Nursing facilities must provide dental-related necessary services ~~((per))~~ according to WAC 388-97-012, Nursing facility care.

(7) A request to exceed stated limitations or other restrictions on covered services is called a limitation extension (LE), which is a form of prior authorization. MAA evaluates and approves requests for LE for dental-related services when medically necessary, under the provisions of WAC 388-501-0165.

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 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1100 Dental-related services not covered—Children. (1) The medical assistance administration (MAA) does not cover children's dental-related services described in subsection (2) of this section unless the services are:

(a) Required by a physician as a result of an EPSDT screen as provided under chapter 388-534 WAC; or

(b) Included in an MAA waived program ~~((; or~~
~~((Part of one of the Medicare programs for qualified Medicare beneficiaries (QMB) except for QMB only, which is not covered))~~).

(2) MAA does not cover the following services for children:

(a) Any service specifically excluded by statute;

(b) More costly services when less costly, equally effective services as determined by the department are available;

(c) Services, procedures, treatment, devices, drugs, or application of associated services which the department or the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)) consider investigative or experimental on the date the services were provided;

(d) Routine fluoride treatments (gel or varnish) ~~((for adults))~~ for clients age eighteen through twenty, unless the clients are:

(i) Clients of the division of developmental disabilities; or

(ii) Diagnosed with xerostomia, in which case the provider must request prior authorization ~~((; or~~

~~((iii) High risk adults sixty five and over. High risk means the client has at least one of the following:~~

~~((A) Rampant root surface decay; or~~

~~((B) Xerostomia)).~~

(e) Crowns, as follows:

(i) For wisdom and peg teeth;

(ii) Laboratory processed crowns for posterior teeth;

(iii) Temporary crowns, including stainless steel crowns placed as temporary crowns; and

(iv) Post and core for crowns.

(f) Root canal services for primary or wisdom teeth;

(g) Root planing ~~((for children))~~, unless they are clients of the division of developmental disabilities;

(h) Bridges;

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- (i) Transitional or treatment dentures;
- (j) Teeth implants, including follow up and maintenance;
- (k) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness;

(l) Porcelain margin extensions (also known as crown lengthening), due to receding gums;

(m) Extraction of asymptomatic teeth;

(n) Minor bone grafts;

(o) Nonemergent oral surgery (~~for adults~~) performed in an inpatient hospital setting, except for the following:

(i) For clients of the division of developmental disabilities, or for children eighteen years of age or younger whose surgeries cannot be performed in an office setting. This requires written prior authorization for the inpatient hospitalization; or

(ii) As provided in WAC 388-535-1080(4).

(p) Dental supplies such as toothbrushes (manual, automatic, or electric), toothpaste, floss, or whiteners;

(q) Dentist's time writing prescriptions or calling in prescriptions or prescription refills to a pharmacy;

(r) Educational supplies;

(s) Missed or canceled appointments;

(t) Nonmedical equipment, supplies, personal or comfort items or services;

(u) Provider mileage or travel costs;

(v) Service charges or delinquent payment fees;

(w) Supplies used in conjunction with an office visit;

(x) Take-home drugs;

(y) Teeth whitening; or

(z) Restorations for anterior or posterior wear with no evidence of decay.

(3) MAA evaluates a request for any service that is listed as noncovered under the provisions of WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1200 Dental-related services requiring prior authorization—Children. The following services for children require prior authorization:

(1) Nonemergent inpatient hospital dental admissions as described under WAC 388-535-1100 (2)(o) and 388-550-1100(1);

(2) Crowns as described in WAC 388-535-1230;

(3) Dentures as described in WAC 388-535-1240; and

(4) (~~Routine fluoride treatment (gel or varnish) for adults age nineteen through sixty four who are diagnosed with xerostomia; and~~

(5)) Selected procedures identified by the medical assistance administration (MAA) and published in its current dental billing instructions (~~which are available from MAA in Olympia, Washington~~).

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1220 Obtaining prior authorization for dental-related services—Children. When the medical assistance administration (MAA) authorizes a dental-related service for children, that authorization indicates only that the

specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.

(1) MAA requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611. The request must include at least all of the following:

(a) Physiological description of the disease, injury, impairment, or other ailment;

(b) (~~(X-ray(s))~~) Radiographs;

(c) Treatment plan;

(d) Study model, if requested; and

(e) Photographs, if requested.

(2) MAA authorizes requested services that meet the criteria in WAC 388-535-1080.

(3) MAA denies a request for dental services when the requested service is:

(a) Not medically necessary; or

(b) A service, procedure, treatment, device, drug, or application of associated service which the department or the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)) consider investigative or experimental on the date the service is provided.

(4) MAA may require second opinions and/or consultations before authorizing any procedure.

(5) Authorization is valid only if the client is eligible for covered services on the date of service.

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1230 Crowns for children. (1) Subject to the limitations in WAC 388-535-1100, the medical assistance administration (MAA) covers the following crowns for children without prior authorization:

(a) Stainless steel. MAA considers these as permanent crowns, and does not cover them as temporary crowns; and

(b) Nonlaboratory resin for primary anterior teeth.

(2) MAA does not cover laboratory-processed crowns for posterior teeth.

(3) MAA requires prior authorization for the following crowns, which are limited to single restorations for permanent anterior (~~(upper and lower) teeth~~) maxillary and mandibular teeth seven, eight, nine, ten, eleven, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven:

(a) Resin (laboratory);

(b) Porcelain with ceramic (~~(substrate)~~) substrate;

(c) Porcelain fused to high noble metal;

(d) Porcelain fused to predominantly base metal; and

(e) Porcelain fused to noble metal.

(4) Criteria for covered crowns as described in subsections (1) and (3) of this section:

(a) Crowns may be authorized when the crown is medically necessary.

(b) Coverage is based upon a supportable five-year prognosis that the client will retain the tooth if the tooth is crowned. The provider must submit the following client information:

- (i) The overall condition of the mouth;
- (ii) Oral health status;
- (iii) Client maintenance of good oral health status;
- (iv) Arch integrity; and
- (v) Prognosis of remaining teeth (that is, no more involved than periodontal case type II).

(c) Anterior teeth must show traumatic or pathological destruction to loss of at least one incisal angle.

(5) The laboratory processed crowns described in subsection (3) are covered:

(a) Only when a lesser service will not suffice because of extensive coronal destruction, and treatment is beyond intracoronar restoration;

(b) Only once per permanent tooth in a five-year period;

(c) For endodontically treated anterior teeth only after satisfactory completion of the root canal therapy. Post-endodontic treatment (~~(X-rays)~~) radiographs must be submitted for prior authorization of these crowns.

(6) MAA reimburses only for covered crowns as described in subsections (1) and (3) of this section. The reimbursement is full payment; all of the following are included in the reimbursement and must not be billed separately:

- (a) Tooth and soft tissue preparation;
- (b) Amalgam or acrylic build-ups;
- (c) Temporary restoration;
- (d) Cement bases;
- (e) Insulating bases;
- (f) Impressions;
- (g) Seating; and
- (h) Local anesthesia.

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1240 Dentures, (~~(partials)~~) partial dentures, and overdentures for children. (1) Subject to the limitations in WAC 388-535-1100, the medical assistance administration (MAA) covers for children only one (~~(set of dentures)~~) maxillary denture and one mandibular denture per client in a ten-year period, and considers that set to be the first set. The exception to this is replacement dentures, which may be allowed as specified in subsection (4) of this section. Except as described in subsection (5) of this section, MAA does not require prior authorization for the first set of dentures. The first set of dentures may be any of the following:

(a) An immediate set (constructed prior to removal of the teeth);

(b) An initial set (constructed after the client has been without teeth for a period of time); or

(c) A final set (constructed after the client has received immediate or initial dentures).

(2) The first (~~(set of dentures)~~) maxillary denture and the first mandibular denture must be of the structure and quality to be considered the primary set. MAA does not cover transitional or treatment dentures.

(3) MAA covers partials (resin and cast base) once every five years, except as noted in subsection (4) of this section, and subject to the following limits:

(a) Cast base partials only when replacing three or more teeth per arch excluding wisdom teeth; and

(b) No partials are covered when they replace wisdom teeth only.

(4) Except as stated below, MAA does not require prior authorization for replacement dentures or partials when:

(a) The client's existing dentures or partials meet any of the following conditions. MAA requires prior authorization for replacement dentures or partials requested within one year of the seat date. The dentures or partials must be:

(i) No longer serviceable and cannot be relined or rebased; or

(ii) Damaged beyond repair.

(b) The client's health would be adversely affected by absence of dentures;

(c) The client has been able to wear dentures successfully;

(d) The dentures or partials meet the criteria of medically necessary; and

(e) The dentures are replacing a lost (~~(dentures)~~) maxillary denture and/or a mandibular denture, and the replacement set does not exceed MAA's limit of one set in a ten-year period as stated in subsection (1) of this section.

(5) MAA does not reimburse separately for laboratory and professional fees for dentures and partials. However, MAA may partially reimburse for these fees when the provider obtains prior authorization and the client:

(a) Dies;

(b) Moves from the state;

(c) Cannot be located; or

(d) Does not participate in completing the dentures.

(6) The provider must document in the client's medical or dental record:

(a) Justification for replacement of dentures;

(b) Charts of missing teeth, for replacement of partials; and

(c) Receipts for laboratory costs or laboratory records and notes.

(7) For billing purposes, the provider may use the impression date as the service date for dentures, including partials, only when:

(a) Related dental services including laboratory services were provided during a client's eligible period; and

(b) The client is not eligible at the time of delivery.

(8) For billing purposes, the provider may use the delivery date as the service date when the client is using the first set of dentures in lieu of noncovered transitional or treatment dentures after oral surgery.

(9) MAA includes the cost of relines and adjustments that are done within six months of the seat date in the reimbursement for the dentures.

(10) MAA covers one rebase in a five-year period; the dentures must be at least three years old.

(11) The requirements in this section also apply to overdentures.

ADULTS' DENTAL-RELATED SERVICES**NEW SECTION**

WAC 388-535-1255 Covered dental-related services—Adults. (1) The medical assistance administration (MAA) pays for covered dental and dental-related services for adults listed in this section only when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary; and

(c) Within accepted dental or medical practice standards and are:

(i) Consistent with a diagnosis of dental disease or condition; and

(ii) Reasonable in amount and duration of care, treatment, or service.

(2) MAA covers the following dental-related services for eligible adults, subject to the restrictions and limitations in this section and other applicable WAC:

(a) Medically necessary services for the identification of dental problems or the prevention of dental disease, subject to the limitations of this chapter.

(b) A comprehensive oral evaluation once per provider as an initial examination, that must include:

(i) A complete dental and medical history and a general health assessment;

(ii) A complete thorough evaluation of extra-oral and intra-oral hard and soft tissue; and

(iii) The evaluation and recording of dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

(c) Periodic oral evaluations once every six months to include a periodontal screening/charting at least once per year. There must be six months between the comprehensive oral evaluation and the first periodic oral evaluation.

(d) Limited oral evaluations only when the provider is not providing pre-scheduled dental services for the client. The limited oral evaluation must be:

(i) To provide limited or emergent services for a specific dental problem; and/or

(ii) To provide an evaluation for a referral.

(e) Limited visual oral assessment.

(f) Radiographs, as follows:

(i) Intraoral, complete series (including bitewings), allowed only once in a three-year period;

(ii) Panoramic film, allowed only once in a three-year period and only for oral surgical purposes (see subsection (3) of this section for clients of the division of developmental disabilities);

(iii) Periapical radiographs as needed (periapical radiographs and bitewings taken on the same date of service cannot exceed MAA's fee for a complete intraoral series); and

(iv) Bitewings, up to four allowed every twelve months.

(g) Fluoride treatment as follows (see subsection (3) of this section for clients of the division of developmental disabilities):

(i) Topical application of fluoride gel or fluoride varnish for adults age nineteen through sixty-four with xerostomia (requires prior authorization); and

(ii) Topical application of fluoride gel or fluoride varnish for adults age sixty-five and older for:

(A) Rampant root surface decay; or

(B) Xerostomia.

(h) Oral prophylaxis treatment, which is:

(i) Allowed once every twelve months for adults age nineteen and older, including nursing facility clients, and for clients of the division of developmental disabilities as provided in subsection (3) of this section; and

(ii) Not allowed when oral prophylaxis treatment is performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy, or gingivoplasty.

(i) Restoration of teeth and maintenance of dental health:

(i) Subject to the limitations in WAC 388-535-1265.

(ii) Amalgam and composite restorations are allowed once in a two year period for the same surface of the same tooth per client, per provider, subject to the following:

(A) Multiple restorations involving the proximal and occlusal surfaces of the same tooth are considered to be a single multisurface restoration. Payment is limited to that of a single multisurface restoration.

(B) Proximal restorations that do not involve the incisal angle in the anterior teeth are considered to be a two-surface restoration. Payment is limited to a two-surface restoration.

(C) Proximal restorations that involve the incisal angle are considered to be either a three- or four-surface restoration. All surfaces must be listed on the claim for payment.

(D) MAA pays for a maximum of six surfaces for a posterior tooth, which is allowed once per client, per provider, in a two-year period.

(E) MAA pays for a maximum of six surfaces for an anterior tooth, which is allowed once per client, per provider, in a two-year period.

(F) MAA pays for flowable composites as a restoration only when used with a cavity preparation for a carious lesion that penetrates through the enamel:

(I) As a small Class I (occlusal) restoration; or

(II) As a Class V (buccal or lingual) restoration.

(j) Endodontic (root canal) therapy for permanent anterior teeth only.

(k) Periodontal scaling and root planing, which is:

(i) Allowed for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Allowed for clients age nineteen and older;

(iii) Allowed only when the client has radiographic evidence of periodontal disease. There must be supporting documentation in the client's record, including complete periodontal charting and a definitive periodontal diagnosis;

(iv) Allowed once per quadrant in a twenty-four month period;

(v) Allowed only when the client's clinical condition meets existing periodontal guidelines; and

(vi) Not allowed when performed on the same date of service as oral prophylaxis, periodontal maintenance, gingivectomy or gingivoplasty.

(l) Periodontal maintenance, which is:

(i) Allowed for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Allowed for clients age nineteen and older;

(iii) Allowed only when the client has been previously treated for periodontal disease, including surgical or nonsurgical periodontal therapy;

(iv) Allowed when supporting documentation in the client's record includes a definitive periodontal diagnosis and complete periodontal charting;

(v) Allowed when the client's clinical condition meets existing periodontal guidelines;

(vi) Allowed when periodontal maintenance starts at least six months after completion of periodontal scaling and root planing or surgical treatment and paid only at six month intervals; and

(vii) Not allowed when the periodontal maintenance is performed on the same date of service as oral prophylaxis or periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(m) Dentures and partial dentures according to WAC 388-535-1290.

(n) Simple extractions (includes local anesthesia, suturing, and routine postoperative care);

(o) Surgical extractions, subject to the following:

(i) Includes local anesthesia, suturing, and routine postoperative care; and

(ii) Requires documentation in the client's file to support soft tissue, partially bony, or completely bony extractions.

(p) Medically necessary oral surgery when coordinated with the client's managed care plan (if any);

(q) Palliative (emergency) treatment of dental pain, minor procedures, which is:

(i) Allowed once per client, per day.

(ii) Allowed only when performed on a different date from:

(A) Any other definitive treatment necessary to diagnose the emergency condition; and

(B) Root canal therapy.

(iii) Allowed only when a description of the service is included in the client's record.

(3) For clients of the division of developmental disabilities, MAA allows services as follows:

(a) Fluoride application, either varnish or gel, three times per calendar year;

(b) Prophylaxis or periodontal maintenance, three times per calendar year;

(c) Periodontal scaling and root planing, once every six months;

(d) Nitrous oxide;

(e) Behavior management that requires the assistance of one additional dental professional staff. A description of behavior management must be documented in the client's record;

(f) Panoramic radiographs; and

(g) General anesthesia or conscious sedation with parenteral or multiple oral agents when medically necessary for providing treatment.

(4) MAA covers dental services that are medically necessary and provided in a hospital under the direction of a physician or dentist for:

(a) The care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization;

(b) Short stays when the procedure cannot be done in an office setting. See WAC 388-550-1100(6); and

(c) A hospital call, including emergency care, allowed one per day, per client, per provider.

(5) MAA covers general anesthesia and conscious sedation with parenteral or multiple oral agents for medically necessary dental services as follows:

(a) For treatment of clients who are eligible under the division of developmental disabilities (see subsection (3) of this section).

(b) For oral surgery procedures.

(c) When justification for administering the general anesthesia instead of a lesser type of sedation is clearly documented in the client's record.

(d) When the anesthesia is administered by:

(i) An oral surgeon;

(ii) An anesthesiologist;

(iii) A dental anesthesiologist;

(iv) A Certified Registered Nurse Anesthetist (CRNA), if the performing dentist has a current conscious sedation permit or a current general anesthesia permit from the department of health (DOH); or

(v) A dentist who has a current conscious sedation permit or a current general anesthesia permit from DOH.

(e) When the provider meets the prevailing standard of care and at least the requirements in WAC 246-817-760, Conscious sedations with parenteral or multiple oral agents and WAC 246-817-770, General anesthesia.

(6) MAA pays for anesthesia services according to WAC 388-535-1350.

(7) MAA covers dental-related services for clients residing in nursing facilities or group homes as follows:

(a) Dental services must be requested by the client or the client's surrogate decision maker as defined in WAC 388-97-055, or a referral for services must be made by the attending physician, the director of nursing, or the nursing facility supervisor;

(b) Nursing facilities must provide dental-related necessary services according to WAC 388-97-012, Nursing facility care; and

(c) A bedside call at a nursing facility or group home is allowed once per day (not per client and not per facility), per provider. The bedside call must be requested by the client's physician.

NEW SECTION

WAC 388-535-1265 Dental-related services not covered—Adults. (1) The medical assistance administration (MAA) does not cover dental-related services for adults described in subsection (2) of this section unless the services are included in an MAA waived program.

(2) MAA does not cover the following dental-related services for adults, unless otherwise specified:

(a) Any service specifically excluded by statute.

(b) More costly services when less costly, equally effective services as determined by the department are available.

(c) Services, procedures, treatment, devices, drugs, or application of associated services which the department or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the services were provided.

(d) Coronal polishing.

(e) Fluoride treatments (gel or varnish) for adults, unless the clients are:

(i) Clients of the division of developmental disabilities (see WAC 388-535-1255(3));

(ii) Diagnosed with xerostomia, in which case the provider must request prior authorization; or

(iii) High-risk adults sixty-five and older. High-risk means the client has at least one of the following:

(A) Rampant root surface decay; or

(B) Xerostomia.

(f) Restorations for wear on any surface of any tooth without evidence of decay through the enamel or on the root surface.

(g) Flowable composites for interproximal or incisal restorations.

(h) Nitrous oxide, except as provided in WAC 388-535-1255(3) for clients of the division of developmental disabilities.

(i) Behavior management, except as provided in WAC 388-535-1255(3) for clients of the division of developmental disabilities.

(j) Occlusal adjustments.

(k) Any permanent crowns, temporary crowns, or crown post and cores.

(l) Bridges, including abutment teeth and pontics.

(m) Root canal services for primary teeth.

(n) Root canal services for permanent teeth other than teeth six, seven, eight, nine, ten, eleven, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven.

(o) Pulpotomy services for permanent teeth.

(p) Transitional dentures.

(q) Overdentures.

(r) Replacements for:

(i) Immediate maxillary or mandibular dentures;

(ii) Maxillary or mandibular partial dentures (resin);

(iii) Complete maxillary or mandibular dentures in excess of one replacement in a ten-year period; or

(iv) Cast metal framework maxillary or mandibular partial dentures in excess of one replacement in a ten-year period.

(s) Rebasings, or adjustments of complete dentures and partial dentures.

(t) Tooth implants, including insertion, post-insertion, maintenance, and implant removal.

(u) Periodontal bone grafts or oral soft tissue grafts.

(v) Gingivectomy, gingivoplasty, or frenectomy/frenoplasty and other periodontal surgical procedures.

(w) Crown lengthening procedures.

(x) Orthotic appliances, including but not limited to, night guards, temporomandibular joint dysfunction (TMJ/TMD) appliances, and all other mouth guards.

(y) Any treatment of TMJ/TMD.

(z) Extraction of:

(i) Asymptomatic teeth;

(ii) Asymptomatic wisdom teeth; and

(iii) Surgical extraction of anterior teeth seven, eight, nine, ten, twenty-three, twenty-four, twenty-five, or twenty-six, which are considered simple extractions and paid as such.

(aa) Alveoloplasty, alveolotomy or tori/exostosis removal.

(bb) Debridement of granuloma/cyst associated with tooth extraction.

(cc) Cosmetic treatment or surgery, except as prior authorized by the department for medically necessary reconstructive surgery to correct defects attributable to an accident, birth defect, or illness.

(dd) Nonemergent oral surgery for adults performed in an inpatient hospital setting, except:

(i) Nonemergent oral surgery is covered in an inpatient hospital setting for clients of the division of developmental disabilities when written prior authorization is obtained for the inpatient hospitalization; or

(ii) As provided in WAC 388-535-1080(4).

(ee) Dental supplies such as toothbrushes (manual, automatic, or electric), toothpaste, floss, or whiteners.

(ff) Dentist's time writing and calling in prescriptions or prescription refills.

(gg) Educational supplies.

(hh) Missed or canceled appointments.

(ii) Nonmedical equipment, supplies, personal or comfort items or services.

(jj) Provider mileage or travel costs.

(kk) Service charges or delinquent payment fees.

(ll) Supplies used in conjunction with an office visit.

(mm) Take-home drugs.

(nn) Teeth whitening.

NEW SECTION

WAC 388-535-1270 Dental-related services requiring prior authorization—Adults. The following dental-related services for adults require prior authorization:

(1) Nonemergent inpatient hospital dental admissions as described under WAC 388-535-1100 (2)(o) and 388-550-1100(1);

(2) Dentures and partial dentures as described in WAC 388-550-1290;

(3) Fluoride treatment (gel or varnish) for clients age nineteen through sixty-four who are diagnosed with xerostomia; and

(4) Selected procedures identified by the medical assistance administration (MAA) and published in its current dental billing instructions.

(5) See WAC 388-535-1280 for obtaining prior authorization for dental-related services for adults.

NEW SECTION

WAC 388-535-1280 Obtaining prior authorization for dental-related services—Adults. When the medical assistance administration (MAA) authorizes dental-related services for adults, that authorization indicates only that the specific service is medically necessary; it is not a guarantee

of payment. The client must be eligible for covered services at the time those services are provided.

(1) MAA requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611. The request must include at least all of the following:

- (a) The client's patient identification code (PIC);
- (b) The client's name and address;
- (c) The provider's name and address;
- (d) The provider's telephone and fax number (including area code);
- (e) The provider's MAA-assigned seven-digit provider number;
- (f) The physiological description of the disease, injury, impairment, or other ailment;
- (g) The most recent and relevant radiographs that are identified with client name, provider name, and date the radiograph was taken;
- (h) The treatment plan;
- (i) Periodontal charting and diagnosis;
- (j) Study model, if requested; and
- (k) Photographs, if requested.

(2) MAA considers requests for services according to WAC 388-535-1270.

(3) MAA denies a request for dental services when the requested service is:

- (a) Not listed in chapter 388-535 WAC as a covered service;
- (b) Not medically necessary;
- (c) A service, procedure, treatment, device, drug, or application of associated service that the department or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the service is provided; or
- (d) Covered under another department program or by an agency outside the department.

(4) MAA may require second opinions and/or consultations before authorizing any procedure.

(5) Authorization is valid only if the client is eligible for covered services on the date of service.

NEW SECTION

WAC 388-535-1290 Dentures and partial dentures for adults. (1) The medical assistance administration (MAA) requires prior authorization for the dentures, replacement dentures, partial dentures, and replacement partial dentures that are described in this section.

(2) Subject to the criteria in this section and other applicable WAC, MAA covers the following for eligible adults:

- (a) Dentures, subject to the following limitations:
 - (i) Only one complete maxillary denture and one complete mandibular denture allowed per client in a ten-year period, when constructed after the client has been without teeth for a period of time; or

- (ii) Only one immediate maxillary denture and one immediate mandibular denture allowed per client, per lifetime, and only when constructed prior to the removal of the client's teeth.

(b) Replacement dentures, subject to the following limitations:

- (i) Only one replacement of a complete maxillary denture and one replacement of a complete mandibular denture allowed per client in a ten-year period; and

- (ii) Allowed only when the applicable criteria in subsection (5) of this section are met.

(c) Partial dentures, subject to the following limitations:

- (i) Only one maxillary partial denture (resin) and one mandibular partial denture (resin) to replace one, two, or three missing anterior teeth per arch, allowed per client in a ten-year period; or

- (ii) Only one maxillary partial denture (cast metal framework) and one mandibular partial denture (cast metal framework) allowed per client in a ten-year period to replace:

- (A) Any combination of at least six anterior and posterior missing teeth per arch, excluding wisdom teeth; or

- (B) At least four anterior missing teeth per arch.

(d) Replacement partial dentures, subject to the following limitations:

- (i) Only one replacement of a maxillary partial denture (cast metal framework) and a mandibular partial denture (cast metal framework) allowed per client in a ten-year period; and

- (ii) Allowed only when the applicable criteria in subsection (5) of this section are met.

(3) Dentures must be of an acceptable structure and quality to meet the standard of care.

(4) MAA covers complete denture and partial denture relines only once in a five-year period.

(5) In addition to the prior authorization requirement and other limitations in this section, all replacement dentures and partial dentures are allowed once in a ten-year period and must:

- (a) Replace a complete maxillary denture, a complete mandibular denture, a maxillary partial denture (cast metal framework) or a mandibular partial denture (cast metal framework) (see subsection (2) of this section);

- (b) Replace dentures or partial dentures that are damaged beyond repair or are no longer serviceable and are unable to be relined;

- (c) Replace dentures or partial dentures that a client has been able to wear successfully; and

- (d) Be medically necessary, as defined in WAC 388-500-0005.

(6) For billing purposes, a provider must:

- (a) Use the delivery date as the service date for the dentures and partial dentures; and

- (b) Use the impression date as the service date for dentures and partial dentures only when:

- (i) Related dental services, including laboratory services, were provided during a client's eligible period; and

- (ii) The client is not eligible at the time of delivery; or

- (iii) The client does not return to obtain the dentures or partial dentures.

(7) A provider must retain in a client's record:

- (a) Written laboratory prescriptions;

- (b) Receipts for laboratory fees;
- (c) Charts of missing teeth for partial dentures; and
- (d) Documentation that justifies the placement or replacement of dentures or partial dentures.

(8) MAA does not pay separately for laboratory and professional fees for dentures and partial dentures. However, MAA may partially reimburse for these fees when the provider obtains prior authorization and the client:

- (a) Dies;
- (b) Moves from the state;
- (c) Cannot be located; or
- (d) Does not participate in completing the dentures.

(9) MAA does not pay separately for relines that are done within six months of the seat date. These procedures are included in the reimbursement for the dentures and partial dentures.

PAYMENT

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1350 Payment methodology for dental-related services. The medical assistance administration (MAA) uses the description of dental services described in the American Dental Association's Current Dental Terminology, third edition (CDT-3), and the American Medical Association's Physician's Current (~~Procedure~~) Procedural Terminology 2002 (CPT 2002). MAA uses state-assigned procedure codes to identify services not fully described in the CDT-3 or CPT 2002 descriptions. (CPT is a trademark of the American Medical Association.)

(1) For covered dental-related services provided to eligible clients, MAA pays dentists and (~~related~~) other eligible providers on a fee-for-service or contractual basis, subject to the exceptions and restrictions listed under WAC 388-535-1100 and 388-535-1400.

(2) MAA sets maximum allowable fees for dental services provided to children as follows:

(a) MAA's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) MAA consults with representatives of the provider community to identify program areas and concerns that need to be addressed.

(c) MAA consults with dental experts and public health professionals to identify and prioritize dental services and procedures for their effectiveness in improving or promoting children's dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for children's dental services are allocated to specific procedures based on the priorities identified in (c) of this subsection and considerations of access to services.

(e) Larger percentage increases may be given to those procedures which have been identified as most effective in improving or promoting children's dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the department's evaluation of utilization trends, effectiveness of interventions, and access issues.

(3) MAA reimburses dental general anesthesia services for eligible clients on the basis of base anesthesia units plus time. Payment for dental general anesthesia is calculated as follows:

(a) Dental procedures are assigned an anesthesia base unit of five;

(b) Fifteen minutes constitute one unit of time. When a dental procedure requiring dental general anesthesia results in multiple time units and a remainder (less than fifteen minutes), the remainder or fraction is considered as one time unit;

(c) Time units are added to the anesthesia base unit of five and multiplied by the anesthesia conversion factor;

(d) The formula for determining payment for dental general anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(4) When billing for anesthesia, the provider must show the actual beginning and ending times on the claim. Anesthesia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safely placed under post-operative supervision).

(5) MAA (~~may pay anesthesiologists~~) pays eligible providers listed in WAC 388-535-1070 for conscious sedation with parenteral and multiple oral agents, or for general (~~dental~~) anesthesia (~~provided in dental offices. Only anesthesiologists specially contracted by the department are paid an additional fee for that service~~) when the provider meets the criteria in this chapter and other applicable WAC.

(6) Dental hygienists who have a contract with MAA are paid at the same rate as dentists who have a contract with MAA, for services allowed under The Dental Hygienist Practice Act (~~, which is available from the department of health, Olympia, Washington~~).

(7) Licensed denturists who have a contract with MAA are paid at the same rate as dentists who have a contract with MAA, for providing dentures and partials.

(8) MAA makes fee schedule changes whenever the legislature authorizes vendor rate increases or decreases.

(9) MAA may adjust maximum allowable fees to reflect changes in services or procedure code descriptions.

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 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1400 Payment for dental-related services. (1) The medical assistance administration (MAA) considers that a provider who furnishes covered dental services to an eligible client has accepted MAA's rules and fees.

(2) Participating providers must bill MAA their usual and customary fees.

(3) Payment for dental services is based on MAA's schedule of maximum allowances. Fees listed in the MAA fee schedule are the maximum allowable fees.

(4) MAA pays the provider the lesser of the billed charge (usual and customary fee) or MAA's maximum allowable fee.

(5) MAA pays "by report" on a case-by-case basis, for a covered service that does not have a set fee.

(6) Participating providers must bill a client according to WAC 388-502-0160, unless otherwise specified in this chapter.

(7) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The exception to this is dentures and ~~((partials as stated))~~ partial dentures as described in WAC 388-535-1240 and 388-535-1290.

~~((7) The client is responsible for payment of any dental treatment or service received during any period of ineligibility with the exception described in WAC 388-535-1240(4) even if the treatment was started when the client was eligible.))~~

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1450 Payment for denture laboratory services. The medical assistance administration (MAA) does not directly reimburse denture laboratories. MAA's reimbursement for complete dentures, ((partials)) immediate dentures, partial dentures, and overdentures includes laboratory fees. The provider is responsible to pay a denture laboratory for services furnished ~~((to))~~ at the request the provider.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-535-1120	Coverage limits for dental-related services provided under state-only funded programs.
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**WSR 03-17-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 03-184—Filed August 6, 2003, 3:45 p.m., effective August 9, 2003, 12:01 a.m.]

Date of Adoption: August 6, 2003.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000S; and amending WAC 220-52-030.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Willapa Spits fishery provides an important supply of crab bait to the local Dungeness

crab industry and depending on size and condition of the clams, a fresh market restaurant trade. Biotoxin levels currently fall below the regulatory threshold. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: August 9, 2003, 12:01 a.m.

August 6, 2003

Evan Jacoby
for Jeff Koenigs
Director

NEW SECTION

WAC 220-52-03000S Commercial razor clams. Notwithstanding the provisions of WAC 220-52-030, effective immediately until further notice, it is unlawful to dig for or possess razor clams taken for commercial purposes from Washington waters except as provided for in this section:

(1) Effective 12:01 a.m. August 9, 2003 through September 14, 2003, it is lawful to dig for and possess razor clams for commercial purposes in those waters and beaches of Razor Clam Area 1 lying south of the Willapa Bay Ship Channel, west of Ellen Sands and north of the tip of Leadbetter Point.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 15, 2003:

WAC 220-52-03000S	Commercial razor clams.
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**WSR 03-17-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 03-183—Filed August 6, 2003, 3:46 p.m.]

Date of Adoption: August 6, 2003.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100B; and amending WAC 220-52-051.

EMERGENCY

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to meet allocation, conservation and management agreements. Openings and closures are consistent with these elements. Commercial shrimp quotas have been taken in the areas closed by this rule. A weekly landing limit for spot shrimp is necessary to reduce risk of overharvest, maintain an orderly fishery, provide the ability to enforce state/tribal plan requirements, and to ensure conservation. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: Immediately.

August 6, 2003

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-52-05100C Puget Sound shrimp pot and beam trawl fishery—Seasons. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Waters of Shrimp Management Areas 1B and 1C, and Crustacean Management Regions 2, 3 and 6, are open to the harvest of all shrimp species, except as provided below:

(i) Effective 9:00 p.m. August 10, 2003, until further notice, Shrimp Management Areas 1B and 1C are closed to the harvest of spot shrimp.

(ii) Waters of Shrimp Management Area 2-W (west) outside of the Port Townsend Shrimp District, and Marine Fish-Shellfish Catch and Reporting Areas 23A-S (south), 23D and 26D are closed to the harvest of spot shrimp.

(iii) Waters of Marine Fish-Shellfish Catch and Reporting Areas 23A-W (west) and 23A-E (east) are closed to the harvest of all shrimp species.

(iv) Waters of Shrimp Management Area 2E are closed to the harvest of non-spot shrimp.

(v) Closures provided for in WAC 220-52-051 (2)(c) remain in effect.

(b) Effective immediately, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Regions 1B, 1C, 2, 4 and 6, except, any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Areas 23C or 29 (or any combination of these two areas), shall not be subject to the weekly spot shrimp trip limit for that week. The spot shrimp trip limit accounting week is Monday through Sunday. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks.

(c) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(d) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(c) above.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts:

Open immediately until further notice.

(b) Shrimp Management Area 1B: open immediately, until further notice, except as provided below:

(i) Marine Fish-Shellfish Management and Catch Reporting Area 20B closed immediately until further notice.

(c) Marine Fish-Shellfish Management and Catch Reporting Area 20A: open immediately until further notice.

(3) It is unlawful to set or pull shrimp using shellfish pot or shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100B

Puget Sound shrimp pot and beam trawl fishery—Seasons. (03-172)

WSR 03-17-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-185—Filed August 6, 2003, 3:48 p.m., effective August 11, 2003]

Date of Adoption: August 6, 2003.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100B; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: August 11, 2003.

August 6, 2003

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-52-07100C Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Effective August 11, 2003 until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 on August 11, 12 and 18, 2003, from 6:00 a.m. to one-half hour before official sunset of each day.

(2) Effective August 11, 2003 until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea

Cucumber District 2 on August 11, 2003, from 6:00 a.m. to one-half hour before official sunset of each day.

(3) Effective August 11, 2003 until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 on Mondays and Tuesdays of each week, from 6:00 a.m. to one-half hour before official sunset of each day.

(4) It is unlawful to dive for any purpose from a commercially-licensed fishing vessel, except vessels actively fishing geoducks under contract with the Washington Department of Natural Resources, on August 9, 10, 16, 17, 23, 24, 30 and 31, 2003.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 11, 2003:

WAC 220-52-07100B Sea cucumbers. (03-152)

WSR 03-17-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-189—Filed August 8, 2003, 4:25 p.m.]

Date of Adoption: August 8, 2003.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100C; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to meet allocation, conservation and management agreements. Openings and closures are consistent with these elements. Commercial shrimp quotas have been taken in the areas closed by this rule. A weekly landing limit for spot shrimp is necessary to reduce risk of overharvest, maintain an orderly fishery, provide the ability to enforce state/tribal plan requirements, and to ensure conservation. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: Immediately.

August 8, 2003

J. P. Koenings

Director

by Larry Peck

[NEW SECTION]

WAC 220-52-05100D Puget Sound shrimp pot and beam trawl fishery—Seasons. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Waters of Shrimp Management Areas 1B and 1C, and Crustacean Management Regions 2, 3 and 6, are open to the harvest of all shrimp species, except as provided below:

(i) Effective 9:00 p.m. August 10, 2003, until further notice, Shrimp Management Areas 1B and 1C are closed to the harvest of spot shrimp.

(ii) Waters of Shrimp Management Area 2-W (west) outside of the Port Townsend Shrimp District, and Marine Fish-Shellfish Catch and Reporting Areas 23A-S (south), 23D and 26D are closed to the harvest of spot shrimp.

(iii) Waters of Marine Fish-Shellfish Catch and Reporting Areas 23A-W (west), 23A-E (east), and 23B are closed to the harvest of all shrimp species.

(iv) Waters of Shrimp Management Area 2E are closed to the harvest of non-spot shrimp.

(v) Closures provided for in WAC 220-52-051 (2)(c) remain in effect.

(b) Effective immediately, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Regions 1B, 1C, 2, 4 and 6, except, any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Areas 23C or 29 (or any combination of these two areas), shall not be subject to the weekly spot shrimp trip limit for that week. The spot shrimp trip limit accounting week is Monday through Sunday. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks.

(c) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include number of pots being moved to a new area and the Marine Fish-Shellfish Manage-

ment and Catch Reporting Area that the pots are being moved to.

(d) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(c) above.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts:

Open immediately until further notice.

(b) Shrimp Management Area 1B: open immediately, until further notice, except as provided below:

(i) Marine Fish-Shellfish Management and Catch Reporting Area 20B closed immediately until further notice.

(c) Marine Fish-Shellfish Management and Catch Reporting Area 20A: open immediately until further notice.

(3) It is unlawful to set or pull shrimp using shellfish pot or shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100C Puget Sound shrimp pot and beam trawl fishery—Seasons. (03-183)

**WSR 03-17-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 03-190—Filed August 12, 2003, 3:59 p.m.]

Date of Adoption: August 12, 2003.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100D; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to meet allocation, conservation and management agreements. Openings and closures are consistent with these elements. Commercial shrimp quotas have been taken in the areas closed by this rule. A weekly landing limit for spot shrimp is

necessary to reduce risk of overharvest, maintain an orderly fishery, provide the ability to enforce state/tribal plan requirements, and to ensure conservation. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: Immediately.

August 12, 2003

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-52-05100E Puget Sound shrimp pot and beam trawl fishery—Seasons. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Waters of Shrimp Management Areas 1B and 1C, and Crustacean Management Regions 2, 3 and 6, are open to the harvest of all shrimp species, except as provided below:

(i) Effective immediately, until further notice, Shrimp Management Areas 1B and 1C are closed to the harvest of spot shrimp.

(ii) Waters of Shrimp Management Area 2-W (west) outside of the Port Townsend Shrimp District, and Marine Fish-Shellfish Catch and Reporting Areas 23A-S (south), 23D, 26D, 23B, and 25A are closed to the harvest of spot shrimp.

(iii) Waters of Marine Fish-Shellfish Catch and Reporting Areas 23A-W (west), and 23A-E (east) are closed to the harvest of all shrimp species.

(iv) Waters of Shrimp Management Area 2E are closed to the harvest of non-spot shrimp.

(v) Closures provided for in WAC 220-52-051 (2)(c) remain in effect.

(b) Effective immediately, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Regions 1B, 1C, 2, 4 and 6, except, any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Areas 23C or 29 (or any combination of these two areas), shall not be subject

to the weekly spot shrimp trip limit for that week. The spot shrimp trip limit accounting week is Monday through Sunday. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks.

(c) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(d) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(c) above.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts: Open immediately until further notice.

(b) Shrimp Management Area 1B: open immediately, until further notice, except as provided below:

(i) Marine Fish-Shellfish Management and Catch Reporting Area 20B closed immediately until further notice.

(c) Marine Fish-Shellfish Management and Catch Reporting Area 20A: open immediately until further notice.

(3) It is unlawful to set or pull shrimp using shellfish pot or shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100D Puget Sound shrimp pot and beam trawl fishery—Seasons. (03-189)

WSR 03-17-018

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 03-191—Filed August 12, 2003, 3:59 p.m.]

Date of Adoption: August 12, 2003.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-03000S.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Washington Department of Health has announced that clams taken from the Willapa Spits have been tested and found to exceed the action level for domoic acid. Because these clams are unsafe for human consumption any clams taken from the Willapa Spits will not be available for sale and will be wasted.

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 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.

Effective Date of Rule: Immediately.

August 12, 2003

J. P. Koenings

Director

by Larry Peck

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-52-03000S Commercial razor clams (03-187)

WSR 03-17-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-192—Filed August 13, 2003, 8:20 a.m., effective August 13, 2003, 7:00 p.m.]

Date of Adoption: August 12, 2003.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000G; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Adds one day to the early August commercial fishery. Catches are projected to be within the guidelines of the allocation agreement. Sets the late August fishery consistent with the allocation agreement. The select areas are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. All fisheries are consistent with the 2003 fall management agreement and the preseason allocation agreement. Rules are consistent with actions of the Columbia River compact on July 30, 2003, and August 12, 2003, and are included in the biological assessment of ESA listed stocks. The biological opinion covering these fisheries has been signed. There is insufficient time to promulgate permanent regulations.

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 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.

Effective Date of Rule: August 13, 2003, 7:00 p.m.

August 12, 2003

Evan Jacoby

for Jeff Koenings

Director

NEW SECTION

WAC 220-33-01000G Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections:

1) OPEN AREA: SMCRA 1A, 1B, 1C

a) SEASON: 7:00 p.m. Wednesday, August 13, 2003 to 7:00 a.m. Thursday, August 14, 2003

b) GEAR: 8 inch minimum mesh and 9-3/4 inch maximum mesh.

Monofilament gear is allowed.

c) SANCTUARIES: Grays River, Elokomina-A, Cowlitz, Kalama-A, Lewis-A.

d) ALLOWABLE SALE: Salmon and sturgeon. Up to 7 sturgeon may be possessed or sold for each participating vessel per fishing week, including fish harvested in Select Area fisheries. A fishing week is defined as the Sunday through Saturday encompassing the open dates of the fishery.

e) Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

2) OPEN AREA: SMCRA 1D upstream of the I-5 Bridge and 1E.

a) SEASON: 8:00 p.m. Monday, August 18, 2003 to 6:00 a.m. Tuesday, August 19, 2003

8:00 p.m. Thursday, August 21, 2003 to 6:00 a.m. Friday, August 22, 2003

8:00 p.m. Monday, August 25, 2003 to 6:00 a.m. Tuesday, August 26, 2003

8:00 p.m. Wednesday, August 27, 2003 to 6:00 a.m. Thursday, August 28, 2003

b) GEAR: 9 inch minimum mesh and 9-3/4 inch maximum mesh.

Monofilament gear is allowed.

c) SANCTUARIES: Washougal, Sandy.

d) ALLOWABLE SALE: Salmon and sturgeon. Up to 7 sturgeon may be possessed or sold for each participating vessel per fishing week. A fishing week is defined as the Sunday through Saturday encompassing the open dates of the fishery.

e) Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

3) OPEN AREA: Blind Slough/Knappa Slough Select Area

Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge. Oregon State waters extend upstream of the railroad bridge.

Knappa Slough fishing area includes all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to boundary lines defined by markers on the western end of Minaker Island to markers on Karlson Island and the Oregon shore. An area closure of about a 100' radius at the mouth of Big Creek defined by markers. All waters are under concurrent jurisdiction.

a) SEASON: 7:00 p.m. August 25 to 7:00 p.m. August 28, 2003 and

Monday, Tuesday, Wednesday, and Thursday nights from September 2 through October 31, 2003. Open hours from September 2 through 26 are 7:00 p.m. to 7:00 a.m. daily and beginning September 29, the open hours are 6:00 p.m. to 8:00 a.m. daily.

b) GEAR: Gillnet - 9 3/4 inch maximum mesh size prior to September 16 and 6-inch maximum mesh size after September 16. Maximum net length of 100 fathoms. No weight restriction on lead line.

c) ALLOWABLE SALE: Salmon and sturgeon.

4) OPEN AREA: Tongue Point/South Channel Select Area

Tongue Point fishing area includes all waters bounded by a line from the red light at Tongue Point to the flashing green light at the rock jetty on the northwesterly tip of Mott Island, a line from a marker at the south end of Mott Island

easterly to a marker on the northwest bank on Lois Island, and a line from a marker on the southwest end of Lois Island due westerly to a marker on the opposite bank. All waters are under concurrent jurisdiction.

South Channel area includes all waters bounded by a line from a marker on John Day Point through the green buoy "7" thence to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to flashing red marker "10" thence northwesterly to a marker on the sand bar defining the terminus of South Channel. All waters are under concurrent jurisdiction.

a) SEASON: Monday, Tuesday, Wednesday, and Thursday nights from September 2 through October 31, 2003. Open hours from September 2 through 26 are 7:00 p.m. to 7:00 a.m. daily and beginning September 29, the open hours are 6:00 p.m. to 8:00 a.m. daily. Only the Tongue Point area is open through September 12 and Tongue Point and South Channel areas are open after September 12.

b) GEAR: In the Tongue Point area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line.

In the South Channel area the mesh size is restricted to 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on lead line.

c) ALLOWABLE SALE: Salmon and sturgeon.

d) MISCELLANEOUS: Participants in the Tongue Point fishery may have stored on board their boats, gill nets with lead line in excess of two pounds per fathom.

5) OPEN AREA: Deep River Select Area

Deep River is open to fishing down river from the town of Deep River to the mouth (a line from navigation marker "16" southwest to a marker on the Washington shore). Concurrent waters extend downstream of the Highway 4 bridge. State waters extend upstream of the Highway 4 bridge.

a) SEASON: Monday, Tuesday, Wednesday, and Thursday nights from September 2 through October 31, 2003. Open hours from September 2 through 26 are 7:00 p.m. to 7:00 a.m. daily and beginning September 29, the open hours are 6:00 p.m. to 8:00 a.m. daily.

b) GEAR: Gillnet - 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line.

c) ALLOWABLE SALE: Salmon and sturgeon.

d) OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

6) OPEN AREA: Steamboat Slough Select Area

Steamboat Slough is open to fishing in waters bounded by markers on Price Island and the Washington shore, at both upstream and downstream ends of Steamboat Slough. All open waters are under concurrent jurisdiction.

a) SEASON: Monday, Tuesday, Wednesday, and Thursday nights from September 2 through October 31, 2003. Open hours from September 2 through 26 are 7:00 p.m. to 7:00 a.m. daily and beginning September 29, the open hours are 6:00 p.m. to 8:00 a.m. daily.

b) GEAR: Gillnet 6-inch maximum mesh. Net length maximum of 100 fathoms, and no weight restriction on the lead line.

c) ALLOWABLE SALE: Salmon and sturgeon.

d) MISCELLANEOUS: Transportation or possession of fish outside the fishing area is unlawful unless by licensed buyer, except fishers may transport their catch out of the fishing area with a permit issued by an authorized agency employee after examining the catch.

e) OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:01 a.m. October 31, 2003:

WAC 220-33-01000G Columbia River season below Bonneville.

WSR 03-17-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-193—Filed August 13, 2003, 8:22 a.m., effective August 14, 2003, 6:00 a.m.]

Date of Adoption: August 12, 2003.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation allows commercial sale of platform and hook and line caught fish to be sold in the treaty Indian fishery. Consistent with action of the Columbia River compact action of August 12, 2003, and conforms state rules with tribal rules. There is insufficient time to promulgate permanent rules.

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 0, Amended 0, Repealed 0.

Effective Date of Rule: August 14, 2003, 6:00 a.m.

August 12, 2003

Evan Jacoby

for Jeff Koenings

Director

NEW SECTION

WAC 220-32-05100H Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, shad, carp, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, and the Klickitat River and White Salmon rivers, except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions pursuant to lawfully enacted tribal rules:

1) Open Periods: 6:00 a.m. Thursday August 14, 2003 until further notice.

a) Open Areas: SMCRA 1F, 1G, 1H, the Klickitat River and the White Salmon River.

b) Gear: Hoop nets, dip bag nets, or hook and line.

c) Allowable sale includes: Chinook, coho, steelhead, walleye, carp and shad. Sturgeon between 4-5 feet in length may not be sold but may be retained for subsistence purposes. Sockeye may not be sold but may be retained for subsistence purposes. Fish taken in the Klickitat and White Salmon rivers may be sold when those rivers are open pursuant to lawfully enacted tribal rules. The Klickitat River is currently open Tuesday through Saturday weekly and the White Salmon River is open Monday through Saturday weekly.

WSR 03-17-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-197—Filed August 13, 2003, 2:59 p.m.]

Date of Adoption: August 13, 2003.

Purpose: Amend commercial fishing regulations.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Regulations for the 2003 Puget Sound commercial salmon fishery were discussed at North of Falcon planning meetings in the spring, and subsequently, a package containing permanent regulation changes arising from agreements made by comanagers at those meetings was filed with the Code Reviser's Office under expedited rule procedures. That package of permanent regulations is

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not yet in effect, and these emergency rules are necessary to initiate fisheries which are scheduled to commence before those permanent rules will become effective.

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 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

August 13, 2003

Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-50100A Puget Sound all-citizen commercial salmon fishery. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Lawful gill net gear:

Lawful gill net gear in Puget Sound Areas 7, and 7A, shall not contain meshes of a size less than 5 inches nor greater than 5 1/2 inches.

Area 6D:

Skiff Gill Nets - (a) Open to skiff gill nets using 5-inch minimum and 5 1/2-inch maximum mesh from 7:00 a.m. to 7:00 p.m. on the following dates: 9/29, 9/30, 10/1, 10/2, 10/3, 10/6, 10/7, 10/8, 10/9, 10/10, 10/13, 10/14, 10/15, 10/16, 10/17, 10/20, 10/21, 10/22, 10/23, 10/24, 10/27, 10/28, 10/29, 10/30, 10/31.

(b) It is unlawful to retain chinook or pink salmon taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. Any chinook, chum or pink salmon required to be released, must be removed from the net by cutting the meshes ensnaring the fish.

Areas 7 and 7A:

Reef Nets - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

TIME	DATES
7:00 a.m. to 7:00 p.m. Daily	September 16 through October 15

It is unlawful to retain chinook salmon at all times, and it is unlawful to retain wild coho salmon prior to October 1.

Reef Net Required DNA Tissue Sampling - It is unlawful to retain chum salmon taken with reef net gear prior to October 1 unless the reef net license holder provides the department with 24 hour notice prior to each day of fishing and assists the department with collection of DNA tissue samples from chum salmon. The daily fishing notice to the department must include the reef net license holder's name and a telephone number where they can be contacted, and the notice must be given by one of the following three means:

- (i) FAX transmission to (360) 902-2949;
- (ii) E-mail to psfishtickets@dfw.wa.gov; or
- (iii) Toll-free telephone call to 1-866-791-1279.

Areas 7B and 7C:

Purse Seines - (a) Open only to the purse seine vessels Wooster and Adventurous from 6:00 a.m. to 9:00 p.m. Wednesday August 20, 2003.

(i) It is unlawful to retain sockeye or coho salmon, and any sockeye or coho salmon caught must be released immediately.

(ii) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net, meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water.

(iii) The 5-inch strip requirement is not in effect during this opening.

(b) Open in Area 7B to purse seines using the 5-inch strip during the following hours and dates, provided it is unlawful to retain sockeye salmon, and any sockeye salmon caught must be released immediately.

Hours	Dates
6:00 a.m. to 8:00 p.m.	9/8, 9/9, 9/10, 9/15, 9/16, 9/17
7:00 a.m. to 7:00 p.m.	September 21 through October 25

Gill Nets - Open to gill nets as follows:

Areas	Mesh Size	Hours	Dates
7B and 7C	7" minimum	7:00 p.m. August 18 to 8:00 a.m.	August 19
		7:00 p.m. August 24 to 8:00 a.m.	August 25
		7:00 p.m. August 26 to 8:00 a.m.	August 27
		7:00 p.m. August 28 to 8:00 a.m.	August 29
		7:00 p.m. August 31 to 8:00 a.m.	September 1
		7:00 p.m. September 2 to 8:00 a.m.	September 3
7B	5" minimum	7:00 p.m. September 4 to 8:00 a.m.	September 5.
		7:00 p.m. September 7 to 8:00 a.m.	September 8
		7:00 p.m. September 9 to 8:00 a.m.	September 10

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Areas	Mesh Size	Hours	Dates
		7:00 p.m. September 11 to 8:00 a.m.	September 12
7B	5" minimum	6:00 p.m. September 14 to 8:00 a.m.	September 15
		6:00 p.m. September 16 to 8:00 a.m.	September 17
		6:00 p.m. September 18 to 8:00 a.m.	September 19.
7B	5" minimum	7:00 p.m. September 21 through 4:00 p.m.	October 25

Area 8:

Purse Seines - Open to purse seines as follows:

Hours	Dates
6:00 a.m. to 8:00 p.m.	8/28, 9/3

Gill Nets - Open to gill nets using 5-inch minimum mesh, 5 1/2-inch maximum mesh, and not exceeding 60 meshes in depth, as follows:

Hours	Dates
6:00 a.m. to 8:00 p.m.	8/28, 9/3

Area 8A: Excepting waters of Area 8A southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock:

Purse Seine - Open to purse seine as follows:

Hours	Dates
6:00 a.m. to 9:00 p.m.	8/18, 8/20
6:00 a.m. to 8:00 p.m.	8/26, 8/28

It is unlawful to retain chinook salmon, and any chinook salmon caught with purse seine gear must be released immediately.

Gill Nets - Open to gill nets using 5-inch minimum mesh and 5 1/2-inch maximum mesh as follows:

Hours	Dates
7:00 p.m. August 18 to 8:00 a.m.	August 19
7:00 p.m. August 20 to 8:00 a.m.	August 21
7:00 p.m. August 25 to 8:00 a.m.	August 26
7:00 p.m. August 27 to 8:00 a.m.	August 28

Area 8D:

Purse Seine - Open to purse seines using the 5-inch strip as follows:

Hours	Dates
7:00 a.m. to 7:00 p.m.	9/25, 10/2

It is unlawful to retain chinook salmon, and any chinook salmon caught with purse seine gear must be released immediately.

Gill Nets - Open to gill nets using 5-inch minimum mesh as follows:

Hours	Dates
6:00 p.m. September 21 to 8:00 a.m.	September 22
6:00 p.m. September 23 to 8:00 a.m.	September 24
6:00 p.m. September 25 to 8:00 a.m.	September 26
Hours	Dates
6:00 p.m. September 28 to 8:00 a.m.	September 29
6:00 p.m. September 30 to 8:00 a.m.	October 1
6:00 p.m. October 2 to 8:00 a.m.	October 3

Area 9A:

Gill Nets - Open to gill nets using 5-inch minimum mesh as follows:

Hours	Dates
7:00 p.m. August 26 to 8:00 a.m.	August 27
7:00 p.m. August 28 to 8:00 a.m.	August 29
6:00 a.m. August 31 through 4:00 p.m.	October 25

Area 12A:

Beach Seines - (a) Open to holders of beach seine permits from 7:00 a.m. to 7:00 P.m. on the following dates: 8/25, 8/26, 8/27, 8/28, 8/29, 9/1, 9/2, 9/3, 9/4, 9/5, 9/8, 9/9, 9/10, 9/11, 9/12, 9/15, 9/16, 9/17, 9/18, 9/19, 9/22, 9/23, 9/24, 9/25, 9/26, 9/29, 9/30, 10/1, 10/2, 10/3.

(b) Open in those waters of Area 12A lying northerly of a line extending from Whitney Point to the flashing light off Fishermans Point then to Fishermans Point on the Bolton Peninsula, excluding waters within 1000 feet of the western shoreline, as the shoreline is defined by the mean higher high stage of the tide, between Whitney Point and mouth of the Little Quilcene River.

All Other Saltwater and Freshwater Areas: Closed.

"Quick Reporting" Fisheries:

All fisheries opened under this section, and any fishery openings under authority of the Fraser Panel for sockeye or pink salmon in Areas 7 and 7A are designated as "Quick Reporting Required" fisheries.

WSR 03-17-032

**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 03-196—Filed August 14, 2003, 10:57 a.m., effective August 16, 2003, 7:00 a.m.]

Date of Adoption: August 13, 2003.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000F; and amending WAC 220-56-330.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

EMERGENCY

Reasons for this Finding: This regulation keeps the southern portion of Marine Area 8-2 closed, south of a line from Camano Head to Sandy Point and the north portion of Marine Area 8-2 and all of Marine Area 8-1 on September 2, 2003, to maintain quota targets for these areas. Hard shell criteria have been met in the north part of Marine Area 7 to allow recreational crab harvest. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: August 16, 2003, 7:00 a.m.

August 13, 2003

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-56-33000G Crab—Areas and seasons. Notwithstanding the provisions of WAC 220-56-330, effective immediately until further notice, it is unlawful to fish for crab for personal use in all waters of Puget Sound except as provided herein:

1) Effective immediately until 8:00 p.m. September 2, 2003, Fridays through Mondays only, it is lawful to fish for crab for personal use in all waters of Marine Area 8-1 and that portion of Marine Area 8-2 known as Saratoga Passage north of a line that extends from Camano Head on the southern tip of Camano Island southwesterly to Sandy Point on Whidbey Island.

2) Effective immediately, until further notice, it is lawful to fish for crab for personal use in Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 9, 10, 11, 12, and 13.

3) Effective 7:00 a.m. August 16, 2003 until further notice, it is lawful to fish for crab for personal use in all waters of Marine Area 7.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 a.m. August 16, 2003:

WAC 220-56-33000F Crab—Areas and seasons.
(03-163)

**WSR 03-17-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 03-195—Filed August 14, 2003, 4:03 p.m., effective September 1, 2003]

Date of Adoption: August 14, 2003.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35100A.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: GMU 564 was accidentally removed from the list of Western Washington GMU's open to early archery blacktail deer. There are deer available for harvest and opening this GMU will relieve pressure on adjacent GMUs thus reducing crowding. There is insufficient time to promulgate a permanent rule before the opening of early archery deer season.

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 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.

Effective Date of Rule: September 1, 2003.

August 14, 2003

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 232-28-35100A 2003 Deer general seasons. Notwithstanding the provisions of WAC 232-28-351, Game Management Unit 564 is open to early archery Western Washington Blacktail Deer hunting September 1 through September 30, 2003. A legal deer is any blacktail deer.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2003:

WAC 232-28-35100A 2003 Deer general seasons.

EMERGENCY

WSR 03-17-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-194—Filed August 14, 2003, 4:03 p.m.]

Date of Adoption: August 14, 2003.

Purpose: Amend hunting rules.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The AHE antlerless elk hunts are designed to provide scientific data on organ fat information and to reduce depredation. These hunts are undersubscribed, and it is felt that AHE elk hunters who have an opportunity for a second animal will take that opportunity. This will provide needed elk management information and reduce elk damage claims. There is insufficient time to promulgate permanent rules.

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 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

August 14, 2003

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 232-28-35200A Antlerless elk AHE hunts - 2003. (1) Notwithstanding the provisions of WAC 232-28-352, it is lawful for Advanced Hunter Education master hunters to possess a second elk taken in the following antlerless elk hunts during the open period for each respective hunt, provided the AHE master hunter has a second animal permit as provided for in this section:

- (a) Colockum A
- (b) Colockum B
- (c) Randle B
- (d) Green Mt. B
- (e) Merwin A
- (f) Merwin B
- (g) Grays River A

- (h) Grays River B
- (i) Grays River C
- (j) Grays River D
- (k) Grays River E
- (l) Grays River F
- (m) Grays River G
- (n) Grays River H

(2) AHE master hunters who wish to make application for a second animal permit must notify the department, in writing. Upon selection the AHE master hunter must pay the second animal fee set out in RCW 77.32.410, and will be issued the permit and transportation tag. If more AHE master hunters have made application than the number of permits available, selection will be by random drawing.

(3) AHE master hunters may make application for more than one area, but must state the order of preference on the application.

(4) Colockum A is restricted to muzzleloaders. All other areas are open to any lawful weapon.

Reviser's note: The spelling 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 03-17-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-199—Filed August 15, 2003, 4:56 p.m.]

Date of Adoption: August 15, 2003.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100E; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to meet allocation, conservation and management agreements. Openings and closures are consistent with these elements. Commercial shrimp quotas have been taken in the areas closed by this rule. A weekly landing limit for spot shrimp is necessary to reduce risk of overharvest, maintain an orderly fishery, provide the ability to enforce state/tribal plan requirements, and to ensure conservation. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: Immediately.

August 15, 2003

Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-05100G Puget Sound shrimp pot and beam trawl fishery—Seasons. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Waters of Shrimp Management Areas 1C and 2-W (west), and Crustacean Management Regions 3 and 6, are open to the harvest of all shrimp species, except as provided below:

(i) Effective immediately, until further notice, Shrimp Management Area 1C is open to the harvest of all shrimp species, except that it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 100 pounds per week.

(ii) Effective immediately, until further notice, waters of Shrimp Management Area 2-W (west), and Marine Fish-Shellfish Catch and Reporting Areas 23A-S (south), 23B, 23D, 25A, and 26D are closed to the harvest of spot shrimp.

(iii) Waters of Marine Fish-Shellfish Catch and Reporting Areas 23A-W (west), and 23A-E (east) are closed to the harvest of all shrimp species.

(iv) Effective immediately, until further notice, all waters of Marine Fish-Shellfish Catch and Reporting Area 25A found within the Discovery Bay Shrimp District are open to the harvest of non-spot shrimp.

i. There is a 10-pot per vessel limit when fishing in this portion of Catch Area 25A.

ii. Landings from this area must be hailed as coming from the Discovery Bay Shrimp District portion of Catch Area 25A.

(v) Closures provided for in WAC 220-52-051 (2)(c) with the exception of the Discovery Bay Shrimp District remain in effect.

(b) Effective immediately, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Region 6.. Any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Areas 23C or 29 (or any combination of these two areas), shall not be subject to the weekly spot shrimp trip limit for that week. The spot shrimp trip limit accounting week is Monday through Sunday. It is unlawful to fish for

any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks.

(c) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(d) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(c) above.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts:

Open immediately until further notice.

(b) Shrimp Management Area 1B: open immediately, until further notice, except as provided below:

(i) Marine Fish-Shellfish Management and Catch Reporting Area 20B closed immediately until further notice.

(c) Marine Fish-Shellfish Management and Catch Reporting Area 20A: open immediately until further notice.

(3) It is unlawful to set or pull shrimp using shellfish pot or shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100E

Puget Sound shrimp pot and beam trawl fishery—Seasons. (03-190)

WSR 03-17-051 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 03-198—Filed August 15, 2003, 4:56 p.m., effective August 17, 2003, 7:00 a.m.]

Date of Adoption: August 15, 2003.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100F; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to provide biological data to fisheries managers to aid in assigning appropriate shrimp harvest quotas. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: August 17, 2003, 7:00 a.m.

August 15, 2003

Evan Jacoby

for Jeff Koenigs

Director

NEW SECTION

WAC 220-52-05100F Puget Sound shrimp pot and beam trawl fishery—Seasons. Notwithstanding the provisions of WAC 220-52-051, effective 7:00 a.m. August 17, 2003 through 11:59 p.m. August 23, 2003 Puget Sound commercial shrimp license holders and alternate operators listed below will be allowed to harvest spot shrimp for the purpose of a test fishery. Designated fishers

and their vessels are only allowed to harvest shrimp from the Marine Fish-Shellfish Management and Catch Reporting Areas assigned for their vessel. Only pot gear is allowed in the fishery and no gear may be set or pulled by these vessels in the designated areas without a WDFW staff person aboard. Spot shrimp harvested and not retained by WDFW staff may be sold and will be reported on the Fish Receiving Ticket as test fishery product. Participating fishers:

Vessel Identification	Licensed Commercial Fisher/Alternate Operator	Designated Catch Reporting Area
Flying F, 930156	Lee Freeman	20A
Miss Cassie, WN8117RK	Andy Fisk	20A
Moe-Z-On, WN30564	Greg Moe	26B
Jewlz, WN6794NJ	Ken Crews	25B, 25C, 26A
Anita A, 250281	John McKay	23A
Winter Hawk, 545668	Rick Bendure	25A

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 24, 2003:

WAC 220-52-05100F Puget Sound shrimp pot and beam trawl fishery—Seasons.

**WSR 03-17-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 03-200—Filed August 15, 2003, 4:56 p.m.]

Date of Adoption: August 15, 2003.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000Q; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The weekly landing limit and period is necessary to mitigate handling mortality from sorting soft shelled crab and is in conformity with the coastal Dungeness crab summer fishery management plan. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: Immediately.

August 15, 2003
Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-04000Q Coastal crab fishery—Weekly trip limits. Notwithstanding the provisions of WAC 220-52-04: effective immediately until further notice:

(1) It is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 2,500 pounds taken during each of the following coastal crab accounting periods:

- August 17 through August 23;
- August 24 through August 30;
- August 31 through September 6;
- September 7 through September 13;
- September 14 through September 15, 2003.

(2) Any crab taken prior to August 17, 2003, and not landed before 11:59 p.m. August 16, 2003, become part of the August 17 through August 23 accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 16, 2003:

WAC 220-52-04000Q Coastal crab fishery—
Weekly trip limits.

**WSR 03-17-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 03-201—Filed August 15, 2003, 4:56 p.m.]

Date of Adoption: August 15, 2003.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-30700D; and amending WAC 220-47-307.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The United States section of the Fraser River Panel has scheduled an all-citizen commercial sockeye fishing opening on Saturday, August 16, 2003, in Areas 7 and 7A. Substantial numbers of recreational anglers will be fishing on the weekend in the waters in the westerly portion of the San Juan Islands, and the presence of a commercial salmon fishing fleet in the same area will create conflict between the two groups. This commercial salmon fishing closure is necessary for the orderly conduct of these fisheries to minimize recreational and commercial inter-gear conflicts. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: Immediately.

August 15, 2003
Evan Jacoby
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-30700D Closed areas—Puget Sound salmon. Notwithstanding the provisions of WAC 220-47-307, effective immediately through 11:59 p.m. August 16, 2003, it is unlawful to take, fish for or possess salmon taken for commercial purposes in those waters of Puget Sound Salmon management and Catch Reporting Area 7 lying westerly of lines running from East Point on Saturna Island to Point Doughty on Orcas Island and from Iceberg Point on Lopez Island to the Smith Island Light, and including waters of the San Juan Preserve, as described in WAC 220-47-262.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 17, 2003:

WAC 220-47-30700D Closed areas—Puget Sound
salmon

EMERGENCY

WSR 03-17-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-202—Filed August 18, 2003, 4:36 p.m.]

Date of Adoption: August 19, 2003.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100G; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to meet allocation, conservation and management agreements. Openings and closures are consistent with these elements. Commercial shrimp quotas have been taken in the areas closed by this rule. A weekly landing limit for spot shrimp is necessary to reduce risk of overharvest, maintain an orderly fishery, provide the ability to enforce state/tribal plan requirements, and to ensure conservation. There is insufficient time to promulgate permanent rules.

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 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.

Effective Date of Rule: Immediately.

August 19, 2003
 Evan Jacoby
 for Jeff Koenings
 Director

NEW SECTION

WAC 220-52-05100H Puget Sound shrimp pot and beam trawl fishery—Seasons. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Waters of Shrimp Management Areas 1B, 1C and 2-W (west), and Crustacean Management Regions 3 and 6, are

open to the harvest of all shrimp species, except as provided below:

(i) Effective immediately, until further notice, waters of Shrimp Management Area 1B, 1C, 2-W (west), and Marine Fish-Shellfish Catch and Reporting Areas 23A-S (south), 23B, 23D, 25A, and 26D are closed to the harvest of spot shrimp.

(ii) Waters of Marine Fish-Shellfish Catch and Reporting Areas 23A-W (west), and 23A-E (east) are closed to the harvest of all shrimp species.

(iii) Effective immediately, until further notice, all waters of Marine Fish-Shellfish Catch and Reporting Area 25A found within the Discovery Bay Shrimp District are open to the harvest of non-spot shrimp.

i. There is a 10-pot per vessel limit when fishing in this portion of Catch Area 25A.

ii. Landings from this area must be hailed as coming from the Discovery Bay Shrimp District portion of Catch Area 25A.

(iv) Closures provided for in WAC 220-52-051 (2)(c) with the exception of the Discovery Bay Shrimp District remain in effect.

(b) Effective immediately, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Region 6.. Any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Areas 23C or 29 (or any combination of these two areas), shall not be subject to the weekly spot shrimp trip limit for that week. The spot shrimp trip limit accounting week is Monday through Sunday. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks.

(c) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(d) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(c) above.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts: Open immediately until further notice.

(b) Shrimp Management Area 1B: open immediately, until further notice, except as provided below:

(i) Marine Fish-Shellfish Management and Catch Reporting Area 20B closed immediately until further notice.

(c) Marine Fish-Shellfish Management and Catch Reporting Area 20A: open immediately until further notice.

(3) It is unlawful to set or pull shrimp using shellfish pot or shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100G Puget Sound shrimp pot and beam trawl fishery—Seasons. (03-199)

WSR 03-17-077

EMERGENCY RULES

ENVIRONMENTAL HEARINGS OFFICE

[Filed August 19, 2003, 3:04 p.m.]

Date of Adoption: August 19, 2003.

Purpose: At the request of the Department of Agriculture, our agency is amending existing Pollution Control Hearings Board (PCHB) rules in order to help facilitate transfer of the livestock nutrient management program from the Department of Ecology to the Department of Agriculture.

Citation of Existing Rules Affected by this Order: Amending chapter 371-08 WAC.

Statutory Authority for Adoption: RCW 34.05.360 and ESSB 5889.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The adoption in the last legislative session of ESSB 5889 transferring the livestock nutrient management program from ecology to agriculture created a need to amend existing procedural rules governing appeals to the PCHB related to the program.

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 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 1, Amended 1, Repealed 0.

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

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

Effective Date of Rule: Immediately.

August 19, 2003

Eric Z. Lucas

Administrative Appeals Judge
and Rules Coordinator

NEW SECTION

WAC 371-08-306 Livestock nutrient management program (LNMP). As used in this chapter, and chapter 43.21B RCW, when referring to appeals related to civil penalties and orders issued by the department of agriculture, under the LNMP, pursuant to chapters 90.48 and 90.64 RCW, the following terms shall have the following meaning:

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

(2) "Director" means the director of the department of agriculture.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-315 Membership, function and jurisdiction. (1) **Members.** The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals from the decisions and orders of the department of agriculture pursuant to chapters 90.48 and 90.64 RCW, the department of ecology, from the decisions of air pollution control authorities established pursuant to chapter 70.94 RCW, and from the decisions of local health departments, when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.110:

(a) Civil penalties imposed pursuant to RCW 18.104.-155, 70.94.431, 70.105.080, 70.105.095, 70.107.050, 86.16.-081, 88.46.090, 90.03.600, 90.48.144, 90.56.310, 90.56.320, 90.56.330 ((and)), 90.58.560 and chapter 90.64 RCW.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.-060, 18.104.065, 43.27A.190, 70.94.211, 70.94.332, 70.105.-095, 70.107.060, 88.46.070, 90.14.130, 90.14.190 ((and)), 90.48.120 and chapter 90.64 RCW.

(c) The issuance, modification, termination or denial of any permit certificate or license by the department of ecology or any air pollution control authority.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits or of biosolid permits pursuant to chapter 70.95 RCW.

(e) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.

EMERGENCY

(f) Any other decision by the department of ecology, the administrator of marine safety or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(3) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.

WSR 03-17-080
EMERGENCY RULES
DEPARTMENT OF AGRICULTURE

[Filed August 19, 2003, 4:09 p.m.]

Purpose: In accordance with ESSB 5889, pertaining to the livestock nutrient management program (LNMP) passed during the 2003 legislative session, clarify that appeals of LNMP orders and penalties are not appealable using Department of Agriculture procedural rules in chapter 16-08 WAC, but instead are appealable only to the Pollution Control Hearings Board (PCHB) and must be served on and handled by Washington State Department of Agriculture (WSDA) rather than the Department of Ecology.

Statutory Authority for Adoption: Chapters 90.64 and 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2003 legislature passed ESSB 5889 transferring the livestock nutrient management program (LNMP) to WSDA. WSDA has the authority to take immediate corrective action and formal, regulatory enforcement action for violations of chapters 90.64 and 90.48 RCW. While an appeal of other agency enforcement action is to the director of WSDA, an appeal of any WSDA action in the LNMP is under the jurisdiction of the PCHB. The emergency rule clarifies that appeals of LNMP orders and penalties are not appealable using the procedural rules in chapter 16-08 WAC, but instead are appealable only to the PCHB under chapter 43.21B RCW and chapter 371-08 WAC and must be served on and handled by WSDA rather than the Department of Ecology.

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 Mak-**

ing: New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

August 19, 2003

Valoria Loveland

Director

by William E. Brookreson

PROCEDURAL RULES FOR LNMP PROGRAM

NEW SECTION

WAC 16-08-003 Declaration of purpose and applicability. This chapter sets forth the rules of procedure that are applicable to adjudicative proceedings before the department. Because civil penalties and orders issued by the department pursuant to chapter 90.64 RCW and chapter 90.48 RCW in the Livestock Nutrient Management Program are appealable only to the Pollution Control Hearings Board (PCHB) under chapter 43.21B RCW and chapter 371-08 WAC, this chapter is not applicable to those proceedings.

NEW SECTION

WAC 16-08-004 Livestock nutrient management program (LNMP) appeals. (1) All appeals of civil penalties and orders issued by the department in the Livestock Nutrient Management program shall be filed with the PCHB at the environmental hearings office and shall be served on the department of agriculture pursuant to RCW 43.21B.230 and 43.21B.300, and WAC 371-08-335 and 371-08-345.

(2) Pursuant to WAC 371-08-306, when referring to appeals related to civil penalties and orders issued by the department of agriculture in the Livestock Nutrient Management Program, all references to "department" in both chapter 43.21B RCW and chapter 371-08 WAC shall mean department of agriculture; all references to "director" shall mean director of agriculture.

WSR 03-17-090
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 03-203—Filed August 19, 2003, 4:40 p.m.]

Date of Adoption: August 19, 2003.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-20-08000C; and amending WAC 220-20-080.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These changes in the direct retail endorsement are needed because of SHB 1127, which took effect on July 27, 2003, and require modifications of the WAC implementing RCW 77.08.010, and 77.65.510 through 77.65.520. Permanent rule changes are being implemented, but are not yet in effect.

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 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.

Effective Date of Rule: Immediately.

August 19, 2003

J. P. Koenings

Director

EMERGENCY

NEW SECTION

WAC 220-20-08000D Direct retail endorsement.

Notwithstanding the provisions of WAC 220-20-080, effective immediately until further notice:

(1) Fishers with a direct retail endorsement may sell crab, salmon and sturgeon.

(2) A direct retail endorsement may be purchased at any time by a fisher licensed to take crab, salmon and sturgeon.

(3) Salmon and sturgeon landed by holder of a Direct retail endorsement may be dressed (eviscerated) prior to further processing, crab must be landed in the round.

(4) A holder of a direct retail endorsement selling crab, salmon and sturgeon anywhere other than from the harvest vessel, or who offers for sale from the harvest vessel in a twenty-four hour period crab, salmon and sturgeon having a retail value of greater than one hundred fifty dollars, must notify the department a minimum of eighteen hours prior to offering crab, salmon and sturgeon for sale.

(5) Holders of a direct retail endorsement may sell crab, salmon and sturgeon to a restaurant or similar food service business.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-20-08000C Direct retail endorsement.
(03-168)

WSR 03-15-076
RULES OF COURT
STATE SUPREME COURT

[July 11, 2003]

IN THE MATTER OF THE ADOPTION) ORDER
OF THE AMENDMENTS TO CrR 2.2, CrR) NO. 25700-A-775
3.3, CrR 4.1, JuCR 7.8, CrRLJ 2.2, CrRLJ)
3.3 AND CrRLJ 4.1)

The Board for Judicial Administration having recom-
mended the adoption of the proposed amendments to CrR
2.2, CrR 3.3, CrR 4.1, JuCR 7.8, CrRLJ 2.2, CrRLJ 3.3 and
CrRLJ 4.1, and the Court having considered the amendments
and comments submitted thereto, and having determined that
the proposed amendments will aid in the prompt and orderly
administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Wash-
ington Reports and will become effective September 1, 2003.

DATED at Olympia, Washington this 11th day of July
2003.

Alexander, C.J.

Johnson, J.

Bridge, J.

Madsen, J.

Chambers, J.

Sanders, J.

Owens, J.

Ireland, J.

Fairhurst, J.

CrR 2.2

WARRANT OF ARREST AND SUMMONS

(a) Warrant of Arrest.

(1) Generally. If an indictment is found or an informa-
tion is filed, the court may direct the clerk to issue a warrant
for the arrest of the defendant.

(2) Probable Cause. Before ruling on a request for a
warrant the court may require the complainant to appear per-
sonally and may examine under oath the complainant and any
witnesses the complainant may produce. A warrant of arrest
may not issue unless the court determines that there is proba-
ble cause to believe that the defendant committed the offense
charged. The court shall determine probable cause based on
an affidavit, a document as provided in RCW 9A.72.085 or
any law amendatory thereto, or sworn testimony establishing
the grounds for issuing the warrant. Sworn testimony shall
be recorded electronically or stenographically. The evidence
shall be preserved and shall be subject to constitutional limi-
tations for probable cause determinations and may be hearsay
in whole or in part.

(3) Ascertaining Defendant's Current Address.

(i) Search for Address. The court shall not issue a war-
rant unless it determines that the complainant has attempted
to ascertain the defendant's current address by searching the

following: (A) the District Court Information System data-
base (DISCIS), (B) the driver's license and identicard data-
base maintained by the Department of Licenses; and (C) the
database maintained by the Department of Corrections listing
persons incarcerated and under supervision. The court in its
discretion may require that other databases be searched.

(ii) Exemptions from Address Search. The search
required by subdivision (i) shall not be required if (A) the
defendant has already appeared in court after filing of the
same case, (B) the defendant is known to be in custody, or (C)
the defendant's name is unknown.

(iii) Effect of Erroneous Issuance. If a warrant is errone-
ously issued in violation of this subsection (a)(3), that error
shall not affect the validity of the warrant.

(b) Issuance of Summons in Lieu of Warrant.

(1) Generally. If an indictment is found or an informa-
tion is filed, the court may direct the clerk to issue a summons
commanding the defendant to appear before the court at a
specified time and place.

(2) When Summons Must Issue. If the indictment or
information charges only the commission of a misdemeanor
or a gross misdemeanor, the court shall direct the clerk to
issue a summons instead of a warrant unless it finds reason-
able cause to believe that the defendant will not appear in
response to a summons, or that arrest is necessary to prevent
bodily harm to the accused or another, in which case it may
issue a warrant.

(3) Summons. A summons shall be in writing and in the
name of the State of Washington, shall be signed by the clerk
with the title of the office, and shall state the date when issued
and the county where issued. It shall state the name of the
defendant and shall summon the defendant to appear before
the court at a stated time and place.

(4) Failure To Appear on Summons. If a person fails to
appear in response to a summons, or if service is not effected
within a reasonable time, a warrant for arrest may issue.

(c) Requisites of a Warrant. The warrant shall be in
writing and in the name of the State of Washington, shall be
signed by the clerk with the title of the office, and shall state
the date when issued and the county where issued. It shall
specify the name of the defendant, or if the defendant's name
is unknown, any name or description by which the defendant
can be identified with reasonable certainty. The warrant shall
specify the offense charged against the defendant and that the
court has found that probable cause exists to believe the
defendant has committed the offense charged and shall com-
mand that the defendant be arrested and brought forthwith
before the court issuing the warrant. If the offense is bailable,
the judge shall set forth in the order for the warrant, bail, or
other conditions of release.

(d) Execution; Service.

(1) Execution of Warrant. The warrant shall be directed
to all peace officers in the state and shall be executed only by
a peace officer.

(2) Service of Summons. The summons may be served
any place within the state. It shall be served by a peace
officer who shall deliver a copy of the same to the defendant
personally, or it may be served by mailing the same, postage
prepaid, to the defendant at the defendant's address.

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(e) **Return.** The officer executing a warrant shall make return to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the issuing court to be canceled. The person to whom a summons has been delivered for service shall, on or before the return date, file a return with the court before which the summons is returnable. For reasonable cause, the court may order that the warrant be returned to it.

(f) Defective Warrant or Summons.

(1) **Amendment.** No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any such irregularity.

(2) **Issuance of New Warrant or Summons.** If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which the defendant is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that the defendant is guilty of some other offense, the judge shall not discharge or dismiss the defendant but may allow a new indictment or information to be filed and shall thereupon issue a new warrant or summons.

(g) Failure to Issue Warrant—Dismissal. Upon five days' notice to the prosecuting attorney, the court shall dismiss a charge without prejudice if (i) 90 days have elapsed since the indictment or information was filed and (ii) on the date that the order of dismissal is entered, no warrant has been issued and the defendant has not appeared in court.

**CrR 3.3
TIME FOR TRIAL**

(a) General Provisions.

(1) **Responsibility of Court.** It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with ~~((having committed))~~ a crime.

~~((b))~~ (2) **Precedence Over Civil Cases.** Criminal trials shall take precedence over civil trials.

(3) **Definitions.** For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.

(iii) "Appearance" means the defendant's physical presence in the adult division of the superior court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) "Arraignment" means the date determined under CrR 4.1(b).

(v) "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(4) Construction. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) Related Charges. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) Reporting of Dismissals and Untimely Trials. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified under subsection (b)(5).

(2) Defendant Not Detained in Jail. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(3) Release of Defendant. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) Return to Custody Following Release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) Allowable Time After Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

~~((e))~~ Time for Arraignment and Trial

~~(1) Cases Filed Directly in Superior Court.~~ If the defendant is detained in jail or subject to conditions of release, the defendant shall be arraigned not later than 14 days after the date the information or indictment is filed directly in the superior court. ~~If the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after that appearance in superior court which next follows the filing of the information or indictment. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release pending trial shall be brought to trial not later than 90 days after the date of arraignment.~~

~~(2) Cases Filed Initially in District Court.~~

~~(i) If after proceedings have been initiated in district court an information or indictment is filed with the superior~~

court, and if at the time the information or indictment is filed the defendant is detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after the date the information or indictment is filed. If after proceedings have been initiated in district court an information or indictment is filed with the superior court, and if at the time the information or indictment is filed the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after the date of that appearance in superior court which next follows the filing of the information or indictment. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment, less time elapsed in district court. A defendant released from jail whether or not subjected to conditions of release pending trial shall be brought to trial not later than 90 days after the date of arraignment, less time elapsed in district court.

(ii) "Time elapsed in district court" means the following: If at the time a complaint is filed with the district court a defendant is detained in jail or subjected to conditions of release, time elapsed in district court commences on the date the complaint is filed. If at the time a complaint is filed with the district court the defendant is not detained in jail or subjected to conditions of release, time elapsed in district court commences on the date of the defendant's appearance in district court which next follows the filing of the complaint. Time elapsed in district court ends with the earlier of (a) an oral or written order of dismissal entered by the district court, or (b) the filing of an information or indictment in superior court. Time elapsed in district court does not include time which was the subject of a stipulation entered into pursuant to CrRLJ 3.2.1(d)(3).

(3) *Cases Filed Initially in Juvenile Court.* If an information or indictment is filed with the superior court after a juvenile court has declined jurisdiction, and if at the time the information or indictment is filed the defendant is detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after the date the information or indictment is filed. If an information or indictment is filed with the superior court after a juvenile court has declined jurisdiction, and if at the time the information or indictment is filed the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 14 days after that appearance in superior court which next follows the filing of the information or indictment. A defendant not released from jail pending trial in superior court shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release pending trial in superior court shall be brought to trial not later than 90 days after the date of arraignment.

(4) *Untimely Arraignment.* If a defendant is not arraigned within the time limits of this rule and an objection to the date of arraignment has been made as required by section (e) of this rule, the time for trial established in this section shall commence on the last day the defendant could properly have been arraigned.

((5) *Rearraignment.* If a defendant is required to be rearraigned on a charge that arises out of the same occurrence and has the same elements of proof as those upon which the

defendant was previously arraigned, the time for trial established in this section shall commence on the date of the previous arraignment in superior court.

(6) *Arraignment Defined.* As used in CrR 3.3, "arraignment" means the date on which a plea is entered to the charge.

(d) *Extensions of Time for Trial.* The following extensions of time limits apply notwithstanding the provisions of section (e):

(1) *Revocation of Release.* A defendant who has been released from jail pending trial, pursuant to an order imposing conditions of release, but whose release is then revoked by order of the court, shall be brought to trial within such a time period that the defendant spends no more than a total of 60 days in jail following the date of arraignment, and in any event within such a time period that the defendant is tried not later than a total of 90 days after the date of arraignment unless the time period is otherwise extended by this rule.

(2) *Failure To Appear.* When a defendant who has already been arraigned fails to appear for any trial or pretrial proceeding at which the defendant's presence is required pursuant to rule 3.4, the defendant shall be brought to trial not later than 60 days after the date upon which the defendant is present in the county where the criminal charge is pending and the defendant's presence has been made known to the court on the record, if the defendant is thereafter detained in jail or not later than 90 days after such date if the defendant is not detained in jail whether or not the defendant is thereafter subjected to conditions of release.

(3) *Mistrial and New Trial.* If before verdict the superior court orders a mistrial, the defendant shall be brought to trial not later than 60 days after the oral order of the court if the defendant is thereafter detained in jail or not later than 90 days after the oral order if the defendant is not detained in jail and whether or not the defendant is subjected to conditions of release. If after verdict the superior court orders a new trial, the defendant shall be brought to trial not later than 60 days after entry of the written order of the court if the defendant is thereafter detained in jail, or not later than 90 days after entry of such written order if the defendant is not detained in jail and whether or not the defendant is thereafter subjected to conditions of release.

(4) *Trial After Appeal or Stay.* If a cause is remanded for trial after an appellate court accepts review or stays proceedings, the defendant shall be brought to trial not later than 60 days after that appearance by or on behalf of the defendant in superior court, with notice to both parties of any such appearance, which next follows receipt by the clerk of the superior court of the mandate or other written order, if after such appearance the defendant is detained in jail, or not later than 90 days after such appearance if the defendant is thereafter released whether or not subject to conditions of release.

(5) *Change of Venue.* If a change of venue has been granted pursuant to rule 5.2, the case shall be transferred to the receiving court as soon as practicable but within 7 days and the defendant shall be brought to trial as prescribed by this rule or not later than 30 days following the date upon which the court to which the case is being transferred for trial receives the filing of the case, whichever is later. If, however, after a change of venue is attempted, the criminal calendar of the receiving county will prevent compliance with the

time limits within this section, the trial shall commence on the earliest available date permitted by the criminal calendar of the receiving county.

(6) Disqualification. If the prosecuting attorney or judge becomes disqualified from participating in the case, the defendant shall be brought to trial as prescribed by this rule or not later than 30 days following the disqualification, whichever is later.

(7) Withdrawal of Guilty Plea. If a defendant has been permitted to withdraw a plea of guilty, the defendant shall be brought to trial not later than 60 days after the date of the written order allowing withdrawal of the guilty plea if the defendant is thereafter detained in jail or not later than 90 days if the defendant is thereafter released from jail, whether or not subjected to conditions of release.

(8) Five-Day Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the court or the parties, the court, even if the time for trial has expired, may extend the time within which trial must be held for no more than 5 days exclusive of Saturdays, Sundays, or holidays unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension. If the nature of the unforeseen or unavoidable circumstance continues, the court may extend the time for trial in increments of not to exceed 5 days exclusive of Saturdays, Sundays, or holidays unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension.)

(c) Commencement Date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under CrR 4.1.

(2) Resetting of Commencement Date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) New Trial. The entry of an order granting a mistrial or new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the superior court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new trial pursuant to a personal restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the superior court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of Venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification of Counsel. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

~~((e) Objection to Arraignment Date—Waiver of Objection.~~ A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment pursuant to section (c) of this rule, and the time for trial set out in section (c) shall be deemed to have commenced on that date. Failure of a party to object as required shall be a waiver of the objection, and the date of arraignment shall be conclusively established as the date upon which the defendant was actually arraigned.)

~~((f) Setting of Trial Date—Notice to Parties—Objection to Trial Date—Waiver))~~ **(d) Trial Settings and Notice—Objections—Loss of Right to Object.**

(1) Initial Setting of Trial Date. The court shall, within 15 days of the defendant's actual arraignment in superior court((;)) or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule((;)) and notify counsel for each party of the date set. If a ((party)) defendant is not represented by counsel, the notice shall be given to the ((party,)) defendant and may be mailed to the ((party's)) defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment ((as established at the time of arraignment)) and the date set for trial. ((A party who objects to the date set up on the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a trial commenced on such date, or on an extension of such date properly granted pursuant to this rule, is not within the time limits prescribed by this rule.))

(2) Resetting of Trial Date. When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a ((period of extension)) new commencement date pursuant to ((section (d))) subsection (c)(2) or a period of exclusion pursuant to section ((e)), the court shall set a new date for trial which is within the time limits prescribed and notify each counsel or party of the date set. ((as provided in subsection (f)(1))

(3) Objection to Trial Setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is

mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. (Failure of a party, for any reason, to make such a motion shall be a waiver of the objection.) A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date ((or on an extension of such date granted pursuant to subsection (d)(8))) is not within the time limits prescribed by this rule.

(4) Loss of Right to Object. If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

~~((g))~~ (e) Excluded Periods. The following periods shall be excluded in computing ~~((the time for arraignment and))~~ the time for trial:

(1) Competency Proceedings. All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent((;)).

(2) Proceedings on Unrelated Charges. Arraignment, ~~((Preliminary))~~ pre-trial proceedings, ~~((and))~~ trial, and sentencing on an unrelated charge, ~~((on another charge (except as otherwise provided by CrR 3.3(e)(5);))~~

(3) Continuances. Delay granted by the court pursuant to section ~~((h;))~~ (f).

(4) Period between Dismissal and Refiling. The time between the dismissal of a charge and the ~~((defendant's arraignment or re-arraignment in superior court following the))~~ refile of the same or related charge((;)).

~~((Reserved.))~~ (5) Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in superior court on a related charge.

(6) Defendant Subject to Foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington((;)).

(7) Juvenile Proceedings. All proceedings in juvenile court((;)).

(8) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

~~((h))~~ (f) Continuances. Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial date to a specified date.

~~((The agreement shall be effective when approved by the court on the record or in writing.))~~

(2) Motion by the Court or a Party. On motion of the ~~((State,))~~ the court or a party, the court may continue the ~~((ease when))~~ trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be ~~((substantially))~~ prejudiced in the presentation of ~~((the))~~ his or her defense. The motion must be ~~((filed on or))~~ made before the ~~((date set for trial or the last day of any continuance or extension granted pursuant to this rule))~~ time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

((i)) (h) Dismissal With Prejudice. A ~~((criminal))~~ charge not brought to trial within the time ~~((period provided by))~~ limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

~~((j))~~ Waiver. A defendant may waive his or her time for trial rights. A waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain beyond the current expiration date as calculated pursuant to this rule or for a period of days beyond the current expiration date.))

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

CrR 4.1 ARRAIGNMENT

(a) Time. ~~((Promptly after the indictment or information has been filed, the defendant shall be arraigned thereon in open court.))~~

(1) Defendant Detained in Jail. The defendant shall be arraigned not later than 14 days after the date the information or indictment is filed in the adult division of the superior court, if the defendant is (i) detained in the jail of the county where the charges are pending or (ii) subject to conditions of release imposed in connection with the same charges.

(2) Defendant Not Detained in Jail. The defendant shall be arraigned not later than 14 days after that appearance which next follows the filing of the information or indict-

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ment, if the defendant is not detained in that jail or subject to such conditions of release. Any delay in bringing the defendant before the court shall not affect the allowable time for arraignment, regardless of the reason for that delay. For purposes of this rule, "appearance" has the meaning defined in CrR 3.3 (a)(3)(iii).

(b) Objection to Arraignment Date—Loss of Right to Object. A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment. That date shall constitute the arraignment date for purposes of CrR 3.3. A party who fails to object as required shall lose the right to object, and the arraignment date shall be conclusively established as the date upon which the defendant was actually arraigned.

(c) Counsel. If the defendant appears without counsel, the court shall inform ~~(him of his)~~ the defendant of his or her right to have counsel before being arraigned. The court shall inquire if ~~(he)~~ the defendant has counsel. If ~~(he)~~ the defendant is not represented and is unable to obtain counsel, counsel shall be assigned ~~(to him)~~ by the court, unless otherwise provided.

(d) Waiver of Counsel. If the defendant chooses to proceed without counsel, the court shall ascertain whether this waiver is made voluntarily, competently and with knowledge of the consequences. If the court finds the waiver valid, an appropriate finding shall be entered in the minutes. Unless the waiver is valid, the court shall not proceed with the arraignment until counsel is provided. Waiver of counsel at arraignment shall not preclude the defendant from claiming ~~(his)~~ the right to counsel in subsequent proceedings in the cause, and the defendant shall be so informed. If such claim for counsel is not timely, the court shall appoint counsel but may deny or limit a continuance.

(e) Name. Defendant shall be asked his or her true name. If ~~(he)~~ the defendant alleges that ~~(his)~~ the true name is one other than that by which he or she is charged, it must be entered in the minutes of the court, and subsequent proceedings shall be had ~~(against him)~~ by that name or other names relevant to the proceedings.

(f) Reading. The indictment or information shall be read to defendant, unless the reading is waived, and a copy shall be given to defendant.

JuCR 7.8

TIME FOR ADJUDICATORY HEARING

(a) General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ~~(insure)~~ ensure an adjudicatory hearing in accordance with the provisions of this rule to each person charged with a juvenile offense ~~(an adjudicatory hearing in accordance with the provisions of this rule)~~.

(2) Definitions. For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in juvenile court.

(iii) "Appearance" means the juvenile's physical presence in the court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) "Arraignment" means the date determined under JuCR 7.6 and CrR 4.1(b).

(v) "Held in detention" means held in the custody of a detention facility pursuant to the pending charge. Such detention excludes any period in which a juvenile is on electronic home monitoring, is being held on an unrelated charge or hold, or is serving a sentence of confinement.

(3) Construction. The allowable time for the adjudicatory hearing shall be computed in accordance with this rule. If a hearing is timely under the language of this rule but was delayed by circumstances not addressed in this rule or JuCR 7.6, the pending charge shall not be dismissed unless the juvenile's constitutional right to a speedy trial was violated.

(4) Related Charges. The computation of the allowable time for the adjudicatory hearing on a pending charge shall apply equally to all related charges.

(5) Reporting of Dismissals and Untimely Hearings. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to hearing within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) Time Limits for Adjudicatory Hearing.

(1) Juvenile Held in Detention. ~~(The adjudicatory hearing on a juvenile offense shall begin within 60 days following the juvenile's arraignment in juvenile court on the charges contained in the information. If the alleged juvenile offender is held in detention pending the adjudicatory hearing and would be at liberty but for the current charges, the hearing shall begin within 30 days following the juvenile's arraignment in juvenile court on the charges contained in the information.)~~ A juvenile who is held in detention shall be brought to hearing within the longer of

(i) 30 days after the commencement date specified in this rule, or

(ii) the time specified under subsection (b)(5).

(2) Juvenile Not Held in Detention. A juvenile who is not held in detention shall be brought to hearing within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(3) Release of Juvenile. If a juvenile is released from detention before the 30 day time limit has expired, the limit shall be extended to 60 days.

(4) Return to Detention following Release. If a juvenile was not held in detention at the time the hearing date was set but is subsequently returned to detention on the same or related charge, the 60-day limit shall continue to apply. If the juvenile is held in detention when the hearing is reset following a new commencement date, the 30-day limit shall apply.

(5) Allowable Time after Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for the adjudicatory hearing shall not expire earlier than 15 days after the end of that excluded period.

~~((c) Setting of Hearing Date—Notice to Parties—Objection to Hearing Date—Waiver.~~ CrR 3.3(f) applies in juvenile court. The court shall notify the juvenile of the hearing date in accordance with CrR 3.3(f), and any party who objects to the hearing date must do so by motion within 10 days after the notice is mailed or otherwise given. The failure of a party to make a timely objection shall be a waiver of the objection to the hearing date.)

(c) Commencement date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under JuCR 7.6 and CrR 4.1.

(2) Resetting of Commencement Date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the juvenile's rights under this rule signed by the juvenile. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the hearing contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the juvenile to appear for any proceeding at which the juvenile's appearance was required. The new commencement date shall be the date of the juvenile's next appearance.

(iii) New Adjudicatory Hearing. The entry of an order granting a mistrial or new adjudicatory hearing or allowing the juvenile to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the juvenile's appearance that next follows the receipt by the clerk of the juvenile court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new adjudicatory hearing pursuant to a person restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the juvenile's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the juvenile court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of Venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification of Counsel. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) Setting of Hearing Date—Notice—Objections—Loss of Right to Object.

(1) Initial Setting of Hearing Date. The court shall, within 15 days of the juvenile's actual arraignment in juvenile

court, set a date for the adjudicatory hearing which is within the time limits prescribed by this rule and notify counsel for each party of the date set. If a juvenile is not represented by counsel, the notice shall be given to the juvenile and may be mailed to the juvenile's last known address. The notice shall set forth the proper date of the juvenile's arraignment and the date set for the hearing.

(2) Resetting of Hearing Date. When the court determines that the hearing date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for the hearing which is within the time limits prescribed and notify each party of the date set.

(3) Objection to Hearing Date. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set an adjudicatory hearing within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that an adjudicatory hearing commenced on such a date is not within the time limits prescribed by this rule.

(4) Loss of Right to Object. If a hearing date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for the adjudicatory hearing, subject to section (g). A later hearing date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) Excluded Periods. The following periods shall be excluded in computing the time for the adjudicatory hearing:

(1) Competency Proceedings. All proceedings related to the competency of the alleged juvenile ((~~offender~~)) to participate in the hearing on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the juvenile to be competent.

(2) Proceedings on Unrelated Charges. ((~~Preliminary proceedings and an adjudicatory hearing on another charge.~~)) Arraignment, pre-adjudicatory hearing proceedings, adjudicatory hearing, and disposition hearing on an unrelated charge.

(3) Continuances. Delay granted by the court pursuant to section ((~~e~~)) (f).

(4) Period between Dismissal and Refiling. The time between the dismissal of a charge and the refile of the same or related charge.

(5) Disposition of Related Charge. The period between the commencement of an adjudicatory hearing or the entry of a plea of guilty on one charge and the juvenile's arraignment in superior court on a related charge. ((~~The time between a motion for revision of a court commissioners ruling and the entry of a decision by a judge.~~))

(6) Juvenile Subject to Foreign or Federal Custody or Conditions. The time during which a juvenile is detained outside the state of Washington or in a federal facility and the time during which a juvenile is subject to conditions of

release not imposed by a court of the State of Washington. ((The time required for determining the capacity of the juvenile offender.))

(7) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for the adjudicatory hearing beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(8) Motion for Revision. When a motion for revision of a court commissioner's ruling is filed, the time between the court commissioner's ruling and an order deciding the motion.

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for the adjudicatory hearing.

~~((e))~~ **(f) Continuances.** Continuances or other delays may be granted as follows:

(1) On motion of the alleged juvenile offender on a showing of good cause.

(2) On motion of the prosecuting attorney if:

(i) the alleged juvenile offender consents to a continuance or delay and good cause is shown; or

(ii) the States evidence is presently unavailable, the prosecution has exercised due diligence, and there are reasonable grounds to believe that it will be available within a reasonable time; or

(iii) required in the due administration of justice and the alleged juvenile offender will not be substantially prejudiced in the presentation of his or her defense.

(3) The court on its own motion may continue the case when required in the due administration of justice and the alleged juvenile offender will not be substantially prejudiced in the presentation of his or her defense.))

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the alleged juvenile offender or all the alleged offenders, the court may continue the hearing date to a specified date.

(2) Motion by the Court or a Party. On motion of the court or a party, the court may continue the hearing to a specified date when such continuance is required in the administration of justice and the juvenile will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for the adjudicatory hearing has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for the adjudicatory hearing has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the juvenile will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 7 days for a juvenile who is held in detention, or 28 days for a juvenile not held in detention, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for hearing assignment during the cure period.

~~((f) Absence of Alleged Juvenile Offender.~~ In the event the alleged juvenile offender is absent from the court

and thereby unavailable for the adjudicatory hearing or for any preliminary proceeding at which his or her presence is required, the time period specified in section (b) shall start to accrue anew when the alleged juvenile offender is actually present in the county where the charge is pending, and his presence appears upon the record of the court.))

~~((g))~~ **(h) Dismissal With Prejudice.** ((If the adjudicatory hearing on a juvenile offense is not held within the time limits in this rule, the information shall be dismissed with prejudice.)) A charge not brought to adjudicatory hearing within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-hearing reasons except as expressly required by this rule, a statute, or the state or federal constitution.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

CrRLJ 2.2

WARRANT OF ARREST OR SUMMONS UPON COMPLAINT

(a) Issuance of Warrant of Arrest.

(1) Generally. If a complaint is filed and if the offense charged may be tried in the jurisdiction in which the warrant issues, and if the sentence for the offense charged may include confinement in jail, the court may direct the clerk to issue a warrant for the arrest of the defendant unless the defendant has already been arrested in connection with the offense charged and is in custody or has been released on obligation to appear in court.

(2) Probable Cause. A warrant of arrest must be supported by an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant. Sworn testimony shall be recorded electronically or stenographically. The evidence shall be preserved. The court must determine there is probable cause to believe that the defendant has committed the crime alleged before issuing the warrant. The evidence shall be subject to constitutional limitations for probable cause determinations and may be hearsay in whole or in part.

(3) Ascertaining Defendant's Current Address.

(i) Search for Address. The court shall not issue a warrant unless it determines that the complainant has attempted to ascertain the defendant's current address by searching the following: (A) the District Court Information System database (DISCIS), (B) the driver's license and identicaid database maintained by the Department of Licenses; and (C) the database maintained by the Department of Corrections listing persons incarcerated and under supervision. The court in its discretion may require that other databases be searched.

(ii) Exemptions from Address Search. The search required by subdivision (i) shall not be required if (A) the defendant has already appeared in court (in person or through counsel) after filing of the same case, (B) the defendant is

known to be in custody, or (C) the defendant's name is unknown.

(iii) Effect of Erroneous Issuance. If a warrant is erroneously issued in violation of this subsection (a)(3), that error shall not affect the validity of the warrant.

(b) Issuance of Summons in Lieu of Warrant.

(1) *Generally.* If a complaint is filed, the court may direct the clerk to issue a summons commanding the defendant to appear before the court at a specified time and place.

(2) *When Summons Must Issue.* If the complaint charges the commission of a misdemeanor or a gross misdemeanor, the court shall direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent bodily harm to the accused or another, in which case it may issue a warrant.

(3) *Summons for Felony Complaint.* If the complaint charges the commission of a felony, the court may direct the clerk to issue a summons instead of a warrant unless it finds reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent bodily harm to the accused or another, in which case it may issue a warrant.

(4) *Summons.* A summons shall be in writing and in the name of the charging jurisdiction, shall be signed by the clerk with the title of that office, and shall state the date when issued. It shall state the name of the defendant and the nature of the charge, and shall summon the defendant to appear before the court at a stated time and place. The summons shall inform the defendant that failure to appear as commanded may result in the issuance of a warrant for the arrest of the accused.

(5) *Failure To Appear on Summons.* If a person fails to appear in response to a summons, or if delivery is not effected within a reasonable time, a warrant of arrest may issue, if the sentence for the offense charged may include confinement in jail.

(c) **Requisites of a Warrant.** The warrant shall be in writing and in the name of the charging jurisdiction, shall be signed by the judge or clerk with the title of that office, and shall state the date when issued. It shall specify the name of the defendant, or if his or her name is unknown, any name or description by which he or she can be identified with reasonable certainty. The warrant shall specify the offense charged against the defendant and that the court has found that probable cause exists to believe the defendant has committed the offense charged and shall command the defendant be arrested and brought forthwith before the court issuing the warrant. If the offense is not a capital offense, the court shall set forth in the order for the warrant, bail and/or other conditions of release.

(d) Execution; Service.

(1) *Execution of Warrant.* The warrant shall be directed to all peace officers in the state and shall be executed only by a peace officer.

(2) *Delivery of Summons.* The summons may be served any place within the state. It may be served by a peace officer, who shall deliver a copy of the same to the defendant personally, or it may be delivered by the court mailing the

same, postage prepaid, to the defendant at his or her last known address.

(e) **Return.** The officer executing a warrant shall make return thereof to the court before whom the defendant is brought pursuant to these rules. At the request of the prosecuting authority any unexecuted warrant shall be returned to the issuing court to be canceled. The peace officer to whom a summons has been given for service shall, on or before the return date, file a return thereof with the court before whom the summons is returnable. For reasonable cause, the court may order that the warrant be returned to it.

(f) Defective Warrant or Summons.

(1) *Amendment.* No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any irregularity.

(2) *Issuance of New Warrant or Summons.* If during the preliminary examination of any person arrested under a warrant or appearing in response to a summons, it appears that the warrant or summons does not properly name or describe the defendant or the offense with which he or she is charged, or that although not guilty of the offense specified in the warrant or summons, there is reasonable ground to believe that he or she will be charged with some other offense, the judge shall not discharge or dismiss the defendant but may allow a new complaint to be filed and shall thereupon issue a new warrant or summons.

(g) Failure to Issue Warrant—Dismissal. Upon five days' notice to the prosecuting attorney, the court shall dismiss a charge without prejudice if (i) 90 days have elapsed since the citation or complaint was filed and (ii) on the date that the order of dismissal is entered, no warrant has been issued and the defendant has not appeared in court.

**CrRLJ RULE 3.3
TIME FOR TRIAL**

(a) General Provisions.

(1) *Responsibility of Court.* It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with ~~((having committed))~~ a crime.

~~((b))~~ (2) *Precedence Over Civil Cases.* Criminal trials shall take precedence over civil trials.

(3) *Definitions.* For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in the trial court.

(iii) "Appearance" means the defendant's physical presence in the trial court. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously placed on the record under the cause number of the pending charge.

(iv) "Arraignment" means the date determined under CrRLJ 4.1(b).

(v) "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excludes any period in which a defendant is on electronic

home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement:

(vi) "Trial court" means the court where the pending charge was filed.

(4) Construction. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under this language of this rule but was delayed by circumstances not addressed in this rule or CrRLJ 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) Related Charges. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) Reporting of Untimely Trials. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time allowed by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g).

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(2) Defendant Not Detained in Jail. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule, or

(ii) the time specified in subsection (b)(5).

(3) Release of Defendant. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) Return to Custody following Release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) Allowable Time after Excluded Period. If any period of time is excluded pursuant to section (f), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

((c) Time for Arraignment and Trial.

(1) Cases Filed in Court. If the defendant is detained in jail, or subject to conditions of release, the defendant shall be arraigned not later than 15 days after the date the complaint is filed in court. If the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 15 days after that appearance in court which next follows the filing of the complaint or citation and notice. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release pending trial shall be brought to trial not later than 90 days after the date of arraignment.

(2) [Reserved.]

(3) Cases Filed Initially in Juvenile Court. If a complaint or citation and notice is filed with the court after a juvenile court has declined jurisdiction, and if at the time the complaint or citation and notice is filed the defendant is detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 15 days after the date the complaint or citation and notice is filed. If a complaint or citation and notice is filed with the court after a juvenile court has declined jurisdiction, and if at the time the complaint or citation and notice is filed the defendant is not detained in jail or subjected to conditions of release, the defendant shall be arraigned not later than 15 days after the appearance in court which next follows the filing of the complaint or citation and notice. A defendant not released from jail pending trial in court shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail whether or not subjected to conditions of release shall be brought to trial not later than 90 days after the date of arraignment.

(4) Untimely Arraignment. If a defendant is not arraigned within the time limits of this rule and an objection to the date of arraignment has been made as required by section (e) of this rule, the time for trial established in this section shall commence on the last day the defendant could properly have been arraigned.

(5) Rearraignment. If a defendant is required to be rearraigned on a charge that arises out of the same occurrence and has the same elements of proof as those upon which the defendant was previously arraigned, the time for trial established in this section shall commence on the date of the previous arraignment.

(6) Arraignment Defined. As used in this rule, "arraignment" shall be defined as in rule 4.1.

(d) Extensions of Time for Trial. The following extensions of time limits apply notwithstanding the provisions of section (e):

(1) Revocation of Release. A defendant who has been released from jail pending trial, pursuant to an order imposing conditions of release, but whose release is then revoked by order of the court, shall be brought to trial within such a time period that the defendant spends no more than a total of 60 days in jail following the date of arraignment, and in any event within such a time period that the defendant is tried not later than a total of 90 days after the date of arraignment unless the time period is otherwise extended by this rule.

(2) Failure To Appear. When a defendant who has already been arraigned fails to appear for any trial or pretrial proceeding at which the defendant's presence is required, the defendant shall be brought to trial not later than 60 days after the date upon which the defendant is present in the county where the criminal charge is pending and the defendant's presence has been made known to the court on the record, if the defendant is thereafter detained in jail or not later than 90 days after such date if the defendant is not detained in jail whether or not the defendant is thereafter subjected to conditions of release.

(3) Mistrial and New Trial. If before verdict the court orders a mistrial, the defendant shall be brought to trial not later than 60 days after the oral or written order of the court, whichever first occurs, if the defendant is thereafter detained

in jail or not later than 90 days after the order if the defendant is not detained in jail and whether or not the defendant is subjected to conditions of release. If after verdict the court orders a new trial, the defendant shall be brought to trial not later than 60 days after entry of the oral or written order of the court if the defendant is thereafter detained in jail, or not later than 90 days after entry of such order if the defendant is not detained in jail whether or not the defendant is thereafter subjected to conditions of release.

(4) *Trial After Appellate Review or Stay.* If a cause is remanded for trial after an appellate court accepts review or stays proceedings, the defendant shall be brought to trial not later than 60 days after that appearance by or on behalf of the defendant in court, with notice to both parties of any such appearance, which next follows receipt by the clerk of the court of the mandate or other written order, if after such appearance the defendant is detained in jail, or not later than 90 days after such appearance if the defendant is thereafter released whether or not subject to conditions of release.

(5) *Change of Venue.* If a change of venue has been granted, the case shall be transferred to the receiving court as soon as practicable but within 7 days and the defendant shall be brought to trial as prescribed by this rule or not later than 30 days following the date upon which the court to which the case is being transferred for trial receives the filing of the case, whichever is later. If, however, after a change of venue is attempted, the criminal calendar of the receiving county will prevent compliance with the time limits within this section, the trial shall commence on the earliest available date permitted.

(6) *Disqualification.* If the prosecuting authority or judge becomes disqualified from participating in the case, the defendant shall be brought to trial as prescribed by this rule or not later than 30 days following the disqualification, whichever is later.

(7) *Withdrawal of Guilty Plea.* If a defendant has been permitted to withdraw a plea of guilty, the defendant shall be brought to trial not later than 60 days after the date of the written order allowing withdrawal of the guilty plea if the defendant is thereafter detained in jail or not later than 90 days if the defendant is thereafter released from jail, whether or not subjected to conditions of release.

(8) *Five Day Extensions.* When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the court or the parties, the court, even if the time for trial has expired, may extend the time within which trial must be held for no more than 5 days unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension. If the nature of the unforeseen or unavoidable circumstance continues, the court may extend the time for trial in increments of not to exceed 5 days unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension.))

(c) Commencement date.

(1) *Initial Commencement Date.* The initial commencement date shall be the date of arraignment as determined under CrRLJ 4.1.

(2) *Resetting of commencement date.* On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) *Waiver.* The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be the date of the trial contemporaneously or subsequently set by the court.

(ii) *Failure to Appear.* The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) *New Trial.* The entry of an order granting a mistrial or a new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) *Appellate Review or Stay.* The acceptance of review or grant of a stay by an appellate court, or the issuance of a writ of certiorari, mandamus, or prohibition. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the trial court of the mandate or written order terminating review or stay.

(v) *Collateral Proceeding.* The entry of an order granting a new trial pursuant to a personal restraint proceeding, a habeas corpus proceedings, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the trial court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) *Change of venue.* The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) *Disqualification of Counsel.* The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(viii) *Deferred Prosecution.* The filing of a motion for deferred prosecution. The new commencement date shall be the date that an order is entered denying the motion or revoking deferred prosecution.

~~((c) Objection to Arraignment Date Waiver of Objection))~~

((A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment pursuant to section (c) of this rule, and the time for trial set out in section (c) shall be deemed to have commenced on that date. Failure of a party to object as required shall be a waiver of the objection, and the date of arraignment shall be conclusively established as the date upon which the defendant was actually arraigned.))

~~((f)) Setting of Trial Date—Notice to Parties—Objection to Trial Date—Waiver of Objection~~ **(d) Trial Settings and Notice—Objections—Loss of Right to Object.**

(1) Initial Setting of Trial Date. The court shall, within 15 days of the defendant's actual arraignment in the trial court or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule and notify counsel for each party of the date set. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment as established at the time of arraignment and the date set for trial. ~~((A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. Failure of a party, for any reason, to make such a motion shall be a waiver of the objection that a trial commenced on such a date, or on an extension of such date properly granted pursuant to this rule, is not within the time limits prescribed by this rule.))~~

(2) Resetting of Trial Date. When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a period of extension new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed and notify each party of the date set in subsection (f)(1).

(3) Objection to Trial Setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. ~~((Failure of a party, for any reason, to make such a motion shall be a waiver of the objection))~~ A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date, or on any extension of such date granted pursuant to subsection (e)(8), is not within the time limits prescribed by this rule.

(4) Loss of Right to Object. If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

~~((e))~~ **(e) Excluded Periods.** The following periods shall be excluded in computing the time for arraignment and the time for trial:

(1) Competency Proceedings. All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) Proceedings on Unrelated Charges. Arraignment, ~~((Preliminary))~~ pre-trial proceedings, and trial, and sentencing on an unrelated charge ~~((except as otherwise provided by subsection (e)(5))~~.

(3) Continuances. Delay granted by the court pursuant to section (f).

(4) Period between Dismissal and Filing. The time between the dismissal of a charge and the defendant's arraignment or re-arraignment in court following the re-filing of the same or related charge.

(5) Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in the trial court on a related charge.

~~((5))~~ (6) Defendant Subject to Foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the county in which the defendant is charged or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

~~((6))~~ (7) Juvenile Proceedings. All proceedings in juvenile court.

(8) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

~~((h))~~ **(f) Continuances.** Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial to a specified date. ~~((The agreement shall be effective when approved by the court on the record or in writing.))~~

(2) Motion by the Court or a Party. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be filed before the date set for trial or the last day of any continuance or extension granted pursuant to this rule time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

~~((4))~~ **(h) Dismissal With Prejudice.** A ~~(criminal)~~ charge not brought to trial within the time ~~((period provided by))~~ limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

~~((j))~~ **Waiver.** A defendant may waive his or her time for trial rights. A waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain beyond the current expiration date as calculated pursuant to this rule or for a period of days beyond the current expiration date.)

CrRLJ 4.1 ARRAIGNMENT

(a) Procedures. After the complaint or the citation and notice has been filed, the defendant shall be arraigned thereon in open court.

(1) Time.

(i) The defendant shall be arraigned not later than 15 days after the date the complaint is filed in court, if the defendant is (A) detained in a county or city jail in the county where the charges are pending, or (B) subject to conditions of release imposed in connection with the same charges.

(ii) The defendant shall be arraigned not later than 15 days after that appearance which next follows the filing of the complaint or citation and notice, if the defendant is not detained in such jail or subject to such conditions of release. Any delay in bringing the defendant before the court shall not affect the allowable time for arraignment, regardless of the reason for the delay. For purposes of this rule, "appearance" has the meaning defined in CrRLJ 3.3 (a)(3)(iii).

~~((1))~~ **(2) Reading and Plea.** Arraignment shall consist of reading the complaint or the citation and notice to the defendant or stating to him or her the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the complaint or the citation and notice before being called upon to plead, unless a copy has previously been supplied. The defendant shall not be required to plead to the complaint or the citation and notice until he or she shall have had a reasonable time to examine it and to consult with a lawyer, if requested.

~~((2))~~ **(3) Advisement.** At arraignment, unless the defendant appears with a lawyer, the court shall advise the defendant on the record:

- (i) of the right to trial by jury if applicable; and
- (ii) of the right to be represented by a lawyer at arraignment and to have an appointed lawyer for arraignment if the defendant cannot afford one.

(b) Objection to Arraignment Date—Loss of Right to Object. A party who objects to the date of arraignment on the ground that it is not within the time limits prescribed by this rule must state the objection to the court at the time of the arraignment. If the court rules that the objection is correct, it shall establish and announce the proper date of arraignment. That date shall constitute the arraignment date for purposes

of CrRLJ 3.3. A party who fails to object as required shall lose the right to object, and the arraignment date shall be conclusively established as the date upon which the defendant was actually arraigned.

~~((b))~~ **(c) Waiver.**

(1) *Jury Trial.* A waiver of jury trial at arraignment must be in writing and signed by the defendant. If the defendant waives a jury trial at arraignment, he or she must be advised of the right to withdraw the waiver and request a jury trial within 10 days of arraignment.

(2) *Lawyer.* If the defendant chooses to proceed without a lawyer, the court shall determine on the record that the waiver is made voluntarily, competently and with knowledge of the consequences. The defendant must be advised that waiver of a lawyer at arraignment does not preclude the defendant from asserting the right to a lawyer later in the proceedings.

~~((e))~~ **(d) Name.** At arraignment, the court shall ask the defendant his or her true name. If the defendant's name has been incorrectly stated in the complaint or citation and notice, the court shall order the complaint or citation and notice to be corrected accordingly.

~~((d))~~ **(e) Appearance by Defendant's Lawyer.** Except as otherwise provided by statute or by local court rule, a lawyer may enter an appearance or a plea of not guilty on behalf of a client for any offense. Such appearance or plea may be entered only after a complaint or citation and notice has been filed.

(1) The appearance or the plea of not guilty shall be made only in writing or in open court, and eliminates the need for a further arraignment.

(2) An appearance that waives arraignment but fails to state a plea shall be deemed to constitute entry of a plea of not guilty.

(3) An appearance under this rule constitutes a waiver of any defect in the complaint or the citation and notice except for failure to charge a crime which may be raised at any time and except for any other defect that is specifically stated in writing or on the record at the time the appearance is entered.

(4) A written appearance shall commence the running of the time periods established in rule 3.3 from the date of its receipt by the court, unless the time periods have previously been commenced by an appearance in open court.

(5) Telephonic requests or notices by either the defendant or the defendant's lawyer shall not constitute an arraignment or an appearance or entry of a plea, and shall not commence the running of the time periods under rule 3.3.

(6) The appearance by a lawyer authorized by this rule shall be construed as an "arraignment" under the other provisions of these rules.

WSR 03-16-066
AGENDA
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 [Filed August 1, 2003, 4:20 p.m.]

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Semi-Annual Rule-Making Agenda
July 1, 2003, through December 31, 2003

This report describes the projected rule-making activity by DSHS administrations and divisions from July 1, 2003, through December 31, 2003. DSHS publishes this rule-making agenda semi-annually to comply with RCW 34.05.314.

The rule-making agenda represents activity that can be forecast at this time. There may be additional DSHS rule-making activity, or some activity in this report may not occur

during this period, as DSHS responds to new state laws, to meet federal requirements, or to meet unforeseen circumstances.

If you have questions about this rule-making agenda or the DSHS rule-making process, please contact Andy Fernando, DSHS Rules Coordinator, at P.O. Box 45850, Olympia, WA 98504-5850, by phone at (360) 664-6094, or by e-mail at FernaAX@dshs.wa.gov. If you are interested in receiving DSHS rule-making notices, please contact Fred Swenson at the DSHS Rules and Policies Assistance Unit by phone at (360) 664-6097 or by e-mail at SwensFH@dshs.wa.gov. This document is also available from the Department of Social and Health Services public website, at <http://www1.dshs.wa.gov/msa/rpau/>.

Following the tables are explanations of the terms CR-101, CR-102, CR-103 and CR-105, and other selected terms.

MISC.

AGING AND DISABILITY SERVICES ADMINISTRATION (ADSA)			
ADSA - Division of Developmental Disabilities (DDD)			
WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
Chapter 388-820 WAC	Community residential services and support.	Same.	CR-101, CR-102, CR-103 Amending and clarifying language.
Chapter 388-820 WAC Chapter 388-825 WAC Chapter 388-850 WAC	Community residential services and support. DDD service rules. County plan for developmental disabilities.	State supplemental payment program.	CR-102, CR-103 Amending and adopting new rules to implement legislation (SSB 6387) on DDD state supplemental payment program; and revising eligibility rules.
Chapter 388-825 WAC	DDD service rules.	Eligibility for services.	CR-101, CR-102, CR-103 Amending and clarifying language regarding appeal processes.
New chapter 388-827 WAC	State supplemental payment program.	DDD state supplemental payment program.	CR-102, CR-103 Creating a new WAC chapter to replace new WAC 388-825-500 through 388-825-600 adopted by emergency rule. Adopting new rules to implement legislation (ESSB 6387) on DDD state supplemental payment program; and revising eligibility rules.
Chapter 388-830 WAC	DDD program option rules.	Same.	CR-101, CR-102, CR-103 Possible repeal of this WAC chapter.
Chapter 388-835 WAC	ICF/MR program and reimbursement system.	Same.	CR-101, CR-102, CR-103 Amending language to reflect new rates.
Chapter 388-850 WAC	County plan for DDD.	Same.	CR-101, CR-102, CR-103 Rewriting rules in clear rule format and clarifying language.
WAC 388-513-1301, 388-513-1315, and 388-513-1510	Client not in own home—Institutional medical.	Implementing new DDD federal waivers.	CR-101 Amending and adopting new rule to implement waivers to maintain federal funding.

ASDA - Home and Community Services Division (HCS)			
WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
Chapter 388-71 WAC Chapter 388-515 WAC	Social services for adults. Alternate living—Institutional medical.	Medically-needy (MN) waiver and community options program entry system (COPES).	CR-103 Permanent rules effective July 13, 2003, adopted to establish the medically-needy waiver program; and amending COPES rules to reflect changes in the program requirements and/or options; and complying with Executive Order 97-02.
WAC 388-71-0194, 388-71-0415, and 388-71-0440 WAC 388-72A-0060	Social services for adults. Comprehensive assessment reporting and evaluation tool.	Medicaid personal care (MPC).	CR-102, CR-103 Amending MPC rules to comply with new legislative and budget requirements adopted by the 2003 legislature.
WAC 388-71-0400 through 388-71-0480	Social services for adults, home and community programs.	Home and community programs.	CR-102, CR-103 To establish and clarify (1) what constitutes "living with others" for clients who receive in-home services from Medicaid personal care, COPES or Chore; (2) what services may be authorized when a client lives with another person(s); and (3) the amount of services a person can receive when they live with another person(s).
WAC 388-71-0460	Social services for adults, home and community programs.	Shared living.	CR-103 Permanent rule effective August 3, 2003, clarifying what services DSHS will not pay for when a client and individual provider share a household.
WAC 388-71-0465	Social services for adults, home and community programs.	Are there waiting lists for HCP?	CR-101, CR-102 Amending the rules is required by legislative mandate to control caseload growth.
WAC 388-71-0805, 388-71-0810, 388-71-0815, 388-71-0820, and 388-71-0840	Social services for adults—Program for all-inclusive care for the elderly (PACE).	PACE.	CR-103 Permanent rules effective July 17, 2003, clarifying PACE requirements and additional options under PACE, and to make other amendments.
WAC 388-71-1065 through 388-71-1095	Social services for adults—Respite care.	Respite care—Family caregiver support program.	CR-101 Amending the respite care subchapter to include the family caregiver support program per state legislation.
WAC 388-71-05923	Social services for adults.	Caregiver training.	CR-102, CR-103 Revising language to make the rule easier to implement. Public hearing scheduled for August 26, 2003.

MISC.

WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-79-010, 388-79-020, 388-79-030, 388-79-040, and 388-79-050	Guardianship fees for clients of the department.	Same.	CR-103 Permanent rules filed July 28, 2003. To provide for a total of thirty days for proceedings; prohibit deductions from participation for fees and costs incurred prior to Medicaid eligibility; limit, to the extent possible, the court's ability to advance fees at one accounting and to award higher fees at a later accounting. Second public hearing was held April 22, 2003.
Chapter 388-112 WAC Chapter 388-71 WAC	Residential long-term care services. Social services for adults.	Same.	CR-102, CR-103 Amending rules adopted in 2002 to correct typographical errors without changing the effect of the rules.
WAC 388-513-1350 and 388-513-1380	Client not in own home—Institutional medical.	Maximum resources allowed and client participation for long-term care services.	CR-101, CR-102, CR-103 Amending the rules to comply with new state statute (ESHB 2257) to reduce the maximum resource allocation for the community spouse effective August 1, 2003; and increase the community spouse standards for long-term care program to be consistent with federal standards effective April 1, 2003.
WAC 388-513-1365 WAC 388-561-0100	Client not in own home—Institutional medical. Trusts, annuities, and life estates—Effect on medical programs.	Evaluating the transfer of an asset made on or after March 1, 1997, for long-term care services.	CR-103 Permanent rules effective August 1, 2003, clarifying rules on lifetime care contracts and sole benefit trusts as they relate to financial eligibility for department long-term care.
ADSA - Residential Care Services Division (RCS)			
WAC 388-76-650, 388-76-76500 series	Adult family homes.	Same.	CR-102, CR-103 To incorporate changes consistent with food worker rules of the Department of Health and to clarify emergency evacuation and safety requirements.
WAC 388-76-655	Adult family homes.	Same.	CR-103 Permanent rule effective July 20, 2003, to address provider access to liability insurance.
WAC 388-76-675 WAC 388-97-076	Adult family homes. Nursing homes.	Reporting requirements/prevention of abuse.	CR-101, CR-102, CR-103 To comply with the recently passed legislation ESHB 1904, relating to the reporting of incidents by mandated reporters.

MISC.

WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
Chapter 388-78A WAC	Boarding homes.	Same.	CR-103 Permanent rule to be filed by August 1, 2003, effective September 1, 2004. To review and update rules to be consistent with current practices in residential care and to make it more applicable to today's boarding home residents. Current rules will be repealed and replaced with new rules in chapter 388-78A WAC. Public hearing held March 11, 2003.
Chapter 388-110 WAC	Contracted residential care services.	Same.	CR-102, CR-103 To incorporate dementia care pilot project standards into rule for contracting with boarding homes to provide dementia care to department clients, and to make revisions necessary as a result of amendments to chapter 388-78A WAC.
ADSA - Rates Management Division			
Chapter 388-96 WAC	Nursing facility payment system.	Same.	CR-102, CR-103 Codifying current policies and practices; editing previous codifications for substance and form.
WAC 388-105-0005, 388-105-0030, 388-105-0040, and new 388-105-0045	Medicaid rates for contracted home and community residential care services.	Bed hold process, rates.	CR-101, CR-102, CR-103 Implementing SSB 5579 (chapter 231, Laws of 2003), requiring a change to the current bed hold process for residential care settings and implementing new rates.
CHILDREN'S ADMINISTRATION			
WAC 388-25-0018	Child welfare services—Foster care.	What is the agency's goal as to the maximum number of children who remain in foster care in excess of twenty-four hours?	CR-103 Permanent rule effective July 26, 2003. Expedited rule making - adopting a policy rule required by federal and state law. The rule language was repealed in error previously.
WAC 388-27-0120, 388-27-0130, 388-27-0135, 388-27-0155, 388-27-0160, 388-27-0165, 388-27-0175, 388-27-0190, 388-27-0195, 388-27-0200, 388-27-0210, 388-27-0215, 388-27-0220, 388-27-0225, 388-27-0235, 388-27-0240, 388-27-0245, 388-27-0270 and related sections	Child welfare services—Adoption services and adoption support.	Adopting special needs children.	CR-101, CR-102, CR-103 Amending rules to comply with legislative directives to control rate and reimbursement decisions with families adopting special needs children by maximizing use of federal funds.
WAC 388-32-0020 and 388-32-0030	Child welfare services to prevent out-of-home placement and achieve family reconciliation.	Family reconciliation services.	CR-102, CR-103 Amending rules to implement recent legislation and implement a new twenty-four hour intake service. Public hearing scheduled for August 5, 2003.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
New chapter 388-140 WAC	Licensing standards for group receiving centers.	Same.	CR-102, CR-103 To establish under a new WAC chapter licensing procedures and standards for group receiving center currently approved under waivers.
Chapter 388-148 WAC	Foster homes and facility licensing requirements.	Same.	CR-102, CR-103 Workgroup convened to develop amendments and additions to licensing chapter identified as problematic.
ECONOMIC SERVICES ADMINISTRATION (ESA)			
ESA - Community Services Division (CSD)			
WAC 388-273-0025, 388-273-0030, and 388-273-0035	Washington telephone assistance program.	Same.	CR-102, CR-103 Clarifying the payment limits for reimbursable services, and streamlining the billing process. The amendment also adds community service voice mail as a WTAP benefit as provided for by chapter 134, Laws of 2003.
ESA - Division of Child Care and Early Learning (DCCEL)			
Chapter 388-290 WAC	Working connections child care (WCCC).	Activity fees; copays and mandatory cooperation.	CR-102, CR-103 Changing and clarifying the rules including but not limited to activity fees, change in copayments during the authorization period and mandatory cooperation with quality assurance reviews.
WAC 388-290-0075, 388-290-0085, 388-290-0190, and 388-290-0210	Working connections child care (WCCC).	Copayments.	CR-102, CR-103 Increasing participant family copayment levels; eliminating unfunded portions of WCCC program to meet budget reductions.
WAC 388-290-0130	Working connections child care (WCCC).	Same.	CR-101, CR-102, CR-103 Clarifying that an in-home/relative child care provider may be an eligible provider following results of a criminal background check.
New chapter 388-292 WAC, repeal WAC 388-165-130	Seasonal child care program.	Same.	CR-103 Permanent rules, chapter 388-292 WAC, filed June 30, 2003, effective August 1, 2003.
New chapter 388-295 WAC, repeal all rules in chapter 388-150 WAC	Minimum licensing requirements for child care centers.	Same.	CR-103 Permanent rules, chapter 388-295 WAC, filed June 30, 2003, effective August 1, 2003.
New chapter 388-296 WAC Repealing all rules in chapter 388-155 WAC	New chapter name. Minimum licensing requirements for family child care homes.	Licensing requirements for family child care homes.	CR-102, CR-103 Revising this chapter to meet the governor's clear rule-writing mandate. Revisions will result in adopting new chapter(s) of Title 388 WAC.

MISC.

ESA - Division of Child Support (DCS)			
WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-14A-1030, 388-14A-2040, 388-14A-2075, 388-14A-2135, 388-14A-3125, 388-14A-3300, 388-14A-3315, 388-14A-3350, 388-14A-3375, 388-14A-3800, 388-14A-3865, 388-14A-3875, 388-14A-4605, 388-14A-5000, and 388-14A-5008	Division of child support rules.	Correcting erroneous cross references.	CR-102, CR-103 Amending the rules to correct erroneous or obsolete WAC or RCW cross references without changing the effect of the rules. Public hearing scheduled for September 2, 2003.
WAC 388-14A-2000, 388-14A-2025, 388-14A-2080, 388-14A-3800, 388-14A-3810, 388-14A-4000, 388-14A-4300, and 388-14A-4304	Division of child support rules.	Modifying support obligations.	CR-102, CR-103 Amending the rules to allow the Division of Child Support (DCS) to modify support obligations when both parties make informal arrangements and are unable to return to court to officially change the support order.
WAC 388-14A-3100, 388-14A-3102, 388-14A-3110, 388-14A-3115, 388-14A-3120, 388-14A-3370, and 388-14A-3810	Division of child support rules.	Uniform Parentage Act.	CR-102, CR-103 Bringing DCS rules into compliance with new legislation (chapter 302, Laws of 2002). Public hearing scheduled for August 5, 2003.
WAC 388-14A-3900 to 388-14A-3925	Division of child support rules.	Modification of a support order.	CR-102 Allowing for modification of a support order when it will not change by more than the current standard.
WAC 388-14A-4100, 388-14A-4110, 388-14A-4120, and 388-14A-4130	Division of child support rules.	Medical child support obligations.	CR-102, CR-103 Developing new rules and procedures for enforcing medical child support obligations using the national medical support notice.
WAC 388-14A-4500 though 388-14A-4530	Division of child support rules.	DCS license suspension program.	CR-102, CR-103 Clarifying who is subject to license suspension. Public hearing scheduled for August 26, 2003.
New WAC 388-14A-6105, 388-14A-6110, 388-14A-6115, 388-14A-6120, and 388-14A-6125	Division of child support rules.	Hearing procedures.	CR-102, CR-103 Clarify hearing, reconsideration and review rights for individuals affected by DCS rules consistent with amendments to chapter 388-02 WAC, DSHS Hearing rules. Public hearing scheduled for August 5, 2003.
ESA - Division of Employment and Assistance Programs (DEAP)			
WAC 388-61-001	Family violence.	Family violence amendment—TANF.	CR-102, CR-103 Amending rules to align their intent with current practice.
WAC 388-310-0800, 388-310-1800	WorkFirst.	WorkFirst support services.	CR-102, CR-103 Amending the rule to eliminate the transitional work expense from authorized support services, and to keep WorkFirst support services within budget allocations.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-310-1600	WorkFirst.	WorkFirst sanctions.	CR-102, CR-103 Proposing changes to the sanction process for WorkFirst participants.
WAC 388-406-0005, 388-406-0010, 388-406-0015, 388-406-0021, 388-406-0035, 388-406-0040, 388-406-0055, 388-406-0060, and 388-406-0065 WAC 388-416-0005	Applications. Certification periods.	Washington basic food program.	CR-101, CR-102, CR-103 Amending rules to update program language and clarify program requirements for the application process, expedited service, and certification periods for the Washington basic food program.
WAC 388-408-0005	Assistance units.	Correction.	CR-102, CR-103 Correcting an incorrect WAC cross reference. Public hearing scheduled for July 22, 2003.
WAC 388-408-0034, 388-408-0035, 388-408-0040, 388-408-0045, 388-408-0050	Assistance units.	Same.	CR-102, CR-103 This chapter will be revised to simplify the rules regarding inclusion in the assistance unit. Public hearing scheduled for September 9, 2003.
WAC 388-410-0030	Benefit error.	How does the department calculate and set up my food assistance overpayment?	CR-102, CR-103 Correcting an incorrect WAC cross reference.
WAC 388-412-0015, 388-412-0020, 388-412-0025, and 388-412-0040 WAC 388-460-0001, 388-460-0005, 388-460-0010, and 388-460-0015	Benefit issuances. Payees for benefit issuances.	Washington basic food program.	CR-101, CR-102, CR-103 Amending rules to update and clarify program language and requirements for payees, allotments, and benefit issuances for the Washington basic food program.
WAC 388-414-0001	Categorical eligibility for food assistance.	Some food assistance units do not have to meet all eligibility requirements.	CR-102, CR-103 Amendment will reflect changes in WorkFirst support services that impact which clients are categorically eligible for food assistance and do not have to meet certain requirements to get food assistance benefits.
Chapter 388-418 WAC Chapter 388-444 WAC Chapter 388-450 WAC other chapters as appropriate	Change of circumstances. Employment and training. Income.	Same.	CR-102, CR-103 Amending all necessary sections of Title 388 WAC to implement changes related to change-reporting requirements that affect client's eligibility and benefit level for food stamps and the state-funded food assistance program for legal immigrants.
WAC 388-424-0005, 388-424-0010, and 388-424-0015	Citizenship, alien status.	Same.	CR-102, CR-103 Amending the rules to incorporate changes from federal law; and to revise the rule for clarity.

MISC.

WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-436-0002	Emergency cash assistance.	Additional requirements for emergent needs (ARENS).	CR-102, CR-103 Reducing the maximum allowable payment to prevent overspending of state funds.
Chapter 388-444 WAC	Food stamp employment and training.	Same.	CR-101 Simplifying and updating language so that the rules are easier to read and use.
Chapter 388-448 WAC	Incapacity.	Individual responsibility plan requirements— General assistance	CR-102, CR-103 Developing new individual responsibility plan requirements for general assistance recipients enrolled in WorkPlus.
Chapter 388-448 WAC	Incapacity.	General assistance— Unemployable.	CR-102, CR-103 Anticipating legislation governing eligibility for the GAU program that may require changes in administrative rules.
WAC 388-448-0130 and 388-448-0140	Incapacity.	General assistance— Unemployable.	CR-103 Clarifying optional employment services and participation; clarifying what is good cause for refusing medical treatment or agency referrals. Public hearing was held May 6, 2003.
WAC 388-448-0180	Incapacity.	How and when we redetermine your eligibility if we decide you are eligible for GAX.	CR-102, CR-103 Amending the rule to make reference to the correct type of hearing. "Administrative hearing" needs to be replaced by "appeals court review."
WAC 388-450-0080 and 388-450-0085	Income.	What is self-employment income?	CR-103 Permanent rules effective August 1, 2003. Clarifying the treatment of self-employment income to assure consistent application of the rule.
WAC 388-450-0135	Income.	Allocating income of an ineligible spouse to a GA-U client.	CR-102, CR-103 Simplifying how the department allocates income from an ineligible spouse to a general assistance recipient.
WAC 388-450-0185, 388-450-0190, and 388-450-0195; WAC 388-478-0060; and WAC 388-492-0040 and 388-492-0070	Income. Standards for payments. Washington combined application project.	Same.	CR-102, CR-103 Standards are required by federal regulations and approved department waivers. These standards must be adjusted annually in order to determine a client's eligibility and benefit level for WASHCAP or the Washington basic food program.
WAC 388-452-0005	Interview requirements.	Do I have to be interviewed in order to get benefits?	CR-102, CR-103 Clarifying when an in person or a telephone interview is appropriate to receive basic food benefits. Public hearing scheduled for August 26, 2003.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-454-0006, and 388-454-0025	Living with a relative.	Background checks.	CR-102, CR-103 Revising rules on background checks on adults who are acting <i>in loco parentis</i> (in place of another) without court ordered custody.
Chapter 388-460 WAC	Payees on benefit issuances.	Protective payee policies.	CR-102 Proposing changes to protective payee policies.
WAC 388-468-0005	Residency.	Same.	CR-102, CR-103 Amending rules to prohibit the receipt of benefits from Washington state while receiving comparable benefits from another state. Public hearing scheduled for September 9, 2003.
Chapter 388-474 WAC	Supplemental security income.	State supplemental payment program.	CR-101, CR-102, CR-103 Amending rules to add certain persons who receive federal supplemental security income (SSI) to the population who receive state supplemental payments.
WAC 388-480-0001 and WAC 388-482-0005	Strikers. Student status.	Washington basic food program.	CR-101, CR-102, CR-103 Amending rules to update and clarify language and program requirements for strikers and students for the Washington basic food program.
Chapter 388-490 WAC	Verification.	Proof of eligibility.	CR-102, CR-103 Streamlining the application process by standardizing how the department requests proof of eligibility.
Chapter 388-492 WAC	Washington combined application program (WASH-CAP).	Same.	CR-102, CR-103 Clarifying language and updating WASH-CAP standards.
WAC chapter not yet specified		Client reporting requirements.	CR-101 Implementing quarterly reporting for clients.
WAC chapter not yet specified		Overpayments to clients.	CR-101 Eliminating overpayments caused by agency error and amending all related rules.
HEALTH AND REHABILITATIVE SERVICES ADMINISTRATION (HRSA)			
HRSA - Division of Alcohol and Substance Abuse (DASA)			
Chapter 388-805 WAC	Certification requirements for chemical dependency treatment providers.	Opiate substitution treatment programs, and certification requirements for service providers.	CR-102, CR-103 Amending and adopting new rules implementing SSB 5417 (chapter 242, Laws of 2001) on certifying opiate substitution treatment programs. Reviewing and revising rules using governor's criteria for regulatory improvement. Public hearing scheduled for August 5, 2003.
HRSA - Division of Vocational Rehabilitation (DVR)			
Chapter 251-25 WAC	Washington state internship program.	Eligibility—Duration of internship.	CR-101 Adopting rules to extend duration of internship to twelve months.

WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
Chapter 388-06 WAC	Background checks.	Background checks for DVR service providers.	CR-101 Adopting rules to clarify background check requirements for providers supplying services to vocational rehabilitation clients.
Chapter 388-891 WAC	Rehabilitation services for individuals with disabilities.	Making direct payments to customers.	CR-101 Adopting new rules to comply with federal and state laws, and with requirements of the department.
New chapter 388-892 WAC Repeal WAC 490-500-520	Purchase of services—Selection. Criteria—Community rehabilitation programs.	Change standards for community rehabilitation programs.	CR-102 Amending rules to comply with changes in federal and state laws, and with requirements of the department. Subject matter will be adopted as a new chapter of Title 388 WAC. Public hearing scheduled for August 26, 2003.
HRSA - Mental Health Division (MHD)			
WAC 388-865-0100 through 388-865-0484	Community mental health and involuntary treatment programs.	Community support service providers.	CR-102, CR-103 Revising rules to be consistent with the federal Balanced Budget Act, and for quality improvement.
New WAC 388-865-0217.	Community mental health and involuntary treatment programs.	Psychiatric indigent inpatient program.	CR-101, CR-102, CR-103 New program to replace medically indigent program eliminated in the 2003-05 budget.
WAC 388-865-0500 through 388-865-0565	Community mental health and involuntary treatment programs.	Inpatient evaluation and treatment.	CR-102, CR-103 Revising rules to be consistent with Department of Health rules on residential treatment facilities.
HRSA - Office of Deaf and Hard of Hearing Services (ODHHS) No ODHHS rule-making activity anticipated in this period.			
HRSA - Special Commitment Center			
Chapter 388-880 WAC	Sexual predator program—Special commitment—Escorted leave.	Evaluations.	CR-102, CR-103 Amending the evaluation sections of this chapter in accordance with RCW 71.09.040(4).
JUVENILE REHABILITATION ADMINISTRATION (JRA)			
Chapter 388-700 WAC	Juvenile rehabilitation administration—Practices and procedures.	Background checks.	CR-101, CR-102, CR-103 Potential revisions due to changes in background check procedures.
Chapter 388-720 WAC	Collection of costs of support, treatment, and confinement of juveniles.	Establishing criteria for determination of ability to pay and providing scope clarity for ALJs.	CR-101, CR-102, CR-103 Changes based on court ruling and to provide clarification for ALJs.
Chapter 388-745 WAC	Transfer of juvenile offenders to the Department of Corrections (DOC).	Transfers to DOC.	CR-101, CR-102, CR-103 Potential revisions due to changes in transfer procedures.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
Chapter 388-750 WAC	Impact account—Criminal justice cost reimbursement.	Reimbursement rates and procedures for criminal justice impact.	CR-101, CR-102, CR-103 Potential rule changes to clarify reimbursement rates.
MANAGEMENT SERVICES ADMINISTRATION			
WAC 388-02-0215	DSHS hearing rules.	What is the authority of the ALJ?	CR-103 Permanent rule effective July 12, 2003. Clarifying cases where an initial decision by an administrative law judge may be reviewed by the DSHS Board of Appeals.
MEDICAL ASSISTANCE ADMINISTRATION (MAA)			
WAC 388-416-0005 WAC 388-418-0005, and 388-418-0025 WAC 388-418-0005	Certification periods. Change of circumstance. Eligibility review and recertifications.	Children and family medical programs—Eligibility.	CR-102, CR-103 Implementing legislation initiating a six-month eligibility review and eliminating continuous eligibility for children.
Chapter 388-438 WAC Chapter 388-475 WAC Chapter 388-505 WAC Chapter 388-535 WAC Chapter 388-544 WAC other chapters as appropriate	Emergency assistance for medical needs. Healthcare workers with disabilities (HWD) program. Family medical. Dental-related services. Vision and hearing aid services.	2003-05 state operating budget bill (ESSB 5404).	CR-102, CR-103 Amending rules as required by the 2003-05 state operating budget bill, ESSB 5404, adopted by the 2003 legislature.
WAC 388-438-0100, and 388-438-0110 WAC 388-503-0505	Emergency assistance for medical needs. Family medical.	Medically indigent program.	CR-102, CR-103 Medically indigent program funding was eliminated effective July 1, 2003, in the state's 2003-2005 omnibus operating budget.
WAC 388-468-0005	Residency.	Same.	CR-102, CR-103 Clarifying portions of the rule subject to misinterpretation. Public hearing scheduled for September 9, 2003.
WAC 388-476-0005	Social Security number.	Same.	CR-102, CR-103 Deleting references to the children's health program that has been eliminated. Public hearing scheduled for September 9, 2003.
WAC 388-478-0075	Standards for payments.	Federal poverty level standards.	CR-103 Permanent rule effective July 17, 2003. Amending the rule to adopt new federal poverty level standards effective April 1, 2003.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-478-0080	Standards for payments.	Supplemental security income (SSI)—Categorically needy income level and countable resource standards.	CR-102, CR-103 Revising the rule to qualify for continued federal financial participation.
WAC 388-478-0085	Standards for payments.	Medicare savings program.	CR-102, CR-103 Permanent rule effective July 17, 2003. Amending the rule to adopt new federal poverty level standards effective April 1, 2003.
Chapters 388-500 through 388-561 WAC	All medical assistance chapters.	Federal Health Insurance Portability and Accountability Act.	CR-102, CR-103 Revising all appropriate MAA rules to be compliant with federal law protecting the privacy of DSHS client health information.
WAC 388-500-0005	Medical definitions.	Same.	CR-102, CR-103 Updating the general definitions used throughout MAA rules.
WAC 388-500-0005 WAC 388-501-0165	Medical definitions. Administration of medical programs—General.	"Medically necessary" definition.	CR-102, CR-103 Amending the definition of "medically necessary" to incorporate the use of medical information that is supported by scientific evidence in its determination of services. Amending WAC 388-501-0165 to be consistent with the medically necessary definition.
WAC 388-501-0135	Administration of medical programs.	Patients requiring regulation.	CR-102, CR-103 Amending policy to improve medical supervision of patients who inappropriately over-use medical and pharmaceutical services.
WAC 388-502-0010	Administration of medical programs—Providers.	Payment—Eligible providers defined.	CR-103 Permanent rule effective July 30, 2003. Amending the rule to add "hold harmless" language omitted from MAA core provider agreements.
WAC 388-502-0220, 388-502-0230, and 388-502-0260	Administration of medical programs—Providers.	Vendor dispute resolution.	CR-102, CR-103 Updating the vendor dispute resolution process.
Chapter 388-505 WAC	Premiums—Children's medical.	Same.	CR-102, CR-103 Adopting language required to implement the premium requirement for optional children as allowed by HB 2285 (chapter 14, Laws of 2003).
WAC 388-505-0210	Premiums—Children's medical.	Expedited rule-making.	CR-103 Permanent rule effective July 31, 2003. Expedited rule making to correct a WAC cross reference.
WAC 388-510-1005	Definitions—Aliens.	Expedited rule-making.	CR-105, CR-103 Expedited repeal a duplicative rule. The language of this rule was incorporated into the rules contained in WAC 388-424-0005 and 388-424-0010.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-513-1325	Client not in own home—Institutional medical.	Income of single client for long-term care services.	CR-102, CR-103 Adding income requirements currently found in other rules; correcting incorrect WAC cross references.
WAC 388-513-1340 WAC 388-450-0020	Client not in own home—Institutional medical. Income.	Income exclusions.	CR-102, CR-103 Clarifying that veterans aid and attendance and unusual medical expense can be considered third-party resources.
WAC 388-513-1350, and 388-513-1380	Client not in own home—Institutional medical.	Maximum resources allowed and client participation for long-term care services.	CR-101, CR-102, CR-103 Amending the rules to reduce the maximum resource allocation for the community spouse; and increase the community spouse standards for long-term care program to be consistent with federal standards effective April 1, 2003.
WAC 388-513-1364	Client not in own home—Institutional medical.	Evaluating the transfer of an asset made on or after April 1, 2003, for long-term care (LTC) services.	CR-105, CR-103 Expedited rule making. Changing an obsolete WAC cross reference and renumbering subsections without changing the effect of the rule. Public review period and deadline to object to expedited rule making ends August 19, 2003.
WAC 388-513-1365 WAC 388-561-0100	Client not in own home—Institutional medical. Trusts, annuities, and life estates—Effect on medical programs.	Evaluating the transfer of an asset made on or after March 1, 1997, for long-term care services.	CR-103 Permanent rules effective August 1, 2003. Clarifying rules on lifetime care contracts and sole benefit trusts as they relate to financial eligibility for department long-term care.
WAC 388-527-2700	Estate recovery.	Same.	CR-102, CR-103 Implementing changes from new federal guidelines and chapter 7, Laws of 2001 on estate recovery.
WAC 388-530-1300	Prescription drugs.	Same.	CR-102, CR-103 Amending rules requiring pharmacies to dispense the most "cost-effective" form of a drug.
WAC 388-530-1850	Prescription drugs.	Drug utilization and education (DUE) council.	CR-102, CR-103 Renaming the drug utilization and education council to the Pharmacy and Therapeutics Committee.
Chapter 388-531 WAC	Physician-related services.	Same.	CR-102, CR-103 Revising rules to remain current with medical teaching and residency programs.
Chapter 388-532 WAC	Family planning services.	Same.	CR-103 Revising rules to better identify persons eligible for family planning services. Public hearing scheduled for July 8, 2003.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
Chapter 388-533 WAC	Maternity-related services.	Maternity services and first steps.	CR-101 Changing eligibility criteria for infant case management, defining core services, changing codes and time limits for billing, integrating maternity case management with maternity support services, and creating a separate rule for childbirth education.
Chapter 388-533 WAC	Maternity-related services.	Same.	CR-102, CR-103 Adopting rules on the chemical-using pregnant (CUP) women program, which assists pregnant women in maintaining sobriety to ensure healthier birth outcomes.
WAC 388-533-1000	Maternity-related services.	First steps childcare program.	CR-102, CR-103 Revisions to clarify and update language pertaining to background check requirements, and to mirror background check requirements of other agencies.
WAC 388-535-1050, 388-535-1070, 388-535-1080, 388-535-1100, 388-535-1200, 388-535-130, 388-535-1240, and 388-535-1450; other rules as appropriate	Dental related services.	Same.	CR-102, CR-103 Clarifying existing policy on dental related services; reducing adult dental services by 25% effective August 1, 2003; and amending rules to be compliant with the federal Health Insurance Portability and Accountability Act by October 16, 2003. Public hearing scheduled for August 26, 2003.
Chapter 388-536 WAC	Federally qualified health centers and rural health centers.	Same.	CR-102 Adopting a new WAC chapter will comply with federal financial changes, section 702 of BIPA 2000, and legislative directive to implement prospective payment system.
Chapter 388-538 WAC	Managed care.	Same.	CR-103 Amending rules to bring the program into compliance with the federal Balanced Budget Act and the patient bill of rights; and modifying the criteria for exemptions and ending enrollment in managed care. Public hearing scheduled for August 5, 2003.
WAC 388-538-060	Managed care.	Managed care and choice.	CR-101, CR-102 Amending the rule to make the process of enrolling for Medicaid managed care more efficient and to simplify the administrative process.
Chapter 388-540 WAC	Kidney disease program and kidney center services.	Freestanding kidney centers.	CR-103 Adopting rules to comply with requirements for Medicaid dialysis reimbursements. Public hearing scheduled August 26, 2003.
Chapter 388-544 WAC	Vision services.	Same.	CR-102, CR-103 Updating coverage policies, clarify policy, and add coverage for disposable contact lenses.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
Chapter 388-545 WAC	Infusion, parenteral and interal therapies.	Same.	CR-102, CR-103 Adopting rules to provide medically necessary nutrition services to Medicaid and medical assistance clients who are unable to feed or be fed orally.
Chapter 388-545 WAC	Medical nutrition therapy program.	Same, formerly known as nutritional counseling services.	CR-102, CR-103 Adopting rules to provide medically necessary nutritional counseling for DSHS clients.
Chapter 388-546 WAC	Nonemergency medical transportation.	Same.	CR-102, CR-103 Clarifying language and current policy for nonemergent medical transportation services.
Chapter 388-547 WAC	Ambulatory surgery centers.	Same.	CR-102, CR-103 Consolidating these rules into the new WAC chapter; codifying department policy and practice.
Chapter 388-550 WAC	Hospital services.	Federally qualified health centers and rural health clinics.	CR-102, CR-103 Amending rules to comply with federal payment methodology.
WAC 388-550-1300, 388-550-1400, 388-550-1500, 388-550-6000, and related sections	Hospital services.	Federal Health Insurance Portability and Accountability Act.	CR-102, CR-103 Amending rules to comply with the federal Health Insurance Portability and Accountability Act by October 16, 2003. Public hearing scheduled for August 26, 2003.
WAC 388-550-1900	Hospital services.	Interns, residents, teaching physicians and physician preceptorships.	CR-102, CR-103 Amending rules to be consistent with industry standards; to establish MAA standards for supervising interns and residents in nonhospital settings; and expanding definition of "under primary care exception."
WAC 388-550-2800, 388-550-4800, 388-550-5450 and 388-550-6000	Hospital services.	Trauma services network.	CR-102, CR-103 Adopting rules to encourage participation in the trauma services network.
WAC 388-550-3700	Hospital services.	Diagnosis-related group payment (DRG) methodology.	CR-103 Permanent rule effective July 14, 2003. Clarifying how DSHS pays hospitals for Medicaid claims that qualify as DRG high-cost outliers.
WAC 388-550-4500, 388-550-4900, 388-550-5000, 388-550-5150, 388-550-5200, 388-550-5400, 388-550-5600, 388-550-6800, and 388-550-6900	Hospital services.	Payment methods—Disproportionate share payments.	CR-103 Permanent rules effective July 14, 2003. Updating the rule to reflect current department policy.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-550-4800	Hospital services.	Diagnosis-related group (DRG) high-cost outliers; medically indigent program; general assistance—Unemployable program.	CR-103 To clarify how MAA determines payments for state-administered program claims that qualify as diagnosis-related group (DRG) high-cost outliers. To remove language regarding enhanced payments for trauma care provided to a client eligible under the medically indigent (MI) program or general assistance-unemployable (GAU) program. To add a table that shows high-cost outlier calculations for qualifying claims for state-administered programs.
WAC 388-550-6000	Hospital services.	Outpatient hospital services.	CR-102, CR-103 Implementing a new Medicaid payments method for outpatient services provided to Medicaid clients.
WAC 388-551-1000, 388-551-1010, 388-551-1200, 388-551-1210, 388-551-1300, 388-551-1310, 388-551-1315, 388-551-1320, 388-551-1330, 388-551-1340, 388-551-1350, 388-551-1360, 388-551-1400, 388-551-1410, 388-551-1500, 388-551-1510, 388-551-1520, and 388-551-1530	Alternatives to hospital services.	Hospice care program.	CR-102, CR-103 Incorporating language from current agreements with hospice care centers into rule, and to update and clarify language.
Chapter 388-555 WAC	Interpreter services.	Same.	CR-102, CR-103 Changing how interpreter services are purchased and delivered. Implements legislative directives in SB 6832.
New chapter 388-557 WAC	Medical care—Other services provided.	Disease management.	CR-103 Permanent rules effective July 14, 2003. Establishing a new supplemental service for individuals who are not institutionalized, not enrolled in managed care, and who suffer from certain diseases.
Chapter not specified	Home infusion therapy.	Same.	CR-102, CR-103 Adopting new rules to establish limitations, restrictions, and requirements of MAA's home infusion therapy program.
OFFICE OF THE SECRETARY			
Chapter 388-01 WAC	DSHS organization/disclosure of public records.	Same.	CR-102 Update and clarify current rules to reflect changes and improvements in procedures for responding to public requests for disclosure of records.

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WAC Chapter or WAC Section #	Chapter, Subpart Caption	Subject Matter or Section Caption	Anticipated Rule-Making Actions in the Period July 1 through December 31, 2003
WAC 388-01-030	DSHS organization/disclosure of public records.	What DSHS records are public.	CR-102, CR-103 Clarifying which DSHS records are available to the public by law; which confidential records are not available; how an individual may have access to a confidential record about him/herself. Public hearing scheduled for August 5, 2003.
Chapter 388-06 WAC	Background checks.	Same.	CR-101 Revising background check rules to incorporate additional DSHS programs.

Explanation of terms used in these tables:

"CR-101" is a **Preproposal Statement of Inquiry**, filed per RCW 34.05.310. A CR-101 is a preliminary notice to the public that the agency is in the planning stages to adopt, amend or repeal rules on a particular subject, and the laws authorizing the agency's action. The notice also lets the public know how to participate in the development of the agency rule, and identifies the agency's contact person.

"CR-102" is a **Proposed Rule-Making** notice, filed per RCW 34.05.320. A CR-102 is an announcement that includes: (1) A general description of the rules that the agency proposes to adopt, amend or repeal; (2) the laws authorizing the agency action; (3) the complete text of proposed rules; (4) if applicable, a small business economic impact statement; and (5) agency staff whom the public may contact about the rules. A CR-102 notice also includes the date and location of a public hearing to take formal comments about the proposed rules, the deadline for written comments, and where written comments may be sent. Except for expedited rules, an agency must file and distribute a CR-102 notice, invite public comments and conduct a public hearing before adopting proposed rules as permanent.

"CR-103" is a **Rule-Making Order**, filed per RCW 34.05.360 and 34.05.380. A CR-103 is the official action and notice that an agency is adopting new, amended or repealed rules. A permanent CR-103 order includes the purpose of the rule-making order, the laws authorizing the agency's action, the date the permanent rules will take effect, and the complete text of the rules being adopted or the citation and caption of rules being repealed. Agencies also may use a CR-103 notice to adopt temporary *emergency* rules that become effective without the regular rule-making steps. Emergency rules may not become permanent unless the agency files a CR-101 and/or CR-102 notice as applicable, invites public comment on the proposed rules, conducts a public hearing, and complies with other applicable rule-making statutes.

"CR-105" is an **Expedited Rule-Making** notice, filed per RCW 34.05.353. An agency may use this process to notify the public that it intends to adopt, amend or repeal limited types of rules without accepting public comment or conducting a public hearing. A CR-105 notice contains a description of the rule, the laws authorizing the agency's action, and the complete text of the rule being adopted or amended, or the citation and caption of rules being repealed. Within forty-five days after the CR-105 is published in the

State Register, anyone may file a written objection to the agency using the expedited rule-making process to adopt the rule. If a written objection is received, the agency must file a CR-102 notice, invite public comments and hold a public hearing on the proposed rule before adopting it as permanent. If no objection is received by the deadline, the agency may adopt the rule as permanent by filing a CR-103 Rule-Making Order.

"Rules" as used generally in this document are Washington Administrative Code, also known as WAC or regulations. References to "federal rules" are United States government regulations, also known as the Code of Federal Regulations, or C.F.R.

State "statutes" are laws adopted by the legislature and signed by the governor, or may be initiatives adopted by public vote, and are codified as the Revised Code of Washington (RCW). Federal statutes are laws adopted by congress and signed by the president.

All DSHS rule-making notices and adoption orders are filed with the state Office of the Code Reviser for legal publication in the Washington State Register. Interested persons, businesses, organizations and agencies can receive copies of DSHS rule-making notices by postal mail or e-mail by contacting Fred Swenson at the DSHS Rules and Policies Assistance Unit, (360) 664-6097, or at SwensFH@dshs.wa.gov. This document is also available from the DSHS public website, at <http://www1.dshs.wa.gov/msa/rpau/>.

Andy Fernando
Rules Coordinator

WSR 03-17-006

NOTICE OF PUBLIC MEETINGS

OFFICE OF THE

INTERAGENCY COMMITTEE

(Interagency Committee for Outdoor Recreation)

[Memorandum—August 5, 2003]

The Interagency Committee for Outdoor Recreation (IAC) will meet Thursday, September 11 and Friday, September 12, 2003, beginning with the regular IAC business meeting on Thursday, September 11, 9:30 a.m. in the Columbia Basin Room A-B of the Spokane Convention Center in

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Spokane, Washington. There will be a tour on Friday, September 12 highlighting the board's work in the area.

This two-day meeting is a funding recommendation session for projects in the national recreational trails program, boating infrastructure grant program, and Washington wildlife and recreation program. Additional agenda items include adoption of the 2004 IAC meeting schedule and a nonhighway off-road vehicle program update, along with management update reports.

If you plan to participate or have materials for committee review, please submit information to IAC no later than August 19, 2003. This will allow for distribution to committee members in a timely fashion.

IAC public meetings are held in locations accessible to people with disabilities. Arrangements for individuals with hearing or visual impairments can be provided by contacting IAC by September 2, 2003, at (360) 902-2637 or TDD (360) 902-1996.

WSR 03-17-009
NOTICE OF PUBLIC MEETINGS
HEALTH CARE AUTHORITY
 (Public Employees Benefits Board)
 [Memorandum—August 8, 2003]

2003 Meeting Schedule

All meetings are held on Tuesdays and begin at 1:30 p.m. (unless otherwise noted).

1. **April 22, 2003**
 1:30 - 4:30 p.m.
 Location: To be determined.
2. **July 29, 2003**
 1:30 - 4:30 p.m.
 Location: To be determined.
3. **August 5, 2003**
 1:30 - 4:30 p.m.
 Location:
 Attorney General's Office
 RoweSix
 4224 6th Avenue S.E.
 Building #1
 Olympia, WA
4. **August 12, 2003 (teleconference)**
 1:30 - 4:30 p.m.
 Location changed to:
 Health Care Authority
 676 Woodland Square Loop S.E.
 Lacey, WA
5. **October 21, 2003 (planning session retreat)**
 8:30 a.m. - 3:30 p.m.
 Location: To be determined.
6. **November 25, 2003 (telephone)**
 1:30 - 4:30 p.m.

If you are a person with a disability and need a special accommodation, please contact Theresa Rush at (360) 923-2811.

WSR 03-17-012
NOTICE OF PUBLIC MEETINGS
WASHINGTON SCHOOL
FOR THE DEAF
 [Memorandum—August 6, 2003]

Following is a revised 2003/2004 meeting schedule for the Washington School for the Deaf (WSD) board of trustees. All meetings will be held in the Clarke Hall Community Room on the WSD campus from 9 a.m. - 3 p.m.:

- September 11, 2003
- October 9, 2003
- November 13, 2003
- December 11, 2003
- January 8, 2004
- February 12, 2004
- March 11, 2004
- April 8, 2004
- May 13, 2004
- June 10, 2004

WSR 03-17-015
INTERPRETIVE AND POLICY STATEMENT
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed August 12, 2003, 9:35 a.m.]

In accordance with RCW 34.05.230(12), enclosed is a list of Policy and Interpretive Statements issued by the department for July 2003.

If you have any questions or need additional information, please call Carmen Moore at (360) 902-4206.

POLICY AND INTERPRETIVE STATEMENTS

WISHA Services Division

WISHA Regional Directive (WRD) 2.05, "Initiating Inspections"

This WISHA regional directive provides guidance to WISHA enforcement staff initiating inspections for any reason. It supplements the policies found in the WISHA Compliance Manual and replaces all other instructions on this issue, whether formal or informal. This WRD will be reviewed not later than February 1, 2004, to determine whether it should be modified, repealed or left in place based on inspectors' experience in the field. This policy was issued July 30, 2003.

Contact Marcia Benn, Mailstop 44648, phone (360) 902-5503.

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WISHA Regional Directive (WRD) 2.17 "Targeting WISHA Activities (Agriculture)"

This WISHA regional directive replaces and rescinds WISHA Regional Directive 2.17 issued March 10, 2003, and will remain in effect indefinitely. It provides guidance to WISHA enforcement and consultation staff regarding programmed activities within agriculture that is consistent with the direction provided prior to the temporary suspension of such activities on March 10, 2003. This policy was amended July 30, 2003.

Contact Marcia Benn, Mailstop 44648, phone (360) 902-5503.

WISHA Regional Directive (WRD) 5.25, "First Aid Training in General Industry & Agriculture"

This WISHA regional directive provides guidance to WISHA staff regarding the application of the first-aid training requirements to employers in general industry and agriculture with fewer than fifty employees. Although the background has changed to reflect current rule-making plans, the policy guidance is substantively identical to that found in the previous WRD 5.25, issued on November 13, 2002, which this policy replaces. This policy was amended July 18, 2003.

Contact Marcia Benn, Mailstop 44648, phone (360) 902-5503.

Insurance Services Division**POLICY 61.04 Processing Applications for Elective Coverage**

This policy applies to state fund and self-insured workers' compensation claims. This policy does not apply to crime victims. This policy provides guidelines for staff when processing applications for elective coverage for excluded or exempted employments. The policy was updated to include the department's decision that we will accept faxed elective coverage applications, but benefits will not begin until the day after the date the fax is received. The interim policy issued in 12/02 was finalized. This policy was amended July 25, 2003.

Contact Linda Norris, Mailstop 4310, phone (360) 902-4999.

POLICY 62.12 Maritime Activities

This policy applies to state fund workers' compensation claims. This policy does not apply to self-insurance and crime victims. The policy provides guidelines for staff when determining whether maritime-related employments will be covered under state fund, industrial insurance, Title 51 RCW. This policy was updated to reflect the correct section of the policy manual. This policy was amended July 25, 2003.

Contact Linda Norris, Mailstop 4310, phone (360) 902-4999.

POLICY 63.60 Determining Policy Effective/Business Active Dates

This policy applies to state fund workers' compensation claims. This policy does not apply to self-insurance and crime victims. This policy provides guidelines for staff when determining the industrial insurance policy effective date for first-time applicants. This policy was updated for clarity. This policy was amended July 25, 2003.

Contact Linda Norris, Mailstop 4310, phone (360) 902-4999.

POLICY 64.62 Declaring Accounts Uncollectible With Balances Under \$100

This policy applies to state fund workers' compensation claims. This policy does not apply to self-insurance and crime victims. This policy provides guidelines for policy managers when determining if an inactive employer account can be declared uncollectible and the balance is under \$100. The policy was updated for clarity. This policy was amended July 25, 2003.

Contact Linda Norris, Mailstop 4310, phone (360) 902-4999.

WSR 03-17-024**NOTICE OF PUBLIC MEETINGS****EVERETT COMMUNITY COLLEGE**

[Memorandum—August 5, 2003]

NOTIFICATION OF SPECIAL MEETING**AND CANCELLATION OF AUGUST 13TH REGULAR MEETING**

The board of trustees of Everett Community College will hold a special session on August 13, 2003, at the University Center at Everett Station, Room 311, Everett, Washington. The agenda is as follows:

- 1:00 p.m. - 3:00 p.m. Executive session
- 3:00 p.m. - 6:00 p.m. Open session to discuss EvCC's academic program mix

The regular scheduled board meeting for August 13, 2003, at 5:00 p.m. in the Olympus Board Room at Everett Community College has been cancelled. Call (425) 388-9572 for information.

WSR 03-17-033**NOTICE OF PUBLIC MEETINGS****BELLINGHAM TECHNICAL COLLEGE**

[Memorandum—August 14, 2003]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, August 21, 2003, 9:00 - 11:00 a.m., in Haskell Center, Room 220 on the Bellingham Technical College campus. Call 738-3105 ext. 334 for information.

WSR 03-17-034**PROCLAMATION****OFFICE OF THE GOVERNOR**

[August 11, 2003]

WHEREAS, the cumulative effects of a fuel tanker accident and fire on I-5 in Snohomish County that began July 12, 2003 has caused extensive damage and continues to impact the citizens, property, and infrastructure of Washington State;

WHEREAS, this event and its cumulative effects have caused extensive damage to the transportation infrastructure in Snohomish County in Washington. The fire, fueled by 11,300 gallons of gasoline caused damage to the northbound lanes of I-5's guardrail, bridge rail ends, bridge deck, and concrete overlay. Temporary and permanent repair costs to lanes 1 through 4 for the full length of the affected area are estimated to be between \$1 and \$1.2 million;

WHEREAS, the Washington State Department of Transportation is coordinating resources to repair the roadways to alleviate the immediate impacts upon the infrastructure, and is continuing to assess the magnitude of these events;

NOW, THEREFORE, I, Gary Locke, Governor of the state of Washington, as a result of the aforementioned situation and under Chapters 38.08, 38.52, and 43.06 RCW, do hereby proclaim that a State of Emergency exists in Snohomish County and direct the supporting plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented. State agencies and departments are directed to utilize state resources and do everything possible to assist affected political subdivisions in an effort to respond to and recover from the events. Additionally, the Washington State Department of Transportation shall coordinate all event-related assistance to the affected areas.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia, this 11th day of August, A.D., Two Thousand and Three.

Gary Locke

Governor of Washington

BY THE GOVERNOR:

Steve Excell

Assistant Secretary of State

WSR 03-17-047

ATTORNEY GENERAL'S OFFICE

[Filed August 15, 2003, 3:24 p.m.]

NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION WASHINGTON ATTORNEY GENERAL

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the Attorney General's Office of your interest by September 10, 2003. This is not the due date by which comments must be received. However, if you do not notify the Attorney General's Office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been received. You may notify the Attorney General's Office of your intention to comment by calling (360) 664-3027, or by

writing to the Solicitor General, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you will be provided with a copy of the opinion request in which you are interested, information about the Attorney General's Opinion process, information on how to submit your comments, and a due date by which your comments must be received to ensure that they are fully considered.

The Attorney General's Office seeks public input on the following opinion request(s):

Request by: 03-08-02 **Andrew K. Miller**
Benton County Prosecuting
Attorney
and
Janice E. Ellis
Snohomish County Prosecuting
Attorney

Whether Initiative 120 (RCW 9.02, the Reproductive Privacy Act) should be interpreted to permit Advanced Registered Nurse Practitioners (ARNPs) to provide medical abortion independent of physicians (consistent with their scope of practice).

WSR 03-17-048

NOTICE OF PUBLIC MEETINGS

SHORELINE COMMUNITY COLLEGE

[Memorandum—August 7, 2003]

In compliance with the Open Public Meetings Act, this letter serves as notice that the board of trustees of Shoreline Community College will hold a special meeting from Monday, September 8, through Wednesday, September 10, 2003, to conduct their annual retreat. The board of trustees, President Holly Moore, Board Secretary Michele Foley and the Shoreline Community College Vice Presidents will be in attendance.

Please call (206) 546-4552 or e-mail Michele Foley at mfoley@ctc.edu if you have [need] further information.

WSR 03-17-054

NOTICE OF PUBLIC MEETINGS

WESTERN WASHINGTON UNIVERSITY

[Memorandum—August 15, 2003]

Following is a notice of a special meeting of Western Washington University board of trustees.

The special meeting has been scheduled for Wednesday, August 20, 2003, in Everett, Washington.

If you have any questions, please contact Suzanne Baker by phone at (360) 650-3117 or by e-mail at Suzanne.Baker@wwu.edu.

**WESTERN WASHINGTON UNIVERSITY
BOARD OF TRUSTEES
SPECIAL MEETING**

Date: Wednesday, August 20, 2003
Time: 7:30 a.m.
Place: United Way of Snohomish County
917 134th Street S.W., Suite B-1
Everett, WA

WSR 03-17-055

**NOTICE OF PUBLIC MEETINGS
EASTERN WASHINGTON UNIVERSITY**

[Memorandum—August 18, 2003]

**EASTERN WASHINGTON UNIVERSITY
BOARD OF TRUSTEES**

August 22, 2003

10:00 a.m.

PUB 263-5-7

AGENDA

**9:00 - 10:00 a.m. Groundbreaking ceremony for the
computing and engineering sciences
building.**

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling the president's office, (509) 359-6598.

WSR 03-17-076

**NOTICE OF PUBLIC MEETINGS
HEALTH CARE AUTHORITY**

[Memorandum—August 19, 2003]

PHARMACY AND THERAPEUTICS (P&T) COMMITTEE

2003-2004 Meeting Schedule

All meetings are held on Wednesdays and begin at 9:00 a.m.

1. **September 24, 2003**
9:00 a.m. - 4:00 p.m.
Location: Marriott Hotel
3201 South 176th Street
Seattle, WA 98188
2. **December 17, 2003**
9:00 a.m. - 4:00 p.m.
Location: Holiday Inn SeaTac
Stapleton-Logan Room
17338 Pacific Highway South
Seattle, WA 98188

3. **March 17, 2004**
9:00 a.m. - 4:00 p.m.
Location: Holiday Inn SeaTac
Stapleton-Logan Room
17338 Pacific Highway South
Seattle, WA 98188
4. **June 16, 2004**
9:00 a.m. - 4:00 p.m.
Location: Holiday Inn SeaTac
Stapleton-Logan Room
17338 Pacific Highway South
Seattle, WA 98188

If you are a person with a disability and need a special accommodation, or have any questions regarding the meeting schedule or need further information, please contact Geri Ridley (360) 923-2837.

WSR 03-17-079

**NOTICE OF PUBLIC MEETINGS
SELECT COMMITTEE
ON PENSION POLICY**

[Memorandum—August 19, 2003]

Select Committee on Pension Policy Meetings

Full Committee meeting
September 16, 2003
Senate Hearing Room 4
12 noon

Executive Committee meeting
September 16, 2003
Senate Conference Rooms BC
Immediately following the full committee [meeting]
(approximately 3:00 p.m.)

WSR 03-17-081

**INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed August 19, 2003, 4:13 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: CN 237.
Subject: Section 8.006 - Withdrawing passport denials.
Effective Date: August 18, 2003.
Document Description: This notice explains to DCS staff the recent changes to the procedures for withdrawing passport denial actions.
To receive a copy of the interpretive or policy statement, contact Stephanie Schiller, Division of Child Support, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-

5230, TDD (360) 753-9122, fax (360) 586-3274, e-mail
sschille@dshs.wa.gov.

August 18, 2003
Stephanie E. Schiller

WSR 03-17-082
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed August 19, 2003, 4:14 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: PCM 03-005.

Subject: New mandatory Department of Corrections deductions from Washington state inmates for child support.

Effective Date: July 27, 2003.

Document Description: This notice explains to DCS staff about the new 15% mandatory withhold action that the Washington State Department of Corrections will be taking on Washington state inmate accounts.

To receive a copy of the interpretive or policy statement, contact Stephanie Schiller, Division of Child Support, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-5230, TDD (360) 753-9122, fax (360) 586-3274, e-mail sschille@dshs.wa.gov.

August 6, 2003
Stephanie E. Schiller

WSR 03-17-083
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed August 19, 2003, 4:15 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-57 MAA.

Subject: Prescription drug program updates - MAC list.

Effective Date: September 2003.

Document Description: Effective for dates of service on and after August 1, 2003, the Medical Assistance Administration (MAA) will implement adjustments to the prescription drug program's maximum allowable cost (MAC) list. This memorandum lists the details.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, Department of Social and Health Services, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov/download/publicaitonsfees.htm>, (click on "Numbered Memoranda," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

August 14, 2003
E. A. Meyers, Manager
Rules and Publications Section

WSR 03-17-084
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed August 19, 2003, 4:16 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 03-58 MAA.

Subject: Suboxone added to expedited prior authorization list for prescription drug program.

Effective Date: October 2003.

Document Description: **Effective for the week of September 22, 2003, and after**, the Medical Assistance Administration (MAA) will add Suboxone® to the prescription drug program's expedited prior authorization list. This numbered memorandum describes MAA's policy for Suboxone® and include an authorization form.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, Department of Social and Health Services, Medical Assistance Administration, Division of Program Support, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov/download/publicaitonsfees.htm>, (click on "Numbered Memoranda," "Year 2003"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

August 14, 2003
E. A. Myers, Manager
Rules and Publications Section

WSR 03-17-099
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF REVENUE

[Filed August 20, 2003, 10:41 a.m.]

CANCELLATION OF INTERPRETIVE AND/OR POLICY STATEMENT

This announcement of the cancellation of this interpretive and/or policy statement is being published in the Washington State Register pursuant to the requirements of RCW 34.05.230(4).

The Department of Revenue has cancelled the following Excise Tax Advisory effective August 20, 2003.

ETA 90-001 A Statement of Purpose and Intent With Respect to Issues Involving Employee Placement Businesses and Their Clients

This document was issued in 1990 to announce the department's position on the taxability of businesses that recruit and procure employees to do work for other businesses. The information provided in this document can no longer be relied upon. The Washington State Supreme Court's ruling in *City of Tacoma vs. The William Rogers Company, Inc.* should be followed when determining the tax-reporting responsibilities of these businesses. The department anticipates issuing an interpretive and/or policy state-

MISC.

ment providing guidance consistent with the court's ruling in *City of Tacoma vs. The William Rogers Company, Inc.*

Questions regarding the cancellation of this document may be directed to Alan R. Lynn, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6125, fax (360) 664-0693, internet alanl@dor.wa.gov.

Alan R. Lynn
Rules Coordinator

MISC.

Table of WAC Sections Affected

KEY TO TABLE

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

Symbols:

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJECT = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind of existing section
- REVIEW = Review of previously adopted rule
- SUSP = Suspending an existing section

Suffixes:

- C = Continuance of previous proposal
- E = Emergency action
- P = Proposed action
- S = Supplemental notice
- W = Withdrawal of proposed action
- X = Expedited rule making
- XA = Expedited adoption
- XR = Expedited repeal
- No suffix means permanent action

WAC # Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

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16-239-062	NEW-P	03-07-082	16-239-0903	NEW-P	03-07-082	16-303-240	PREP	03-12-084
16-239-062	NEW	03-12-040	16-239-0903	NEW	03-12-040	16-303-240	AMD-P	03-15-144
16-239-063	NEW-P	03-07-082	16-239-0904	NEW-P	03-07-082	16-303-250	AMD-P	03-03-130
16-239-063	NEW	03-12-040	16-239-0904	NEW	03-12-040	16-303-250	AMD	03-08-005
16-239-064	NEW-P	03-07-082	16-239-0905	NEW-P	03-07-082	16-303-250	PREP	03-12-084
16-239-064	NEW	03-12-040	16-239-0905	NEW	03-12-040	16-303-250	AMD-P	03-15-144
16-239-065	NEW-P	03-07-082	16-239-0906	NEW-P	03-07-082	16-303-300	AMD-P	03-03-130
16-239-065	NEW	03-12-040	16-239-0906	NEW	03-12-040	16-303-300	AMD	03-08-005
16-239-070	NEW-P	03-07-082	16-239-0907	NEW-P	03-07-082	16-303-300	PREP	03-12-084
16-239-070	NEW	03-12-040	16-239-0907	NEW	03-12-040	16-303-300	AMD-P	03-15-144
16-239-071	NEW-P	03-07-082	16-239-0908	NEW-P	03-07-082	16-303-310	AMD-P	03-03-130
16-239-071	NEW	03-12-040	16-239-0908	NEW	03-12-040	16-303-310	AMD	03-08-005
16-239-072	NEW-P	03-07-082	16-239-0909	NEW-P	03-07-082	16-303-310	PREP	03-12-084
16-239-072	NEW	03-12-040	16-239-0909	NEW	03-12-040	16-303-310	AMD-P	03-15-144
16-239-073	NEW-P	03-07-082	16-239-0910	NEW-P	03-07-082	16-303-315	PREP	03-12-084
16-239-073	NEW	03-12-040	16-239-0910	NEW	03-12-040	16-303-315	AMD-P	03-15-144
16-239-074	NEW-P	03-07-082	16-239-0911	NEW-P	03-07-082	16-303-317	AMD-P	03-03-130
16-239-074	NEW	03-12-040	16-239-0911	NEW	03-12-040	16-303-317	AMD	03-08-005
16-239-075	NEW-P	03-07-082	16-239-0912	NEW-P	03-07-082	16-303-317	PREP	03-12-084
16-239-075	NEW	03-12-040	16-239-0912	NEW	03-12-040	16-303-317	AMD-P	03-15-144
16-239-076	NEW-P	03-07-082	16-239-100	NEW-P	03-07-082	16-303-320	AMD-P	03-03-130
16-239-076	NEW	03-12-040	16-239-100	NEW	03-12-040	16-303-320	AMD	03-08-005
16-239-077	NEW-P	03-07-082	16-239-1010	NEW-P	03-07-082	16-303-320	PREP	03-12-084
16-239-077	NEW	03-12-040	16-239-1010	NEW	03-12-040	16-303-320	AMD-P	03-15-144
16-239-078	NEW-P	03-07-082	16-239-1020	NEW-P	03-07-082	16-303-330	AMD-P	03-03-130
16-239-078	NEW	03-12-040	16-239-1020	NEW	03-12-040	16-303-330	AMD	03-08-005
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16-319-041	AMD	03-06-006	16-401-027	AMD-X	03-17-075	16-752-320	AMD	03-16-038
16-321-001	REP-X	03-03-124	16-401-031	REP-P	03-07-091	36- 12-170	AMD-W	03-06-072
16-321-001	REP	03-08-018	16-401-031	REP	03-10-083	36- 14-120	NEW-W	03-06-072
16-321-010	REP-X	03-03-124	16-401-032	AMD-P	03-07-091	51- 04	PREP	03-08-027
16-321-010	REP	03-08-018	16-401-032	AMD	03-10-083	51- 04	PREP	03-12-017
16-321-020	REP-X	03-03-124	16-401-041	AMD-P	03-07-091	82- 04-010	NEW-X	03-16-039
16-321-020	REP	03-08-018	16-401-041	AMD	03-10-083	82- 04-020	NEW-X	03-16-039
16-321-030	REP-X	03-03-124	16-401-041	AMD-X	03-17-075	82- 04-030	NEW-X	03-16-039
16-321-030	REP	03-08-018	16-401-060	NEW-P	03-06-102	82- 04-040	NEW-X	03-16-039
16-321-040	REP-X	03-03-124	16-401-060	NEW	03-09-112	82- 04-050	NEW-X	03-16-039
16-321-040	REP	03-08-018	16-403-280	PREP	03-15-120	82- 04-060	NEW-X	03-16-039
16-321-050	REP-X	03-03-124	16-406-001	PREP	03-15-118	82- 04-070	NEW-X	03-16-039
16-321-050	REP	03-08-018	16-406-025	PREP	03-15-118	82- 50-021	AMD-X	03-07-083
16-321-060	REP-X	03-03-124	16-449	PREP	03-14-142	82- 50-021	AMD	03-11-073
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16-321-070	REP-X	03-03-124	16-461-010	PREP	03-15-119	98- 70-010	AMD-P	03-08-009
16-321-070	REP	03-08-018	16-461-015	PREP	03-15-119	98- 70-010	AMD	03-11-020
16-321-080	REP-X	03-03-124	16-465-001	REP	03-05-079	118- 65-010	REP-P	03-04-108
16-321-080	REP	03-08-018	16-465-060	REP	03-05-079	118- 65-010	REP	03-10-014
16-321-090	REP-X	03-03-124	16-470-905	AMD-P	03-07-092	118- 65-020	REP-P	03-04-108
16-321-090	REP	03-08-018	16-470-905	AMD	03-10-082	118- 65-020	REP	03-10-014
16-321-100	REP-X	03-03-124	16-470-911	REP-P	03-07-092	118- 65-030	REP-P	03-04-108
16-321-100	REP	03-08-018	16-470-911	REP	03-10-082	118- 65-030	REP	03-10-014
16-321-110	REP-X	03-03-124	16-470-912	AMD-P	03-07-092	118- 65-040	REP-P	03-04-108
16-321-110	REP	03-08-018	16-470-912	AMD	03-10-082	118- 65-040	REP	03-10-014
16-321-120	REP-X	03-03-124	16-470-912	AMD-X	03-17-075	118- 65-050	REP-P	03-04-108
16-321-120	REP	03-08-018	16-470-916	REP-P	03-07-092	118- 65-050	REP	03-10-014
16-328-008	AMD-P	03-07-090	16-470-916	REP	03-10-082	118- 65-060	REP-P	03-04-108
16-328-008	AMD	03-10-080	16-470-917	AMD-P	03-07-092	118- 65-060	REP	03-10-014
16-328-010	PREP	03-03-121	16-470-917	AMD	03-10-082	118- 65-070	REP-P	03-04-108
16-328-010	REP-P	03-07-090	16-470-917	AMD-X	03-17-075	118- 65-070	REP	03-10-014
16-328-010	REP	03-10-080	16-470-921	AMD-P	03-07-092	118- 65-081	REP-P	03-04-108
16-328-011	PREP	03-03-121	16-470-921	AMD	03-10-082	118- 65-081	REP	03-10-014
16-328-011	AMD-P	03-07-090	16-536-040	AMD-C	03-06-101	118- 65-090	REP-P	03-04-108
16-328-011	AMD	03-10-080	16-536-040	AMD-W	03-12-042	118- 65-090	REP	03-10-014
16-328-011	AMD-X	03-17-075	16-600-001	REP-X	03-13-129	118- 66-010	NEW-P	03-04-108
16-333-010	AMD-P	03-07-089	16-600-010	REP-X	03-13-129	118- 66-010	NEW	03-10-014
16-333-010	AMD	03-10-081	16-603-010	AMD-X	03-08-088	118- 66-020	NEW-P	03-04-108
16-333-040	PREP	03-03-120	16-603-010	AMD	03-13-005	118- 66-020	NEW	03-10-014
16-333-040	REP-P	03-07-089	16-607	PREP	03-13-128	118- 66-030	NEW-P	03-04-108
16-333-040	REP	03-10-081	16-657	PREP	03-03-122	118- 66-030	NEW	03-10-014
16-333-041	PREP	03-03-120	16-659	PREP	03-03-122	118- 66-040	NEW-P	03-04-108
16-333-041	AMD-P	03-07-089	16-662-100	AMD-X	03-03-123	118- 66-040	NEW	03-10-014
16-333-041	AMD	03-10-081	16-662-100	AMD	03-08-017	118- 66-042	NEW-P	03-04-108
16-333-041	AMD-X	03-17-075	16-662-105	AMD-X	03-03-123	118- 66-042	NEW	03-10-014
16-400-040	AMD-P	03-07-081	16-662-105	AMD	03-08-017	118- 66-045	NEW-P	03-04-108
16-400-040	AMD-W	03-10-062	16-662-110	AMD-X	03-03-123	118- 66-045	NEW	03-10-014
16-400-100	AMD-P	03-07-081	16-662-110	AMD	03-08-017	118- 66-050	NEW-P	03-04-108
16-400-100	AMD-W	03-10-062	16-662-115	AMD-X	03-03-123	118- 66-050	NEW	03-10-014
16-400-210	AMD-P	03-07-081	16-662-115	AMD	03-08-017	118- 66-080	NEW-P	03-04-108
16-400-210	AMD-W	03-10-062	16-690	PREP	03-14-142	118- 66-080	NEW	03-10-014
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16-400-215	NEW-W	03-10-062	16-750-005	AMD	03-04-001	118- 66-081	NEW	03-10-014
16-401	PREP	03-14-135	16-750-011	AMD	03-04-001	118- 66-085	NEW-P	03-04-108
16-401-021	AMD-P	03-07-091	16-750-015	AMD	03-04-001	118- 66-085	NEW	03-10-014
16-401-021	AMD	03-10-083	16-752-300	AMD-X	03-11-098	118- 66-090	NEW-P	03-04-108
16-401-023	AMD-P	03-07-091	16-752-300	AMD	03-16-038	118- 66-090	NEW	03-10-014
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131- 28-026	AMD-P	03-15-021	132F-120	AMD-C	03-10-078	132F-121-070	NEW	03-16-015
132A	PREP	03-04-091	132F-120-020	REP-P	03-06-067	132F-121-080	NEW-P	03-06-067
132A-116-011	AMD-P	03-08-056	132F-120-020	REP	03-16-015	132F-121-080	NEW	03-16-015
132A-116-011	AMD	03-13-133	132F-120-030	REP-P	03-06-067	132F-121-090	NEW-P	03-06-067
132A-150-010	AMD-P	03-08-056	132F-120-030	REP	03-16-015	132F-121-090	NEW	03-16-015
132A-150-010	AMD	03-13-133	132F-120-040	REP-P	03-06-067	132F-121-100	NEW-P	03-06-067
132A-320-010	AMD-P	03-08-056	132F-120-040	REP	03-16-015	132F-121-100	NEW	03-16-015
132A-320-010	AMD	03-13-133	132F-120-041	REP-P	03-06-067	132F-121-110	NEW-P	03-06-067
132B-120	PREP	03-15-140	132F-120-041	REP	03-16-015	132F-121-110	NEW	03-16-015
132F- 01	AMD-C	03-10-078	132F-120-042	REP-P	03-06-067	132F-121-120	NEW-P	03-06-067
132F- 01-010	AMD-P	03-06-067	132F-120-042	REP	03-16-015	132F-121-120	NEW	03-16-015
132F- 01-010	AMD	03-16-015	132F-120-043	REP-P	03-06-067	132F-121-130	NEW-P	03-06-067
132F- 01-020	REP-P	03-06-067	132F-120-043	REP	03-16-015	132F-121-130	NEW	03-16-015
132F- 01-020	REP	03-16-015	132F-120-050	REP-P	03-06-067	132F-121-140	NEW-P	03-06-067
132F-104	AMD-C	03-10-078	132F-120-050	REP	03-16-015	132F-121-140	NEW	03-16-015
132F-104-010	AMD-P	03-06-067	132F-120-060	REP-P	03-06-067	132F-121-150	NEW-P	03-06-067
132F-104-010	AMD	03-16-015	132F-120-060	REP	03-16-015	132F-121-150	NEW	03-16-015
132F-104-020	AMD-P	03-06-067	132F-120-061	REP-P	03-06-067	132F-121-160	NEW-P	03-06-067
132F-104-020	AMD	03-16-015	132F-120-061	REP	03-16-015	132F-121-160	NEW	03-16-015
132F-104-030	REP-P	03-06-067	132F-120-070	REP-P	03-06-067	132F-121-170	NEW-P	03-06-067
132F-104-030	REP	03-16-015	132F-120-070	REP	03-16-015	132F-121-170	NEW	03-16-015
132F-104-801	REP-P	03-06-067	132F-120-080	REP-P	03-06-067	132F-121-180	NEW-P	03-06-067
132F-104-801	REP	03-16-015	132F-120-080	REP	03-16-015	132F-121-180	NEW	03-16-015
132F-104-810	AMD-P	03-06-067	132F-120-090	REP-P	03-06-067	132F-121-190	NEW-P	03-06-067
132F-104-810	AMD	03-16-015	132F-120-090	REP	03-16-015	132F-121-190	NEW	03-16-015
132F-104-811	REP-P	03-06-067	132F-120-100	REP-P	03-06-067	132F-121-200	NEW-P	03-06-067
132F-104-811	REP	03-16-015	132F-120-100	REP	03-16-015	132F-121-200	NEW	03-16-015
132F-104-812	REP-P	03-06-067	132F-120-110	REP-P	03-06-067	132F-121-210	NEW-P	03-06-067
132F-104-812	REP	03-16-015	132F-120-110	REP	03-16-015	132F-121-210	NEW	03-16-015
132F-104-813	REP-P	03-06-067	132F-120-120	REP-P	03-06-067	132F-121-220	NEW-P	03-06-067
132F-104-813	REP	03-16-015	132F-120-120	REP	03-16-015	132F-121-220	NEW	03-16-015
132F-104-814	REP-P	03-06-067	132F-120-130	REP-P	03-06-067	132F-121-230	NEW-P	03-06-067
132F-104-814	REP	03-16-015	132F-120-130	REP	03-16-015	132F-121-230	NEW	03-16-015
132F-104-815	REP-P	03-06-067	132F-120-140	REP-P	03-06-067	132F-121-240	NEW-P	03-06-067
132F-104-815	REP	03-16-015	132F-120-140	REP	03-16-015	132F-121-240	NEW	03-16-015
132F-104-816	REP-P	03-06-067	132F-120-150	REP-P	03-06-067	132F-121-250	NEW-P	03-06-067
132F-104-816	REP	03-16-015	132F-120-150	REP	03-16-015	132F-121-250	NEW	03-16-015
132F-104-817	REP-P	03-06-067	132F-120-160	REP-P	03-06-067	132F-121-260	NEW-P	03-06-067
132F-104-817	REP	03-16-015	132F-120-160	REP	03-16-015	132F-121-260	NEW	03-16-015
132F-104-818	REP-P	03-06-067	132F-120-170	REP-P	03-06-067	132H-116	PREP	03-04-074
132F-104-818	REP	03-16-015	132F-120-170	REP	03-16-015	132H-120	PREP	03-04-075
132F-104-819	REP-P	03-06-067	132F-120-180	REP-P	03-06-067	132H-120-020	AMD-P	03-08-021
132F-104-819	REP	03-16-015	132F-120-180	REP	03-16-015	132H-120-020	AMD	03-14-015
132F-108	AMD-P	03-06-067	132F-120-190	REP-P	03-06-067	132H-120-030	AMD-P	03-08-021
132F-108	AMD-C	03-10-078	132F-120-190	REP	03-16-015	132H-120-030	AMD	03-14-015
132F-108	AMD	03-16-015	132F-120-200	REP-P	03-06-067	132H-120-040	AMD-P	03-08-021
132F-108-020	AMD-P	03-06-067	132F-120-200	REP	03-16-015	132H-120-040	AMD	03-14-015
132F-108-020	AMD	03-16-015	132F-120-210	REP-P	03-06-067	132H-120-050	AMD-P	03-08-021
132F-108-050	AMD-P	03-06-067	132F-120-210	REP	03-16-015	132H-120-050	AMD	03-14-015
132F-108-050	AMD	03-16-015	132F-121-010	NEW-P	03-06-067	132H-120-200	AMD-P	03-08-021
132F-108-070	AMD-P	03-06-067	132F-121-010	NEW	03-16-015	132H-120-200	AMD	03-14-015
132F-108-070	AMD	03-16-015	132F-121-020	NEW-P	03-06-067	132H-120-220	AMD-P	03-08-021
132F-108-080	AMD-P	03-06-067	132F-121-020	NEW	03-16-015	132H-120-220	AMD	03-14-015
132F-108-080	AMD	03-16-015	132F-121-030	NEW-P	03-06-067	132H-120-300	AMD-P	03-08-021
132F-108-100	AMD-P	03-06-067	132F-121-030	NEW	03-16-015	132H-120-300	AMD	03-14-015
132F-108-100	AMD	03-16-015	132F-121-040	NEW-P	03-06-067	132H-120-310	AMD-P	03-08-021
132F-108-120	AMD-P	03-06-067	132F-121-040	NEW	03-16-015	132H-120-310	AMD	03-14-015
132F-108-120	AMD	03-16-015	132F-121-050	NEW-P	03-06-067	132H-132-010	REP-P	03-08-019
132F-108-130	AMD-P	03-06-067	132F-121-050	NEW	03-16-015	132H-132-010	REP	03-14-014
132F-108-130	AMD	03-16-015	132F-121-060	NEW-P	03-06-067	132H-132-020	REP-P	03-08-019
132F-108-140	AMD-P	03-06-067	132F-121-060	NEW	03-16-015	132H-132-020	REP	03-14-014

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132H-152-135	REP	03-14-013	132Q- 03	PREP	03-09-094	132Q- 07-040	NEW-P	03-13-082
132H-155-010	NEW-P	03-08-020	132Q- 03-005	REP-P	03-13-082	132Q- 07-050	NEW-P	03-13-082
132H-155-010	NEW	03-14-013	132Q- 03-010	REP-P	03-13-082	132Q- 07-060	NEW-P	03-13-082
132H-155-020	NEW-P	03-08-020	132Q- 03-020	REP-P	03-13-082	132Q- 20	PREP	03-09-094
132H-155-020	NEW	03-14-013	132Q- 03-030	REP-P	03-13-082	132Q- 20-005	NEW-P	03-13-082
132H-155-030	NEW-P	03-08-020	132Q- 04	PREP	03-09-094	132Q- 20-010	AMD-P	03-13-082
132H-155-030	NEW	03-14-013	132Q- 04-010	REP-P	03-13-082	132Q- 20-020	REP-P	03-13-082
132H-155-040	NEW-P	03-08-020	132Q- 04-020	REP-P	03-13-082	132Q- 20-040	AMD-P	03-13-082
132H-155-040	NEW	03-14-013	132Q- 04-030	REP-P	03-13-082	132Q- 20-050	AMD-P	03-13-082
132H-155-040	NEW	03-14-138	132Q- 04-031	REP-P	03-13-082	132Q- 20-060	AMD-P	03-13-082
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132H-155-050	NEW	03-14-013	132Q- 04-077	REP-P	03-13-082	132Q- 20-080	AMD-P	03-13-082
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132Q- 02-100	NEW-P	03-13-081	132Q- 04-210	REP-P	03-13-082	132Q- 20-250	AMD-P	03-13-082
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132R-04-057	NEW	03-15-063	132R-118-040	AMD	03-15-063	132R-190-050	AMD	03-15-063
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172- 64-070	NEW-P	03-11-099	173-170-040	AMD	03-07-104	173-303-070	AMD	03-07-049
172- 64-080	NEW-P	03-11-099	173-170-050	AMD	03-07-104	173-303-071	AMD-E	03-03-047
172- 64-090	NEW-P	03-11-099	173-170-070	AMD	03-07-104	173-303-071	AMD	03-07-049
172- 64-100	NEW-P	03-11-099	173-170-080	AMD	03-07-104	173-303-100	AMD	03-07-049
172- 64-110	NEW-P	03-11-099	173-170-090	AMD	03-07-104	173-303-110	AMD	03-07-049
172- 64-120	NEW-P	03-11-099	173-170-100	AMD	03-07-104	173-303-140	AMD	03-07-049
172- 64-130	NEW-P	03-11-099	173-183-820	AMD-X	03-06-036	173-303-170	AMD	03-07-049
172- 64-140	NEW-P	03-11-099	173-183-820	AMD	03-11-010	173-303-200	AMD	03-07-049
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173-303-505	AMD	03-07-049	173-350-990	NEW	03-03-043	180- 77A	PREP	03-10-076
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173-303-520	AMD	03-07-049	173-434-020	AMD-P	03-13-077	180- 78A-250	AMD-P	03-14-113
173-303-522	AMD	03-07-049	173-434-030	AMD-P	03-13-077	180- 78A-264	PREP	03-09-085
173-303-525	AMD	03-07-049	173-434-050	REP-P	03-13-077	180- 78A-264	AMD-P	03-14-111
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173-303-646	AMD	03-07-049	173-434-120	REP-P	03-13-077	180- 78A-535	AMD	03-04-024
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173-303-692	AMD	03-07-049	173-434-170	AMD-P	03-13-077	180- 79A-117	PREP	03-07-004
173-303-806	AMD	03-07-049	173-434-190	AMD-P	03-13-077	180- 79A-117	AMD-E	03-08-060
173-303-830	AMD	03-07-049	173-434-200	AMD-P	03-13-077	180- 79A-117	AMD-P	03-09-029
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173-314-010	REP	03-10-020	173-503	PREP	03-14-023	180- 79A-127	AMD-X	03-10-071
173-314-100	REP-X	03-05-095	180- 10-001	REP-W	03-03-060	180- 79A-127	AMD	03-15-121
173-314-100	REP	03-10-020	180- 10-003	REP-W	03-03-060	180- 79A-140	PREP	03-09-019
173-314-200	REP-X	03-05-095	180- 10-005	REP-W	03-03-060	180- 79A-140	AMD-E	03-12-038
173-314-200	REP	03-10-020	180- 10-007	REP-W	03-03-060	180- 79A-150	PREP	03-04-109
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173-314-210	REP	03-10-020	180- 10-015	REP-W	03-03-060	180- 79A-223	PREP	03-12-036
173-314-220	REP-X	03-05-095	180- 10-020	REP-W	03-03-060	180- 79A-231	AMD-P	03-04-019
173-314-220	REP	03-10-020	180- 10-025	REP-W	03-03-060	180- 79A-231	AMD-P	03-09-023
173-314-300	REP-X	03-05-095	180- 10-030	REP-W	03-03-060	180- 79A-231	AMD	03-12-035
173-314-300	REP	03-10-020	180- 10-035	REP-W	03-03-060	180- 79A-231	AMD-E	03-12-038
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173-314-310	REP	03-10-020	180- 10-045	REP-W	03-03-060	180- 79A-308	PREP	03-09-021
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173-314-320	REP	03-10-020	180- 24-00701	AMD-E	03-14-117	180- 81	PREP	03-10-076
173-314-330	REP-X	03-05-095	180- 24-215	PREP	03-12-037	180- 82	PREP	03-10-076
173-314-330	REP	03-10-020	180- 24-215	AMD-E	03-14-117	180- 82-105	AMD-E	03-14-121
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173-350-210	NEW	03-03-043	180- 33-035	AMD-E	03-14-116	180- 82A-204	PREP	03-04-020
173-350-220	NEW	03-03-043	180- 38-065	AMD-W	03-03-062	180- 82A-204	AMD-E	03-04-028
173-350-230	NEW	03-03-043	180- 38-065	REP	03-13-079	180- 82A-204	AMD-P	03-09-024
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173-350-330	NEW	03-03-043	180- 51-063	AMD-E	03-09-018	180- 82A-206	AMD-E	03-09-027
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173-350-360	NEW	03-03-043	180- 51-063	AMD	03-14-118	180- 82A-215	PREP	03-04-021
173-350-400	NEW	03-03-043	180- 55-032	NEW-W	03-03-061	180- 82A-215	AMD-P	03-09-026
173-350-410	NEW	03-03-043	180- 55-034	PREP	03-04-112	180- 82A-215	AMD-E	03-09-027
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180- 86-116	PREP	03-10-028	192- 16-036	REP	03-06-038	196- 25-010	AMD-P	03-16-113
180- 87	PREP	03-10-076	192- 16-040	REP	03-06-038	196- 25-020	REP-P	03-16-113
180- 90-105	AMD	03-04-053	192- 16-042	REP	03-06-038	196- 25-030	REP-P	03-16-113
180- 90-110	REP	03-04-053	192- 16-045	REP	03-06-038	196- 25-040	AMD-P	03-16-113
180- 90-112	AMD	03-04-053	192- 16-047	REP	03-06-038	196- 25-050	AMD-P	03-16-113
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180- 90-123	REP	03-04-053	192-240-010	NEW	03-06-038	196- 27A-025	NEW-P	03-16-113
180- 90-125	REP	03-04-053	192-240-015	NEW	03-06-038	196- 30	PREP	03-03-111
180- 90-130	AMD	03-04-053	192-240-020	NEW	03-06-038	197- 11-070	AMD-P	03-03-082
180- 90-133	REP	03-04-053	192-240-025	NEW	03-06-038	197- 11-070	AMD	03-16-067
180- 90-135	REP	03-04-053	192-240-030	NEW	03-06-038	197- 11-250	AMD-P	03-03-082
180- 90-137	REP	03-04-053	192-240-035	NEW	03-06-038	197- 11-250	AMD	03-16-067
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182- 08-190	AMD-P	03-13-138	196- 12-050	AMD-P	03-16-113	204- 82A-060	AMD	03-12-013
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212- 12-310	NEW	03-06-063	220- 33-01000B	NEW-E	03-06-007	220- 48-01500R	NEW-E	03-13-025
212- 12-320	NEW	03-06-063	220- 33-01000B	REP-E	03-06-007	220- 48-029	AMD	03-05-063
212- 12-330	NEW	03-06-063	220- 33-01000C	NEW-E	03-08-004	220- 48-02900B	NEW-E	03-13-078
212- 12-340	NEW	03-06-063	220- 33-01000C	REP-E	03-08-004	220- 48-032	AMD	03-05-063
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220- 16-27000A	NEW-E	03-09-081	220- 33-01000Z	REP-E	03-04-033	220- 52-03000S	REP-E	03-17-018
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232- 19-120	REP	03-10-038	232- 28-334	AMD	03-16-087	232- 28-61900I	NEW-E	03-06-009
232- 19-130	REP-P	03-06-080	232- 28-335	NEW-P	03-02-103	232- 28-61900I	REP-E	03-06-009
232- 19-130	REP	03-10-038	232- 28-335	NEW	03-06-110	232- 28-61900I	NEW-E	03-13-013
232- 19-140	REP-P	03-06-080	232- 28-335	AMD-P	03-13-120	232- 28-61900I	REP-E	03-13-013
232- 19-140	REP	03-10-038	232- 28-335	AMD	03-16-087	232- 28-61900J	NEW-E	03-06-008
232- 19-180	REP-P	03-06-080	232- 28-336	NEW-P	03-02-103	232- 28-61900J	REP-E	03-06-008
232- 19-180	REP	03-10-038	232- 28-336	NEW	03-06-110	232- 28-61900J	NEW-E	03-13-001
232- 28-02201	REP-P	03-02-103	232- 28-337	NEW-P	03-06-112	232- 28-61900J	REP-E	03-13-001
232- 28-02201	REP	03-06-110	232- 28-337	NEW	03-13-047	232- 28-61900K	NEW-E	03-06-028
232- 28-02202	REP-P	03-02-103	232- 28-341	NEW-P	03-06-106	232- 28-61900K	REP-E	03-06-028
232- 28-02202	REP	03-06-110	232- 28-341	NEW	03-13-047	232- 28-61900K	NEW-E	03-13-069
232- 28-02203	REP-P	03-02-103	232- 28-341	AMD-P	03-13-116	232- 28-61900K	REP-E	03-14-028
232- 28-02203	REP	03-06-110	232- 28-341	AMD	03-16-087	232- 28-61900L	NEW-E	03-07-001
232- 28-02204	REP-P	03-02-103	232- 28-351	NEW-P	03-06-113	232- 28-61900L	REP-E	03-07-001
232- 28-02204	REP	03-06-110	232- 28-351	NEW	03-13-047	232- 28-61900L	REP-E	03-11-037
232- 28-02205	REP-P	03-02-103	232- 28-35100A	NEW-E	03-17-038	232- 28-61900L	NEW-E	03-13-068
232- 28-02205	REP	03-06-110	232- 28-35100A	REP-E	03-17-038	232- 28-61900L	REP-E	03-14-073
232- 28-02206	REP-P	03-02-103	232- 28-352	NEW-P	03-06-114	232- 28-61900M	NEW-E	03-07-016
232- 28-02206	REP	03-06-110	232- 28-352	NEW	03-13-047	232- 28-61900M	REP-E	03-07-016
232- 28-02220	REP-P	03-06-112	232- 28-35200A	NEW-E	03-17-039	232- 28-61900M	REP-E	03-11-037
232- 28-02220	REP	03-13-047	232- 28-426	REP-P	03-13-115	232- 28-61900M	NEW-E	03-13-094
232- 28-02240	REP-P	03-06-112	232- 28-426	REP	03-16-087	232- 28-61900M	REP-E	03-13-094
232- 28-02240	REP	03-13-047	232- 28-42600C	NEW-E	03-03-102	232- 28-61900N	NEW-E	03-07-023
232- 28-02280	REP-P	03-02-103	232- 28-42600C	REP-E	03-03-102	232- 28-61900N	REP-E	03-07-023
232- 28-02280	REP	03-06-110	232- 28-427	NEW-P	03-13-115	232- 28-61900N	NEW-E	03-14-028
232- 28-248	AMD-P	03-06-108	232- 28-427	NEW	03-16-087	232- 28-61900N	REP-E	03-14-093
232- 28-248	AMD	03-13-047	232- 28-515	AMD-P	03-06-107	232- 28-61900P	NEW-E	03-07-075
232- 28-266	AMD-P	03-06-066	232- 28-515	AMD	03-13-047	232- 28-61900P	REP-E	03-07-075
232- 28-266	AMD	03-10-009	232- 28-619	AMD	03-05-057	232- 28-61900P	REP-E	03-13-069
232- 28-271	AMD	03-03-016	232- 28-619	AMD-X	03-12-094	232- 28-61900P	NEW-E	03-14-073
232- 28-272	AMD-P	03-06-108	232- 28-619	AMD	03-16-110	232- 28-61900Q	REP-E	03-05-003
232- 28-272	AMD	03-13-047	232- 28-61900A	NEW-E	03-10-053	232- 28-61900Q	NEW-E	03-07-064
232- 28-273	AMD-P	03-06-105	232- 28-61900A	REP-E	03-10-053	232- 28-61900Q	REP-E	03-07-064
232- 28-273	AMD	03-13-047	232- 28-61900B	REP-E	03-04-047	232- 28-61900Q	NEW-E	03-14-093
232- 28-276	REP-P	03-06-106	232- 28-61900B	NEW-E	03-11-001	232- 28-61900Q	REP-E	03-15-092
232- 28-276	REP	03-13-047	232- 28-61900B	REP-E	03-11-001	232- 28-61900R	NEW-E	03-07-068
232- 28-278	REP-P	03-06-113	232- 28-61900B	REP-E	03-13-001	232- 28-61900R	REP-E	03-07-068
232- 28-278	REP	03-13-047	232- 28-61900C	NEW-E	03-03-004	232- 28-61900R	NEW-E	03-15-092
232- 28-279	REP-P	03-06-114	232- 28-61900C	REP-E	03-03-004	232- 28-61900S	NEW-E	03-08-054
232- 28-279	REP	03-13-047	232- 28-61900C	NEW-E	03-11-037	232- 28-61900S	REP-E	03-08-054
232- 28-282	AMD	03-03-016	232- 28-61900C	REP-E	03-11-082	232- 28-61900S	NEW-E	03-16-012
232- 28-282	AMD-P	03-13-141	232- 28-61900D	NEW-E	03-03-098	232- 28-61900T	NEW-E	03-09-001
232- 28-282	AMD	03-16-087	232- 28-61900D	REP-E	03-03-098	232- 28-61900T	REP-E	03-09-001
232- 28-291	AMD-P	03-06-105	232- 28-61900D	NEW-E	03-11-051	232- 28-61900T	REP-E	03-10-033
232- 28-291	AMD-P	03-12-077	232- 28-61900D	REP-E	03-11-051	232- 28-61900T	NEW-E	03-16-057
232- 28-291	AMD	03-13-047	232- 28-61900E	NEW-E	03-04-047	232- 28-61900T	REP-E	03-16-057
232- 28-291	AMD	03-16-087	232- 28-61900E	REP-E	03-04-047	232- 28-61900U	NEW-E	03-09-016
232- 28-331	NEW-P	03-02-103	232- 28-61900E	NEW-E	03-11-082	232- 28-61900U	REP-E	03-09-016
232- 28-331	NEW	03-06-110	232- 28-61900E	REP-E	03-12-022	232- 28-61900V	NEW-E	03-10-001
232- 28-331	AMD-P	03-13-117	232- 28-61900F	NEW-E	03-05-003	232- 28-61900V	REP-E	03-10-001
232- 28-331	AMD	03-16-087	232- 28-61900F	REP-E	03-05-003	232- 28-61900V	REP-E	03-12-041
232- 28-332	NEW-P	03-02-103	232- 28-61900F	NEW-E	03-12-022	232- 28-61900W	NEW-E	03-10-015
232- 28-332	NEW	03-06-110	232- 28-61900F	REP-E	03-13-068	232- 28-61900W	REP-E	03-11-037
232- 28-332	AMD-P	03-13-118	232- 28-61900G	NEW-E	03-05-038	232- 28-61900X	NEW-E	03-10-032
232- 28-332	AMD	03-16-087	232- 28-61900G	REP-E	03-05-038	232- 28-61900X	REP-E	03-10-032
232- 28-333	NEW-P	03-02-103	232- 28-61900G	NEW-E	03-12-041	232- 28-61900X	REP-E	03-11-037
232- 28-333	NEW	03-06-110	232- 28-61900G	REP-E	03-12-041	232- 28-61900Y	NEW-E	03-10-039
232- 28-333	AMD-P	03-13-121	232- 28-61900H	NEW-E	03-05-037	232- 28-61900Y	REP-E	03-10-039
232- 28-333	AMD	03-16-087	232- 28-61900H	REP-E	03-05-037	232- 28-61900Y	REP-E	03-10-053
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232- 28-62000K	REP-E	03-10-039	246-244-030	AMD	03-12-062	246-290-002	AMD	03-08-037
232- 28-62000K	REP-E	03-15-095	246-244-080	AMD-P	03-07-094	246-290-010	AMD-P	03-03-079
232- 28-62000L	NEW-E	03-15-095	246-244-080	AMD	03-12-062	246-290-010	AMD	03-08-037
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232- 28-621	AMD-X	03-12-095	246-244-110	AMD	03-12-062	246-290-025	AMD	03-08-037
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232- 28-62100K	NEW-E	03-10-039	246-244-115	NEW	03-12-062	246-290-060	AMD-P	03-03-079
232- 28-62100K	REP-E	03-10-039	246-244-160	AMD-P	03-07-094	246-290-060	AMD	03-08-037
232- 28-62100K	REP-E	03-16-043	246-244-160	AMD	03-12-062	246-290-100	AMD-P	03-03-079
232- 28-62100L	NEW-E	03-16-043	246-244-240	AMD-P	03-07-094	246-290-100	AMD	03-08-037
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236- 12-480	REP-E	03-09-030	246-247-075	AMD-P	03-15-104	246-290-105	AMD	03-08-037
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242- 02-010	AMD	03-15-047	246-247-110	AMD-P	03-15-104	246-290-125	AMD	03-08-037
242- 02-052	AMD-X	03-10-069	246-247-120	PREP	03-10-016	246-290-220	AMD-P	03-03-079
242- 02-052	AMD	03-15-047	246-247-120	AMD-P	03-15-104	246-290-220	AMD	03-08-037
242- 02-070	AMD-X	03-10-069	246-247-130	PREP	03-10-016	246-290-300	AMD-P	03-03-079
242- 02-070	AMD	03-15-047	246-247-130	AMD-P	03-15-104	246-290-300	AMD	03-08-037
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242- 02-072	AMD	03-15-047	246-254-053	AMD	03-13-122	246-290-310	AMD	03-08-037
242- 02-076	NEW-X	03-10-069	246-254-070	AMD-P	03-08-035	246-290-320	AMD-P	03-03-079
242- 02-076	NEW	03-15-047	246-254-070	AMD	03-14-034	246-290-320	AMD	03-08-037
242- 02-834	AMD-X	03-10-069	246-254-080	AMD-P	03-08-035	246-290-416	AMD-P	03-03-079
242- 02-834	AMD	03-15-047	246-254-080	AMD	03-14-034	246-290-416	AMD	03-08-037
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242- 04-050	AMD	03-15-047	246-254-090	AMD	03-14-034	246-290-451	AMD	03-08-037
246- 01-001	AMD-X	03-04-105	246-254-100	AMD-P	03-08-035	246-290-480	AMD-P	03-03-079
246- 01-001	AMD	03-11-032	246-254-100	AMD	03-14-034	246-290-480	AMD	03-08-037
246- 01-040	REP-X	03-04-105	246-260-9901	AMD-P	03-11-030	246-290-490	AMD-P	03-03-079
246- 01-040	REP	03-11-032	246-260-9901	AMD	03-14-146	246-290-490	AMD	03-08-037
246- 01-070	REP-X	03-04-105	246-262-990	AMD-P	03-11-030	246-290-495	REP-P	03-03-079
246- 01-070	REP	03-11-032	246-262-990	AMD	03-14-146	246-290-495	REP	03-08-037
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246- 01-080	AMD	03-11-032	246-272B-00101	NEW-P	03-12-089	246-290-601	AMD	03-08-037
246- 01-090	AMD-X	03-04-105	246-272B-00501	NEW-P	03-12-089	246-290-630	AMD-P	03-03-079
246- 01-090	AMD	03-11-032	246-272B-01001	NEW-P	03-12-089	246-290-630	AMD	03-08-037
246- 01-100	REP-X	03-04-105	246-272B-03001	NEW-P	03-12-089	246-290-634	AMD-P	03-03-079
246- 01-100	REP	03-11-032	246-272B-08001	NEW-P	03-12-089	246-290-634	AMD	03-08-037
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246-290-692	AMD	03-08-037	246-455-030	AMD	03-13-029	246-830-990	AMD-P	03-03-077
246-290-694	AMD-P	03-03-079	246-455-040	AMD-P	03-05-024	246-830-990	AMD	03-07-095
246-290-694	AMD	03-08-037	246-455-040	AMD-S	03-09-127	246-834-990	PREP	03-13-126
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246-290-696	AMD	03-08-037	246-455-070	AMD-P	03-05-024	246-836-990	AMD	03-07-095
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246-290-71001	NEW	03-08-037	246-455-080	AMD-S	03-09-127	246-840-010	AMD-E	03-13-143
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246-290-71002	NEW	03-08-037	246-455-090	AMD-P	03-05-024	246-840-840	PREP	03-12-087
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246-290-71005	NEW	03-08-037	246-562-020	AMD-E	03-06-050	246-840-860	AMD-E	03-13-143
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246-290-71006	NEW	03-08-037	246-562-050	AMD-P	03-15-141	246-840-870	AMD-E	03-13-143
246-290-71007	NEW-P	03-03-079	246-562-060	AMD-P	03-15-141	246-840-880	PREP	03-12-087
246-290-71007	NEW	03-08-037	246-562-060	AMD-P	03-15-141	246-840-880	AMD-E	03-13-143
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246-310-290	NEW-P	03-03-097	246-815-990	AMD	03-07-095	246-850-160	NEW	03-17-093
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296-17-761	PREP	03-03-026	296-19A-240	AMD	03-11-009	296-24-24019	REP-P	03-14-075
296-17-761	AMD-P	03-14-126	296-19A-245	NEW	03-11-009	296-24-245	REP-P	03-14-075
296-17-762	PREP	03-03-026	296-19A-260	AMD	03-11-009	296-24-24501	REP-P	03-14-075
296-17-762	AMD-P	03-14-126	296-19A-270	AMD	03-11-009	296-24-24503	REP-P	03-14-075
296-17-76201	PREP	03-03-026	296-19A-300	AMD	03-11-009	296-24-24505	REP-P	03-14-075
296-17-76201	AMD-P	03-14-126	296-19A-350	AMD	03-11-009	296-24-24507	REP-P	03-14-075
296-17-76202	PREP	03-03-026	296-19A-400	AMD	03-11-009	296-24-24509	REP-P	03-14-075
296-17-76202	AMD-P	03-14-126	296-19A-440	AMD	03-11-009	296-24-24511	REP-P	03-14-075
296-17-76203	PREP	03-03-026	296-19A-480	AMD	03-11-009	296-24-24513	REP-P	03-14-075
296-17-76203	AMD-P	03-14-126	296-20-010	AMD-X	03-14-127	296-24-24515	REP-P	03-14-075
296-17-76204	PREP	03-03-026	296-20-01002	AMD-X	03-14-127	296-24-24517	REP-P	03-14-075
296-17-76204	AMD-P	03-14-126	296-20-01501	AMD-X	03-14-127	296-24-24519	REP-P	03-14-075
296-17-76205	PREP	03-03-026	296-20-02010	AMD-X	03-14-127	296-24-650	REP	03-09-009
296-17-76205	AMD-P	03-14-126	296-200A	PREP	03-04-098	296-24-65003	REP	03-09-009
296-17-76206	PREP	03-03-026	296-20-12501	AMD-X	03-14-127	296-24-65005	REP	03-09-009
296-17-76206	AMD-P	03-14-126	296-20-135	AMD-P	03-09-107	296-24-65007	REP	03-09-009
296-17-76207	PREP	03-03-026	296-20-135	AMD	03-14-043	296-24-655	REP	03-09-009
296-17-76207	AMD-P	03-14-126	296-20-170	AMD-X	03-14-127	296-24-65501	REP	03-09-009
296-17-76208	PREP	03-03-026	296-20-303	DECOD-X	03-14-127	296-24-657	REP	03-09-009
296-17-76208	AMD-P	03-14-126	296-23-220	AMD-P	03-09-107	296-24-65701	REP	03-09-009
296-17-76209	PREP	03-03-026	296-23-220	AMD	03-14-043	296-24-65703	REP	03-09-009
296-17-76209	AMD-P	03-14-126	296-23-230	AMD-P	03-09-107	296-24-660	REP	03-09-009
296-17-76210	PREP	03-03-026	296-23-230	AMD	03-14-043	296-24-66001	REP	03-09-009
296-17-76210	AMD-P	03-14-126	296-23-240	AMD-X	03-14-127	296-24-66003	REP	03-09-009
296-17-76211	PREP	03-03-026	296-23-246	RECOD-X	03-14-127	296-24-66005	REP	03-09-009
296-17-76211	AMD-P	03-14-126	296-23A-0710	AMD-X	03-14-127	296-24-66007	REP	03-09-009
296-17-76212	PREP	03-03-026	296-24	PREP	03-03-110	296-24-66009	REP	03-09-009
296-17-76212	AMD-P	03-14-126	296-24	PREP	03-10-064	296-24-66011	REP	03-09-009
296-17-76213	NEW-P	03-14-126	296-24	PREP	03-10-066	296-24-663	REP	03-09-009
296-19A-010	AMD	03-11-009	296-24-120	AMD-X	03-12-072	296-24-66301	REP	03-09-009
296-19A-020	AMD	03-11-009	296-24-12001	REP-X	03-12-072	296-24-66303	REP	03-09-009
296-19A-025	NEW	03-11-009	296-24-12002	REP-X	03-12-072	296-24-66305	REP	03-09-009
296-19A-030	AMD	03-11-009	296-24-12010	REP-X	03-12-072	296-24-66307	REP	03-09-009
296-19A-040	AMD	03-11-009	296-24-12011	REP-X	03-12-072	296-24-66309	REP	03-09-009
296-19A-045	AMD-X	03-17-072	296-24-12017	REP-X	03-12-072	296-24-66311	REP	03-09-009
296-19A-050	PREP	03-17-070	296-24-235	REP-P	03-14-075	296-24-66313	REP	03-09-009
296-19A-060	AMD	03-11-009	296-24-23501	REP-P	03-14-075	296-24-66315	REP	03-09-009
296-19A-065	NEW	03-11-009	296-24-23503	REP-P	03-14-075	296-24-66317	REP	03-09-009
296-19A-065	PREP	03-17-070	296-24-23505	REP-P	03-14-075	296-24-66319	REP	03-09-009
296-19A-070	AMD	03-11-009	296-24-23507	REP-P	03-14-075	296-24-66321	REP	03-09-009
296-19A-080	AMD-X	03-17-072	296-24-23509	REP-P	03-14-075	296-24-665	REP	03-09-009
296-19A-090	AMD	03-11-009	296-24-23511	REP-P	03-14-075	296-24-66501	REP	03-09-009
296-19A-090	PREP	03-17-070	296-24-23513	REP-P	03-14-075	296-24-66503	REP	03-09-009
296-19A-100	AMD	03-11-009	296-24-23515	REP-P	03-14-075	296-24-66505	REP	03-09-009
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296-19A-110	PREP	03-17-070	296-24-23519	REP-P	03-14-075	296-24-66509	REP	03-09-009
296-19A-120	PREP	03-17-070	296-24-23521	REP-P	03-14-075	296-24-670	REP	03-09-009
296-19A-120	AMD-X	03-17-072	296-24-23523	REP-P	03-14-075	296-24-67001	REP	03-09-009
296-19A-125	NEW	03-11-009	296-24-23525	REP-P	03-14-075	296-24-67003	REP	03-09-009

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296-24-67005	REP	03-09-009	296-46A-348	REP-P	03-05-074	296-46B-010	NEW-P	03-05-074
296-27-01109	AMD	03-09-110	296-46A-348	REP	03-09-111	296-46B-010	NEW	03-09-111
296-30-190	PREP	03-11-057	296-46A-365	REP-P	03-05-074	296-46B-020	NEW-P	03-05-074
296-30-200	PREP	03-11-058	296-46A-365	REP	03-09-111	296-46B-020	NEW	03-09-111
296-37	PREP	03-04-097	296-46A-370	REP-P	03-05-074	296-46B-030	NEW-P	03-05-074
296-400A	PREP	03-04-098	296-46A-370	REP	03-09-111	296-46B-030	NEW	03-09-111
296-401B	PREP	03-04-098	296-46A-41004	REP-P	03-05-074	296-46B-040	NEW-P	03-05-074
296-402A	PREP	03-04-098	296-46A-41004	REP	03-09-111	296-46B-040	NEW	03-09-111
296-45	PREP	03-07-072	296-46A-41030	REP-P	03-05-074	296-46B-110	NEW-P	03-05-074
296-45	PREP	03-10-064	296-46A-41030	REP	03-09-111	296-46B-110	NEW	03-09-111
296-45-045	AMD-P	03-10-067	296-46A-422	REP-P	03-05-074	296-46B-210	NEW-P	03-05-074
296-45-045	AMD	03-17-071	296-46A-422	REP	03-09-111	296-46B-210	NEW	03-09-111
296-45-255	AMD-P	03-10-067	296-46A-450	REP-P	03-05-074	296-46B-215	NEW-P	03-05-074
296-45-255	AMD	03-17-071	296-46A-450	REP	03-09-111	296-46B-215	NEW	03-09-111
296-45-325	AMD-P	03-10-067	296-46A-500	REP-P	03-05-074	296-46B-220	NEW-P	03-05-074
296-45-325	AMD	03-17-071	296-46A-500	REP	03-09-111	296-46B-220	NEW	03-09-111
296-45-48535	AMD-X	03-12-072	296-46A-514	REP-P	03-05-074	296-46B-225	NEW-P	03-05-074
296-46A	PREP	03-04-098	296-46A-514	REP	03-09-111	296-46B-225	NEW	03-09-111
296-46A-090	REP-P	03-05-074	296-46A-517	REP-P	03-05-074	296-46B-230	NEW-P	03-05-074
296-46A-090	REP	03-09-111	296-46A-517	REP	03-09-111	296-46B-230	NEW	03-09-111
296-46A-092	REP-P	03-05-074	296-46A-550	REP-P	03-05-074	296-46B-250	NEW-P	03-05-074
296-46A-092	REP	03-09-111	296-46A-550	REP	03-09-111	296-46B-250	NEW	03-09-111
296-46A-095	REP-P	03-05-074	296-46A-553	REP-P	03-05-074	296-46B-300	NEW-P	03-05-074
296-46A-095	REP	03-09-111	296-46A-553	REP	03-09-111	296-46B-300	NEW	03-09-111
296-46A-100	REP-P	03-05-074	296-46A-600	REP-P	03-05-074	296-46B-314	NEW-P	03-05-074
296-46A-100	REP	03-09-111	296-46A-600	REP	03-09-111	296-46B-314	NEW	03-09-111
296-46A-102	REP-P	03-05-074	296-46A-680	REP-P	03-05-074	296-46B-334	NEW-P	03-05-074
296-46A-102	REP	03-09-111	296-46A-680	REP	03-09-111	296-46B-334	NEW	03-09-111
296-46A-104	REP-P	03-05-074	296-46A-700	REP-P	03-05-074	296-46B-358	NEW-P	03-05-074
296-46A-104	REP	03-09-111	296-46A-700	REP	03-09-111	296-46B-358	NEW	03-09-111
296-46A-110	REP-P	03-05-074	296-46A-702	REP-P	03-05-074	296-46B-394	NEW-P	03-05-074
296-46A-110	REP	03-09-111	296-46A-702	REP	03-09-111	296-46B-394	NEW	03-09-111
296-46A-130	REP-P	03-05-074	296-46A-900	REP-P	03-05-074	296-46B-410	NEW-P	03-05-074
296-46A-130	REP	03-09-111	296-46A-900	REP	03-09-111	296-46B-410	NEW	03-09-111
296-46A-140	REP-P	03-05-074	296-46A-910	REP-P	03-05-074	296-46B-422	NEW-P	03-05-074
296-46A-140	REP	03-09-111	296-46A-910	REP	03-09-111	296-46B-422	NEW	03-09-111
296-46A-155	REP-P	03-05-074	296-46A-915	REP-P	03-05-074	296-46B-430	NEW-P	03-05-074
296-46A-155	REP	03-09-111	296-46A-915	REP	03-09-111	296-46B-430	NEW	03-09-111
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296-46A-21052	REP	03-09-111	296-46A-920	REP	03-09-111	296-46B-450	NEW	03-09-111
296-46A-215	REP-P	03-05-074	296-46A-930	REP-P	03-05-074	296-46B-501	NEW-P	03-05-074
296-46A-215	REP	03-09-111	296-46A-930	REP	03-09-111	296-46B-501	NEW	03-09-111
296-46A-220	REP-P	03-05-074	296-46A-931	REP-P	03-05-074	296-46B-514	NEW-P	03-05-074
296-46A-220	REP	03-09-111	296-46A-931	REP	03-09-111	296-46B-514	NEW	03-09-111
296-46A-22530	REP-P	03-05-074	296-46A-932	REP-P	03-05-074	296-46B-517	NEW-P	03-05-074
296-46A-22530	REP	03-09-111	296-46A-932	REP	03-09-111	296-46B-517	NEW	03-09-111
296-46A-23001	REP-P	03-05-074	296-46A-933	REP-P	03-05-074	296-46B-520	NEW-P	03-05-074
296-46A-23001	REP	03-09-111	296-46A-933	REP	03-09-111	296-46B-520	NEW	03-09-111
296-46A-23028	REP-P	03-05-074	296-46A-934	REP-P	03-05-074	296-46B-527	NEW-P	03-05-074
296-46A-23028	REP	03-09-111	296-46A-934	REP	03-09-111	296-46B-527	NEW	03-09-111
296-46A-23040	REP-P	03-05-074	296-46A-935	REP-P	03-05-074	296-46B-550	NEW-P	03-05-074
296-46A-23040	REP	03-09-111	296-46A-935	REP	03-09-111	296-46B-550	NEW	03-09-111
296-46A-23062	REP-P	03-05-074	296-46A-940	REP-P	03-05-074	296-46B-553	NEW-P	03-05-074
296-46A-23062	REP	03-09-111	296-46A-940	REP	03-09-111	296-46B-553	NEW	03-09-111
296-46A-250	REP-P	03-05-074	296-46A-950	REP-P	03-05-074	296-46B-555	NEW-P	03-05-074
296-46A-250	REP	03-09-111	296-46A-950	REP	03-09-111	296-46B-555	NEW	03-09-111
296-46A-300	REP-P	03-05-074	296-46A-960	REP-P	03-05-074	296-46B-600	NEW-P	03-05-074
296-46A-300	REP	03-09-111	296-46A-960	REP	03-09-111	296-46B-600	NEW	03-09-111
296-46A-30011	REP-P	03-05-074	296-46B	PREP	03-10-065	296-46B-680	NEW-P	03-05-074
296-46A-30011	REP	03-09-111	296-46B	PREP	03-15-116	296-46B-680	NEW	03-09-111
296-46A-324	REP-P	03-05-074	296-46B-005	NEW-P	03-05-074	296-46B-700	NEW-P	03-05-074
296-46A-324	REP	03-09-111	296-46B-005	NEW	03-09-111	296-46B-700	NEW	03-09-111

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296-46B-800	NEW-P	03-05-074	296-52-63005	AMD	03-10-037	296-62-080	REP	03-10-068
296-46B-800	NEW	03-09-111	296-52-65005	AMD-X	03-05-073	296-62-08001	AMD	03-09-110
296-46B-900	NEW-P	03-05-074	296-52-65005	AMD	03-10-037	296-62-09015	AMD	03-11-060
296-46B-900	NEW	03-09-111	296-52-66005	AMD-X	03-05-073	296-62-11021	REP-X	03-04-100
296-46B-905	NEW-P	03-05-074	296-52-66005	AMD	03-10-037	296-62-11021	REP	03-10-068
296-46B-905	NEW	03-09-111	296-52-67065	AMD	03-06-073	296-62-130	REP-X	03-04-100
296-46B-905	AMD-X	03-13-100	296-52-67160	AMD	03-06-073	296-62-130	REP	03-10-068
296-46B-910	NEW-P	03-05-074	296-52-68060	AMD	03-06-073	296-62-20015	AMD-X	03-12-072
296-46B-910	NEW	03-09-111	296-52-69010	AMD	03-06-073	296-62-300	AMD-P	03-14-074
296-46B-911	NEW-P	03-05-074	296-52-69015	AMD	03-06-073	296-62-31020	AMD-X	03-12-072
296-46B-911	NEW	03-09-111	296-52-69095	AMD	03-06-073	296-62-31335	AMD-X	03-12-072
296-46B-915	NEW-P	03-05-074	296-52-69125	AMD	03-06-073	296-78	PREP	03-10-064
296-46B-915	NEW	03-09-111	296-52-69130	NEW	03-06-073	296-78	PREP	03-10-066
296-46B-920	NEW-P	03-05-074	296-52-70010	AMD	03-06-073	296-78-56505	AMD	03-06-076
296-46B-920	NEW	03-09-111	296-52-710	AMD	03-06-073	296-78-71001	AMD	03-06-076
296-46B-925	NEW-P	03-05-074	296-52-71020	AMD	03-06-073	296-78-71011	AMD	03-06-076
296-46B-925	NEW	03-09-111	296-52-71040	AMD	03-06-073	296-78-835	AMD	03-06-076
296-46B-930	NEW-P	03-05-074	296-52-71045	AMD	03-06-073	296-79	PREP	03-03-110
296-46B-930	NEW	03-09-111	296-54	PREP	03-10-064	296-79	PREP	03-10-064
296-46B-930	AMD-X	03-13-100	296-54	PREP	03-10-066	296-79	PREP	03-10-066
296-46B-935	NEW-P	03-05-074	296-54-51130	AMD	03-11-060	296-96	PREP	03-04-098
296-46B-935	NEW	03-09-111	296-56	PREP	03-03-110	296-96	PREP	03-10-065
296-46B-940	NEW-P	03-05-074	296-56	PREP	03-10-066	296-96-01005	AMD-P	03-09-108
296-46B-940	NEW	03-09-111	296-56-60001	AMD	03-11-060	296-96-01005	AMD	03-12-045
296-46B-945	NEW-P	03-05-074	296-59	PREP	03-03-110	296-96-01030	AMD-P	03-09-108
296-46B-945	NEW	03-09-111	296-59	PREP	03-10-064	296-96-01030	AMD	03-12-045
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296-46B-950	NEW	03-09-111	296-62	PREP	03-04-097	296-96-01050	AMD	03-12-045
296-46B-950	AMD-X	03-13-100	296-62	PREP	03-08-073	296-96-01055	AMD-P	03-09-108
296-46B-951	NEW-P	03-05-074	296-62-054	REP-X	03-04-100	296-96-01055	AMD	03-12-045
296-46B-951	NEW	03-09-111	296-62-054	REP	03-10-068	296-104	PREP	03-03-129
296-46B-955	NEW-P	03-05-074	296-62-05402	REP-X	03-04-100	296-104	PREP	03-12-081
296-46B-955	NEW	03-09-111	296-62-05402	REP	03-10-068	296-104-055	AMD-P	03-08-076
296-46B-960	NEW-P	03-05-074	296-62-05404	REP-X	03-04-100	296-104-055	AMD	03-12-051
296-46B-960	NEW	03-09-111	296-62-05404	REP	03-10-068	296-104-700	AMD-P	03-08-076
296-46B-965	NEW-P	03-05-074	296-62-05406	REP-X	03-04-100	296-104-700	AMD	03-12-051
296-46B-965	NEW	03-09-111	296-62-05406	REP	03-10-068	296-115-050	AMD-X	03-12-072
296-46B-970	NEW-P	03-05-074	296-62-05408	REP-X	03-04-100	296-128-500	AMD	03-03-109
296-46B-970	NEW	03-09-111	296-62-05408	REP	03-10-068	296-128-532	NEW	03-03-109
296-46B-971	NEW-P	03-05-074	296-62-05410	REP-X	03-04-100	296-128-533	NEW	03-03-109
296-46B-971	NEW	03-09-111	296-62-05410	REP	03-10-068	296-130-010	AMD	03-03-010
296-46B-975	NEW-P	03-05-074	296-62-05412	REP-X	03-04-100	296-130-020	AMD	03-03-010
296-46B-975	NEW	03-09-111	296-62-05412	REP	03-10-068	296-130-030	AMD	03-03-010
296-46B-980	NEW-P	03-05-074	296-62-070	REP-X	03-04-100	296-130-035	AMD	03-03-010
296-46B-980	NEW	03-09-111	296-62-070	REP	03-10-068	296-130-040	AMD	03-03-010
296-46B-985	NEW-P	03-05-074	296-62-07001	REP-X	03-04-100	296-130-050	AMD	03-03-010
296-46B-985	NEW	03-09-111	296-62-07001	REP	03-10-068	296-130-060	AMD	03-03-010
296-46B-990	NEW-P	03-05-074	296-62-07003	REP-X	03-04-100	296-130-065	AMD	03-03-010
296-46B-990	NEW	03-09-111	296-62-07003	REP	03-10-068	296-130-070	AMD	03-03-010
296-46B-995	NEW-P	03-05-074	296-62-07005	REP-X	03-04-100	296-130-080	AMD	03-03-010
296-46B-995	NEW	03-09-111	296-62-07005	REP	03-10-068	296-130-100	NEW	03-03-010
296-46B-998	NEW-P	03-05-074	296-62-071	AMD-P	03-08-044	296-130-500	REP	03-03-010
296-46B-998	NEW	03-09-111	296-62-07308	AMD-X	03-12-072	296-150C	PREP	03-10-065
296-46B-999	NEW-P	03-05-074	296-62-07336	AMD-X	03-12-072	296-150C	PREP	03-15-115
296-46B-999	NEW	03-09-111	296-62-07342	AMD-X	03-12-072	296-150C-0150	NEW-P	03-09-109
296-52-60020	AMD	03-06-073	296-62-07347	AMD-X	03-12-072	296-150C-0150	NEW	03-12-044
296-52-60130	AMD	03-06-073	296-62-07419	AMD-X	03-12-072	296-150C-3000	AMD-P	03-09-108
296-52-61040	AMD-X	03-05-073	296-62-07460	AMD-X	03-12-072	296-150C-3000	AMD	03-12-045
296-52-61040	AMD	03-10-037	296-62-075	AMD-P	03-11-059	296-150F	PREP	03-10-065
296-52-62005	AMD-X	03-05-073	296-62-07521	AMD-X	03-12-072	296-150F	PREP	03-15-115
296-52-62005	AMD	03-10-037	296-62-07719	AMD-X	03-12-072	296-150F-3000	AMD-P	03-09-109
296-52-63005	AMD-X	03-05-073	296-62-080	REP-X	03-04-100	296-150F-3000	AMD	03-12-044

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296-150M	PREP	03-10-065	296-150T	PREP	03-10-065	296-304-04001	AMD	03-04-099
296-150M	PREP	03-15-115	296-150T	PREP	03-15-115	296-304-05001	AMD	03-04-099
296-150M-0020	AMD-P	03-09-109	296-150T-3000	AMD-P	03-09-108	296-304-05003	AMD	03-04-099
296-150M-0020	AMD	03-12-044	296-150T-3000	AMD	03-12-045	296-304-05005	AMD	03-04-099
296-150M-0049	AMD-P	03-09-109	296-150V	PREP	03-10-065	296-304-05009	AMD	03-04-099
296-150M-0049	AMD	03-12-044	296-150V	PREP	03-15-115	296-304-05013	AMD	03-04-099
296-150M-0050	AMD-P	03-09-109	296-150V-0020	AMD-P	03-09-109	296-304-06003	AMD	03-04-099
296-150M-0050	AMD	03-12-044	296-150V-0020	AMD	03-12-044	296-304-07009	AMD	03-04-099
296-150M-0051	NEW-P	03-09-109	296-150V-0800	AMD-P	03-09-109	296-304-07011	AMD	03-04-099
296-150M-0051	NEW	03-12-044	296-150V-0800	AMD	03-12-044	296-304-07013	AMD	03-04-099
296-150M-0302	AMD-P	03-09-109	296-150V-1090	AMD-P	03-09-109	296-304-08001	AMD	03-04-099
296-150M-0302	AMD	03-12-044	296-150V-1090	AMD	03-12-044	296-304-08009	AMD	03-11-060
296-150M-0320	AMD-P	03-09-109	296-150V-1220	REP-P	03-09-109	296-304-09009	AMD	03-11-060
296-150M-0320	AMD	03-12-044	296-150V-1220	REP	03-12-044	296-304-09017	AMD	03-04-099
296-150M-0322	NEW-P	03-09-109	296-150V-1530	AMD-P	03-09-109	296-304-09021	AMD	03-04-099
296-150M-0322	NEW	03-12-044	296-150V-1530	AMD	03-12-044	296-304-09023	AMD	03-04-099
296-150M-0360	AMD-P	03-09-109	296-150V-1600	NEW-P	03-09-109	296-304-10003	AMD	03-04-099
296-150M-0360	AMD	03-12-044	296-150V-1600	NEW	03-12-044	296-304-10007	AMD	03-04-099
296-150M-0705	NEW-P	03-09-109	296-150V-3000	AMD-P	03-09-108	296-305	PREP	03-04-097
296-150M-0705	NEW	03-12-044	296-150V-3000	AMD	03-12-045	296-305	PREP	03-10-066
296-150M-0715	NEW-P	03-09-109	296-155	PREP	03-04-097	296-305-01515	AMD	03-09-110
296-150M-0715	NEW	03-12-044	296-155	PREP	03-10-064	296-305-02005	AMD	03-11-060
296-150M-0725	NEW-P	03-09-109	296-155	PREP	03-10-066	296-305-02501	AMD	03-09-110
296-150M-0725	NEW	03-12-044	296-155-145	AMD	03-11-060	296-305-05503	AMD	03-11-060
296-150M-0800	NEW-P	03-09-109	296-155-210	AMD	03-11-060	296-307	PREP	03-10-064
296-150M-0800	NEW	03-12-044	296-155-300	AMD	03-06-075	296-307	PREP	03-10-066
296-150M-0805	NEW-P	03-09-109	296-155-305	AMD	03-06-075	296-307-009	AMD-X	03-04-100
296-150M-0805	NEW	03-12-044	296-155-310	AMD	03-06-075	296-307-009	AMD	03-10-068
296-150M-0810	NEW-P	03-09-109	296-155-315	AMD	03-06-075	296-307-018	AMD-X	03-04-100
296-150M-0810	NEW	03-12-044	296-200A	PREP	03-10-065	296-307-018	AMD	03-10-068
296-150M-0815	NEW-P	03-09-109	296-200A-015	AMD-P	03-15-117	296-307-018	AMD	03-10-068
296-150M-0815	NEW	03-12-044	296-200A-025	AMD-P	03-15-117	296-307-03930	NEW-X	03-04-100
296-150M-0820	NEW-P	03-09-109	296-200A-030	NEW-P	03-15-117	296-307-03930	NEW	03-10-068
296-150M-0820	NEW	03-12-044	296-200A-035	AMD-P	03-15-117	296-307-03935	NEW-X	03-04-100
296-150M-0830	NEW-P	03-09-109	296-200A-040	AMD-P	03-15-117	296-307-03935	NEW	03-10-068
296-150M-0830	NEW	03-12-044	296-200A-060	AMD-P	03-15-117	296-307-03940	NEW-X	03-04-100
296-150M-0835	NEW-P	03-09-109	296-200A-065	NEW-P	03-15-117	296-307-03940	NEW	03-10-068
296-150M-0835	NEW	03-12-044	296-200A-070	AMD-P	03-15-117	296-307-03945	NEW-X	03-04-100
296-150M-0840	NEW-P	03-09-109	296-200A-080	AMD-P	03-15-117	296-307-03945	NEW	03-10-068
296-150M-0840	NEW	03-12-044	296-200A-090	AMD-P	03-15-117	296-307-148	NEW-P	03-15-032
296-150M-0845	NEW-P	03-09-109	296-200A-111	AMD-P	03-15-117	296-307-14805	NEW-P	03-15-032
296-150M-0845	NEW	03-12-044	296-200A-112	AMD-P	03-15-117	296-307-14810	NEW-P	03-15-032
296-150M-0855	NEW-P	03-09-109	296-200A-112	AMD-P	03-15-117	296-307-14815	NEW-P	03-15-032
296-150M-0855	NEW	03-12-044	296-200A-300	AMD-P	03-15-117	296-307-14820	NEW-P	03-15-032
296-150M-0860	NEW-P	03-09-109	296-200A-305	AMD-P	03-15-117	296-307-14825	NEW-P	03-15-032
296-150M-0860	NEW	03-12-044	296-200A-310	AMD-P	03-15-117	296-307-14830	NEW-P	03-15-032
296-150M-0865	NEW-P	03-09-109	296-200A-320	AMD-P	03-15-117	296-307-14835	NEW-P	03-15-032
296-150M-0865	NEW	03-12-044	296-200A-330	AMD-P	03-15-117	296-307-14840	NEW-P	03-15-032
296-150M-0865	NEW	03-12-044	296-200A-340	AMD-P	03-15-117	296-307-14845	NEW-P	03-15-032
296-150M-3000	AMD-P	03-09-109	296-200A-360	AMD-P	03-15-117	296-307-14845	NEW-P	03-15-032
296-150M-3000	AMD	03-12-044	296-200A-370	AMD-P	03-15-117	296-307-40013	AMD-X	03-04-100
296-150P	PREP	03-10-065	296-200A-380	AMD-P	03-15-117	296-307-40013	AMD	03-10-068
296-150P	PREP	03-15-115	296-200A-390	AMD-P	03-15-117	296-307-40015	AMD-X	03-04-100
296-150P-0020	AMD-P	03-09-109	296-200A-390	AMD-P	03-15-117	296-307-40015	AMD	03-10-068
296-150P-0020	AMD	03-12-044	296-200A-400	AMD-P	03-15-117	296-307-40027	AMD-X	03-04-100
296-150P-3000	AMD-P	03-09-108	296-200A-405	AMD-P	03-15-117	296-307-40027	AMD	03-10-068
296-150P-3000	AMD	03-12-045	296-200A-500	REP-P	03-15-117	296-307-445	NEW-X	03-04-100
296-150R	PREP	03-10-065	296-200A-510	REP-P	03-15-117	296-307-445	NEW	03-10-068
296-150R	PREP	03-15-115	296-200A-900	AMD-P	03-15-117	296-307-450	AMD-X	03-04-100
296-150R-0020	AMD-P	03-09-109	296-304-01001	AMD	03-04-099	296-307-450	AMD	03-10-068
296-150R-0020	AMD	03-12-044	296-304-01003	AMD	03-04-099	296-307-45001	REP-X	03-04-100
296-150R-3000	AMD-P	03-09-108	296-304-02007	AMD	03-04-099	296-307-45001	REP	03-10-068
296-150R-3000	AMD	03-12-045	296-304-02009	AMD	03-04-099	296-307-45003	REP-X	03-04-100
296-150R-3000	AMD	03-12-045	296-304-03007	AMD	03-04-099	296-307-45003	REP	03-10-068

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296-307-45005	AMD-X	03-04-100	296-307-45565	NEW-X	03-04-100	296-401B-300	REP-P	03-05-074
296-307-45005	AMD	03-10-068	296-307-45565	NEW	03-10-068	296-401B-300	REP	03-09-111
296-307-45007	REP-X	03-04-100	296-307-460	NEW-X	03-04-100	296-401B-310	REP-P	03-05-074
296-307-45007	REP	03-10-068	296-307-460	NEW	03-10-068	296-401B-310	REP	03-09-111
296-307-45009	REP-X	03-04-100	296-307-46005	NEW-X	03-04-100	296-401B-320	REP-P	03-05-074
296-307-45009	REP	03-10-068	296-307-46005	NEW	03-10-068	296-401B-320	REP	03-09-111
296-307-45010	NEW-X	03-04-100	296-307-46025	NEW-X	03-04-100	296-401B-330	REP-P	03-05-074
296-307-45010	NEW	03-10-068	296-307-46025	NEW	03-10-068	296-401B-330	REP	03-09-111
296-307-45011	REP-X	03-04-100	296-307-46030	NEW-X	03-04-100	296-401B-335	REP-P	03-05-074
296-307-45011	REP	03-10-068	296-307-46030	NEW	03-10-068	296-401B-335	REP	03-09-111
296-307-45013	REP-X	03-04-100	296-307-465	NEW-X	03-04-100	296-401B-340	REP-P	03-05-074
296-307-45013	REP	03-10-068	296-307-465	NEW	03-10-068	296-401B-340	REP	03-09-111
296-307-45015	AMD-X	03-04-100	296-307-55030	AMD-X	03-04-100	296-401B-350	REP-P	03-05-074
296-307-45015	AMD	03-10-068	296-307-55030	AMD	03-10-068	296-401B-350	REP	03-09-111
296-307-45017	REP-X	03-04-100	296-307-560	NEW-X	03-04-100	296-401B-410	REP-P	03-05-074
296-307-45017	REP	03-10-068	296-307-560	NEW	03-10-068	296-401B-410	REP	03-09-111
296-307-45019	REP-X	03-04-100	296-307-56005	NEW-X	03-04-100	296-401B-420	REP-P	03-05-074
296-307-45019	REP	03-10-068	296-307-56005	NEW	03-10-068	296-401B-420	REP	03-09-111
296-307-45020	NEW-X	03-04-100	296-307-56010	NEW-X	03-04-100	296-401B-430	REP-P	03-05-074
296-307-45020	NEW	03-10-068	296-307-56010	NEW	03-10-068	296-401B-430	REP	03-09-111
296-307-45021	REP-X	03-04-100	296-307-56015	NEW-X	03-04-100	296-401B-440	REP-P	03-05-074
296-307-45021	REP	03-10-068	296-307-56015	NEW	03-10-068	296-401B-440	REP	03-09-111
296-307-45023	REP-X	03-04-100	296-307-56020	NEW-X	03-04-100	296-401B-445	REP-P	03-05-074
296-307-45023	REP	03-10-068	296-307-56020	NEW	03-10-068	296-401B-445	REP	03-09-111
296-307-45025	AMD-X	03-04-100	296-307-56025	NEW-X	03-04-100	296-401B-450	REP-P	03-05-074
296-307-45025	AMD	03-10-068	296-307-56025	NEW	03-10-068	296-401B-450	REP	03-09-111
296-307-45027	REP-X	03-04-100	296-307-56030	NEW-X	03-04-100	296-401B-455	REP-P	03-05-074
296-307-45027	REP	03-10-068	296-307-56030	NEW	03-10-068	296-401B-455	REP	03-09-111
296-307-45029	REP-X	03-04-100	296-307-56035	NEW-X	03-04-100	296-401B-460	REP-P	03-05-074
296-307-45029	REP	03-10-068	296-307-56035	NEW	03-10-068	296-401B-460	REP	03-09-111
296-307-45030	NEW-X	03-04-100	296-307-56040	NEW-X	03-04-100	296-401B-470	REP-P	03-05-074
296-307-45030	NEW	03-10-068	296-307-56040	NEW	03-10-068	296-401B-470	REP	03-09-111
296-307-45035	NEW-X	03-04-100	296-307-56045	NEW-X	03-04-100	296-401B-475	REP-P	03-05-074
296-307-45035	NEW	03-10-068	296-307-56045	NEW	03-10-068	296-401B-475	REP	03-09-111
296-307-45045	NEW-X	03-04-100	296-307-56050	NEW-X	03-04-100	296-401B-476	REP-P	03-05-074
296-307-45045	NEW	03-10-068	296-307-56050	NEW	03-10-068	296-401B-476	REP	03-09-111
296-307-45050	NEW-X	03-04-100	296-400A	PREP	03-10-065	296-401B-500	REP-P	03-05-074
296-307-45050	NEW	03-10-068	296-400A	PREP	03-15-114	296-401B-500	REP	03-09-111
296-307-455	NEW-X	03-04-100	296-400A-045	AMD-P	03-09-108	296-401B-510	REP-P	03-05-074
296-307-455	NEW	03-10-068	296-400A-045	AMD	03-12-045	296-401B-510	REP	03-09-111
296-307-45505	NEW-X	03-04-100	296-401B-092	REP-P	03-05-074	296-401B-520	REP-P	03-05-074
296-307-45505	NEW	03-10-068	296-401B-092	REP	03-09-111	296-401B-520	REP	03-09-111
296-307-45510	NEW-X	03-04-100	296-401B-100	REP-P	03-05-074	296-401B-600	REP-P	03-05-074
296-307-45510	NEW	03-10-068	296-401B-100	REP	03-09-111	296-401B-600	REP	03-09-111
296-307-45515	NEW-X	03-04-100	296-401B-110	REP-P	03-05-074	296-401B-610	REP-P	03-05-074
296-307-45515	NEW	03-10-068	296-401B-110	REP	03-09-111	296-401B-610	REP	03-09-111
296-307-45520	NEW-X	03-04-100	296-401B-120	REP-P	03-05-074	296-401B-620	REP-P	03-05-074
296-307-45520	NEW	03-10-068	296-401B-120	REP	03-09-111	296-401B-620	REP	03-09-111
296-307-45525	NEW-X	03-04-100	296-401B-130	REP-P	03-05-074	296-401B-630	REP-P	03-05-074
296-307-45525	NEW	03-10-068	296-401B-130	REP	03-09-111	296-401B-630	REP	03-09-111
296-307-45535	NEW-X	03-04-100	296-401B-140	REP-P	03-05-074	296-401B-640	REP-P	03-05-074
296-307-45535	NEW	03-10-068	296-401B-140	REP	03-09-111	296-401B-640	REP	03-09-111
296-307-45540	NEW-X	03-04-100	296-401B-180	REP-P	03-05-074	296-401B-700	REP-P	03-05-074
296-307-45540	NEW	03-10-068	296-401B-180	REP	03-09-111	296-401B-700	REP	03-09-111
296-307-45545	NEW-X	03-04-100	296-401B-200	REP-P	03-05-074	296-401B-800	REP-P	03-05-074
296-307-45545	NEW	03-10-068	296-401B-200	REP	03-09-111	296-401B-800	REP	03-09-111
296-307-45550	NEW-X	03-04-100	296-401B-250	REP-P	03-05-074	296-401B-850	REP-P	03-05-074
296-307-45550	NEW	03-10-068	296-401B-250	REP	03-09-111	296-401B-850	REP	03-09-111
296-307-45555	NEW-X	03-04-100	296-401B-260	REP-P	03-05-074	296-401B-860	REP-P	03-05-074
296-307-45555	NEW	03-10-068	296-401B-260	REP	03-09-111	296-401B-860	REP	03-09-111
296-307-45560	NEW-X	03-04-100	296-401B-270	REP-P	03-05-074	296-401B-870	REP-P	03-05-074
296-307-45560	NEW	03-10-068	296-401B-270	REP	03-09-111	296-401B-870	REP	03-09-111

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296-401B-900	REP-P	03-05-074	296-402A-250	REP-P	03-05-074	296-402A-580	REP-P	03-05-074
296-401B-900	REP	03-09-111	296-402A-250	REP	03-09-111	296-402A-580	REP	03-09-111
296-401B-910	REP-P	03-05-074	296-402A-260	REP-P	03-05-074	296-402A-590	REP-P	03-05-074
296-401B-910	REP	03-09-111	296-402A-260	REP	03-09-111	296-402A-590	REP	03-09-111
296-401B-920	REP-P	03-05-074	296-402A-270	REP-P	03-05-074	296-402A-600	REP-P	03-05-074
296-401B-920	REP	03-09-111	296-402A-270	REP	03-09-111	296-402A-600	REP	03-09-111
296-401B-950	REP-P	03-05-074	296-402A-290	REP-P	03-05-074	296-402A-610	REP-P	03-05-074
296-401B-950	REP	03-09-111	296-402A-290	REP	03-09-111	296-402A-610	REP	03-09-111
296-401B-960	REP-P	03-05-074	296-402A-300	REP-P	03-05-074	296-402A-620	REP-P	03-05-074
296-401B-960	REP	03-09-111	296-402A-300	REP	03-09-111	296-402A-620	REP	03-09-111
296-401B-970	REP-P	03-05-074	296-402A-310	REP-P	03-05-074	296-402A-630	REP-P	03-05-074
296-401B-970	REP	03-09-111	296-402A-310	REP	03-09-111	296-402A-630	REP	03-09-111
296-401B-980	REP-P	03-05-074	296-402A-320	REP-P	03-05-074	296-402A-640	REP-P	03-05-074
296-401B-980	REP	03-09-111	296-402A-320	REP	03-09-111	296-402A-640	REP	03-09-111
296-401B-990	REP-P	03-05-074	296-402A-330	REP-P	03-05-074	296-402A-650	REP-P	03-05-074
296-401B-990	REP	03-09-111	296-402A-330	REP	03-09-111	296-402A-650	REP	03-09-111
296-402A-010	REP-P	03-05-074	296-402A-340	REP-P	03-05-074	296-402A-660	REP-P	03-05-074
296-402A-010	REP	03-09-111	296-402A-340	REP	03-09-111	296-402A-660	REP	03-09-111
296-402A-020	REP-P	03-05-074	296-402A-350	REP-P	03-05-074	296-402A-670	REP-P	03-05-074
296-402A-020	REP	03-09-111	296-402A-350	REP	03-09-111	296-402A-670	REP	03-09-111
296-402A-030	REP-P	03-05-074	296-402A-360	REP-P	03-05-074	296-402A-675	REP-P	03-05-074
296-402A-030	REP	03-09-111	296-402A-360	REP	03-09-111	296-402A-675	REP	03-09-111
296-402A-040	REP-P	03-05-074	296-402A-370	REP-P	03-05-074	296-402A-680	REP-P	03-05-074
296-402A-040	REP	03-09-111	296-402A-370	REP	03-09-111	296-402A-680	REP	03-09-111
296-402A-050	REP-P	03-05-074	296-402A-380	REP-P	03-05-074	296-402A-690	REP-P	03-05-074
296-402A-050	REP	03-09-111	296-402A-380	REP	03-09-111	296-402A-690	REP	03-09-111
296-402A-060	REP-P	03-05-074	296-402A-390	REP-P	03-05-074	296-800	PREP	03-04-097
296-402A-060	REP	03-09-111	296-402A-390	REP	03-09-111	296-800-110	AMD-X	03-12-072
296-402A-070	REP-P	03-05-074	296-402A-400	REP-P	03-05-074	296-800-11030	AMD-X	03-12-072
296-402A-070	REP	03-09-111	296-402A-400	REP	03-09-111	296-800-15005	AMD	03-09-110
296-402A-080	REP-P	03-05-074	296-402A-410	REP-P	03-05-074	296-800-170	AMD-X	03-12-072
296-402A-080	REP	03-09-111	296-402A-410	REP	03-09-111	296-800-17005	AMD-X	03-12-072
296-402A-090	REP-P	03-05-074	296-402A-430	REP-P	03-05-074	296-800-17007	NEW-X	03-12-072
296-402A-090	REP	03-09-111	296-402A-430	REP	03-09-111	296-800-17015	AMD-X	03-12-072
296-402A-100	REP-P	03-05-074	296-402A-440	REP-P	03-05-074	296-800-17020	AMD-X	03-12-072
296-402A-100	REP	03-09-111	296-402A-440	REP	03-09-111	296-800-230	AMD-X	03-12-072
296-402A-110	REP-P	03-05-074	296-402A-450	REP-P	03-05-074	296-800-23005	AMD-X	03-12-072
296-402A-110	REP	03-09-111	296-402A-450	REP	03-09-111	296-800-23010	AMD-X	03-12-072
296-402A-130	REP-P	03-05-074	296-402A-460	REP-P	03-05-074	296-800-23020	AMD-X	03-12-072
296-402A-130	REP	03-09-111	296-402A-460	REP	03-09-111	296-800-23025	AMD-X	03-12-072
296-402A-140	REP-P	03-05-074	296-402A-470	REP-P	03-05-074	296-800-23030	REP-X	03-12-072
296-402A-140	REP	03-09-111	296-402A-470	REP	03-09-111	296-800-23035	REP-X	03-12-072
296-402A-150	REP-P	03-05-074	296-402A-480	REP-P	03-05-074	296-800-23040	NEW-X	03-12-072
296-402A-150	REP	03-09-111	296-402A-480	REP	03-09-111	296-800-23045	NEW-X	03-12-072
296-402A-160	REP-P	03-05-074	296-402A-490	REP-P	03-05-074	296-800-23050	NEW-X	03-12-072
296-402A-160	REP	03-09-111	296-402A-490	REP	03-09-111	296-800-23055	NEW-X	03-12-072
296-402A-170	REP-P	03-05-074	296-402A-500	REP-P	03-05-074	296-800-23060	NEW-X	03-12-072
296-402A-170	REP	03-09-111	296-402A-500	REP	03-09-111	296-800-23065	NEW-X	03-12-072
296-402A-180	REP-P	03-05-074	296-402A-510	REP-P	03-05-074	296-800-23070	NEW-X	03-12-072
296-402A-180	REP	03-09-111	296-402A-510	REP	03-09-111	296-800-23075	NEW-X	03-12-072
296-402A-190	REP-P	03-05-074	296-402A-520	REP-P	03-05-074	296-800-31050	AMD-X	03-12-072
296-402A-190	REP	03-09-111	296-402A-520	REP	03-09-111	296-800-350	AMD-X	03-12-072
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296-402A-200	REP	03-09-111	296-402A-530	REP	03-09-111	296-800-35040	AMD-X	03-12-072
296-402A-210	REP-P	03-05-074	296-402A-540	REP-P	03-05-074	296-800-35062	AMD-X	03-12-072
296-402A-210	REP	03-09-111	296-402A-540	REP	03-09-111	296-800-35064	AMD-X	03-12-072
296-402A-220	REP-P	03-05-074	296-402A-550	REP-P	03-05-074	296-800-370	AMD-X	03-12-072
296-402A-220	REP	03-09-111	296-402A-550	REP	03-09-111	296-807-100	NEW	03-09-009
296-402A-230	REP-P	03-05-074	296-402A-560	REP-P	03-05-074	296-807-110	NEW	03-09-009
296-402A-230	REP	03-09-111	296-402A-560	REP	03-09-111	296-807-11005	NEW	03-09-009
296-402A-240	REP-P	03-05-074	296-402A-570	REP-P	03-05-074	296-807-120	NEW	03-09-009
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296-807-130	NEW	03-09-009	296-817-01035	NEW-W	03-13-096	296-823-13020	NEW-W	03-14-136
296-807-13005	NEW	03-09-009	296-817-01040	NEW-W	03-13-096	296-823-13025	NEW-W	03-14-136
296-807-140	NEW	03-09-009	296-817-020	NEW-W	03-13-096	296-823-13030	NEW-W	03-14-136
296-807-14005	NEW	03-09-009	296-817-02005	NEW-W	03-13-096	296-823-140	NEW	03-09-110
296-807-14010	NEW	03-09-009	296-817-02010	NEW-W	03-13-096	296-823-14005	NEW	03-09-110
296-807-14015	NEW	03-09-009	296-817-02015	NEW-W	03-13-096	296-823-14010	NEW	03-09-110
296-807-14020	NEW	03-09-009	296-817-030	NEW-W	03-13-096	296-823-14015	NEW	03-09-110
296-807-14025	NEW	03-09-009	296-817-03005	NEW-W	03-13-096	296-823-14020	NEW	03-09-110
296-807-14030	NEW	03-09-009	296-817-03010	NEW-W	03-13-096	296-823-14025	NEW	03-09-110
296-807-14035	NEW	03-09-009	296-817-03015	NEW-W	03-13-096	296-823-14030	NEW	03-09-110
296-807-14040	NEW	03-09-009	296-817-03020	NEW-W	03-13-096	296-823-14035	NEW	03-09-110
296-807-150	NEW	03-09-009	296-817-03025	NEW-W	03-13-096	296-823-14040	NEW	03-09-110
296-807-15005	NEW	03-09-009	296-817-03030	NEW-W	03-13-096	296-823-14045	NEW	03-09-110
296-807-15010	NEW	03-09-009	296-817-03035	NEW-W	03-13-096	296-823-14050	NEW	03-09-110
296-807-15015	NEW	03-09-009	296-817-040	NEW-W	03-13-096	296-823-14055	NEW	03-09-110
296-807-15020	NEW	03-09-009	296-817-04005	NEW-W	03-13-096	296-823-14060	NEW	03-09-110
296-807-15025	NEW	03-09-009	296-817-04010	NEW-W	03-13-096	296-823-14065	NEW	03-09-110
296-807-15030	NEW	03-09-009	296-817-04015	NEW-W	03-13-096	296-823-150	NEW	03-09-110
296-807-15035	NEW	03-09-009	296-817-04020	NEW-W	03-13-096	296-823-15005	NEW	03-09-110
296-807-15040	NEW	03-09-009	296-817-04025	NEW-W	03-13-096	296-823-15010	NEW	03-09-110
296-807-15045	NEW	03-09-009	296-817-050	NEW-W	03-13-096	296-823-15015	NEW	03-09-110
296-807-15050	NEW	03-09-009	296-817-100	NEW	03-11-060	296-823-15020	NEW	03-09-110
296-807-15055	NEW	03-09-009	296-817-200	NEW	03-11-060	296-823-15025	NEW	03-09-110
296-807-160	NEW	03-09-009	296-817-20005	NEW	03-11-060	296-823-15030	NEW	03-09-110
296-807-16005	NEW	03-09-009	296-817-20010	NEW	03-11-060	296-823-160	NEW	03-09-110
296-807-16010	NEW	03-09-009	296-817-20015	NEW	03-11-060	296-823-16005	NEW	03-09-110
296-807-16015	NEW	03-09-009	296-817-20020	NEW	03-11-060	296-823-16010	NEW	03-09-110
296-807-16020	NEW	03-09-009	296-817-20025	NEW	03-11-060	296-823-16015	NEW	03-09-110
296-807-16025	NEW	03-09-009	296-817-20030	NEW	03-11-060	296-823-16020	NEW	03-09-110
296-807-16030	NEW	03-09-009	296-817-20035	NEW	03-11-060	296-823-16025	NEW	03-09-110
296-807-16035	NEW	03-09-009	296-817-20040	NEW	03-11-060	296-823-16030	NEW	03-09-110
296-807-170	NEW	03-09-009	296-817-300	NEW	03-11-060	296-823-16035	NEW-W	03-14-136
296-807-17005	NEW	03-09-009	296-817-30005	NEW	03-11-060	296-823-16040	NEW-W	03-14-136
296-807-17010	NEW	03-09-009	296-817-30010	NEW	03-11-060	296-823-16045	NEW-W	03-14-136
296-807-17015	NEW	03-09-009	296-817-30015	NEW	03-11-060	296-823-170	NEW	03-09-110
296-807-17020	NEW	03-09-009	296-817-400	NEW	03-11-060	296-823-17005	NEW	03-09-110
296-807-180	NEW	03-09-009	296-817-40005	NEW	03-11-060	296-823-17010	NEW	03-09-110
296-807-18005	NEW	03-09-009	296-817-40010	NEW	03-11-060	296-823-17015	NEW-W	03-14-136
296-807-18010	NEW	03-09-009	296-817-40015	NEW	03-11-060	296-823-17020	NEW-W	03-14-136
296-807-18015	NEW	03-09-009	296-817-40020	NEW	03-11-060	296-823-17025	NEW-W	03-14-136
296-807-18020	NEW	03-09-009	296-817-40025	NEW	03-11-060	296-823-17030	NEW-W	03-14-136
296-807-18025	NEW	03-09-009	296-817-40030	NEW	03-11-060	296-823-180	NEW	03-09-110
296-807-18030	NEW	03-09-009	296-817-40035	NEW	03-11-060	296-823-18005	NEW	03-09-110
296-807-18035	NEW	03-09-009	296-817-500	NEW	03-11-060	296-823-18010	NEW	03-09-110
296-807-18040	NEW	03-09-009	296-817-50005	NEW	03-11-060	296-823-18015	NEW	03-09-110
296-807-18045	NEW	03-09-009	296-817-50010	NEW	03-11-060	296-823-18020	NEW	03-09-110
296-807-18050	NEW	03-09-009	296-817-50015	NEW	03-11-060	296-823-18025	NEW	03-09-110
296-807-18055	NEW	03-09-009	296-817-50020	NEW	03-11-060	296-823-18030	NEW	03-09-110
296-807-18060	NEW	03-09-009	296-817-50025	NEW	03-11-060	296-823-18035	NEW	03-09-110
296-807-18065	NEW	03-09-009	296-817-600	NEW	03-11-060	296-823-18040	NEW	03-09-110
296-807-18070	NEW	03-09-009	296-823-100	NEW	03-09-110	296-823-18045	NEW	03-09-110
296-807-18075	NEW	03-09-009	296-823-110	NEW	03-09-110	296-823-18050	NEW	03-09-110
296-807-18080	NEW	03-09-009	296-823-11005	NEW	03-09-110	296-823-18055	NEW	03-09-110
296-807-18085	NEW	03-09-009	296-823-11010	NEW	03-09-110	296-823-190	NEW-W	03-14-136
296-807-190	NEW	03-09-009	296-823-120	NEW	03-09-110	296-823-19005	NEW-W	03-14-136
296-817-010	NEW-W	03-13-096	296-823-12005	NEW	03-09-110	296-823-19010	NEW-W	03-14-136
296-817-01005	NEW-W	03-13-096	296-823-12010	NEW	03-09-110	296-823-19015	NEW-W	03-14-136
296-817-01010	NEW-W	03-13-096	296-823-12015	NEW	03-09-110	296-823-19020	NEW-W	03-14-136
296-817-01015	NEW-W	03-13-096	296-823-130	NEW	03-09-110	296-823-19025	NEW-W	03-14-136
296-817-01020	NEW-W	03-13-096	296-823-13005	NEW	03-09-110	296-823-19030	NEW-W	03-14-136
296-817-01025	NEW-W	03-13-096	296-823-13010	NEW	03-09-110	296-823-19035	NEW-W	03-14-136
296-817-01030	NEW-W	03-13-096	296-823-13015	NEW-W	03-14-136	296-823-19040	NEW-W	03-14-136

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296-842-22015	NEW-P	03-08-044	308-20-091	NEW	03-14-046	308-56A-200	AMD	03-12-006
296-842-22020	NEW-P	03-08-044	308-20-105	AMD-P	03-10-085	308-56A-210	AMD	03-05-081
296-842-300	NEW-P	03-08-044	308-20-105	AMD	03-14-046	308-56A-210	PREP	03-14-022
296-843-100	NEW-P	03-14-074	308-20-107	AMD-P	03-10-085	308-56A-215	AMD-P	03-05-001
296-843-110	NEW-P	03-14-074	308-20-107	AMD	03-14-046	308-56A-215	AMD	03-12-006
296-843-11005	NEW-P	03-14-074	308-20-110	AMD-P	03-10-085	308-56A-250	AMD-P	03-03-095
296-843-11010	NEW-P	03-14-074	308-20-110	AMD	03-14-046	308-56A-250	AMD	03-08-055
296-843-120	NEW-P	03-14-074	308-20-120	AMD-P	03-05-058	308-56A-265	AMD-P	03-03-095
296-843-12005	NEW-P	03-14-074	308-20-120	AMD	03-08-043	308-56A-265	AMD	03-08-055
296-843-130	NEW-P	03-14-074	308-20-120	AMD-P	03-10-085	308-56A-270	AMD-P	03-03-095
296-843-13005	NEW-P	03-14-074	308-20-120	AMD	03-14-046	308-56A-270	AMD	03-08-055
296-843-13010	NEW-P	03-14-074	308-20-180	REP-P	03-10-085	308-56A-275	AMD-P	03-03-095
296-843-140	NEW-P	03-14-074	308-20-180	REP	03-14-046	308-56A-275	AMD	03-08-055
296-843-14005	NEW-P	03-14-074	308-20-210	AMD-P	03-03-119	308-56A-295	AMD	03-05-081
296-843-150	NEW-P	03-14-074	308-20-210	AMD	03-06-054	308-56A-300	AMD-P	03-08-093
296-843-15005	NEW-P	03-14-074	308-20-210	AMD-P	03-10-085	308-56A-300	AMD	03-12-071
296-843-15010	NEW-P	03-14-074	308-20-210	AMD	03-14-046	308-56A-305	AMD-P	03-08-093
296-843-15015	NEW-P	03-14-074	308-20-520	AMD-P	03-10-085	308-56A-305	AMD	03-12-071
296-843-160	NEW-P	03-14-074	308-20-520	AMD	03-14-046	308-56A-315	AMD-P	03-08-093
296-843-16005	NEW-P	03-14-074	308-20-530	REP-P	03-10-085	308-56A-315	AMD	03-12-071
296-843-170	NEW-P	03-14-074	308-20-530	REP	03-14-046	308-56A-320	AMD-P	03-08-093
296-843-17005	NEW-P	03-14-074	308-20-550	AMD-P	03-10-085	308-56A-320	AMD	03-12-071
296-843-180	NEW-P	03-14-074	308-20-550	AMD	03-14-046	308-56A-325	AMD-P	03-08-093
296-843-18005	NEW-P	03-14-074	308-20-560	AMD-P	03-10-085	308-56A-325	AMD	03-12-071
296-843-18010	NEW-P	03-14-074	308-20-560	AMD	03-14-046	308-56A-330	AMD-P	03-08-093
296-843-18015	NEW-P	03-14-074	308-20-570	AMD-P	03-10-085	308-56A-330	AMD	03-12-071
296-843-18020	NEW-P	03-14-074	308-20-570	AMD	03-14-046	308-56A-455	AMD-P	03-06-040
296-843-190	NEW-P	03-14-074	308-20-575	NEW-P	03-10-085	308-56A-455	AMD	03-10-097
296-843-19005	NEW-P	03-14-074	308-20-575	NEW	03-14-046	308-56A-455	PREP	03-14-022
296-843-200	NEW-P	03-14-074	308-20-600	AMD-P	03-10-085	308-56A-460	PREP	03-14-022
296-843-20005	NEW-P	03-14-074	308-20-600	AMD	03-14-046	308-56A-640	PREP-W	03-07-078
296-843-20010	NEW-P	03-14-074	308-20-710	AMD-P	03-10-085	308-56A-640	AMD-P	03-09-031
296-843-20015	NEW-P	03-14-074	308-20-710	AMD	03-14-046	308-56A-640	AMD-W	03-09-075
296-843-20020	NEW-P	03-14-074	308-30-100	PREP	03-15-108	308-57	PREP-W	03-07-077
296-843-20025	NEW-P	03-14-074	308-48-800	PREP	03-04-076	308-57-030	PREP	03-12-018
296-843-20030	NEW-P	03-14-074	308-48-800	AMD-P	03-08-010	308-78	PREP	03-17-035
296-843-20035	NEW-P	03-14-074	308-48-800	AMD	03-11-021	308-88	PREP	03-11-069A
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296-843-21005	NEW-P	03-14-074	308-56A-021	AMD-P	03-07-080	308-90-040	AMD-P	03-17-094
296-843-220	NEW-P	03-14-074	308-56A-021	AMD	03-11-069	308-93-230	AMD-P	03-10-045
296-843-22005	NEW-P	03-14-074	308-56A-030	AMD	03-05-081	308-93-230	AMD	03-15-019
296-843-22010	NEW-P	03-14-074	308-56A-040	AMD	03-05-081	308-93-370	AMD	03-07-076
296-843-300	NEW-P	03-14-074	308-56A-056	AMD	03-05-081	308-93-380	AMD	03-07-076
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308-13-150	AMD	03-11-074	308-56A-070	AMD	03-12-071	308-96A-026	PREP	03-14-021
308-14	PREP	03-17-027	308-56A-075	AMD-P	03-06-040	308-96A-047	NEW	03-05-080
308-15	PREP	03-04-080	308-56A-075	AMD	03-10-097	308-96A-074	AMD	03-05-082
308-17-120	AMD	03-03-024	308-56A-110	AMD	03-05-081	308-96A-099	PREP	03-14-021
308-17-240	AMD	03-03-024	308-56A-115	AMD	03-05-081	308-96A-136	PREP	03-14-021
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308-20	PREP	03-17-026	308-56A-140	AMD	03-12-006	308-96A-314	AMD	03-05-082
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308-20-010	AMD	03-14-046	308-56A-150	AMD	03-05-081	308-96A-550	AMD	03-05-082
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308-20-040	AMD	03-14-046	308-56A-150	PREP	03-14-022	308-97-125	PREP	03-13-018
308-20-080	AMD-P	03-10-085	308-56A-160	AMD-P	03-05-001	308-97-230	PREP	03-13-018
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388-71-0194	AMD-P	03-09-042	388-71-0442	NEW	03-13-052	388-71-05928	PREP	03-17-065
388-71-0194	PREP	03-11-088	388-71-0445	AMD-E	03-05-044	388-71-05929	PREP	03-17-065
388-71-0194	AMD-E	03-13-007	388-71-0445	AMD-E	03-05-098	388-71-05930	PREP	03-17-065
388-71-0194	AMD	03-13-052	388-71-0445	AMD-P	03-09-042	388-71-05931	PREP	03-17-065
388-71-0194	PREP-W	03-14-098	388-71-0445	AMD-E	03-13-007	388-71-05932	PREP	03-17-065
388-71-0194	PREP	03-14-099	388-71-0445	AMD	03-13-052	388-71-05933	PREP	03-17-065
388-71-0194	AMD-E	03-15-133	388-71-0460	AMD-E	03-05-044	388-71-05934	PREP	03-17-065
388-71-0202	AMD-E	03-05-044	388-71-0460	AMD-E	03-05-098	388-71-05935	PREP	03-17-065
388-71-0202	AMD-E	03-05-098	388-71-0460	AMD-P	03-09-042	388-71-05936	PREP	03-17-065
388-71-0202	AMD-P	03-09-042	388-71-0460	AMD-W	03-11-025	388-71-05937	PREP	03-17-065
388-71-0202	AMD-E	03-13-007	388-71-0460	AMD-P	03-11-066	388-71-05938	PREP	03-17-065
388-71-0202	AMD	03-13-052	388-71-0460	AMD	03-15-010	388-71-05939	PREP	03-17-065
388-71-0202	PREP	03-17-065	388-71-0465	AMD-E	03-05-044	388-71-05940	PREP	03-17-065
388-71-0203	AMD-E	03-05-044	388-71-0465	AMD-E	03-05-098	388-71-05941	PREP	03-17-065
388-71-0203	AMD-E	03-05-098	388-71-0465	AMD-P	03-09-042	388-71-05942	PREP	03-17-065
388-71-0203	AMD-P	03-09-042	388-71-0465	AMD-E	03-13-007	388-71-05943	PREP	03-17-065
388-71-0203	AMD-E	03-13-007	388-71-0465	AMD	03-13-052	388-71-05944	PREP	03-17-065
388-71-0203	AMD	03-13-052	388-71-0465	PREP	03-16-019	388-71-05945	PREP	03-17-065
388-71-0405	AMD-E	03-05-044	388-71-0470	AMD-E	03-05-044	388-71-05946	PREP	03-17-065
388-71-0405	AMD-E	03-05-098	388-71-0470	AMD-E	03-05-098	388-71-05947	PREP	03-17-065
388-71-0405	AMD-P	03-09-042	388-71-0470	AMD-P	03-09-042	388-71-05948	PREP	03-17-065
388-71-0405	AMD-E	03-13-007	388-71-0470	AMD-E	03-13-007	388-71-05949	PREP	03-17-065
388-71-0405	AMD	03-13-052	388-71-0470	AMD	03-13-052	388-71-05950	PREP	03-17-065
388-71-0405	PREP	03-14-099	388-71-0475	REP-P	03-06-093	388-71-05951	PREP	03-17-065
388-71-0410	AMD-E	03-05-044	388-71-0475	REP	03-09-092	388-71-05952	PREP	03-17-065

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388- 71-0600	AMD-E	03-05-044	388- 71-0820	AMD	03-13-091	388- 78A-0110	NEW-P	03-03-018
388- 71-0600	AMD-E	03-05-098	388- 71-0825	AMD-P	03-09-091	388- 78A-0110	NEW	03-16-047
388- 71-0600	AMD-P	03-09-042	388- 71-0825	AMD	03-13-091	388- 78A-0120	NEW-P	03-03-018
388- 71-0600	AMD-E	03-13-007	388- 71-0835	AMD-P	03-09-091	388- 78A-0120	NEW	03-16-047
388- 71-0600	AMD	03-13-052	388- 71-0835	AMD	03-13-091	388- 78A-0130	NEW-P	03-03-018
388- 71-0605	AMD-E	03-05-044	388- 71-0840	AMD-P	03-09-091	388- 78A-0130	NEW	03-16-047
388- 71-0605	AMD-E	03-05-098	388- 71-0840	AMD	03-13-091	388- 78A-0140	NEW-P	03-03-018
388- 71-0605	AMD-P	03-09-042	388- 71-0845	AMD-P	03-09-091	388- 78A-0140	NEW	03-16-047
388- 71-0605	AMD-E	03-13-007	388- 71-0845	AMD	03-13-091	388- 78A-0150	NEW-P	03-03-018
388- 71-0605	AMD	03-13-052	388- 72A-0005	NEW	03-05-097	388- 78A-0150	NEW	03-16-047
388- 71-0610	AMD-E	03-05-044	388- 72A-0010	NEW	03-05-097	388- 78A-0160	NEW-P	03-03-018
388- 71-0610	AMD-E	03-05-098	388- 72A-0015	NEW	03-05-097	388- 78A-0160	NEW	03-16-047
388- 71-0610	AMD-P	03-09-042	388- 72A-0020	NEW	03-05-097	388- 78A-0170	NEW-P	03-03-018
388- 71-0610	AMD-E	03-13-007	388- 72A-0025	NEW	03-05-097	388- 78A-0170	NEW	03-16-047
388- 71-0610	AMD	03-13-052	388- 72A-0030	NEW	03-05-097	388- 78A-0180	NEW-P	03-03-018
388- 71-0702	NEW	03-06-024	388- 72A-0035	NEW	03-05-097	388- 78A-0180	NEW	03-16-047
388- 71-0704	NEW	03-06-024	388- 72A-0040	NEW	03-05-097	388- 78A-0190	NEW-P	03-03-018
388- 71-0706	NEW	03-06-024	388- 72A-0045	NEW	03-05-097	388- 78A-0190	NEW	03-16-047
388- 71-0708	NEW	03-06-024	388- 72A-0050	NEW	03-05-097	388- 78A-020	REP-P	03-03-018
388- 71-0710	NEW	03-06-024	388- 72A-0055	NEW	03-05-097	388- 78A-020	REP	03-16-047
388- 71-0712	NEW	03-06-024	388- 72A-0060	NEW	03-05-097	388- 78A-0200	NEW-P	03-03-018
388- 71-0714	NEW	03-06-024	388- 72A-0060	PREP	03-14-099	388- 78A-0200	NEW	03-16-047
388- 71-0716	NEW	03-06-024	388- 72A-0060	AMD-E	03-15-133	388- 78A-0210	NEW-P	03-03-018
388- 71-0718	NEW	03-06-024	388- 72A-0065	NEW	03-05-097	388- 78A-0210	NEW	03-16-047
388- 71-0720	NEW	03-06-024	388- 72A-0070	NEW	03-05-097	388- 78A-0220	NEW-P	03-03-018
388- 71-0722	NEW	03-06-024	388- 72A-0075	NEW	03-05-097	388- 78A-0220	NEW	03-16-047
388- 71-0724	NEW	03-06-024	388- 72A-0080	NEW	03-05-097	388- 78A-0230	NEW-P	03-03-018
388- 71-0726	NEW	03-06-024	388- 72A-0085	NEW	03-05-097	388- 78A-0230	NEW	03-16-047
388- 71-0728	NEW	03-06-024	388- 72A-0090	NEW	03-05-097	388- 78A-0240	NEW-P	03-03-018
388- 71-0730	NEW	03-06-024	388- 72A-0095	NEW	03-05-097	388- 78A-0240	NEW	03-16-047
388- 71-0732	NEW	03-06-024	388- 72A-0095	PREP	03-17-065	388- 78A-0250	NEW-P	03-03-018
388- 71-0734	NEW	03-06-024	388- 72A-0100	NEW	03-05-097	388- 78A-0250	NEW	03-16-047
388- 71-0736	NEW	03-06-024	388- 72A-0105	NEW	03-05-097	388- 78A-0260	NEW-P	03-03-018
388- 71-0738	NEW	03-06-024	388- 72A-0110	NEW	03-05-097	388- 78A-0260	NEW	03-16-047
388- 71-0740	NEW	03-06-024	388- 76-655	AMD-P	03-10-090	388- 78A-0270	NEW-P	03-03-018
388- 71-0742	NEW	03-06-024	388- 76-655	AMD	03-14-018	388- 78A-0270	NEW	03-16-047
388- 71-0744	NEW	03-06-024	388- 76-675	PREP	03-12-055	388- 78A-0280	NEW-P	03-03-018
388- 71-0746	NEW	03-06-024	388- 78A	AMD-P	03-03-018	388- 78A-0280	NEW	03-16-047
388- 71-0748	NEW	03-06-024	388- 78A	AMD-C	03-07-088	388- 78A-0290	NEW-P	03-03-018
388- 71-0750	NEW	03-06-024	388- 78A	AMD	03-16-047	388- 78A-0290	NEW	03-16-047
388- 71-0752	NEW	03-06-024	388- 78A-0010	NEW-P	03-03-018	388- 78A-030	REP-P	03-03-018
388- 71-0754	NEW	03-06-024	388- 78A-0010	NEW	03-16-047	388- 78A-030	REP	03-16-047
388- 71-0756	NEW	03-06-024	388- 78A-0020	NEW-P	03-03-018	388- 78A-0300	NEW-P	03-03-018
388- 71-0758	NEW	03-06-024	388- 78A-0020	NEW	03-16-047	388- 78A-0300	NEW	03-16-047
388- 71-0760	NEW	03-06-024	388- 78A-0030	NEW-P	03-03-018	388- 78A-0310	NEW-P	03-03-018
388- 71-0762	NEW	03-06-024	388- 78A-0030	NEW	03-16-047	388- 78A-0310	NEW	03-16-047
388- 71-0764	NEW	03-06-024	388- 78A-0040	NEW-P	03-03-018	388- 78A-0320	NEW-P	03-03-018
388- 71-0766	NEW	03-06-024	388- 78A-0040	NEW	03-16-047	388- 78A-0320	NEW	03-16-047
388- 71-0768	NEW	03-06-024	388- 78A-0050	NEW-P	03-03-018	388- 78A-0330	NEW-P	03-03-018
388- 71-0770	NEW	03-06-024	388- 78A-0050	NEW	03-16-047	388- 78A-0330	NEW	03-16-047
388- 71-0772	NEW	03-06-024	388- 78A-0060	NEW-P	03-03-018	388- 78A-0340	NEW-P	03-03-018
388- 71-0774	NEW	03-06-024	388- 78A-0060	NEW	03-16-047	388- 78A-0340	NEW	03-16-047
388- 71-0776	NEW	03-06-024	388- 78A-0070	NEW-P	03-03-018	388- 78A-0350	NEW-P	03-03-018
388- 71-0800	AMD-P	03-09-091	388- 78A-0070	NEW	03-16-047	388- 78A-0350	NEW	03-16-047
388- 71-0800	AMD	03-13-091	388- 78A-0080	NEW-P	03-03-018	388- 78A-0360	NEW-P	03-03-018
388- 71-0805	AMD-P	03-09-091	388- 78A-0080	NEW	03-16-047	388- 78A-0360	NEW	03-16-047
388- 71-0805	AMD	03-13-091	388- 78A-0090	NEW-P	03-03-018	388- 78A-0370	NEW-P	03-03-018
388- 71-0810	AMD-P	03-09-091	388- 78A-0090	NEW	03-16-047	388- 78A-0370	NEW	03-16-047
388- 71-0810	AMD	03-13-091	388- 78A-010	REP-P	03-03-018	388- 78A-0380	NEW-P	03-03-018
388- 71-0815	AMD-P	03-09-091	388- 78A-010	REP	03-16-047	388- 78A-0380	NEW	03-16-047
388- 71-0815	AMD	03-13-091	388- 78A-0100	NEW-P	03-03-018	388- 78A-0390	NEW-P	03-03-018
388- 71-0820	AMD-P	03-09-091	388- 78A-0100	NEW	03-16-047	388- 78A-0390	NEW	03-16-047

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388- 78A-1200	NEW-P	03-03-018	388- 79-030	AMD-P	03-06-094	388-140-0125	NEW-E	03-04-035
388- 78A-1200	NEW	03-16-047	388- 79-030	AMD	03-16-022	388-140-0125	NEW-E	03-12-004
388- 78A-1210	NEW-P	03-03-018	388- 79-040	AMD-P	03-06-094	388-140-0130	NEW-E	03-04-035
388- 78A-1210	NEW	03-16-047	388- 79-040	AMD	03-16-022	388-140-0130	NEW-E	03-12-004
388- 78A-1220	NEW-P	03-03-018	388- 79-050	NEW-P	03-06-094	388-140-0135	NEW-E	03-04-035
388- 78A-1220	NEW	03-16-047	388- 79-050	NEW	03-16-022	388-140-0135	NEW-E	03-12-004
388- 78A-1230	NEW-P	03-03-018	388- 96	PREP	03-07-031	388-140-0140	NEW-E	03-04-035
388- 78A-1230	NEW	03-16-047	388- 97-027	PREP-W	03-16-018	388-140-0140	NEW-E	03-12-004
388- 78A-130	REP-P	03-03-018	388- 97-076	PREP	03-12-056	388-140-0145	NEW-E	03-04-035
388- 78A-130	REP	03-16-047	388-105	PREP	03-15-050	388-140-0145	NEW-E	03-12-004
388- 78A-140	REP-P	03-03-018	388-105-0005	AMD-E	03-15-011	388-140-0150	NEW-E	03-04-035
388- 78A-140	REP	03-16-047	388-105-0030	AMD-E	03-15-011	388-140-0150	NEW-E	03-12-004
388- 78A-150	REP-P	03-03-018	388-105-0040	AMD-E	03-15-011	388-140-0155	NEW-E	03-04-035
388- 78A-150	REP	03-16-047	388-105-0045	NEW-E	03-15-011	388-140-0155	NEW-E	03-12-004
388- 78A-160	REP-P	03-03-018	388-140-0005	NEW-E	03-04-035	388-140-0160	NEW-E	03-04-035
388- 78A-160	REP	03-16-047	388-140-0005	NEW-E	03-12-004	388-140-0160	NEW-E	03-12-004
388- 78A-170	REP-P	03-03-018	388-140-0010	NEW-E	03-04-035	388-140-0165	NEW-E	03-04-035
388- 78A-170	REP	03-16-047	388-140-0010	NEW-E	03-12-004	388-140-0165	NEW-E	03-12-004
388- 78A-180	REP-P	03-03-018	388-140-0015	NEW-E	03-04-035	388-140-0170	NEW-E	03-04-035
388- 78A-180	REP	03-16-047	388-140-0015	NEW-E	03-12-004	388-140-0170	NEW-E	03-12-004
388- 78A-190	REP-P	03-03-018	388-140-0020	NEW-E	03-04-035	388-140-0175	NEW-E	03-04-035
388- 78A-190	REP	03-16-047	388-140-0020	NEW-E	03-12-004	388-140-0175	NEW-E	03-12-004
388- 78A-200	REP-P	03-03-018	388-140-0025	NEW-E	03-04-035	388-140-0180	NEW-E	03-04-035
388- 78A-200	REP	03-16-047	388-140-0025	NEW-E	03-12-004	388-140-0180	NEW-E	03-12-004
388- 78A-210	REP-P	03-03-018	388-140-0030	NEW-E	03-04-035	388-140-0185	NEW-E	03-04-035
388- 78A-210	REP	03-16-047	388-140-0030	NEW-E	03-12-004	388-140-0185	NEW-E	03-12-004
388- 78A-220	REP-P	03-03-018	388-140-0035	NEW-E	03-04-035	388-140-0190	NEW-E	03-04-035
388- 78A-220	REP	03-16-047	388-140-0035	NEW-E	03-12-004	388-140-0190	NEW-E	03-12-004
388- 78A-230	REP-P	03-03-018	388-140-0040	NEW-E	03-04-035	388-140-0195	NEW-E	03-04-035
388- 78A-230	REP	03-16-047	388-140-0040	NEW-E	03-12-004	388-140-0195	NEW-E	03-12-004
388- 78A-240	REP-P	03-03-018	388-140-0045	NEW-E	03-04-035	388-140-0200	NEW-E	03-04-035
388- 78A-240	REP	03-16-047	388-140-0045	NEW-E	03-12-004	388-140-0200	NEW-E	03-12-004
388- 78A-250	REP-P	03-03-018	388-140-0050	NEW-E	03-04-035	388-140-0205	NEW-E	03-04-035
388- 78A-250	REP	03-16-047	388-140-0050	NEW-E	03-12-004	388-140-0205	NEW-E	03-12-004
388- 78A-260	REP-P	03-03-018	388-140-0055	NEW-E	03-04-035	388-140-0210	NEW-E	03-04-035
388- 78A-260	REP	03-16-047	388-140-0055	NEW-E	03-12-004	388-140-0210	NEW-E	03-12-004
388- 78A-265	REP-P	03-03-018	388-140-0060	NEW-E	03-04-035	388-140-0215	NEW-E	03-04-035
388- 78A-265	REP	03-16-047	388-140-0060	NEW-E	03-12-004	388-140-0215	NEW-E	03-12-004
388- 78A-268	REP-P	03-03-018	388-140-0065	NEW-E	03-04-035	388-140-0220	NEW-E	03-04-035
388- 78A-268	REP	03-16-047	388-140-0065	NEW-E	03-12-004	388-140-0220	NEW-E	03-12-004
388- 78A-280	REP-P	03-03-018	388-140-0070	NEW-E	03-04-035	388-140-0225	NEW-E	03-04-035
388- 78A-280	REP	03-16-047	388-140-0070	NEW-E	03-12-004	388-140-0225	NEW-E	03-12-004
388- 78A-290	REP-P	03-03-018	388-140-0075	NEW-E	03-04-035	388-140-0230	NEW-E	03-04-035
388- 78A-290	REP	03-16-047	388-140-0075	NEW-E	03-12-004	388-140-0230	NEW-E	03-12-004
388- 78A-300	REP-P	03-03-018	388-140-0080	NEW-E	03-04-035	388-140-0235	NEW-E	03-04-035
388- 78A-300	REP	03-16-047	388-140-0080	NEW-E	03-12-004	388-140-0235	NEW-E	03-12-004
388- 78A-310	REP-P	03-03-018	388-140-0085	NEW-E	03-04-035	388-140-0240	NEW-E	03-04-035
388- 78A-310	REP	03-16-047	388-140-0085	NEW-E	03-12-004	388-140-0240	NEW-E	03-12-004
388- 78A-320	REP-P	03-03-018	388-140-0090	NEW-E	03-04-035	388-140-0245	NEW-E	03-04-035
388- 78A-320	REP	03-16-047	388-140-0090	NEW-E	03-12-004	388-140-0245	NEW-E	03-12-004
388- 78A-330	REP-P	03-03-018	388-140-0095	NEW-E	03-04-035	388-140-0250	NEW-E	03-04-035
388- 78A-330	REP	03-16-047	388-140-0095	NEW-E	03-12-004	388-140-0250	NEW-E	03-12-004
388- 78A-335	REP-P	03-03-018	388-140-0100	NEW-E	03-04-035	388-140-0255	NEW-E	03-04-035
388- 78A-335	REP	03-16-047	388-140-0100	NEW-E	03-12-004	388-140-0255	NEW-E	03-12-004
388- 78A-340	REP-P	03-03-018	388-140-0105	NEW-E	03-04-035	388-140-0260	NEW-E	03-04-035
388- 78A-340	REP	03-16-047	388-140-0105	NEW-E	03-12-004	388-140-0260	NEW-E	03-12-004
388- 78A-990	REP-P	03-03-018	388-140-0110	NEW-E	03-04-035	388-140-0265	NEW-E	03-04-035
388- 78A-990	REP	03-16-047	388-140-0110	NEW-E	03-12-004	388-140-0265	NEW-E	03-12-004
388- 79-010	AMD-P	03-06-094	388-140-0115	NEW-E	03-04-035	388-140-0270	NEW-E	03-04-035
388- 79-010	AMD	03-16-022	388-140-0115	NEW-E	03-12-004	388-140-0270	NEW-E	03-12-004
388- 79-020	AMD-P	03-06-094	388-140-0120	NEW-E	03-04-035	388-140-0275	NEW-E	03-04-035
388- 79-020	AMD	03-16-022	388-140-0120	NEW-E	03-12-004	388-140-0275	NEW-E	03-12-004

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388-145-0450	NEW	03-08-026	388-145-1070	NEW	03-08-026	388-148-0560	AMD-E	03-14-012
388-145-0460	NEW	03-08-026	388-145-1080	NEW	03-08-026	388-148-0585	AMD-E	03-05-099
388-145-0470	NEW	03-08-026	388-145-1090	NEW	03-08-026	388-148-0585	AMD-E	03-14-012
388-145-0480	NEW	03-08-026	388-145-1100	NEW	03-08-026	388-148-0630	AMD-E	03-05-099
388-145-0490	NEW	03-08-026	388-145-1110	NEW	03-08-026	388-148-0630	AMD-E	03-14-012
388-145-0500	NEW	03-08-026	388-145-1120	NEW	03-08-026	388-148-0700	AMD-E	03-05-099
388-145-0510	NEW	03-08-026	388-145-1130	NEW	03-08-026	388-148-0700	AMD-E	03-14-012
388-145-0520	NEW	03-08-026	388-145-1140	NEW	03-08-026	388-148-0720	AMD-E	03-05-099
388-145-0530	NEW	03-08-026	388-145-1150	NEW	03-08-026	388-148-0720	AMD-E	03-14-012
388-145-0540	NEW	03-08-026	388-145-1160	NEW	03-08-026	388-148-0722	NEW-E	03-05-099
388-145-0550	NEW	03-08-026	388-145-1170	NEW	03-08-026	388-148-0722	NEW-E	03-14-012
388-145-0560	NEW	03-08-026	388-145-1180	NEW	03-08-026	388-148-0725	AMD-E	03-05-099
388-145-0570	NEW	03-08-026	388-145-1190	NEW	03-08-026	388-148-0725	AMD-E	03-14-012
388-145-0580	NEW	03-08-026	388-145-1200	NEW	03-08-026	388-148-0785	AMD-E	03-05-099
388-145-0590	NEW	03-08-026	388-145-1210	NEW	03-08-026	388-148-0785	AMD-E	03-14-012
388-145-0600	NEW	03-08-026	388-145-1220	NEW	03-08-026	388-148-0880	AMD-E	03-05-099
388-145-0610	NEW	03-08-026	388-148-0035	AMD-E	03-14-012	388-148-0880	AMD-E	03-14-012
388-145-0620	NEW	03-08-026	388-148-0040	AMD-E	03-05-099	388-148-0892	NEW-E	03-05-099
388-145-0630	NEW	03-08-026	388-148-0040	AMD-E	03-14-012	388-148-0892	NEW-E	03-14-012
388-145-0640	NEW	03-08-026	388-148-0045	AMD-E	03-05-099	388-148-0915	AMD-E	03-05-099
388-145-0650	NEW	03-08-026	388-148-0045	AMD-E	03-14-012	388-148-0915	AMD-E	03-14-012
388-145-0660	NEW	03-08-026	388-148-0050	AMD-E	03-05-099	388-148-0995	AMD-E	03-05-099
388-145-0670	NEW	03-08-026	388-148-0050	AMD-E	03-14-012	388-148-0995	AMD-E	03-14-012
388-145-0680	NEW	03-08-026	388-148-0058	NEW-E	03-05-099	388-148-1060	AMD-E	03-05-099
388-145-0690	NEW	03-08-026	388-148-0058	NEW-E	03-14-012	388-148-1060	AMD-E	03-14-012
388-145-0700	NEW	03-08-026	388-148-0060	AMD-E	03-05-099	388-148-1060	AMD-E	03-05-099
388-145-0710	NEW	03-08-026	388-148-0060	AMD-E	03-14-012	388-148-1070	AMD-E	03-05-099
388-145-0720	NEW	03-08-026	388-148-0065	AMD-E	03-05-099	388-148-1070	AMD-E	03-14-012
388-145-0730	NEW	03-08-026	388-148-0065	AMD-E	03-14-012	388-148-1076	NEW-E	03-05-099
388-145-0740	NEW	03-08-026	388-148-0095	AMD-E	03-14-012	388-148-1076	NEW-E	03-14-012
388-145-0750	NEW	03-08-026	388-148-0120	AMD-E	03-05-099	388-148-1077	NEW-E	03-05-099
388-145-0760	NEW	03-08-026	388-148-0120	AMD-E	03-14-012	388-148-1077	NEW-E	03-14-012
388-145-0770	NEW	03-08-026	388-148-0125	AMD-E	03-05-099	388-148-1078	NEW-E	03-05-099
388-145-0780	NEW	03-08-026	388-148-0125	AMD-E	03-14-012	388-148-1078	NEW-E	03-14-012
388-145-0790	NEW	03-08-026	388-148-0140	AMD-E	03-05-099	388-148-1079	NEW-E	03-05-099
388-145-0800	NEW	03-08-026	388-148-0140	AMD-E	03-14-012	388-148-1079	NEW-E	03-14-012
388-145-0810	NEW	03-08-026	388-148-0140	AMD-E	03-14-012	388-148-1115	AMD-E	03-05-099
388-145-0820	NEW	03-08-026	388-148-0170	AMD-E	03-14-012	388-148-1115	AMD-E	03-14-012
388-145-0830	NEW	03-08-026	388-148-0220	AMD-E	03-05-099	388-148-1120	AMD-E	03-05-099
388-145-0840	NEW	03-08-026	388-148-0220	AMD-E	03-14-012	388-148-1120	AMD-E	03-14-012
388-145-0850	NEW	03-08-026	388-148-0260	AMD-E	03-05-099	388-148-1140	NEW-E	03-05-099
388-145-0860	NEW	03-08-026	388-148-0260	AMD-E	03-14-012	388-148-1140	NEW-E	03-14-012
388-145-0870	NEW	03-08-026	388-148-0270	AMD-E	03-05-099	388-148-1145	NEW-E	03-05-099
388-145-0880	NEW	03-08-026	388-148-0270	AMD-E	03-14-012	388-148-1145	NEW-E	03-14-012
388-145-0890	NEW	03-08-026	388-148-0335	AMD-E	03-05-099	388-148-1150	NEW-E	03-05-099
388-145-0890	NEW	03-08-026	388-148-0335	AMD-E	03-14-012	388-148-1150	NEW-E	03-14-012
388-145-0900	NEW	03-08-026	388-148-0345	AMD-E	03-05-099	388-148-1155	NEW-E	03-05-099
388-145-0910	NEW	03-08-026	388-148-0345	AMD-E	03-14-012	388-148-1155	NEW-E	03-14-012
388-145-0920	NEW	03-08-026	388-148-0350	AMD-E	03-05-099	388-148-1160	NEW-E	03-05-099
388-145-0930	NEW	03-08-026	388-148-0350	AMD-E	03-14-012	388-148-1160	NEW-E	03-14-012
388-145-0940	NEW	03-08-026	388-148-0395	AMD-E	03-05-099	388-148-1165	NEW-E	03-05-099
388-145-0950	NEW	03-08-026	388-148-0395	AMD-E	03-14-012	388-148-1165	NEW-E	03-14-012
388-145-0960	NEW	03-08-026	388-148-0427	NEW-E	03-05-099	388-148-1170	NEW-E	03-05-099
388-145-0970	NEW	03-08-026	388-148-0427	NEW-E	03-14-012	388-148-1170	NEW-E	03-14-012
388-145-0980	NEW	03-08-026	388-148-0460	AMD-E	03-05-099	388-148-1175	NEW-E	03-05-099
388-145-0990	NEW	03-08-026	388-148-0460	AMD-E	03-14-012	388-148-1175	NEW-E	03-14-012
388-145-1000	NEW	03-08-026	388-148-0462	NEW-E	03-05-099	388-148-1180	NEW-E	03-05-099
388-145-1010	NEW	03-08-026	388-148-0462	NEW-E	03-14-012	388-148-1180	NEW-E	03-14-012
388-145-1020	NEW	03-08-026	388-148-0520	AMD-E	03-05-099	388-148-1185	NEW-E	03-05-099
388-145-1030	NEW	03-08-026	388-148-0520	AMD-E	03-14-012	388-148-1185	NEW-E	03-14-012
388-145-1040	NEW	03-08-026	388-148-0542	NEW-E	03-05-099	388-148-1190	NEW-E	03-05-099
388-145-1050	NEW	03-08-026	388-148-0542	NEW-E	03-14-012	388-148-1190	NEW-E	03-14-012
388-145-1060	NEW	03-08-026	388-148-0560	AMD-E	03-05-099	388-148-1205	NEW-E	03-06-091

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-148-1210	NEW-E	03-06-091	388-150-140	REP	03-14-110	388-150-440	REP	03-14-110
388-148-1215	NEW-E	03-06-091	388-150-150	REP-P	03-09-005	388-150-450	REP-P	03-09-005
388-148-1220	NEW-E	03-06-091	388-150-150	REP	03-14-110	388-150-450	REP	03-14-110
388-148-1225	NEW-E	03-06-091	388-150-160	REP-P	03-09-005	388-150-460	REP-P	03-09-005
388-148-1230	NEW-E	03-06-091	388-150-160	REP	03-14-110	388-150-460	REP	03-14-110
388-148-1235	NEW-E	03-06-091	388-150-165	REP-P	03-09-005	388-150-470	REP-P	03-09-005
388-148-1240	NEW-E	03-06-091	388-150-165	REP	03-14-110	388-150-470	REP	03-14-110
388-148-1245	NEW-E	03-06-091	388-150-170	REP-P	03-09-005	388-150-480	REP-P	03-09-005
388-148-1250	NEW-E	03-06-091	388-150-170	REP	03-14-110	388-150-480	REP	03-14-110
388-148-1255	NEW-E	03-06-091	388-150-180	REP-P	03-09-005	388-150-490	REP-P	03-09-005
388-148-1260	NEW-E	03-06-091	388-150-180	REP	03-14-110	388-150-490	REP	03-14-110
388-148-1265	NEW-E	03-06-091	388-150-190	REP-P	03-09-005	388-150-500	REP-P	03-09-005
388-148-1270	NEW-E	03-06-091	388-150-190	REP	03-14-110	388-150-500	REP	03-14-110
388-148-1275	NEW-E	03-06-091	388-150-200	REP-P	03-09-005	388-150-990	REP-P	03-09-005
388-148-1280	NEW-E	03-06-091	388-150-200	REP	03-14-110	388-150-990	REP	03-14-110
388-148-1285	NEW-E	03-06-091	388-150-210	REP-P	03-09-005	388-150-991	REP-P	03-09-005
388-148-1290	NEW-E	03-06-091	388-150-210	REP	03-14-110	388-150-991	REP	03-14-110
388-148-1295	NEW-E	03-06-091	388-150-220	REP-P	03-09-005	388-150-992	REP-P	03-09-005
388-148-1300	NEW-E	03-06-091	388-150-220	REP	03-14-110	388-150-992	REP	03-14-110
388-150-005	REP-P	03-09-005	388-150-230	REP-P	03-09-005	388-150-993	REP-P	03-09-005
388-150-005	REP	03-14-110	388-150-230	REP	03-14-110	388-150-993	REP	03-14-110
388-150-010	REP-P	03-09-005	388-150-240	REP-P	03-09-005	388-155-070	AMD-P	03-06-092
388-150-010	REP	03-14-110	388-150-240	REP	03-14-110	388-155-070	AMD	03-09-074
388-150-020	REP-P	03-09-005	388-150-250	REP-P	03-09-005	388-155-090	AMD-P	03-06-092
388-150-020	REP	03-14-110	388-150-250	REP	03-14-110	388-155-090	AMD	03-09-074
388-150-040	REP-P	03-09-005	388-150-260	REP-P	03-09-005	388-165-130	REP-P	03-09-033
388-150-040	REP	03-14-110	388-150-260	REP	03-14-110	388-165-130	REP	03-14-109
388-150-050	REP-P	03-09-005	388-150-270	REP-P	03-09-005	388-180-0100	NEW	03-04-013
388-150-050	REP	03-14-110	388-150-270	REP	03-14-110	388-180-0110	NEW	03-04-013
388-150-060	REP-P	03-09-005	388-150-280	REP-P	03-09-005	388-180-0120	NEW	03-04-013
388-150-060	REP	03-14-110	388-150-280	REP	03-14-110	388-180-0130	NEW	03-04-013
388-150-070	REP-P	03-09-005	388-150-290	REP-P	03-09-005	388-180-0140	NEW	03-04-013
388-150-070	REP	03-14-110	388-150-290	REP	03-14-110	388-180-0150	NEW	03-04-013
388-150-080	REP-P	03-09-005	388-150-295	REP-P	03-09-005	388-180-0160	NEW	03-04-013
388-150-080	REP	03-14-110	388-150-295	REP	03-14-110	388-180-0170	NEW	03-04-013
388-150-085	REP-P	03-09-005	388-150-310	REP-P	03-09-005	388-180-0180	NEW	03-04-013
388-150-085	REP	03-14-110	388-150-310	REP	03-14-110	388-180-0190	NEW	03-04-013
388-150-090	REP-P	03-09-005	388-150-320	REP-P	03-09-005	388-180-0200	NEW	03-04-013
388-150-090	REP	03-14-110	388-150-320	REP	03-14-110	388-180-0210	NEW	03-04-013
388-150-092	REP-P	03-09-005	388-150-330	REP-P	03-09-005	388-180-0220	NEW	03-04-013
388-150-092	REP	03-14-110	388-150-330	REP	03-14-110	388-180-0230	NEW	03-04-013
388-150-093	REP-P	03-09-005	388-150-340	REP-P	03-09-005	388-273-0025	AMD-E	03-12-057
388-150-093	REP	03-14-110	388-150-340	REP	03-14-110	388-273-0025	PREP	03-13-044
388-150-094	REP-P	03-09-005	388-150-350	REP-P	03-09-005	388-273-0030	AMD-E	03-12-057
388-150-094	REP	03-14-110	388-150-350	REP	03-14-110	388-273-0030	PREP	03-13-044
388-150-095	REP-P	03-09-005	388-150-360	REP-P	03-09-005	388-273-0035	AMD-E	03-12-057
388-150-095	REP	03-14-110	388-150-360	REP	03-14-110	388-273-0035	PREP	03-13-044
388-150-096	REP-P	03-09-005	388-150-370	REP-P	03-09-005	388-290-0075	AMD-E	03-06-045
388-150-096	REP	03-14-110	388-150-370	REP	03-14-110	388-290-0075	AMD-E	03-14-061
388-150-097	REP-P	03-09-005	388-150-380	REP-P	03-09-005	388-290-0085	AMD-E	03-06-045
388-150-097	REP	03-14-110	388-150-380	REP	03-14-110	388-290-0085	AMD-E	03-14-061
388-150-098	REP-P	03-09-005	388-150-390	REP-P	03-09-005	388-290-0130	AMD-E	03-12-026
388-150-098	REP	03-14-110	388-150-390	REP	03-14-110	388-290-0190	AMD-E	03-06-045
388-150-100	REP-P	03-09-005	388-150-400	REP-P	03-09-005	388-290-0190	AMD-E	03-14-061
388-150-100	REP	03-14-110	388-150-400	REP	03-14-110	388-290-0210	REP-E	03-06-045
388-150-110	REP-P	03-09-005	388-150-410	REP-P	03-09-005	388-290-0210	REP-E	03-14-061
388-150-110	REP	03-14-110	388-150-410	REP	03-14-110	388-292-0001	NEW-P	03-09-033
388-150-120	REP-P	03-09-005	388-150-420	REP-P	03-09-005	388-292-0001	NEW	03-14-109
388-150-120	REP	03-14-110	388-150-420	REP	03-14-110	388-292-0003	NEW-P	03-09-033
388-150-130	REP-P	03-09-005	388-150-430	REP-P	03-09-005	388-292-0003	NEW	03-14-109
388-150-130	REP	03-14-110	388-150-430	REP	03-14-110	388-292-0005	NEW-P	03-09-033
388-150-140	REP-P	03-09-005	388-150-440	REP-P	03-09-005	388-292-0005	NEW	03-14-109

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-295-3200	NEW-P	03-09-005	388-295-5150	NEW-P	03-09-005	388-408-0050	PREP	03-06-056
388-295-3200	NEW	03-14-110	388-295-5150	NEW	03-14-110	388-408-0050	AMD-P	03-16-045
388-295-3210	NEW-P	03-09-005	388-295-5160	NEW-P	03-09-005	388-410-0030	PREP	03-07-040
388-295-3210	NEW	03-14-110	388-295-5160	NEW	03-14-110	388-410-0030	AMD-P	03-17-086
388-295-3220	NEW-P	03-09-005	388-295-5170	NEW-P	03-09-005	388-412-0015	PREP	03-15-023
388-295-3220	NEW	03-14-110	388-295-5170	NEW	03-14-110	388-412-0020	PREP	03-15-023
388-295-3230	NEW-P	03-09-005	388-295-6010	NEW-P	03-09-005	388-412-0025	PREP	03-15-023
388-295-3230	NEW	03-14-110	388-295-6010	NEW	03-14-110	388-412-0040	PREP	03-15-023
388-295-4010	NEW-P	03-09-005	388-295-6020	NEW-P	03-09-005	388-416	PREP	03-17-085
388-295-4010	NEW	03-14-110	388-295-6020	NEW	03-14-110	388-416-0005	PREP	03-15-024
388-295-4020	NEW-P	03-09-005	388-295-6030	NEW-P	03-09-005	388-416-0015	AMD-E	03-14-060
388-295-4020	NEW	03-14-110	388-295-6030	NEW	03-14-110	388-416-0015	PREP	03-14-077
388-295-4030	NEW-P	03-09-005	388-295-6040	NEW-P	03-09-005	388-416-0035	PREP-W	03-15-051
388-295-4030	NEW	03-14-110	388-295-6040	NEW	03-14-110	388-416-0035	PREP-W	03-16-080
388-295-4040	NEW-P	03-09-005	388-295-6050	NEW-P	03-09-005	388-418	PREP	03-13-035
388-295-4040	NEW	03-14-110	388-295-6050	NEW	03-14-110	388-418	PREP	03-17-085
388-295-4050	NEW-P	03-09-005	388-295-6060	NEW-P	03-09-005	388-418-0005	AMD-E	03-14-060
388-295-4050	NEW	03-14-110	388-295-6060	NEW	03-14-110	388-418-0005	PREP	03-14-077
388-295-4060	NEW-P	03-09-005	388-295-7010	NEW-P	03-09-005	388-418-0005	AMD-P	03-17-087
388-295-4060	NEW	03-14-110	388-295-7010	NEW	03-14-110	388-418-0007	AMD-P	03-17-087
388-295-4070	NEW-P	03-09-005	388-295-7020	NEW-P	03-09-005	388-418-0020	AMD-P	03-17-087
388-295-4070	NEW	03-14-110	388-295-7020	NEW	03-14-110	388-418-0025	AMD-E	03-14-060
388-295-4080	NEW-P	03-09-005	388-295-7030	NEW-P	03-09-005	388-418-0025	PREP	03-14-077
388-295-4080	NEW	03-14-110	388-295-7030	NEW	03-14-110	388-424-0005	PREP	03-03-007
388-295-4090	NEW-P	03-09-005	388-295-7040	NEW-P	03-09-005	388-424-0010	PREP	03-03-007
388-295-4090	NEW	03-14-110	388-295-7040	NEW	03-14-110	388-424-0015	PREP	03-03-007
388-295-4100	NEW-P	03-09-005	388-295-7050	NEW-P	03-09-005	388-424-0020	AMD	03-05-029
388-295-4100	NEW	03-14-110	388-295-7050	NEW	03-14-110	388-424-0025	AMD	03-05-029
388-295-4110	NEW-P	03-09-005	388-295-7060	NEW-P	03-09-005	388-434-0005	AMD-E	03-14-060
388-295-4110	NEW	03-14-110	388-295-7060	NEW	03-14-110	388-434-0005	PREP	03-14-077
388-295-4120	NEW-P	03-09-005	388-295-7070	NEW-P	03-09-005	388-436-0002	AMD-E	03-04-067
388-295-4120	NEW	03-14-110	388-295-7070	NEW	03-14-110	388-436-0002	PREP	03-11-089
388-295-4130	NEW-P	03-09-005	388-295-7080	NEW-P	03-09-005	388-436-0002	AMD-E	03-12-027
388-295-4130	NEW	03-14-110	388-295-7080	NEW	03-14-110	388-438	PREP	03-12-054
388-295-4140	NEW-P	03-09-005	388-310	PREP	03-17-063	388-438	PREP-W	03-15-051
388-295-4140	NEW	03-14-110	388-310-0800	AMD-E	03-04-066	388-438-0100	PREP-W	03-14-058
388-295-5010	NEW-P	03-09-005	388-310-0800	PREP	03-11-087	388-438-0100	REP-E	03-14-104
388-295-5010	NEW	03-14-110	388-310-0800	AMD-E	03-12-025	388-438-0110	PREP	03-10-088
388-295-5020	NEW-P	03-09-005	388-310-0800	AMD-E	03-14-105	388-438-0110	AMD-E	03-14-104
388-295-5020	NEW	03-14-110	388-310-1800	AMD-E	03-14-105	388-440	PREP-W	03-15-051
388-295-5030	NEW-P	03-09-005	388-400-0040	AMD	03-05-028	388-444	PREP	03-13-035
388-295-5030	NEW	03-14-110	388-400-0045	AMD	03-05-028	388-444-0035	AMD	03-05-031
388-295-5040	NEW-P	03-09-005	388-406-0005	PREP	03-15-024	388-448	PREP	03-13-033
388-295-5040	NEW	03-14-110	388-406-0010	PREP	03-15-024	388-448-0130	AMD-P	03-08-079
388-295-5050	NEW-P	03-09-005	388-406-0015	PREP-W	03-03-112	388-448-0140	AMD-P	03-08-079
388-295-5050	NEW	03-14-110	388-406-0015	PREP	03-15-024	388-450	PREP	03-13-035
388-295-5060	NEW-P	03-09-005	388-406-0021	PREP	03-15-024	388-450-0020	PREP	03-08-083
388-295-5060	NEW	03-14-110	388-406-0035	PREP	03-15-024	388-450-0045	AMD	03-03-071
388-295-5070	NEW-P	03-09-005	388-406-0040	PREP	03-15-024	388-450-0050	AMD-P	03-03-008
388-295-5070	NEW	03-14-110	388-406-0055	PREP	03-15-024	388-450-0050	AMD	03-06-095
388-295-5080	NEW-P	03-09-005	388-406-0060	PREP	03-15-024	388-450-0080	PREP	03-06-057
388-295-5080	NEW	03-14-110	388-406-0065	PREP	03-15-024	388-450-0080	AMD-P	03-09-073
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434-219-100	AMD-P	03-16-041	458-12-360	AMD-P	03-09-098	458-20-185	AMD	03-12-058
434-219-130	REP-P	03-16-041	458-16-010	REP-P	03-03-099	458-20-208	AMD	03-07-066
434-219-150	AMD-P	03-16-041	458-16-010	REP	03-09-002	458-20-209	AMD-P	03-09-146
434-219-160	AMD-P	03-16-041	458-16-011	REP-P	03-03-099	458-20-210	AMD-P	03-09-146
434-219-170	AMD-P	03-16-041	458-16-011	REP	03-09-002	458-20-211	PREP	03-16-044
434-219-180	AMD-P	03-16-041	458-16-012	REP-P	03-03-099	458-20-231	REP-X	03-04-030
434-219-185	AMD-P	03-16-041	458-16-012	REP	03-09-002	458-20-231	REP	03-09-062
434-219-210	AMD-P	03-16-041	458-16-013	REP-P	03-03-099	458-20-24001	PREP	03-15-039
434-219-220	AMD-P	03-16-041	458-16-013	REP	03-09-002	458-20-24001A	PREP	03-15-039
434-219-230	AMD-P	03-16-041	458-16-020	REP-P	03-03-099	458-20-24003	PREP	03-03-101
434-219-250	AMD-P	03-16-041	458-16-020	REP	03-09-002	458-20-24003	NEW-P	03-08-069
434-219-255	REP-P	03-16-041	458-16-022	REP-P	03-03-099	458-20-24003	NEW	03-12-053
434-219-270	REP-P	03-16-041	458-16-022	REP	03-09-002	458-20-244	PREP	03-15-038
434-219-280	AMD-P	03-16-041	458-16-030	REP-P	03-03-099	458-20-251	AMD-P	03-13-022
434-219-285	REP-P	03-16-041	458-16-030	REP	03-09-002	458-20-266	PREP	03-16-044
434-219-290	AMD-P	03-16-041	458-16-040	REP-P	03-03-099	458-40-660	PREP	03-05-084
434-219-300	REP-P	03-16-041	458-16-040	REP	03-09-002	458-40-660	AMD-P	03-10-079
434-219-340	AMD-P	03-16-041	458-16-060	REP-P	03-03-099	458-40-660	AMD	03-14-072
434-219-350	REP-P	03-16-041	458-16-060	REP	03-09-002	458-40-660	PREP	03-17-098
434-240-010	AMD-P	03-10-055	458-16-070	REP-P	03-03-099	458-40-680	PREP	03-09-100
434-240-010	AMD	03-15-054	458-16-070	REP	03-09-002	458-40-680	AMD-P	03-16-009
434-262-010	PREP	03-07-086	458-16-079	REP-P	03-03-099	458-61-100	PREP	03-07-065
434-262-010	AMD-P	03-10-055	458-16-079	REP	03-09-002	458-61-100	AMD-P	03-11-079
434-262-010	AMD	03-15-054	458-16A	AMD-P	03-03-099	468-06-040	AMD-X	03-04-062
434-262-020	PREP	03-07-086	458-16A	AMD	03-09-002	468-06-040	AMD	03-09-103
434-262-020	AMD-P	03-10-055	458-16A-100	NEW-P	03-03-099	468-15-010	NEW	03-03-012
434-262-020	AMD	03-15-054	458-16A-100	NEW	03-09-002	468-15-020	NEW	03-03-012
434-670-010	NEW	03-06-069	458-16A-110	NEW-P	03-03-099	468-15-030	NEW	03-03-012
434-670-020	NEW	03-06-069	458-16A-110	NEW	03-09-002	468-15-040	NEW	03-03-012
434-670-030	NEW	03-06-069	458-16A-115	NEW-P	03-03-099	468-15-050	NEW	03-03-012
434-670-040	NEW	03-06-069	458-16A-115	NEW	03-09-002	468-15-060	NEW	03-03-012
434-670-050	NEW	03-06-069	458-16A-120	NEW-P	03-03-099	468-38-110	PREP	03-14-027
434-670-060	NEW	03-06-069	458-16A-120	NEW	03-09-002	468-38-110	AMD-P	03-17-045
434-670-070	NEW	03-06-069	458-16A-130	NEW-P	03-03-099	468-38-265	PREP	03-11-075
434-670-080	NEW	03-06-069	458-16A-130	NEW	03-09-002	468-38-265	AMD-E	03-14-026
434-670-090	NEW	03-06-069	458-16A-135	NEW-P	03-03-099	468-38-265	AMD-P	03-15-041
446-20-285	AMD	03-05-007	458-16A-135	NEW	03-09-002	468-38-340	AMD	03-03-035
446-75-010	AMD-P	03-04-070	458-16A-140	NEW-P	03-03-099	468-58-010	AMD-E	03-16-026
446-75-010	AMD	03-08-053	458-16A-140	NEW	03-09-002	468-58-010	PREP	03-16-059
446-75-020	AMD-P	03-04-070	458-16A-150	NEW-P	03-03-099	468-58-080	AMD-E	03-04-040
446-75-020	AMD	03-08-053	458-16A-150	NEW	03-09-002	468-58-080	AMD-E	03-08-008
446-75-030	AMD-P	03-04-070	458-16A-150	AMD-X	03-11-095	468-58-080	AMD-P	03-08-061
446-75-030	AMD	03-08-053	458-16A-150	AMD	03-16-029	468-58-080	AMD	03-11-076
446-75-060	AMD-P	03-04-070	458-17	AMD	03-16-028	468-70	PREP	03-13-040
446-75-060	AMD	03-08-053	458-17-101	NEW-P	03-09-147	468-70-050	AMD-E	03-11-071
446-75-070	AMD-P	03-04-070	458-17-101	NEW	03-16-028	468-70-050	AMD-P	03-16-104
446-75-070	AMD	03-08-053	458-17-105	REP-P	03-09-147	468-70-070	AMD-E	03-06-052
446-75-080	AMD-P	03-04-070	458-17-105	REP	03-16-028	468-70-070	AMD-E	03-14-051
446-75-080	AMD	03-08-053	458-17-110	REP-P	03-09-147	468-70-070	AMD-P	03-16-105
458-07-020	AMD-X	03-17-096	458-17-110	REP	03-16-028	468-70-080	REP-E	03-06-052
458-07-035	AMD-X	03-17-097	458-17-115	REP-P	03-09-147	468-70-080	REP-E	03-14-051
458-12-060	PREP	03-03-100	458-17-115	REP	03-16-028	468-70-080	REP-P	03-16-105
458-12-060	AMD-P	03-17-005	458-17-120	REP-P	03-09-147	468-95-010	AMD-E	03-03-028
458-12-065	PREP	03-03-100	458-17-120	REP	03-16-028	468-95-010	AMD-P	03-03-029
458-12-065	REP-P	03-17-005	458-20-122	REP-P	03-09-146	468-95-010	AMD	03-06-053
458-12-070	PREP	03-03-100	458-20-135	AMD-P	03-04-032	468-95-020	REP-E	03-03-028

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
468-95-020	REP-P	03-03-029	468-95-190	NEW-E	03-03-028	468-300-020	AMD-P	03-04-102
468-95-020	REP	03-06-053	468-95-190	NEW-P	03-03-029	468-300-020	AMD	03-08-072
468-95-025	REP-E	03-03-028	468-95-190	NEW	03-06-053	468-300-040	AMD-P	03-04-102
468-95-025	REP-P	03-03-029	468-95-200	NEW-E	03-03-028	468-300-040	AMD	03-08-072
468-95-025	REP	03-06-053	468-95-200	NEW-P	03-03-029	468-300-220	AMD-P	03-04-102
468-95-030	REP-E	03-03-028	468-95-200	NEW	03-06-053	468-300-220	AMD	03-08-072
468-95-030	REP-P	03-03-029	468-95-210	NEW-E	03-03-028	468-300-700	AMD-P	03-04-102
468-95-030	REP	03-06-053	468-95-210	NEW-P	03-03-029	468-300-700	AMD	03-08-072
468-95-035	REP-E	03-03-028	468-95-210	NEW	03-06-053	468-510-010	AMD-E	03-06-014
468-95-035	REP-P	03-03-029	468-95-220	NEW-E	03-03-028	468-510-010	AMD-E	03-14-050
468-95-035	REP	03-06-053	468-95-220	NEW-P	03-03-029	468-510-010	AMD-P	03-16-106
468-95-037	REP-E	03-03-028	468-95-220	NEW	03-06-053	478-04	PREP	03-09-040
468-95-037	REP-P	03-03-029	468-95-230	NEW-E	03-03-028	478-132-030	AMD	03-08-040
468-95-037	REP	03-06-053	468-95-230	NEW-P	03-03-029	478-136	PREP	03-15-099
468-95-040	REP-E	03-03-028	468-95-230	NEW	03-06-053	478-136-030	AMD-E	03-16-024
468-95-040	REP-P	03-03-029	468-95-240	NEW-E	03-03-028	478-136-060	AMD-E	03-16-024
468-95-040	REP	03-06-053	468-95-240	NEW-P	03-03-029	478-138-060	AMD-X	03-05-019
468-95-050	REP-E	03-03-028	468-95-240	NEW	03-06-053	478-138-060	AMD	03-12-007
468-95-050	REP-P	03-03-029	468-95-250	NEW-E	03-03-028	478-140-018	AMD-X	03-05-019
468-95-050	REP	03-06-053	468-95-250	NEW-P	03-03-029	478-140-018	AMD	03-12-007
468-95-055	REP-E	03-03-028	468-95-250	NEW	03-06-053	478-160-085	AMD-X	03-05-019
468-95-055	REP-P	03-03-029	468-95-260	NEW-E	03-03-028	478-160-085	AMD	03-12-007
468-95-055	REP	03-06-053	468-95-260	NEW-P	03-03-029	478-168-170	AMD-X	03-05-019
468-95-060	REP-E	03-03-028	468-95-260	NEW	03-06-053	478-168-170	AMD	03-12-007
468-95-060	REP-P	03-03-029	468-95-270	NEW-E	03-03-028	478-168-170	AMD	03-12-007
468-95-060	REP	03-06-053	468-95-270	NEW-P	03-03-029	478-276-140	AMD-X	03-05-019
468-95-070	REP-E	03-03-028	468-95-270	NEW	03-06-053	478-276-140	AMD	03-12-007
468-95-070	REP-P	03-03-029	468-95-280	NEW-E	03-03-028	478-324-020	AMD-X	03-05-019
468-95-070	REP	03-06-053	468-95-280	NEW-P	03-03-029	478-324-020	AMD	03-12-007
468-95-080	REP-E	03-03-028	468-95-280	NEW	03-06-053	478-324-045	AMD-X	03-05-019
468-95-080	REP-P	03-03-029	468-95-290	NEW-E	03-03-028	478-324-045	AMD	03-12-007
468-95-080	REP	03-06-053	468-95-290	NEW-P	03-03-029	478-324-140	AMD-X	03-05-019
468-95-090	REP-E	03-03-028	468-95-290	NEW	03-06-053	478-324-140	AMD	03-12-007
468-95-090	REP-P	03-03-029	468-95-300	NEW-E	03-03-028	478-324-145	NEW-X	03-05-019
468-95-090	REP	03-06-053	468-95-300	NEW-P	03-03-029	478-324-145	NEW	03-12-007
468-95-100	REP-E	03-03-028	468-95-300	NEW	03-06-053	478-324-180	AMD-X	03-05-019
468-95-100	REP-P	03-03-029	468-95-310	NEW-E	03-03-028	478-324-180	AMD	03-12-007
468-95-100	REP	03-06-053	468-95-310	NEW-P	03-03-029	479-01-010	AMD-P	03-12-009
468-95-110	NEW-E	03-03-028	468-95-310	NEW	03-06-053	479-01-010	AMD	03-16-077
468-95-110	NEW-P	03-03-029	468-95-320	NEW-E	03-03-028	479-01-010	AMD	03-12-009
468-95-110	NEW	03-06-053	468-95-320	NEW-P	03-03-029	479-01-050	AMD-P	03-12-009
468-95-120	NEW-E	03-03-028	468-95-320	NEW	03-06-053	479-01-050	AMD	03-16-077
468-95-120	NEW-P	03-03-029	468-95-330	NEW-E	03-03-028	479-05-010	AMD-P	03-12-009
468-95-120	NEW	03-06-053	468-95-330	NEW-P	03-03-029	479-05-010	AMD	03-16-077
468-95-130	NEW-E	03-03-028	468-95-330	NEW	03-06-053	479-05-050	AMD-P	03-12-009
468-95-130	NEW-P	03-03-029	468-95-340	NEW-E	03-03-028	479-05-050	AMD	03-16-077
468-95-130	NEW	03-06-053	468-95-340	NEW-P	03-03-029	479-05-240	AMD-P	03-12-009
468-95-140	NEW-E	03-03-028	468-95-340	NEW	03-06-053	479-05-240	AMD	03-16-077
468-95-140	NEW-P	03-03-029	468-95-350	NEW-E	03-03-028	479-12-260	REP-P	03-12-009
468-95-140	NEW	03-06-053	468-95-350	NEW-P	03-03-029	479-12-260	REP	03-16-077
468-95-150	NEW-E	03-03-028	468-95-350	NEW	03-06-053	479-12-430	AMD-P	03-12-009
468-95-150	NEW-P	03-03-029	468-95-360	NEW-E	03-03-028	479-12-430	AMD	03-16-077
468-95-150	NEW	03-06-053	468-95-360	NEW-P	03-03-029	480-04-020	AMD-P	03-17-100
468-95-160	NEW-E	03-03-028	468-95-360	NEW	03-06-053	480-04-030	AMD-P	03-17-100
468-95-160	NEW-P	03-03-029	468-95-370	NEW-E	03-03-028	480-04-035	NEW-P	03-17-100
468-95-160	NEW	03-06-053	468-95-370	NEW-P	03-03-029	480-04-050	AMD-P	03-17-100
468-95-170	NEW-E	03-03-028	468-95-370	NEW	03-06-053	480-04-060	AMD-P	03-17-100
468-95-170	NEW-P	03-03-029	468-95-400	NEW-E	03-03-028	480-04-065	AMD-P	03-17-100
468-95-170	NEW	03-06-053	468-95-400	NEW-P	03-03-029	480-04-070	REP-P	03-17-100
468-95-180	NEW-E	03-03-028	468-95-400	NEW	03-06-053	480-04-090	AMD-P	03-17-100
468-95-180	NEW-P	03-03-029	468-300-010	AMD-P	03-04-102	480-04-095	AMD-P	03-17-100
468-95-180	NEW	03-06-053	468-300-010	AMD	03-08-072	480-04-100	AMD-P	03-17-100
						480-04-110	REP-P	03-17-100
						480-04-120	AMD-P	03-17-100

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
480-04-130	AMD-P	03-17-100	480-07-640	NEW-P	03-17-100	480-09-450	REP-P	03-17-100
480-07-010	NEW-P	03-17-100	480-07-650	NEW-P	03-17-100	480-09-460	REP-P	03-17-100
480-07-100	NEW-P	03-17-100	480-07-660	NEW-P	03-17-100	480-09-465	REP-P	03-17-100
480-07-110	NEW-P	03-17-100	480-07-700	NEW-P	03-17-100	480-09-466	REP-P	03-17-100
480-07-120	NEW-P	03-17-100	480-07-710	NEW-P	03-17-100	480-09-467	REP-P	03-17-100
480-07-125	NEW-P	03-17-100	480-07-720	NEW-P	03-17-100	480-09-470	REP-P	03-17-100
480-07-130	NEW-P	03-17-100	480-07-730	NEW-P	03-17-100	480-09-475	REP-P	03-17-100
480-07-140	NEW-P	03-17-100	480-07-740	NEW-P	03-17-100	480-09-480	REP-P	03-17-100
480-07-143	NEW-P	03-17-100	480-07-750	NEW-P	03-17-100	480-09-500	REP-P	03-17-100
480-07-145	NEW-P	03-17-100	480-07-800	NEW-P	03-17-100	480-09-510	REP-P	03-17-100
480-07-150	NEW-P	03-17-100	480-07-810	NEW-P	03-17-100	480-09-520	REP-P	03-17-100
480-07-160	NEW-P	03-17-100	480-07-820	NEW-P	03-17-100	480-09-530	REP-P	03-17-100
480-07-170	NEW-P	03-17-100	480-07-825	NEW-P	03-17-100	480-09-600	REP-P	03-17-100
480-07-180	NEW-P	03-17-100	480-07-830	NEW-P	03-17-100	480-09-610	REP-P	03-17-100
480-07-200	NEW-P	03-17-100	480-07-835	NEW-P	03-17-100	480-09-620	REP-P	03-17-100
480-07-210	NEW-P	03-17-100	480-07-840	NEW-P	03-17-100	480-09-700	REP-P	03-17-100
480-07-220	NEW-P	03-17-100	480-07-850	NEW-P	03-17-100	480-09-705	REP-P	03-17-100
480-07-230	NEW-P	03-17-100	480-07-860	NEW-P	03-17-100	480-09-710	REP-P	03-17-100
480-07-240	NEW-P	03-17-100	480-07-870	NEW-P	03-17-100	480-09-720	REP-P	03-17-100
480-07-300	NEW-P	03-17-100	480-07-875	NEW-P	03-17-100	480-09-730	REP-P	03-17-100
480-07-305	NEW-P	03-17-100	480-07-880	NEW-P	03-17-100	480-09-735	REP-P	03-17-100
480-07-310	NEW-P	03-17-100	480-07-883	NEW-P	03-17-100	480-09-736	REP-P	03-17-100
480-07-320	NEW-P	03-17-100	480-07-885	NEW-P	03-17-100	480-09-740	REP-P	03-17-100
480-07-330	NEW-P	03-17-100	480-07-900	NEW-P	03-17-100	480-09-745	REP-P	03-17-100
480-07-340	NEW-P	03-17-100	480-07-910	NEW-P	03-17-100	480-09-750	REP-P	03-17-100
480-07-345	NEW-P	03-17-100	480-07-920	NEW-P	03-17-100	480-09-751	REP-P	03-17-100
480-07-350	NEW-P	03-17-100	480-07-930	NEW-P	03-17-100	480-09-760	REP-P	03-17-100
480-07-355	NEW-P	03-17-100	480-07-940	NEW-P	03-17-100	480-09-770	REP-P	03-17-100
480-07-360	NEW-P	03-17-100	480-07-950	NEW-P	03-17-100	480-09-780	REP-P	03-17-100
480-07-370	NEW-P	03-17-100	480-09-005	REP-P	03-17-100	480-09-800	REP-P	03-17-100
480-07-375	NEW-P	03-17-100	480-09-010	REP-P	03-17-100	480-09-810	REP-P	03-17-100
480-07-380	NEW-P	03-17-100	480-09-012	REP-P	03-17-100	480-09-815	REP-P	03-17-100
480-07-385	NEW-P	03-17-100	480-09-015	REP-P	03-17-100	480-09-820	REP-P	03-17-100
480-07-390	NEW-P	03-17-100	480-09-100	REP-P	03-17-100	480-80-121	AMD-X	03-15-142
480-07-395	NEW-P	03-17-100	480-09-101	REP-P	03-17-100	480-80-122	AMD-X	03-15-142
480-07-400	NEW-P	03-17-100	480-09-110	REP-P	03-17-100	480-80-126	NEW-X	03-15-142
480-07-405	NEW-P	03-17-100	480-09-115	REP-P	03-17-100	480-80-205	AMD-X	03-15-142
480-07-410	NEW-P	03-17-100	480-09-120	REP-P	03-17-100	480-90-153	AMD-X	03-15-142
480-07-415	NEW-P	03-17-100	480-09-125	REP-P	03-17-100	480-90-238	PREP	03-09-069
480-07-420	NEW-P	03-17-100	480-09-130	REP-P	03-17-100	480-100-153	AMD-X	03-15-142
480-07-423	NEW-P	03-17-100	480-09-135	REP-P	03-17-100	480-100-238	PREP	03-09-068
480-07-425	NEW-P	03-17-100	480-09-140	REP-P	03-17-100	480-107	PREP	03-09-070
480-07-430	NEW-P	03-17-100	480-09-150	REP-P	03-17-100	480-107-001	AMD-X	03-15-142
480-07-440	NEW-P	03-17-100	480-09-200	REP-P	03-17-100	480-107-005	AMD-X	03-15-142
480-07-450	NEW-P	03-17-100	480-09-210	REP-P	03-17-100	480-110-435	AMD-X	03-15-142
480-07-460	NEW-P	03-17-100	480-09-220	REP-P	03-17-100	480-120-017	NEW	03-03-090
480-07-470	NEW-P	03-17-100	480-09-230	REP-P	03-17-100	480-120-019	NEW	03-03-090
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