

WSR 07-12-001
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 23, 2007, 2:53 p.m., effective June 23, 2007]

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

Purpose: Further explanation was needed in this section to clarify its intent for school apportionment purposes specifically. It does not change the certification of CTE teachers in any way.

Citation of Existing Rules Affected by this Order: Amending WAC 181-77-041.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-08-047 on March 28, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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Date Adopted: May 16, 2007.

Nasue Nishida
 Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates for certification who have not completed approved programs set forth in WAC 181-82-322 shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation ~~((of three years (six thousand hours)))~~ of paid occupational experience in the specific career and technical education subcategory for which certification is sought. ~~((One year (two thousand hours) must be within the past six years. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience.))~~

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

(i) General and specific safety;

(ii) Career and technical education teaching methods;

(iii) Occupational analysis;

(iv) Course organization and curriculum design;

(v) Philosophy of vocational education;

(vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

(i) School law;

(ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in diversified occupations or coordinator of work based learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer—i.e., school district(s) or skills center(s).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

WSR 07-12-003
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 06-15—Filed May 23, 2007, 4:18 p.m., effective June 23, 2007]

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

Purpose: The purpose of this rule change was to update the rule in accordance with changes to the federal program.

Citation of Existing Rules Affected by this Order: Amending WAC 173-480-030, 173-480-040, 173-480-050, 173-480-070, and 173-480-080.

Statutory Authority for Adoption: RCW 70.94.331 and 70.94.422.

Adopted under notice filed as WSR 07-03-183 on January 24, 2007.

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Date Adopted: May 23, 2007.

Jay J. Manning
 Director

AMENDATORY SECTION (Amending Order 86-04, filed 5/7/86)

WAC 173-480-030 Definitions. Unless a different meaning is clearly required by context words and phrases used in this chapter shall have the following meanings: General terms common with other chapters as defined in chapter ~~((173-403))~~ 173-400 WAC, and terms specific to the standards and limits of radionuclides as defined in this section.

(1) "ALARA" means as low as reasonably achievable making every reasonable effort to maintain exposures to radiation as far below the dose standards in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other socioeconomic considerations, and in relation to the utilization of nuclear energy, ionizing radiation, and radioactive materials in the public interest.

(2) "As low as reasonably achievable control technology" (ALARACT) means the use of radionuclide emission control technology that achieves emission levels that are consistent with the philosophy of ALARA.

(3) Best available radionuclide control technology "BARCT" means technology which will result in a radionu-

clide emission limitation based on the maximum degree of reduction for radionuclides which would be emitted from any proposed new or modified emission units which the permitting authority on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such emission unit or modification through application of production processes or available methods, systems, and techniques. In no event shall application of best available radionuclide technology result in emissions of radionuclides which would exceed the ambient annual standard limitation specified in this chapter.

~~((2)) "Critical organ" means the most exposed human organ or tissue exclusive of the skin (integumentary system) and the cornea.~~

~~(3) "Dose equivalent" means the product of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quantity of radiation and its distribution in the body.)~~

~~(4) "Effective dose equivalent" means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man.~~

~~(5) "Radionuclide" means any nuclide that emits radiation.~~

~~((5)) (6) "Rem" means a unit of dose equivalent radiation.~~

~~((6) "Whole body" means all human organs or tissue exclusive of the skin (integumentary system) and the cornea.)~~

AMENDATORY SECTION (Amending Order 86-04, filed 5/7/86)

WAC 173-480-040 Ambient standard. Emissions of radionuclides in the air shall not cause a maximum ~~((accumulated))~~ effective dose equivalent of more than ~~((25))~~ 10 mrem/y to the whole body ~~((or 75 mrem/y to a critical organ of))~~ to any member of the public. ~~((Doses due to radon-220, radon-222, and their respective decay products are excluded from these limits.))~~ Compliance with the standard shall be determined by procedures in WAC 173-480-070.

AMENDATORY SECTION (Amending Order 86-04, filed 5/7/86)

WAC 173-480-050 General standards for maximum permissible emissions. (1) All radionuclide emission units are required to meet the emission standards in this chapter. At a minimum all emission units shall meet ~~((WAC 402-10-010))~~ chapter 246-247 or 246-248 WAC (as applicable) requiring every reasonable effort to maintain radioactive materials in effluents to unrestricted areas, as low as reasonably achievable (ALARA). For the purposes of this chapter, control equipment of facilities operating under ALARA shall be defined as reasonably ~~((available))~~ achievable control technology (RACT).

(2) ~~((PSD—The emission requirements for an emission unit of radionuclides shall be the same for all areas of the state independent of prevention of significant deterioration (PSD) classification.~~

~~(3))~~ Whenever another federal or state regulation or limitation in effect controls the emission of radionuclides to the ambient air, the more stringent control of emissions shall govern.

AMENDATORY SECTION (Amending Order 86-04, filed 5/7/86)

WAC 173-480-070 Emission monitoring and compliance procedures. (1) The procedures specified in chapter ~~((402-80 WAC))~~ 246-247 or 246-248 WAC (as applicable) shall be used to determine compliance with the standard. Radionuclide emissions shall be determined and dose equivalents to members of the public shall be calculated using department of ~~((social and))~~ health ~~((services))~~ approved sampling procedures, department of ~~((social and))~~ health ~~((services))~~ approved models, or other procedures, including those based on environmental measurements that department of ~~((social and))~~ health ~~((services))~~ has determined to be suitable.

(2) Compliance with this standard shall be determined by calculating the dose to members of the public at the point of maximum annual air concentration in an unrestricted area where any member of the public may be.

AMENDATORY SECTION (Amending Order 86-04, filed 5/7/86)

WAC 173-480-080 Regulatory actions and penalties. (1) The department or any activated local air pollution control authority may enforce this chapter with the provisions of WAC ~~((173-403-170))~~ 173-400-230, Regulatory actions; and ~~((173-403-180))~~ 173-400-240, Criminal penalties.

(2) The responsible person may also be subject to the provisions of RCW ~~((34-04-030))~~ 34.05.350, Emergency rules and amendments; RCW 70.98.130, Administrative procedure; RCW 70.98.140, Injunction proceedings; and RCW 70.98.200, Penalties as cited by the department of ~~((social and))~~ health ~~((services))~~.

WSR 07-12-004

PERMANENT RULES

HOME CARE

QUALITY AUTHORITY

[Filed May 24, 2007, 9:34 a.m., effective June 24, 2007]

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

Purpose: Amending WAC 257-05-160 Who is required to complete safety training and when must it be completed? and amending WAC 257-05-240 Will DSHS deny payment of an individual provider who does not complete safety training?, to remove the safety training requirement for individual providers working for a consumer prior to December 1, 2004.

Citation of Existing Rules Affected by this Order: Amending WAC 257-05-160 and 257-05-240.

Statutory Authority for Adoption: RCW 74.39A.280(3).

Adopted under notice filed as WSR 07-07-033 on March 12, 2007.

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Date Adopted: May 23, 2007.

R. A. Hall

Executive Director

AMENDATORY SECTION (Amending WSR 05-01-158, filed 12/20/04, effective 1/20/05)

WAC 257-05-160 Who is required to complete safety training and when must it be completed? (1) Individual providers must complete safety training no later than one hundred twenty calendar days after beginning to work with their first DSHS consumer. Safety training must be provided by appropriate HCQA staff or contracted entities, or by approved trainers who meet DSHS requirements outlined in WAC 388-71-05875.

~~(2) ((Individual providers who are already working for a consumer as of December 1, 2004, have two calendar years to complete safety training.~~

~~(3))~~ Individual providers who are not required to complete basic core training, such as revised fundamentals of caregiving, identified in WAC 388-71-0500 through 388-71-05952 may complete safety training via distance learning. Alternate methods to complete safety training will be provided that could include innovative learning strategies such as:

- (a) CD, video, DVD, or other electronic method.
- (b) Internet-based or other computerized method.
- (c) Workbook of printed subject matter.

AMENDATORY SECTION (Amending WSR 05-01-158, filed 12/20/04, effective 1/20/05)

WAC 257-05-240 Will DSHS deny payment of an individual provider who does not complete safety training? HCQA will notify DSHS of an individual provider's noncompliance. DSHS will deny payment of an individual provider who does not return the attestation form and complete safety training within one hundred twenty calendar days after beginning to work with their first DSHS consumer.

~~((DSHS will deny payment of an individual provider who is already caring for a consumer as of December 1, 2004, and who does not complete the safety training by December 31, 2006.))~~

WSR 07-12-005
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 24, 2007, 1:49 p.m., effective June 24, 2007]

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

Purpose: Changes to this section of rule provide for full implementation of the permanent first peoples' language culture teacher certification.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-700.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-08-049 on March 28, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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.

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Date Adopted: May 17, 2007.

Nasue Nishida
 Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-04-015, filed 1/25/07, effective 2/25/07)

WAC 181-78A-700 First peoples' language/culture certification ((pilot)) program—Findings, purposes and intent—Definitions—Program established—Tribal eligibility to participate—Program requirements—Assignment of teachers—Reports. (1) **FINDINGS.** The professional educator standards board endorses the following:

(a) Teaching first peoples' languages can be a critical factor in successful educational experiences and promoting cultural sensitivity for all students. The effect is particularly strong for native American students;

(b) First peoples' languages are falling silent. Despite tribal efforts, first peoples' languages are not fully incorporated into the school systems. This is a loss to the cultural heritage of the affected tribes and to the cultural resources of Washington state;

(c) Recognition of native American languages under RCW 28A.230.090(3) and 28B.80.350(2), as satisfying state or local graduation requirements and minimum college admission requirements, while concentrating on promoting a

positive impact on student learning through state policies, is insufficient to meet the educational needs of native American students;

(d) The potential to have a positive impact on student learning is in part dependent on the willingness of the local education agency to collaborate with the sovereign tribal government's language/culture program;

(e) It is within the statutory authority of the professional educator standards board to enhance the learning opportunities for all students by helping prevent the loss of first peoples' languages through assisting the state's sovereign neighbors to sustain, maintain or recover their linguistic heritage, history and culture;

(f) From the Multi-Ethnic Think Tank position statement, June 2001:

(i) "...A culturally inclusive pedagogy will ensure the success of all students, who will develop greater appreciation of other cultures and worldviews;"

(ii) "All students have prior experiences that frame their worldview; learn from childbirth and are lifelong learners; can academically achieve at high levels when they are appropriately taught; and are entitled to learn in a multicultural context;"

(g) Research has shown that students who study another language may benefit in the following ways: Greater academic success in other areas of study, including reading, social studies, and mathematics; a clearer understanding of the English language including function, vocabulary and syntax; and an increase on standardized test scores, especially in verbal areas;

(h) From the Native American Languages Act, Public Law 101-477, Section 102, 1990:

(i) "The traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values;"

(ii) "Languages are the means of communication for the full range of human experiences and are critical to the survival of cultural and political integrity of any people"; and

(i) There are many sovereign tribal nations in the state of Washington and they serve the needs of many groups of first peoples, each possessing unique languages, cultures and worldviews.

(2) **PURPOSES.** The purpose of this section of the established first peoples' language/culture program is to accomplish the following goals:

(a) To honor the sovereign status of tribal governments in their sole expertise in the transmission of their indigenous languages, heritage, cultural knowledge, customs, traditions and best practices for the training of first peoples' language/culture teachers;

(b) Contribute to a positive impact on student learning by promoting continuous improvement of student achievement of the sovereign tribal government's language/culture learning goals, as established by each sovereign tribal government's language/culture program, and by supporting the goals for multicultural education included in the 2001 position statement developed by the Washington state Multi-Ethnic Think Tank;

(c) Contribute to the preservation, recovery, revitalization, and promotion of first peoples' languages and cultures;

(d) Meaningfully acknowledge that language is inherently integral to native American culture and ways of life;

(e) Implement in a tangible way the spirit of the 1989 Centennial Accord and the 2000 Millennium Accord between Washington state and the sovereign tribal governments in the state of Washington;

(f) Provide a mechanism for the professional educator standards board to recognize tribally qualified language/culture teachers as eligible to receive a Washington state first peoples' language/culture teaching certificate; and

(g) Provide the opportunity for native American students to learn first peoples' languages and cultures while at school and provide another avenue for students to learn core curricula through first peoples' worldviews.

(3) **INTENT.** It is the intent of the professional educator standards board to work in collaboration with the sovereign tribal governments of Washington state to establish a Washington state first peoples' language/culture teacher certification program in order to:

(a) Act in a manner consistent with the policy as specified in the Native American Languages Act, P.L. 101-477 Sec. 104(1) "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages";

(b) Act in a manner consistent with Washington state's government-to-government relationship with Washington state sovereign tribal governments and use the Washington state first peoples' language/culture certification programs to model effective government-to-government relationships;

(c) Act in a manner consistent with the goal of the state Basic Education Act under RCW 28A.150.210;

(d) Act in a manner consistent with the following purposes of Public Law 107-110, "No Child Left Behind Act":

(i) "Holding schools, local education agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education," [Sec. 1002(4)];

(ii) "Providing children an enriched and accelerated educational program, including the use of schoolwide programs or additional services that increase the amount and quality of instructional time," [Sec. 1002(8)];

(iii) "Promoting schoolwide reform and ensuring the access of children to effective, scientifically based instructional strategies and challenging academic content," [Sec. 1002(9)];

(iv) "...Supporting local education agencies, Indian tribes, organizations, postsecondary institutions and other entities to meet the unique education, culturally related academic needs of American Indian and Alaskan Native Students" [Sec. 7102(a)];

(e) Act on its involvement with and adoption of the 1991 joint policy statement on Indian education:

"K-12 American Indian dropout prevention is a priority of schools. Effective education needs to be implemented

throughout the K-12 school system if the American Indian student is to achieve academic and personal success";

(f) Acknowledge that there is a public responsibility to make available to all students in the state of Washington an accurate and balanced study of the American Indian experiences with and contributions to life on this continent;

(g) Act on the following professional educator standards board beliefs:

(i) In order to meet the needs of all students, highly qualified teachers are required;

(ii) All professional educator standards board policies and activities should meet the needs of the state's diverse student population;

(iii) In order for all students to achieve at high levels, multiple learning styles and needs must be supported; and

(h) Act on the following goals from the professional educator standards board's 2002-05 work plan:

(i) Professional education and certification requirements are aligned with education reform and support a positive impact on student learning;

(ii) All students shall be provided equitable educational opportunities.

(4) **DEFINITIONS.**

(a) "Positive impact on student learning" shall mean:

(i) The same as under WAC 181-78A-010(8) and 180-16-220 (2)(b); and

(ii)(A) Supporting the goal of basic education under RCW 28A.150.210, "...to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives...";

(B) Promoting continuous improvement of student achievement of the state learning goals and the sovereign tribal government's language/culture learning goals as established by each sovereign tribal government's language/culture program;

(C) Recognizing nonacademic student learning and growth related, but not limited, to: Oral traditions, community involvement, leadership, interpersonal relationship skills, teamwork, self-confidence, resiliency, and strengthened unique cultural identities;

(iii) Developing greater appreciation of other cultures and worldviews;

(b) A "culturally sensitive environment" honors the unique history, culture, values, learning styles, and community of the student. For example, to demonstrate the value of the language and culture, the homeroom teacher participates in the language/culture classroom. A "culturally sensitive environment" also includes those provisions as outlined in the Washington state joint policy on equity in education, revised in May 2000.

(c) For the purpose of this section, "highly qualified teachers" shall mean those teachers who meet the standards of the sovereign tribal government's language/culture program.

(5) **PROGRAM ESTABLISHED.** A Washington state first peoples' language/culture teacher certification program is established in January 2007. First peoples' language/culture teacher certificates issued prior and subsequent to June 30,

2006, shall be kept valid per subsection (7)(d)(iv) of this section.

(6) **TRIBAL ELIGIBILITY TO PARTICIPATE.** Any sovereign tribal government in the state of Washington shall be eligible to participate individually on a government-to-government basis in the pilot program.

(7) **PROGRAM REQUIREMENTS.**

(a) Each sovereign tribal government will (~~appoint and~~) certify individuals who meet the tribe's criteria for certification as instructors in the Washington state first peoples' language/culture program.

(b) Each sovereign tribal government's language/culture program shall submit to the (~~professional educator standards board~~) superintendent of public instruction the following information for each eligible language/culture teacher desiring to participate in the program:

(i) Written documentation that each designated teacher has completed the sovereign tribal government's language/culture teacher certification program;

(ii) Written documentation that each designated teacher has completed the background check required under RCW 28A.410.010 and WAC 181-79A-150 (1) and (2);

(iii) Written documentation that each designated teacher has completed a course on issues of abuse as required by RCW 28A.410.035 and WAC 181-79A-030(6);

(iv) Designation of which language(s), or dialects thereof, shall be listed on the Washington state first peoples' language/culture certificate;

(c) After meeting the requirements of (~~subsection (8))~~(b) of this (~~section and receiving professional educator standards board approval~~) subsection, the office of the superintendent of public instruction shall issue each teacher a Washington state first peoples' language/culture teaching certificate;

(d) Tribes will individually determine the continuing education and first peoples' language/culture certificate renewal requirements for their tribal language endorsement. As such, each tribe will do the following. Notify the certification division of the office of superintendent of public instruction when:

(i) A teacher has met the requirements for renewal/continuing education; or

(ii) A teacher has not met the requirements for renewal/continuing to hold a first peoples' language/culture certificate; or

(iii) A tribe, at any time, withdraws a teacher certification for any reason.

(iv) Every five years, the tribes will provide documentation that the certificate holder continues to meet the requirements of (a) of this subsection;

(e) To support a positive impact on student learning, the local education agency in consultation with the sovereign tribal government's language/culture program is strongly encouraged to provide:

(i) A minimum of one contact hour per day, five days a week;

(ii) Access to the same students from year to year, to the extent possible, so that students who receive instruction during the first year of the (~~project~~) program can continue to

receive instruction throughout the (~~three~~) first year(s) of the (~~project~~) program;

(iii) A culturally sensitive environment as defined in subsection (4)(b) of this section; or

(iv) Some combination of (e)(i), (ii), and (iii) of this subsection which will allow a positive impact on student learning;

(f) To document a positive impact on student learning, the sovereign tribal government's language/culture program is encouraged to provide written documentation of how teaching the first peoples' language/culture has supported the promotion of continuous improvement of student achievement of the program learning goals as established by each sovereign tribal government's language/culture program;

(g) To support a greater understanding of the government-to-government relationship, (~~the professional development and certification committee of the professional educator standards board and~~) the professional educator standards board (~~are~~) is strongly encouraged to make site visits and attend meetings with the local education agency and the sovereign tribal government's language/culture program;

(h) Nothing in this section shall be interpreted as precluding any eligible tribe in consultation with the state or in consultation with any local education agency from entering into an inter-governmental agreement or compact related to the teaching of first peoples' languages and cultures in order to address unique issues related to individual sovereign tribal governments.

(8) **ASSIGNMENT OF TEACHERS.**

(a) The holder of a Washington state first peoples' language/culture teacher certificate shall be deemed qualified to be a teacher of first peoples' language/culture with the ability to meet individual tribal competency criteria for language/culture, history, and English.

(b) A Washington state first peoples' language/culture teacher certificate qualifies the holder to accept a teaching position in a public school district.

(c) The holder of a Washington state first peoples' language/culture teacher certificate who does not also hold an initial (~~☞~~), residency, continuing or professional certificate shall be assigned to teach only the language(s)/culture(s) designated on the certificate, and no other subject.

(d) The Washington state first peoples' language/culture teacher certificate is recognized by the state of Washington for as long as the teacher holds a valid language/culture certificate from a participating sovereign tribal government.

(e) A Washington state first peoples' language/culture teacher certificate will serve as the sole endorsement in first peoples' language/culture for anyone holding an initial (~~☞~~), residency, continuing or professional certificate.

(9) **TRIBAL PREPARATION PROGRAM REVIEW.**

(a) Every five years, the joint committee of the professional educator standards board and the first peoples' language/culture committee shall prepare a report that includes:

(i) Reports from each participating tribe related to progress in meeting program objectives, with particular emphasis on positive impact on students;

(ii) Appraisal of the government-to-government relationship; and

(iii) Any relevant recommendations for continued program success.

(b) In order to promote understanding and collaboration, beginning with the second year of the program, the professional educator standards board may accept invitations from participating tribes to visit at least two tribal programs per year as identified and invited by the individual tribal programs.

(c) Annually, the professional educator standards board will commit to ensuring a professional educator standards board member(s) and staff attends the first peoples' language/culture committee meeting. The professional educator standards board will proactively identify opportunities to share information about the first peoples' language/culture program in order to support its growth and development.

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 07-12-006
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 24, 2007, 1:51 p.m., effective June 24, 2007]

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

Purpose: Sections in this chapter need to be revised to address certificate fees related to the first peoples' language/culture certificate, provisional certificate to residency certificate fees, the first peoples' language/culture certificate levels, requirements and certificate renewal.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-130, 181-79A-145, and 181-79A-150.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-08-048 on March 28, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 17, 2007.

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-130 Fee for certification. (1) In accordance with provisions of RCW 28A.410.060 and 28A.415.-010, the fee for certificates which are valid for more than one year, issued by authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be as follows:

(a) The first issue of the residency certificate, ~~((thirty-five))~~ five dollars for each year of validity;

(b) The continuing certificate, seventy dollars;

(c) The reinstatement, additional endorsement on the teaching certificate, duplicate certificates, substitute certificates, and certificates issued for the purpose of showing a name change, fifteen dollars; ~~((and))~~

(d) The first peoples' language/culture teacher certificate, twenty-five dollars; and

~~(e)~~ Any other certificate or credential or any renewal thereof, five dollars for each year of validity:

~~((e))~~ ~~(f)~~ Provided, That the fee for all career and technical education certificates shall be one dollar:

~~((f))~~ ~~(g)~~ Provided, That a one-time late fee for a renewed initial or continuing certificate issued under the provisions of WAC 181-79A-123 (7), (8), or (9) for those whose initial certificate had already expired shall be one hundred dollars.

(2) The fee for any other certificate/credential, or for any renewal thereof, issued by the authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be five dollars.

(3) Officials authorized to collect certification fees are educational service district superintendents, local school district superintendents, deans and directors of education at colleges and universities, or their designees. Sovereign tribal governments may collect certification fees for first peoples' language/culture certificates. The fee must accompany the application for a certificate and shall be transmitted by the receiving district, college or university, sovereign tribal government or program unit designee at least quarterly to the educational service district within which the application is filed for disposition in accordance with provisions of RCW 28A.410.060. The fee shall not be refunded unless the application is withdrawn before it is finally considered (i.e., the issuance of a certificate or a written communication denying such issuance) by the superintendent of public instruction or his or her designee. Fees not refunded shall apply as credit toward certificate fees if such applicant reapplies within twenty-four months of the date of denial. Moneys accrued from certification fees within the boundaries of an educational service district shall be divided in the following manner:

(a) Local school districts employing more than one hundred teachers and other professional staff and collecting certification fees may retain one dollar of each fee in order to hold a professional training institute. If such district does not

hold an institute, all such moneys shall be placed to the credit of the educational service district.

(b) No less than fifty percent of the funds accruing within the boundaries of an educational service district shall be used to support program activities related to statewide pre-certification professional preparation and evaluation.

(c) The remaining funds shall be used to support professional in-service training programs and evaluations thereof.

(d) Use of certification fees described in this section shall be reported annually to the professional educator standards board pursuant to WAC 181-79A-131(5).

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-145 Levels and validity of certificates (~~(initial/residency and continuing/professional)~~). Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has lapsed or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors, school psychologists, and school social workers no later than September 1, 2005.

(b) The residency certificate for principals, program administrators, and educational staff associates is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250 (2)(b) and (c).

(c) The first issue of a residency certificate for teachers employed in a school district or state agency that provides educational services for students shall be valid until the holder is no longer on provisional status. When the teacher for the first time in their career completes provisional status, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the teacher must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(a).

(d) The first issue of a residency certificate for teachers employed in a state approved private school shall be valid until the holder has completed two years of successful teaching. When the teacher for the first time in their career completes two years of successful teaching, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the teacher must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(a).

(e) The first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two successful years of service in the role. When the principal, program administrator, or educational staff associate for the first time in their career completes two years of successful service in a school district, state approved private school, or state agency, their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(b) and (c).

(f) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors, school psychologists, and school social workers beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language/culture certificates: The first peoples' language/culture certificate will be issued beginning in January 2007. The first peoples' language/culture certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-150 General requirements—Teachers, administrators, educational staff associates and first peoples' language/culture teachers. The following requirements are to be met by candidates for certification as teachers including career and technical education teachers, administrators, ~~(or)~~ educational staff associates, or first peoples' language/culture teachers:

(1) Age. No person who is less than eighteen years of age shall receive a certificate to serve in the public or nonpublic schools of Washington state.

(2) Character. Applicants for certificates in Washington state who are not holders of a valid Washington state teacher's, administrator's, educational staff associate's, ~~((or))~~ career and technical education, or first peoples' language/culture teacher's certificate must give evidence of good moral character and personal fitness as specified in WAC 181-79A-155 and must complete a record check through the Washington state patrol criminal identification system and through the Federal Bureau of Investigation at the applicant's expense as required by RCW 28A.410.010; such record check shall include a fingerprint check using a Washington state patrol approved fingerprint card: Provided, That the superintendent of public instruction may waive the record check for an applicant who has had a record check within the two years prior to application.

(3) Degrees and course work. A candidate for certification shall hold appropriate degrees, licenses, and additional course work as prescribed in chapters 181-79A and 181-77 WAC or have qualified under WAC 181-79A-257 or 181-78A-700.

(4) Approved preparation program. Applicants for certification as teachers, administrators, school counselors, school psychologists and school social workers, except as otherwise provided in WAC 181-79A-257, and 181-79A-231, and in chapter 181-77 WAC, in order to be certified within the state of Washington shall have completed a state approved college/university preparation program in the professional field for which certification is to be issued. Applicants for certification as first peoples' language/culture teachers shall have completed a sovereign tribal government's first peoples' language/culture teaching certification program.

(5) Certificates.

(a) Candidates for principal's certificates must hold or have held:

(i) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates; or

(ii) A valid educational staff associate certificate and have demonstrated successful school-based experience in an instructional role with students. Persons whose teacher or educational staff associate certificates were revoked, suspended, or surrendered are not eligible for principal's certificates.

(b) Candidates for superintendent's certificates must hold a valid teacher, educational staff associate, program administrator, or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(6) Assessments. See RCW 28A.410.220.

NEW SECTION

WAC 181-79A-252 First peoples' language/culture certificates—Renewal and continuing education requirements. The following shall apply to first peoples' language/culture certificates issued pursuant to this chapter:

A first peoples' language/culture certificate may be renewed for an additional five-year period on application and verification that the individual has met tribal renewal/continuing education requirements.

WSR 07-12-010

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 06-06—Filed May 24, 2007, 4:15 p.m., effective June 24, 2007]

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

Purpose: This rule establishes requirements for all treatment works treating domestic sewage, including sewage treatment plants and other facilities which generate, treat, or use biosolids pursuant to chapters 70.95J and 70.95 RCW. The rule prescribes permitting processes; addresses septage management requirements; changes the program implementation fee; clarifies previous rule interpretations and program policy; and corrects some inconsistencies between the biosolids rule and the biosolids general permit.

Citation of Existing Rules Affected by this Order: Amending chapter 173-308 WAC, Biosolids management.

Statutory Authority for Adoption: Chapters 70.95J and 70.95 RCW.

Adopted under notice filed as WSR 07-03-099 on January 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: Based on public comments, ecology made some changes to the rule language. These changes include: Clarifying the requirements for the mixing of grease trap wastes and other commercial/industrial septage with domestic septage; clarifying the requirements for the removal of manufactured inerts and allowable concentrations of manufactured inerts in land applied biosolids; and eliminating the requirement for a management plan for the storage of biosolids that does not meet a vector attraction reduction standard. Please see concise explanatory statement for more details.

A final cost-benefit analysis is available by contacting Cathy Carruthers, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6564, fax (360) 407-6989, e-mail caca461@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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 12, Amended 27, Repealed 4.

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

Date Adopted: May 24, 2007.

Polly Zehm
for Jay J. Manning
Director

NEW SECTION

WAC 173-308-005 Explanation for the use of the terms "sewage sludge," "biosolids," and "septage." (1) Sewage sludge is the solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Biosolids are produced by treating sewage sludge to meet certain quality standards that allow it to be applied to the land for beneficial use. Septage is a class of biosolids that comes from septic tanks and similar systems receiving domestic wastes.

(a) Sewage sludge. Unless the context requires otherwise, "sewage sludge" is the term used in this chapter to refer to the residual material produced by a treatment works treating domestic sewage that does not meet the standards to be classified as biosolids or that is being disposed in a municipal solid waste landfill.

(b) Biosolids. Unless the context requires otherwise, "biosolids" is the term used in this chapter to refer to sewage sludge or septage that has been or is being treated to meet standards so that it can be applied to the land.

(c) Septage. Unless the context requires otherwise, "septage" is the term used in this chapter to refer to septage that is or will be managed as septage.

(2) The following sections apply only to biosolids or septage managed as biosolids originating from sewage sludge: WAC 173-308-150, 173-308-160, 173-308-170, 173-308-180, 173-308-200, 173-308-210, 173-308-250, and 173-308-260.

(3) WAC 173-308-270 addresses the management requirements for septage.

(4) Unless the context requires otherwise, all other sections apply to all biosolids, including septage.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-010 Authority and purpose. (1) **Authority.** This chapter is adopted under the authority of chapters 70.95J and 70.95 RCW.

(2) **Purpose.**

~~((a) The purpose of this chapter is to protect human health and the environment when biosolids are applied to the land. This chapter encourages the maximum beneficial use of biosolids, and is intended to conform to all applicable federal rules adopted under the Federal Clean Water Act as it existed on February 4, 1987.~~

~~(b) This chapter establishes permitting requirements for treatment works treating domestic sewage that engage in applicable biosolids treatment or management practices, including any person, site, or facility that has been designated as a treatment works treating domestic sewage.~~

~~(c) This chapter establishes standards for the treatment, quality, and management of municipal sewage sludge and~~

~~domestic septage that are directly enforceable, and that allow these materials to be classified and managed as biosolids.~~

~~(d) This chapter establishes requirements, standards, management practices, and monitoring, recordkeeping and reporting requirements that are applicable when biosolids are applied to the land and when municipal sewage sludge is disposed in a municipal solid waste landfill unit as defined in WAC 173-351-100.~~

~~(e) This chapter establishes fees for permits issued to facilities that engage in applicable biosolids management activities:~~

~~Fees under WAC 173-308-320 do not apply to persons whose activity is limited to pumping, hauling, temporarily storing, or delivering septage or biosolids to other facilities or land application sites, if:~~

~~(i) They do not engage in the treatment of the septage or biosolids;~~

~~(ii) They have not been designated as a treatment works treating domestic sewage; and~~

~~(iii) The generating and receiving facility or land application site is in compliance with the requirements of WAC 173-308-310.) The purpose of this chapter is to protect human health and the environment when biosolids are managed.~~

~~(a) This chapter encourages the maximum beneficial use of biosolids and is intended to conform to all applicable federal rules adopted under the Federal Clean Water Act as it existed on February 4, 1987.~~

~~(b) This chapter establishes permitting requirements for treatment works treating domestic sewage that engage in applicable biosolids treatment or management practices, including any person, site, or facility that has been designated as a treatment works treating domestic sewage.~~

~~(c) This chapter establishes standards for the treatment, quality, and management of sewage sludge and septage that are directly enforceable and that allow these materials to be classified and managed as biosolids.~~

~~(d) This chapter establishes requirements, standards, management practices, and monitoring, recordkeeping and reporting requirements that are applicable when biosolids are applied to the land and when sewage sludge is disposed in a municipal solid waste landfill unit as defined in chapter 173-351 WAC.~~

~~(e) This chapter establishes fees for permits issued to treatment works treating domestic sewage.~~

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-020 Applicability. ~~((1) Unless otherwise specified in this chapter, these rules apply to the following:~~

~~(a) A person who prepares biosolids;~~

~~(b) A person who stores biosolids;~~

~~(c) A person who applies biosolids to the land;~~

~~(d) Biosolids that are applied to the land;~~

~~(e) The land where biosolids are applied;~~

~~(f) The owner and lease holder of land where biosolids are applied;~~

(g) A person who disposes of municipal sewage sludge in a municipal solid waste landfill;

(h) Municipal sewage sludge that is disposed of in a municipal solid waste landfill.

(2) This chapter does not apply to the following municipal sewage sludge and biosolids management facilities and practices:

(a) The firing of municipal sewage sludge in an incinerator.

(b) The placing or disposal of municipal sewage sludge or biosolids in facilities other than municipal solid waste landfills.

(3) Except as provided in (a) and (g) of this subsection, the following solid wastes are not regulated under this chapter:

(a) Sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage; sludge generated at an industrial facility during the treatment of only domestic sewage is considered municipal sewage sludge subject to the requirements of this chapter.

(b) Sewage sludge determined to be hazardous in accordance with chapter 70.105 RCW or rules adopted thereunder.

(c) Sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

(d) Ash generated during the firing of municipal sewage sludge or biosolids in an incinerator.

(e) Grit or screenings generated during preliminary treatment of domestic sewage in a treatment works.

(f) Sludge generated during the treatment of either surface water or ground water used for drinking water.

(g) Commercial septage, industrial septage, or a mixture of domestic septage and commercial or industrial septage; on a case-by-case basis, on request of the person who applies septage to the land or at the department's discretion, the department may designate the septage in this subsection (3)(g) as septage that is domestic in quality, and require the septage to be managed in accordance with the provisions of this chapter.) (1) These rules apply to all treatment works treating domestic sewage as defined by this chapter. In addition, these rules apply to, but are not limited to, the following:

(a) A person who prepares biosolids or sewage sludge.

(b) A person who stores biosolids or sewage sludge.

(c) A person who applies biosolids to the land.

(d) Biosolids that are applied to the land.

(e) The land where biosolids are applied.

(f) The owner and lease-holder of land where biosolids are applied.

(g) A person who disposes of sewage sludge in a municipal solid waste landfill.

(h) Sewage sludge that is disposed of in a municipal solid waste landfill.

(i) Biosolids or sewage sludge generated at an industrial facility during the treatment of only domestic sewage.

(j) A person who transfers biosolids or sewage sludge from one facility to another.

(k) A person who transports biosolids or sewage sludge.

(1) Mixtures of biosolids and other materials including, but not limited to, solid wastes.

(2) This chapter does not apply to the following sewage sludge and biosolids management facilities and practices:

(a) The firing of biosolids or sewage sludge in an incinerator.

(b) The placing or disposal of sewage sludge in facilities other than municipal solid waste landfills (e.g., the placement of sewage sludge at a surface disposal site).

(3) Except as provided in (g) of this subsection, the following solid wastes are not regulated under this chapter:

(a) Sludge generated at an industrial facility during the treatment of industrial wastewater, including when such a facility combines their industrial wastewater with their domestic sewage.

(b) Sewage sludge determined to be hazardous in accordance with chapter 70.105 RCW or rules adopted thereunder.

(c) Sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

(d) Ash generated during the firing of sewage sludge or biosolids in an incinerator.

(e) Grit or screenings generated during preliminary treatment of domestic sewage in a treatment works.

(f) Sludge generated during the treatment of either surface water or ground water used for drinking water.

(g) Commercial or industrial septage or a mixture of domestic septage and commercial or industrial septage except as allowed in accordance with this subsection.

(i) Grease trap wastes from restaurants and similar food service facilities may be mixed with domestic septage up to twenty-five percent by volume.

(ii) On a case-by-case basis, on request of a septage management facility or at the department's discretion, the department may designate other commercial or industrial septage as septage that is "domestic in quality" and require the septage to be managed in accordance with the provisions of this chapter.

(iii) At no time may the combined total of grease trap wastes and other commercial or industrial septage mixed with domestic septage exceed twenty-five percent by volume.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-030 Relationship to other laws, regulations, and ordinances. ((In addition to the requirements of this chapter, other laws, regulations, and ordinances may also apply to biosolids. These include but are not limited to the following:

(1) Commercial fertilizers are subject to regulation by the Washington state department of agriculture. The following statutes and rules apply to biosolids meeting the definition of a commercial fertilizer under chapter 15.54 RCW:

(a) Chapter 15.54 RCW – Fertilizers, minerals, and limes; and chapter 16-200 WAC – rules relating to fertilizers, minerals and limes, including requirements for labeling, licensing, and registration;

~~(b) Chapter 19.94 RCW — Weights and measures; and chapter 16.666 WAC — Weights and measures — Packaging and labeling regulations.~~

~~(2) Except as required in WAC 173-308-100, the transportation of biosolids or municipal sewage sludge is subject to regulation by the Washington state utilities and transportation commission under Title 81 RCW.~~

~~(3) Facilities required to obtain permits under WAC 173-308-310 must comply with the requirements in chapter 43.21C RCW and the State Environmental Policy Act rules adopted under chapter 197-11 WAC. Public notice and hearing requirements under the State Environmental Policy Act may be coordinated with the similar requirements of this chapter.~~

~~(4) Biosolids facilities and sites where biosolids are applied to the land must comply with other applicable federal, state and local laws including zoning and land use requirements. Enforcement of other laws and regulations is the responsibility of the agency with jurisdiction.)) In addition to the requirements of this chapter, other laws, regulations, and ordinances may also apply to biosolids or sewage sludge. These include, but are not limited to, the following:~~

~~(1) Commercial fertilizers are subject to regulation by the Washington state department of agriculture. Biosolids meeting the definition of a commercial fertilizer must comply with chapter 15.54 RCW and chapter 16-200 WAC.~~

~~(2) Except as required in WAC 173-308-100, the transportation of biosolids or sewage sludge is subject to regulation by the Washington state utilities and transportation commission under Title 81 RCW.~~

~~(3) Facilities required to obtain permits under WAC 173-308-310 must comply with the requirements in chapter 43.21C RCW and the State Environmental Policy Act (SEPA) rules adopted under chapter 197-11 WAC. Public notice and hearing requirements under SEPA may be coordinated with the similar requirements of this chapter.~~

~~(4) Biosolids facilities and sites where biosolids are applied to the land must comply with the requirements of chapter 90.48 RCW and chapters 173-200 and 173-201A WAC.~~

~~(5) Facilities and sites where biosolids are applied to the land or sewage sludge is disposed must comply with the federal biosolids rule, 40 CFR Part 503.~~

~~(6) Facilities and sites where biosolids are applied to the land must comply with other applicable federal, state and local laws, regulations, and ordinances, including zoning and land use requirements.~~

~~(7) The enforcement of other laws, regulations, and ordinances is the responsibility of the agency with jurisdiction.~~

NEW SECTION

WAC 173-308-041 Enforcement. Any violation of this chapter or any permit issued under this chapter may be subject to the enforcement provisions of applicable law including, but not limited to, chapters 70.95 and 70.95J RCW.

NEW SECTION

WAC 173-308-042 Appeals. Any person aggrieved by a decision of the department made in accordance with provi-

sions of this chapter may appeal that decision only as provided by applicable law including, but not limited to, chapters 43.21B and 34.05 RCW.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-050 Delegation of authority. ~~((+))~~ Upon the request of a local health ~~((department))~~ jurisdiction, the department may delegate authority to implement and assist in the administration of appropriate portions of this chapter.

Delegation must be consistent with any applicable state-EPA agreement regarding delegation of federal biosolids program authority.

~~((2))~~ **(1) Method of delegation.**

(a) Delegation will be accomplished through an instrument of mutual consent that is acceptable to both the department and the local health ~~((department))~~ jurisdiction seeking delegation.

(b) The department may revoke part or all of a delegation of authority under this section if it finds that a local health ~~((department))~~ jurisdiction has failed to adequately carry out any portion of a delegated responsibility.

~~((e) As an alternative to revocation of local delegation under (b) of this subsection, the department may correct any deficiencies in a locally approved state permit element by implementing the requirements of this chapter in a separate state approved land application plan or permit. In such case the requirements of the state plan or permit will be in addition to or take precedent over local requirements.~~

~~((3))~~ **(2) Contents of delegation agreements.**

(a) At a minimum, delegation agreements must specify the authorities and responsibilities that are being delegated to a local health ~~((department))~~ jurisdiction.

(b) Other authorities and responsibilities are assumed to be retained by the department.

(c) All delegation agreements must have a termination date that is no more than five years from the date signed.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-060 Biosolids not classified as solid waste. (1) The state of Washington recognizes biosolids as a valuable commodity.

(2) Biosolids are not solid waste and are not subject to regulation under solid waste laws.

~~((2) Municipal)~~ (3) Sewage sludge or septage that fails to meet standards for classification as biosolids is a solid waste, and may not be applied to the land.

~~((3) Municipal)~~ (4) Sewage sludge or septage that will be disposed in a landfill is a solid waste.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-080 Definitions. Unless the department determines that the context of the rule requires otherwise, the following definitions are applicable for the purposes of this chapter.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Aerobic digestion" is the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air. Aerobic digestion does not include composting.

"Agricultural land" is land on which a food crop, feed crop, or fiber crop is grown. This includes range land and land used as pasture.

"Agronomic rate" is the ~~((whole))~~ biosolids application rate ~~((dry weight basis))~~ that will provide the amount of nitrogen required for optimum growth of vegetation) that provides the amount of nitrogen necessary for the optimum growth of targeted vegetation, and that will not result in the violation of applicable standards or requirements for the protection of ground or surface water as established under chapter 90.48 RCW and related rules including chapters 173-200 and ~~((173-201))~~ 173-201A WAC.

"Anaerobic digestion" is the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air. Anaerobic digestion does not include composting.

~~("Annual pollutant loading rate" is the maximum amount of a pollutant that can be applied to a unit area of land during a three hundred sixty-five day period.~~

"Annual whole biosolids application rate" is the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a three hundred sixty-five day period.)

"Apply biosolids or biosolids applied to the land" means the land application of biosolids for the purpose of beneficial use.

"Beneficial use facility" means a receiving-only facility consisting of a site or sites where biosolids from other treatment works treating domestic sewage are applied to the land for beneficial use, which has been permitted as a treatment works treating domestic sewage in accordance with the provisions of WAC 173-308-310, and that has been designated as a beneficial use facility through the permitting process.

"Beneficial use of biosolids" means the application of biosolids to the land for the purposes of improving soil characteristics including tilth, fertility, and stability ~~((and enhancing))~~ to enhance the growth of vegetation consistent with protecting human health and the environment.

"Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all applicable requirements under this chapter. Biosolids includes a material derived from biosolids, and septic tank sludge, also known as septage, that can be beneficially recycled and meets all applicable requirements under this chapter. For the purposes of this rule, semisolid products include biosolids or products derived from biosolids ranging in character from mostly liquid to fully dried solids.

"Biosolids sold or given away in a bag or other container" means biosolids sold or given away to the general public in a bag or other container holding less than 1 metric ton (1.1 U.S. tons).

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

"Ceiling concentration" means the maximum concentration of a pollutant in any biosolids sample, beyond which level the biosolids would be classified as ~~((municipal))~~ sewage sludge not suitable for application to the land. Ceiling concentrations are established in Table 1 of WAC 173-308-160.

"Class I biosolids management facility" is any publicly owned treatment works (POTW), as defined in 40 CFR 501.2, required to have an approved pretreatment program under 40 CFR 403.8(a) (including any POTW located in a state that has elected to assume local program responsibilities under 40 CFR 403.10(e)), and any treatment works treating domestic sewage, as defined in 40 CFR 122.2, classified as a Class I biosolids management facility by the EPA Regional Administrator, or in the case of approved state programs, the Regional Administrator in conjunction with the state director, because of the potential for its biosolids use or disposal practice to affect public health and the environment adversely.

"Clean Water Act" or "CWA" means the Clean Water Act or Federal Clean Water Act (FCWA) (formerly referred to as either the Federal Water Pollution Act or the Federal Water Pollution Control Act Amendments of 1972), Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, Public Law 97-117, and Public Law 100-4.

"Composting" means the ~~((controlled))~~ biological degradation of organic ~~((solid waste yielding a product for use as a soil conditioner))~~ material under controlled conditions designed to promote aerobic decomposition. This does not include the treatment of sewage sludge in a digester at a wastewater treatment plant.

"Cumulative pollutant loading rate" is the maximum amount of a pollutant that can be applied to an area of land from biosolids that exceed the pollutant concentration limits established in Table 3 of WAC 173-308-160.

"Density of microorganisms" is the number of microorganisms per unit mass of total solids (dry weight) in the biosolids.

"Department" means the Washington state department of ecology and, within the scope of its delegation, a local health ~~((department))~~ jurisdiction that has been delegated authority under WAC 173-308-050.

"Director" means the director of the department of ecology or his or her authorized representative.

"Disposal on an emergency basis" means a period up to but not exceeding one year. Generally, emergency situations requiring the use of disposal facilities will normally occur as a result of inclement weather conditions at a beneficial use site, contractual or technical difficulties in the treatment, transportation, or application of the biosolids, or as a result of short term economic or administrative barriers, any and all of which are expected to be resolved within a period of one year.

"Disposal on a long-term basis" means to adopt disposal as a preferred method of management for at least five years, or for an indefinite period of time with no expectation for pursuing other management alternatives.

"Disposal on a temporary basis" means a period of more than one but less than five years. Generally, situations requiring the temporary use of disposal facilities will normally occur as a result of deficiencies in the wastewater or biosolids treatment process, or economic, administrative, or contractual constraints which cannot be resolved in less than one year.

~~("Domestic septage" means domestic septage—Class I, Class II, or Class III as defined in this section.~~

~~**"Domestic septage—Class I"** is liquid or solid material removed from domestic septic tanks, cess pools, or similar treatment works that receive only domestic sewage, and that has had a sufficiently long residency time to be considered largely stabilized. For the purposes of managing mixed loads or batches of septage, a load or batch is considered Class I if it does not exceed twenty five percent by volume of Class II domestic septage or twenty five percent by volume of restaurant grease trap waste, unless otherwise approved by the regulatory authority.~~

~~**"Domestic septage—Class II"** is liquid or solid material removed from portable toilets, type III marine sanitation devices, vault toilets, pit toilets, RV holding tanks or other similar holding systems that receive only domestic sewage.~~

~~**"Domestic septage—Class III"** is liquid or solid material removed from domestic septic tanks, cess pools, or similar treatment works that receive sewage from commercial or industrial sources, but which the department has determined to be domestic in quality under WAC 173-308-020 (3)(g).~~

~~**"Domestic septage managed as biosolids originating from municipal sewage sludge"** means domestic septage managed as if it had originated from a sewage treatment process at a publicly owned treatment works.)~~

"Domestic sewage" is waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Dry weight basis" means calculated on the basis of having been dried at 105°C (221°F) until reaching a constant mass (i.e., essentially one hundred percent solids content).

"EPA" means the United States Environmental Protection Agency.

"Exceptional quality biosolids" means biosolids that meet the pollutant concentration limits in Table 3 of WAC 173-308-160, and at least one of the Class A pathogen reduction requirements in ~~((one of))~~ WAC 173-308-170 ~~((2)(a) through (f))~~, and at least one of the vector attraction reduction requirements in ~~((one of))~~ WAC 173-308-180 ~~((2) through (7))~~.

"Facility" means a treatment works treating domestic sewage as defined in this chapter, unless the context of the rule requires otherwise. For the purposes of this chapter a facility is considered to be new if it has not been previously approved for the treatment, storage, use, or disposal of biosolids or sewage sludge.

"Feed crops" are crops produced primarily for consumption by animals.

"Fiber crops" are crops such as flax and cotton~~(s)~~ including, but not limited to, those whose parts or by-products may be consumed by humans or used in the production or preparation of food for human consumption.

"Food crops" are crops consumed by humans. These include, but are not limited to, fruits, vegetables, grains, and tobacco.

"Forest" is an area of land that is managed for the production of timber or other forest products, or for benefits such as recreation and watershed protection, and that is or will be dominated by trees under the current system of management. For the purposes of this rule, other areas of land that are not regulated as agricultural land, public contact sites, land reclamation sites, or lawns or home gardens are considered ~~((forestland))~~ forest land.

~~**"General permit(s)"** ((for the purposes of this chapter,)) means a permit issued by the department in accordance with the procedures established in this chapter ((or in chapter 173-226 WAC)), to be effective in a designated geographical area, that authorizes the application of biosolids to the land or the disposal of ((biosolids)) sewage sludge in a municipal solid waste landfill, under which multiple treatment works treating domestic sewage may apply for coverage.~~

"Geometric mean" means the antilogarithm of the arithmetic average of the logarithms of the sample values, or the nth root of the product of n sample values.

"Ground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.

"Health ((department)) jurisdiction" or **"local health ((department)) jurisdiction"** means city, county, city-county, or district public health ~~((department))~~ jurisdiction as defined in chapters 70.05, 70.08, and 70.46 RCW.

~~**"Individual permit(s)"** ((for the purposes of this chapter,)) means a permit issued by the department to a single treatment works treating domestic sewage in accordance with WAC 173-308-310, which authorizes the ((application)) management of biosolids ((to the land or the disposal of biosolids in a municipal solid waste landfill)) or sewage sludge.~~

"Industrial septage" or "commercial septage" is the contents from septic tanks or similar systems that receive wastewater generated in a commercial or industrial process. This definition includes, but is not limited to, grease trap wastes generated at restaurants and similar food service facilities.

"Industrial wastewater" or "commercial wastewater" is wastewater generated in a commercial or industrial process.

"Land application" is the application of biosolids to the land surface by means such as spreading or spraying~~(s)~~, the injection of biosolids below the land surface~~(s)~~, or the incorporation of biosolids into the soil, for the purpose of beneficial use.

"Land with a low potential for public exposure" is land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Land with a high potential for public exposure" is land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Local health ((department)) jurisdiction" see definition of health ~~((department))~~ jurisdiction.

"Manufactured inerts" means wastes such as plastic, metals, ceramics and other manufactured items that remain relatively unchanged during wastewater or biosolids treatment processes.

"Monthly average" is the arithmetic mean of all measurements taken during the month.

"Municipal sewage sludge" means sewage sludge generated from a publicly owned treatment works. For the purposes of this chapter, sewage sludge generated from the treatment of only domestic sewage in a privately owned or industrial treatment facility is considered municipal sewage sludge.

"Municipality" means a city, town, borough, county, parish, district, association, or other public body (including an inter-municipal agency of two or more of the foregoing entities) created by or under state law, or a designated and approved management agency under section 208 of the Clean Water Act, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in section 201(e) of the Clean Water Act, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of biosolids.

"Nonexceptional quality biosolids" means biosolids that do not meet the criteria of "exceptional quality biosolids" as defined in this section.

"Other container" is either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton (1.1 U.S. tons) or less.

"Owner" means any person with ownership interest in a site or facility, or who exercises control over a site or facility, but does not include a person who, without participating in management of the site or facility, holds indicia of ownership primarily to protect the person's security interest.

"Pasture" is land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" are disease causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Permit" means an authorization, license, or equivalent control document issued by the director to implement the requirements of this chapter. Unless the context requires differently, the use of the term in this chapter refers to individual permits, general permits, and coverage under general permits.

"Person" is an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof.

"Person who prepares biosolids" is either the person who generates biosolids during the treatment of domestic sewage in a treatment works or the person who derives a material from biosolids.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration.

"Place sewage sludge" or **"sewage sludge placed"** means to dispose of sewage sludge.

"Pollutant" is an organic substance, an inorganic substance, a combination of organic and inorganic substances, or

a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the Administrator of EPA, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" is a numerical value that describes the amount of a pollutant allowed per unit amount of biosolids (e.g., milligrams per kilogram of total solids), the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare), the volume of a material that can be applied to a unit area of land (e.g., gallons per acre), or the number of pathogens or indicator organisms per unit of biosolids. Pollutant limits are established in Tables 1 - (4) of WAC 173-308-160, in 173-308-170, and in 173-308-270.

"Public contact site" is land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

"Publicly owned treatment works" means a treatment works treating domestic sewage that is owned by a municipality, the state of Washington, or the federal government.

"Range land" is generally open, uncultivated land dominated by herbaceous or shrubby vegetation that may be used for grazing or browsing, either by wildlife or livestock.

"Receiving-only facility" means a treatment works treating domestic sewage that only receives (municipal) sewage sludge or biosolids from other sources for further treatment and/or application to the land, and which does not generate any biosolids from the treatment of domestic sewage.

"Reclamation site" is drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

"Regional administrator" means the Regional Administrator of Region 10 of the Environmental Protection Agency or his/her authorized representative.

"Residential equivalent value" means the number of residential equivalents determined for a facility under chapter 173-224 WAC or a value similarly obtained under WAC 173-308-320.

"Restrict public access" means to minimize access of nonessential personnel to land where biosolids are applied, through the use of natural or artificial barriers, signs, remoteness, or other means.

"Saturated zone" means the zone below the water table in which all interstices are filled with water.

"Septage" or **"domestic septage"** is liquid or solid material removed from septic tanks, cess pools, portable toilets, type III marine sanitation devices, vault toilets, pit toilets, RV holding tanks, or similar systems that receive only domestic sewage. Septage may also include commercial or industrial septage mixed with domestic septage if approved in accordance with the provisions in WAC 173-308-020 (3)(g).

"Septage managed as biosolids originating from sewage sludge" means septage managed as if it had originated

from a sewage treatment process at a wastewater treatment facility including, but not limited to, meeting the sampling requirements in WAC 173-308-140, the monitoring requirements in WAC 173-308-150, the pollutant limits in WAC 173-308-160, the pathogen reduction requirements in WAC 173-308-170, and the vector attraction reduction requirements in this chapter.

"Septage management facility" means a person who applies septage to the land or one that treats septage for application to the land.

"Sewage sludge" is solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Significant change in biosolids management practices" means, but is not limited to, the following: A change in the quality of biosolids that are applied to the land, either from class A to class B for pathogens, or from Table 3 to Table 1 of WAC 173-308-160 for pollutant limits; the addition of a new area to which biosolids will be applied(;) which was not previously disclosed during a required public notice process; for class B biosolids only, a change from non-food crops to food crops, a change from crops where the harvestable portions do not contact the biosolids/soil mixture to crops where the harvestable portions contact(§) the biosolids/soil mixture, or a change in site classification from land with a low potential for public exposure to land with a high potential for public exposure; or any change or deletion of a requirement established in an approved land application plan or established as a condition of coverage under a permit that would result in a decrease in buffer size, site monitoring, or facility reporting requirements, which was not otherwise provided for in the permit or plan approval process.

~~("Significantly remove or reduce recognizable materials" means to remove recognizable debris from biosolids by means such as screening, or to reduce the number of recognizable items in biosolids by means such as grinding, to a level that in the opinion of the department, will not result in an aesthetic nuisance or physical hazard when biosolids are applied to the land.)~~

"Site" means all areas of land, including buffer areas, which are identified in the scope of an approved site specific land application plan. A site is considered to be new or expanded when biosolids are applied to an area not approved in a site specific land application plan or that was not previously disclosed during a required public notice process.

"Specific oxygen uptake rate (SOUR)" is the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the biosolids.

"State" means the state of Washington.

"Store or storage of biosolids or sewage sludge" is the placing of biosolids or sewage sludge on land ~~((on which the biosolids remain for two years or less))~~ or in surface impoundments or other containment devices in which the

biosolids or sewage sludge remain for two years or less, except where a greater time period has been approved by the department. This does not include the placing of biosolids or sewage sludge on land or in surface impoundments or other containment devices for treatment or disposal.

"Stover" is the nongrain, above-ground part of a grain crop, often corn or sorghum.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquids or sludges. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Surface waters of the state" means surface waters of the state as defined in WAC 173-201A-020.

"Tank" means a stationary device designed to contain an accumulation of liquid or semisolid materials and which is constructed primarily of nonearthen materials to provide structural support.

"Temporary, small-scale storage" is the storage of biosolids or sewage sludge for no more than thirty days in a tank holding no more than 10,000 gallons with a total on-site maximum volume of no more than 20,000 gallons.

"Total solids" are the materials in biosolids that remain as residue when the biosolids are dried at 103 to 105°C (217.4 to 221°F).

"Treat or treatment of biosolids" is the preparation of biosolids for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of biosolids. This does not include storage of biosolids.

"Treatment works" is either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

"Treatment works treating domestic sewage" means a publicly owned treatment works or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage or sewage sludge, including land dedicated for the disposal of sewage sludge. Treatment works treating domestic sewage also includes ((#) beneficial use ((facility that has been permitted in accordance with the provisions of WAC 173-308-310)) facilities and septage management facilities as defined in this section, and a person, site, or facility designated as a treatment works treating domestic sewage in accordance with WAC 173-308-310 (1)(b). This definition does not include septic tanks or similar devices(, but may include persons or vehicles that service septic systems and centralized septage facilities that are designated as a treatment works treating domestic sewage or are applicable under this definition)) or temporary, small-scale storage as defined in this section.

"Unstabilized solids" are organic materials in biosolids that have not been treated in either an aerobic or anaerobic treatment process.

"**Vector attraction**" is the primarily odorous characteristic of biosolids that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"**Volatile solids**" is the amount of the total solids in biosolids that are lost when the biosolids are combusted at 550°C (1,022°F) in the presence of excess air.

"**Waters of the state**" means waters of the state as defined in RCW 90.48.020.

"**Wetlands**" means those areas that are inundated or saturated by surface water or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-090 Requirement for a person who prepares biosolids or sewage sludge. Any person who prepares biosolids or sewage sludge must ensure that the applicable requirements in this chapter and any applicable permit issued under this chapter are met when the biosolids are ~~((applied to the land))~~ managed.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-100 Requirement for a person who transports biosolids or sewage sludge. This section applies to facilities required to obtain a permit under this chapter who transport their biosolids or sewage sludge or contract for the transportation of their biosolids or sewage sludge.

(1) Any person who transports biosolids or sewage sludge must ensure that the transportation vehicle is properly cleaned prior to use of the vehicle for the transportation of food crops, feed crops, or fiber crops.

(2) **Spill prevention/response plan.** Facilities must submit a spill prevention/response plan to the department which describes how they will attempt to prevent and respond to any spillage of biosolids or sewage sludge during transportation. The plan must include a list of contact names and numbers, an explanation of how and when they would be contacted, what their role is, and how a spill would be cleaned up. For those who contract for the transportation of their biosolids or sewage sludge, a contractor's plan is sufficient if the minimal requirements are met.

(3) The transportation of biosolids or sewage sludge is otherwise subject to regulation by the Washington state utilities and transportation commission under Title 81 RCW and WAC 173-308-030(2).

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-120 Requirement to obtain and provide information. (1) It is a violation of the provisions of this chapter for any person to falsify a certification or statement that is required by these rules or to make any required certification or statement under false pretense.

(2) Any person who applies biosolids to the land must obtain information needed to comply with the requirements of this chapter.

(3) The person who prepares biosolids must provide the person who applies biosolids to the land with notice and necessary information to comply with the requirements of this chapter, including sufficient information on the concentration and types of nutrients in the biosolids needed to determine an agronomic rate for the crop under management.

(4) When a person who prepares biosolids provides the biosolids to another person who further prepares the biosolids, the person who provides the biosolids must provide the person who receives the biosolids notice and necessary information to comply with the requirements of this chapter.

(5) The person who applies bulk biosolids to the land must provide the owner or lease holder of the land on which the bulk biosolids are applied notice and necessary information to comply with the requirements of this chapter.

(6) The person who applies nonexceptional quality bulk biosolids to the land must obtain written approval of the landowner prior to applying biosolids to the land for the first time ~~((when the bulk biosolids do not meet the criteria to be classified as exceptional quality))~~.

(7) All persons required to keep and maintain records under any provision of this chapter must provide access to those records during normal business hours to a representative of the department, a local health ~~((department))~~ jurisdiction, or the United States EPA, and to the owner, lessor, lessee or other person with a legal management interest in the land on which the biosolids are applied, at the location where the records are kept.

(8) Any facility, including a beneficial use facility, must immediately notify all sources from which it receives biosolids, if at any time it becomes unsuitable for the purpose of receiving biosolids from those other sources.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-130 ~~((Additional or more stringent))~~ Requirements for treatment works located outside of the jurisdiction of the department. ~~((On a case-by-case basis, the department may impose requirements for the beneficial use of biosolids that are in addition to or more stringent than the requirements in this chapter if the department believes that the additional or more stringent requirements are necessary to protect public health and the environment from any adverse effect of a pollutant in the biosolids.~~

~~((1) In addition to other considerations, failure of a generator, applicator, or landowner to conform to any applicable requirements of this chapter may be cause to impose additional or more stringent requirements.~~

~~((2) The department will impose any additional or more stringent requirements under WAC 173-308-130 in a permit issued to the applicable facility.))~~ When bulk biosolids or sewage sludge or biosolids in a bag or other container originating from treatment works located on tribal lands, in other states, or in other nations are exported into the state, the requirements of this section must be met.

(1) Bulk biosolids or sewage sludge from a treatment works seeking its own management program within the state must meet the following requirements:

(a) The exporting facility must apply for a permit in accordance with the requirements in WAC 173-308-310 and receive final coverage under a general permit or receive an individual permit prior to exporting biosolids or sewage sludge into the state.

(b) The exporting facility must pay a fee as determined by the criteria specified in WAC 173-308-320.

(2) Bulk biosolids or sewage sludge from a treatment works seeking to transfer its biosolids or sewage sludge to a facility within the state for management or further treatment must meet the following requirements:

(a) The exporting facility must receive written approval from the department prior to exporting biosolids or sewage sludge for the first time.

(b) There must be no sustainable objection to the approval required in (a) of this subsection from the EPA or the local health jurisdiction(s) in the county(s) where the material will be received.

(c) The biosolids or sewage sludge must be exported to a facility with a current permit issued by the department that allows it to accept biosolids or sewage sludge from other facilities.

(d) The receiving facility must maintain any applicable records and certification statements required in WAC 173-308-290 on the biosolids or sewage sludge from the exporting facility and provide such records to the department upon request and in its annual biosolids report.

(e) The exporting facility must pay a fee as determined by the criteria specified in WAC 173-308-320.

(3) Biosolids in a bag or other container must meet the following requirements:

(a) The exporting facility must receive written approval from the department prior to exporting biosolids for the first time.

(b) The biosolids must meet the requirements in WAC 173-308-260.

(4) The exporting facility must be in compliance with any other federal, state, provincial, or local biosolids or sewage sludge laws, regulations, and ordinances.

(5) All other applicable requirements of this chapter must be met.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-140 Biosolids sampling and ((analysis)) analytical methods. (1) **Sampling.** Samples that are collected and analyzed must be representative of the biosolids that are applied to the land.

(2) **((Analysis)) Analytical methods.**

(a) The most current version of the publications listed in this subsection are incorporated by reference ((in this chapter. Methods in the publications listed below must be used to analyze samples of biosolids unless other methods are approved in writing by the department)). These publications are available for review during normal working hours at the Washington State Department of Ecology headquarters located at 300

Desmond Drive in Olympia, Washington. Copies may be obtained from the standard producer or publisher.

~~((a) For enteric viruses use ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," 1992 Annual Book of ASTM Standards: Section 11 Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, PA 19103-1187.~~

~~(b) For fecal coliform use part 9221-E. or part 9222-D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street NW, Washington, DC 20005.~~

~~(c) For helminth ova use Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 88-154273/AS).~~

~~(d) For inorganic pollutants use, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Second Edition (1982) with Updates I (April 1984) and II (April 1985) and Third Edition (November 1986) with Revision I (December 1987). Second Edition and Updates I and II are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 87-190-291). Third Edition and Revision I are available from Superintendent of Documents, Government Printing Office, 941 North Capitol Street NE, Washington, DC 20002 (Document Number 955-001-00000-1).~~

For the analysis of nitrogen and other nutrients the department may specify additional analytical references that are acceptable:

~~(e) For salmonella sp. bacteria use part 9260-D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street NW, Washington, DC 20005; or Kenner, B.A. and H.P. Clark, "Detection and enumeration of Salmonella and Pseudomonas aeruginosa," Journal of the Water Pollution Control Federation, Vol. 46, no. 9, September 1974, pp. 2163-2171. Water Environment Federation, 601 Wythe Street, Alexandria, VA 22314.~~

~~(f) For specific oxygen uptake rate (SOUR) use part 2710-B., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street NW, Washington, DC 20005.~~

~~(g) For total, fixed, and volatile solids use part 2540-G., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, 1992, American Public Health Association, 1015 15th Street NW, Washington, DC 20005.)~~ (b)

Unless otherwise stipulated by the department, the following methods (or methods in 40 CFR Part 136 or 40 CFR Part 503) must be used to analyze samples of biosolids or sewage sludge.

ANALYTICAL METHODS

Parameter	Analytical Method
Arsenic	SW-846 Method 6010
	SW-846 Method 6020
	SW-846 Method 7010
	SW-846 Method 7061

<u>Parameter</u>	<u>Analytical Method</u>
<u>Cadmium</u>	SW-846 Method 6010 SW-846 Method 6020 SW-846 Method 7000B SW-846 Method 7010
<u>Copper</u>	SW-846 Method 6010 SW-846 Method 6020 SW-846 Method 7000B SW-846 Method 7010
<u>Lead</u>	SW-846 Method 6010 SW-846 Method 6020 SW-846 Method 7000B SW-846 Method 7010
<u>Mercury</u>	SW-846 Method 7470 SW-846 Method 7471
<u>Molybdenum</u>	SW-846 Method 6010 SW-846 Method 6020 SW-846 Method 7000B SW-846 Method 7010
<u>Nickel</u>	SW-846 Method 6010 SW-846 Method 6020 SW-846 Method 7000B SW-846 Method 7010
<u>Selenium</u>	SW-846 Method 6010 SW-846 Method 6020 SW-846 Method 7010 SW-846 Method 7741
<u>Zinc</u>	SW-846 Method 6010 SW-846 Method 6020 SW-846 Method 7000B SW-846 Method 7010
<u>Fecal Coliform</u>	SM 9221 C or E SM 9222 D Appendix F, EPA/625/R-92/013 EPA 1680 EPA 1681
<u>Salmonella Bacteria</u>	SM 9260 D Appendix G, EPA/625/R-92/013 EPA 1682
<u>Helminth Ova</u>	Appendix I, EPA/625/R-92/013
<u>Enteric Viruses</u>	ASTM Designation: D 4994-89 Appendix H, EPA/625/R-92/013

<u>Parameter</u>	<u>Analytical Method</u>
<u>Total Kjeldahl Nitrogen (TKN)</u>	SM Method 4500, N _{org} -B SM Method 4500, N _{org} -C
<u>Nitrate (as N)</u>	SM Method 4500-NO ₃ -E, F, or H
<u>Nitrite (as N)</u>	SM Method 4500-NO ₂ -B
<u>Ammonia (as N)</u>	SM Method 4500-NH ₃ -B + C, D, E, or G
<u>Organic Nitrogen</u>	Value calculated as TKN minus NH ₃ -N
<u>Total Phosphorus</u>	SM Method 4500-P B + E or F
<u>Total Solids, Fixed Solids, or Volatile Solids</u>	SM Method 2540 G
<u>Volatile Solids Reduction</u>	Appendix C, EPA/625/R-92/013
<u>Additional Volatile Solids Reduction for Anaerobically Digested Solids</u>	Appendix D (1), EPA/625/R-92/013
<u>Additional Volatile Solids Reduction for Aerobically Digested Solids</u>	Appendix D (3), EPA/625/R-92/013
<u>Specific Oxygen Update Rate (SOUR)</u>	SM Method 2710 B Appendix D (2), EPA/625/R-92/013
<u>pH</u>	SW-846 Method 9045D
<u>TCLP</u>	SW-846 Method 1311
<u>Paint Filter Test</u>	SW-846 Method 9095B
Where:	
ASTM	≡ <i>"Standard Practice for Recovery of Viruses From Wastewater Sludges"</i> , Annual Book of ASTM Standards: Section 11-Water and Environmental Technology, ASTM, 1916 Race Street, Philadelphia, PA 19103-1187.
EPA/625/R-92/013	≡ <i>"Environmental Regulations and Technology, Control of Pathogens and Vector Attraction in Sewage Sludge (Including Domestic Septage) Under 40 CFR Part 503"</i> , U.S. Environmental Protection Agency, Office of Research and Development, National Risk Management Research Laboratory, Center for Environmental Research Information, Cincinnati, OH 45268.

<u>Parameter</u>	<u>Analytical Method</u>
EPA 1680	≡ USEPA. Method 1680: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation Using Lauryl-Tryptose Broth (LTB) and EC Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA-821-R-06-012.
EPA 1681	≡ USEPA. Method 1681: Fecal Coliforms in Sewage Sludge (Biosolids) by Multiple-Tube Fermentation using A-1 Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA-821-R-06-013.
EPA 1682	≡ USEPA. Method 1682: Salmonella in Sewage Sludge (Biosolids) by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA-821-R-06-014.
SM	≡ "Standard Methods for the Examination of Water and Wastewater", American Public Health Association, 1015 15th Street NW, Washington, DC 20005.
SW-846	≡ "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA publication SW-846. Available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<u>MINIMUM FREQUENCY OF MONITORING</u>	
<u>Metric tons (U.S. tons) per 365-day period</u>	<u>Frequency</u>
Greater than zero but less than 290 (320)	once per year
Equal to or greater than 290 (320) but less than 1,500 (1,653)	once per quarter (4 times per year)
Equal to or greater than 1,500 (1,653) but less than 15,000 (16,535)	once per 60 days (6 times per year)
Equal to or greater than 15,000 (16,535)	once per month (12 times per year)

~~((1))~~ The frequency of monitoring required by this section is based on the dry weight tonnage of bulk biosolids applied to the land per three hundred sixty five day period, or the dry weight tonnage of biosolids received per three hundred sixty five day period by a person who prepares biosolids that are sold or given away for application to the land.

~~(2))~~ (4) Treatment works treating domestic sewage that transfer biosolids or sewage sludge for further treatment to another facility are not required to monitor for pollutant concentrations, pathogen reduction, or vector attraction reduction unless specifically required to do so in a permit issued by the department.

(5) After the biosolids have been monitored for two years at the frequency in ~~((subsection (3) of))~~ this section, the person who prepares the biosolids may request the department to reduce the frequency of monitoring for pollutant concentrations ~~(, and for the pathogen density requirements in WAC 173-308-170 (2)(c)(ii) and (iii))~~. The frequency of monitoring must not be less than once per year when biosolids are applied to the land.

~~((3))~~ **MINIMUM FREQUENCY OF MONITORING**

<u>Metric tons (U.S. tons) per 365-day period</u>	<u>Frequency</u>
Greater than zero but less than 290 (320)	once per year
Equal to or greater than 290 (320) but less than 1,500 (1,653)	once per quarter (four times per year)
Equal to or greater than 1,500 (1,653) but less than 15,000 (16,535)	once per 60 days (six times per year)
Equal to or greater than 15,000 (16,535)	once per month (12 times per year))

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-150 Frequency of biosolids monitoring. (1) The frequency of monitoring required by this section is based on the dry weight tonnage of bulk biosolids applied to the land per three hundred sixty-five-day period or the dry weight tonnage of biosolids received per three hundred sixty-five-day period by a person who prepares biosolids that are sold or given away for application to the land.

(2) The person who prepares biosolids is responsible for ensuring that monitoring is carried out in accordance with the requirements of this chapter and any applicable permit.

(3) The minimum frequency of monitoring ~~((for))~~ listed below applies to the pollutants listed in Tables 1, 2, and 3 ~~((and 4))~~ of WAC 173-308-160~~((;)),~~ the pathogen density requirements in WAC 173-308-170~~((;)),~~ and the vector attraction reduction requirements in WAC 173-308-180~~((; is prescribed in subsection (3) of this section;)).~~

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-160 Biosolids pollutant limits. This section sets pollutant concentration limits ~~((, and annual))~~ and cumulative pollutant loading rate limits for biosolids that are applied to the land.

(1) **Table 1.** Table 1 of this section sets the maximum allowable concentration (ceiling limit) of pollutants in biosolids that are applied to the land. ~~((Municipal))~~ Sewage sludge

that contains any pollutant listed in Table 1 of this section at a concentration greater than the allowable ceiling limit is not biosolids, is a solid waste, and may not be applied to the land.

(2) **Table 2.** Table 2 of this section sets the maximum quantities of pollutants that may be added to an area of land, also referred to as the cumulative pollutant loading rate. The cumulative pollutant loading rates in Table 2 apply when the concentration of any pollutant in biosolids that are applied to the land exceeds the allowable pollutant concentration limit in Table 3 of this section.

(a) A person may not apply bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of this section to a land application site, if any of those rates have been reached on the site.

(b) Before bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of this section are applied to the land, the person who proposes to apply the bulk biosolids must contact the local health ~~((department))~~ jurisdiction and the department to determine whether bulk biosolids subject to the cumulative pollutant loading rates were applied to the site before the effective date of this chapter.

(i) If bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of this section have been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site since that date is known, in addition to any amount subtracted in (b)(iii) of this subsection, the amount previously applied must be subtracted from the cumulative pollutant loading rate for each pollutant, to determine the remaining amount of pollutant that may be applied to the site.

(ii) If bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of this section have been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, additional biosolids subject to the cumulative pollutant loading rates in Table 2 of this section may not be applied to the site.

(iii) If bulk biosolids were applied to the site prior to July 20, 1993, and the cumulative amount of each pollutant applied to the site prior to that date can be determined, in addition to any amount subtracted in (b)(i) of this subsection, the amount applied must be subtracted from the cumulative pollutant loading rate for each pollutant, to determine the remaining amount of pollutant that may be applied to the site.

(iv) If bulk biosolids subject to the cumulative pollutant loading rates in Table 2 of this section have not been applied to the site, the cumulative amount of each pollutant listed in Table 2 of this section may be applied to the site.

(v) Any person who applies bulk biosolids to the land, which are subject to the cumulative pollutant loading rates in Table 2 of this section, must provide written notice prior to the initial application of bulk biosolids to the land. Notice must be submitted to the department, and to any local health ~~((department))~~ jurisdiction in whose jurisdiction the biosolids will be applied. The department and the local health ~~((department))~~ jurisdiction must retain and provide access to the notice. The notice must include the following:

(A) The location of each site, either by street address ~~((if applicable, a copy of the assessor's plat))~~, the latitude and longitude of the approximate center, or the section, township and

range of each quarter section, and a map(s) with the application area(s) clearly shown ~~((or the latitude and longitude of the approximate center of each land application site, and the section, township and range of each quarter section on which biosolids are applied; and))~~.

(B) The name, address, telephone number, and National Pollutant Discharge Elimination System (NPDES) or state waste discharge permit number and state biosolids permit number (if applicable) of the person who prepared the biosolids and also of the person who applies (if applicable) the bulk biosolids.

(3) **Table 3.** Table 3 of this section sets a lower pollutant concentration threshold which, when achieved, relieves the person who prepares biosolids and the person who applies biosolids, from certain requirements related to recordkeeping, reporting, and labeling.

~~((4) Table 4 of this section sets annual pollutant loading rates used to derive an annual whole biosolids application rate. Table 4 is applicable only when biosolids that are sold or given away in a bag or other container for application to the land exceed any of the pollutant concentration limits in Table 3 of this section. The person who prepares the biosolids must provide information on compliance with this requirement on a label or information sheet as required under WAC 173-308-260 (1)(b)(ii) and (4)(b).))~~

TABLE 1 - CEILING CONCENTRATION LIMITS

POLLUTANT	CEILING CONCENTRATION ((*)) <u>milligrams per kilogram</u> <u>(dry weight basis)</u>
Arsenic	75
Cadmium	85
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

~~((*Milligrams per kilogram – dry weight basis))~~

TABLE 2 - CUMULATIVE POLLUTANT LOADING RATES

POLLUTANT	CUMULATIVE POLLUTANT LOADING RATE ((*)) <u>kilograms</u> <u>per hectare (dry weight basis)</u>
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

~~((*Kilograms per hectare – dry weight basis))~~

TABLE 3 - POLLUTANT CONCENTRATION LIMITS

POLLUTANT	LIMIT (*) <u>monthly average in milligrams per kilogram (dry weight basis)</u>
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

~~(*) Monthly average concentration in milligrams per kilogram - dry weight basis~~

TABLE 4 - ANNUAL POLLUTANT LOADING RATES

POLLUTANT	ANNUAL POLLUTANT LOADING RATE *
Arsenic	2.0
Cadmium	1.9
Copper	75
Lead	15
Mercury	0.85
Nickel	21
Selenium	5.0
Zinc	140

~~*Kilograms per hectare per 365-day period)~~

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-170 Pathogen reduction. ~~((+))~~ This section contains the requirements for biosolids to be classified either Class A or Class B with respect to pathogens.

~~((a) The requirements in subsection (2)(a)(i) and (ii), or (b)(i) and (ii), or (c)(i), (ii), and (iii), or (d)(i), (ii) and (iii), or (e)(i) and (ii), or (f)(i) and (ii) of this section must be met for biosolids to be Class A for pathogens.~~

(b) The Class A pathogen requirements must be met at the same time or before the vector attraction reduction requirements in WAC 173-308-180 (2), (3), or (4).

(c) The requirements in subsection (3)(a), (b), or (c) of this section must be met for biosolids to be Class B for pathogens.

(2) Biosolids - Class A:

(a) Class A - Alternative 1:

~~((+))~~ The Class A pathogen reduction requirements must be met at the same time or before the vector attraction reduction requirements in WAC 173-308-180 (1), (2), or (3).

(1) Class A - Alternative 1: Time and Temperature.

(a) Fecal coliform or Salmonella sp. bacteria density.

The density of fecal coliform in the biosolids must be less than 1000 Most Probable Number per gram of total solids (dry weight basis)~~(*)~~ or the density of *Salmonella sp. bacteria* in the biosolids must be less than three Most Probable

Number per four grams of total solids (dry weight basis) at the time the biosolids are used~~(*)~~, at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land~~(*)~~, or at the time the biosolids or material derived from biosolids ~~((are))~~ is prepared to meet the requirements for exemption in WAC 173-308-200~~(*)~~, and

~~((ii) The time and temperature requirements in (a)(i)(A), (B), (C), or (D)) one of the requirements in (b) through (e) of this subsection must be met.~~

~~((A))~~ (b) When the percent solids of the biosolids is seven percent or higher, the temperature of the biosolids must be 50°C (122°F) or higher~~(*)~~, the time period must be twenty minutes or longer~~(*)~~, and the temperature and time period must be determined using equation (1), except when small particles of biosolids are heated by either warmed gases or an immiscible liquid~~(*)~~.

$$D = \frac{131,700,000}{10^{(0.1400t)}} \quad \text{Equation (1)}$$

$$D = \frac{131,700,000}{10^{0.1400t}}$$

Where~~(*)~~:

D = time in days~~(*)~~

t = temperature in degrees Celsius~~(*)~~

~~((B))~~ (c) When the percent solids of the biosolids is seven percent or higher and small particles of biosolids are heated by either warmed gases or an immiscible liquid, the temperature of the biosolids must be 50°C (122°F) or higher~~(*)~~, the time period must be fifteen seconds or longer~~(*)~~, and the temperature and time period must be determined using equation (1)~~(*)~~.

~~((C))~~ (d) When the percent solids of the biosolids is less than seven percent and the time period is at least fifteen seconds, but less than thirty minutes, the temperature and time period must be determined using equation (1)~~(*)~~.

~~((D))~~ (e) When the percent solids of the biosolids is less than seven percent~~(*)~~, the temperature of the biosolids is 50°C (122°F) or higher~~(*)~~, and the time period is thirty minutes or longer, the temperature and time period must be determined using equation (2).

$$D = \frac{50,070,000}{10^{(0.1400t)}} \quad \text{Equation (2)}$$

$$D = \frac{50,070,000}{10^{0.1400t}}$$

Where~~(*)~~:

D = time in days~~(*)~~

t = temperature in degrees Celsius~~(*)~~

~~((b))~~ (2) Class A - Alternative 2: **pH, Time, Temperature, and Percent Solids.**

~~((+))~~ (a) **Fecal coliform or Salmonella sp. bacteria density.** The density of fecal coliform in the biosolids must be less than 1000 Most Probable Number per gram of total solids (dry weight basis)~~(*)~~ or the density of *Salmonella sp.*

bacteria in the biosolids must be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids are used, at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land, or at the time the biosolids or material derived from biosolids is prepared to meet the requirements for exemption in WAC 173-308-200, and the requirements in (b) of this subsection must be met.

(b) The pH of the biosolids that are used must be raised to above twelve and remain above twelve for seventy-two hours.

(i) The temperature of the biosolids must be above 52°C (126°F) for twelve hours or longer during the period that the pH of the biosolids is above twelve.

(ii) At the end of the seventy-two-hour period during which the pH of the biosolids is above twelve, the biosolids must be air dried to achieve a percent solids in the biosolids greater than fifty percent.

3 Class A - Alternative 3:

(a) Processes to Further Reduce Pathogens.

(a) Fecal coliform or *Salmonella sp.* bacteria density.

The density of fecal coliform in the biosolids must be less than 1000 Most Probable Number per gram of total solids (dry weight basis) or the density of *Salmonella sp.* bacteria in the biosolids must be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids are used, at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land, or at the time the biosolids or material derived from biosolids is prepared to meet the requirements for exemption in WAC 173-308-200, and

The biosolids must be analyzed prior to pathogen treatment to determine whether the biosolids contain enteric viruses; and

(A) When the density of enteric viruses in the biosolids prior to pathogen treatment is less than one plaque-forming unit per four grams of total solids (dry weight basis), the biosolids are Class A with respect to enteric viruses until the next monitoring episode for the biosolids; or

(B) When the density of enteric viruses in the biosolids prior to pathogen treatment is equal to or greater than one plaque-forming unit per four grams of total solids (dry weight basis), the biosolids are Class A with respect to enteric viruses when the density of enteric viruses in the biosolids after pathogen treatment is less than one plaque-forming unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the biosolids that meets the enteric virus density requirement are documented.

(C) After the enteric virus reduction in (c)(ii)(B) of this subsection is demonstrated for the pathogen treatment process, the biosolids continue to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented.

(iii) The biosolids must be analyzed prior to pathogen treatment to determine whether the biosolids contains viable helminth ova; and

(A) When the density of viable helminth ova in the biosolids prior to pathogen treatment is less than one per four

grams of total solids (dry weight basis), the biosolids are Class A with respect to viable helminth ova until the next monitoring episode for the biosolids; or

(B) When the density of viable helminth ova in the biosolids prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the biosolids are Class A with respect to viable helminth ova when the density of viable helminth ova in the biosolids after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the biosolids that meets the viable helminth ova density requirement are documented.

(C) After the viable helminth ova reduction in (c)(iii)(B) of this subsection is demonstrated for the pathogen treatment process, the biosolids continue to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented.

(d) Class A - Alternative 4.

(i) The density of fecal coliform in the biosolids must be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids must be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids are used; at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements for exemption in WAC 173-308-200; and

(ii) The density of enteric viruses in the biosolids must be less than one plaque-forming unit per four grams of total solids (dry weight basis) at the time the biosolids are used; at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements for exemption in WAC 173-308-200, unless otherwise specified by the department; and

(iii) The density of viable helminth ova in the biosolids must be less than one per four grams of total solids (dry weight basis) at the time the biosolids are used; at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements for exemption in WAC 173-308-200, unless otherwise specified by the department.

(e) Class A - Alternative 5.

(i) The density of fecal coliform in the biosolids must be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the biosolids must be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids are used; at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements for exemption in WAC 173-308-200; and

(ii) The biosolids must be treated in one of the processes to further reduce pathogens described in (c)(ii)(A) through (G) of this subsection.

(A) Composting.

(I) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the biosolids must be maintained at 55°C or higher for three days.

(II) Using the windrow composting method, the temperature of the biosolids must be maintained at 55°C or higher for fifteen days or longer. During the period when the compost is maintained at 55°C or higher, there must be a minimum of five turnings of the windrow.

(B) Heat drying. Biosolids must be dried by direct or indirect contact with hot gases to reduce the moisture content of the biosolids to ten percent or less. Either the temperature of the biosolids particles must exceed 80°C or the wet bulb temperature of the gas in contact with the biosolids as the biosolids leaves the dryer must exceed 80°C.

(C) Heat treatment. Liquid biosolids must be heated to a temperature of 180°C or higher for thirty minutes.

(D) Thermophilic aerobic digestion. Liquid biosolids must be agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the biosolids must be at least ten days at 55 to 60°C.

(E) Beta ray irradiation. Biosolids must be irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

(F) Gamma ray irradiation. Biosolids must be irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature (ca. 20°C).

(G) Pasteurization. The temperature of the biosolids must be maintained at 70°C or higher for thirty minutes or longer.

(f) Class A – Alternative 6.

(i) The density of fecal coliform in the biosolids must be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella* sp. bacteria in the biosolids must be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids are used; at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements for exemption in WAC 173-308-200; and

(ii) The biosolids must be treated in a process that is equivalent to a process to further reduce pathogens. Pathogen equivalency for biosolids applied to land under jurisdiction of the state of Washington will be determined by the department or by the EPA with the approval and concurrence of the department.

(3) Biosolids – Class B.**(a) Class B – Alternative 1.**

(i) Seven samples of the biosolids must be collected at the time the biosolids are used; and

(ii) The geometric mean of the density of fecal coliform of the samples must be less than 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

(b) Class B – Alternative 2. The biosolids must be treated in one of the processes to significantly reduce pathogens described in (b)(i) through (v) of this subsection.

(i) Aerobic digestion. The biosolids must be agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature must be between forty days at 20°C and sixty days at 15°C.

(ii) Air drying. The biosolids must be dried on sand beds or on paved or unpaved basins. The biosolids must dry for a minimum of three months. During two of the three months, the ambient average daily temperature must be above 0°C.

(iii) Anaerobic digestion. The biosolids must be treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature must be between fifteen days at 35 to 55°C and sixty days at 20°C.

(iv) Composting. Using the within-vessel, static aerated pile, or windrow composting methods, the temperature of the biosolids must be raised to 40°C or higher and remain at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile must exceed 55°C.

(v) Lime stabilization. Sufficient lime must be added to the biosolids to raise the pH of the biosolids to twelve after two hours of contact.

(e) Class B – Alternative 3.) one of the requirements in (b)(i) through (vii) of this subsection must be met.

(b) Processes to further reduce pathogens. The biosolids must be treated in one of the processes to further reduce pathogens described in this subsection.

(i) Composting.

(A) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the biosolids must be maintained at 55°C (131°F) or higher for three days.

(B) Using the windrow composting method, the temperature of the biosolids must be maintained at 55°C (131°F) or higher for fifteen days or longer. During the period when the compost is maintained at 55°C (131°F) or higher, there must be a minimum of five turnings of the windrow.

(ii) Heat drying. Biosolids must be dried by direct or indirect contact with hot gases to reduce the moisture content of the biosolids to ten percent or less and one of the following requirements must be met.

(A) The temperature of the biosolids particles must exceed 80°C (176°F).

(B) The wet bulb temperature of the gas in contact with the biosolids as the biosolids leave the dryer must exceed 80°C (176°F).

(iii) Heat treatment. Liquid biosolids must be heated to a temperature of 180°C (356°F) or higher for thirty minutes.

(iv) Thermophilic aerobic digestion. Liquid biosolids must be agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the biosolids must be at least ten days at 55 to 60°C (131 to 140°F).

(v) Beta ray irradiation. Biosolids must be irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20°C (68°F)).

(vi) Gamma ray irradiation. Biosolids must be irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature (ca. 20°C (68°F)).

(vii) Pasteurization. The temperature of the biosolids must be maintained at 70°C (158°F) or higher for thirty minutes or longer.

(4) Class A - Alternative 4: Equivalent Process to Further Reduce Pathogens.

(a) Fecal coliform or Salmonella sp. bacteria density. The density of fecal coliform in the biosolids must be less than 1000 Most Probable Number per gram of total solids (dry weight basis) or the density of *Salmonella* sp. bacteria in the biosolids must be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids are used, at the time the biosolids are prepared for sale or give away in a bag or other container for application to the land, or at the time the biosolids or material derived from biosolids is prepared to meet the requirements for exemption in WAC 173-308-200, and the requirements in (b) of this subsection must be met.

(b) The biosolids must be treated in a process that is equivalent to a process to further reduce pathogens. Pathogen equivalency for biosolids applied to land under jurisdiction of the state of Washington will be determined by the department or by the EPA with the approval and concurrence of the department.

(5) Class B - Alternative 1: Testing. A minimum of seven samples of the biosolids must be collected at the time the biosolids are used, and the geometric mean of the density of fecal coliform of the samples must be less than 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

(6) Class B - Alternative 2: Process to Significantly Reduce Pathogens. The biosolids must be treated in one of the processes to significantly reduce pathogens described in (a) through (e) of this subsection.

(a) Aerobic digestion. The biosolids must be agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature must be between forty days at 20°C (68°F) and sixty days at 15°C (59°F).

(b) Air drying. The biosolids must be dried on sand beds or on paved or unpaved basins. The biosolids must dry for a minimum of three months. During two of the three months, the ambient average daily temperature must be above 0°C (32°F). During the air drying period, no additional material may be added.

(c) Anaerobic digestion. The biosolids must be treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature must be between fifteen days at 35 to 55°C (95 to 131°F) and sixty days at 20°C (68°F).

(d) Composting. Using the within-vessel, static aerated pile, or windrow composting methods, the temperature of the biosolids must be raised to 40°C (104°F) or higher and remain at 40°C (104°F) or higher for five days. For four

hours during the five days, the temperature in the compost pile must exceed 55°C (131°F).

(e) Lime stabilization. Sufficient lime must be added to the biosolids to raise the pH of the biosolids to twelve after two hours of contact.

(7) Class B - Alternative 3: Equivalent Process to Significantly Reduce Pathogens. The biosolids must be treated in a process that is equivalent to a process to significantly reduce pathogens. Pathogen equivalency for biosolids applied to land under jurisdiction of the state of Washington will be determined by the department or by the EPA with the approval and concurrence of the department.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-180 Vector attraction reduction. ~~((+))~~ When vector attraction reduction is accomplished prior to application of biosolids to the land, the requirements in one of subsections ~~((2))~~ (1) through ~~((7))~~ (6) of this section must be met.

The vector attraction reduction requirements in subsection ~~(1), (2), or (3)~~ ~~((3))~~ of this section must be met at the same time or after the Class A pathogen requirements in WAC 173-308-170.

~~((2))~~ (1) **Alternative 1: Volatile Solids Reduction.** The mass of volatile solids in the biosolids must be reduced by a minimum of thirty-eight percent ~~((see calculation procedures in "Environmental Regulations and Technology—Control of Pathogens and Vector Attraction in Sewage Sludge," EPA-625/R-92/013, 1992, U.S.EPA, Cincinnati, OH 45268-))~~.

(a) Bench-scale test for anaerobically digested solids. When the thirty-eight percent volatile solids reduction requirement in this subsection ~~((2))~~ cannot be met for anaerobically digested biosolids, vector attraction reduction can be demonstrated by digesting a portion of the previously digested biosolids anaerobically in the laboratory in a bench-scale unit for forty additional days at a temperature between 30 and 37°C (86 and 98.6°F). After the forty-day period, the vector attraction reduction requirement is met if the volatile solids in the biosolids at the beginning of that period are reduced by less than seventeen percent.

(b) Bench-scale test for aerobically digested solids. When the thirty-eight percent volatile solids reduction requirement in this subsection ~~((2))~~ cannot be met for aerobically digested biosolids, vector attraction reduction can be demonstrated by digesting a portion of the previously digested biosolids that has a percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for thirty additional days at 20°C (68°F). After the thirty-day period, the vector attraction reduction requirement is met if the volatile solids in the biosolids at the beginning of that period are reduced by less than fifteen percent.

~~((3))~~ (2) **Alternative 2: Specific Oxygen Uptake Rate (SOUR).** The specific oxygen uptake rate (SOUR) for biosolids treated in an aerobic process must be less than or equal to 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C (68°F).

~~((4))~~ **(3) Alternative 3: Aerobic Process.** The biosolids must be treated in an aerobic process for fourteen days or longer. During that time, the temperature of the biosolids must be higher than 40°C (104°F) and the average temperature of the biosolids must be higher than 45°C (113°F).

~~((5))~~ **(4) Alternative 4: pH Adjustment.** The pH of the biosolids must be raised to twelve or higher by alkali addition and, without the addition of more alkali, must remain at twelve or higher for two hours and then at 11.5 or higher for an additional twenty-two hours.

~~((6))~~ **(5) Alternative 5: Percent Solids for Stabilized Solids.** For biosolids that do not contain unstabilized solids generated in a primary wastewater treatment process, the percent solids must be equal to or greater than seventy-five percent based on the moisture content and total solids prior to mixing with other materials.

~~((7))~~ **(6) Alternative 6: Percent Solids for Unstabilized Solids.** For biosolids that contain unstabilized solids generated in a primary wastewater treatment process, the percent solids must be equal to or greater than ninety percent based on the moisture content and total solids prior to mixing with other materials.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-190 Protecting waters of the state—Agronomic rate requirement. ~~(In accordance with water quality standards for ground waters of the state of Washington, chapter 173-200 WAC,)~~ **(1)** Biosolids must be applied to the land in a manner approved by the department~~(;)~~ and at ~~((not greater than))~~ agronomic rates ~~((unless otherwise specified)), except when approved by the department for land reclamation sites in accordance with subsection (3) of this section or for research purposes when approved by the department in accordance with ((subsection (1) or (2) of this section))~~ WAC 173-308-192 or in a site-specific land application plan developed under WAC 173-308-310(8).

(2) Agronomic rate determinations must take into account nitrogen supplied from other sources such as manures, cover crops, and commercial fertilizers as well as biosolids.

~~((4))~~ **(3)** Biosolids applied to land reclamation sites may be applied in excess of agronomic rates if approved by the department in a site specific land application plan developed under WAC 173-308-310~~((6))~~**(8).**

~~((2))~~ For the purposes of furthering necessary research efforts, biosolids may be applied at greater than agronomic rates to limited areas of land if approved by the department in a site specific land application plan developed under WAC 173-308-310(6). In addition to the elements required under WAC 173-308-310(6), the land application plan for a research project must also include:

~~(a) A research proposal describing the nature of the project, what may be learned, the anticipated benefits, provisions for progress reports and peer review, and interpretation of results;~~

~~(b) An explanation for the sizing of the research plot(s). Plot size must not exceed the minimum area required to support the goals of the research; and~~

~~(e) A discussion of any potential adverse impacts of application rates in excess of agronomic rates, along with potential mitigation or response to adverse effects if observed.~~

~~(3))~~ **(4)** The person who prepares exceptional quality biosolids that are sold or given away to another person must provide sufficient information to allow the person who receives the biosolids to determine an agronomic rate of application.

~~((4))~~ **(5)** The person who applies exceptional quality biosolids to the land is responsible for compliance with the agronomic rate requirement in this section.

~~((5))~~ **(6)** When the potential for ground water contamination due to biosolids application exists, the department may require ground water monitoring or other conditions in accordance with ~~((WAC 173-200-080))~~ the provisions of chapter 173-200 WAC. If it is determined that an enforcement criterion may be violated, an evaluation must be conducted to demonstrate compliance with the provisions of ~~((WAC 173-200-050 (3)(b)(vi)))~~ chapter 173-200 WAC.

NEW SECTION

WAC 173-308-191 Protection of endangered or threatened species. Biosolids may not be applied to the land if they are likely to adversely affect a threatened or endangered species or its critical habitat as listed under Title 232 WAC or section 4 of the Endangered Species Act.

NEW SECTION

WAC 173-308-192 Exemptions for research. For the purposes of furthering necessary research, the land application of nonexceptional quality biosolids is exempt from the agronomic rate requirements in WAC 173-308-190 or 173-308-270, the reporting requirements in WAC 173-308-295, and the permitting requirements in WAC 173-308-310 if all of the following requirements are met:

(1) A research proposal must be submitted containing, at a minimum, the following:

(a) A description of the nature of the project, what may be learned, the anticipated benefits, provisions for progress reports, provisions for peer review, and provisions for providing a final report to the department.

(b) A discussion of any potential adverse impacts of application rates in excess of agronomic rates, along with potential mitigation or response to adverse effects if observed.

(c) An explanation for the sizing of the research plot(s) that will receive biosolids. Plot size must not exceed the minimum area required to support the goals of the research.

(2) The generator of the biosolids must report the dry tons of biosolids land applied in the research project in their annual biosolids report required under WAC 173-308-295.

(3) The department must approve, in writing, the research proposal required in subsection (1) of this section.

(4) There must be no sustainable objections to the approval required in subsection (3) of this section from the EPA or the local health jurisdiction(s) in the county(s) where the biosolids will be managed.

(5) All other applicable requirements of this chapter must be met.

(6) All other local, state, and federal regulatory requirements must be met.

NEW SECTION

WAC 173-308-193 Management and exemptions for septage from composting toilets. (1) The residual solids from composting toilet systems (also known as "waterless toilets") that receive only domestic waste are considered to be septage.

(2) Septage from composting toilet systems must either be sent to a permitted facility for further treatment, or it must be managed in accordance with the requirements in WAC 173-308-270 and other applicable sections of this chapter.

(3) Unless a permit is otherwise required by the department, persons who land apply septage from composting toilet systems and sites where the septage is applied are exempt from the reporting requirements in WAC 173-308-295 and the permitting requirements in WAC 173-308-310.

(4) All other applicable requirements of this chapter must be met.

(5) All other local, state, and federal regulatory requirements must be met.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-200 Exemptions based on the exceptional quality of biosolids. ~~((+))~~ The person who prepares and the person who applies biosolids that meet ~~((criteria to be classified as))~~ the exceptional quality standards are exempt from the following requirements:

~~((a) The site management and access restrictions in WAC 173-308-210(4), 173-308-220(4), 173-308-230(4), and 173-308-240(4);~~

~~(b) The labeling requirement derived from Table 4 of WAC 173-308-160 for the annual whole biosolids application rate in WAC 173-308-260 (1)(b)(ii);~~

~~(e)) (1) The requirement in WAC 173-308-120(6) for obtaining prior written approval of the landowner(;~~

~~(d) The land application plan requirements of WAC 173-308-310(6), except as provided in WAC 173-308-310 (6)(a)(ii) or (iii);~~

~~(e) The recordkeeping requirements in WAC 173-308-210 (5)(b), 173-308-220 (5)(b), 173-308-230 (5)(b), and 173-308-240 (6)(b);~~

~~(f) The requirements in WAC 173-308-300 (2)(a) and (b) for approved plans when used as a component of intermediate or final cover in a municipal solid waste landfill).~~

(2) The site management and access restrictions in WAC 173-308-210(5) except where, on a case-by-case basis, the director ((may apply)) applies any or all ((of the site management and access)) restrictions ((exempted under WAC 173-308-200 (1)(a)) after determining that the requirements are necessary to protect public health and the environment from any adverse effect that may occur from a pollutant in the bulk biosolids.

(3) The recordkeeping and certification requirements in WAC 173-308-290(3).

(4) The requirement in WAC 173-308-300 (6)(c) for submittal of a land application plan when used as a component of intermediate or final cover at a municipal solid waste landfill.

(5) The land application plan requirements of WAC 173-308-310(8), except as provided in WAC 173-308-310 (8)(a)(ii) or (iii).

NEW SECTION

WAC 173-308-205 Significantly remove manufactured inerts. (1) Except for sewage sludge approved for long-term disposal in accordance with WAC 173-308-300(9), all biosolids (including septage) or sewage sludge must be treated by a process such as physical screening or another method to significantly remove manufactured inerts prior to final disposition. Meeting this requirement may occur at any point in the wastewater treatment or biosolids manufacturing process.

(2) **Options for meeting the requirement.** Meeting the requirement in subsection (1) of this section can be accomplished by either of the following:

(a) Screening through a bar screen with a maximum aperture of 3/8 inch (0.95 cm).

(b) Obtaining approval from the department for an alternative method that achieves a removal rate similar to or greater than that achieved by the screening standard in (a) of this subsection.

(3) **Timing for meeting the requirement.** The requirement in subsection (1) of this section must be met by July 1, 2012, or at the time of final disposition if the material will not be managed prior to July 1, 2012.

(4) Regardless of the date that the requirement in subsection (1) of this section is met, biosolids (including septage) that are land applied or sold/given away in a bag or other container must contain less than one percent by volume recognizable manufactured inerts.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-210 Bulk biosolids applied to agricultural land, forest land, a public contact site, or a land reclamation site. (1) Bulk biosolids applied to agricultural land, forest land, a public contact site, or a land reclamation site must meet the requirements for a significant reduction in manufactured inerts in WAC 173-308-205.

(2) Pollutant concentrations.

(a) The concentration of a pollutant in bulk biosolids that are applied to agricultural land, forest land, a public contact site, or a land reclamation site may not exceed the allowable ceiling limit in Table 1 of WAC 173-308-160.

(b) If the concentration of a pollutant in bulk biosolids that are applied to agricultural land, forest land, a public contact site, or a land reclamation site exceeds the pollutant concentration limits in Table 3 of WAC 173-308-160, then the total cumulative loading rate for each pollutant may not exceed the limit in Table 2 of WAC 173-308-160, ~~((as required in WAC 173-308-160 (1)(b)(i)))~~ and the requirements in WAC 173-308-160(2) must be met.

~~((2))~~ **(3) Pathogens.** Bulk biosolids that are applied to agricultural land, forest land, a public contact site, or a land reclamation site must be Class A for pathogens, or they must be Class B for pathogens and the site management and access restrictions in subsection ~~((4)(a)(i) through (x) and (b)(i) through (iii))~~ **(5)** of this section must be met.

~~((3))~~ **(4) Vector attraction reduction.**

~~((a))~~ Bulk biosolids that are applied to agricultural land, forest land, a public contact site, or a land reclamation site must meet one of the vector attraction reduction requirements in WAC 173-308-180 ~~((2))~~ **(1)** through ~~((7))~~ **(6)** before they are applied to the land~~((;))~~, or the requirements of (a) or (b)~~((i) or (ii))~~ of this subsection must be met.

~~((b)(i))~~ **(a) Injection.** The biosolids must be injected below the surface of the land~~((;))~~ and the following requirements must be met, as applicable.

~~((A))~~ **(i)** No significant amount of the biosolids may be present on the land surface within one hour after the biosolids are injected~~((; and))~~.

~~((B))~~ **(ii)** When the biosolids are Class A for pathogens, the biosolids must be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

~~((i))~~ **(b) Incorporation.** Biosolids must be incorporated into the soil within six hours after application to the land~~((;))~~. When biosolids that are incorporated into the soil are Class A with respect to pathogens, the biosolids must be applied to the land within eight hours after being discharged from the pathogen treatment process.

~~((4))~~ **(5) Site management and access restrictions.**

(a) Class B biosolids. The site management and access restrictions in (a)~~((i) through (x) and (b)(i) through (iii))~~ and (b) of this subsection are applicable to biosolids that are Class B for pathogens ~~((when they are applied to agricultural land))~~.

(i) Food crops, feed crops, and fiber crops must not be harvested for a minimum of thirty days after the last application of biosolids.

(ii) Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface must not be harvested for a minimum of fourteen months after the last application of biosolids.

(iii) Food crops with harvested parts below the surface of the land must not be harvested for a minimum of twenty months after the last application of biosolids when the biosolids remain on the land surface for four months or longer prior to incorporation into the soil.

(iv) Food crops with harvested parts below the surface of the land must not be harvested for thirty-eight months after application of biosolids when the biosolids remain on the land surface for less than four months prior to incorporation into the soil.

(v) Livestock must not be allowed to graze on the land for a minimum of thirty days after the last application of biosolids.

(vi) Turf grown on land where biosolids are applied must not be harvested for a minimum of one year after the last application of the biosolids ~~((when the harvested turf is placed on either land with a high potential for public expo-~~

~~sure or a lawn,))~~ unless otherwise specified by the department.

(vii) Public access to land with a high potential for public exposure must be restricted for a minimum of one year after the last application of biosolids.

(viii) Public access to land with a low potential for public exposure must be restricted for a minimum of thirty days after the last application of biosolids.

(ix) ~~((Unless otherwise approved in a site specific land application plan under WAC 173-308-310 (6)(b), during the time when access is restricted, signs must be posted around the application site at all significant points of access, and otherwise around the perimeter so that they can be noticed and read by a reasonably observant person. The required content of signs is listed in WAC 173-308-275.))~~ Biosolids must not be applied to the land within one hundred feet (30.5 meters) of a well unless otherwise approved in a permit issued in accordance with the requirements of this chapter.

(x) During the time when access is restricted, signs must be posted around the application site at all significant points of access and at least every 1/2 mile (805 meters) around the perimeter of the site. Unless the department has approved the substitution of "no trespassing" signs for informational signs, signs must contain at least the following:

(A) The name and address or phone number of the generator and if different, the person who applies.

(B) The names, addresses, and phone numbers of the regulatory and permitting authorities.

(C) The material that is being applied (biosolids or a more detailed description).

(D) Notice that access is restricted, and if desired, the date after which access is no longer restricted.

(E) If applicable, a notice on limitations regarding the harvest of edible plants from the site.

It is a violation of these rules for any person to remove a sign posted in accordance with the requirements of ~~((a)(ix) or (f))~~ this subsection during the period when access is restricted.

~~((x))~~ Biosolids must not be applied to the land within one hundred feet of a well unless otherwise approved in a permit issued in accordance with the requirements of this chapter.

~~((b))~~ The site management restrictions in (b)(i) through (iii) of this subsection are applicable to biosolids that do not meet standards to be classified as exceptional quality when they are applied to agricultural land.

~~((i))~~ Bulk biosolids may not be applied to land that is ten meters or less from surface waters of the state, unless otherwise specified by the department.

~~((ii))~~ Bulk biosolids may not be applied to the land so that they enter a wetland or waters of the state, unless approved in a permit issued by the department or by EPA with the approval of the department.

~~((iii))~~ Bulk biosolids may not be applied to the land if they are likely to adversely affect a threatened or endangered species listed under WAC 232-12-011 or 232-12-014 or its critical habitat.

(5) Recordkeeping.

(a) The person who prepares biosolids for application to agricultural land must keep the records required in WAC 173-308-290 (2) and (3).

(b) The person who applies biosolids that do not meet criteria to be classified as exceptional quality to agricultural land must keep the records required in WAC 173-308-290(4).

(6) **Reporting.** The person who prepares biosolids for application to agricultural land must submit an annual report in accordance with the requirements of WAC 173-308-295.)

(b) **Nonexceptional quality biosolids.** The following site management restrictions are applicable to nonexceptional quality biosolids when they are applied to agricultural land, forest land, a public contact site, or a land reclamation site:

(i) Bulk biosolids may not be applied to land that is thirty-three feet (10 meters) or less from surface waters of the state, unless otherwise specified by the department.

(ii) Bulk biosolids may not be applied to the land so that they enter a wetland or waters of the state, unless approved in a permit issued by the department or by EPA with the approval of the department.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-250 Bulk biosolids applied to a lawn or home garden. (1) Bulk biosolids (~~that are~~) applied to a lawn or home garden must meet the (~~criteria to be classified as exceptional quality as defined in WAC 173-308-080.~~

(2) **Recordkeeping.** The person who prepares bulk biosolids for application to a lawn or home garden must keep the records required in WAC 173-308-290 (2) and (3).

(3) **Reporting.** The person who prepares bulk biosolids for application to a lawn or home garden must submit annual reports in accordance with the requirements of WAC 173-308-295)) requirements for a significant reduction in manufactured inerts in WAC 173-308-205.

(2) Bulk biosolids that are applied to a lawn or home garden must meet the exceptional quality standards.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-260 Biosolids sold or given away in a bag or other container. (~~(1) Pollutant concentrations:~~

(a) The concentration of a pollutant in biosolids that are sold or given away in a bag or other container may not exceed the allowable ceiling limit in Table 1 of WAC 173-308-160.

(b) If biosolids that are sold or given away in a bag or other container exceed the pollutant concentration limits in Table 3 of WAC 173-308-160, then:

(i) The mathematical product of the concentration of each pollutant in the biosolids and the annual whole biosolids application rate for the biosolids must not cause the annual pollutant loading rate for the pollutant in Table 4 of WAC 173-308-160 to be exceeded;

The procedure for determining the annual whole biosolids application rate that complies with the requirement in (b)(i) of this subsection is specified in Appendix A of this chapter.

(ii) The annual whole biosolids application rate as calculated in (b)(i) of this subsection, or the recommended agronomic rate, whichever is less, must be included on the label or information sheet required in WAC 173-308-260(4).

(2) **Pathogens.** Biosolids that are sold or given away in a bag or other container must be Class A for pathogens.

(3) **Vector attraction.** One of the vector attraction reduction requirements in WAC 173-308-180 (2) through (7) must be met when biosolids are sold or given away in a bag or other container for application to the land.

(4)) (1) Biosolids sold or given away in a bag or other container must meet the requirements for a significant reduction in manufactured inerts in WAC 173-308-205.

(2) Biosolids sold or given away in a bag or other container must meet the exceptional quality standards.

(3) **Label or information sheet required.** Any person who prepares biosolids that are sold or given away in a bag or other container in the state of Washington, must comply with the requirements of (~~(a)(i) through (vi) of~~) this subsection when the biosolids product is prepared or derived from (~~bio-solids that do not meet exceptional quality standards~~) nonexceptional quality biosolids.

(a) A label must be affixed to the bag or other container in which biosolids are sold or given away, or an information sheet must be provided to the person who receives biosolids that are sold or given away in a bag or other container. The label or information sheet must contain the following information:

(i) The name, address, and phone number of the person who prepared the biosolids.

(ii) A statement or information indicating that the product complies with applicable regulations for biosolids or that the product has been prepared to meet standards that make it safe for its intended use when used in accordance with the directions provided by the manufacturer.

(iii) A statement or information that encourages proper use of the product and protection of public health and the environment. This may include information on (~~agronomic rates;~~) product storage, hygiene, and protection of surface or ground water resources.

(iv) Agronomic rates for typical applications or guidance on how to determine the agronomic rate of application.

(v) A statement or information indicating that the product contains or is derived from biosolids.

(vi) (~~Any additional information needed to facilitate safe use of the product.~~

(b) ~~In addition to the information required in (a)(i) through (vi) of this subsection, the information in subsection (1)(b)(ii) of this section when the pollutant limits in Table 3 of WAC 173-308-160 are exceeded.~~

(c) Any person who prepares biosolids that are sold or distributed outside the jurisdiction of the state of Washington, must comply with the requirements in 40 CFR Part 503.14(e), as applicable.

(5) **Recordkeeping.** The person who prepares biosolids for sale or give away in a bag or other container must keep the records required in WAC 173-308-290 (2) and (5).

(6) **Reporting.** The person who prepares biosolids for sale or give away in a bag or other container must submit annual reports in accordance with the requirements of WAC 173-308-295.) Unless registered as a fertilizer by the Washington state department of agriculture, a disclaimer stating that the product is not a commercial fertilizer and that all nutrient claims are estimates or averages and not guaranteed.

(b) Any person who prepares biosolids that are sold or distributed outside the jurisdiction of the state of Washington must comply with the requirements in 40 CFR Part 503.14 (c), as applicable.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-270 ((Domestic septage management requirements.)) Septage applied to the land. (((1) Domestic septage may not be applied to a public contact site, a lawn, or a home garden, unless it is managed as biosolids originating from municipal sewage sludge according to this subsection (1).

When domestic septage managed as biosolids originating from municipal sewage is applied to the land, unless otherwise provided, all applicable requirements for biosolids must be met, including but not limited to requirements for pathogen and vector attraction reduction, site management and access restrictions, pollutant concentration limits, agronomic rates, obtaining and providing information, sampling and analysis, and recordkeeping and reporting.

(2) Domestic septage that is applied to the land must be treated by a process such as physical screening or grinding, or another approved method must be employed to significantly remove or reduce recognizable materials when septage is applied to the land.

(3) Pathogens:

(a) When domestic septage — class II is applied to the land, the alkaline stabilization requirement of (b) of this subsection must be met, or the Class B pathogen requirements in one of WAC 173-308-170 (3)(a) through (c) and the site management and access restrictions in subsection (5)(a)(i) through (ix) and (b)(i) through (iv) of this section must be met.

(b) When domestic septage — class I or III is applied to the land, the pH of the septage must be raised to twelve or higher by alkali addition and, without the addition of more alkali, must remain at twelve or higher for thirty minutes and the site management and access restrictions in subsection (5)(a)(i) through (ix) of this section must be met, or, when pH adjustment is not used to achieve pathogen reduction requirements, the site management and access restrictions in subsection (5)(a)(i) through (ix) and (b)(i) through (iv) of this section must be met.

(4) Vector attraction reduction. The requirements in one of (a), (b), or (c) of this subsection, must be met when domestic septage is applied to the land.

(a) The septage must be injected below the surface of the land;

(i) No significant amount of septage may be present on the land surface within one hour after the septage is injected; and

(ii) When the septage is Class A for pathogens, the septage must be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

(b) Septage must be incorporated into the soil within six hours after application to the land;

When septage that is incorporated into the soil is Class A with respect to pathogens, the septage must be applied to the land within eight hours after being discharged from the pathogen treatment process.

(c) The pH of the septage must be raised to twelve or higher by alkali addition and, without the addition of more alkali, must remain at twelve or higher for thirty minutes.

(5) Site management and access restrictions.

(a) The site management and access restrictions in (a)(i) through (ix) of this subsection are applicable when domestic septage is applied to the land.

(i) Food crops, feed crops, and fiber crops must not be harvested for thirty days after the application of septage.

(ii) Food crops with harvested parts that touch the septage/soil mixture and are totally above the land surface must not be harvested for fourteen months after application of septage.

(iii) Food crops with harvested parts below the surface of the land must not be harvested for twenty months after application of septage when the septage remains on the land surface for four months or longer prior to incorporation into the soil.

(iv) Food crops with harvested parts below the surface of the land must not be harvested for thirty-eight months after application of septage when the septage remains on the land surface for less than four months prior to incorporation into the soil.

(v) Unless otherwise approved in a site specific land application plan under WAC 173-308-310 (6)(b), during the time when access is restricted, signs must be posted around the application site at all significant points of access, and otherwise around the perimeter so that they can be noticed and read by a reasonably observant person. The required content of signs is listed in WAC 173-308-275.

It is a violation of these rules for any person to remove a sign posted in accordance with the requirements of subsection (4)(a)(v) of this section during the period when access is restricted.

(vi) Septage must not be applied to land that is one hundred feet or less from surface waters of the state, unless otherwise specified by the department;

(vii) Septage must not be applied to the land so that it enters a wetland or waters of the state, unless approved in a permit issued by the department, or by EPA with the approval of the department;

(viii) Septage must not be applied to the land if it is likely to adversely affect a threatened or endangered species listed under WAC 232-12-011 or 232-12-014 or its critical habitat.

(ix) Septage must not be applied to the land within one hundred feet of a well unless otherwise approved in a permit issued in accordance with the requirements of this chapter.

(b) In addition to the site management and access restrictions in (a)(i) through (ix) of this subsection, the additional site management and access restrictions in (b)(i) through (iv) of this subsection apply to domestic septage if the pH adjustment requirement of subsection (3)(b) of this section is not met when septage is applied to the land.

(i) Livestock must not be allowed to graze on the land for thirty days after application of septage.

(ii) Turf grown on land where septage is applied must not be harvested for one year after application of the septage when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the department.

(iii) Public access to land with a high potential for public exposure must be restricted for one year after the application of septage.

(iv) Public access to land with a low potential for public exposure must be restricted for thirty days after the application of septage.

(6) Except as provided in this subsection (6), septage that is applied to the land must be applied at a rate not exceeding the rate determined by equation (3).

$$\text{AAR} = \frac{N}{0.0026} \quad \text{Equation (3)}$$

Where:

AAR = Annual application rate in gallons per acre per three hundred sixty five day period.

N = Amount of nitrogen in pounds per acre per 365 day period needed by the crop or vegetation grown on the land.

A person may not apply domestic septage to the land during a three hundred sixty five day period if the annual application rate in this subsection (6) has been reached during that period, unless the domestic septage is managed as biosolids originating from municipal sewage sludge per subsection (1) of this section.

(7) Monitoring.

(a) Samples of domestic septage that are collected and analyzed must be representative of the material that is applied to the land.

(b) When domestic septage — class I, II, or III is applied to the land and pH adjustment is used to meet any pathogen or vector attraction reduction requirement, each container of domestic septage that is applied to the land must be monitored to determine compliance with pH requirements.

(8) Recordkeeping. The person who prepares septage and the person who applies septage must keep the records required in WAC 173-308-290(6).

(9) Reporting. Facilities that prepare septage for application to the land, and persons who apply septage to the land, which is not prepared at a treatment works treating domestic sewage must submit annual reports in accordance with the requirements of WAC 173-308-295.) This section contains the requirements for the land application of septage as defined in WAC 173-308-080.

This section does not apply to "septage managed as biosolids originating from sewage sludge" as defined in WAC 173-308-080. Facilities who seek to manage their septage as biosolids must meet all of the requirements applicable to the particular classification of biosolids into which it falls.

(1) Septage applied to the land must meet the requirements for a significant reduction in manufactured inerts in WAC 173-308-205.

(2) Septage may not be applied to a public contact site, a lawn, or a home garden.

(3) Pathogen reduction and vector attraction reduction.

(a) For loads of septage that are composed of at least seventy-five percent by volume of septage from households, one of the following requirements must be met:

(i) The septage must be injected below the surface of the land and no significant amount of septage may be present on the land surface within one hour after the septage is injected.

(ii) Septage must be incorporated into the soil within six hours after application to the land.

(iii) The pH of the septage must be raised to twelve or higher and must remain at twelve or higher for a minimum of thirty minutes.

(A) A minimum of two tests for pH must be conducted for each load applied to the land.

(B) The first test must occur after a pH of twelve or higher has been attained.

(C) The second test must occur no less than thirty minutes after the first test to show that a pH of twelve or higher has been retained.

(D) If the pH has dropped below twelve when the second test is conducted, the stabilization process must be restarted.

(b) For loads of septage not composed of at least seventy-five percent by volume of septage from households, the requirements in (a)(iii) of this subsection must be met.

(4) Site management and access restrictions. All of the following site management and access restrictions are applicable when septage is applied to the land:

(a) Food crops, feed crops, and fiber crops must not be harvested for thirty days after the application of septage.

(b) Food crops with harvested parts that touch the septage/soil mixture and are totally above the land surface must not be harvested for a minimum of fourteen months after the last application of septage.

(c) Food crops with harvested parts below the surface of the land must not be harvested for a minimum of twenty months after the last application of septage when the septage remains on the land surface for four months or longer prior to incorporation into the soil.

(d) Food crops with harvested parts below the surface of the land must not be harvested for a minimum of thirty-eight months after the last application of septage when the septage remains on the land surface for less than four months prior to incorporation into the soil.

(e) Septage must not be applied to land that is one hundred feet (30.5 meters) or less from surface waters of the state, unless otherwise specified by the department.

(f) Septage must not be applied to the land so that it enters a wetland or waters of the state, unless approved in a permit issued by the department, or by EPA with the approval of the department.

(g) Septage must not be applied to the land within one hundred feet (30.5 meters) of a well unless approved in a permit issued by the department.

(h) Domestic animals must not be allowed to graze on the land for a minimum of thirty days after the last application of septage.

(i) Public access to land with a high potential for public exposure must be restricted for a minimum of one year after the last application of septage.

(j) Public access to land with a low potential for public exposure must be restricted for a minimum of thirty days after the last application of septage.

(k) During the time when access is restricted, signs must be posted around the application site at all significant points of access and at least every 1/2 mile (805 meters) around the perimeter of the site. Unless the department has approved the substitution of "no trespassing" signs for informational signs, signs must contain at least the following:

(i) The name and address or phone number of the generator and if different, the person who applies.

(ii) The names, addresses, and phone numbers of the regulatory and permitting authorities.

(iii) The material that is being applied (septage or a more detailed description).

(iv) Notice that access is restricted, and if desired, the date after which access is no longer restricted.

(v) If applicable, a notice on limitations regarding the harvest of edible plants from the site.

It is a violation of these rules for any person to remove a sign posted in accordance with the requirements of this subsection during the period when access is restricted.

(5) Application rates.

(a) Septage that is applied to the land must be applied at a rate not exceeding the rate determined by equation (3).

(b) At its discretion, the department may require the use of a different approach for calculating application rates based on the mixture ratios and site specific criteria, but at no time may the rate exceed that calculated by equation (3).

Equation (3)

$$AAR = \frac{N}{0.0026}$$

Where:

AAR = Annual application rate in gallons per acre per 365-day period.

N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land (subtract any nitrogen supplied by other sources - for example, commercial fertilizers or manures).

(6) **Spreader drive length.** To determine the distance (in feet) over which a load of liquid septage should be spread to meet the application rate, use equation (4).

Equation (4)

Drive length (in feet) = gallons in spreader ÷ spread width (in feet) x 43.560 ÷ AAR

Where:

AAR = Annual application rate in gallons per acre per 365-day period.

(7) Monitoring.

(a) Samples of septage that are collected and analyzed must be representative of the septage that is applied to the land.

(b) When septage is applied to the land and pH adjustment as described in subsection (3)(a)(iii) of this section is used to meet the pathogen and vector attraction reduction requirements, each container of septage that is applied to the land must be monitored to determine compliance with the pH requirements.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-280 Requirements for facilities storing biosolids or sewage sludge. (1) Facilities storing biosolids or sewage sludge under a local, state, or federal water pollution control permit or another environmental permit and facilities conducting temporary, small-scale storage as defined in WAC 173-308-080 are exempt from this section if the department determines that the standards in subsection (3) of this section are being met.

(2) Facilities other than those in subsection (1) of this section storing biosolids or sewage sludge must do so in accordance with the provisions of a permit issued under this chapter(, if an applicable permit has been issued).

((2)) (3) Biosolids or sewage sludge may not be stored in a manner that would be likely to result in the contamination of ground water, surface water, air, or land under current conditions or in the case of fire or flood.

((3)) (4) Facilities existing on July 1, 2007, storing liquid biosolids or sewage sludge in surface impoundments must meet the requirements ((in WAC 173-304-430 and other applicable sections of chapter 173-304 WAC that apply to) for the design, construction, and operation of surface impoundments in chapter 173-304 WAC or the standards in chapter 173-350 WAC.

(5) After July 1, 2007, new facilities proposing to store biosolids or sewage sludge in surface impoundments, facilities that are proposing a new surface impoundment, and facilities that are proposing to upgrade existing surface impoundments must meet the requirements for the design, construction, and operation of surface impoundments in chapter 173-350 WAC.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-290 Recordkeeping. ((1)(a) Both) The person who prepares biosolids or sewage sludge, the person who applies nonexceptional quality biosolids to the land, and the person who applies ((bulk biosolids)) septage to the land must keep certain records and certification statements ((showing that applicable standards for biosolids quality, treatment, and management have been met. Records must also be kept on the amount and type biosolids applied to the land under different management scenarios or that are disposed of in a municipal solid waste landfill. ((b)) as described in this section.

(1) A responsible official as described in WAC 173-308-310((8)) (10) must sign all certification statements required under this section.

(2) **Preparers of biosolids or sewage sludge.** The person who prepares biosolids or sewage sludge must keep the

following records ~~((amounts recorded as dry tons))~~, as applicable, and certification statement for five years:

(a) The amount ~~((of bulk biosolids))~~ applied by the preparer ~~((or the))~~/preparer's agent((s)) to agricultural land~~((;))~~.

(b) The amount ~~((of bulk biosolids))~~ applied by the preparer ~~((or the))~~/preparer's agent((s)) to ~~((forestland;))~~ forest land.

(c) The amount ~~((of bulk biosolids))~~ applied by the preparer ~~((or the))~~/preparer's agent((s)) to a public contact site~~((;))~~.

(d) The amount ~~((of bulk biosolids))~~ applied by the preparer ~~((or the))~~/preparer's agent((s)) to a land reclamation site~~((;))~~.

(e) The amount ~~((of bulk biosolids))~~ applied by the preparer ~~((or the))~~/preparer's agent((s)) to a lawn or home garden~~((;))~~.

(f) The amount ~~((of biosolids that are))~~ sold or given away by the preparer in a bag or other container ~~((for application to the land;))~~.

(g) The amount ~~((of biosolids in a compost or blended biosolids product that is))~~ sold or given away by the preparer in bulk form ~~((or in a bag or other container for application to the land;))~~.

~~(h) The amount of bulk biosolids that are)) (does not include that provided to the preparer's agent).~~

(h) The amount in a compost or blended biosolids product sold or given away by the preparer ((to another person who prepares biosolids for application to the land;)).

(i) The amount ~~((of bulk biosolids that are sold or given away by the preparer to a person other than an agent of the preparer for application to the land; and~~

~~(j) The amount of biosolids that are disposed in)) sent to a municipal solid waste landfill ((on an emergency, temporary, or long-term basis.~~

~~(3) When bulk biosolids are applied to the land, the person who prepares the biosolids must develop and maintain the following information, as applicable, for five years:~~

~~(a) If the pollutant limits in Table 3 of WAC 173-308-160 were met, laboratory)) for disposal and the name of the landfill.~~

(j) The amount stored on-site.

(k) The amount transferred to another facility for further treatment and the name of the other treatment facility.

(l) The amount received from another facility and the name of the other facility.

(m) The amount transferred for incineration and the name of the incineration facility.

~~(n) Laboratory analysis data showing that ((those limits were met; or, if)) the pollutant ceiling concentrations in ((Table 1 of)) WAC 173-308-160 Table 1 were met((, laboratory)).~~

~~(o) Laboratory analysis data showing that ((those limits were met.~~

(b) If the Class A pathogen requirements in one of WAC 173-308-170 (2)(a) through (f) were met,)) the pollutant concentrations in WAC 173-308-160 Table 3 were met.

(p) Process monitoring and/or laboratory analysis data showing that ((those requirements were met, and a description of how those requirements were met; or, if the Class B pathogen standards in one of WAC 173-308-170 (3)(a), (b),

or (e) were met, process monitoring and/or laboratory analysis data showing that those requirements were met, and a description of how those requirements were met.

~~(e) If the vector attraction)) the pathogen reduction requirements in ((one of WAC 173-308-180 (2) through (7) were met, process monitoring and/or laboratory analysis monitoring data showing that those requirements)) WAC 173-308-170 were met and a description of how ((those)) the requirements were met.~~

~~((d) One of the following certification statements, as applicable:~~

~~(i) If the vector attraction reduction requirements in one of WAC 173-308-180 (2) through (7) were met, the following signed certification: "I certify, under penalty of law, that the (insert Class A or Class B as appropriate) pathogen requirements in (insert one of WAC 173-308-170 (2)(a), (b), (c), (d), (e), or (f) if Class A, or insert one of WAC 173-308-170 (3)(a), (b), or (c) if Class B), and the vector attraction reduction requirement in (insert one of)) (q) If the vector attraction reduction requirements in WAC 173-308-180 ((2) through (7)) have been met)) were met, process monitoring and/or laboratory analysis data and a description of how the requirements were met.~~

(r) Laboratory analysis data showing the nitrogen concentration.

CERTIFICATION STATEMENT:

"I certify, under penalty of law, that the following were met (check boxes, as applicable):

The pollutant ceiling concentration limits in WAC 173-308-160 Table 1.

The pollutant concentration limits in WAC 173-308-160 Table 3.

The Class A pathogen reduction requirements in WAC 173-308-170: (1), (2), (3), (4).

The Class B pathogen reduction requirements in WAC 173-308-170: (5), (6), (7).

The vector attraction reduction requirements in WAC 173-308-180: (1), (2), (3), (4), (5), (6).

This determination was made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that pathogen ~~((and))~~ reduction requirements, vector attraction reduction requirements, and pollutant concentration limits have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Signature _____ Title _____

Date _____

~~((ii) If the vector attraction reduction requirements in one of WAC 173-308-180 (2) through (7) were not met, the following signed certification: "I certify, under penalty of law, that the (insert Class A or Class B as appropriate) pathogen requirements in (insert one of WAC 173-308-170 (2)(a),~~

(b), (c), (d), (e), or (f) if Class A, or insert one of WAC 173-308-170 (3)(a), (b), or (c) if Class B) have been met. This determination was made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that pathogen reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(4) When bulk biosolids are applied to the land, the person who applies the biosolids must develop and maintain the following information, as applicable, for five years or indefinitely as required in (e) of this subsection:

(a) If the Class B pathogen standards in one of WAC 173-308-170 (3)(a), (b), or (c) were met, a description of how the site management and access restrictions in WAC 173-308-210 (4)(a)(i) through (x), or WAC 173-308-220 (4)(a)(i) through (ix), or WAC 173-308-230 (4)(a)(i) through (ix), or WAC 173-308-240 (4)(a)(i) through (x), as applicable, were met for each site on which biosolids were applied.

The following signed certification: "I certify, under penalty of law, that the site management and access restrictions in (insert WAC 173-308-210 (4)(a)(i) through (x), or WAC 173-308-220 (4)(a)(i) through (ix), or WAC 173-308-230 (4)(a)(i) through (ix), or WAC 173-308-240 (4)(a)(i) through (x), as applicable) have been met for each site on which bulk biosolids were applied. This determination was made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the site management and access restrictions have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."

(b) If the vector attraction reduction requirements in WAC 173-308-210 (3)(b)(i) or (ii), WAC 173-308-220 (3)(b)(i) or (ii), WAC 173-308-230 (3)(b)(i) or (ii), or WAC 173-308-240 (4)(b)(i) or (ii) were met, a description of how those requirements were met.

The following signed certification: "I certify, under penalty of law, that the vector attraction reduction requirement in (insert WAC 173-308-210 (3)(b)(i) or (ii), WAC 173-308-220 (3)(b)(i) or (ii), WAC 173-308-230 (3)(b)(i) or (ii), WAC 173-308-240 (3)(b)(i) or (ii), as applicable) has been met for each site on which biosolids were applied. This determination was made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the vector attraction reduction and site management requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(c) If the pollutant ceiling concentration limits in Table 1 of WAC 173-308-160 were met (but the concentration limits in Table 3 were exceeded), the information in (e)(i) through (v) of this subsection must be developed and kept indefinitely.

(i) The location, by street address if applicable, a copy of the assessor's plat map(s) with the application area(s) clearly shown or the latitude and longitude of the approximate center of each land application site, and the section, township, and

range of each quarter section on which biosolids were applied.

(ii) The number of hectares in each site on which bulk biosolids were applied.

(iii) The date and time bulk biosolids were applied to each site.

(iv) The cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of WAC 173-308-160 in the bulk biosolids applied to each site, including the amount(s) in WAC 173-308-160 (2)(b)(i) and (iii).

(v) The amount of biosolids (i.e., dry metric tons) applied to each site.

(d) A description of how the requirement to obtain information under WAC 173-308-160 (2)(b) was met.

(i) The following signed certification: "I certify, under penalty of law, that the requirement to obtain information under WAC 173-308-160 (2)(b) has been met for each site on which bulk biosolids were applied. This determination was made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements to obtain information have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."

(ii) If the biosolids that were applied to the land did not meet standards to be classified as exceptional quality, and the site management restrictions in WAC 173-308-210 (4)(b)(i) through (iii), or WAC 173-308-220 (4)(b)(i) through (iii), or WAC 173-308-230 (4)(b)(i) through (iii), or WAC 173-308-240 (4)(b)(i) through (iii) were met, the following signed certification:

"I certify, under penalty of law, that the site management restrictions in (insert WAC 173-308-210 (4)(b)(i) through (iii), or WAC 173-308-220 (4)(b)(i) through (iii), or WAC 173-308-230 (4)(b)(i) through (iii), or WAC 173-308-240 (4)(b)(i) through (iii), as applicable) were met for each site on which bulk biosolids were applied. This determination was made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the site management restrictions have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."

(5) When biosolids are sold or given away in a bag or other container for application to the land, the person who prepares the biosolids must develop and maintain the following information, as applicable, for five years:

(a) If the pollutant limits in Table 3 of WAC 173-308-160 were met, laboratory analysis data showing that those limits were met; or, if the pollutant ceiling concentrations in Table 1 of WAC 173-308-160 were met, laboratory analysis data showing that those limits were met.

(b) Process monitoring and/or laboratory analysis data showing that the Class A pathogen requirements in one of WAC 173-308-170 (2)(a) through (f) were met, and a description of how those requirements were met.

(c) Process monitoring and/or laboratory analysis data showing that the vector attraction reduction requirements in one of WAC 173-308-180 (2) through (7) were met, and a description of how those requirements were met.

(d) The following certification statement:

"I certify, under penalty of law, that the Class A pathogen requirement in (insert one of WAC 173-308-170 (2)(a), (b), (c), (d), (e), or (f) if Class A), and the vector attraction reduction requirement in (insert one of WAC 173-308-180 (2) through (7)) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that pathogen requirement and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(e) When the biosolids are subject to the requirements of WAC 173-308-160(4), the concentration in the biosolids of each pollutant listed in Table 4 of WAC 173-308-160, and the annual whole biosolids application rate that does not cause the annual pollutant loading rates in Table 4 of WAC 173-308-160 to be exceeded.

The following certification statement:

"I certify, under penalty of law, that the labeling and notification requirement in WAC 173-308-260 (1)(b)(ii) has been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the labeling and notification requirements are met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

(6) When domestic septage is applied to the land, the person who applies the domestic septage must develop and maintain the following information, as applicable, for five years:

(a) The location, by street address if applicable, a copy of the assessor's plat map(s) with the application area(s) clearly shown or the latitude and longitude of the approximate center of each land application site, and the section, township and range of each quarter section on which septage is applied.

(b) The number of acres in each site on which septage is applied.

(c) The date and time septage is applied to each site.

(d) The nitrogen requirement for the crop or vegetation grown on each site during a three hundred sixty-five day period.

(e) The rate, in gallons per acre per three hundred sixty-five day period, at which septage is applied to each site and the total number of gallons of septage applied to each site;

(f) The source of the septage, including the name and address of the individual or business where the septage was generated, or in the case of a centralized septage treatment facility, the name of the person or business who delivered the septage, the dates of delivery, and how much septage was delivered.

(g) The class of septage as defined in WAC 173-308-080.

(h) A description of how the pathogen requirements in WAC 173-308-270 (3)(a) or (b) were met.

(i) A description of how the vector attraction reduction requirements in one of WAC 173-308-270 (4)(a), (b), or (c) were met.

(j) A description of how the applicable site management and access restriction requirements in WAC 173-308-270(5) were met.

(k) The following signed certification: "I certify, under penalty of law, that the pathogen requirements in (insert either WAC 173-308-270 (3)(a) or (b)), the vector attraction reduction requirements in (insert one of WAC 173-308-270 (4)(a), (b), or (c)), and the applicable site management and access restriction requirements in WAC 173-308-270(5) have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen and vector attraction reduction requirements and site management and access restrictions have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.") (3) **Appliers of nonexceptional quality biosolids.** The person who applies nonexceptional quality biosolids must keep the following records, as applicable, and certification statement for five years or indefinitely where stated.

(a) The location of each site, either by street address, the latitude and longitude of the approximate center, or the section, township and range of each quarter section, and a map(s) with the application area(s) clearly shown.

(b) The number of acres in each site on which biosolids were applied.

(c) The date biosolids were applied to each site.

(d) The targeted vegetation grown on each site and its nitrogen requirement.

(e) The rate, in dry tons per acre per year, at which biosolids are applied to each site.

(f) The amount, in dry tons, of biosolids applied to each site.

(g) In addition, when biosolids with pollutants exceeding the WAC 173-308-160 Table 3 concentrations are applied, the following records must be kept indefinitely:

(i) The cumulative amount of each pollutant listed in WAC 173-308-160 Table 2 in the biosolids applied to each site.

(ii) A description of how the requirement to obtain information under WAC 173-308-160 (2)(b) was met.

(h) If the biosolids were Class B for pathogens, a description of how the site management and access restrictions in WAC 173-308-210 (5)(a) were met.

(i) If the vector attraction reduction requirements were not met prior to application, a description of how requirements in WAC 173-308-210 (5)(b) were met.

CERTIFICATION STATEMENT:

"I certify, under penalty of law, that the following were met (check boxes, as applicable):

The requirement to obtain information under WAC 173-308-160 (2)(b) (required if any of the pollutant concentrations exceed those in WAC 173-308-160 Table 3).

The vector attraction reduction requirement in WAC 173-308-210(4): (a) or (b) (required if the vector attraction reduction requirements were not met prior to application).

The site management and access restrictions in WAC 173-308-210(5): (a) and/or (b).

This determination was made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements to obtain information have been met, the site management and access restrictions have been met, and the vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."

Signature _____ Title _____
Date _____

(4) Preparers or applicers of septage. The person who prepares or applies septage to the land must keep the following records, as applicable, and certification statement for five years:

- (a) The total number of gallons of septage managed.
- (b) The total number of gallons of septage land applied.
- (c) The number of gallons of septage managed in any manner other than land application (e.g., transfer to another facility).
- (d) The location of each site, either by street address, the latitude and longitude of the approximate center, or the section, township, and range of each quarter section, and a map(s) with the application area(s) clearly shown.
- (e) The number of acres in each site on which septage is applied.
- (f) The date septage is applied to each site.
- (g) The targeted vegetation grown on each site and its annual nitrogen requirement.
- (h) The rate, in gallons per acre per year, at which septage is applied to each site.
- (i) The number of gallons of septage applied to each site.
- (j) The source of the septage, including the name and address of the individual or business where the septage was generated, or, in the case of a centralized septage treatment facility, the name of the person or business who delivered the septage, the dates of delivery, and how much septage was delivered.
- (k) A description of how the pathogen and vector attraction reduction requirements in WAC 173-308-270(3) were met.

(l) If pH stabilization was used to meet the pathogen and vector attraction reduction requirements in WAC 173-308-270 (3)(a)(iii), pH measurements for each load.

(m) A description of how the applicable site management and access restriction requirements in WAC 173-308-270(4) were met.

CERTIFICATION STATEMENT:

"I certify, under penalty of law, that the following were met (check boxes, as applicable):

The pathogen and vector attraction reduction requirements in WAC 173-308-270(3): (a)(i), (a)(ii), or (a)(iii).

The site management and access restriction requirements in WAC 173-308-270(4).

This determination has been made under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen and vector attraction reduction requirements and site management and access restrictions have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Signature _____ Title _____
Date _____

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-295 Annual reports. (1) ~~((Class I biosolids management facilities, treatment works treating domestic sewage with a design flow rate equal to or greater than one million gallons per day, and those that serve 10,000 people or more, must submit to the department by March 1 of each year, the following information for the preceding calendar year:~~

~~(a) All applicable information required under WAC 173-308-290 (2), (3) and (5);~~

~~(b) The information in WAC 173-308-290 (4)(e)(i) through (v) and WAC 173-308-290 (4)(d) and (d)(i) and (ii) when ninety percent or more of any of the cumulative pollutant loading rates in Table 2 of WAC 173-308-160 have been reached;~~

~~(2) Other facilities and treatment works treating domestic sewage that are not required to submit an annual report under WAC 173-308-295(1) must submit part or all of any applicable information in WAC 173-308-290 (1)(a) and (b) as required by the department on the written request of the department, or in accordance with the requirements of an applicable permit issued by the department.~~

~~(3) All persons who apply septage to the land must submit to the department by March 1 of each year, the following information for the preceding calendar year:~~

~~(a) The number of gallons of septage applied to the land;~~

~~(b) The number of acres of land to which septage was applied.) All treatment works treating domestic sewage subject to this chapter must submit to the department by March 1 of each year, an annual report on a form provided by the department.~~

(2) All requested information that is required under this chapter or an applicable permit must be submitted.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-300 Disposal of ((municipal)) sewage sludge ((or)) in municipal solid waste landfill units and use of biosolids in municipal solid waste landfill ((units)) operations. (1) When biosolids are placed in a municipal solid waste landfill unit they are considered solid waste (((municipal)) sewage sludge).

(2) ((The use of municipal sewage sludge or biosolids that are subject to regulation under this chapter, as daily cover or as an amendment to daily cover is not a beneficial use and is considered disposal.

The use of biosolids as a component of landfill intermediate or final cover is considered a beneficial use if it is consistent with an approved landfill plan of operations or closure/post-closure plan.

(a) Landfills that use biosolids that do not meet standards to be classified as exceptional quality as a component of intermediate or final cover must have an approved site specific land application plan that meets the requirements of WAC 173-308-310(6) and 173-308-210, 173-308-230, or 173-308-240, as applicable.

(b) For the purposes of beneficial use on a municipal solid waste landfill unit, a site specific land application plan may recognize an approved plan of operations or closure/post-closure plan that addresses the substantive requirements of WAC 173-308-310(6) and 173-308-210, 173-308-230, or 173-308-240, as applicable.

(3) Any landfill accepting municipal sewage sludge for disposal must be in compliance with the requirements of chapter 173-351 WAC and 40 CFR Part 258.

(4) Municipal sewage sludge that is disposed in a municipal solid waste landfill must meet the liquids in landfills restrictions of WAC 173-351-200(9).

(5) Municipal sewage sludge that is disposed in a municipal solid waste landfill must not be hazardous waste as defined in chapter 173-303 WAC.

(6) Disposal on an emergency or temporary basis. Facilities wishing to dispose of municipal sewage sludge in a municipal solid waste landfill on an emergency or temporary basis must meet the conditions of (a) through (c) of this subsection and those in WAC 173-351-220(10).

(a) The person proposing to dispose of municipal sewage sludge must obtain a written determination from the local health department where the biosolids are being or would be land applied, that a potentially unhealthful circumstance exists under present conditions of management or would result from further land application of the biosolids, and that other management options are unavailable or would pose a threat to human health or the environment.

(b) Upon making the determination in (a) of this subsection, the local health department must notify the department in writing, of its findings and the basis for its determination. In its notification, the local health department must state the date on which disposal is approved to commence, any conditions, and the date after which continued disposal is prohibited.

(i) If the municipal sewage sludge is proposed to be disposed of in a municipal solid waste landfill outside the jurisdiction of the local health department in (b) of this subsection, the person proposing to dispose of the municipal sewage sludge must obtain written approval for disposal from the health department in the receiving jurisdiction.

(ii) If the jurisdictional health department in (b)(i) of this subsection, approves disposal of the municipal sewage sludge, the person proposing the disposal must forward a copy of the jurisdictional health department's determination to the department.

(e) Any person wishing to dispose of municipal sewage sludge in a municipal solid waste landfill on a temporary basis must submit a plan for approval to the department. The plan must include the following information:

(i) The conditions that make disposal necessary.

(ii) The steps that will be taken to correct the conditions in (e)(i) of this subsection, so that disposal will not become a long-term management option.

(iii) A time table for implementing the steps to be taken in (e)(ii) of this subsection.

(7) Disposal on a long-term basis.

(a) Facilities wishing to dispose of municipal sewage sludge in a municipal solid waste landfill on a long-term basis must have authorization to do so in a valid NPDES or state waste discharge permit issued under chapter 90.48 RCW, or a valid permit issued in accordance with this chapter.

(b) Any person wishing to engage in the disposal of municipal sewage sludge in a municipal solid waste landfill on a long-term basis must meet the conditions of (b)(i) and (ii) of this subsection and those in subsections (3), (4), and (5) of this section.

(i) The person proposing to dispose of municipal sewage sludge or biosolids must demonstrate to the satisfaction of the department that other options for disposal or beneficial use are economically infeasible.

(ii) The person proposing to dispose of municipal sewage sludge must provide the department with written approval for disposal from the local health department in the receiving jurisdiction.

(8) All facilities that dispose of municipal sewage sludge in a municipal solid waste landfill must submit the information in WAC 173-308-290 (2)(j), as required under WAC 173-308-295.) Any landfill accepting sewage sludge for disposal must be in compliance with the requirements of chapter 173-351 WAC and 40 CFR Part 258.

(3) Sewage sludge that is disposed in a municipal solid waste landfill must meet the liquids in landfills restrictions of chapter 173-351 WAC.

(4) Sewage sludge that is disposed in a municipal solid waste landfill must not be hazardous waste as defined in chapter 173-303 WAC or 40 CFR Part 261.

(5) **Daily cover.** The use of sewage sludge as daily cover or as an amendment to daily cover is not a beneficial use and is considered disposal.

(6) **Intermediate or final cover.** The use of biosolids as a component of landfill intermediate or final cover is considered a beneficial use if the following conditions are met:

(a) The use is consistent with an approved landfill plan of operations or closure/post-closure plan.

(b) The biosolids are used for the purposes of establishing a vegetative cover.

(c) If the biosolids are nonexceptional quality, the department has approved a site specific land application plan that meets the requirements of WAC 173-308-310(8). For the purposes of this subsection, a site specific land application plan may recognize an approved plan of operations or closure/post-closure plan that addresses the substantive requirements of WAC 173-308-310(8).

(7) Disposal on an emergency basis.

(a) Facilities wishing to dispose of sewage sludge in a municipal solid waste landfill on an emergency basis must meet the conditions of this subsection and those in chapter 173-351 WAC.

(b) The person proposing to dispose of sewage sludge must obtain a written determination from the local health jurisdiction where the sewage sludge is proposed for disposal that a potentially unhealthful circumstance exists under present conditions of management or would result from land application, and that other management options are unavailable or would pose a threat to human health or the environment.

(c) Upon making the determination in (b) of this subsection, the local health jurisdiction must notify the department in writing of its findings and the basis for its determination. In its notification, the local health jurisdiction must state the date on which disposal is approved to commence, any conditions, and the date after which disposal is prohibited.

(8) Disposal on a temporary basis.

(a) Any person wishing to dispose of sewage sludge in a municipal solid waste landfill on a temporary basis must submit a plan for approval to the department. The plan must include the following information:

(i) The conditions that make disposal necessary.

(ii) The steps that will be taken to correct the conditions that make disposal necessary so that disposal will not become a long-term management option.

(iii) A time table for implementing the steps to be taken to correct the conditions that make disposal necessary.

(b) The person proposing to dispose must provide the department with written approval for disposal from the local health jurisdiction in the receiving jurisdiction.

(9) Disposal on a long-term basis.

(a) Any person wishing to dispose of sewage sludge in a municipal solid waste landfill on a long-term basis must have authorization to do so in a valid NPDES or state waste discharge permit issued under chapter 90.48 RCW or a permit issued under this chapter, and the person must submit for approval to the department an evaluation of the various management options that demonstrates to the satisfaction of the department that options for beneficial use are economically infeasible.

(b) The person proposing to dispose must provide the department with written approval for disposal from the local health jurisdiction in the receiving jurisdiction.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-310 Permitting. (1) Applicable facilities—Application required.

~~((a) Except as provided in (a) of this subsection,))~~ All treatment works treating domestic sewage ~~((that engage in practices regulated under this chapter))~~ are applicable facilities, and must apply for ~~((an individual permit or for coverage under a general))~~ a permit for the final use or disposal of biosolids or sewage sludge except for certain composting toilet systems described in WAC 173-308-193 and certain composting facilities described in (a) of this subsection.

(a) *Permitting exemption for some composting facilities.* Facilities that compost biosolids ~~((and those facilities where only septage is applied to the land or collected and treated prior to application to the land,))~~ or sewage sludge do not require permitting under this chapter if all of the following conditions are met:

(i) A permit is not otherwise required in order to comply with the Federal Clean Water Act~~((;))~~.

(ii) The department and local health ~~((department))~~ jurisdiction agree that a permit issued by the local health ~~((department))~~ jurisdiction will be adequate~~((;))~~.

(iii) The conditions of the permit issued by the local health ~~((department))~~ jurisdiction meet or exceed the requirements of this chapter~~((; and))~~.

(iv) The department does not otherwise find that a state-issued permit is necessary because one or more of the conditions in (b)(i) through (iv) of this subsection exists.

(b) *Designation as a treatment works treating domestic sewage.* In addition to facilities meeting the definition of a treatment works treating domestic sewage in WAC 173-308-080, the department may designate any person, site, or facility that treats, uses, transports, stores, or applies biosolids, as a treatment works treating domestic sewage, and require the owner or operator to apply for a permit if any of the following conditions are met:

(i) The department determines that a permit is necessary to protect human health or the environment from the adverse effect of a pollutant in the biosolids~~((;))~~.

(ii) The department determines that a permit is necessary to protect human health or the environment from poor biosolids management practices~~((;))~~.

(iii) The department determines that a permit is necessary to ensure compliance with any of the requirements in this chapter~~((; or))~~.

(iv) Bulk biosolids or sewage sludge originating from a source or location outside the jurisdiction of the state of Washington are being applied to the land or received at any site or facility.

(c) It is a violation of this chapter for a facility to fail to submit a permit application to the department as required by these rules.

(2) General and individual permits. The department will issue permits for the treatment and final use or disposal of biosolids or sewage sludge.

(a) The department will issue, modify, revoke and reissue, and terminate general permits in accordance with the ~~((procedures in chapter 173-226 WAC))~~ provisions of Appendix 5.

(b) The department will accept and consider applications for coverage under a general permit, modify conditions of coverage, revoke and ~~((reauthorize))~~ reissue coverage, or terminate coverage under a general permit in accordance with the provisions of this ~~((chapter))~~ section.

(c) The department will issue, modify, revoke and reissue, or terminate individual permits in accordance with the provisions of this ~~((chapter))~~ section.

(3) (~~(Permit selection.)~~) Requirements to apply for coverage under a general permit or to request an individual permit.

(a) After the department has issued a general permit for the final use or disposal of biosolids or sewage sludge, all applicable facilities must (~~submit a notice of intent or~~) apply for coverage under the general permit (~~(, unless)~~) in accordance with subsection (4) of this section unless any of the following apply:

(i) The facility has a current individual permit issued under this chapter (~~(3)~~).

(ii) The department requires a facility to apply for an individual permit (~~(3 or 4)~~).

(iii) On written request of the applicant, the department has granted permission to apply for an individual permit.

(A) A facility may request an individual permit if a practice it proposes is not addressed in a general permit issued by the department.

(B) A facility may seek coverage under a general permit for any portion of its biosolids or sewage sludge management practices that are applicable under the general permit (~~(3)~~) and may also request an individual permit for any portion of its biosolids or sewage sludge management practices that are not applicable under the general permit.

(iv) The department may require any facility applying for an individual permit under (a)(iii) (~~(A) or (B)~~) of this subsection to limit its practices for the final use or disposal of biosolids or sewage sludge to those that are authorized in a general permit (~~(3)~~) and to apply for coverage under a general permit.

(b) The department may notify a facility that it is covered by a general permit, even if the facility has not submitted a permit application (~~or notice of intent~~) as required under (~~this~~) subsection (~~(3)~~) (4) of this section.

(i) A facility so notified may request an individual permit in accordance with the provisions of (a)(iii) of this subsection.

(ii) Facilities that are notified of coverage under (~~(b) or (f)~~) this subsection must submit a (~~notice of intent or~~) permit application as directed by the department.

(4) Timing of permit applications (~~and notices of intent—renewal of coverage~~).

(a) (~~Except for facilities in (e)(i) and (f) of this subsection, existing facilities that are class one biosolids management facilities, publicly owned treatment works with a design flow rate equal to or greater than one million gallons per day, and those that serve a population of 10,000 people or more must either:~~

(i) Submit an application for coverage under a general permit within ninety days after issuance of a biosolids general permit by the department; or

(ii) Submit a notice of intent within ninety days of issuance of an applicable general permit, followed by a complete permit application within one hundred eighty days of issuance of the applicable general permit.

(b) Except for facilities in (a), (e)(i), and (f) of this subsection, existing facilities must submit a notice of intent to be covered under a general permit within ninety days after issuance of a biosolids general permit by the department.

(c) Except for facilities in (e)(ii) and (f) of this subsection, new facilities that are class one biosolids management facilities, publicly owned treatment works with a design flow rate equal to or greater than one million gallons per day, and those that serve a population of 10,000 people or more must submit an application for coverage under a general permit or a request for an individual permit at least one hundred eighty days in advance of engaging in applicable biosolids management activities.

(d) Except for facilities in (e), (e)(ii) and (f) of this subsection, new facilities must submit a notice of intent to be covered under a general permit or a request for an individual permit at least one hundred eighty days in advance of engaging in applicable biosolids management activities.

(e)(i) Existing facilities that have not been previously permitted under this subsection that wish to request an individual permit under subsection (3)(a)(iii) of this section must do so within thirty days of issuance of a biosolids general permit by the department.

(ii) New facilities that wish to request an individual permit under subsection (3)(a)(iii) of this section must do so at least one hundred eighty days in advance of engaging in applicable biosolids management activities.

(f) Facilities that have been directed to apply for an individual permit under subsection (3)(a)(ii) of this section must submit an application for an individual permit as directed by the department, but the department will allow at least ninety days for a submittal.

(g) Facilities that are denied an individual permit must submit a notice of intent or a complete permit application for coverage under a general permit as would otherwise be required, within sixty days after being denied an individual permit unless a later date is authorized by the department.

(h) Facilities, other than those in (a) of this subsection, that have submitted a notice of intent to be covered under a general permit must submit a complete permit application as follows:

(i) Except as required under (h)(iv) of this subsection, if the facility is subject to permitting under chapter 173-216 or 173-220 WAC, a complete permit application is due on the date when an application for a state waste discharge or NPDES permit, or for renewal thereof, is due, or one hundred eighty days after issuance of the applicable general permit, whichever is later.

(ii) Except as required under (h)(iv) of this subsection, if the facility is not subject to permitting under chapter 173-216 or 173-220 WAC but is subject to permitting under chapter 173-304 WAC and local solid waste ordinances, a complete permit application is due on the date when an application for a local solid waste permit, or for renewal thereof, is due, or one hundred eighty days after issuance of the applicable general permit, whichever is later.

(iii) Other facilities that have submitted a notice of intent must submit a complete permit application as directed by the department, but the department will allow at least ninety days for a submittal.

(iv) The department may require facilities under (h)(i) and (ii) of this subsection to submit a complete permit application at an earlier date for the purpose of expediting the permitting process, or if the department finds that any of the con-

ditions in subsection (1)(b)(i) through (iv) of this section are met. Facilities required to make an early submittal must do so within ninety days from the time of the first request unless a later date is authorized by the department.

(i) ~~Renewal of coverage.~~

(A) All facilities permitted under this section must submit a notice of intent to continue coverage under a general permit or for initial coverage under a general permit, or an application for an individual permit or for renewal of an individual permit, at least one hundred eighty days prior to the expiration date of their applicable permit.

Facilities that are submitting a notice of intent must submit a complete updated permit application according to the schedule in (a) through (h) of this subsection.

(B) When a facility has made timely and sufficient notice of intent or application as required in (i) of this subsection, an expiring permit remains in effect and enforceable until:

(I) The application has been denied;

(II) A replacement permit has been issued by the department; or

(III) The department has cancelled the expired permit.

(C) ~~Unless the department specifies otherwise in a renewing general permit, or notifies a facility directly, facilities previously covered under a general permit issued in accordance with subsection (2) of this section are automatically covered under a new general permit if they reapply for coverage in accordance with (i) of this subsection; and~~

(I) The facility will not implement a significant change in biosolids management practices under the new permit; and

(II) The public notice requirements of subsection (11) of this section have been met and there are no sustainable objections to continuation of coverage.

(D) For facilities that are renewing coverage under a general permit, land application plans required under subsection (6) of this section that have been previously approved are automatically approved under the new general permit as long as biosolids management practices remain consistent with the approved plan.

(E) Coverage under an expired permit for permittees who fail to submit a timely and sufficient application or notice of intent shall cease on the expiration date of the permit.

(5) Contents of permit applications—notice of intent.

(a) All facilities must submit a complete and factually correct permit application in accordance with the schedule established in subsection (4) of this section, on forms or in a format specified by the department. When complete, all permit applications must contain at least the information in (a)(i) through (xi) of this subsection:

(i) The activities conducted by the applicant that require it to obtain a permit, and if applying under a general permit, the name of the permit;

(ii) Name, mailing address, and location of the facility for which the application is submitted;

(iii) The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

(iv) Whether or not the facility or any associated facilities or land applications sites are located on Indian or federal lands;

(v) A listing of other relevant environmental permits, and all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous waste management program under the Resource Conservation and Recovery Act;

(B) Underground injection control program under the Safe Drinking Water Act;

(C) National pollutant discharge elimination system program under the Clean Water Act;

(D) Prevention of significant deterioration program under the Clean Air Act;

(E) Nonattainment program under the Clean Air Act;

(F) National emission standards for hazardous pollutants preconstruction approval under the Clean Air Act;

(G) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act;

(H) Dredge or fill permits under section 404 of the Clean Water Act;

(vi) A map extending one mile beyond the property boundaries of the facility, showing the location and means of access to the facility, and additional maps if necessary, showing the same for any associated treatment or storage facilities.

(vii) Any biosolids monitoring data the applicant has for the last two years, including for land application sites any available soil, or surface or ground water monitoring data, with a description of the sampling locations, and for wells the approximate depth to ground water.

(viii) A description of the applicant's biosolids use and disposal practices including, where applicable, the location of any sites where the applicant transfers biosolids for treatment or disposal, as well as the name of the applicator or other contractor who applies the biosolids to land if different from the applicant;

(ix) Land application plans, as required under subsection (6) of this section;

(x) The amount of biosolids produced and the amount of biosolids applied to the land during the previous year, and estimated to be produced or applied to the land on an annual basis during the life of the permit;

(xi) Any information required to determine the appropriate standards for permitting under this chapter, and any other information the department may request and reasonably require to assess biosolids use and disposal practices, to determine whether or not to issue a permit, or to ascertain appropriate permit requirements under this chapter.

(b) A notice of intent to be covered under a general permit for biosolids recycling must contain:

(i) The name of the general permit under which coverage is being sought, and a statement declaring the applicant's intent to comply with the requirements of the permit.

(ii) The information required in (a)(i) through (iii) of this subsection, and the location and a description of any site(s) where biosolids are treated, stored, disposed, or applied, and whether or not any permit, including a local solid waste permit has been issued for a site.

(iii) Any information specifically required for a notice of intent under the applicable general permit.

(6)) Existing facilities seeking coverage under a general permit. Existing facilities seeking coverage under a general permit must submit an application for coverage within

ninety days after issuance of the applicable general permit by the department. However, on a case-by-case basis the department's regional biosolids coordinator may grant an extension up to a maximum of one hundred eighty days after issuance of the applicable general permit. Requests for an extension must be made in accordance with the following:

(i) Requests must be made in writing to the applicable regional biosolids coordinator.

(ii) Requests must be made within ninety days after issuance of the applicable general permit.

(b) **Existing facilities requesting an individual permit.** Existing facilities that wish to request an individual permit under subsection (3)(a)(iii) of this section must do so within thirty days of issuance of an applicable general permit by the department.

(c) **Facilities required or approved to apply for an individual permit.** Facilities that have been directed by the department to apply for an individual permit under subsection (3)(a)(ii) of this section or approved to apply for an individual permit requested under subsection (3)(a)(iii) of this section must submit a permit application within ninety days of receiving notification.

(d) **Facilities that have been denied an individual permit.** Facilities that are denied an individual permit must submit an application for coverage under a general permit within sixty days after being denied an individual permit.

(e) **New facilities.** New facilities being proposed after July 1, 2007, must submit an application for coverage under an applicable general permit or a request for an individual permit at least one hundred eighty days prior to engaging in applicable management activities.

(5) Timing of notices of intent - continuing coverage.

(a) All facilities permitted under this section must submit a notice of intent to continue coverage under a general permit or an application for a new individual permit, at least one hundred eighty days prior to the expiration date of their applicable permit.

(b) When a facility has submitted a timely and sufficient notice of intent or application as required in this subsection, an expiring permit remains in effect and enforceable until any of the following occur:

(i) The application has been denied.

(ii) A replacement permit has been issued by the department.

(iii) The department has cancelled the expired permit.

(c) Coverage under a permit for permittees who fail to submit a timely and sufficient application or notice of intent shall cease on the expiration date of the permit.

(6) **Permit application contents.** All facilities must submit a complete and factually correct permit application in accordance with the schedule established in WAC 173-308-310(4) on a form or in a format specified by the department. The content requirements are listed in Appendix 1.

(7) **Notices of intent contents.** Facilities submitting a notice of intent to be covered under an applicable general permit must do so on a form provided by the department. The content requirements are listed in Appendix 2.

(8) Land application plans.

(a) **Exemptions for exceptional quality biosolids.** Land application plans are not required when exceptional quality

biosolids are applied to the land, except as specified in ~~((a)(ii) or (iii) of)~~ this subsection.

(i) Any person who prepares exceptional quality biosolids for application to the land must determine and assure to the extent practicable, through recordkeeping and other means, that all applicable criteria of this chapter and any applicable permit are met when bulk exceptional quality biosolids are applied to the land.

(ii) Any person who prepares exceptional quality biosolids for application to the land and who fails to satisfy the requirements in (a)(i) of this subsection, may be required to submit a general or site specific land application plan, or both, for any or all sites where bulk exceptional quality biosolids are applied to the land, and may also be required to comply with the public notice requirements in subsection ~~((14))~~ (13) of this section.

(iii) The department may require a site specific land application plan for any site where bulk exceptional quality biosolids are proposed to be applied if the plan is necessary to evaluate potential permit conditions or if the department finds there would be a strong benefit to the public from the preparation of a site specific land application plan.

(iv) The department may require advance notice prior to the application of bulk exceptional quality biosolids to the land. In such case the department will notify the facility in writing of the conditions requiring advance notice, the length of advance notice required, and the length of time the requirement for advance notice will remain in effect.

(b) **Nonexceptional quality biosolids.** Land application plans are required when ~~((bulk biosolids that do not meet criteria to be classified as exceptional))~~ nonexceptional quality biosolids are applied to the land ~~((;-))~~ except when biosolids are delivered to a beneficial use facility as provided in (g) of this subsection ~~((;-))~~. Facilities that propose to apply nonexceptional quality biosolids to the land ~~((that do not meet criteria to be classified as exceptional quality must either))~~ must do one or both of the following:

(i) Submit with their permit application a site specific land application plan for each site where biosolids will be applied during the life of the permit ~~((;-or))~~.

(ii) Submit with their permit application a general land application plan, and at a later date prior to applying biosolids ~~((to a site))~~, a site specific land application plan for each site where biosolids will be applied to the land ~~((;-))~~.

~~((iii) Facilities that submit a general land application plan may also submit at the same time any available site specific land application plans for approval))~~.

(c) ~~((AH))~~ Any site specific land application plans must be consistent with a facility's general land application plan, if a general land application plan ~~((is required))~~ has been submitted.

(d) **Site specific land application plan contents.** Each site specific land application plan must provide information necessary to determine if the site is appropriate for land application of biosolids, and a description of how the site will be managed. ~~((At a))~~ The minimum ~~((;-))~~ content for site specific land application plans ~~((must address the following:~~

~~((i) In accordance with the provisions of WAC 173-308-160 (2)(b), whether or not it is known or can be determined that biosolids containing pollutants in excess of the values~~

established in Table 3 of WAC 173-308-160 have ever been applied to the site, and if so:

(A) The date(s) when the biosolids were applied (if known);

(B) The amount of biosolids applied (if known);

(C) The concentrations of the pollutants in the biosolids (if known);

(D) The area(s) of the site to which the biosolids were applied (if known);

(ii) A discussion of the types of crops grown or expected to be grown, their intended end use (e.g., pasture grass for a feed crop, corn as a food crop), and the current distribution of crops on the site;

(iii) An explanation of how agronomic rates will be determined during the life of the site, along with any currently available calculations. Whenever agronomic rates are determined or conditions change (i.e., a change in crops or agronomic rates) an update of the agronomic rate calculations must be filed with the department;

(iv) Method(s) of application;

(v) Seasonal and daily timing of biosolids applications;

(vi) Any available data from soils, surface water, or ground water monitoring collected from the site within the last two years;

(vii) The name of the county and water resource inventory area where biosolids will be applied;

(viii) A description of how biosolids will be stored at the site and also addressing related off-site storage;

(ix) Site map(s) showing:

(A) The location and means of access to the facility;

(B) The number of acres in the site;

(C) Location and extent of any wetlands on the site;

(D) A topographic relief of the application site and surrounding area;

(E) Adjacent properties and uses and their zoning classification;

(F) Any seasonal surface water bodies located on the site or perennial surface water bodies within 1/4 mile of the site;

(G) The location of any wells within 1/4 mile of the site that are listed in public records or otherwise known to the applicant, whether for domestic, irrigation, or other purposes;

(H) The width of buffer zones to surface waters, property boundaries and other features requiring buffers;

(I) The presence and extent of any threatened or endangered species or related critical habitat;

(J) The location of any critical areas on site, as required to be identified under chapter 36.70A RCW in the county's growth management plan;

(K) The location and size of any areas that will be used to store biosolids.

(e) Except for facilities under (e)(vi) of this subsection, applicants including beneficial use facilities) is listed in Appendix 3.

(e) **General land application plan contents.** Applicants intending to apply ((biosolids to the land that do not meet criteria to be classified as exceptional)) nonexceptional quality((;)) biosolids to sites for which a site specific land application plan is not submitted as a part of the permit application, must submit for approval as a part of their permit

application((;)) a general land application plan ((that at a minimum:

(i) Describes the geographical area covered by the plan, including the names of all counties and water resource inventory areas where biosolids may be applied;

(ii) Identifies site selection criteria;

(iii) Describes how sites will be managed;

(iv) Provides for not less than thirty days advance notice to the department of new or expanded land application sites, including those subject to provisional approval under subsection (17) of this section, to allow time for the department to object prior to the biosolids application; and

(v) Provides for advance public notice as required in subsection (11) of this section, and that is reasonably calculated to reach potentially interested adjacent and abutting property owners; except

(vi) A general land application plan is not required when biosolids are provided to a beneficial use facility and the requirements of (g) of this subsection are met). The minimum content for general land application plans is listed in Appendix 4.

(f) As individual sites are identified in accordance with the general land application plan in ((~~(6)~~))(e) of this subsection, facilities((, including beneficial use facilities applying biosolids that do not meet criteria to be classified as exceptional quality must develop and submit the information required for site specific land application plans in)) that seek to apply nonexceptional quality biosolids must develop and submit site specific land application plans in accordance with (d) of this subsection.

(g) **Exemptions when sending biosolids to a permitted beneficial use facility.** When biosolids are provided to a beneficial use facility that has been permitted as a treatment works treating domestic sewage, the person who prepares the biosolids is not required to prepare ((a)) land application plans for the biosolids that will be applied to the beneficial use facility if((-

(i)) all of the following conditions are met:

(i) The beneficial use facility's permit allows it to accept biosolids from the person who prepares biosolids.

(ii) As a part of the permit application or public notice, the person who prepares the biosolids identifies the beneficial use facility(ies) to which biosolids may be provided((;)) or((; if specific beneficial use facilities cannot be identified,)) specifies the criteria by which beneficial use facilities may be selected at a future date((; and

(ii) At least thirty days in advance of delivering biosolids to the beneficial use facility the person who prepares the biosolids submits to the department a certification statement, signed in accordance with the provisions of subsection (8) of this section by the person who prepares the biosolids, stipulating the following:

(A) That the applicable site specific land application plan and other management plans approved for the beneficial use facility are appropriate to the quality of biosolids being provided by the person who prepared the biosolids;

(B) That the person who prepared the biosolids has reviewed the public notice conducted by the beneficial use facility and the conditions in subsection (11)(d) of this section have been met, or additional public notice has been con-

~~ducted in accordance with subsection (11) of this section;)) or states or indicates that it maintains the option to send its biosolids or sewage sludge to any facility permitted by the department to accept it for management.~~

(h) All land application plans, including those authorized under provisional approval in accordance with subsection ~~((17))~~ (18)(a) of this section, are subject to review and final approval by the department. If a land application plan is found to be insufficient, the department may either request additional information or may impose additional requirements as a condition of approval ~~(. Any additional requirements imposed under (h) of this subsection are considered to be permit requirements, fully enforceable))~~ in accordance with ~~((the provisions of this chapter and the applicable permit))~~ subsection (19) of this section.

~~((7))~~ (9) **Submitting permit applications and notices of intent.** Facilities must submit ~~((copies of))~~ their permit application ~~((or))~~ and notice of intent as follows:

(a) The original ~~((must be submitted))~~, in hardcopy form, to the biosolids coordinator in the regional office of the department where the facility is located.

(b) One copy, in either electronic or hardcopy form, to any other regional office of the department where the facility's biosolids or sewage sludge will be treated, stored, disposed, or applied to the land. The department encourages submittal in electronic form.

(c) One copy, in either electronic or hardcopy form, to the biosolids coordinator at the department's headquarters office ~~((of the department of ecology, and one copy must be submitted to each regional office of the department of ecology where biosolids will be treated or applied to the land.~~

~~(b) Unless a local health department otherwise requests as provided in (b) of this subsection, one copy must be submitted))~~. The department encourages submittal in electronic form.

(d) One copy, in either electronic or hardcopy form, to the local health ~~((department))~~ jurisdiction in each county where biosolids or sewage sludge will be treated, stored, disposed, or applied to the land ~~((, or disposed in a municipal solid waste landfill)).~~ The department encourages submittal in electronic form.

Local health ~~((departments))~~ jurisdictions that elect not to ~~((participate in the implementation of this chapter may notify the department in writing))~~ receive copies of notices of intent or permit applications may notify in writing the facility or the department that they do not wish to receive copies ~~((of permit applications or land application plans)).~~

~~((8))~~ (10) **Signatories to permit applications** ~~((, notices of intent,))~~ and reports ~~((, and other documents)).~~

(a) **Applications.** All permit applications must be signed as follows:

(i) *For a corporation.* By a responsible corporate officer. For the purpose of this ~~((chapter))~~ section, a responsible corporate officer means either of the following:

(A) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation ~~((, or))~~.

(B) The manager of one or more manufacturing, production, or operating facilities employing more than two hundred

fifty persons or having gross annual sales or expenditures exceeding twenty-five million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) *For a partnership or sole proprietorship.* By a general partner or the proprietor, respectively ~~((,))~~.

(iii) *For a municipality, state, federal, or other public agency.* By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes either of the following:

(A) The chief executive officer of the agency ~~((, or))~~.

(B) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(b) **Reports and other information.** All reports and other information required by permits, and other information requested by the department must be signed by a person described in (a) of this subsection, or by a duly authorized representative of that person. A person is a duly authorized representative only if the following conditions are met:

(i) The authorization is ~~((made))~~ submitted to the department in writing by a person described in (a) of this subsection ~~((,))~~.

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters ~~((, and~~

~~((iii) The written authorization is submitted to the department)).~~

(c) **Changes to authorization.** If an authorization under (b) of this subsection is no longer accurate ~~((because a different individual or position has responsibility for the overall operation of the facility)),~~ a new authorization satisfying the requirements of (b) of this subsection must be submitted to the department prior to or together with any reports ~~((,))~~ or other information ~~((, or applications to be signed by an authorized representative)).~~

(d) **Certification.** Any person signing a document under (a) or (b) of this subsection must make the following certification, unless a different certification is applicable under another related section of this chapter:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

~~((9))~~ (11) **Public access to information.** In accordance with chapter 42.17 RCW, the department must provide, upon request, any information submitted as part of ~~((an))~~ a permit application ~~((for an individual permit or for~~

coverage under a general permit)), except as provided in (a) of this subsection.

(a) In accordance with chapters 42.17, 43.21A, 70.105, and 90.52 RCW, the department must protect any information (other than information on the quality of biosolids) contained in applications as confidential upon a showing by any person that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of the person.

(b) Any information accorded confidential status, whether or not contained in any application form, must be disclosed, upon request, to the Regional Administrator of EPA.

~~((10))~~ **(12) Recordkeeping required for permit applications.** Applicants must keep records of all information used to complete permit applications and any supplemental information submitted for a period of five years, or longer, if otherwise required by this chapter, the conditions of the applicable permit, or other state or local laws((:)).

~~((11))~~ **(13) Public notice and comment period.** Public notices and comment periods must minimally meet the requirements listed in this subsection.

(a) Applying for coverage under a general permit initially, proposing a significant change, or reapplying following revocation. All facilities ((that are)) applying for coverage under a general permit initially, facilities ((applying for renewal of coverage under a general permit that)) who propose a significant change in biosolids management practices, and those ((applying for an individual permit or for renewal thereof, must issue public notice within each county where they will prepare biosolids for application to the land, and except as provided in (c) and (d) of this subsection, in each county where biosolids not meeting the criteria to be classified as exceptional quality will be applied to the land. Notice must be given as follows:

(i) The applicant must publish two notices, at intervals of at least one week, in a newspaper of general circulation in each county where biosolids are proposed to be applied to the land.

(ii) The applicant must mail a copy of the notice to any person or group that has notified the applicant in writing of an interest in the applicant's biosolids management activities.

(iii) For a period of at least thirty days, beginning not later than the last date of newspaper publication required in (a)(i) of this subsection, notice must be posted at all sites identified in the permit application where bulk biosolids that do not meet the standards to be classified as exceptional quality will be applied to the land;

(A) When newspaper notice is not required for new sites being proposed in accordance with an approved general land application plan per (c) of this subsection, the thirty day notice period in (a)(iii) of this subsection begins when the direct mail notice requirement of (a)(ii) of this subsection has been met.

(B) It is a violation of these rules for any person to remove a sign posted in accordance with the requirements of (a)(iii) of this subsection during the public notice period.

(iv) Notice must be given by any other method required by the department.

(v) At the time of the initial notice, copies of the notice and an explanation of all places where and when the notice was or will be published or posted must be submitted to:

(A) The contact person in the regional or headquarters office of the department of ecology that has lead responsibility for the permit; and

(B) ~~The local health department in each county where biosolids will be treated, stored, applied to the land, or disposed in a municipal solid waste landfill, unless the local health department has waived receipt of notification under subsection (7)(b) of this section.~~

(b) Notices under (a) of this subsection must contain the information in (b)(i) through (xi) of this subsection:

(i) The name and address of the facility seeking the permit or filing a notice of intent, and a contact person;

(ii) When the local health department has accepted delegation of responsibility under WAC 173-308-050, the address of the local health department and a contact person;

(iii) The address of the regional or headquarters office of the department of ecology that has lead responsibility for the permit, and a contact person;

(iv) A brief statement of the applicant's biosolids management practices for which a permit is sought or a notice of intent is being submitted;

(v) If coverage under a general permit is being sought, the name of the general permit or the name and location of the site if notice is being given for a site specific land application plan;

(vi) The statement: "Any person wishing to comment on this application or desiring to present their views regarding this application to the department of ecology or its delegated representative must do so in writing within thirty days of the last date of newspaper publication of this notice. Comments should be addressed to (insert the name and address of the person identified in (b)(vii) of this subsection)."

(vii) The person to whom comments should be addressed is the person in (b)(vii)(A) or (B) of this subsection, whichever is appropriate;

(A) When the application or notice of intent is for coverage under a general permit or for an individual permit, the person to whom comments should be directed is the department of ecology contact in (b)(iii) of this subsection.

(B) When the proposal is for a specific land application site, the person to whom comments should be directed is the department of ecology contact in (b)(iii) of this subsection, except where responsibility has been delegated to a local health department, in which case the recipient of comments should be the local health department contact in (b)(ii) of this subsection.

(viii) A statement specifying:

(A) Whether or not the permit application contains any information about current or proposed biosolids application sites;

(B) Whether or not the permit application contains a plan specifying how future application sites will be identified;

(C) If biosolids will be provided to any other facility, including a beneficial use facility; and

(D) How the public will be notified regarding the selection of future land application sites.

(ix) The time and place of any public hearing or meeting that will be held or the procedures to request one, and other procedures by which the public may participate in the final permit decision;

(x) The means by which an interested person or organization can have their name placed on a list to be maintained by the applicant for the purpose of future notification of biosolids management activities.

On written request of the person seeking to have their name added to the list of interested parties, all facilities maintaining a list of interested persons or organizations under (b)(x) of this subsection must provide written confirmation by certified mail, return receipt requested, to each interested person or organization that their name has been placed on the list.

(xi) Any additional information considered necessary or proper.

(e) Except as provided in (d) of this subsection, public notice for a new or expanded land application site that is being proposed in accordance with an approved general land application plan must be satisfied as follows:

(i) If site specific local approval is required to be obtained through integrated project review under the State Growth Management Act and the substantive notice requirements of (b) of this subsection are met, public notice for the purposes of this rule will be satisfied by compliance with the public notice requirements of the local integrated project review process;

(ii) Public notice conducted in accordance with the State Environmental Policy Act satisfies the public notice requirements of this rule for new or expanded land application sites if the substantive requirements of (b) of this subsection are met and the site is specifically identified in an environmental checklist that is available for public review and comment;

(iii) The public notice process for new or expanded land application sites not applicable under (e)(i) or (ii) of this subsection must meet the requirements of (a)(ii) through (v) and (b) of this subsection.

(d) Facilities that will provide biosolids to a permitted beneficial use facility must conduct public notice in accordance with this subsection as follows:

(i) Public notice must be given when applying for an individual permit or for coverage under a general permit;

(ii) Other than sites that are part of a beneficial use facility, public notice must be given for all new or expanded sites where biosolids not meeting the criteria to be classified as exceptional quality will be applied to the land;

(iii) Facilities that provide biosolids to a permitted beneficial use facility are not required to carry out public notice specific to the land application of biosolids at the beneficial use facility if:

(A) Public notice given for the beneficial use facility identified the facility providing the biosolids; or

(B) Public notice given for the beneficial use facility clearly stated that biosolids would be accepted from unknown sources, including sources outside of the county in which the beneficial use facility is located, as applicable.

(e) Facilities applying for individual permits must complete the public notice requirements in this subsection at the

time they apply for a permit and at the time when a draft permit is provided for formal review by the department.

(12)) who reapply for a permit following revocation of their permit must issue public notice in the following manner:

(i) Issue one notice in a newspaper of general circulation in any county(ies) where you prepare biosolids or sewage sludge.

(ii) Issue one notice in a newspaper of general circulation in any county(ies) covered by a general land application you have submitted.

(iii) Issue one notice in a newspaper of general circulation in any county(ies) where you land apply nonexceptional quality biosolids except where this notice has been conducted by a permitted biosolids beneficial use facility.

(iv) Post notices at any site(s) where you plan to land apply nonexceptional quality biosolids except where this notice has been conducted by a permitted biosolids beneficial use facility. The site(s) must remain posted during the entire public comment period required in (a)(v) of this subsection.

(v) Provide a thirty-day public comment period following the issuance of newspaper notice and the posting of site(s).

(b) **Applying for renewal of coverage under a general permit with no land application of nonexceptional quality biosolids.** All facilities applying for renewal of coverage under a general permit who have previously met the public notice requirements of (a) of this subsection and who do not land apply nonexceptional quality biosolids are not required to conduct additional public notice.

(c) **Applying for renewal of coverage under a general permit with land application of nonexceptional quality biosolids.** All facilities applying for renewal of coverage under a general permit who have previously met the public notice requirements of (a) of this subsection and who land apply nonexceptional quality biosolids must conduct public notice in accordance with (a)(iii) and (v) of this subsection.

(d) **Applying for an individual permit.** Facilities applying for individual permits must conduct public notice in accordance with (a)(i) through (v) of this subsection at the time they apply for a permit and at the time when a draft permit is provided for formal review by the department.

(e) **Notice when adding a new site in accordance with a general land application plan.** All facilities who are proposing to add a new site or expand an existing site for the land application of nonexceptional quality biosolids in accordance with an approved general land application plan and who previously met the public notice requirements of (a) of this subsection must conduct public notice at the proposed new site or expanded area of an existing site in accordance with (a)(iv) and (v) of this subsection.

(f) All facilities not captured under one of the descriptions in (a) through (e) of this subsection must conduct public notice as directed by the department.

(g) **Notice contents.** All notices issued in accordance with this subsection must contain at least the following:

(i) The name and address of the facility and the name of the contact person for the facility.

(ii) The name and address of the department of ecology person responsible for the permit.

(iii) The name and address of the local health jurisdiction person responsible for the permit if the local health jurisdiction has been delegated this responsibility.

(iv) A description of the proposal.

(A) Proposals for coverage under a general permit must cite the name of the general permit.

(B) Proposals for land application plans must contain information on the location of the proposed land application sites and, if applicable, the source(s) of biosolids that may be applied.

(C) Proposals for general land application plans must provide information on how the public will be notified when specific sites are identified.

(v) A brief statement describing the applicant's biosolids or sewage sludge management practices.

(vi) A statement describing an interested person's opportunity to comment or request a public hearing or meeting on the proposal, including the last date for comments or requests and the contact person to whom comments or requests must be directed.

(A) The period for comments and requests must be at least thirty days following the posting.

(B) Comments and requests should be directed to the responsible department of ecology contact or the responsible local health jurisdiction contact if the authority is delegated.

(C) The following is an example: "Any person wishing to comment on this proposal or wishing to request a public hearing or meeting must do so in writing within thirty days of this notice. Comments should be addressed to (insert either 'the department of ecology contact listed' or 'the local health jurisdiction contact listed')."

(vii) The statement, "If you wish to be included on an interested parties list to receive notification of activities relating to this project, please notify, in writing, the (insert facility name) contact listed. (Insert facility name) will provide written confirmation by certified mail, return receipt requested, to each interested person or organization that their name has been placed on the list."

(viii) Any additional information considered necessary or proper.

(h) **Notice to interested parties.** Notices must be sent to all persons on a facility's interested parties list at the same time or before notice is run in a newspaper or posted at a land application site.

(i) **Notices at land application sites.** Notices at land application sites must be posted at all significant site access points and at least every 1/2 mile (805 meters) around the perimeter of the site.

(j) Following the completion of public notice and comment period requirements, the facility must provide written documentation to the department certifying completion of the process in accordance with the following:

(i) When newspaper notice has been conducted, either an *Affidavit of Publication* must be submitted or a copy of the newspaper notice that shows the date of publication must be submitted.

(ii) When site posting has been conducted, a copy of the final notice posted and a brief description describing how site posting and notification was conducted.

(k) Notice must be given by any other method required by the department.

(14) Public hearings and meetings.

(a) The department may require an applicant to hold a public hearing or meeting when applying for ~~((coverage under a general permit, for an individual))~~ a permit~~((;))~~ or for any land application plan if it finds, on the basis of requests, a significant degree of public interest~~((;))~~ or if it determines that a public discussion might clarify one or more aspects important to compliance with the requirements of this chapter or an applicable permit.

(b) During the public comment period provided for in subsection ~~((+1))~~ (13) of this section, any person may request the department to require a public hearing or meeting if none has been scheduled. Any request for a public hearing or meeting must be in writing and must state the nature of the issues proposed to be raised. The department will consider all requests that are received not later than the final comment date specified in the notice required under subsection ~~((+1)(b))~~ (13) of this section.

(c) **Notice of a hearing.** If the department determines that a public hearing must be held, the applicant must give notice of a public hearing in accordance with the procedures in subsection ~~((+1)(a) and (b))~~ (13) of this section, except that posting of sites that are not specifically subject to the hearing is not required.

(i) The notice of hearing must contain the following information:

(A) The dates of previous public notices relating to the permit application~~((;))~~.

(B) The date, time, and place of the hearing~~((;))~~.

(C) A brief description of the nature and purpose of the hearing, including any rules and procedures that apply.

(ii) Copies of the notice and an explanation of all places where and when the notice was published must be submitted to:

(A) The contact person in the regional or headquarters office of the department ~~((of ecology))~~ that has lead responsibility for the permit~~((; and))~~.

(B) Any applicable local health ~~((department))~~ jurisdiction that has accepted delegation of authority ~~((under WAC 173-308-050))~~ for conducting public hearings.

(d) Public hearings required under this subsection, must be held in each county where biosolids will be treated or applied to the land, unless otherwise allowed by the department.

(e) Public hearings required under this subsection must be held no sooner than thirty days after the ~~((final notice of public hearing published in accordance with subsection (11)(a)(i) of this section;))~~ publication of the notice required in (c) of this subsection and at a time and place as can be reasonably expected to be convenient to the department and interested parties.

(f) Public hearings must be attended by a representative of the permit applicant who is authorized to respond to questions from the public and the department~~((;))~~ and by a representative of the department.

~~((+))~~ (g) **Notice of a meeting.** Requirements for notice conducted for public meetings ~~((+))~~ are the same as that

required for public hearings unless otherwise allowed by the department.

~~((13))~~ **(15) Record and response to comments received on an application or during a public hearing or meeting.**

(a) The department will maintain a record of all written comments received during the public comment period in subsection ~~((14))~~ **(13)** of this section, and of all comments properly submitted in response to a public hearing required under subsection ~~((12))~~ **(14)** of this section.

(b) The department will prepare a response to all relevant comments received, and will briefly describe any changes that resulted (other than editorial changes) to ~~(an individual permit or to an applicant's coverage under a general)~~ a permit.

(c) The department is not obligated to consider or respond to comments or information that is received later than thirty days after the ~~(initial)~~ date of publication of public notice, or the date of a public hearing, whichever is later.

~~((14) Additional requirements. In addition to the requirements of this chapter, the department may impose additional requirements as part of the approval process for coverage under a general permit or as conditions of an individual permit if any of the conditions in subsection (1)(b)(i) through (iv) of this section are met.~~

~~(a) Any additional requirements imposed under this subsection are considered to be permit requirements, fully enforceable in accordance with the provisions of this chapter and the applicable permit.~~

~~(b) If known, any additional requirements must be disclosed at a public hearing if a public hearing is held, or if imposed subsequent to a public hearing, must become a part of the written record required under subsection (13)(b) of this section.~~

~~(15))~~ **(16) Compliance schedules.**

(a) A permit may specify a schedule leading to compliance with the federal Clean Water Act and these regulations. Any compliance schedule under this ~~(section)~~ subsection must require compliance as soon as possible, but not later than any applicable statutory deadline under the Clean Water Act or chapter 70.95J RCW.

(b) ***Interim dates.*** If a permit establishes a compliance schedule that exceeds one year from the date of permit issuance, the schedule must set forth interim requirements and the date for their achievement. The time between interim dates must not exceed six months.

(c) ***Reporting.*** The permit must require that no later than fourteen days after each interim date and the final date of compliance, the permittee must notify the department in writing of its compliance or noncompliance with the interim or final requirements.

~~((16))~~ **(17) Fact sheet required for individual permits.**

(a) The department must prepare a fact sheet for every draft individual permit for a class I biosolids management facility, for every draft individual permit requiring permit conditions developed on a case-by-case basis to implement section 405 (d)(4) of the Clean Water Act, for every draft individual permit that includes a general land application plan ~~(under subsection (6)(b)(iii) of this section)), and for~~

every draft individual permit that the director finds is the subject of widespread public interest or raises major issues.

(i) The fact sheet must briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit.

(ii) The director must send this fact sheet to the applicant and, on request, to any other person.

(b) ***Fact sheet contents.*** The fact sheet must include all of the following:

(i) A brief description of the type of facility or activity that is the subject of the draft permit~~(s)~~.

(ii) Any calculations or other necessary explanation of the derivation of conditions for biosolids use and sewage sludge disposal, including a citation to the applicable standards for biosolids use or sewage sludge disposal and reasons why they are applicable, or in the case of conditions developed on a case-by-case basis to implement section 405 (d)(4) of the Clean Water Act, an explanation of, and the bases for the conditions~~(s and))~~.

(iii) For permits that include a general land application plan ~~(under subsection (6)(b)(iii) of this section)), a brief description of how each of the required elements of the land application plan is addressed in the permit.~~

~~((17))~~ **(18) Approval of coverage - provisional approval and final coverage.**

Provisional approval. Except for new beneficial use facilities as described in (a)(ii) of this subsection, facilities that are in compliance with this chapter, an applicable permit, and any plans submitted as part of a request to obtain a permit are provisionally approved to engage in the biosolids management activities proposed in their applications.

(i) Facilities with provisional approval are subject to further review and permitting requirements at a later date, and are subject at all times to all applicable conditions of this chapter, an applicable permit, and any plans submitted as part of a request to obtain a permit.

(ii) New beneficial use facilities may not obtain provisional approval.

Final coverage. After reviewing ~~((an))~~ a permit application ~~(for an individual permit or for coverage under a general permit,))~~ and considering other pertinent information including any testimony received during a public hearing or meeting~~(s))~~ or written comments submitted in response to a public notice, the department may approve coverage under a general permit or issue an individual permit.

~~((a) If coverage under a general permit is approved or an individual permit))~~ If final approval is issued, the department will notify the applicant in writing~~(, conveying a final copy of the issued permit))~~ of its decision including any additional requirements or stipulations that are imposed as a condition of ~~((coverage under a general permit))~~ approval in accordance with subsection (19) of this section.

~~((b))~~ (c) ***Disapproval.*** If an application for ~~((an individual permit or for coverage under a general))~~ a permit is disapproved, the department will notify the applicant in writing, including an explanation of why ~~((coverage))~~ the application was disapproved.

~~((e) On and after the effective date of this chapter, if there are no significant changes to biosolids management practices at an existing site, a facility may continue to apply~~

biosolids to sites that were permitted by the local health department before the effective date of this chapter, in accordance with the requirements of the local health department, the applicable general permit, and this chapter, unless the department objects in writing.

(i) Facilities applicable under (c) of this subsection that have submitted a notice of intent to be covered or have been notified that they are covered under a general permit, and those that have applied for coverage under a general permit, are provisionally approved for coverage under an applicable general permit to apply biosolids to existing sites as permitted by the local health department and in accordance with the requirements of the applicable general permit and this chapter.

(ii) A beneficial use facility may not obtain provisional approval for coverage under a general permit, but may obtain provisional approval for existing land application sites after being permitted as a beneficial use facility.

(d) Except for provisionally approved facilities under this subsection (d), a facility may not engage in new biosolids management practices or implement significant changes to biosolids management practices at existing sites, or apply biosolids to new or expanded sites until all applicable requirements of this section including those for public notice, and public hearings or meetings, have been satisfied.

Facilities that have submitted a notice of intent or that have been notified of coverage under a general permit, or that have applied for coverage under a general permit, are provisionally approved for coverage under an applicable general permit to apply biosolids to sites consistent with the applicable requirements of this chapter and the applicable general permit and as approved by the local health department, if the public notice requirements under subsection (11) of this section have been fulfilled, and no request for a public hearing has been made or the department has denied the request, and all comments received have been resolved to the satisfaction of the local health department;

(e) Facilities with provisional approval are subject to further review and permitting requirements at a later date, and are subject at all times to all applicable conditions of this chapter and the applicable general permit.

(f) (d) In no case may a lack of action by the department be construed as relieving an applicant of the obligation to comply with any of the provisions of this chapter or an applicable (general) permit, or as approving final use or disposal practices that are not consistent with the provisions of this chapter or an applicable (general) permit, or that pose a threat to human health or the environment.

(19) Additional or more stringent requirements.

(a) On a case-by-case basis, the department may impose requirements for the beneficial use of biosolids that are in addition to or more stringent than the requirements in this chapter if the department believes that the additional or more stringent requirements are necessary to protect public health or the environment from any adverse effect of a pollutant in the biosolids or to ensure compliance with this chapter.

(b) In addition to other considerations, failure of a generator, applicator, or landowner to conform to any applicable

requirements of this chapter may be cause to impose additional or more stringent requirements.

(c) The department will impose any additional or more stringent requirements in an individual permit issued to a facility, in general permits issued in accordance with Appendix 5 of this chapter, and in the issuance of final coverage under a general permit.

(d) Any additional or more stringent requirements imposed in accordance with this section are considered to be permit requirements, fully enforceable in accordance with the provisions of this chapter and the applicable permit.

(e) If known, any additional requirements must be disclosed at a public hearing if a public hearing is held, or if imposed subsequent to a public hearing, must become a part of the written record required under subsection (15)(b) of this section.

(20) Prohibition. The department may not issue a permit when the Regional Administrator of EPA has objected in writing under 40 CFR 123.44.

(21) Duration of permits.

(a) Permits are issued for fixed terms up to, but not exceeding, five years from the effective date of the permit.

(b) Final coverage under a general permit may be issued for a period up to the remaining term of issuance for the permit.

(c) The term of a permit may not be extended by modification beyond five years.

(22) Transfer of permit coverage.

(a) Except as provided in (b) of this subsection, a permit may be transferred by the permittee to a new owner operator only if the permit has been modified or revoked and reissued to identify the new permittee and incorporate other requirements as may be necessary to assure compliance with the requirements of this chapter.

(b) **Automatic transfer.** Coverage under a permit is automatically transferred from the old permittee to a new permittee on the date agreed to if all of the following conditions are met:

(i) A written, signed agreement between the old and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability is submitted in accordance with the requirements of subsection (7) of this section (b)(i)(A) through (D) of this subsection at least thirty days in advance of the proposed date of transfer.

(A) The original to the biosolids coordinator in the regional office of the department where the facility is located.

(B) One copy to any other regional office of the department where the facility's biosolids or sewage sludge will be treated, stored, disposed, or applied to the land.

(C) One copy to the biosolids coordinator at the department's headquarters office.

(D) One copy to the local health jurisdiction in each county where biosolids or sewage sludge will be treated, stored, disposed, or applied to the land.

(ii) The department has not notified both permittees of any objection to the transfer, or of the intent to revoke the coverage under the (general) permit.

(c) No condition or requirement of a permit or this chapter may be waived by the transfer of permit coverage from one party to another.

~~((21)) (23) Modification or revocation and reissuance of ((individual permits and modification of conditions of coverage under a general)) permits.~~

(a) When the department receives any information (for example, upon inspection of a facility, receipt of information submitted by the permittee as required in the permit, receipt of a request for modification or revocation and reissuance, or upon a review of the permit file), the department may determine whether or not one or more of the causes listed in (b) or (c) of this subsection for modification or revocation and reissuance, or both, exist.

(i) If cause for modification or revocation and reissuance, or both, exists, the department may modify or revoke and reissue ~~((an individual permit, or modify conditions of coverage or revoke and reissue coverage under a general))~~ a permit ~~((;))~~ and may request an updated application if necessary.

(ii) When ~~((an individual permit or conditions for coverage under a general permit is/are))~~ a permit is modified, only the conditions subject to modification are reopened.

(iii) If ~~((an individual permit or authorization for coverage under a general))~~ a permit is revoked and reissued, the entire ~~((individual permit or consideration of coverage under a general))~~ permit is reopened and subject to revision, and the ~~((individual permit or coverage under the general))~~ permit may be reissued for a new term.

(iv) If cause does not exist under this section, the department may not modify or revoke and reissue ~~((an individual permit or conditions of coverage under a general))~~ a permit.

(b) **Causes for modification.** The following are causes for modification but not revocation and reissuance of ~~((individual permits or authorization of coverage under a general))~~ permits except when the permittee requests or agrees.

(i) **Alterations.** There are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different from or absent in the existing permit.

(ii) **Information.** The department has received new information. ~~((Individual permits or authorization of coverage under a general))~~ A permit may be modified during ~~((their))~~ its term ~~((s))~~ for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

(iii) **New regulations.** New regulations have been adopted or the standards or regulations on which the permit was based have been changed by adoption of amended standards or regulations or by judicial decision after the permit was issued.

(iv) **Compliance schedules.** The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy. However, in no case may a compliance schedule be modified to

extend beyond an applicable Clean Water Act statutory deadline.

(v) **Land application plans.** When required by a permit condition to incorporate a general land application plan for beneficial use of biosolids, to revise a general land application plan, or to add a general land application plan.

(c) **Causes for modification or revocation and reissuance.** The following are causes to modify or, alternatively, revoke and reissue ~~((; an individual permit or the conditions for coverage under a general))~~ a permit.

(i) Cause exists for termination under subsection ~~((22))~~ (24) of this section and the department determines that modification or revocation and reissuance is appropriate.

(ii) The department has received notification of a proposed transfer of the permit.

(d) **Public notice requirements.** When ~~((an individual permit or coverage under a general))~~ a permit is modified or revoked and reissued, the public notice requirements of subsection ~~((11))~~ (13) of this section, and if required the public hearing requirements of subsection ~~((12))~~ (14) of this section must be complied with for the reopened conditions or reissued permit.

~~((22))~~ (24) **Causes for termination of permits, denying permit applications, or denying expansion of an existing permit.** The following are causes for terminating ~~((an individual permit or coverage under a general))~~ a permit during its term, or for denying a permit ~~((renewal))~~ application, or for denying an expansion of an existing permit:

(a) Noncompliance by the permittee with any condition of the permit ~~((;))~~.

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time ~~((;))~~.

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination ~~((; or))~~.

(d) A change in any condition that requires either a temporary or a permanent reduction or elimination of any activity controlled by the permit.

~~((23) Enforcement.~~ Any violation of this chapter or any permit issued under this chapter, may be subject to the enforcement provisions of applicable law, including chapters 70.95 and 70.95J RCW.

~~((24) Appeals.~~ Any person aggrieved by a decision of the department made) (e) **Failure by the permittee to pay a permit fee issued** in accordance with ~~((provisions of this chapter may appeal that decision only as provided by applicable law, including chapters 43.21B RCW and 34.05 RCW))~~ WAC 173-308-320.

(25) **Requirement to coordinate permitting with delegated local health ((departments)) jurisdictions.** When a local health ~~((department))~~ jurisdiction has received delegation to administer any portion of, or to carry out any activity required under this chapter, all facilities subject to permitting under this chapter must cooperate with the department and the local health ~~((department))~~ jurisdiction by coordinating permitting activities so as to assure an opportunity for local

health (~~(department)~~) jurisdiction involvement consistent with the terms of the delegation agreement.

AMENDATORY SECTION (Amending Order 97-30, filed 2/18/98, effective 3/21/98)

WAC 173-308-320 Permit fees. (1) All facilities that are required to obtain a permit (~~(under this section)~~) must pay an annual biosolids permit fee to the department (~~(of ecology)~~).

(2) Biosolids permit fees are assessed (~~(prospectively)~~) on an annual basis and apply regardless of the date of issuance of a permit.

(3) Except for those facilities described in subsection (4)(h) of this section, biosolids permit fees are assessed and collected for fiscal years (~~(and)~~) for wastewater treatment facilities and for calendar years for receiving-only facilities and septage management facilities. Fees are due and payable within forty-five days after the department mails a billing statement.

(a) (~~(Failure to pay a permit fee is cause for denial of coverage under a permit or revocation of existing coverage.)~~) Fees are considered delinquent if they are not received by the first invoice billing due date. (~~(Permit holders)~~)

(i) If a fee is determined to be delinquent, the permittee will be notified by certified letter and have thirty days to bring their account up-to-date before further action is taken by the department.

(~~(b)~~) (ii) Failure to pay a fee is a cause for termination of a permit in accordance with WAC 173-308-310(24).

(b) Upon request from the permittee, the department may at its discretion mail partial billing statements up to two (~~(or more)~~) times per year, in which case a facility is responsible only for the amount reflected on the current (and any past due) billing statement.

(~~(c)~~) Receiving-only facilities, centralized septage treatment facilities, and persons who apply septage to the land that determine a residential equivalent value under subsection (4)(b) or (c) of this section may submit periodic payments as provided in (c)(i), (ii), and (iii) of this subsection, based on the actual level of service, provided that they submit a letter to the department indicating their intent to do so.

(i) ~~Facilities under (c) of this subsection must submit a quarterly payment and statement of actual service level within ten days of the end of each quarter (not later than the 10th day of March, June, September, and December of each year), except as provided in (c)(ii) or (iii) of this subsection.~~

(ii) ~~Facilities under (c) of this subsection that estimate and provide a level of service less than three hundred residential equivalents per year are subject to a fee of \$0.00 per residential equivalent and are not required to submit periodic payments, but must submit a statement of actual service level at least once per year.~~

(iii) ~~Facilities under (c) of this subsection that calculate an annual residential equivalent value equal to or greater than three hundred residential equivalents per year may withhold a payment for any quarter where the total amount due is less than fifty dollars, provided a statement of the actual service level is submitted and that all accounts are brought up-to-date by July 10th of each year.)~~

(4) The permit fee schedule is based on the number of residences or residential equivalents (residential equivalent value) contributing to a permittee's biosolids management system (~~(, and incorporates)~~). All charges per residential equivalent and any maximum fees listed in this subsection will be adjusted by the annual fiscal growth factor calculated under chapter 43.135 RCW.

(a) All facilities required or requesting to obtain a permit or approval are assigned a minimum of one residential equivalent.

(b) For facilities with NPDES permits issued under chapter 173-220 WAC or state waste discharge permits issued under chapter 173-216 WAC, the department will use residential equivalent values determined under chapter 173-224 WAC. If no residential equivalent value is determined under chapter 173-224 WAC, the number of residences connected to the system or another appropriate criteria will be used to determine the residential equivalent value.

(~~(b)~~) (c) The residential equivalent value for receiving-only facilities other than septage management facilities in (~~(e)~~) (c) of this subsection is the sum of the (~~(fraction of)~~) residential equivalent values contributed from all sources, as determined by considering the portion of the current annual (~~(biosolids)~~) production of each originating source that is provided to the receiving facility.

(~~(A receiving-only facility must determine an estimated)~~) (d) The residential equivalent value (~~(based on projected capacity as detailed in the permit application submitted under WAC 173-308-310 and the method described in (b) of this subsection.~~)

(e) ~~For centralized septage treatment facilities and persons who apply septage to the land,) for facilities located outside of the state (e.g., those on tribal lands, other states, and other nations) who export solids into the state will be based on the portion of the current annual production of the facility that is exported into the state.~~

(c) For septage management facilities, each 1,250 gallons of septage received for treatment or applied to the land is equal to one residential equivalent (~~(as shown in Equation (4)).~~)

$$\text{(RE)} = \frac{\text{Gallons of septage received or applied to the land}}{1,250 \text{ Gallons per Residential Equivalent}} \quad \text{Equation (4)}$$

~~A centralized septage treatment facility and a person who applies septage to the land must determine an estimated residential equivalent value based on projected capacity as detailed in the permit application submitted under WAC 173-308-310 and the method described in (c) of this subsection.~~

(d) ~~Equation (5) below is used to calculate permit fees:~~

$$\text{Permit Fee} = (\text{REV} \times \text{Cost per RE}_{\text{FGF}}) \text{ where:} \quad \text{Equation (5)}$$

(i) ~~REV = residential equivalent value.~~

(ii) ~~FGF = An annual fiscal growth factor expressed as a percentage, as determined under chapter 43.135 RCW.~~

(iii) ~~Cost per RE_{FGF} = cost per residential equivalent in dollars including a fiscal growth factor. The cost per RE_{FGF} is obtained by multiplying the cost per residential equivalent in the preceding year by the current year's fiscal growth factor as follows in (6):~~

$Cost\ per\ RE_{FGF} = Previous\ year's\ cost\ per\ RE \times [1 + (FGF)]$ Equation (6)

(For implementation of the fiscal growth factor, the base year for all biosolids permit fees will be fiscal year 1998, ending June 30, 1998. In the base year, the FGF will be zero.)

(e) Unless a lower cost is specified in a permit, the cost per residential equivalent in the base year will be as follows:

(i) \$0.00 per residential equivalent for any permit for any facility with a total residential equivalent value of less than 300, including those that would otherwise fall under (e)(ii) through (v) of this subsection.

(ii) \$0.015 per residential equivalent for a permit authorizing municipalities that own or operate incinerators that fire municipal sewage sludge to dispose of municipal sewage sludge generated by their own facility in a municipal solid waste landfill or through another facility on an emergency basis.

(iii) \$.20 per residential equivalent for permits authorizing disposal in a municipal solid waste landfill, except for facilities under (e)(ii) of this subsection.

(iv) \$0.04 per residential equivalent for permits issued to receiving-only facilities as defined in WAC 173-308-080.

(v) \$0.162 per residential equivalent for permits authorizing any other type of biosolids management activity, including but not limited to the following:

(A) Direct beneficial use by a treatment works treating domestic sewage;

(B) Transfer from one facility to another facility, including delivery of biosolids to an incinerator from nonincinerating jurisdictions;

(C) Prolonged treatment or storage, including lagoon systems;

(D) Treatment or land application of septage.) (f) Equations (5) and (6), below, are used to calculate permit fees:

Equation (5)

$Permit\ Fee = (REV \times Cost\ per\ RE_{FGF})$

Where:

REV = residential equivalent value.

FGF = an annual fiscal growth factor expressed as a percentage, as determined under chapter 43.135 RCW.

Cost per RE_{FGF} = cost per residential equivalent in dollars including a fiscal growth factor. The cost per RE_{FGF} is obtained by multiplying the cost per residential equivalent in the preceding year by the current year's fiscal growth factor as follows in equation (6).

Equation (6)

$Cost\ per\ RE_{FGF} = Previous\ year's\ cost\ per\ RE \times [1 + (FGF)]$

(g) For implementation of the fiscal growth factor, the base year for all biosolids permit fees will be fiscal year 2008, ending June 30, 2008. In the base year, the FGF will be zero (0).

(h) **Review fee for new facilities.** New facilities proposed after July 1, 2007, will be required to pay a nonrefundable fee of \$1,800.00 for the first residential equivalent prior

to departmental review of an application package or proposal. In addition, following issuance of a permit or approval, the facility will be subject to the fees described in (i) of this subsection.

(i) A cost of \$600.00 will be assigned to the first residential equivalent for all facilities. The cost per subsequent residential equivalent in the base year will be as follows:

(i) \$0.00 per residential equivalent for permits issued to municipalities that own or operate incinerators that fire sewage sludge to dispose of sewage sludge generated by their own facility in a municipal solid waste landfill or through another facility on an emergency basis.

(ii) \$0.051 per residential equivalent up to a maximum of \$3000.00 for permits issued to receiving-only facilities.

(iii) \$0.215 per residential equivalent for permits authorizing any other type of solids management activity including, but not limited to, the following:

(A) Direct beneficial use by a treatment works treating domestic sewage.

(B) Transfer from one facility to another facility, including delivery to an incinerator from nonincinerating jurisdictions.

(C) Prolonged treatment or storage including, but not limited to, lagoon systems.

(D) Treatment or land application of septage.

(E) Disposal of sewage sludge in a municipal solid waste landfill except for facilities under (i)(i) of this subsection.

(F) Exporting biosolids or sewage sludge from facilities located outside of the state.

(iv) \$0.16 per residential equivalent above 100,000.

(5) Following is a summary table showing the equations used to calculate fees for the base year.

Facility Type	Fee Formula for Base Year
Septage management	$\$600 + (\text{gallons} \div 1,250 \times \$0.215)$
Receiving-only (includes beneficial use facilities)	$\$600 + (REV_{received} \times \$0.051)$ Maximum of \$3,000
Out-of-state	$\$600 + (REV_{exported} \times \$0.215)$
Incineration	\$600.00
All others (includes most wastewater treatment facilities)	$\$600 + (REV_{<100,000} \times \$0.215) + (REV_{\geq 100,000} \times \$0.16)$
New facility review fee	\$1,800
Where:	
	$REV_{received}$ = residential equivalent values received (based on the portion of the residential equivalent values contributed from each source).
	$REV_{exported}$ = residential equivalent values exported (based on the portion of the annual production of the facility that is exported into the state).
	$REV_{<100,000}$ = residential equivalent values less than 100,000.

Facility Type	Fee Formula for Base Year
	<u>REV_{>100,000} = residential equivalent values greater than or equal to 100,000.</u>

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 173-308-90001 Appendix 1—Minimum content for a permit application. (1) The activities conducted by the applicant that require it to obtain a permit, and if applying under a general permit, the name of the permit.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(4) Whether or not the facility or any associated facilities or land applications sites are located on tribal or federal lands.

(5) A listing of other relevant environmental permits, and all permits or construction approvals received or applied for under any of the following programs:

(a) Hazardous waste management program under the Resource Conservation and Recovery Act.

(b) Underground injection control program under the Safe Drinking Water Act.

(c) National pollutant discharge elimination system program under the Clean Water Act.

(d) Prevention of significant deterioration program under the Clean Air Act.

(e) Nonattainment program under the Clean Air Act.

(f) National emission standards for hazardous pollutants preconstruction approval under the Clean Air Act.

(g) Ocean dumping permits under the Marine Protection, Research, and Sanctuaries Act.

(h) Dredge or fill permits under section 404 of the Clean Water Act.

(6) A map extending one mile (1.6 kilometers) beyond the property boundaries of the facility, showing the location and means of access to the facility, and additional maps if necessary, showing the same for any associated treatment or storage facilities.

(7) Any biosolids monitoring data the applicant has for the last two years, including for land application sites any available soil, or surface or ground water monitoring data, with a description of the sampling locations, and for wells the approximate depth to ground water.

(8) A description of the applicant's biosolids use and disposal practices including, where applicable, the location of any sites where the applicant transfers biosolids for treatment or sewage sludge for disposal, as well as the name of the applicator or other contractor who applies the biosolids to land if different from the applicant.

(9) Land application plans, as required under WAC 173-308-310.

(10) The amount of biosolids produced and the amount of biosolids applied to the land during the previous year, and

estimated to be produced or applied to the land on an annual basis during the life of the permit.

(11) Any information required to determine the appropriate standards for permitting under this chapter, and any other information the department may request and reasonably require to assess biosolids use or sewage sludge disposal practices, to determine whether or not to issue a permit, or to ascertain appropriate permit requirements under this chapter.

NEW SECTION

WAC 173-308-90002 Appendix 2—Minimum content for a notice of intent to be covered under a general permit. (1) The name of the general permit under which coverage is being sought, and a statement declaring the applicant's intent to comply with the requirements of the permit.

(2) The activities conducted by the applicant that require it to obtain coverage.

(3) Name, mailing address, and location of the facility for which the application is submitted.

(4) The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(5) The location and a description of any site(s) where biosolids or sewage sludge are treated, stored, disposed, or applied, and whether or not any permit, including a local solid waste permit has been issued for a site.

(6) Any information specifically required for a notice of intent under the applicable general permit.

NEW SECTION

WAC 173-308-90003 Appendix 3—Minimum content for a site specific land application plan. (1) Whether or not it is known or can be determined that biosolids containing pollutants in excess of the values WAC 173-308-160 Table 3 have ever been applied to the site, and if so:

(a) The date(s) when the biosolids were applied (if known).

(b) The amount of biosolids applied (if known).

(c) The concentrations of the pollutants in the biosolids (if known).

(d) The area(s) of the site to which the biosolids were applied (if known).

(2) A discussion of the types of crops grown or expected to be grown, their intended end use (e.g., pasture grass for a feed crop, corn as a food crop), and the current distribution of crops on the site.

(3) An explanation of how agronomic rates will be determined during the life of the site, along with any currently available calculations. Whenever agronomic rates or the method used to determine agronomic rates change, an update of the agronomic rate calculations must be filed with the department.

(4) Method(s) of application.

(5) Seasonal and daily timing of biosolids applications.

(6) Provisions for conducting any sampling of soils, surface waters, or ground water and any available data collected from the site within the last two years.

(7) The name of the county and water resource inventory area where biosolids will be applied.

(8) A description of how biosolids will be stored at the site that also addresses related off-site storage.

(9) Map(s) for the site(s) must be submitted. Maps must be of an appropriate scale to show the detail necessary for evaluation of the proposed application areas and so that a person may reasonably be able to locate the sites and any application units within a site (for example, 1:7,920 (eight inches to the mile) for detailed information with an overview map at 1:63,360 (one inch to the mile)). Minimally, maps must provide the following information:

- (a) A legend.
- (b) The location and means of access.
- (c) Specific areas of the site where biosolids may be applied. If there is more than one site or more than one application unit within a site, a site or unit ID number should be included.
- (d) The number of acres in the site or in any distinct application unit within a site.
- (e) Location and extent of any wetlands on the site.
- (f) A topographic relief of the application site and surrounding area.
- (g) Adjacent properties and uses and their zoning classification.
- (h) Any seasonal surface water bodies located on the site.
- (i) Any perennial surface water bodies located on or within one-quarter mile (402 meters) of the site.
- (j) The location of any wells located on or within one-quarter mile (402 meters) of the site that are listed in public records or otherwise known to the applicant, whether for domestic, irrigation, or other purposes.
- (k) Buffer zones to features such as surface waters, wells, property boundaries, and roadways and the width of the buffer zones.
- (l) The presence and extent of any threatened or endangered species or related critical habitat.
- (m) The location of any critical areas on site, as required to be identified under chapter 36.70A RCW in the county's growth management plan.
- (n) The location and size of any areas that will be used to store biosolids.
- (10) If the seasonal ground water is three feet (0.91 meters) or less below the surface, a management plan describing how you will protect ground water. For example, you may propose to limit applications to the time of year when ground water has receded to less than three feet (0.91 meters) below the surface.
- (11) A description of how access to the site will be restricted (e.g., signs posted around the site or other approved method of access restriction).
- (12) A copy of the landowner agreement required under WAC 173-308-120(6).
- (13) Any additional information requested by the department that is needed to evaluate the appropriateness of the site for biosolids application.

NEW SECTION

WAC 173-308-90004 Appendix 4—Minimum content for a general land application plan. (1) Describes the geographical area covered by the plan, including the names

of all counties and water resource inventory areas where biosolids may be applied.

- (2) Identifies site selection criteria.
- (3) Describes how sites will be managed.
- (4) Provides for not less than thirty days advance notice to the department of new or expanded land application sites, including those subject to provisional approval under WAC 173-308-310(18), to allow time for the department to object prior to the biosolids application.
- (5) Provides for advance public notice as required in WAC 173-308-310(13), and that is reasonably calculated to reach potentially interested adjacent and abutting property owners.

NEW SECTION

WAC 173-308-90005 Appendix 5—Procedures for issuing general permits. When the department issues general permits, it will do so in accordance with the procedures in this section.

- (1) **General permit coverage.**
 - (a) The director may issue general permits to satisfy any or all of the biosolids management requirements in chapter 70.95J RCW or other applicable state or federal biosolids management requirements.
 - (b) The director may issue general permits to cover categories or subcategories of facilities within appropriate geographic areas.
 - (c) General permits may be written to cover categories of treatment works treating domestic sewage that meet all of the following requirements:
 - (i) Involve the same or substantially similar types of operations.
 - (ii) Engage in the same types of biosolids use or sewage sludge disposal practices.
 - (iii) Require the same or substantially similar operating conditions or standards for biosolids use or sewage sludge disposal.
 - (iv) Require the same or substantially similar monitoring.
 - (v) In the opinion of the director are more appropriately controlled under a general permit than under individual permits.
- (2) **General permit preparation - preliminary determination.**
 - (a) For all general permits, the department must make a preliminary determination to develop a general permit.
 - (i) Interested persons may petition the director requesting that a category of facilities be considered for the development of a general permit.
 - (ii) The department must respond to such a petition within ninety days of receipt.
 - (b) The department must provide public notice of all preliminary determinations to develop a general permit pursuant to subsection (5)(a) of this section.
 - (c) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to subsection (5)(a) of this section, the department must provide public notice to that effect in the

same manner as the preliminary determination public notice was provided.

(3) Fact sheets.

(a) The department must prepare a fact sheet for every draft general permit determination. Such fact sheets must summarize the following:

- (i) The legal basis of the permitting program.
- (ii) The type of facility or activity which is the subject of the general permit.
- (iii) The geographical area for which the general permit is valid.
- (iv) The criteria for which coverage under a general permit will be approved.
- (v) If available, a listing or some other means of identifying the facilities proposed to be covered under the general permit.
- (vi) The information required to be submitted as part of the application for coverage under the general permit.
- (vii) The general characteristics of the facilities being authorized under the general permit.
- (viii) Standards and limitations imposed in the general permit.
- (ix) A general description of the conditions in the general permit.
- (x) Any compliance schedules proposed as part of the general permit.
- (xi) The procedures for the formulation of final determinations, including:
 - (A) The thirty-day comment period required in subsection (5)(c)(iv) of this section, including the date and time after which public comments will not be considered by the department in formulating the final determination on the draft general permit.
 - (B) The time and place of the public hearing(s) required in subsection (7) of this section.
 - (C) Any other procedures by which the public may participate in the formulation of the final determination.
- (xii) A summary of the economic impact analysis required in subsection (4) of this section, including any mitigation proposed for small business.

(b) The department must provide copies of general permit fact sheets to any interested person upon request.

(4) Economic impact analysis.

(a) The department must prepare an economic impact analysis on all draft general permits which are intended to directly cover small business. The economic impact analysis must be prepared on the draft general permit for which public notice is being provided pursuant to subsection (5)(c) of this section.

(b) The purpose of the economic impact analysis is to reduce the economic impact of the general permit on small business by doing one or more of the following when it is legal and feasible in meeting the stated objectives of chapter 70.95J RCW:

- (i) Establishing differing compliance or reporting requirements or timetables for small businesses.
- (ii) Clarifying, consolidating, or simplifying the compliance and reporting requirements under the general permit for small businesses.

(iii) Establishing performance rather than design standards.

(iv) Exempting small businesses from parts of the general permit.

(c) The contents of an economic impact analysis of a proposed general permit must include, at a minimum, the following:

(i) A brief description of the compliance requirements of the general permit, including:

- (A) The minimum quality requirements.
- (B) The monitoring requirements contained in the general permit.
- (C) The reporting and recordkeeping requirements.
- (D) Any plan submittal requirements.

(ii) The estimated costs of compliance, based upon existing data for facilities intended to be covered under the general permit. Costs must include:

- (A) The costs associated with (c)(i) of this subsection.
- (B) The costs of equipment, supplies, labor, and any increased administrative costs.

(iii) A comparison, to the greatest extent possible, of the cost of compliance for small businesses with the cost of compliance for the largest ten percent of the facilities intended to be covered under the general permit. The economic impact analysis must use one or more of the following as a basis for comparing costs:

- (A) Cost per employee.
- (B) Cost per hour of labor.
- (C) Cost per one hundred dollars of sales.
- (d) The following compliance costs associated with a general permit must not be included in the economic impact analysis:

(i) The costs necessary to comply with chapter 173-308 WAC.

(ii) The costs associated with requirements of the general permit which result from conformity or compliance, or both, with federal law or regulations.

(5) **Public notice.** The department must provide public notice of all preliminary determinations to develop a general permit, all determinations not to develop a general permit after publishing such a preliminary determination, all draft general permit determinations, and the issuance of a final general permit. All public notices must be circulated in a manner designed to inform interested and potentially affected persons of the proposed general permit.

(a) **Public notice for preliminary determinations.** The department must provide public notice of all preliminary determinations to develop a general permit as follows:

(i) The public notice must be circulated within the geographical area of the proposed general permit. Such notice may include any or all of the following:

- (A) Publishing, as a paid advertisement or legal notice, the department's preliminary determination in one or more major local newspapers throughout the area of proposed coverage.
- (B) Issuance of news releases, focus sheets, or newsletters.
- (C) Publication in the State Register.

(ii) The department must request comments on whether a general permit is appropriate for the proposed category of facilities or whether individual permits are necessary.

(iii) The public notice must provide an opportunity for any interested or potentially affected party to submit information on facilities proposed to be covered under a general permit including:

(A) Any documented information on the characteristics of the biosolids including quantity, quality, and any land application sites. Information may be from an individual facility or be representative of the category as a whole.

(B) Any other relevant information.

(iv) The department must add the name of any person upon request to a general permit specific mailing list to receive information and notices related to the development of the general permit.

(b) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to (a) of this subsection, the department must provide public notice to that effect.

(c) **Public notice for draft general permits.** The department must provide public notice of every draft general permit as follows:

(i) The notice must be circulated throughout the geographical area covered by the general permit. Such circulation may include any or all of the following:

(A) Posting for a period of thirty days in post offices, public libraries, and public places within the geographical area covered by the general permit.

(B) Publishing the notice as a paid advertisement, display advertisement, or legal notice, in one or more major local newspapers of general circulation serving the area covered by the general permit.

(C) Issuance of news releases, focus sheets, or newsletters.

(ii) Notice must be mailed to any person upon request, including all persons on the general permit specific mailing list established pursuant to (a)(iv) of this subsection and all known, potential permittees.

(iii) At least thirty days before the public hearing(s) required in subsection (7) of this section, the department must have the following published in the State Register:

(A) The public notice contents contained in (c)(vi) of this subsection.

(B) A reference to the relevant sections of chapter 70.95J RCW as the statutory authority for issuing the general permit.

(C) The date on which the agency intends to issue the general permit.

(D) A short explanation of the permit, its purpose, and anticipated effects.

(E) A summary of the economic impact analysis required in subsection (4) of this section.

(iv) **Public comment period.** The department must provide a period of not less than thirty days following the last publication of the public notice, during which time interested persons may submit their written views on a draft general permit determination. All written comments submitted during the comment period must be retained by the department and considered in the formulation of its final determination

with respect to the draft general permit. The period for comment may be extended at the discretion of the department.

(v) The department must make available during the public comment period:

(A) The draft general permit.

(B) The fact sheet on the draft general permit required pursuant to subsection (3) of this section.

(C) The economic impact analysis required pursuant to subsection (4) of this section.

(D) A copy of the proposed application for coverage.

(E) The notice required pursuant to (c)(iii) of this subsection.

(vi) The contents of the draft general permit public notice must, at a minimum, summarize the following:

(A) The name, address, and phone number of the agency issuing the public notice.

(B) The type of facilities and activities which are the subject of the general permit.

(C) The geographical area for which the general permit is valid.

(D) The criteria for which coverage under a general permit will be approved.

(E) If available, a listing or some other means of generally identifying the facilities proposed to be covered under the general permit.

(F) The tentative determination to issue a general permit.

(G) The procedures for the formulation of final determinations, including the thirty-day comment period required in (c)(iv) of this subsection and any other means by which interested persons may comment upon those determinations.

(H) The date, time, and place when the public hearing(s) required in subsection (7) of this section will be held.

(I) The address and phone number of state premises at which interested persons may obtain further information.

(J) The date and time after which comments will not be considered by the department in formulating the final determination on the draft general permit.

(d) **Public notice for final general permits.** The department must provide public notice of the issuance of a final general permit as follows:

(i) The notice of general permit issuance must be circulated in a manner similar to that used to circulate the notice on the draft general permit in (c)(i) of this subsection and must be published in the State Register.

(ii) The notice of general permit issuance must be provided to all persons on the general permit specific mailing list established pursuant to (a)(iv) of this subsection and all known, potential permittees.

(iii) The public notice of the issuance of a general permit must contain:

(A) The name, address, and phone number of the agency issuing the public notice.

(B) The type of facilities and activities which are the subject of the general permit.

(C) The geographical area for which the general permit is valid.

(D) The criteria for which coverage under a general permit will be approved.

(E) If available, a listing or some other means of generally identifying the facilities proposed to be covered under the general permit.

(F) A summary of the application process by which eligible facilities may obtain coverage under the general permit.

(G) An explanation of any changes to the final general permit, other than editing changes, and the principal reasons for adopting the changes.

(H) A notice that the terms and conditions of the general permit may be appealed only by filing an appeal with the pollution control hearings board and by serving it upon the department within thirty days, and the process for doing so as contained in RCW 43.21B.310.

(I) The date after which the general permit will be effective. The effective date of a general permit must be no sooner than thirty days after the publication in the State Register of the public notice required pursuant to (d)(i) of this subsection.

(6) **Notice to other government agencies.** The department must notify other appropriate government agencies of each draft general permit determination and must provide such agencies an opportunity to submit their written views and recommendations.

(7) Public hearings.

(a) The department must hold one or more public hearings on all draft general permits. The public hearing must be held during the public comment period provided pursuant to subsection (5)(c)(iv) of this section.

(b) The date, time, and place will be at the discretion of the department provided:

(i) At least thirty days is provided between the time the public notice is published pursuant to subsection (5)(c)(i) and (iii) of this section, and the time the hearing is held.

(ii) The hearing location is within the geographical area covered by the general permit.

(c) The department must cause a record to be made of all hearings required pursuant to this section. The record may be stenographic, mechanical, or electronic.

(8) Public access to information.

(a) In accordance with chapter 42.17 RCW and its published policy describing disclosure of public records, the department must make identifiable public records relating to all general permits available to the public for inspection and copying.

(b) The department must designate a general permit coordinator for each general permit. The coordinator must:

(i) Have knowledge of the general permit being prepared.

(ii) Maintain the records associated with the development of the general permit including the general permit file required pursuant to (c) of this subsection.

(iii) Be identified as the department contact in public notices regarding the general permit.

(c) **General permit development file.** The department must prepare a general permit development file for each issued general permit. The general permit development file must be available for public inspection subject to the provisions of this section. The general permit development file must contain:

(i) Copies of all public notices required pursuant to subsection (5) of this section.

(ii) A copy of the fact sheet required pursuant to subsection (3) of this section and any other documents not readily available to the public which were used in developing the terms and conditions of the general permit.

(iii) A copy of the economic impact analysis required pursuant to subsection (4) of this section.

(iv) Copies of the draft and final general permits and the application for coverage.

(v) All written comments received during the public comment period required pursuant to subsection (5)(c)(iv) of this section, on the draft general permit, fact sheet, economic impact analysis, and application for coverage.

(vi) The record of public hearings produced pursuant to subsection (7)(c) of this section.

(vii) The response to comments prepared pursuant to subsection (9)(a) of this section.

(d) The department must add the name of any person, upon request, to a mailing list to receive notices of department actions associated with a general permit.

(e) The department must provide facilities for the inspection of information relating to general permits and must ensure that employees honor requests for such inspection promptly without undue requirements or restrictions. The department must do either:

(i) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee.

(ii) Otherwise provide for, or coordinate with copying facilities or services such that requests for copies of nonconfidential, identifiable public records be honored promptly.

(9) Issuance of general permits.

(a) At the close of the public comment period required pursuant to subsection (5)(c)(iv) of this section, the department must prepare a response to all relevant comments received (both written and oral) and must briefly describe any changes, other than editing changes, and the principal reasons for making the changes to the draft general permit.

(b) General permits must be deemed issued upon signing by the director or by a person delegated the authority to issue general permits pursuant to chapter 173-06 WAC.

(c) The department must provide public notice of the issuance of all final general permits pursuant to subsection (5)(d) of this section.

(d) General permits become effective thirty days after the date of publication in the State Register of the public notice required pursuant to subsection (5)(d) of this section unless a later date is specified by the department.

(10) Appeals.

(a) The terms and conditions of a general permit as they apply to the appropriate class of facilities are subject to appeal within thirty days of issuance of a general permit in accordance with chapter 43.21B RCW.

(b) The terms and conditions of a general permit, as they apply to an individual facility, are appealable, within thirty days of the effective date of coverage of that facility, in accordance with chapter 43.21B RCW. This appeal is limited to the general permit's applicability or nonapplicability to that individual facility.

(c) The appeal of general permit coverage of an individual facility does not affect any other facilities covered under the general permit. If the terms and conditions of a general permit are found to be inapplicable to any individual facility, the matter must be remanded to the department for consideration of issuance of an individual permit or permits.

(11) **Modification, revocation and reissuance, and termination of general permits.** A general permit may be modified, revoked and reissued, or terminated, during its term for cause including, but not limited to, the following:

(a) A change occurs in the technology or practices for control or abatement of pollutants applicable to the category of facilities covered under the general permit.

(b) New biosolids or sewage sludge guidelines or standards are promulgated pursuant to the Clean Water Act or chapter 70.95J RCW, for the category of facilities covered under the general permit.

(c) Information is obtained which indicates that cumulative effects on the environment from facilities covered under the general permit are unacceptable.

(12) **Notice for determinations to modify or revoke.** In the event that the director has determined to modify or revoke, in whole or in part, a general permit pursuant to subsection (11) of this section the director must notify, in writing, all facilities covered under the general permit. The notification must include:

(a) The reason(s) why the general permit is being revoked or modified.

(b) The process for appealing the determination pursuant to RCW 43.21B.310.

(c) An application form and a time limit for submitting the application.

(d) Any other information determined to be relevant by the department.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-308-070	Use of term, "biosolids"—Explanation.
WAC 173-308-220	Bulk biosolids applied to forestland.
WAC 173-308-230	Bulk biosolids applied to a public contact site.
WAC 173-308-240	Bulk biosolids applied to a land reclamation site.

**WSR 07-12-020
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed May 25, 2007, 2:48 p.m., effective June 25, 2007]

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

Purpose: Language from chapter 180-38 WAC is being adopted as new language in chapter 392-380 WAC as required by the transfer of duties from the state board of education to the superintendent of public instruction under E2SHB 3098 (Immunization requirement and life-threatening conditions—Public school pupils).

Citation of Existing Rules Affected by this Order: Amending chapter 180-38 WAC.

Statutory Authority for Adoption: RCW 28A.210.160.

Adopted under notice filed as WSR 07-08-093 on April 3, 2007.

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

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

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

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

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

Date Adopted: May 25, 2007.

Dr. Terry Bergeson
Superintendent of
Public Instruction

Chapter 392-380 WAC

**PUBLIC SCHOOL PUPILS—IMMUNIZATION
REQUIREMENT AND LIFE-THREATENING
HEALTH CONDITION**

NEW SECTION

WAC 392-380-005 Purpose and authority. (1) The purpose of this chapter is to establish the procedural and substantive due process requirements governing the exclusion of students from public schools for failure to comply with the immunization requirement of the state of Washington or failure to present a medication or treatment order for a life-threatening health condition.

(2) The authority for this chapter is RCW 28A.210.160.

NEW SECTION

WAC 392-380-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(6).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(1).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(2).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC 246-100-166(5)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the school, on a form prescribed by the department of health, which complies with RCW 28A.210.-090.

(6) "Life-threatening condition" shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260 (2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

(9) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance:

(a) Due to failure to submit a schedule of immunization, or a certificate of exemption; or

(b) In the case of a life-threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(10) "School day" shall mean the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school.

(11) "Parent" shall mean parent, legal guardian, or other adult *in loco parentis*.

NEW SECTION

WAC 392-380-045 School attendance conditioned upon presentation of proofs. (1) The initial attendance of every student at every public school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent, guardian or other adult *in loco parentis*.

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition

the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

NEW SECTION

WAC 392-380-050 Written notice prior to exclusions from school. (1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 392-380-045.

(2) The written notice for public school students shall:

(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.

(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.

(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.

(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.

(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until

a hearing officer determines that the student is no longer excluded from school.

NEW SECTION

WAC 392-380-080 Prehearing and hearing process.

(1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.

(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter 392-400 WAC.

WSR 07-12-025

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed May 29, 2007, 2:50 p.m., effective June 29, 2007]

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

Purpose: The department is amending WAC 388-492-0040 Can I choose whether I get WASHCAP or regular food assistance? This rule change is necessary so we can allow recipients to choose whether to participate in Washington combined application project (WASHCAP) or apply for Basic Food benefits if their food benefits under Basic Food would be at least \$40 more due to excess shelter costs or legally-obligated child support payments. The change also removes the high rent threshold as an opt out criterion, to be replaced by the benefit difference criterion, and corrects the date for the grandfathered rule consistent with a court order. The change is consistent with the amendment to the WASHCAP extension demonstration project plan approved by the United States Department of Agriculture, Food and Nutrition Services (FNS) from December 1, 2006, through November 30, 2011. A letter, dated January 17, 2007, from Arthur Foley, Director of Program Development Division, FNS, approves the amendment to the "opt-out" criteria at the \$40 threshold versus the high rent cost threshold.

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0040.

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

Other Authority: See Purpose above.

Adopted under notice filed as WSR 07-08-056 on March 29, 2007.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 23, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-011, filed 10/6/06, effective 11/6/06)

WAC 388-492-0040 Can I choose whether I get WASHCAP food benefits or Basic Food benefits? You can choose to have Basic Food benefits instead of WASHCAP food benefits when:

(1) ~~((Your nonutility shelter costs as defined in WAC 388-450-0190 (1)(a) through (d) are more than five hundred sixty-seven dollars a month;~~

~~(2))~~ Your out-of-pocket medical expenses are more than thirty-five dollars a month; ~~((or~~

~~(3))~~ (2) You chose to have Basic Food benefits instead of WASHCAP benefits prior to ~~((January 1))~~ April 25, 2005;
or

(3) Your food benefits under Basic Food would be at least forty dollars more due to excess shelter costs under WAC 388-450-0190 (1)(a) through (e) or legally obligated child support payments.

WSR 07-12-026

PERMANENT RULES

HIGHER EDUCATION COORDINATING BOARD

[Filed May 30, 2007, 9:36 a.m., effective June 30, 2007]

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

Purpose: To establish the procedures the Washington higher education coordinating board will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington higher education coordinating board and establish processes for both requestors and the Washington higher education coordinating board staff that are designed to best assist members of the public in obtaining such access.

Statutory Authority for Adoption: RCW 42.56.100.

Adopted under notice filed as WSR 07-07-026 on March 12, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, 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 7, Amended 0, Repealed 0.

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

Date Adopted: May 30, 2007.

Donald G. Alexander
Associate Director for
Accounting, Budget and Facilities

NEW SECTION

WAC 250-82-010 Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency.. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public Records held by that agency.

(2) The purpose of these rules is to establish the procedures the Washington Higher Education Coordinating Board will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington Higher Education Coordinating Board and establish processes for both requestors and the Washington Higher Education Coordinating Board staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the Washington Higher Education Coordinating Board will be guided by the provisions of the act describing its purposes and interpretation.

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 250-82-020 Agency description—Contact information—Public records officer. (1) The Washington Higher Education Coordinating Board administers all state student financial aid programs. These programs include state and federal student need based aid, merit based aid, work-force incentive aid, and other outreach programs. In addition, the Board provides state level policy development, research, analysis, planning, and coordination of various issues confronting higher education. The Washington Higher Education Coordinating Board serves as the administrative agency for the state's Guaranteed Education Tuition Program, over-

seen by the GET Committee. The Washington Higher Education Coordinating Board central office is located at 917 Lakeridge Way SW, P.O. Box 43430, Olympia, WA 98504-3430.

(2) Any person wishing to request access to public records of Washington Higher Education Coordinating Board, or seeking assistance in making such a request should contact the public records officer of the Washington Higher Education Coordinating Board:

Public Records Officer
Washington Higher Education Coordinating Board
917 Lakeridge Way SW
P.O. Box 43430
Olympia, WA 98504-3430
Voice-360-753-7800
Fax-360-753-7808
publicrecordsofficer@hecb.wa.gov

Information is also available at the Washington Higher Education Coordinating Board web site at <http://www.hecb.wa.gov/>.

(3) The public records officer will oversee compliance with the act but another Washington Higher Education Coordinating Board staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the Washington Higher Education Coordinating Board will provide the "fullest assistance" to requestors; create and maintain for use by the public and Washington Higher Education Coordinating Board officials an index to public records of the Washington Higher Education Coordinating Board; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Washington Higher Education Coordinating Board.

NEW SECTION

WAC 250-82-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the Washington Higher Education Coordinating Board, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the offices of the Washington Higher Education Coordinating Board.

(2) **Records index.** An index of public records is available for use by members of the public, including final orders, declaratory orders, interpretive statements, and statements of policy issued after June 30, 1990.

The volume of records maintained by the Washington Higher Education Coordinating Board is such that it would be unduly burdensome to develop and maintain an index for all such records. In lieu of an index the following filing system is utilized:

(a) Resolutions by the board are filed by resolution number by year.

(b) The following records are filed by the name of the academic institution:

- Complaints filed by persons claiming loss of tuition or fees as a result of an unfair business practice;

- Records regarding the issuance or denial of authorization for an academic institution to issue one or more degrees, or the waiver or exemption of any requirement of authorization;
- Records regarding the approval or denial of a degree program for an academic institution;
- Records regarding program approval for the use of G.I. Bill benefits;
- Records regarding the approval or denial of an academic institution to participate in the state need grant program.

(3) **Organization of records.** The Washington Higher Education Coordinating Board will maintain its records in a reasonably organized manner. The Washington Higher Education Coordinating Board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take records from Washington Higher Education Coordinating Board offices without the permission of the public records officer or designee. A variety of records is available on the Washington Higher Education Coordinating Board web site at <http://www.hecb.wa.gov/>. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.** (a) Any person wishing to inspect or copy public records of the Washington Higher Education Coordinating Board should make the request in writing on the Washington Higher Education Coordinating Board's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and the date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to section 7 of this rule, standard photocopies will be provided at 15 cents per page.

(c) A form is available for use by requestors at the office of the public records officer and on-line at <http://www.hecb.wa.gov/>.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 250-82-040 Processing of public records requests—General. (1) **Providing "fullest assistance."** The Washington Higher Education Coordinating Board is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide

"fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit, for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request.

(3) **Consequences of failure to respond.** If the Washington Higher Education Coordinating Board does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the Washington Higher Education Coordinating Board believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the non-exempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the Washington Higher Education Coordinating Board shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the Washington Higher Education Coordinating Board's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency

to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the Washington Higher Education Coordinating Board may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(8) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the Washington Higher Education Coordinating Board has completed a diligent search for the requested records and made any located non-exempt records available for inspection.

(10) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the Washington Higher Education Coordinating Board has closed the request.

(11) **Later discovered documents.** If, after the Washington Higher Education Coordinating Board has informed the requestor that it has provided all available records, the Washington Higher Education Coordinating Board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 250-82-050 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the Washington Higher Education Coordinating Board for inspection and copying:

Family Educational Rights and Privacy Act (FERPA)
(20 U.S.C. § 1232g; 34 CFR Part 99)

Health Insurance Portability and Accountability Act of 1996 (HIPAA). (PL 104-191 Health Insurance Portabil-

ity and Accountability Act of 1996; 45 CFR Parts 160, 162, and 164)

28B.76.280 Data collection and research — Research advisory group — Privacy protection.

28B.85.020 Board's duties — Rules — Investigations — Interagency agreements for degree and nondegree programs — Information on institutions offering standard or fraudulent degree programs — Financial disclosure exempt from public disclosure.

(2) The Washington Higher Education Coordinating Board is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 250-82-060 Costs of providing copies of public records. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for 15 cents per page.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Washington Higher Education Coordinating Board will not charge sales tax when it makes copies of public records.

(2) **Costs of mailing.** The Washington Higher Education Coordinating Board may also charge actual costs of mailing, including the cost of the shipping container.

(3) **Payment.** Payment may be made by cash, check, or money order to the Washington Higher Education Coordinating Board.

NEW SECTION

WAC 250-82-070 Review of denials of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the deputy director. The deputy will immediately consider the petition and either affirm or reverse the denial within two business days following the Washington Higher Education Coordinating Board's receipt of the petition, or within such other time as the Washington Higher Education Coordinating Board and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the Washington Higher Education Coordinating Board denies a requestor access to public records because it claims the record is exempt in whole or

part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records request pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

**WSR 07-12-028
PERMANENT RULES
BOARD OF**

PILOTAGE COMMISSIONERS

[Filed May 30, 2007, 12:10 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: To establish an annual tariff for pilotage services in the Puget Sound pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-300.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 07-09-006 on April 5, 2007.

Changes Other than Editing from Proposed to Adopted Version: The proposed rule reflects a tariff increase in a range of 0% to 8% across-the-board with the noted excep-

tions being the *Transportation and Training Surcharge* categories.

The adopted rule reflects a tariff increase of 5% across-the-board with the noted exceptions being the *Transportation and Training Surcharge* categories.

The proposed new category called *Pension Charge* was not adopted which is the equivalent of an additional 6% across-the-board increase.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 23, 2007.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 07-01-084, filed 12/19/06, effective 1/20/07)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours (~~(January 20)~~) July 1, 2007, through 2400 hours June 30, (~~(2007)~~) 2008.

CLASSIFICATION

RATE

Ship length overall (LOA)

Charges:

Per LOA rate schedule in this section.

Boarding fee:

~~(\$43.00)~~ \$45.00

Per each boarding/deboarding at the Port Angeles pilot station.

Harbor shift - Live ship (Seattle Port)

LOA Zone I

Harbor shift - Live ship (other than Seattle Port)

LOA Zone I

Harbor shift - Dead ship

Double LOA Zone I

Towing charge - Dead ship:

Double LOA Zone

LOA of tug + LOA of tow + beam of tow

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment

~~(\$310.00)~~ \$326.00

Radio Direction Finder Calibration

~~(\$310.00)~~ \$326.00

Launching Vessels

~~(\$466.00)~~ \$489.00

Trial Trips, 6 hours or less (minimum ~~(\$876.00)~~ \$918.00)

~~(\$146.00)~~ \$153.00 per hour

Trial Trips, over 6 hours (two pilots)

~~(\$291.00)~~ \$306.00 per hour

Shilshole Bay – Salmon Bay

~~(\$182.00)~~ \$191.00

Salmon Bay – Lake Union

~~(\$141.00)~~ \$148.00

Lake Union – Lake Washington (plus LOA zone from Webster Point)

~~(\$182.00)~~ \$191.00

Cancellation Charge

LOA Zone I

Cancellation Charge – Port Angeles:

LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of ~~((\$229.00))~~ \$240.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of ~~((\$109.00))~~ \$114.00 per bridge.

Ships 90' beam and/or over:

A charge of ~~((\$311.00))~~ \$327.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of ~~((\$217.00))~~ \$228.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus ~~((\$236.00))~~ \$248.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~((\$236.00))~~ \$248.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~((\$236.00))~~ \$248.00 for every hour or fraction thereof. The assessment of the standby fee shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of ~~((\$236.00))~~ \$248.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of ~~((\$236.00))~~ \$248.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of ~~((\$0.0073))~~ \$0.0077 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of ~~((\$0.0751))~~ \$0.0789 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be ~~((\$0.0900))~~ \$0.0945 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$157.00
Bangor	153.00
Bellingham	181.00
Bremerton	135.00
Cherry Point	209.00
Dupont	97.00
Edmonds	35.00
Everett	59.00
Ferndale	199.00
Manchester	131.00
Mukilteo	53.00
Olympia	125.00
Point Wells	35.00
Port Gamble	185.00
Port Townsend (Indian Island)	223.00
Seattle	15.00
Tacoma	71.00

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after ((45)) 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage fees on the LOA zone mileage basis from Port Angeles to destination, from place of departure to

Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

Training Surcharge:

Effective January 20, 2007, a surcharge of \$5.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each ((vessel)) pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

((LOA	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
Up to 449	227	351	600	894	1,204	1,562
450-459	236	358	604	908	1,224	1,570
460-469	238	362	613	923	1,240	1,577
470-479	247	372	621	941	1,244	1,580
480-489	253	379	624	959	1,251	1,587
490-499	257	384	632	976	1,267	1,595
500-509	270	391	642	988	1,276	1,605
510-519	272	398	649	1,002	1,290	1,610
520-529	275	412	657	1,007	1,301	1,624
530-539	284	417	666	1,018	1,322	1,642
540-549	289	423	681	1,029	1,343	1,657
550-559	294	438	686	1,044	1,353	1,673
560-569	305	455	699	1,053	1,366	1,689
570-579	311	459	702	1,058	1,380	1,700
580-589	324	466	718	1,066	1,389	1,717
590-599	340	476	723	1,071	1,409	1,737
600-609	351	490	732	1,075	1,426	1,746
610-619	371	495	746	1,080	1,440	1,761
620-629	386	502	751	1,092	1,456	1,782
630-639	404	510	760	1,095	1,469	1,797
640-649	419	522	769	1,097	1,481	1,810
650-659	449	531	782	1,107	1,499	1,829
660-669	458	537	789	1,112	1,515	1,844
670-679	474	551	797	1,132	1,533	1,854
680-689	481	560	808	1,142	1,546	1,872
690-699	495	569	820	1,162	1,562	1,911
700-719	517	588	835	1,177	1,592	1,933
720-739	548	604	856	1,193	1,624	1,965
740-759	569	632	872	1,204	1,657	2,000
760-779	591	653	894	1,224	1,689	2,027
780-799	621	682	908	1,240	1,717	2,062
800-819	646	702	926	1,247	1,746	2,093
820-839	666	727	947	1,267	1,782	2,118

(LOA	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
840-859	694	756	965	1,281	1,809	2,154
860-879	720	782	983	1,314	1,844	2,185
880-899	746	805	1,002	1,345	1,872	2,217
900-919	768	831	1,019	1,379	1,911	2,248
920-939	791	856	1,044	1,409	1,931	2,278
940-959	820	878	1,059	1,440	1,965	2,306
960-979	839	904	1,078	1,469	2,000	2,341
980-999	867	926	1,096	1,499	2,027	2,370
1000-1019	919	986	1,145	1,579	2,122	2,473
1020-1039	944	1,014	1,180	1,624	2,186	2,546
1040-1059	972	1,039	1,215	1,673	2,249	2,621
1060-1079	1,002	1,076	1,250	1,724	2,319	2,699
1080-1099	1,032	1,107	1,288	1,773	2,387	2,780
1100-1119	1,061	1,140	1,327	1,828	2,458	2,864
1120-1139	1,094	1,176	1,368	1,881	2,532	2,949
1140-1159	1,126	1,209	1,407	1,938	2,609	3,038
1160-1179	1,159	1,244	1,450	1,996	2,686	3,129
1180-1199	1,195	1,282	1,492	2,056	2,768	3,223
1200-1219	1,231	1,321	1,536	2,118	2,850	3,318
1220-1239	1,267	1,360	1,582	2,181	2,934	3,417
1240-1259	1,304	1,400	1,629	2,246	3,023	3,519
1260-1279	1,343	1,441	1,678	2,313	3,114	3,625
1280-1299	1,383	1,486	1,729	2,383	3,205	3,734
1300-1319	1,425	1,528	1,779	2,453	3,302	3,845
1320-1339	1,468	1,574	1,834	2,527	3,400	3,961
1340-1359	1,510	1,622	1,889	2,602	3,502	4,080
1360-1379	1,556	1,669	1,944	2,681	3,606	4,200
1380-1399	1,602	1,719	2,004	2,760	3,714	4,328
1400-1419	1,650	1,771	2,061	2,842	3,825	4,457
1420-1439	1,699	1,824	2,124	2,928	3,941	4,590
1440-1459	1,751	1,879	2,189	3,014	4,059	4,727
1460-1479	1,800	1,934	2,252	3,105	4,180	4,868
1480-1499	1,855	1,991	2,320	3,197	4,304	5,013
1500 & Over	1,911	2,052	2,389	3,295	4,432	5,163))

LOA	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
<u>Up to 449</u>	<u>238</u>	<u>369</u>	<u>630</u>	<u>939</u>	<u>1,264</u>	<u>1,640</u>
<u>450 - 459</u>	<u>248</u>	<u>376</u>	<u>634</u>	<u>953</u>	<u>1,285</u>	<u>1,649</u>
<u>460 - 469</u>	<u>250</u>	<u>380</u>	<u>644</u>	<u>969</u>	<u>1,302</u>	<u>1,656</u>
<u>470 - 479</u>	<u>259</u>	<u>391</u>	<u>652</u>	<u>988</u>	<u>1,306</u>	<u>1,659</u>
<u>480 - 489</u>	<u>266</u>	<u>398</u>	<u>655</u>	<u>1,007</u>	<u>1,314</u>	<u>1,666</u>
<u>490 - 499</u>	<u>270</u>	<u>403</u>	<u>664</u>	<u>1,025</u>	<u>1,330</u>	<u>1,675</u>
<u>500 - 509</u>	<u>284</u>	<u>411</u>	<u>674</u>	<u>1,037</u>	<u>1,340</u>	<u>1,685</u>

LOA	ZONE					
	I Intra Harbor	II 0-30 Miles	III 31-50 Miles	IV 51-75 Miles	V 76-100 Miles	VI 101 Miles & Over
<u>510 - 519</u>	<u>286</u>	<u>418</u>	<u>681</u>	<u>1,052</u>	<u>1,355</u>	<u>1,691</u>
<u>520 - 529</u>	<u>289</u>	<u>433</u>	<u>690</u>	<u>1,057</u>	<u>1,366</u>	<u>1,705</u>
<u>530 - 539</u>	<u>298</u>	<u>438</u>	<u>699</u>	<u>1,069</u>	<u>1,388</u>	<u>1,724</u>
<u>540 - 549</u>	<u>303</u>	<u>444</u>	<u>715</u>	<u>1,080</u>	<u>1,410</u>	<u>1,740</u>
<u>550 - 559</u>	<u>309</u>	<u>460</u>	<u>720</u>	<u>1,096</u>	<u>1,421</u>	<u>1,757</u>
<u>560 - 569</u>	<u>320</u>	<u>478</u>	<u>734</u>	<u>1,106</u>	<u>1,434</u>	<u>1,773</u>
<u>570 - 579</u>	<u>327</u>	<u>482</u>	<u>737</u>	<u>1,111</u>	<u>1,449</u>	<u>1,785</u>
<u>580 - 589</u>	<u>340</u>	<u>489</u>	<u>754</u>	<u>1,119</u>	<u>1,458</u>	<u>1,803</u>
<u>590 - 599</u>	<u>357</u>	<u>500</u>	<u>759</u>	<u>1,125</u>	<u>1,479</u>	<u>1,824</u>
<u>600 - 609</u>	<u>369</u>	<u>515</u>	<u>769</u>	<u>1,129</u>	<u>1,497</u>	<u>1,833</u>
<u>610 - 619</u>	<u>390</u>	<u>520</u>	<u>783</u>	<u>1,134</u>	<u>1,512</u>	<u>1,849</u>
<u>620 - 629</u>	<u>405</u>	<u>527</u>	<u>789</u>	<u>1,147</u>	<u>1,529</u>	<u>1,871</u>
<u>630 - 639</u>	<u>424</u>	<u>536</u>	<u>798</u>	<u>1,150</u>	<u>1,542</u>	<u>1,887</u>
<u>640 - 649</u>	<u>440</u>	<u>548</u>	<u>807</u>	<u>1,152</u>	<u>1,555</u>	<u>1,901</u>
<u>650 - 659</u>	<u>471</u>	<u>558</u>	<u>821</u>	<u>1,162</u>	<u>1,574</u>	<u>1,920</u>
<u>660 - 669</u>	<u>481</u>	<u>564</u>	<u>828</u>	<u>1,168</u>	<u>1,591</u>	<u>1,936</u>
<u>670 - 679</u>	<u>498</u>	<u>579</u>	<u>837</u>	<u>1,189</u>	<u>1,610</u>	<u>1,947</u>
<u>680 - 689</u>	<u>505</u>	<u>588</u>	<u>848</u>	<u>1,199</u>	<u>1,623</u>	<u>1,966</u>
<u>690 - 699</u>	<u>520</u>	<u>597</u>	<u>861</u>	<u>1,220</u>	<u>1,640</u>	<u>2,007</u>
<u>700 - 719</u>	<u>543</u>	<u>617</u>	<u>877</u>	<u>1,236</u>	<u>1,672</u>	<u>2,030</u>
<u>720 - 739</u>	<u>575</u>	<u>634</u>	<u>899</u>	<u>1,253</u>	<u>1,705</u>	<u>2,063</u>
<u>740 - 759</u>	<u>597</u>	<u>664</u>	<u>916</u>	<u>1,264</u>	<u>1,740</u>	<u>2,100</u>
<u>760 - 779</u>	<u>621</u>	<u>686</u>	<u>939</u>	<u>1,285</u>	<u>1,773</u>	<u>2,128</u>
<u>780 - 799</u>	<u>652</u>	<u>716</u>	<u>953</u>	<u>1,302</u>	<u>1,803</u>	<u>2,165</u>
<u>800 - 819</u>	<u>678</u>	<u>737</u>	<u>972</u>	<u>1,309</u>	<u>1,833</u>	<u>2,198</u>
<u>820 - 839</u>	<u>699</u>	<u>763</u>	<u>994</u>	<u>1,330</u>	<u>1,871</u>	<u>2,224</u>
<u>840 - 859</u>	<u>729</u>	<u>794</u>	<u>1,013</u>	<u>1,345</u>	<u>1,899</u>	<u>2,262</u>
<u>860 - 879</u>	<u>756</u>	<u>821</u>	<u>1,032</u>	<u>1,380</u>	<u>1,936</u>	<u>2,294</u>
<u>880 - 899</u>	<u>783</u>	<u>845</u>	<u>1,052</u>	<u>1,412</u>	<u>1,966</u>	<u>2,328</u>
<u>900 - 919</u>	<u>806</u>	<u>873</u>	<u>1,070</u>	<u>1,448</u>	<u>2,007</u>	<u>2,360</u>
<u>920 - 939</u>	<u>831</u>	<u>899</u>	<u>1,096</u>	<u>1,479</u>	<u>2,028</u>	<u>2,392</u>
<u>940 - 959</u>	<u>861</u>	<u>922</u>	<u>1,112</u>	<u>1,512</u>	<u>2,063</u>	<u>2,421</u>
<u>960 - 979</u>	<u>881</u>	<u>949</u>	<u>1,132</u>	<u>1,542</u>	<u>2,100</u>	<u>2,458</u>
<u>980 - 999</u>	<u>910</u>	<u>972</u>	<u>1,151</u>	<u>1,574</u>	<u>2,128</u>	<u>2,489</u>
<u>1000 - 1019</u>	<u>965</u>	<u>1,035</u>	<u>1,202</u>	<u>1,658</u>	<u>2,228</u>	<u>2,597</u>
<u>1020 - 1039</u>	<u>991</u>	<u>1,065</u>	<u>1,239</u>	<u>1,705</u>	<u>2,295</u>	<u>2,673</u>
<u>1040 - 1059</u>	<u>1,021</u>	<u>1,091</u>	<u>1,276</u>	<u>1,757</u>	<u>2,361</u>	<u>2,752</u>
<u>1060 - 1079</u>	<u>1,052</u>	<u>1,130</u>	<u>1,313</u>	<u>1,810</u>	<u>2,435</u>	<u>2,834</u>
<u>1080 - 1099</u>	<u>1,084</u>	<u>1,162</u>	<u>1,352</u>	<u>1,862</u>	<u>2,506</u>	<u>2,919</u>
<u>1100 - 1119</u>	<u>1,114</u>	<u>1,197</u>	<u>1,393</u>	<u>1,919</u>	<u>2,581</u>	<u>3,007</u>
<u>1120 - 1139</u>	<u>1,149</u>	<u>1,235</u>	<u>1,436</u>	<u>1,975</u>	<u>2,659</u>	<u>3,096</u>
<u>1140 - 1159</u>	<u>1,182</u>	<u>1,269</u>	<u>1,477</u>	<u>2,035</u>	<u>2,739</u>	<u>3,190</u>
<u>1160 - 1179</u>	<u>1,217</u>	<u>1,306</u>	<u>1,523</u>	<u>2,096</u>	<u>2,820</u>	<u>3,285</u>
<u>1180 - 1199</u>	<u>1,255</u>	<u>1,346</u>	<u>1,567</u>	<u>2,159</u>	<u>2,906</u>	<u>3,384</u>
<u>1200 - 1219</u>	<u>1,293</u>	<u>1,387</u>	<u>1,613</u>	<u>2,224</u>	<u>2,993</u>	<u>3,484</u>

LOA	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE
	I Intra Harbor	II 0-30 Miles	III 31-50 Miles	IV 51-75 Miles	V 76-100 Miles	VI 101 Miles & Over
<u>1220 - 1239</u>	<u>1,330</u>	<u>1,428</u>	<u>1,661</u>	<u>2,290</u>	<u>3,081</u>	<u>3,588</u>
<u>1240 - 1259</u>	<u>1,369</u>	<u>1,470</u>	<u>1,710</u>	<u>2,358</u>	<u>3,174</u>	<u>3,695</u>
<u>1260 - 1279</u>	<u>1,410</u>	<u>1,513</u>	<u>1,762</u>	<u>2,429</u>	<u>3,270</u>	<u>3,806</u>
<u>1280 - 1299</u>	<u>1,452</u>	<u>1,560</u>	<u>1,815</u>	<u>2,502</u>	<u>3,365</u>	<u>3,921</u>
<u>1300 - 1319</u>	<u>1,496</u>	<u>1,604</u>	<u>1,868</u>	<u>2,576</u>	<u>3,467</u>	<u>4,037</u>
<u>1320 - 1339</u>	<u>1,541</u>	<u>1,653</u>	<u>1,926</u>	<u>2,653</u>	<u>3,570</u>	<u>4,159</u>
<u>1340 - 1359</u>	<u>1,586</u>	<u>1,703</u>	<u>1,983</u>	<u>2,732</u>	<u>3,677</u>	<u>4,284</u>
<u>1360 - 1379</u>	<u>1,634</u>	<u>1,752</u>	<u>2,041</u>	<u>2,815</u>	<u>3,786</u>	<u>4,410</u>
<u>1380 - 1399</u>	<u>1,682</u>	<u>1,805</u>	<u>2,104</u>	<u>2,898</u>	<u>3,900</u>	<u>4,544</u>
<u>1400 - 1419</u>	<u>1,733</u>	<u>1,860</u>	<u>2,164</u>	<u>2,984</u>	<u>4,016</u>	<u>4,680</u>
<u>1420 - 1439</u>	<u>1,784</u>	<u>1,915</u>	<u>2,230</u>	<u>3,074</u>	<u>4,138</u>	<u>4,820</u>
<u>1440 - 1459</u>	<u>1,839</u>	<u>1,973</u>	<u>2,298</u>	<u>3,165</u>	<u>4,262</u>	<u>4,963</u>
<u>1460 - 1479</u>	<u>1,890</u>	<u>2,031</u>	<u>2,365</u>	<u>3,260</u>	<u>4,389</u>	<u>5,111</u>
<u>1480 - 1499</u>	<u>1,948</u>	<u>2,091</u>	<u>2,436</u>	<u>3,357</u>	<u>4,519</u>	<u>5,264</u>
<u>1500 & Over</u>	<u>2,007</u>	<u>2,155</u>	<u>2,508</u>	<u>3,460</u>	<u>4,654</u>	<u>5,421</u>

WSR 07-12-029
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed May 30, 2007, 2:37 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: WAC 246-08-400 Allowable fees for searching and duplicating medical records, the department is adjusting the maximum fees medical providers can charge for searching and duplicating medical records, as required by statute. The department is also correcting the statutory authority referenced from RCW 70.02.010 (14) to (15) to alleviate confusion. The subsection number was changed by ESSB 6106, chapter 235, Laws of 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 246-08-400.

Statutory Authority for Adoption: RCW 70.02.010(15) and 43.70.040.

Adopted under notice filed as WSR 07-07-073 on March 16, 2007.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 29, 2007.

M. C. Selecky
 Secretary

AMENDATORY SECTION (Amending WSR 06-11-166, filed 5/24/06, effective 6/24/06)

WAC 246-08-400 How much can a medical provider charge for searching and duplicating medical records? RCW 70.02.010(~~(14)~~) (15) allows medical providers to charge fees for searching and duplicating medical records. The fees a provider may charge cannot exceed the fees listed below:

(1) Copying charge per page:

(a) No more than (~~ninety-one~~) ninety-six cents per page for the first thirty pages;

(b) No more than (~~sixty-nine~~) seventy-three cents per page for all other pages.

(2) Additional charges:

(a) The provider can charge a (~~twenty-one~~) twenty-two dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.

(3) This section is effective July 1, (~~2005~~) 2007, through June 30, (~~2007~~) 2009.

(4) HIPAA covered entities: See HIPAA regulation Section 164.524 (c)(4) to determine applicability of this rule.

WSR 07-12-032
PERMANENT RULES
SECRETARY OF STATE
(Elections Division)

[Filed May 30, 2007, 3:07 p.m., effective June 30, 2007]

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

Purpose: To adopt procedures regarding recounts, signature verification equipment, orientation training, and motor voter, election reports, and voter intent.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-262-106, 434-262-108, 434-326-005, 434-326-010, 434-326-015, 434-326-020, 434-326-025, 434-326-030, 434-326-035, 434-326-040, 434-326-045, 434-326-050, 434-326-055, 434-326-060, 434-326-065, and 434-326-900; and amending WAC 434-250-070, 434-250-130, 434-250-310, 434-250-330, 434-260-170, 434-260-240, 434-261-070, 434-261-075, 434-262-030, and 434-335-010.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 07-09-094 on April 18, 2007.

Changes Other than Editing from Proposed to Adopted Version:

- WAC 434-264-040, county canvassing boards are encouraged to request additional observers from the major political parties, as space allows.
- WAC 434-264-110, precinct or batch numbers are required to be made available to observers.
- Voting intent standards are incorporated into WAC 434-261-086.
- WAC 434-250-330, to maintain the secrecy of each voter's ballot, the voter's information must not be recorded in the same order that his or her ballot was cast.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 7, Repealed 16.

Number of Sections Adopted Using Negotiated Rule Making: New 28, Amended 10, Repealed 16; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 30, 2007.

Sam Reed
Secretary of State

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-070 Forwarding ballots. (1) If the county auditor chooses not to forward ballots, the return

envelope must clearly indicate the ballot is not to be forwarded and return postage is guaranteed.

(2) If the county auditor chooses to forward absentee ballots, as authorized by RCW 29A.40.091, the county auditor must include with the ballot an explanation (~~(that is)~~) of qualifications necessary to vote and instructions substantially similar to the following:

~~((For each jurisdiction listed on the ballot, you must reside in the jurisdiction in order to vote for that office or issue.))~~ If you have changed your permanent residence address, please contact your county auditor to ensure the ballot you receive in future elections contains the races and issues for your residential address. If you have any questions about your eligibility to vote in this election, please contact your county auditor.

~~((This))~~ The above instructions and the explanation required by RCW 29A.40.091 may be provided on the ballot envelope, on an enclosed insert, or on the ballot itself. Auditors must begin to provide the above instruction to voters no later than January 1, 2008. The county auditor must utilize postal service endorsements that allow:

(a) ~~The ballots to be forwarded((; allow));~~

(b) ~~The county auditor to receive from the post office the addresses to which ballots were forwarded((;)); and ((allow))~~

(c) ~~The return of ballots that were not capable of being forwarded. ((If the above explanation is not provided to the voter, the return envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.))~~

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-130 Maintenance of an audit trail.

Each county auditor shall maintain an audit trail with respect to the processing of absentee ballots, which shall include, but not be limited to, the following:

(1) A record of the date each absentee ballot application was received, the date the ballot was mailed or issued, and the date the ballot was received;

(2) The number of absentee ballots issued and returned, by legislative and congressional district, for each primary and general election;

(3) A record of the disposition of each request for an absentee ballot that was not honored;

(4) A record of the disposition of each returned absentee ballot that was not counted;

(5) A record of the time and place each time the county canvassing board met ~~((to process absentee ballots)); and~~

(6) A documentation of the security procedures undertaken to protect the integrity of all ballots after receipt, including the seal numbers used to secure the ballots during all facets of the absentee ballot process~~((; and~~

~~((7) A reconciliation that all absentee ballots counted plus all absentee ballots rejected is equal to the total number of absentee ballots received)).~~

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-310 Notice of elections by mail. (1) A jurisdiction requesting that a special election be conducted

entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than ~~((forty))~~ forty-seven days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than ~~((forty five))~~ seventy-nine days before the primary date.

(3) In addition to the information required in the notice of election published pursuant to RCW 29A.52.351 and 29A.52.311, a county auditor conducting an election by mail, ~~((whether for a single jurisdiction or the entire county))~~ including a county auditor that conducts every election by mail, must also state:

(a) ~~((That))~~ The election will be conducted by mail and regular polling places will not be open;

(b) The precincts that are voting by mail if it is only specific precincts rather than the entire county;

(c) The location where voters may obtain replacement ballots;

(d) ~~((The amount of))~~ Return postage is required ~~((on the return envelope));~~

(e) The dates, times and locations of designated deposit sites and sites for voting devices that are accessible to the visually impaired, including the county auditor's office as a polling place.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-250-330 County auditor's office as a polling place. (1) For elections conducted entirely by mail, services that would have been provided at the polling place must, at a minimum, be provided at the county auditor's office, including provisional ballots. Such services must be provided beginning the date that ballots are mailed to voters, excluding Saturdays, Sundays, and legal holidays. Identification must be provided in compliance with RCW 29A.44.205 and WAC ~~((434-253-055))~~ 434-253-024, except in the case of replacement ballots as authorized by RCW 29A.48.040. If the county auditor does not maintain poll books at the county auditor's office, the voter must sign a ~~((log sheet))~~ record that includes the same information that would have appeared in a poll book. To maintain the secrecy of each voter's ballot, the voter's information must not be recorded in the same order that his or her ballot was cast.

(2) If the persons providing services at the county auditor's office are not employees of the county auditor's office but are persons appointed by the county auditor, the appointees must be representatives of different major political parties and must subscribe to an oath regarding the discharge of duties.

NEW SECTION

WAC 434-260-165 Response to draft special review recommendations. The county auditor or the county canvassing board must respond, in writing, to the draft election

special review recommendations, listing the steps that have been taken or that will be taken to correct any problems listed in the report. Such a response shall be submitted to the review staff not later than ten days following the issuance of the draft special review report.

Nothing in this section shall prevent the review staff from modifying or amending its recommendations, based on the response received from the county auditor or canvassing board.

AMENDATORY SECTION (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

WAC 434-260-170 Distribution of special review recommendations and response. ~~((The county auditor and the county canvassing board may respond in writing to any recommendations made by the review staff. Such response shall not be made later than ten working days after the completion of the mandatory recount.))~~ The review staff shall, after the county auditor and county canvassing board have had an opportunity to respond, provide a copy of its recommendations and any response to any person requesting them at actual reproduction costs. ~~((Nothing in this section shall prevent the review staff from modifying or amending its recommendations, based on the response received from the county auditor or county canvassing board.))~~ In the event the special review recommendations are modified or amended, only the final recommendations and any response by the county shall be made available for inspection and copying. In the event that the review staff does not modify or amend the draft recommendations within ~~((sixteen))~~ twenty-five working days from the completion of the mandatory recount, the draft recommendations shall be considered to be final recommendations and shall be made available for inspection and copying. A copy of the special review recommendations and any response shall be provided to the chairperson of the election administration and certification board and a copy shall also be kept on file by the secretary of state.

AMENDATORY SECTION (Amending WSR 99-12-004, filed 5/19/99, effective 6/19/99)

WAC 434-260-240 Mandatory orientation. (1) All election administrators and assistant election administrators shall, within eighteen months of undertaking those responsibilities, attend a mandatory orientation workshop sponsored by the secretary of state to be eligible for certification. Mandatory orientation workshops will be offered for new election administrators and deputy election administrators annually.

(2) Mandatory orientation will consist of ~~((twelve))~~ at least eight hours of training in election-related subjects.

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-261-070 Manual inspection of ballots. (1) Upon receiving absentee ballots and upon breaking the seals and opening the ballot containers from the precincts, all voting positions on voted ballots shall be manually inspected on both sides of the ballot to determine whether the ballot ~~((with~~

be)) is readable by the vote tabulating system. This manual inspection is a required part of processing ballots.

(2) The inspection of ballots tabulated at the poll site is not required provided that the poll site ballot programming provisions of RCW 29A.44.340 are in effect.

(3) If the manual inspection process detects any physically damaged ballots, unreadable ballots which might not be correctly counted by the tabulating equipment, or marks that differ from those specified in the voting instructions, ~~((but the marks clearly form a discernible and consistent pattern on the ballot to the extent that the voter's intent can be clearly determined.))~~ the county auditor ~~((may either:~~

~~(a) Refer the ballots to the county canvassing board; or~~

~~(b) Duplicate the ballots if authorized by the county canvassing board.~~

~~If the voter's intent is not clear, the ballot must be referred)) shall refer such ballots to the county canvassing board to be counted according to the statewide standards on what is a vote, as provided in WAC 434-261-086. The county canvassing board shall make the final determination of voter intent for ballots not addressed in the statewide standards on what is a vote.~~

~~(4) The county canvassing board may delegate duplication of the ballots consistent with RCW 29A.60.140.~~

AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

WAC 434-261-075 ~~((Manual inspection of ballot—Acceptability of marks.))~~ **Votes on something other than a ballot.** ~~((+))~~ If the voter returns voting responses by mail on any form other than the ballot sent, the votes thereon shall be acceptable and tallied provided that:

~~((+))~~ (1) Only votes for offices or measures for which the voter is eligible are counted.

~~((+))~~ (2) The candidate or measure response position for which the voter is voting can be clearly identified.

~~((+))~~ (3) The ballot issued is not returned, or if returned, contains no marks indicating an attempt to vote it.

~~((+))~~ (4) A valid signature on an absentee oath is ~~((on file with the county auditor))~~ received with the voting responses.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

~~((2))~~ Corrected absentee ballots shall be counted in the following manner:

~~(a) If a voter follows the instructions for correcting a vote, either the written instructions or other instructions given to the voter by the county auditor, the correction shall be made by duplicating the ballot and then tabulating the duplicated ballot.~~

~~(b) If a voter appears to have corrected the ballot in a manner other than as instructed, the vote for that candidate or issue shall not be tabulated unless the voter provides written instructions directing how the vote should be counted or has clearly attempted to erase a mark.~~

~~(3) If a voter has indicated a write-in vote on the ballot which duplicates the name of a candidate who already appears on the ballot for the same office, the ballot shall be~~

~~duplicated to count one vote for the candidate indicated. Such a vote shall be counted pursuant to RCW 29A.60.021.~~

~~(4) If a ballot contains marks that differ from those specified in the voting instructions, those marks shall not be counted as valid votes unless there is a discernible and consistent pattern, to the extent that the voter's intent can clearly be determined. If there is such a pattern, the ballot shall be duplicated to reflect the voter's intent.)~~

NEW SECTION

WAC 434-261-086 **Statewide standards on what is a vote.** (1) Pursuant to 42 U.S.C. § 15481(a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes. Any marks made outside of the target area will only be valid if they fulfill the consistent pattern requirements in (b) of this subsection. Exceptions:

(i) Obvious stray marks.

(ii) Hesitation marks.

(iii) Parts of written notes.

(iv) Corrected votes, according to the instructions printed on the ballot or written instructions provided by the voter, which may include arrows, circles, and written words.

(b) Consistent pattern. Marks made outside of the target area shall only be counted as valid votes if a consistent pattern of marks is used throughout the whole ballot. This means that all races and issues for which the voter has indicated a choice must have the same mark. If some marks are in the target area and some are not, but the same *type* of mark is used throughout the whole ballot, they shall all be counted as valid votes.

(c) Corrected votes. If more than one target area is marked, it is not an overvote if the voter has followed the instructions for correcting a vote and marked another choice.

(d) Not a correction. If the voter has both marked a choice correctly and *also* placed an 'X' in the same target area, but has not marked a second target area as if attempting to correct the vote, it shall be counted as a valid vote.

(e) Written instructions. If the voter has attempted to correct a vote and provides written instruction on his or her intent, it shall be counted as the voter instructed. Written instruction includes words, circles, or arrows.

(f) Identifying marks. Ballots that have a legible signature, address sticker or address stamp anywhere on the ballot, other than a write-in line, must be rejected. Initials or illegible signatures do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted.

(h) No bubble. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Name variations. If a write-in vote is cast for a *declared* write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) Mystery write-in. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) Mystery write-in with a candidate. If a candidate's target area is marked, *and* the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in overvote. If a candidate's target area is marked and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. This applies whether or not the target area for the write-in is marked.

(o) Not eligible. A write-in vote for a race that does not appear on the ballot is for a race on which the voter is not eligible to vote, and shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked for a candidate partially extend into the response area of another candidate, it shall be counted as a vote if most of the mark is in the proper area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

(s) Anything else. Voter intent on any questionable marks not explicitly falling within the parameters of the rules in this manual must be determined by county canvassing boards, operating under all applicable laws of the state of Washington and the rules of the canvassing board manual.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 06-14-046, filed 6/28/06, effective 7/29/06)

WAC 434-262-030 County auditor's abstract of votes. No later than the ~~((tenth))~~ fifteenth day following any primary or special election and the twenty-first day following any general election the county canvassing board shall meet and canvass all ballots. Upon completion of this canvass, the board shall direct the county auditor to prepare the auditor's abstract of votes as defined by WAC 434-262-010. The reconciliation of absentee and vote by mail ballots must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received. In addition, county auditors must provide any additional information necessary to explain variances between the number of ballots counted compared to the number of ballots received and credited. The oaths and the reconciliation report must be substantially similar to the following:

Oath of County Auditor or Supervisor of Elections

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I solemnly swear that the returns of the (insert election) held on (insert date), in _____ County, State of Washington, have been in no way altered and that they are the same as when they were deposited in my office.

County Auditor or Supervisor of Elections

Subscribed and sworn to me this ___ day of (insert month, year).

Chairman, County Legislative Authority

Certification Reconciliation Report
_____ Election
(insert date)

County _____
Date of Completion _____

NOTE: Address confidentiality program participants must be included with service voters.

Registration

Total number of active registered voters in all precincts _____
Total number of inactive registered voters in all precincts _____
Total registered voters in all precincts _____

Total absentee ballots counted (includes absentee, VBM, federal write-in, overseas, out of state, and service ballots) _____

Total poll site ballots counted (includes poll site and provisional ballots) _____
Total Ballots counted _____

Absentee and VBM Ballots

The total number of absentee/VBM ballots originally issued _____
The total number of absentee/VBM ballots received _____
The total number of absentee/VBM ballots rejected _____
The total number of absentee/VBM ballots counted _____

Federal Write-In Ballots

The total number of federal write-in ballots counted _____

Out-of-State, Overseas, and Service Voters

The total number of out-of-state, overseas, and service voters' ballots issued _____

The total number of out-of-state, overseas, and service voters' ballots received _____

The total number of out-of-state, overseas, and service voters' ballots rejected _____

The total number of out-of-state, overseas, and service voters' ballots counted _____

Provisional Ballots

The total number of provisional ballots issued (by this county) _____

The total number of provisional ballots rejected (includes sending to other counties) _____

The total number of provisional ballots received from other counties _____

The total number of provisional ballots counted _____

Certification of the Canvassing Board

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

The undersigned officers designated by law as constituting the Canvassing Board for the County of _____, State of Washington, hereby certify that this is a full, true and correct copy of the Abstract of Votes including the cumulative results, precinct results, and a reconciliation report of votes cast at the (insert election) held on (insert date), in _____ County, State of Washington, and that the following are the true and reconciled numbers of voters and votes counted.

Witness our hands and official seal this _____ day of (insert month, year).

County Auditor or Supervisor of Elections

Chairman, County Legislative Authority

County Prosecuting Attorney

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-262-106	Machine recount of votes cast on direct recording electronic devices.
WAC 434-262-108	Manual recount of votes cast on direct recording electronic devices.

Chapter 434-264 WAC**RECOUNTS**NEW SECTION

WAC 434-264-005 Application. This chapter applies to all contests subject to a recount pursuant to chapter 29A.64 RCW and to manual and machine recounts unless otherwise noted. In addition, each county auditor must promulgate written procedures regarding the conduct of a recount.

NEW SECTION

WAC 434-264-010 Recount—Definition. A recount is the process for retabulating the votes for a specific office or issue on all valid ballots cast in a primary or election.

NEW SECTION

WAC 434-264-020 Recount—Restrictions. All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount of the original ballots.

However, if any ballots or votes are discovered during the recount process that were not originally counted, the ballots shall be presented to the county canvassing board in accordance with RCW 29A.60.021, and the county canvassing board shall determine whether such ballots are to be included in the recount.

Nothing in this section shall preclude the county canvassing board from canvassing a ballot or a vote not canvassed during the original or previous count.

NEW SECTION

WAC 434-264-030 Observers—Conduct. Observers must be permitted to witness activities associated with the recount.

Any questions or objections by observers must be directed toward the county canvassing board, supervisory personnel or another designated staff person present at the recount. Under no circumstance may an observer interrupt the recount process in objection to the decision to count or not count a ballot.

The county auditor shall provide a copy of any additional guidelines that are established by the county canvassing board to each observer.

The county canvassing board or its designated representative may ask any observer who is causing a disruption to the recount process to leave the area.

NEW SECTION

WAC 434-264-040 Observers—Designated. (1) In addition to the admittance of two observers for each side of a recount as required by RCW 29A.64.041, a county canvassing board is encouraged to request additional observers from each of the two major political parties, as space allows. If provided, the additional party observers may be stationed to observe each counting board's process and must be considered the official observers of the recount.

(2) One observer representing each candidate or the proponents or opponents to a measure may also be permitted to observe each counting board's process.

NEW SECTION

WAC 434-264-050 Observers—Priority. Priority for viewing space shall be given in the following order:

- (1) Candidates of the affected race or their designated representative or to the designated representative for the proponents and opponents of any measure;
- (2) Each candidates' or representatives' counsel;
- (3) Designated party observer;
- (4) Additional observers for the candidates or ballot measure proponents or opponents; and then
- (5) General public and media.

NEW SECTION

WAC 434-264-060 Machine recount of votes cast on direct recording electronic devices. Machine recounts must be conducted by reloading individual ballot data packs or cartridges. The county auditor must verify all data packs or cartridges have been loaded.

NEW SECTION

WAC 434-264-070 Manual recount of votes cast on direct recording electronic devices. (1) Written procedures to perform manual recounts of direct recording electronic devices must be promulgated by the county auditor. The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(a) A continuous paper record must be utilized in the audit; the paper record must not be cut into separate individual records; and

(b) If a paper record indicates a ballot has been canceled, the ballot must be exempt from the recount.

(2) The county auditor must compare the hand recount results with the original results. The county auditor may take any necessary actions to investigate and resolve discrepancies.

NEW SECTION

WAC 434-264-080 Recount—Irregular votes. For optical and digital scan ballots in which voter intent was not

previously determined, the validity of the vote will be determined according to the statewide standards on determining voter intent manual required by WAC 434-261-086.

The county canvassing board must make the final determination of voter intent on ballots referred to the county canvassing board not addressed by the statewide standards on determining voter intent.

NEW SECTION

WAC 434-264-090 Manual recount—Preparation.

Prior to beginning a manual recount, all ballots that were originally tabulated at the poll site must be inspected. All ballots must be sorted by precinct. If a results report can be produced by batch, ballots may be sorted by batch.

NEW SECTION

WAC 434-264-100 Manual recount—Counting boards. Each county auditor shall establish the number of counting boards to conduct the recount. Each board shall be comprised of no less than three members, made up of:

- (1) One representative from each of the two major political parties and one observer or staff person;
- (2) Two staff persons and one observer; or
- (3) Three staff persons.

NEW SECTION

WAC 434-264-110 Manual recount—Process. The counting board may only count the responses for one race or measure at a time. The following process to count the ballots shall be used during a recount.

(1) Each counting board shall be given the ballots one precinct or batch at a time. The results from the original count shall not be given with the ballots. The precinct or batch number must be made available to any observers.

(2) The ballots shall be sorted into separate stacks for each of the candidates or side of a ballot measure. Additional stacks may be created for overvotes, undervotes, and write-ins.

(3) Each stack of ballots must be counted at least twice to confirm the number of votes in each stack. The results of the count shall not be shared until both persons have counted the ballots.

(4) Individual tallies for each stack shall be compared. If the counts match, the results shall be reported to the designated staff person and the results shall be compared to the results of the original count.

(5) If the counts do not match, the ballots shall be counted by the same counting board one more time. If the counts still do not match, the discrepancy must be reported to the designated staff person and the ballots referred to another counting board.

NEW SECTION

WAC 434-264-120 Recount—Interruption. If the recount must be stopped prior to its completion for any reason, the ballots must be placed in secure storage until the resumption of the recount. The observers must be allowed to

witness the sealing of the ballots and the recording of the seal numbers. Observers must also be allowed to witness the confirmation of the seal numbers at the resumption of the recount.

NEW SECTION

WAC 434-264-130 Recount—Completion. On completion of the recount:

(1) The county auditor shall prepare an amended abstract of the recounted ballots for the county canvassing board. The amended abstract shall include a revised cumulative summary, as well as the votes cast in each precinct for the office or measure that was recounted.

(2) The results must be formally reviewed and approved by the county canvassing board.

(3) If the results of the manual count do not match the results of the original count, the county canvassing board shall verify all ballots have been recounted. The county canvassing board shall take all necessary steps to investigate and resolve any discrepancies.

(4) The county canvassing board shall certify the amended abstract that, for each precinct, displays the results of the office that has been recounted. The new abstract shall be included in the amended certified canvass report.

(5) Copies of the certified amended abstract will be distributed to the same persons or agencies as the original certified abstract of votes.

(6) The amended certified canvass report must be available to the public by the next business day following the recount.

(7) Interim reports of the recount may be published at the discretion of the county canvassing board.

(8) If the recount involves ballots from more than one county, the secretary of state may require that amended abstracts be certified by each county canvassing board on a uniform date.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-005 Definitions. As used in this chapter:

(1) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(2) "Applicant" means a person who has applied, or is applying, to become a registered voter in the state of Washington.

(3) "Auditor" means "county auditor" and means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(4) "County election management system" means software used by county auditors to manage computer files pertaining to elections and includes, but is not limited to, voter registration records.

(5) "County registration number" means a ~~((unique))~~ identifier assigned to each registered voter by the county auditor.

(6) "Motor voter data" means computer information concerning an applicant that is common to both driver's license and voter registration records. This includes name, address, date of birth, sex, the date of the application, the location of the office where the application was submitted, the applicant's driver's license number, the applicant's Social Security number (if provided), and the applicant's previous driver's license number if the applicant has changed names.

(7) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration data base.

~~((7))~~ (8) "Late registration absentee ballot" means an absentee ballot cast by a voter who registered pursuant to RCW 29A.08.145 after the close of the regular registration period.

~~((8))~~ (9) "Licensing agent" or "agent" means the employees serving the public at driver's licensing offices operated by the department of licensing.

(10) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.

~~((9))~~ (11) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.

~~((10))~~ (12) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter.

~~((11))~~ (13) "Pending cancellation" means the registered voter's registration record ~~((with))~~ must be canceled within a specified amount of time and he or she is not eligible to vote.

~~((12))~~ (14) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

~~((13))~~ (15) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on his or her behalf.

~~((14))~~ (16) "State registration number" means a unique identifier assigned to each registered voter by the state, pursuant to RCW 29A.08.651.

MOTOR VOTER

NEW SECTION

WAC 434-324-190 Voter registration at driver's license facilities. Pursuant to RCW 29A.08.340, a person may register to vote or transfer a voter registration when he or she applies for or renews a driver's license or state identification card.

NEW SECTION

WAC 434-324-200 Registration procedure. When processing each applicant at a driver's licensing office, the agent must inquire whether the applicant wishes to register to vote or transfer his or her voter registration address. If the applicant answers affirmatively, the agent must ask the applicant if he or she is a United States citizen and is or will be eighteen years old by the next election. If the applicant answers these questions affirmatively, the agent shall present the voter a registration application prefilled with the voter's

full name, address, mailing address, and driver's license or identification number. In addition, the applicant shall provide the following information:

(1) Residence address for voting purposes, if it is different from the address on the driver's license;

(2) Previous address at which he or she was registered to vote;

(3) Confirmation by checking the appropriate boxes that he or she is a United States citizen and will be eighteen years of age or older at the time of the next election; and

(4) Military status by checking the appropriate box on the application.

Additionally the applicant may optionally provide the following information in writing:

(a) Daytime phone number; and

(b) E-mail address.

NEW SECTION

WAC 434-324-210 Oaths and warnings. The agent must request that the applicant read the warning concerning fraudulent registration. The applicant must then sign the required oath including an attestation to his or her citizenship.

NEW SECTION

WAC 434-324-220 Transfer of information from the department of licensing to the secretary of state. The completed voter registration application forms must be transmitted by the department of licensing to the secretary of state at least once each week.

NEW SECTION

WAC 434-324-230 Weekly transmittal of data from the department of licensing to the secretary of state. Once each week, the motor voter data processing division of the department of licensing must electronically transmit that week's computer data record of the voter registration transactions to the secretary of state. There must be one record for each transaction, which must contain at least the following information: The name, address, date of birth, sex, and driver's license number of the applicant, the applicant's Social Security number (if provided), the applicant's previous driver's license number in the case of a name change, the date on which the application was submitted, and the location of the office at which the application was submitted.

NEW SECTION

WAC 434-324-240 Transfer of data, and reports from the secretary of state to the county auditors. Each week, the secretary of state must amend any computer record that requires an address for voting purposes that is different from the one supplied to the department of licensing. The computer records must then be sorted according to the county in which the voter applicant resides.

The secretary of state shall produce a list of voter transactions by county. This list shall be transmitted to each county and shall contain at least the voters' names, addresses, mailing addresses, and birthdates.

NEW SECTION

WAC 434-324-250 Transfer of voter registration forms to counties. The completed voter registration application forms must be sorted by county. These forms must then be shipped to the county auditors. This shipment must be made as soon as possible, no later than ten days after the secretary of state receives the motor voter data from the department of licensing. If there are no applications for a county the secretary of state shall immediately notify the county auditor.

NEW SECTION

WAC 434-324-260 Processing records received from the secretary of state. Whenever a county auditor receives a shipment of voter registration information from the secretary of state, the records shall be processed in a timely manner. Any voter registrations that the county auditor receives for a voter residing in another county shall be forwarded to the appropriate county auditor as soon as possible after receipt.

These records shall be processed by entering the applicant's information into the county auditor's local data base and sending the information to the statewide voter registration data base. A voter identification number, precinct codes, levy codes and any other information assigned to regular registrations shall be assigned to motor voter registrations.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 434-326-005	Authority and purpose.
WAC 434-326-010	Definitions.
WAC 434-326-015	Voter registration at driver license facilities.
WAC 434-326-020	Registration procedure.
WAC 434-326-025	Obtaining additional information from the applicant.
WAC 434-326-030	Oaths and warnings.
WAC 434-326-035	Cancellation of previous name registration.
WAC 434-326-040	Transfer of information from the department of licensing to the secretary of state.
WAC 434-326-045	Weekly transmittal of data from the department of licensing to the secretary of state.
WAC 434-326-050	Transfer of data, and reports from the secretary of state to the county auditors.
WAC 434-326-055	Transfer of voter registration forms to counties.

WAC 434-326-060	Processing records received from the secretary of state.
WAC 434-326-065	Reimbursement of county auditors and the department of licensing for routine transaction costs.
WAC 434-326-900	Reimbursement of county auditors and the department of licensing for costs associated with implementation of this chapter.

AMENDATORY SECTION (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

WAC 434-335-010 Certification of voting equipment. All voting systems, voting devices, and vote tallying systems must meet applicable federal standards and be certified and approved by the secretary of state before they can be used in Washington state pursuant to RCW ((~~29A.12.080 and meet the applicable federal standards~~)) 29A.12.020.

NEW SECTION

WAC 434-335-605 Initial application for approval. Any vendor requesting approval of an automatic signature verification system for use with a specific election management system must complete and submit an application to the secretary of state. The secretary of state shall coordinate its review of the system with the vendor and the participating county.

NEW SECTION

WAC 434-335-615 Examination of signature verification system. Prior to its use or purchase by any Washington county, an automated signature verification system must be reviewed and approved by the secretary of state for use with that county's particular election management system.

Prior to approval, an automated signature verification system must:

- (1) Be able to integrate with the election management system in use by the test county and the ballot accountability processes implemented by the county;
- (2) Have variable levels of confidence which the county may adjust and set to the level as subscribed by the secretary of state in the system's approval report; and
- (3) Provide a setting that must not accept a signature that an election worker with required signature training should not accept.

NEW SECTION

WAC 434-335-625 Signature verification system acceptance testing. An agreement by a county auditor to purchase a signature verification system is subject to that system passing an acceptance test that demonstrates the system is operating as it was when it was approved by the secretary of state. The minimum acceptance test standards are listed below.

(1) The version number of the signature verification software must be the same as the version number of the software approved by the secretary of state. Any hardware must be the same model number and contain the same version of firmware that is certified by the secretary of state.

(2) The county auditor must receive all training and manuals necessary for the proper operation of the system.

(3) The county auditor must perform a series of tests to verify that the software is not accepting signatures that the county auditor's trained signature verification personnel would not accept. The test should include the county auditor's own signature envelopes, and be run against the county auditor's election management system signatures.

(4) The county auditor must perform a series of tests to verify the system integrates with the county election management system and ballot accountability processes.

(5) The county auditor must include the secretary of state where the signature verification system is being integrated with an election management system that has not been previously approved for that system.

(6) When participation by the secretary of state is not required under these rules, the county auditor must certify the results of the acceptance tests to the secretary of state. The certification must include version numbers of hardware, software and firmware installed and tested and ballot accountability procedures which incorporate the signature verification system.

NEW SECTION

WAC 434-335-635 Signature verification system approval report. No more than fourteen days following the approval of an automated signature verification system, the secretary of state must issue a written approval report that specifies the approved use of the system and conditions of its use. The approval must include the prescribed setting for the confidence level for either accepting or rejecting signatures. Signature verification systems are only approved for use with election management systems included in the approval report.

WSR 07-12-039

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 30, 2007, 3:45 p.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The department is amending these rules to update and clarify existing language for the acute physical medical and rehabilitation (acute PM&R) program, change verbiage from "medical assistance administration (MAA)" to "the department," change verbiage from "facility" to "hospital," and delete definitions for terms that are no longer applicable or that are defined in other sections. In addition, the department is adding verbiage that states on and after August 1, 2007, an in-state bordering city, or critical border hospital

may apply to become a department-approved acute PM&R hospital.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-2501, 388-550-2511, 388-550-2521, 388-550-2531, 388-550-2541, and 388-550-2561.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Adopted under notice filed as WSR 07-08-106 on April 4, 2007.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnd@dshs.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: May 30, 2007.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2501 Acute physical medicine and rehabilitation (acute PM&R) program—General. Acute physical medicine and rehabilitation (acute PM&R) is a twenty-four-hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation. The ~~((medical assistance administration (MAA)))~~ department requires prior authorization for acute PM&R services. (See WAC 388-550-2561 for prior authorization requirements.)

(1) An interdisciplinary team coordinates individualized acute PM&R services at ~~((an MAA))~~ a department-approved rehabilitation ~~((facility))~~ hospital to achieve the following for a client:

(a) Improved health and welfare; and

(b) Maximum physical, social, psychological and educational or vocational potential.

(2) ~~((MAA))~~ The department determines and authorizes a length of stay based on:

(a) The client's acute PM&R needs; and

(b) Community standards of care for acute PM&R services.

(3) When ~~((MAA's))~~ the department's authorized acute period of rehabilitation ends, the hospital provider ~~((transfers the client to a more))~~ discharges the client to the client's resi-

dence, or to an appropriate level of care. Therapies may continue to help the client achieve maximum potential through other ((MAA)) department programs such as:

- (a) Home health services;
- (b) Nursing facilities;
- (c) Outpatient physical, occupational, and speech therapies; or
- (d) Neurodevelopmental centers.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2511 Acute PM&R definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to the acute PM&R program. If conflicts occur, this section prevails for this subchapter.

"Accredit" (or "Accreditation") means a term used by nationally recognized health organizations, such as CARF, to state a facility meets community standards of medical care.

"Acute" means an intense medical episode, not longer than three months.

~~("Acute physical medicine and rehabilitation (acute PM&R)" means a comprehensive inpatient rehabilitative program coordinated by an interdisciplinary team at an MAA-approved rehabilitation facility. The program provides twenty-four-hour specialized nursing services and an intense level of therapy for specific medical conditions for which the client shows significant potential for functional improvement.~~

"Administrative day" means a day of a hospital stay in which an acute inpatient level of care is no longer necessary, and noninpatient hospital placement is appropriate.

"Administrative day rate" means the statewide Medicaid average daily nursing facility rate as determined by the department.

~~"CARF" is the official name for The Rehabilitation Accreditation Commission of Tucson, Arizona. CARF is a national private agency that develops and maintains current, "field-driven" (community) standards through surveys and accreditations of rehabilitation facilities.~~

~~"Rehabilitation Accreditation Commission, The" See "CARF.")~~

"Survey" or "review" means an inspection conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with acute PM&R program requirements.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2521 Client eligibility requirements for acute PM&R services. (1) Only a client who is eligible for one of the following programs may receive acute PM&R services, subject to the restrictions and limitations in this section and WAC 388-550-2501, 388-550-2511, 388-550-2531, 388-550-2541, 388-550-2551, 388-550-2561, 388-550-3381, and other ((published)) rules:

- (a) Categorically needy program (CNP);
- (b) ((CNP--)) State children's health insurance program ((CNP--))SCHIP);

(c) Limited casualty program - Medically needy program (LCP-MNP);

(d) ((CNP--)) Alien emergency medical ((only)) (AEM) (CNP);

(e) ((LCP-MNP--)) Alien emergency medical ((only)) (AEM) (LCP-MNP);

(f) General assistance unemployable (GA-U - No out-of-state care); or

(g) Alcoholism and drug addiction treatment and support act (ADATSA)((--and

~~(h) Medically indigent program (MIP) - Emergency hospital-based and emergency transportation services only when:~~

~~(i) The client is transferred directly from an acute hospital stay; and~~

~~(ii) The client's acute PM&R needs are directly related to the emergency medical condition that qualified the client for (MIP)).~~

(2) If a client is enrolled in ((an MAA Healthy Options)) a department managed care organization (MCO) plan at the time of acute care admission, that plan pays for and coordinates acute PM&R services as appropriate.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2531 Requirements for becoming an acute PM&R provider. (1) Before August 1, 2007, only an in-state or ((border-area)) bordering city hospital may apply to become a ((medical assistance administration (MAA))) department-approved acute PM&R ((facility)) hospital. On and after August 1, 2007 an instate, bordering city, or critical border hospital may apply to become a department-approved acute PM&R hospital. To apply, ((MAA)) the department requires the hospital provider to submit a letter of request to:

Acute PM&R Program Manager
Division of ((Medical Management --
Medical Operations))
Healthcare Services
((Medical Assistance))
Health and Recovery Services Administration
P.O. Box 45506
Olympia, WA 98504-5506

(2) A hospital that applies to become ((an MAA)) a department-approved acute PM&R facility must provide ((MAA)) the department with documentation that confirms the facility is all of the following:

- (a) A medicare-certified hospital;
- (b) Accredited by the Joint Commission on Accreditation of ((Hospital)) Healthcare Organizations (JCAHO);
- (c) Licensed by the department of health (DOH) as an acute care hospital as defined under WAC 246-310-010;
- (d) Commission on Accreditation of Rehabilitation Facilities (CARF) accredited as a comprehensive integrated inpatient rehabilitation program or as a pediatric family centered rehabilitation program, unless subsection (3) of this section applies;

(e) For dates of admission before July 1, 2007, contracted under ((MAA's)) the department's selective contracting program, if in a selective contracting area, unless

exempted from the requirements by ~~((MAA))~~ the department; and

(f) Operating per the standards set by DOH (excluding the certified rehabilitation registered nurse (CRRN) requirement) in either:

(i) WAC 246-976-830, Level I trauma rehabilitation designation; or

(ii) WAC 246-976-840, Level II trauma rehabilitation designation.

(3) A hospital not yet accredited by CARF:

(a) May apply for or be awarded a twelve-month conditional written approval by ~~((MAA))~~ the department if the facility:

(i) Provides ~~((MAA))~~ the department with documentation that it has started the process of obtaining full CARF accreditation; and

(ii) Is actively operating under CARF standards.

(b) Is required to obtain full CARF accreditation within twelve months of ~~((MAA's))~~ the department's conditional approval date. If this requirement is not met, ~~((MAA))~~ the department sends a letter of notification to revoke the conditional approval.

(4) A hospital qualifies as ~~((an MAA))~~ a department-approved acute PM&R ((facility)) hospital when:

(a) The ~~((facility))~~ hospital meets all the applicable requirements in this section;

(b) ~~((MAA's))~~ The department's clinical staff has conducted a facility site visit; and

(c) ~~((MAA))~~ The department provides written notification that the ~~((facility))~~ hospital qualifies to be ~~((reimbursed))~~ paid for providing acute PM&R services to eligible medical assistance clients.

(5) ~~((MAA))~~ The department-approved acute PM&R ~~((facilities))~~ hospitals must meet the general requirements in chapter 388-502 WAC, Administration of medical programs—Providers.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2541 Quality of care—Department-approved acute PM&R hospital. (1) To ensure quality of care, the ~~((medical assistance administration (MAA)))~~ department may conduct reviews (e.g., post-pay, on-site) of any ~~((MAA))~~ department-approved acute PM&R ~~((facility))~~ hospital.

(2) A provider of acute PM&R services must act on any report of substandard care or violation of the ~~((facility's))~~ hospital's medical staff bylaws and CARF standards. The provider must have and follow written procedures that:

(a) Provide a resolution to either a complaint or grievance or both; and

(b) Comply with applicable CARF standards for adults or pediatrics as appropriate.

(3) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(a) The department of health (DOH);

(b) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

(c) CARF;

(d) ~~((MAA))~~ The department; or

(e) Other agencies with review authority for ~~((MAA))~~ the department's programs.

AMENDATORY SECTION (Amending WSR 03-06-047, filed 2/28/03, effective 3/31/03)

WAC 388-550-2561 ~~((MAA's))~~ The department's prior authorization requirements for acute PM&R services. (1) The ~~((medical assistance administration (MAA)))~~ department requires prior authorization for acute PM&R services. The acute PM&R provider of services must obtain prior authorization:

(a) Before admitting a client to the rehabilitation unit; and

(b) For an extension of stay before the client's current authorized period of stay expires.

(2) For an initial admit:

(a) A client must:

(i) Be eligible under one of the programs listed in WAC 388-550-2521, subject to the restrictions and limitations listed in that section;

(ii) Require acute PM&R services as determined in WAC 388-550-2551;

(iii) Be medically stable and show evidence of physical and cognitive readiness to participate in the rehabilitation program; and

(iv) Be willing and capable to participate at least three hours per day, seven days per week, in acute PM&R activities.

(b) The acute PM&R provider of services must:

(i) Submit a request for prior authorization to the ~~((MAA))~~ department's clinical consultation team by fax, electronic mail, or telephone as published in ~~((MAA's))~~ the department's acute PM&R billing instructions; and

(ii) Include sufficient medical information to justify that:

(A) Acute PM&R treatment would effectively enable the client to obtain a greater degree of self-care and/or independence;

(B) The client's medical condition requires that intensive twenty-four-hour inpatient comprehensive acute PM&R services be provided in ~~((an MAA))~~ a department-approved acute PM&R facility; and

(C) The client suffers from severe disabilities including, but not limited to, neurological and/or cognitive deficits.

(3) For an extension of stay:

(a) A client must meet the conditions listed in subsection (2)(a) of this section and have observable and significant improvement; and

(b) The acute PM&R provider of services must:

(i) Submit a request for the extension of stay to the ~~((MAA))~~ department clinical consultation team by fax, electronic mail, or telephone as published in ~~((MAA's))~~ the department's acute PM&R billing instructions; and

(ii) Include sufficient medical information to justify the extension and include documentation that the client's condition has observably and significantly improved.

(4) If ~~((MAA))~~ the department denies the request for an extension of stay, the client must be transferred to an appro-

appropriate lower level of care as described in WAC 388-550-2501(3).

(5) The ~~((MAA))~~ department's clinical consultation team approves or denies authorization for acute PM&R services for initial stays or extensions of stay based on individual circumstances and the medical information received. ~~((MAA))~~ The department notifies the client and the acute PM&R provider of a decision.

(a) If ~~((MAA))~~ the department approves the request for authorization, the notification letter includes:

- (i) The number of days requested;
- (ii) The allowed dates of service;
- (iii) ~~((An MAA))~~ A department-assigned authorization number;
- (iv) Applicable limitations to the authorized services; and
- (v) ~~((MAA's))~~ The department's process to request additional services.

(b) If ~~((MAA))~~ the department denies the request for authorization, the notification letter includes:

- (i) The number of days requested;
- (ii) The reason for the denial;
- (iii) Alternative services available for the client; and
- (iv) The client's right to request a fair hearing. (See subsection (7) of this section.)

(6) A hospital or other facility intending to transfer a client to ~~((an MAA))~~ a department-approved acute PM&R ~~((facility))~~ hospital, and/or ~~((an))~~ a department-approved acute PM&R ~~((facility))~~ hospital requesting an extension of stay for a client, must:

(a) Discuss ~~((MAA's))~~ the department's authorization decision with the client and/or the client's legal representative; and

(b) Document in the client's medical record that ~~((MAA's))~~ the department's decision was discussed with the client and/or the client's legal representative.

(7) A client who does not agree with a decision regarding acute PM&R services has a right to a fair hearing under chapter 388-02 WAC. After receiving a request for a fair hearing, ~~((MAA))~~ the department may request additional information from the client and the facility, or both. After ~~((MAA))~~ the department reviews the available information, the result may be:

(a) A reversal of the initial ~~((MAA))~~ department decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted per chapter 388-02 WAC.

(8) ~~((MAA))~~ The department may authorize administrative day(s) for a client who:

(a) Does not meet requirements described in subsection (3) of this section; or

(b) ~~((Stays in the facility longer than the "community standards length of stay"; or~~

~~((e)))~~ Is waiting for a discharge destination or a discharge plan.

(9) ~~((MAA))~~ The department does not authorize acute PM&R services for a client who:

(a) Is deconditioned by a medical illness or by surgery; or

(b) Has loss of function primarily as a result of a psychiatric condition(s); or

(c) Has had a recent surgery and has no complicating neurological deficits. Examples of surgeries that do not qualify a client for inpatient acute PM&R services without extenuating circumstances are:

- (i) Single amputation;
- (ii) Single extremity surgery; and
- (iii) Spine surgery.

WSR 07-12-040

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 30, 2007, 3:47 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: The department is adopting into rule that the department is ending the hospital selective contracting program on June 30, 2007. The program is being replaced with a new inpatient payment system. The hospital selective contracting program was based on negotiating a rate below the conversion factor based on facility-specific costs (subject to peer group caps in some instances). Conversion factors in the new inpatient payment system were generally based on statewide weighted average cost per discharge amounts, which were then adjusted to reflect the unique characteristic of hospitals in the state for payment purposes. The new inpatient methodology was developed as budget neutral; aggregate payments to hospitals under the proposed methodology do not exceed what projected aggregate payments would be to those same hospitals if the current methodology remained in place.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-4600 and 388-550-4700.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-09-080 on April 17, 2007.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnd@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: May 23, 2007.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-4600 Hospital selective contracting program. This section applies only for dates of admission before July 1, 2007. The hospital selective contracting program ends on June 30, 2007.

(1) The department designates selective contracting areas (SCA) in which hospitals participate in competitive bidding to provide hospital services to Medicaid clients. Selective contracting areas are based on historical patterns of hospital use by Medicaid clients.

(2) The department requires Medicaid clients in a selective contracting area obtain their elective (nonemergent) inpatient hospital services from participating or exempt hospitals in the SCA. Elective (nonemergent) inpatient hospital services provided by nonparticipating hospitals in an SCA shall not be reimbursed by the department, except as provided in WAC 388-550-4700.

(3) The department exempts from the selective contracting program those hospitals that are:

(a) In an SCA but designated by the department as remote. The department designates hospitals as remote when they meet the following criteria:

(i) Located more than ten miles from the nearest hospital in the SCA;

(ii) Having fewer than seventy-five beds; and

(iii) Having fewer than five hundred Medicaid admissions in a two-year period.

(b) Owned by health maintenance organizations (HMOs) and providing inpatient services to HMO enrollees only;

(c) Children's hospitals;

(d) State psychiatric hospitals or separate (freestanding) psychiatric facilities;

(e) Out-of-state hospitals located in nonbordering cities, and out-of-state hospitals in bordering cities not designated as selective contracting areas;

(f) Peer group E hospitals; and

(g) Peer group F hospitals (critical access hospitals).

(4) The department:

(a) Negotiates with selectively contracted hospitals a negotiated conversion factor (NCF) for inpatient hospital services provided to Medicaid clients.

(b) Calculates its maximum financial obligation for a Medicaid client under the hospital selective contract in the same manner as DRG payments using cost-based conversion factors (CBCFs).

(c) Applies NCFs to Medicaid clients only. (The department uses CBCFs in calculating payments for medical care services clients.)

AMENDATORY SECTION (Amending WSR 99-06-046, filed 2/26/99, effective 3/29/99)

WAC 388-550-4700 Payment—Non-SCA participating hospitals. This section applies only for dates of admission before July 1, 2007. The hospital selective contracting program ends on June 30, 2007.

(1) In a selective contracting area (SCA), MAA pays any qualified hospital for inpatient hospital services provided to an eligible medical care client for treatment of an emergency medical condition.

(2) MAA pays any qualified hospital for medically necessary but nonemergent inpatient hospital services provided to an eligible medical care client deemed by the department to reside an excessive travel distance from a contracting hospital.

(a) The client is deemed to have an excessive travel burden if the travel distance from a client's residence to the nearest contracting hospital exceeds the client's county travel distance standard, as follows:

<u>County</u>	<u>Community Travel Distance Standard</u>
Adams	25 miles
Asotin	15 miles
Benton	15 miles
Chelan	15 miles
Clallam	20 miles
Clark	15 miles
Columbia	19 miles
Cowlitz	15 miles
Douglas	20 miles
Ferry	27 miles
Franklin	15 miles
Garfield	30 miles
Grant	24 miles
Grays Harbor	23 miles
Island	15 miles
Jefferson	15 miles
King	15 miles
Kitsap	15 miles
Kittitas	18 miles
Klickitat	15 miles
Lewis	15 miles
Lincoln	31 miles
Mason	15 miles
Okanogan	29 miles
Pacific	21 miles
Pend Oreille	25 miles
Pierce	15 miles
San Juan	34 miles
Skagit	15 miles
Skamania	40 miles
Snohomish	15 miles
Spokane	15 miles
Stevens	22 miles
Thurston	15 miles

<u>County</u>	<u>Community Travel Distance Standard</u>
Wahkiakum	32 miles
Walla Walla	15 miles
Whatcom	15 miles
Whitman	20 miles
Yakima	15 miles

(b) If a client must travel outside his/her SCA to obtain inpatient services not available within the community, such as treatment from a tertiary hospital, the client may obtain such services from a contracting hospital appropriate to the client's condition.

(3) MAA requires prior authorization for all non-emergent admissions to nonparticipating hospitals in an SCA. See WAC 388-550-1700 (2)(a).

(4) MAA pays a licensed hospital all applicable Medicare deductible and coinsurance amounts for inpatient services provided to Medicaid clients who are also beneficiaries of Medicare Part A subject to the Medicaid maximum allowable as established in WAC 388-550-1200 (8)(a).

(5) The department pays any licensed hospital DRG-exempt services as listed in WAC 388-550-4400.

WSR 07-12-045
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 31, 2007, 3:10 p.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: This rule making:

Corrects references of chapter 296-17 WAC classifications to chapter 296-17A WAC. Housekeeping changes need to be made to correct references to the new WAC.

Revises WAC 296-17-895 regarding reporting for the medical aid holiday.

Clarifies drywall rate title to indicate "dollars per sq ft of wallboard" in WAC 296-17-89502.

Clarifies horseracing rates in WAC 296-17-89504.

Revises WAC 296-17-31013 to clarify instructions for debris hauling and janitorial.

Permanently adds WAC 296-17-891, 296-17-86505, and 296-17-86507 which were filed in an emergency rule on January 22, 2007 (WSR 07-03-125). These tables are necessary to establish experience factors for employers.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-895, 296-17-89502, 296-17-89504 and 296-17-31013; and new WAC 296-17-891, 296-17-86505, and 296-17-86507.

Statutory Authority for Adoption: RCW 51.06.035, 51.08.010, 51.04.020.

Adopted under notice filed as WSR 07-09-078 on April 17, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 4, 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 3, Amended 4, Repealed 0.

Date Adopted: May 31, 2007.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-31001 Introduction. WAC 296-17-31001 through ((~~296-17-31029~~)) ~~296-17-35204~~ provides rules applicable to workers' compensation insurance coverage (industrial insurance) that employers in the state of Washington must provide for their workers. We refer to these rules (WACs) as sections and the complete body of information as the *workers' compensation underwriting manual*. The workers' compensation underwriting manual contains sections (WACs) that define or explain:

- Words and phrases which we use
- Who the workers' compensation system applies to
- How to obtain workers' compensation coverage
- Why a classification system is necessary
- How our classification plan is designed
- How our classification approach compares to other states
- How we assign classifications to your business
- How we classify your business if a specific classification treatment is not referenced in our classification plan
- How employers report and pay premiums to us
- How we compute base rates
- Audit and recordkeeping requirements
- Experience rating plan
- Base rate tables.

AMENDATORY SECTION (Amending WSR 05-12-031, filed 5/24/05, effective 7/1/05)

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.

Account 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. An account manager is also referred to as an underwriter.

Actual hours worked: A worker's composite work period 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 classifica-

tions 4806, 4900, 4904, 5206, 6301, 6302, 6303, 7100, 7101, and temporary help classifications 7104 through 7122. Classification descriptions contained in WAC ((~~296-17-501~~) 296-17A-0101 through ((~~296-17-779~~)) 296-17A-7400 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 operations," 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."

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 an "account 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 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-31011 Classification system and plan.

(1) What is a workers' compensation classification system?

A workers' compensation classification system is an objective method of collecting money (*premiums*) to pay the benefits of workers injured on the job. We believe the method used to spread this cost among the employers we insure should be fair and have some relationship to their hazard and potential for loss. Classifications are the tool used to achieve a fair method of distributing the risk among employers we insure. Objective boundaries are established for each classification. These boundaries describe the types of businesses which are included in the classification, as well as the operations and employments routinely encountered. We refer to these objective boundaries as the scope of the classification.

Once these boundaries have been defined, we can begin collecting information about the employers assigned to each classification. The information includes the exposure which is being covered (*risk*) and the losses (*claims*) which are related to these businesses. Next, we use this information to establish premium rates that employers in each industry will pay for their workers' compensation insurance. Our goal is to produce fair insurance rates which reflect the hazardous nature of each industry. We have tailored our classification system in Washington to reflect industries found in our state. This makes our system responsive to change and provides rate payer equity to the employers we insure. Employers engaged in more hazardous industries such as logging will pay higher insurance rates than employers engaged in less hazardous businesses such as retail store operations.

(2) Why is a classification system needed?

We need a classification system to provide fair premium rates. Washington law (*RCW 51.16.035*) also requires us to have a classification system.

(3) Is the classification system the same as the classification plan?

No, we refer to the body of rules (*WACs*) which establish the general parameters of how classifications are to be used as the "classification system." These rules speak to the requirements of workers' compensation insurance and to our general classification approach, such as classifying by nature of business in the state of Washington, not by occupation of worker. The "classification plan" refers to all of the various classification descriptions which describe different types of business or industry. The classification system rules (*general rules*) will apply to all businesses unless another treatment is specifically provided for in the classification plan rules (*special rules*).

(4) How is our classification plan designed?

We have designed a plan which is keyed to the nature of the businesses or industries of the employers we insure. Our plan has over three hundred business or industry classifications. Each classification carries a premium rate which reflects the hazards that workers are exposed to. Descriptions of our classifications can be found in *WAC ((296-17-501) 296-17A-0101* through (~~*296-17-779*~~) *296-17A-7400*.

(5) Is your classification approach similar to the approach used by private insurance companies?

Yes, we are required by law (*RCW 51.16.035*) to use the same classification (*underwriting*) approach used by private carriers.

AMENDATORY SECTION (Amending WSR 06-12-075, filed 6/6/06, effective 1/1/07)

WAC 296-17-31013 Building construction. (1) Does this same classification approach apply to building and construction contractors?

Yes, but it may not appear that way without further explanation. We classify contractors by phase and type of construction since it is common for each contract to vary in scope.

Example: A contractor who builds and remodels private residences may frame the structure and work on no other phases of the project. On another job the same contractor

may do only the interior finish carpentry. On still another job the contractor may install a wood deck or build a garden arbor. Each of these carpentry activities is covered by a different classification code. To ensure that contractor businesses receive the same treatment as other businesses, we assign classifications according to the phases and types of construction they contract to perform. Since some contractors specialize in one area of construction, such as plumbing, roofing, insulation, or electrical services, this classification approach mirrors that of nonbuilding contractor businesses. The policy of assigning several basic classifications to contractors engaged in multiple phases of construction may seem to be in conflict with the classification approach used for nonbuilding contractor businesses, but we have simply used the **multiple business** classification approach.

If we have assigned multiple classifications to your construction business you should take special care in maintaining the records required in the auditing and recordkeeping section of this manual. If we discover that you have failed to keep the required records we will assign all worker hours for which the records were not maintained to the highest rated classification applicable to the work that was performed.

(2) Who does this rule apply to?

If you are a building, construction or erection contractor and we have assigned one or more of the following classifications to your business, this rule applies to you: 0101, 0103, 0104, 0105, 0107, 0108, 0201, 0202, 0210, 0212, 0214, 0217, 0219, 0301, 0302, 0303, 0306, 0307, 0403, 0502, 0504, 0507, 0508, 0509, 0510, 0511, 0512, 0513, 0514, 0516, 0517, 0518, 0519, 0521, 0540, 0541, 0550, 0551, 0601, 0602, 0603, 0607, 0608, and 0701.

(3) Can I have a single classification assigned to my business to cover a specific construction project?

Yes, to simplify recordkeeping and reporting requirements we will assign a single classification to cover an entire project.

(4) How do I request the single classification for one of my construction projects?

You should send your request to the attention of your account manager at the address below:

Department of Labor and Industries
P.O. Box 44144
Olympia, Washington 98504-4144

(5) If I have asked for a single classification on one of my construction projects, how do you determine which classification will apply?

You must supply us with a description of the project and a break down of the total number of hours of exposure by phase of construction that you are responsible for.

Example: You notify us that your company will be responsible for all plumbing and iron erection work on a commercial building site. You have requested a single classification for this project. In your request you tell us that you estimate that it will take one thousand work hours to perform all the plumbing work and five hundred work hours to do the steel erection work.

With this information we will estimate the premiums by classification.

Example: We determine that the plumbing work is covered under classification 0306 and the steel erection work is covered under classification 0518. Assume that classification 0306 has an hourly premium rate of \$1.50 and classification 0518 has an hourly premium rate of \$2.55. We estimate the total premium on this job to be \$2,775 (1,000 hours x \$1.50 = \$1,500 + 500 hours x \$2.55 = \$1,275).

Our next step in this process is to develop an average hourly rate for the project. We will use this information to select the single classification which will apply to this project.

Example: We will take the estimated premium (\$2,775) and divide this number by the estimated hours (1,500) and arrive at an average hourly rate of \$1.85.

To select the single classification that will apply to a construction project, we will compare the average hourly rate that we have computed to the rates of the classifications applicable to the project. We will select the classification whose hourly rate is the closest to the average hourly rate that we computed from the information you supplied us with.

Example: From the information you supplied, we have determined that the average hourly rate for this project is \$1.85. We also know that the rate for the plumbing classification (0306) is \$1.50 per hour and the rate for steel erection is \$2.55 per hour. We would assign classification 0306 as the single classification applicable to this project.

(6) How will I know what classification will apply to my construction project?

We will send you a written notice which will specify the basic classification and premium rate that will apply to this project.

(7) If I have asked for a single classification to cover one of my construction projects, am I required to use the single classification which you gave me?

No, but you should call your account manager to verify what other classifications would apply to the project. The name and phone number of your account 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 account manager.

(8) I am a general construction or erection contractor, I subcontract all my work and have no employees of my own. Do I have to report to the department of labor and industries?

No, since you do not have employees, you do not need to report to the department of labor and industries. You should be aware that the workers' compensation insurance laws of Washington include certain independent contractors as workers. If we determine that an independent contractor that you used qualifies as a covered worker, you will be responsible for the premium due for their work time. You can also be held responsible for premiums due to labor and industries if you subcontract with an unregistered contractor and they fail to pay premiums on behalf of their employees. It is in your best interest to make sure that your subcontractors are registered contractors in good standing by confirming their status on the department's web site or contacting your account manager.

(9) Am I required to keep any special records of subcontractors that I use?

Yes, you are required to keep certain information about the subcontractors that you use. The information required is:

- Subcontractor's legal name;
- Contractor registration number and expiration date;
- UBI number (or labor and industries account ID number).

If you supply materials to a subcontractor, also keep a record of the:

- Amount of material supplied;
- Project name or location;
- Date material was supplied; and
- Completion date of contracted work.

Failure to maintain these records may result in the subcontractor being considered a covered worker for whom you must report hours.

(10) What classification should I use to report construction site cleanup by my employees? You should report the cleanup of construction debris in the same classification that applied to the work which generated the debris unless another classification treatment is provided for in other rules. For example, if you are a roofing contractor and you have an employee pick up roofing debris at the construction (project) site, you would report the employee involved in the site cleanup in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business, you would report site cleanup in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report construction site cleanup by your employees in classification 0510 "wood frame building construction."

(11) I am a construction site clean-up contractor, my employees only pick up construction debris, we do no construction work, what classification do I report site cleanup in? If your employees are collecting and/or removing construction site debris, you would report in classification 4305-22. If your employees are collecting and/or removing nonconstruction debris such as household junk, garden waste, basement debris, furniture and appliances, you would also report in classification 4305-22. If you have contracts to clean up construction debris and also provide preoccupancy clean up work and are not a construction contractor, then you can divide hours between the two risk classifications 4305-22 and 6602-03 providing accurate accounting records are kept for both activities.

(12) What classification should I use to report the work time of my employees when they are involved in the set up of scaffolding, hoists, cranes, towers or elevators at a construction site? We use the same classification treatment for this type of work as we do with construction site cleanup. For example, if you are a roofing contractor and you have an employee set up scaffolding at the construction (project) site, you would report the employee involved in the set up of scaffolding in the roofing classification (0507). If you are the general contractor at a construction site and have

either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business, you would report the set up of scaffolding at the construction in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report scaffolding set up by your employees in classification 0510 "wood frame building construction." Helicopter services that are engaged to assist in lifting beams, air conditioning units, statues and other objects onto buildings or structures are to be reported separately in classification 6803.

(13) Is preoccupancy cleanup of a building by my employees classified the same as debris cleanup at a construction site? Since your understanding of what preoccupancy clean-up work is may be different from ours, we need to share with you our understanding before we can answer this question. Our understanding in this area is that preoccupancy cleanup occurs after the building is finished. The clean-up work consists of washing paint and overspray from windows, vacuuming carpets, washing floors and fixtures, and dusting woodwork, doors and cabinets. If you have employees whose duties are limited to this type of cleaning, we will allow you to report their work time in classification 6602 "janitors."

(14) If I have an employee who does some construction work, construction site cleanup and preoccupancy cleanup, can I divide their work time between the janitor and a construction classification? No, we will not permit you to divide the work time of an employee between the janitor classification and a construction classification. If you have an employee who does preoccupancy clean-up work for you, and that employee also performs other nonpreoccupancy clean-up work for you such as construction work, shop work or construction site debris clean-up work, then you must report all of their work time in the applicable construction or nonshop classification.

AMENDATORY SECTION (Amending WSR 06-12-075, filed 6/6/06, effective 1/1/07)

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 classifications 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)) 296-17A-4904*) "clerical office employment." This classification includes clerical, administrative, and drafting employees.
- Sales personnel classifications 6301 (*WAC ((296-17-696), 6302 (WAC 296-17-697)) 296-17A-6301*), and 6303 (*WAC ((296-17-698)) 296-17A-6303*) includes outside sales personnel and messengers.
- Classification 7101 (*WAC ((296-17-754)) 296-17A-7101*) 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)) 296-17A-7100*) 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 cashiering 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 noted under each exception below have

been met, the following classifications may be used even if your basic classification includes the phrases "all operations" or "all employees." These special exceptions are subject to a division of worker hours in connection with all other basic classifications unless specifically prohibited in an individual classification WAC rule.

Security guards - classification 6601 (~~WAC ((296-17-723)) 296-17A-6601~~) 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)) 296-17A-6602~~) 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)) 296-17A-4900~~) 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.

Construction: Estimator - classification 4911 (~~WAC ((296-17-65802)) 296-17A-4911~~) will apply if the estimator:

- Is the employee of a licensed contractor engaged in construction, and
- Has no duties other than estimating during their work shift.

If these conditions are not met, the estimator is to be reported in the basic classification applicable to their employer's business or the construction project.

Log truck drivers - classification 5003 (~~WAC ((296-17-66001)) 296-17A-5003~~) 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)) 296-17A-5001~~).

(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 Order 85-7, filed 2/28/85, effective 4/1/85)

WAC 296-17-352 Audits. An audit of the employer's books, records and payrolls performed pursuant to the authority contained in RCW 51.48.040 may include but will not be limited to:

(1) An audit to determine whether an employer engaged in a business or trade has employment subject to the industrial insurance laws.

(2) A visual inspection of the employer's workplace or places for the purpose of determining appropriate classifications in accordance with the industrial insurance laws and rules as set forth in chapter ((296-17)) 296-17A WAC.

(3) Audits containing a complete and detailed examination of the employer's books and records for a specific period to establish the reporting of the employer's payroll in accordance with the industrial insurance laws and the rules as set forth in chapter 296-17 WAC, and as well, chapter 296-15 WAC in the event the employer has been certified a self-insurer.

Except as otherwise provided in this rule any audit time period may be less than, but will not exceed, three years of the due dates of any payments from any employer where the department has requested submission of the employer's books, or three years of the due dates of any payments where the employer makes claim for adjustment, recomputation or alteration of any such payment: Provided, That an employer certified to self-insure pursuant to the authority contained in chapter 51.14 RCW, shall be subject to such audit as deemed necessary to guarantee its compliance with the industrial insurance laws and rules and regulations for self-insurers:

Provided further, That an employer who fails to make any books and records, or certified copies thereof, available for audit in the state of Washington, will be charged for all costs incurred by the department in auditing any books and records maintained at other places: Provided further, That in any instance where fraud may be indicated with respect to underpayment or nonpayment of premiums the audit time period may be extended beyond that previously set forth.

AMENDATORY SECTION (Amending WSR 06-23-127, filed 11/21/06, effective 1/1/07)

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(6).

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 separate 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).

(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 (~~can~~

elled)) canceled 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 subcontractor, 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 entity that awarded the contract can verify the status of the contractors' account online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability 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)) 296-17A-5005.

(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 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.

(7) **Safe patient handling rule.** The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include

Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include

Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include

Birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include

Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes

such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44161, Olympia, Washington, 98504.

NEW SECTION

WAC 296-17-86505 2007 Alternative claim-free experience modification calculation. The following experience modification factor calculation is similar to the experience rating calculation used in 2006 for employers with no compensable accident during the experience period. The experience modification factor shall be calculated the same way as WAC 296-17-860 with the following exceptions:

(1) In WAC 296-17-885, the Expected Loss Rate and Primary Ratio Table IIIA shall be used instead of Table III.

(2) The Maximum Experience Modification Table IVA in WAC 296-17-891 shall be used instead of Table IV in WAC 296-17-890.

NEW SECTION

WAC 296-17-86507 2007 Claim-free experience modification phase-in limitation. For calendar year 2007, if the experience modification factor using WAC 296-17-860 is greater than 100% of the experience modification factor using WAC 296-17-86505, then the experience modification factor shall be limited to 100% of the factor using WAC 296-17-86505.

AMENDATORY SECTION (Amending WSR 05-23-161, filed 11/22/05, effective 1/1/06)

WAC 296-17-870 Evaluation of actual losses. Except as provided in the following subsections of this paragraph, actual losses shall include all payments as of the "valuation date" for each claim arising from an accident occurring during the experience period. Losses for claims open as of the valuation date may also include a reserve for future payments. Actual losses on claims for accidents occurring outside of the experience period shall not be included.

(1) **Valuation date.** The valuation date shall be on and include December 31, one year and one day immediately preceding the effective date of premium rates as set forth in WAC 296-17-895. For experience modifications effective January 1, 1990, and thereafter, the valuation date shall be June 1, seven months immediately preceding the effective date of premium rates.

(2) **Retroactive adjustments - revision of losses between valuation dates.** No claim value shall be revised between valuation dates and no retroactive adjustment of an experience modification shall be made because of disputation concerning the judgment of the claims examiner or because of subsequent developments except as specifically provided in the following cases:

(a) In cases where loss values are included or excluded through mistake other than error of judgment.

(b) In cases where a third party recovery is made, subject to subsection (4)(a) of this section.

(c) In cases where the claim qualifies as a second injury claim under the provisions of RCW 51.16.120.

(d) In cases where a claim, which was previously evaluated as a compensable claim, is closed and is determined to be noncompensable (ineligible for benefits other than medical treatment).

(e) In cases where a claim is closed and is determined to be ineligible for any benefits.

In the above specified cases retroactive adjustment of the experience modification shall be made for each rating in which the claim was included. Retroactive adjustments will not be made for rating periods more than ten years prior to the date on which the claim status was changed.

(3) **Average death value.** Each fatality occurring to a worker included within the mandatory or elective coverage of Title 51 RCW shall be assigned the "average death value." The "average death value" shall be the average incurred cost for all such fatalities occurring during the experience period. The average death value is set forth in WAC 296-17-880 (Table II).

(4) **Third-party recovery - effect on experience modification.**

(a) For claims with injury dates prior to July 1, 1994, a potential claim cost recovery from action against a third party, either by the injured worker or by the department, shall not be considered in the evaluation of actual losses until such time as the third-party action has been completed. If a third-party recovery is made after a claim had previously been used in an experience modification calculation, the experience modification shall be retroactively adjusted. The department shall compute a percentage recovery by dividing the current valuation of the claim into the amount recovered or recoverable as of the recovery date, and shall reduce both primary and excess losses previously used in the experience modification calculation by that percentage.

(b) For claims with injury dates on or after July 1, 1994, if the department determines that there is a reasonable potential of recovery from an action against a third party, both primary and excess values of the claim shall be reduced by fifty percent for purposes of experience modification calculation, until such time as the third-party action has been completed. This calculation shall not be retroactively adjusted, regardless of the final outcome of the third-party action. After a third-party recovery is made, the actual percentage recovery shall be applied to future experience modification calculations.

(c) For third-party actions completed before July 1, 1996, the claim shall be credited with the department's net share of the recovery, after deducting attorney fees and costs. For third-party actions completed on or after July 1, 1996, the claim shall be credited with the department's gross share of the recovery, before deducting attorney fees and costs.

(d) Definitions:

(i) As used in this section, "recovery date" means the date the money is received at the department or the date the order confirming the distribution of the recovery becomes final, whichever comes first.

(ii) As used in this section, "recoverable" means any amount due as of the recovery date and/or any amount available to offset case reserved future benefits.

(5) **Second injury claims.** The primary and excess values of any claim which becomes eligible for second injury relief under the provisions of RCW 51.16.120, as now or hereafter amended, shall be reduced by the percentage of relief granted.

(6) **Occupational disease claims.** When a claim results from an employee's exposure to an occupational disease hazard, the "date of injury," for the purpose of experience rating, will be the date the disability was diagnosed and that gave rise to the filing of a claim for benefits. The cost of any occupational disease claim, paid from the accident fund and medical aid fund and arising from exposure to the disease hazard under two or more employers, shall be prorated to each period of employment involving exposure to the hazard. Each insured employer who had employed the claimant during the experience period, and for at least ten percent of the claimant's exposure to the hazard, shall be charged for his/her share of the claim based upon the prorated costs.

(7) **Maximum claim value.** No claim shall enter an employer's experience record at a value greater than the "maximum claim value." The maximum claim value is set forth in WAC 296-17-880 (Table II).

(8) **Catastrophic losses.** Whenever a single accident results in the deaths or total permanent disability of three or more workers employed by the same employer, costs charged to the employer's experience shall be limited as required by RCW 51.16.130.

(9) **Acts of terrorism.** Whenever any worker insured with the state fund sustains an injury or occupational disease as a result of an incident certified to be an act of terrorism under the U.S. Terrorism Risk Insurance Act of 2002, the costs of the resulting claim shall be excluded from the experience rating computation of the worker's employer.

(10) **Claims filed by preferred workers.** The costs of subsequent claims filed by certified preferred workers will not be included in experience calculations, as provided in WAC 296-16-010.

(11) **Life and rescue phase of emergencies:** This provision applies to "emergency workers" of nongovernmental employers assigned to report in classification 7205 (WAC ((296-17-7660+)) 296-17A-7205) who assist in a life and rescue phase of a state or local emergency (disaster). The life and rescue phase of an emergency is defined in RCW 51.16.130(3) as being the first seventy-two hours after a natural or man-made disaster has occurred. For an employer to qualify for this special experience rating relief, a state or local official such as, but not limited to, the governor; a county executive; a mayor; a fire marshal; a sheriff or police chief must declare an emergency and must request help from private sector employers to assist in locating and rescuing survivors. This special relief is only applicable to nongovernmental employers during this initial seventy-two hour phase of the declared emergency unless the emergency has been extended by the official who declared the emergency. The cost of injuries or occupational disease claims filed by employees of nongovernmental employers assisting in the life and rescue phase of a declared emergency will not be charged to the experience record of the nongovernmental state fund employer.

NEW SECTION

WAC 296-17-891 Table IV-A.

Alternate "old" 2007 method

Maximum experience modifications for firms with no compensable accidents: Effective 1/1/2007 to 12/31/2007

Expected Loss Range	Maximum Experience Modification
1 - 2,995	0.90
2,996 - 3,644	0.89
3,645 - 4,322	0.88
4,323 - 5,031	0.87
5,032 - 5,777	0.86
5,778 - 6,558	0.85
6,559 - 7,381	0.84
7,382 - 8,246	0.83
8,247 - 9,157	0.82
9,158 - 10,120	0.81
10,121 - 11,137	0.80
11,138 - 12,214	0.79
12,215 - 13,355	0.78
13,356 - 14,569	0.77
14,570 - 15,860	0.76
15,861 - 17,237	0.75
17,238 - 18,708	0.74
18,709 - 20,285	0.73
20,286 - 21,977	0.72
21,978 - 23,799	0.71
23,800 - 25,767	0.70
25,768 - 27,898	0.69
27,899 - 30,213	0.68
30,214 - 32,738	0.67
32,739 - 35,502	0.66
35,503 - 38,542	0.65
38,543 - 41,900	0.64
41,901 - 45,629	0.63
45,630 - 49,793	0.62
49,794 - 54,476	0.61
54,477 & Higher	0.60

Class	Accident Fund	Medical Aid Fund
0101	1.5102	0.7102
0103	1.9285	0.9063
0104	1.0954	0.5189
0105	1.4873	0.8554
0107	1.4779	0.6467
0108	1.0954	0.5189
0112	0.8855	0.4502
0201	2.9771	1.1228
0202	3.5865	1.7260
0210	1.4481	0.5946
0212	1.5741	0.6908
0214	1.5723	0.6391
0217	1.2903	0.6064
0219	1.0310	0.5979
0301	0.6338	0.4127
0302	2.4031	0.8991
0303	2.2735	0.8789
0306	1.2097	0.5013
0307	1.0909	0.5375
0308	0.5462	0.3967
0403	1.8151	1.0914
0502	1.8533	0.7421
0504	1.6756	0.8618
0507	3.1395	1.7331
0508	2.4004	0.8899
0509	1.9140	0.7798
0510	1.6923	0.9163
0511	1.9177	0.8731
0512	1.8329	0.7927
0513	0.9923	0.4630
0514	2.1735	1.0436
0516	1.8907	0.8933
0517	1.9313	1.0352
0518	1.9005	0.8052
0519	2.6218	1.1503
0521	0.6073	0.3376
0601	0.7416	0.3729
0602	0.9248	0.4189
0603	1.2551	0.4830
0604	1.0086	0.6823
0606	0.5608	0.3679
0607	0.5428	0.3239
0608	0.4330	0.2432
0701	2.7040	0.7317
0803	0.4986	0.3150
0901	1.9005	0.8052

AMENDATORY SECTION (Amending WSR 07-07-032 and 07-07-129, filed 3/12/07 and 3/21/07, effective 7/1/07)

WAC 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry.

Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

Base Rates Effective
January 1, 2007

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
1002	1.0349	0.6322	2905	0.5443	0.4428
1003	0.8552	0.5082	2906	0.3483	0.2395
1004	0.5814	0.3011	2907	0.5409	0.3986
1005	9.6730	4.4009	2908	1.1619	0.6262
1007	0.4244	0.2189	2909	0.3916	0.2927
1101	0.7541	0.4688	3101	1.0863	0.5612
1102	1.5286	0.7283	3102	0.2872	0.1983
1103	1.3045	0.7863	3103	0.6003	0.3802
1104	0.5311	0.4052	3104	0.6744	0.3701
1105	1.0005	0.5747	3105	0.7886	0.5375
1106	0.3267	0.2807	3303	0.4653	0.3088
1108	0.6894	0.4434	3304	0.4574	0.3817
1109	1.5396	0.9942	3309	0.4556	0.3036
1301	0.7669	0.3602	3402	0.5828	0.3664
1303	0.2400	0.1527	3403	0.2137	0.1418
1304	0.0296	0.0192	3404	0.5027	0.3517
1305	0.4356	0.2806	3405	0.3434	0.2232
1401	0.4876	0.3476	3406	0.1960	0.1695
1404	0.7669	0.5189	3407	0.7729	0.4525
1405	0.6008	0.3976	3408	0.1880	0.1246
1407	0.6165	0.4427	3409	0.1663	0.1403
1501	0.6346	0.3723	3410	0.2803	0.2240
1507	0.5820	0.3399	3411	0.5284	0.3058
1701	1.0239	0.5509	3412	0.6816	0.3328
1702	2.5949	0.9691	3414	0.6261	0.3601
1703	1.1204	0.3557	3415	0.8773	0.5152
1704	1.0239	0.5509	3501	1.1294	0.7094
1801	0.5826	0.3513	3503	0.2759	0.2748
1802	0.8068	0.4272	3506	1.3792	0.5391
2002	0.7386	0.5182	3509	0.3980	0.3263
2004	1.0135	0.6728	3510	0.3848	0.2760
2007	0.4854	0.3184	3511	0.7602	0.5032
2008	0.3401	0.2179	3512	0.3360	0.2880
2009	0.3930	0.3170	3513	0.4523	0.3564
2101	0.7007	0.4712	3602	0.1286	0.0963
2102	0.5642	0.4120	3603	0.4908	0.3451
2104	0.3307	0.2965	3604	0.8076	0.6067
2105	0.6213	0.4048	3605	0.5803	0.3382
2106	0.4365	0.3199	3701	0.2872	0.1983
2201	0.2530	0.1745	3702	0.4833	0.3360
2202	0.7733	0.4742	3708	0.7128	0.4106
2203	0.4765	0.3581	3802	0.1954	0.1415
2204	0.2530	0.1745	3808	0.4773	0.2627
2401	0.5360	0.3290	3901	0.1540	0.1481
2903	0.6629	0.4833	3902	0.5034	0.3777
2904	0.7700	0.5325	3903	1.0439	0.8858

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
3905	0.1447	0.1398	5003	2.3613	0.9947
3906	0.4803	0.3556	5004	0.9584	0.6259
3909	0.2474	0.2162	5005	0.6550	0.3265
4002	1.6280	0.7618	5006	1.9073	0.8254
4101	0.3183	0.2031	5101	0.9648	0.6286
4103	0.4048	0.3771	5103	0.7356	0.5874
4107	0.1686	0.1219	5106	0.7356	0.5874
4108	0.1487	0.1119	5108	0.9177	0.6739
4109	0.2210	0.1513	5109	0.6542	0.3966
4201	0.8230	0.3679	5201	0.4666	0.2945
4301	0.6687	0.5001	5204	0.9946	0.6060
4302	0.6992	0.4650	5206	0.4708	0.2584
4304	1.0132	0.7360	5207	0.1551	0.1536
4305	1.4391	0.6544	5208	0.8852	0.5790
4401	0.4070	0.2945	5209	0.8151	0.4940
4402	0.8309	0.6355	5300	0.1098	0.0738
4404	0.5665	0.4215	5301	0.0330	0.0267
4501	0.1849	0.1590	5302	0.0207	0.0154
4502	0.0399	0.0354	5305	0.0498	0.0464
4504	0.1011	0.1050	5306	0.0605	0.0494
4601	0.7733	0.5186	5307	0.5858	0.3420
4802	0.2979	0.2248	6103	0.0753	0.0755
4803	0.2438	0.2354	6104	0.3560	0.2884
4804	0.5360	0.3861	6105	0.3714	0.2395
4805	0.2812	0.2436	6107	0.1224	0.1320
4806	0.0566	0.0450	6108	0.4166	0.3694
4808	0.4945	0.3441	6109	0.0980	0.0688
4809	0.3766	0.3045	6110	0.6353	0.4328
4810	0.1332	0.1225	6120	0.2971	0.1916
4811	0.2506	0.2279	6121	0.3714	0.2395
4812	0.3967	0.3054	6201	0.3576	0.2052
4813	0.1493	0.1295	6202	0.6582	0.4908
4900	0.3884	0.1773	6203	0.0825	0.1050
4901	0.0867	0.0511	6204	0.1219	0.1102
4902	0.1098	0.0738	6205	0.2469	0.1932
4903	0.1675	0.1054	6206	0.2350	0.1773
4904	0.0304	0.0237	6207	0.9090	0.9446
4905	0.3208	0.2955	6208	0.2207	0.2133
4906	0.0986	0.0692	6209	0.3010	0.2576
4907	0.0513	0.0399	6301	0.1529	0.0747
4908	0.0799	0.1152	6302	0.1776	0.1483
4909	0.0381	0.0622	6303	0.0725	0.0510
4910	0.4829	0.3235	6304	0.3757	0.3458
4911	0.0697	0.0500	6305	0.0909	0.0884
5001	6.0252	2.4999	6306	0.3406	0.2448
5002	0.6557	0.3944	6308	0.0669	0.0483

Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
6309	0.1776	0.1483	6908	0.4925	0.3340
6402	0.2832	0.2378	6909	0.1169	0.0963
6403	0.1593	0.1422	7100	0.0327	0.0243
6404	0.2184	0.1745	7101	0.0255	0.0175
6405	0.6377	0.3937	7102	3.0801	4.2970
6406	0.1116	0.0981	7103	0.6772	0.3641
6407	0.2793	0.2110	7104	0.0310	0.0234
6408	0.4131	0.2828	7105	0.0316	0.0254
6409	0.9934	0.5215	7106	0.1887	0.1614
6410	0.2946	0.2151	7107	0.2015	0.1987
6501	0.1719	0.1293	7108	0.1703	0.1730
6502	0.0403	0.0313	7109	0.1259	0.1085
6503	0.0902	0.0447	7110	0.3871	0.2062
6504	0.3636	0.3535	7111	0.4265	0.2329
6505	0.0944	0.0974	7112	0.6466	0.4776
6506	0.0994	0.0899	7113	0.3368	0.3040
6509	0.3492	0.3076	7114	0.5211	0.4502
6510	0.5441	0.2700	7115	0.5380	0.4693
6511	0.3269	0.2768	7116	0.6929	0.5136
6512	0.2715	0.2105	7117	1.5938	1.2207
6601	0.1848	0.1493	7118	1.3242	1.0182
6602	0.4685	0.3511	7119	1.3808	0.9103
6603	0.3564	0.2275	7120	6.4082	4.2401
6604	0.0833	0.0656	7121	5.9556	3.9464
6605	0.2779	0.2818	7122	0.5236	0.4754
6607	0.1746	0.1260	7200	1.2338	0.6227
6608	0.6917	0.2648	7201	1.5423	0.7784
6620	4.8308	2.9905	7202	0.0414	0.0226
6704	0.1754	0.1209	7203	0.1053	0.1217
6705	0.6966	0.7926	7204	0.0000	0.0000
6706	0.3005	0.2637	7205	0.0000	0.0000
6707	3.4221	2.9240	7301	0.5041	0.3715
6708	6.9097	7.8371	7302	0.9770	0.7401
6709	0.2714	0.2477	7307	0.4868	0.3880
6801	0.6708	0.4154	7308	0.2678	0.2871
6802	0.4546	0.3395	7309	0.2410	0.2315
6803	1.0265	0.4432	7400	1.5423	0.7784
6804	0.2946	0.1943			
6809	4.7278	4.0617			
6901	0.0000	0.0584			
6902	1.2857	0.4644			
6903	8.6855	3.9709			
6904	0.4799	0.2432			
6905	0.4281	0.2567			
6906	0.0000	0.2567			
6907	1.3109	0.8611			

For work performed during the period July 1, 2007, through December 31, 2007, ~~((and reported and paid in full to the department no later than April 30, 2008;))~~ employers shall not be required to pay nor shall they be entitled to deduct from workers' pay, medical aid premium; such premiums shall be deemed to have been paid by the department out of the medical aid fund.

In calendar year 2008, the department will pay such dividends from the accident fund to employers not participating in the retrospective rating program during the period July 1, 2007, through December 31, 2007, as the department's

actuaries determine to be necessary to equalize the proportion of losses funded between retro and nonretro employers.

AMENDATORY SECTION (Amending WSR 07-07-032 and 07-07-129, filed 3/12/07 and 3/21/07, effective 7/1/07)

WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

Base Rates in Dollars Per Sq. Ft. of Wallboard Effective January 1, 2007

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
0540	0.0268	0.0111	0.0005
0541	0.0161	0.0062	0.0005
0550	0.0375	0.0124	0.0005
0551	0.0218	0.0073	0.0005

For work performed during the period July 1, 2007, through December 31, 2007, ~~((and reported and paid in full to the department no later than April 30, 2008,))~~ employers shall not be required to pay nor shall they be entitled to deduct from workers' pay, medical aid premium; such premiums shall be deemed to have been paid by the department out of the medical aid fund.

In calendar year 2008, the department will pay such dividends from the accident fund to employers not participating in the retrospective rating program during the period July 1, 2007, through December 31, 2007, as the department's actuaries determine to be necessary to equalize the proportion of losses funded between retro and nonretro employers.

AMENDATORY SECTION (Amending WSR 07-07-032 and 07-07-129, filed 3/12/07 and 3/21/07, effective 7/1/07)

WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.

Base Rates Per License Effective January 1, 2007

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
6614	44((*))	35((*))	1((*))
6615	309((*))	270((*))	1((*))
6616	14((*))	10((*))	1((*))
6617	103((*))	76((*))	1((*))
6618	99((*))	50((*))	1((*))

Base Rates Per Twelve Horse Stalls
Effective January 1, 2007

6622	565((**))	449((**))	1((**))
6623	207((**))	147((**))	1((**))

((*)) These rates are calculated on a per license basis for parimutuel race tracks and are base rated.

((**)) These rates are calculated on a per 12 horse stalls for parimutuel race tracks and are base rated.

WSR 07-12-047
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 31, 2007, 4:34 p.m., effective July 1, 2007]

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

Purpose: Housekeeping changes have been made to nineteen classifications (see below for list of classifications). These changes are primarily grammatical corrections, changes in references to other classifications, and minor additions or deletions.

A new subclassification was created for log home manufacturing.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17A-0307 Classification 0307, 296-17A-0510 Classification 0510, 296-17A-1002 Classification 1002, 296-17A-1003 Classification 1003, 296-17A-1101 Classification 1101, 296-17A-1105 Classification 1105, 296-17A-1108 Classification 1108, 296-17A-1407 Classification 1407, 296-17A-1501 Classification 1501, 296-17A-2903 Classification 2903, 296-17A-2908 Classification 2908, 296-17A-3402 Classification 3402, 296-17A-3406 Classification 3406, 296-17A-3414 Classification 3414, 296-17A-5001 Classification 5001, 296-17A-5109 Classification 5109, 296-17A-6409 Classification 6409, 296-17A-6510 Classification 6510, and 296-17A-6511 Classification 6511.

Statutory Authority for Adoption: RCW 51.16.035 and 51.16.100.

Adopted under notice filed as WSR 07-09-079 on April 17, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 19, 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 19, Repealed 0.

Date Adopted: May 31, 2007.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0307 Classification 0307.

0307-01 Furnaces and heating systems: Installation, service or repair

Applies to contractors engaged in the installation, service, or repair of furnaces and heating systems, including duct work, in all types of residential and commercial settings. These services are generally performed by furnace contractors, heating and ventilation contractors, or sheet metal contractors. Work contemplated by this classification includes the fabrication, erection, installation and duct work performed at the job site. Materials include, but are not limited to, gas or electric furnace units, heater units, heat pumps, air purification systems, fireplace inserts or units, hot water tanks, thermostats, flat sheets of metal, vents, preformed or bent venting duct and pipe, vent collars and reels, fittings, galvanized pipe, insulation wrap, concrete pads and gas logs. Contractors who operate a sheet metal fabrication shop or who prefabricate the duct systems in a shop away from the construction site are to be assigned classification ((~~3402~~) 3404) 3404 for the shop fabrication work. When a contractor's business is assigned classification ((~~3402~~) 3404) 3404 for shop operations, then classification 5206, "Permanent yard or shop," is no longer applicable to the contractor's business for the storage of materials or repair to equipment.

This classification excludes sheet metal fabrication shops which are to be reported separately in classification ((~~3402~~) 3404); duct cleaning work which is to be reported separately in classification 1105; installation or repair of ventilation, air conditioning and refrigeration systems which is to be reported separately in classification 0307-04; or the installation of wood stoves which is to be reported separately in classification 0307-05.

Special note: This classification includes the installation of display areas or showrooms which provide prospective customers an opportunity to inspect the quality of workmanship and products carried by the contractor. Generally, displays or showrooms are installed where the contractors store their materials. It is common for contractors subject to this classification to sell furnace and heating system materials and accessories, but the intent of these areas is not to sell products to walk-in customers. Sales of these products by a furnace and heating systems contractor are included in classification 0307. Classification 2009, 6309, or similar store classifications, are not to be assigned to a contracting business. Employees engaged exclusively in showing the display areas or showrooms to customers are to be assigned classification 6303 provided the conditions of the standard exception general reporting rule have been met.

0307-04 Ventilating, air conditioning and refrigeration systems: Installation, service or repair, N.O.C.

Applies to contractors engaged in the installation, service, or repair of ventilating, air conditioning and refrigeration systems not covered by another classification (N.O.C.), including duct work at the job site in all types of residential and commercial settings. These services are generally performed by heating and ventilation contractors, refrigeration contractors, or sheet metal contractors. Work contemplated

by this classification includes the fabrication, erection, installation and duct work performed at the job site. Materials include, but are not limited to, air conditioning units, refrigeration systems, air purification systems, hoods and protective metal covers, hot water tanks, flat sheets of metal, vents, preformed or bent duct portions, vent collars and reels, thermostats, fittings, galvanized pipe, insulation wrap, and concrete pads. This classification includes the installation or repair of built-in vacuum systems and air (pneumatic) tube systems, such as those at drive-up teller windows. Contractors who operate a sheet metal fabrication shop or who prefabricate the duct systems in a shop away from the construction site are to be assigned classification ((~~3402~~) 3404) 3404 for the shop fabrication work. When a contractor's business is assigned classification ((~~3402~~) 3404) 3404 for shop operations, then classification 5206 "Permanent yard or shop" is no longer applicable to the contractor's business for the storage of materials or repair to equipment.

This classification excludes sheet metal fabrication shops which are to be reported separately in classification 3402; installation or repair of furnace or heating systems which is to be reported separately in classification 0307-01; and the installation of wood stoves which is to be reported separately in classification 0307-05.

Special note: This classification includes the installation of display areas or showrooms which provide prospective customers an opportunity to inspect the quality of workmanship and products carried by the contractor. Generally, displays or showrooms are installed where the contractors store their materials. It is common for contractors subject to this classification to sell ventilating and air conditioning equipment and materials, but the intent of these areas is not to sell products to walk-in customers. Sales of these products by a ventilating and air conditioning contractor are included in classification 0307. Classification 2009, 6309, or similar store classifications, are not to be assigned to a contracting business. Employees engaged exclusively in showing the display areas or showrooms to customers are to be assigned classification 6303 provided the conditions of the standard exception general reporting rule have been met.

0307-05 Wood, pellet, or gas stove: Installation, service or repair

Applies to contractors engaged in the installation, service or repair of wood, pellet or gas stoves in all types of residential and commercial settings. Work contemplated by this classification includes the fabrication, installation and duct work performed at the job site. Materials include, but are not limited to, wood, gas or pellet stoves, inserts, heater units, protective metal covers or hoods, gas fireplace logs, preformed or bent venting duct and pipe, or vents and vent collars. Contractors who operate a sheet metal fabrication shop or who prefabricate the duct systems in a shop away from the installation site are to be assigned classification 3402 for the shop fabrication work. When a contractor's business is assigned classification 3402 for the shop operations, then classification 5206, "Permanent yard or shop," is no longer applicable to the contractor's business for the storage of materials or repair to equipment.

This classification excludes wood stove and accessory stores which are to be reported separately in classification

6309; stove manufacturing which is to be reported separately in classification ((5209)) 3402; sheet metal fabrication shops which are to be reported separately in classification ((3402)) 3404; brick or masonry work which is to be reported separately in classification 0302; and the installation or repair of furnace or heating systems which is to be reported separately in classification 0307-01.

Special note: This classification includes the installation of display areas or showrooms which provide prospective customers an opportunity to inspect the quality of workmanship and products carried by the contractor. Generally, displays or showrooms are installed where the contractors store their materials. It is common for contractors subject to this classification to sell wood stove installation materials and accessories, but the intent of these areas is not to sell products to walk-in customers. Sales of these products by a wood stove installation contractor are included in classification 0307. Classifications 2009, 6309, or similar store classifications, are not to be assigned to a contracting business. Employees engaged exclusively in showing the display areas or showrooms to customers are to be assigned classification 6303 provided the conditions of the standard exception general reporting rule have been met.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0510 Classification 0510.

0510-00 Wood frame building: Construction or alterations, N.O.C.

Applies to contractors engaged in wood frame building construction or alterations not covered by another classification (N.O.C.). For the purposes of this classification, wood frame building construction means buildings erected exclusively of wood or wood products. This classification includes all building framing activities done in connection with wood frame building construction including the placement of roof trusses, sheathing roofs, installation of exterior building siding, and the installation of exterior doors and door frames. This classification also includes the installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract on a wood frame building. This classification also includes the erection of log home shells at customer's location. The manufacturing of log homes in a permanent yard which includes peeling the logs, notching the logs with chainsaws, and assembly is to be reported in classification 1003-06.

This classification excludes all other phases of wood frame building construction not listed as part of the framing activities above such as, but not limited to, site preparation and excavation (0101); overhead or underground utilities, asphalt work, or concrete work which is to be reported separately in the applicable classification; new landscape work (0301); brick work (0302); stucco work (0303); plumbing work (0306); HVAC work (0307); carpet and tile work (0502); exterior painting (0504); roof work (0507); insulation work (0512); interior finish carpentry - interior doors, cabinets, fixtures or molding (0513); installation of garage doors (0514); installation of sheet metal siding, gutters, and non-structural sheet metal patio covers/carports (0519); interior

painting (0521); electrical work (0601) or wallboard installation, taping or texturing which are to be reported separately in the applicable classifications. For a more thorough description of the activities included and excluded from wood frame building construction, review the Construction Industry Guide.

Special note: Classification 0510 also includes wood frame building alterations or remodel work when the activity involves building new additions. The term "new additions" is defined as adding on to an existing wood frame building (upwards or outwards) in which the use of structural supports and main bearing beams is required. This is distinguishable from classification 0516 - building repair or carpentry work that typically does not require the placement of structural supports or main bearing beams. The purpose of classification 0516 is to build or rebuild with nonstructural or bearing beams, or to replace an existing portion (including existing structural and bearing beams) of a wood frame building for appearances or as a result of deterioration to make it appear new again. Care should be exercised as the terminology to build, rebuild, remodel, construct or reconstruct is irrelevant to assignment of classification which should recognize what the project actually involves.

Guidelines:

Constructing a new wood frame building that never existed - 0510

Altering all or part of an existing wood frame building by adding on new additions - 0510

Remodeling all or part of an existing wood frame building *without* adding on new additions - 0516

Installation of wood or vinyl siding on a new or existing wood frame building - 0510

Constructing a new wood garage that never existed - 0510

Altering all or part of an existing wood garage by adding on new additions - 0510

Remodeling all or part of an existing wood garage without adding on new additions - 0516

Constructing a new wood carport or wood shed that never existed - 0510

Rebuilding an existing wood carport or wood shed (all or part) with or without new additions - 0516

Construction of a new wood deck by the framing contractor when a new wood house is being built - 0510

Constructing or replacing a wood deck on an existing wood house - 0516

Constructing or replacing a wood deck for any type of nonwood building - 0516

Altering the existing interior of a wood frame building by adding exterior additions - 0510

Remodeling the existing interior of a wood frame building without adding exterior additions - 0516

Constructing, altering, or remodeling the interiors of nonwood frame buildings - 0516

Installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract of a wood frame building - 0510.

0510-99 Wood frame building: Construction or alteration, N.O.C. (only to be assigned by the wood framing specialist)

Applies to framing contractors, who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for "account in good standing" status for prime contractor liability.

Special note: Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1002 Classification 1002.

1002-00 Sawmills: Operation and maintenance

Applies to establishments engaged in the operation and maintenance of a sawmill. Sawmills receive raw logs which they usually store temporarily in their yard before cutting them into rough and finished lumber. This classification includes operations such as, but not limited to, loading raw logs onto the conveyor or log slip; sawing logs with a variety of head, cut-off, circular or band saws; grading and sorting lumber; drying green (wet) lumber; and the stacking and storing of lumber. The raw logs are cut into rough lumber, such as cants and blocks, or into finished lumber, such as posts, planks or boards.

This classification excludes all operations conducted in the woods, such as logging or use of a portable sawmill, which is to be reported separately in classification 5001, and establishments engaged *only* in the manufacturing of wood, veneer, veneer products, or lumber remanufacturing which is to be reported separately in the classification applicable to the manufacturing being performed.

**1002-08 Shake and shingle mills - automated process
(to be assigned by classifications underwriter)**

Applies to establishments operating an automated shake and shingle mill which manufacture shakes, shingles and/or ridge caps using automated processes. For purposes of this classification, automated processes refers to shake and shingle mills equipped with automatic feeders on all saws, adjustable packing and cutting stations, and fully automatic systems for conveying material to work stations. All equipment must be equipped with automatic shut off switches. Within a shingle mill the operation of a trim saw must be performed by an individual as a separate function from that of the shingle saw operator (shingle sawyer is not to perform both functions). Shake splitters must be equipped with a gauge control mechanism which permits the operator to automatically set the thickness of the cut. Conveyor systems must have dual controls to allow the deck man and sawyer the ability to control incoming material to the work station.

Block mills must be equipped with an automated pallet dump to eliminate the handling of material to the sawyer work station or an adjustable scissor lift adjacent to the shingle saw or shake splitter. Blocked wood purchased by mills

must be contained in pallets prior to entering the mill yard or premises. Log mills must be equipped with a fully mechanized log slip (used to move logs into the deck area), log levelers, stabilizers, and lifters must be present in the deck area, automatic deck cut-off saw, live deck for moving material from the deck to the splitting area and overhead mounted splitters. Trim saws, also referred to as clipper saws, must be equipped with a laser guide or quartz light. This lighting reveals to the operator where its saw blade is in relationship to the material being processed.

For purposes of this classification, the following terms or words shall be given the meanings below:

Automatic deck or cut-off saw: A large saw, usually circular, used to trim logs to a specified length (rounds) before they enter a manufacturing plant.

Clipper saw: A machine used to make shingle edges parallel.

Shingle: Roofing or siding material having sawn faces and backs, are of a standard thickness at the butt end and tapered finish at the other end.

Shake: Roofing or siding material having at least one surface with a natural grain textured split surface.

Live deck: A chain driven platform located in the same proximity as the deck saw and is used to convey cut rounds from the cutting area to the splitting area.

Log stabilizer: A levered device adjacent to the deck saw used to hold the log steady while it is being cut.

Log slip: A chain driven conveyor used to move logs into the deck area.

Laser or quartz guide light: An overhead mounted light above a saw that illuminates that portion of a work surface where the saw blade will pass or make a cut.

Log leveler: A levered device adjacent to the deck saw used to level a log automatically.

Overhead splitter: A ceiling mounted hydraulic, air, or electrically operated apparatus with wedge shaped end that is used to split log rounds into block wood when activated by the splitterman.

Shingle saw: A machine used to make shingles.

Shake splitter: A machine used to split blocks into shake blanks.

Shake saw: A machine used to saw shake blanks into a finished wedged shaped product.

This classification excludes all operations conducted in the woods, such as logging or the cutting and splitting of shake or shingle bolts, which are to be reported separately in classification 5001.

Special notes: Shake and shingle mills not meeting all the conditions as set forth above shall be reported separately in classification 1005 "shake and shingle mills, N.O.C."

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1003 Classification 1003.

1003-02 Dry kiln operations

Applies to establishments engaged in kiln drying of wood as a service for customers in the wood products industry. They may also purchase and dry wood themselves for later sale to a wood product manufacturer. Operations con-

templated by this classification include, but are not limited to, receiving green lumber or logs, peeling (mechanized or manual), any incidental machining or turning, layering on a trolley (with spacers in between to allow for air circulation), drying in the heated kiln, and the incidental application of preservative, fire retardant, or insecticide treatments, storing, and delivery. Preservatives may be oil or water based and may be applied through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping) or by soaking in tanks. Machinery and equipment includes, but is not limited to, log handling and trimming machinery, kilns, boilers that heat the kilns, autoclaves, storage tanks, trolley cars, fork lifts, hand tools and delivery trucks.

This classification excludes dry kiln operations that are part of a wood, veneer or lumber product manufacturing or remanufacturing operation which are to be reported separately in the classification applicable for the operation being performed; all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-03 Creosote works; pile and pole treating

Applies to establishments engaged in treating wood poles with creosote or other chemicals to inhibit deterioration. Poles produced by this type of business are intended for use as utility line poles, supports for bridges and trestles, or piles to be driven into the ground as part of the support for a pier or other structure. Operations contemplated by this classification include, but are not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling (mechanized or manual), any incidental machining and turning (which may include cutting material into ties or cross arms), the application of creosote or other chemical preservative, and pick up and delivery. Preservative may be applied to seasoned wood through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, hand tools, and trucks.

This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-04 Pole yards

Applies to establishments engaged in producing wood poles to a customer's specifications or for their own resale. These poles are intended for a variety of uses and are finished to varying requirements. Work contemplated by this classification includes, but is not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling (mechanized or manual), incidental machining or turning (which may include cutting some material into cross arms, cutting and

boring), the application of creosote or other chemical preservative, and pick up and delivery. Preservative may be applied to seasoned wood through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, hand tools, and trucks.

This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-05 Masts and spars yards

Applies to establishments engaged in producing wood masts and spars. Masts and spars are the main and secondary supports, respectively, for sails and running rigging on sailing vessels. These businesses may also produce poles for other uses which may need to be more precisely shaped and finished than those produced in 1003-04. Work contemplated by this classification includes, but is not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling the logs (mechanized or manual), machining and turning to size (which may include cutting and boring holes), application of chemical preservative, sanding if necessary, and pick up and delivery. The application of wood finish is also included when performed by employees of an employer having operations subject to this classification. Preservative may be applied to seasoned wood through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, wood finishing equipment, hand tools, and trucks. This classification includes the production of finished logs that will be used in the manufacture of log houses or cabins.

This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-06 Log home manufacturing

Applies to establishments that receive logs either peeled or unpeeled. Work contemplated by this classification includes the use of hand tools such as, but not limited to, planers, grinders, skids, drawn knives, and slicks to peel or bring back the new appearance of the logs. Chainsaws and chisels are used to notch out the logs to assemble them together. Equipment such as loaders, forklifts, or cranes are used to maneuver the logs around the yard or to help in the assembly of the log home. Once the shell is assembled, it is numbered. The shell is then unassembled and is shipped to the customer's site to be erected. The erection of the log home shell at the customer's site is to be reported in 0510-00. This classification excludes all other phases of construction

which will be reported in the applicable construction classifications.

Log home manufacturing performed in a sawmill environment using dimensional lumber is to be reported in 2903-12.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1101 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 ((~~☞~~)) and the use of a tow truck which is to be reported separately in 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 delivery 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. Sales personnel 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 deliver products to their customer's place of business 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, food vendors operating from a push cart or mobile stand and food vendors who operate from a truck or van but who do not move

from place to place throughout the day who are to be reported separately in classification 3905.

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 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1105 Classification 1105.

1105-00 Septic tank pumping

Applies to establishments engaged in septic tank pumping services. Operations contemplated by this classification include driving, locating the septic tank and digging as necessary to uncover it, connecting the pumping hose to the septic tank, pumping out the sludge, and disposing of the waste products.

This classification excludes installation and repair of septic tanks or systems which are to be reported separately in classification 0108, and cleaning of sewage treatment tanks which is to be reported separately in classification 0504.

1105-01 Street sweeping; parking lot sweeping; dust control; and portable chemical toilet servicing

Applies to establishments that perform street sweeping and parking lot sweeping services for others. Trucks used for sweeping are equipped with rotating or nonrotating brushes and vacuum/suction devices. In addition to driving duties, the drivers may adjust/unclog the brushes, and clean the holding tanks contained on the sweeping or pumping vehicle. This classification also includes snow removal by plowing, delivery of portable toilets and the related servicing and disposal of waste products which are recovered by establishments subject to this classification. This classification also includes trucks that spray water on roads and other surfaces for dust control.

1105-02 Vacuum truck services

Applies to establishments engaged in vacuum truck services for others. Services include, but are not limited to, cleaning of duct work, picking up waste oils, lubricants, anti-freeze, bilge water, and similar waste products. Establishments subject to this classification may offer a regular service, one-time or occasional pick-up service. The driver has kits for testing the materials and, if there is a question, a sample is taken to a laboratory for further analysis. If the waste material is acceptable, it is pumped into the tanker truck. The waste material may be consolidated with similar products and

"bulked" in storage tanks, then taken to appropriate treatment or disposal facilities, or it may be taken directly to appropriate facilities. If it is to be "bulked" with other products, it will be filtered as it is pumped into the storage tanks and allowed to sit for a few days for any water to settle to the bottom of the tank and be drained off. Bulked materials may be hauled away by the establishment's own trucks or by common carrier. Establishments subject to this classification may pick up containers of used oil filters and bring them into their plant where they are sorted into crushed and uncrushed filters, and gaskets removed. This activity is included within the scope of this classification if it is an incidental service. This classification includes the related disposal of waste products which are recovered by establishments subject to this classification.

This classification excludes septic tank pumping which is to be reported separately in classification 1105-00.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1108 Classification 1108.

1108-02 Glass tempering

Applies to establishments engaged in glass tempering services for others. Operations contemplated by this classification include glass cutting, bending, grinding, beveling, and silvering. Tools and equipment include metal and wood cutting tools and machinery, grinders, sanders, drills, saws, knives, suction cups, putty, caulking, cleaning solvents, forklifts, packing materials, delivery and service vehicles and tempering ovens. The process of glass tempering consists of taking auto or sheet glass which has been purchased from a glass manufacturer or distributor and placing it in a tempering oven. The oven heat realigns the molecular structure of the glass creating added strength, however, the appearance of the glass remains unchanged. This classification includes the sale of accessories for flat glass such as sealants, screening, aluminum frames for storm windows and doors, mirror backings, frames and glass cleaners.

This classification excludes establishments engaged in the installation of glass, mirrors, aluminum or wood window sashes or similar products away from the shop which are to be reported separately in classification 0511; establishments engaged in the manufacture of glass which is to be reported separately in classification 3503; merchants who specialize in selling or installing auto glass which is to be reported separately in classification 1108-04; glass merchants engaged exclusively in flat glass sales which are to be reported separately in classification 1108-03; and combined auto/flat glass merchants with no tempering which are to be reported separately in classification 1108-05.

1108-03 Flat glass merchants - no tempering

Applies to establishments engaged in receiving, storing and selling all types of fabricated glass and plexiglas. Glass products include, but are not limited to, window glass, plate glass, safety glass for automobiles, and mirrors. Work contemplated by this classification includes cutting of glass to customers specified dimensions, beveling, buffing, grinding, polishing, silvering of plate glass, and the installation of glass into frames within the shop or adjacent yard. Some dealers

may specialize in cutting, selling or installing fabricated flat glass or they may also sell and install plate, laminated, window, cathedral, stained, bullet proof, opalescent flat, picture, skylight and tempered glass. Most glass dealers will cut glass to order. Tools and equipment include metal and wood cutting tools and machinery, grinders, sanders, drills, saws, knives, suction cups, putty, caulking, cleaning solvents, forklifts, packing materials, delivery and service vehicles. This classification includes the sale of accessories for flat glass such as sealants, screening, aluminum frames for storm windows and doors, mirror backings, frames and glass cleaners.

This classification excludes establishments engaged in the installation of glass, mirrors, aluminum or wood window sashes or similar products away from the shop which are to be reported separately in classification 0511; manufacturing of glass which is to be reported separately in classification 3503; glass merchants who perform glass tempering which are to be reported separately in classification 1108-02; and merchants who specialize in selling or installing auto glass which are to be reported separately in classification 1108-04.

1108-04 Auto glass merchants

Applies to establishments engaged in selling and installing automobile glass in vehicles. In addition to selling and installing new or replacement auto glass, merchants typically repair auto windshield cracks, scratches, bullseyes and breaks. Tools and equipment include metal and wood cutting tools, grinders, sanders, drills, saws, knives, windshield sticks, suction cups, putty, caulking, cleaning solvents, delivery and service vehicles. Solar tinting of auto glass with film to reduce heat and glare may also be performed, as well as selling and installing sun roofs. Auto glass merchants may offer 24-hour emergency service or pickup and delivery. Installation of auto glass, truck glass or boat tops performed in or away from the shop is included within the scope of this classification.

This classification excludes establishments engaged in the manufacturing of glass which are to be reported separately in classification 3503; tinting or the application of tinted plastic film to auto glass by an auto detailer which is to be reported separately in classification 3406; repairing auto windshield cracks, bullseyes and chips by an auto detailer which is to be reported in 3406; glass merchants who perform glass tempering which are to be reported separately in classification 1108-02; glass merchants exclusively dealing in flat glass which are to be reported in classification 1108-03; and combined auto/flat glass merchants with no tempering which are to be reported in classification 1108-05.

1108-05 Combined auto and flat glass merchants - no tempering

Applies to establishments engaged in receiving, storing and selling all types of fabricated glass and plexiglas as window glass, plate glass, safety glass for automobiles, mirrors and other types of glass at a permanent shop location or adjacent yard. Work contemplated by this classification includes cutting of glass to customers' specified dimensions, beveling, buffing, grinding, polishing, silvering of plate glass and the installation of glass into frames. Tools and equipment include metal and wood cutting tools and machinery, grinders, sanders, drills, saws, knives, suction cups, windshield sticks,

putty, caulking, cleaning solvents, forklifts, packing materials, and delivery and service vehicles. A glass merchant performing the installation of glass in automobiles is also included within the scope of this classification; as are related services such as, but not limited to, repair of auto windshield cracks, scratches, bullseyes and breaks; in vehicle tinting of auto glass to reduce heat and glare; and installing sun roofs. Other dealers may specialize in cutting, selling or installing fabricated flat glass or they may also sell and install plate, laminated, window, cathedral, stained, bullet proof, opalescent flat, picture, skylight and tempered glass. Included within the scope of this classification is the sale of accessories for flat glass such as sealants, screening, aluminum frames for storm windows and doors, mirror backings, frames and glass cleaners.

This classification excludes establishments engaged in the installation of glass, aluminum or wood window sashes or similar products away from the shop which are to be reported separately in classification 0511; manufacturing of glass which is to be reported separately in classification 3503; tinting or the application of tinted plastic film to auto glass by an auto detailer which is to be reported separately in classification 3406; repairing auto windshield cracks, bullseyes and chips by an auto detailer which is to be reported in 3406; glass merchants who perform glass tempering which are to be reported separately in classification 1108-02; and flat glass merchants who do not sell or install auto glass which are to be reported separately in classification 1108-03.

1108-06 Glass frosting, etching, beveling or grinding

Applies to establishments engaged in shaping and finishing solid glass by cutting, frosting, etching, beveling, grinding, sandblasting, carving, glue chipping, decorating or grooving. Custom items manufactured in this classification include, but are not limited to, video game tops, glass signs, glass used in the assembly of electrical appliances such as microwave ovens, electronically controlled cabinets and display panels, and mirrors of all sizes. Machinery includes diamond or glass cutting saws, diamond or glass grinding wheels and discs, drills, polishing laps, etching tools and other hand tools. In the manufacture of mirrors, metallic solutions (usually silver), shellacs or varnishes, paints, and plate glass are received from outside sources. The glass is cut to size, ground, smoothed, and the edges may be beveled. Hole drilling, chemical etching, drying, buffing and polishing may be performed. Reflective surfaces are generally produced by pouring or spraying metallic solutions over prepared glass. Heavier coats are obtained by successive applications of the plating solution. After applying the plating solution, the mirrors are sprayed or hand brushed with shellac or varnish, then with paint. Frames, handles or similar finishings may be attached. Production manufacturing of insulated glass by sealing together two or more sheets of glass with an air space between them is also included when performed by employees of an employer subject to this classification.

This classification excludes the mining, digging or quarrying of raw materials which is to be reported separately in the applicable classification; glass merchants who do incidental grinding, beveling, silvering and cutting of glass who are to be reported separately in the classification applicable to the type of glass they specialize in; establishments manufac-

turing optical goods or telescopes, or perform precision grinding of blank or rough lenses which are to be reported separately in classification 6604; and establishments engaged in manufacturing stained or leaded glassware, or in melting or blowing glass which are to be reported separately in classification 3503.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1407 Classification 1407.

1407-00 Bus companies

Applies to establishments engaged in providing transportation services such as, but not limited to, charter and tour bus, contract school bus, shuttle van, and nonmunicipal, scheduled bus systems. Work contemplated by this classification includes operation of the vehicle and related loading/unloading duties, cleaning, maintenance and ordinary repair of all facilities, equipment, and vehicles, all bus terminal employment except for office personnel. Ticket sellers and dispatchers may be reported separately in classification 4904 provided that they do not handle baggage and that all of the conditions of the standard exception general reporting rules have been met.

This classification excludes: Municipal transit and bus service provided by a county or taxing district which is to be reported separately in classification 1501; municipal transit and bus service provided by a city or town which is to be reported separately in classification 0803; taxicab companies which are to be reported separately in classification 1401; cabulance and paratransit companies which are to be reported separately in classification 1404; and drivers employed by a limousine company who are to be reported separately in classification 6301.

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.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1501 Classification 1501.

1501-00 Counties and taxing districts, N.O.C. - all other employees

Applies to employees of counties and taxing districts, not covered by another classification (N.O.C.), who perform manual labor, or who supervise a work crew performing manual labor such as custodial or maintenance, and machinery or equipment operators including transit bus drivers. This classification includes administrative personnel such as engineers, safety inspectors, and biologists who have field exposure, and internal inventory and supply clerks. For purposes of this classification, field exposure is defined as any exposure other than the normal travel to or from a work assignment.

This classification excludes electric light and power public utility districts which are to be reported separately in classification 1301; privately owned and operated bus or transit

systems which are to be reported separately in classification 1407; water distribution or purification system public utility districts which are to be reported separately in classification 1507; irrigation system public utility districts which are to be reported separately in classification 1507; port districts which are to be reported separately in classification 4201; school districts, library districts or museum districts which are to be reported separately in classifications 6103 or 6104; hospital districts which are to be reported separately in classification 6105; fire fighters who are to be reported separately in classification 6904; law enforcement officers who are to be reported separately in classification 6905 and 6906, as appropriate; clerical office and administrative employees who are to be reported separately in classification 5306, and volunteers who are to be reported separately in classifications 6901 or 6906, as appropriate.

1501-01 Housing authorities, N.O.C. - all other employees

Applies to employees of housing authorities, not covered by another classification, who perform manual labor, or who supervise a work crew performing manual labor such as custodial or maintenance, and machinery or equipment operators. This classification includes all functional operations of a housing authority such as inspection, maintenance and repairs, including minor structural repairs, janitorial service, and building and grounds maintenance. Also included in this classification are meter readers, security personnel, other than those with law enforcement powers, administrative personnel such as engineers and safety inspectors who have field exposure, and internal inventory and supply clerks. For purposes of this classification, housing authorities are defined as nonprofit, public and political entities which serve the needs of a specific city, county or Indian tribe. The nature and objectives of some of the projects undertaken by housing authorities include providing decent, safe and sanitary living accommodations for low income persons, or providing group homes or halfway houses to serve developmentally or otherwise disabled persons or juveniles released from correctional facilities. A housing authority has the power to prepare, carry out, lease and operate housing facilities; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project; to sell or rent dwellings forming part of the project to or for persons of low income; to acquire, lease, rent or sell or otherwise dispose of any commercial space located in buildings or structures containing a housing project; to arrange or contract for the furnishing of the units; and to investigate into the means and methods of improving such conditions where there is a shortage of suitable, safe and sanitary dwelling accommodations for persons of low income.

This classification excludes new construction or major alteration activities which are to be reported separately in the appropriate construction classifications; clerical office and administrative employees who are to be reported separately in classification 5306; security personnel with law enforcement powers who are to be reported separately in classification 6905; and volunteers who are to be reported separately in classifications 6901 or 6906, as appropriate.

1501-08 Native American tribal councils - all other employees

Applies to employees of Native American tribal councils who perform manual labor, or who supervise a work crew performing manual labor such as custodial or maintenance, and machinery or equipment operators. This classification includes administrative personnel such as engineers, safety inspectors, and biologists who have field exposure, and internal inventory and supply clerks of the tribal council. For purposes of this classification, field exposure is defined as any exposure other than the normal travel to and from a work assignment.

This classification excludes electric light and power public utility districts which are to be reported separately in classification 1301; water distribution or purification system public utility districts which are to be reported separately in classification 1507; irrigation system public utility districts which are to be reported separately in classification 1507; school districts, library districts or museum districts which are to be reported separately in classifications 6103 or 6104; hospital districts which are to be reported separately in classification 6105; fire fighters who are to be reported separately in classification 6904; law enforcement officers who are to be reported separately in classifications 6905 and 6906; new construction or reconstruction activities which are to be reported separately in the appropriate construction classification; clerical office and administrative employees who are to be reported separately in classification 5306.

Special notes: Housing authorities operating under the name of, and for the benefit of, a particular tribe are not exempt from mandatory coverage. These housing authorities are federally funded and are not owned or controlled by a tribe.

Only those tribal operations which are also provided by county governments are subject to classification 1501. The following activities, such as but not limited to, visiting nurses and home health care, grounds keepers, building maintenance, park maintenance, road maintenance, and garbage and sewer works, are considered to be normal operations to be included in this classification. All other tribal council operations which are not normally performed by a county government shall be assigned the appropriate classification for the activities being performed. The following operations, such as but not limited to, meals on wheels, bingo parlors, casinos, liquor stores, tobacco stores, grocery stores, food banks, gift shops, restaurants, motels/hotels, Head Start programs, fish/shellfish hatcheries, logging, and tree planting/reforestation are outside the scope of classification 1501 and are to be reported separately in the applicable classifications.

1501-09 Military base maintenance, N.O.C.

Applies to establishments, not covered by another classification (N.O.C.), engaged in providing all support operations and services on a military base on a contract basis. Such services include, but are not limited to, data processing, photography, mail delivery (on post and to other military facilities), hotel/motel services, mess halls, recreational facilities, grounds and building maintenance, vehicle maintenance, and may also include the maintenance of such facilities as water works, sewer treatment plants and roads.

This classification excludes new construction or construction repair projects which are to be reported separately in the applicable construction classification for the work being performed; contracts for specific activities on a military base such as, but not limited to, building maintenance, club or mess hall operations, or vehicle maintenance, which are to be reported separately in the applicable classification for the work being performed; firefighters who are to be reported separately in classification 6904; law enforcement officers who are to be reported separately in classification 6905; and clerical office and administrative employees who are to be reported separately in classification 5306.

Special note: Classification 1501-09 is to be assigned to an establishment only when *all* support services on a military base are being provided by the contractor. Care should be taken when assigning classification 1501-09 to firms whose military support services include loading, unloading, repair or construction of vessels, or the repair of buildings or structures used for such activities as that firm may be subject to federal maritime law.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2903 Classification 2903.**2903-00 Wood chip, hog fuel, bark, bark flour, fire log and lath: Manufacturing**

Applies to establishments engaged in the production of products such as, but not limited to, wood chips, hog fuel, bark, bark flour, fire logs, kindling, excelsior, particleboard, and similar wood by-products.

Wood chips are small pieces of wood, generally uniform in size and larger and coarser than sawdust, commonly used to make pulp, particleboard, stuffing for products such as animal bedding, and as smoker/barbecue fuel;

Hog fuel is made by grinding waste wood in a hog machine, is larger and coarser than wood chips, and is used to fire boilers or furnaces, often at the mill or plant at which the fuel was processed;

Bark is the outermost covering of a tree which is chopped into pieces of varying sizes, and is commonly used for landscaping;

Bark flour is finely ground bark used as a filler or extender in adhesives;

Fire logs are made by forming sawdust into a log about 15 inches long and are used for fuel;

Lath is a narrow strip of wood commonly used to support shingle, slate or tile roofing, and as a fencing material;

Excelsior is the curled shreds of wood used as a packing and stuffing material, or as a raw material in making various board products;

Particleboard is a panel made from discrete particles of wood which are mixed with resins and formed into a solid board under heat and pressure.

The degree of manual labor required to make these products varies depending upon the size of the operation and sophistication of the equipment. Raw materials include, but are not limited to, logs, mill waste, bark, sawdust, or chips. Machinery includes, but is not limited to, rip saws, cut-off saws, loaders, debarkers, hog chippers, hammer mills, con-

veyors, sorting screens, and storage bunkers. 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. The operation of portable chipping or debarking mills is included in this classification.

This classification excludes all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; veneer manufacturing which is to be reported separately in classification 2904; and sawmill operations which are to be reported separately in classification 1002.

2903-06 Wood furniture stock: Manufacturing

Applies to establishments engaged in the manufacture of wood furniture stock such as, but not limited to, tabletops, table or chair legs, chair backs or seats, panels for beds, turning squares (bolts of wood which are shaped on lathes into furniture legs) and furniture squares (standard sized - usually 2" x 2" - pieces of wood used in constructing frames of upholstered furniture). Stock may be mass produced or custom. Raw material includes dimensional lumber from hardwoods such as, but not limited to, ash or alder. If the lumber is not presurfaced, it is sanded and/or planed. It is cut to desired width and thickness with a rip saw; and cut to desired length with a cut-off saw. Pieces may be beveled with a table saw, bored with a horizontal boring machine, molded or shaped, and joints formed using a mortise, tenon or jointer. Finished stock is banded and/or palletized and usually shipped unfinished and unassembled to furniture manufacturing plants. 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 all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; manufacture of wood furniture and caskets which is to be reported separately in classification 2905; lumber remanufacturing which is to be reported separately in classification 2903-26; veneer manufacturing which is to be reported separately in classification 2904; and sawmill operations which are to be reported separately in classification 1002.

2903-08 Wood door, jamb, window, sash, stair, molding and miscellaneous millwork: Manufacturing, prehang-ing or assembly

Applies to establishments engaged in the manufacture, prehang-ing or assembly of wooden doors, door components, jambs, windows, sashes, stairs, mantels, moldings, turnings, and miscellaneous millwork such as, but not limited to, shutters, door and window grilles, skylights, pillars, wainscot, and similar architectural ornaments. Doors manufactured in this classification may be for residential or commercial use, such as, but not limited to, garage, closet, warehouse, interior and exterior; they may be odd-size or standard, panel, solid, louver, hollow core, sliding, bifold and overhead. Component parts for stairs include, but are not limited to, risers, tread, balusters, hand rails, and newel posts. Fireplace mantels include both the shelf and the complete ornamental facing surrounding the firebox. Moldings include, but are not limited to, picture moldings, chair rails, quarter round, coves, and architectural molding and base. Raw materials include,

but are not limited to, cut stock lumber, plywood, veneer, particleboard, cardboard, plastic laminates, glue, hardware, glass, and metal. Cutting and fitting of glass and metal components for doors and windows is an integral phase of the manufacturing process and is included within the scope of this classification. Machinery includes, but is not limited to, various types of saws (table, panel, rip, cut-off, radial arm, trim, circular, band, jig, and miter), molders, shapers, routers, planers, finger jointers, mortises, tenons, lathes, presses, various types of sanders, drill presses, hand drills, boring machines, pneumatic nail, screw and staple guns, spray guns, chisels, air compressors, glue spreaders, drying ovens, overhead vacuum lifts, conveyor systems, fork lifts, and pallet jacks. Some door manufacturers have "door machines" which route impressions in jambs and blanks for hinge placement, and bores holes in the blank for knobs and locks; some have computerized overhead vacuum lights, electronic gluers, hydraulic lift pits, or electronically controlled saws. Prehang-ing doors involves boring holes in door blanks for knobs and locks, routing impressions into the blanks and jambs for hinge replacement, mounting hinges, trimming door and jamb replacements to exact size. Finishing the products with stain, paint, oil, or lacquer is included in this classification when done 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 all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; the manufacture of wood furniture and caskets which is to be reported separately in classification 2905; the manufacture of wood cabinets, countertops, and fixtures which is to be reported separately in classification 2907; lumber remanufacturing which is to be reported separately in classification 2903-26; veneer manufacturing which is to be reported separately in classification 2904; the manufacture of metal doors, jambs, windows, and sashes which is to be reported separately in classification 3402; and sawmill operations which are to be reported separately in classification 1002.

Special note: Lumber yards and building materials centers subject to classification 2009 are to be assigned classification 2903-08 in addition to their basic classification if they prehang door blanks.

2903-10 Wood box, shook, pallet, bin: Manufacturing, assembly, or repair

Wood pallet dealer/recycle operations: Including repairs of pallets

Applies to establishments engaged in the manufacture, assembly, or repair of wood pallets, boxes, bins, shook, shipping crates, and storage containers. A shook is a set of unassembled sawn wood components for assembling a packing box or barrel. Shooks are usually sold to box assembly plants. Pallets may be constructed out of vertical and horizontal runners of dimensional lumber to form a slatted pallet or by attaching three evenly spaced rows of wooden blocks between two sheets of solid plywood to form a lid-block pallet. Usually, the manufacturer subject to this classification picks up pallets, boxes or shipping crates from the customer, brings them to the plant for repair, reconditioning, or rebuild-

ing, then returns them to the customer. However, the *assembly or repair* of bins is often done at the customer's location, which is still to be reported in classification 2903-10 when performed by employees of the bin manufacturer. Raw materials include, but are not limited to, dimensional lumber, plywood, nails, staples, screws, glue, and paint. Machinery includes, but is not limited to, a variety of saws (table, rip, radial arms, cut-off, band or trim), planers, molders, drills, boring machines, notchers, nailing machines, pneumatic stapler, screw and nail guns, conveyors, roll cases, sorting tables, pallet jacks, and fork lifts. Incoming lumber is cut to specified lengths, widths, and thicknesses with saws, then planed, bored, tongued, and grooved. Pieces are nailed, stapled or glued together to form finished products. Cut ends of pallets, bins, and boxes may be painted for design or for color identification purposes. Customer's name may be imprinted on the product using stencils and paint or wood burning tools. 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 lumber remanufacturing which is to be reported separately in classification 2903-26; and sawmill operations which are to be reported separately in classification 1002. Nonwood pallet/bin dealers are to be reported in the appropriate metal, fiberglass, or plastics classification.

2903-12 Wood products, N.O.C.: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of miscellaneous wood products which are not covered by another classification (N.O.C.), including, but not limited to, ladders, utility pole crossarms, beams, barricades, cable spools, slugs or ends for paper rolls, attic vents, prefabricated wall panels, gazebos, saunas, solariums, lattice panels, mall and park furnishings, playground equipment, docks and floats, parade floats, boat trailer bunks, cattle feeders, tree spreaders, tack strip, exhibit booths, weaving looms, and pottery wheels. Finishing of the product with stains or other lacquers is included in this classification when done by employees of employers subject to this classification. Raw materials include, but are not limited to, dimensional lumber, plywood, particleboard, lath, logs, glue, staples, screws, nails, stains, paints, oils, and lacquers. Operations require substantial amounts of machine work, as well as hand assembly. Machinery includes, but is not limited to, saws (table, panel, cut-off, band, jig, miter, or chain), sanders, planers, routers, shapers, molders, jointers, drill presses, boring machines, hydraulic presses, pneumatic nail, screw and staple guns. 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 also includes log home manufacturers who use a sawmill type operation using dimensional lumber to construct the shell of the home. Log home manufacturers constructing log home shells in a permanent yard using the traditional method of peeling the logs, using chainsaws to notch logs, and assembling the logs together, are to be reported in classification 1003-06.

This classification excludes all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; the manufacture of wood household and sporting goods which is to be reported separately in classification 2909; the manufacture of wood furniture and caskets which is to be reported separately in classification 2905; the manufacture of wood cabinets, countertops and fixtures which is to be reported separately in classification 2907; lumber remanufacturing which is to be reported separately in classification 2903-26; veneer manufacturing which is to be reported separately in classification 2904; and sawmill operations which are to be reported separately in classification 1002.

2903-13 Veneer products: Manufacturing

Applies to establishments engaged in the manufacture of veneer products by laminating rough veneer to plywood or particleboard and applying plastic or polyester overlays. Laminated veneer sheets are generally sold to other manufacturers and used in the construction of items such as, but not limited to, cabinets, countertops, furniture, wall board, flooring, and shelving. Veneer products generally require no pre-finishing with paint, stain or lacquer. Raw materials include, but are not limited to, plywood, particleboard, polyester, paper, polyethylene, fiberglass, plastic laminates and glue. To make veneer products, sheets of rough veneer are individually fed through glue spreader machines which apply glue to both sides. Veneer sheets may be laminated to other veneer or to plywood or particleboard, cut to size with saws, then plastic or polyester overlays applied. Laminated sheets are fed through either hydraulic cold or hot presses to be bonded and cured. More sophisticated presses automatically feed the sheets through, and shear the laminated panels to standard 4' x 8' or 4' x 10' dimensions, or to specified lengths and widths for custom orders. Forklifts are used to move materials. 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 activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; the manufacture of household and sporting goods wooden ware which is to be reported separately in classification 2909; the manufacture of wood products not covered by another classification (N.O.C.) which is to be reported separately in classification 2903-12; the manufacture of wood furniture and caskets which is to be reported separately in classification 2905; the manufacture of wood cabinets, countertops and fixtures which is to be reported separately in classification 2907; the manufacture of rough veneer which is to be reported separately in classification 2904-00; lumber remanufacturing which is to be reported separately in classification 2903-26; and sawmill operations which are to be reported separately in classification 1002.

2903-20 Wood sign: Manufacturing

Applies to establishments engaged in the manufacture of interior or exterior signs made of wood or wood products. Raw materials include, but are not limited to, dimensional lumber, plywood, molding, acrylic, paint, stain, lacquer and hardware. When additional sizing is required, saws, such as

table, panel, cut-off, or radial arm, are used to cut material to desired dimensions. Pieces may be further sized, shaped, and smoothed with routers, saws, planers, or sanders. Stain, paint, or other finishes may be applied as background colors, borders or designs, with pneumatic spray guns, airbrushes, or by hand. Lettering or designs can be painted directly on the sign, cut from separate stock and glued or screwed on, or carved, routed or sandblasted. Computer-cut vinyl lettering may also be applied. Sign painting and lettering is included in this classification when done by employees of the sign manufacturer. Hand drills or drill presses are used to mount wood lettering or designs, bore holes and attach hardware used in the subsequent installation of the sign. 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 installation or removal of signs outside of buildings which is to be reported separately in classification 0403; the installation or removal of signs inside of buildings which is to be reported separately in classification 0513; sign painting or lettering on the inside of buildings which is to be reported separately in classification 4109; establishments that paint on or apply lettering to sign "backings" that are manufactured by others which is to be reported separately in classification 4109; the manufacture of metal or plastic signs which is to be reported separately in the classification applicable to the manufacturing process; and sawmill operations which are to be reported separately in classification 1002.

Special note: The majority of sign manufacturers also install their signs. Installation and removal of signs is to be reported separately.

2903-21 Wood truss: Manufacturing

Applies to establishments engaged in the manufacture of structural roof trusses, and/or ceiling and floor joists from wood or wood products. These products usually do not require a high degree of finishing work. Raw materials include, but are not limited to, dimensional lumber (usually 2" x 4", 2" x 6", and 2" x 8", which is kiln dried, machine stressed, and presurfaced), plywood, metal gussets, and hardware. Dimensional lumber is cut with gang, table, resaw, or radial arm saws. Cut stock is placed in a hydraulic jig assembly which holds the unassembled components in the properly aligned configuration. Pneumatic nailers are used to embed the nail clips which connect each joint of the truss. A gantry, which is an overhead crane traveling along a bridge-like frame, is used to relocate the truss along the assembly line. The assembled truss is placed in a stationary or moveable press which attaches reinforcing triangular shaped metal plates called gussets at each joint or angle. 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 all installation activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; the manufacture of door jambs, windows, sashes, stairs, molding and miscellaneous millwork which is to be reported separately in classification 2903-08; lumber remanufacturing which is to be reported separately in classification

2903-26; and sawmill operations which are to be reported separately in classification 1002.

Special note: Truss manufacturers, whose primary customers are building contractors and building supply dealers, usually deliver their product. Delivery to the construction site often entails placing trusses onto the roof top, using boom lifts mounted on the delivery truck, which is included in this classification when performed by employees of employers subject to this classification.

2903-26 Lumber: Remanufacturing

Applies to establishments engaged in lumber remanufacturing, which is the process of converting cants, plywood, or lumber into a more specialized or higher grade product. Cants are large slabs of wood, usually having one or more rounded edges, which have been cut from logs. The incoming stock is generally green, rough-cut, and may be owned by the customer or by the remanufacturer. Machinery includes, but is not limited to, a variety of saws, (chop, resaw, trim, rip, table, radial arm, and cut-off), planers, surfacers, sanders, molders, groovers, finger jointers, tenoners, gluers, kiln dryers, fork lifts, and trolley cars. Stock is kiln dried, resawed, planed, grooved, or otherwise treated, according to customer specification if the customer owns it, or to standard cuts if it is for resale. Remanufacturers sell lumber to construction contractors or manufacturers that use it in the construction of products such as, but not limited to, paneling, countertops, framing studs, siding, decking, fencing, railroad ties, or molding. Remanufacturers generally do not finish the material with stain, paint, or lacquer. 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 all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; the manufacture of roof trusses and ceiling and floor joints which is to be reported separately in classification 2903-21; veneer manufacturing which is to be reported separately in classification 2904; establishments that exclusively kiln dry and/or treat lumber with preservatives, fire retardants, or insecticides, and that do not perform any remanufacturing operations which are to be reported separately in classification 1003; and sawmill operations which are to be reported separately in classification 1002.

2903-27 Ridge cap and/or shim: Manufacturing

Applies to establishments engaged in the production of shims and ridge caps. Shims are thin wedges of wood used for filling spaces or leveling. Ridge caps are shingles which are used as a covering for roof peaks. 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 all activities away from the shop or plant which are to be reported separately in the classification applicable to the work being performed; 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: This classification must be assigned only by Classification Services after a field inspection of the business has been performed. If a classification must be assigned prior to the field inspection, assign classification 1005-02.

2903-28 Wood boat: Manufacturing, repair, or refinish

Applies to establishments engaged in manufacturing, repairing, or refinishing wooden boats. Raw materials include, but are not limited to, dimensional lumber, plywood, glue, staples, screws, nails, stains, paints, oils, and lacquers. Machinery includes, but is not limited to, band saws, lathes, drill presses, jointers, planers and sanders. Other than pleasure craft, very few wooden boats have been manufactured over the last fifty years. 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 manufacture of fiberglass boats which is to be reported separately in classification 3511, and the manufacture of metal boats which is to be reported separately in the classification applicable to the materials used and work being performed.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2908 Classification 2908.

2908-00 Factory built housing: Manufacturing or assembly

Applies to establishments engaged in the assembly line production of factory built (manufactured) housing such as wood prefab and modular homes, (~~log home kits,~~) mobile homes and prefab cedar homes when manufactured at a shop or adjacent yard. Sections vary in size up to 80 feet long and 28 or more feet wide. Manufactured homes are built on an assembly line with materials such as plywood, rolls of aluminum, steel I beams, insulation, electric wire, particleboard, lumber, pipes, plumbing fixtures, electrical fixtures, appliances, carpeting, paint and hardware. Assembly may be single line or on a side by side line. After the chassis is built, it is placed on a conveyor where workers lay joists and heating and plumbing lines. Floors are then installed, interior walls are raised and cabinets are installed. Preassembled exterior walls are fastened, the roof is placed, covered, and tie down straps are attached. These homes may be sided with aluminum, vinyl, hardwood fiberboard or natural wood. While the chassis and some other steel parts are welded, the majority of the work is performed with stamping and forming equipment, hand and air tools, joiners, jig clamps, planers, hoists, forklifts and rail conveyors. Other parts may be nailed, riveted, stapled or glued. Furniture and blinds or curtains may then be installed and specialty items such as fireplaces may be added. Units are inspected, then moved to the yard until sold or delivered. Individual work stations may include a mill room, cabinet mill room, sheet metal department or paint and finish departments. Some plants may also have sewing departments where they make curtains, blinds and drapes. This classification includes transporting of the factory built home to the customer's site or a dealer's sales lot when performed by employ-

ees of an employer subject to this classification, but excludes set up which is to be reported separately in classification 0517.

This classification excludes establishments engaged in the manufacture of campers and travel trailers which are to be reported separately in classification 2908-02; establishments engaged exclusively in the manufacture of truck canopies which are to be reported separately in classification 2908-03; establishments engaged in the manufacture of fiberglass canopies which are to be reported separately in classification 3511; and delivery and set up performed by an independent contractor which is to be reported separately in classification 0517.

2908-02 Campers and travel trailers: Manufacturing

Applies to establishments engaged in the manufacture of factory built campers or travel trailers which are generally not more than 35 feet long and 8 feet wide. This process includes cutting steel I-beams, placing them on a jig and welding the pieces together. Hitches, running gear, and side frames are installed. Subflooring is assembled on a jig and fastened with lag bolts to the frame. Shears, stamping equipment, drill presses and jig clamps are used to perform the work as the pieces are moved by conveyor. Interior and exterior metal panels and trim are spray painted in spray booths or dipped in tanks, using enamel and then hardened by using drying ovens or heat lamps. All electrical wiring, flooring, carpets, heating units, and plumbing fixtures are installed with the use of electrical hand tools, pneumatic wrenches, staplers, and air compressors. Partition walls are then nailed in place with nail guns. Side walls are framed up on a jig and placed on the trailer. Afterwards, the ceiling is nailed in place and the insulation and cabinets are put in place. Sheet metal sides are stapled on and the top is installed. All systems are checked and the trailer or camper is delivered to the distributor's lot. The process of manufacturing a camper is similar except there are no frame rails, axles or hitch involved as a camper has no chassis. Campers are mounted on pickup trucks; travel trailers are fitted with a hitch for towing behind a motor vehicle.

This classification excludes establishments engaged in the manufacture of factory built housing which are to be reported separately in classification 2908-00; establishments engaged in the manufacture of truck canopies which are to be reported separately in classification 2908-03; establishments engaged in fiberglass canopy manufacturing which are to be reported separately in classification 3511; and camper and travel trailer rental/sales agencies which are to be reported separately in classification 3411.

2908-03 Wood or metal truck canopy: Manufacturing

Applies to establishments engaged in the manufacture of wood or metal truck canopies. After the framework is assembled, insulation is cut to size and inserted, electrical wiring is strung, exterior aluminum sheeting or "skin" is cut to size and attached, interior paneling and decorative trim is fitted, doors and windows are installed and electrical clearance lights are attached. Machinery includes, but is not limited to, saws, electrical hand tools, metal cutting and welding equipment, shears, stamping equipment, drill presses, jig clamps, spray booths, pneumatic wrenches, staple and nail guns, air compressors and miscellaneous hand tools. Direct sales to retail

consumers or to wholesale dealers by a canopy manufacturer are included in this classification.

This classification excludes dealers who sell and/or install canopies who are reported separately in classification 1106; establishments engaged in the manufacture of campers and travel trailers which are to be reported separately in classification 2908-02; establishments engaged in the manufacture of factory built housing which are to be reported in classification 2908-00; and establishments engaged in the manufacture of fiberglass canopies which are to be reported separately in classification 3511.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3402 Classification 3402.

3402-00 Air compressor: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of air compressors. This includes air or gas compressors used for paint sprayers, air tools, tire inflation, and general industrial purposes. Operations contemplated include, but are not limited to, welding, machining, general mechanical and electrical work. Machinery and equipment includes, but is not limited to, hand and air tools, welders, punches, shears, and compression equipment. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

3402-01 Printing or bookbinding machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of printing or bookbinding machinery. The outside casings of the machines may be made of plate metal that varies between 1" to 2 1/2" in thickness. The machines used to make the presses and binding machinery may include both Computer Numeric Controlled (CNC) and manual mills and lathes. Other machinery used in the manufacturing process includes, but is not limited to, welders or cutters, grinders, and drill presses. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant; and the set up, installation and repair of printing or bookbinding machinery which is to be reported separately in classification 0603.

3402-02 Pump, safe, scale, auto jack, and water meter: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of pumps, safes, scales, auto jacks, and water meters. Materials range from brass screws and rubber washers used to rebuild water meters to plate metal and steel castings used for safe and pump manufacturing. Machinery includes, but is not limited to, hand tools used for repairs, lathes, welders, and pressure testers. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant; the installation and repair of safes which is to be reported separately in classification 0607; and the installation of pumps which is to be reported separately in the applicable classification.

3402-03 Shoe or textile machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of shoe machinery or textile machinery. Metal materials used vary in size, shape and dimension. Machinery includes, but is not limited to, drills, mills, lathes, saws, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and the installation and repair of shoe or textile machinery which is to be reported separately in classification 0603.

3402-04 Confectioners or food processing machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of food processing or confectioners machinery. Metal materials used vary in size, shape and weight. These establishments often have an assembly line operation and a separate electronic assembly area. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and the installation and repair of confectioners and food processing machinery which is to be reported separately in classification 0603.

3402-05 Machine shops, N.O.C.

Applies to establishments engaged in general machine shop operations not covered by another classification (N.O.C.), tool sharpening, and mobile welding shops. Many of the establishments in this classification are "job shops." Size and shape of materials vary with steel and aluminum being the most common. Plastics, light weight aluminum, and alloyed metals are becoming increasingly popular in the manufacture of equipment for some industries. These establishments often have welding shops along with machine shops. Machinery and equipment includes, but is not limited to, mills, lathes, grinders, saws, welding equipment, inspection equipment, and material handling equipment. Machinery is both manual and Computer Numeric Controlled (CNC). This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pick up pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, however, sometimes the broken part is removed and taken back to the shop for repair.

This classification excludes repairs to buildings and structures which are to be reported separately in the appropriate construction classification, and mechanical repairs which are to be reported separately in the classification applicable to the work being performed.

Special note: The term "job shop" is an industry term that means the shop will produce products to customer specifications.

3402-06 Power saw, lawn and garden equipment, small motor, N.O.C.: Repair

Applies to establishments engaged in repairing small power tools, small motors powered by gas or diesel, outboard marine engines, and lawn and garden equipment not covered by another classification (N.O.C.). The largest piece of equipment repaired in this classification is generally a riding lawn mower. Classification 3402-06 is assigned in conjunction with a store classification for establishments that have a store operation and also repair the type of items they sell. Classification 3402-06 may also be assigned to a manufacturer's representative who performs warranty repairs. Tools used in this type of repair are mainly hand and air tools. 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 all activities away from the shop or plant and the repair of electrical motors which is to be reported separately in classification 5201.

3402-07 Gear: Manufacturing or grinding

Applies to establishments engaged in the manufacture or grinding of gears. Establishments in this classification may also cut key slots and broaches. Establishments that cut stock to manufacture the gear are often not the same ones that perform the final grinding process. Gears may go through two, three, or four different grinding, slotting, and/or keying establishments and then go to another establishment for electroplating or galvanizing before they are ready for sale or use. Precision machine shops may grind gears to the ten thou-

sandths of an inch. Materials used are usually stainless steel, aluminum, or plastic. Machinery includes, but is not limited to, gear shapers, drill presses, mill, hobbers, grinders, some of which might be Computer Numeric Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

3402-08 Elevator: Manufacturing

Applies to establishments engaged in the manufacture of elevators and associated electronic components. Machinery includes, but is not limited to, mills, drills, lathes, saws, and grinders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and the installation, service, and repair of elevators which is to be reported separately in classification 0602.

3402-11 Metal goods: Manufacturing and shop services (temporary classification)

Applies temporarily to all establishments assigned any classification within WAC 296-17-580. When the metal goods study is complete, the establishments within this classification will be assigned to the appropriate classifications. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation.

This classification excludes all activities away from the shop or plant.

3402-12 Multimedia blasting

Applies to establishments engaged in multimedia (such as, but not limited to, glass, plastic and sand) blasting operations which strip paint or other coatings from metal or fiberglass. Most of the blasting operations in this classification are done on automobiles, but it also applies to establishments that perform blasting on items such as, but not limited to, barbecue grills, and cast iron pieces. Multimedia blasting processes in this classification are performed in a shop, use less air pressure and media with softer finishes than other blasting operations. 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 all activities away from the shop or plant and sandblasting of buildings or structures which is to be reported separately in classification 0504.

3402-14 Furnace, heater, radiator, wood, propane, or pellet stoves: Manufacturing

Applies to establishments engaged in the manufacture of furnaces, radiators, wood, propane, or pellet burning stoves or similar heating fixtures. Materials include, but are not limited to, metal cast parts, sheet metal, plate metal, aluminum, or stainless steel. Machinery includes, but is not limited to, hand tools, solder guns, punches, lathes, and saws. Establishments in this classification may have separate areas for electronic assembly and/or painting. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant; establishments engaged in the manufacture of radiators for automobiles or trucks which are to be reported separately in classification 3402-48; and establishments engaged in the manufacture of baseboard heaters which are to be reported separately in classification 3404.

3402-16 Die casting

Applies to establishments engaged in the manufacture of products by die casting. Die casting is a manufacturing process for producing accurately-dimensioned, sharply-defined metal products which are referred to as "die castings." "Dies" are the steel molds used to mass produce the product. The process begins when ingots of various metal alloys are melted in die casting machines. The machine forces the metal into the die under hydraulic or pneumatic pressure. The casting quickly solidifies in the die, and is automatically ejected by the machine, and the cycle starts again. The castings are cleaned by grinding or sanding, which also removes any excess metal "flash." Many die casting manufacturers maintain their own machine shop for making the dies. Die making, when done as a part of die casting operations, is included within the scope of this classification. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant; and establishments engaged in making dies for others which are to be reported separately in classification 3402-74.

3402-26 Saw blade: Manufacturing, assembly, or sharpening

Applies to establishments engaged in the manufacture, assembly, or sharpening of saw blades such as, but not limited to, those used in circular saws, band saws, ripsaws, key-hole saws, and handsaws such as hacksaws or meat saws. This classification also includes sharpening services for items such as, but not limited to, tools, scissors, and knives. Mate-

rials include, but are not limited to, high tensile steel and carbide tipped blades. Machinery includes, but is not limited to, saws, mills, drills, and hand tools. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant; establishments engaged in the repair or sharpening of chain saws which are to be reported separately in classification 3402-06; and establishments engaged in the manufacture or repair of electrical saws which are to be reported separately in classification 5201.

3402-28 Heat treating metal

Applies to establishments engaged in heat treating metal. The heat treating process may use computer numeric controlled ovens or furnaces. The oven may heat up to 1200 degrees Fahrenheit and a furnace may heat up to 2000 degrees Fahrenheit. The metal(s) is placed on a platform; the platform is hydraulically moved into the first chamber and the door is automatically closed. At this time, the oxygen is burned from the chamber. Then the second chamber door is opened and the metal enters the oven/furnace. Depending upon the specifications, the heat treating process usually takes six to sixteen hours. When the metal is finished in the heating chamber it returns automatically to the first chamber. Then the platform lowers and the metals are dipped into a cooling agent. Once the metals are cooled to room temperature the platform rises, the door opens, and the materials are removed. The process is essentially the same using noncomputer numeric controlled heat treating equipment except that, rather than being hydraulically operated, the machine operators move the metals through the system. Many establishments do not produce a product, but heat treat a variety of products to customer specifications. 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 all activities away from the shop or plant.

3402-29 Nut, bolt, screw, nail, tack, rivet, eyelet spike, needle, N.O.C.: Manufacturing**Sprinkler head, speedometer, carburetor: Manufacturing or assembly**

Applies to establishments engaged in the manufacture of nuts, bolts, screws, nails, tacks, rivets, eyelets, spikes, and needles not covered by another classification (N.O.C.). This classification also applies to establishments engaged in the manufacture or assembly of sprinkler heads, speedometers, or carburetors. Materials include, but are not limited to, steel or iron rods which may be pressed or formed, and small component parts. Machinery includes, but is not limited to, saws, shears, presses, chucks, threading and tapping machines, some of which may be Computer Numeric Controlled (CNC). Establishments may have separate areas for deburring, inspecting, packing and shipping. The carburetor

rebuilding may be performed on vehicles that are driven or towed into the shop, or on carburetors that have been already removed from the vehicles. In either case the repairs are made exclusively with hand and air tools and sometimes a diagnostic scope and a drill press. A speedometer is usually embodied with a mileage recording mechanism. The central feature of the device is a permanent magnet. There are gears, spindles, and a drive shaft present in most speedometers. There is also a unit counting disc and a spiral spring calibrator. Hand tools are used almost exclusively in the repair of this kind of speedometer. Today many speedometers are computer controlled. Basically, if this kind of speedometer is in need of repair, a computer chip(s) is replaced, using hand tools. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and establishments engaged in the manufacture of hardware that is not covered under another classification, such as handles, latches, and hinges which are to be reported separately in classification 3404, and the repair of speedometers or carburetors in a vehicle which is to be reported separately in the appropriate vehicle repair classification.

3402-32 Abrasive wheel: Manufacturing

Applies to establishments engaged in the manufacture of abrasive wheels. Manufacturing operations often include a laboratory where carbon and other materials are mixed together to form the abrasive edge of the mainly high tensile steel wheels. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

3402-40 Welding or cutting, N.O.C. (*mobile operations limited to repair of equipment and machinery*)

Applies to establishments engaged in welding or cutting operations not covered by another classification (N.O.C.) either in the shop or at the customer's site. Steel is the predominant material along with some aluminum alloys. Machinery is predominantly welding equipment, but may include tools such as, but not limited to, grinders, saws, drills, and material handling equipment. This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pick up pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, sometimes with the use of the customer's equipment; however,

broken parts may be removed and taken back to the shop for repair.

This classification excludes welding construction and repairs to buildings or structures which are to be reported separately in the appropriate construction classification and mechanical repairs which are to be reported separately in the classification applicable to the work being performed.

3402-48 Automobile or truck, radiator and heater core: Manufacturing and repair shops

Applies to establishments engaged in the manufacture and/or repair of automobile or truck radiator and heater cores. Manufacturers in this classification may have a die casting area and a separate electronic assembly area. Tools and equipment include, but are not limited to, hand tools, solder guns, and punches. Shops that repair radiators may work on the radiators in the vehicles, but usually the radiators have been removed from the vehicle. The radiator is examined and the core may be removed. Next the radiator is cleaned, air pressurized, and dipped in a water tank to check it for leaks. Once the leaks are found they can generally be repaired by welding the holes shut. The radiator is dipped again to ensure the repair has been made properly. Cleaning the radiator may be done by sandblasting, ultra sound baths or by "rodding" the radiator to remove corrosion. Repair equipment includes, but is not limited to, welders, air and hand tools, dipping tanks, hoists, and forklifts. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

3402-60 Office machinery, N.O.C.: Manufacturing or assembly; Cash register or sewing machines: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of cash registers, sewing machines and office machinery not covered by another classification (N.O.C.) such as, but not limited to, copiers, collators, mail/postage machines, calculators and automatic letter openers. Component parts may be metal, plastic, or wood. Operations include, but are not limited to, cutting, shaping, forming, drilling, riveting, clamping, and bolting; there may be a separate electronic assembly area. Machinery and tools vary within this classification; some establishments use hand and air tools only, others use additional equipment such as, but not limited to, saws, lathes, mills, drills, or water jets, some of which may be Computer Numeric Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

3402-61 Small arms: Manufacturing, assembly, or rebuild

Applies to establishments engaged in the manufacture, assembly, or rebuild of small arms. For the purpose of this classification, small arms means .50 caliber or less, such as pistols, rifles, shotguns, and light machine guns. Operations include, but are not limited to, metal stamping of casings, machining, assembling, and a high proportion of inspecting. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant; establishments engaged in the manufacture of ammunition which is to be reported separately in classification 4601; the manufacture or repair of heavy arms which is to be reported separately in classification 5109; and gun stores which are to be reported separately in classification 6309.

3402-74 Tool: Manufacturing, not hot forming or stamping; Die: Manufacturing - ferrous

Applies to establishments engaged in tool manufacturing or die manufacturing, for others, from ferrous materials. Tools manufactured in this classification are usually cutting tools used in lathes, mills, rotors, and saws. Machinery includes, but is not limited to, sharpeners, grinders, lathes and mills, which are both manual or Computer Numeric Controlled (CNC). The die manufacturing included in this classification includes those made exclusively of ferrous materials including, but not limited to, jigs, fixtures, and dies for metal work in general. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and establishments engaged in the manufacture of machine-finished tools which are to be reported separately in classification 3402-83.

3402-77 Auto, truck, semi-trailer and bus body: Manufacturing;

Travel trailer body: Manufacturing or repair

Applies to establishments engaged in the manufacture of auto, truck, and bus bodies, and in the manufacture or repair of travel trailer bodies or cargo containers. Repairs are usually made with the use of welders or cutting torches and air or hand tools. These establishments will also repair or replace hydraulic units. Material used in the manufacture of goods in this classification is usually steel and aluminum, varying in thickness from 16 gauge to plate metal up to one inch thick.

Shapes include, but are not limited to, sheet metal, tubes, solid rod or I-beams. Equipment includes, but is not limited to, shears, breaks, hydraulic presses, iron workers, drill presses, grinders, welders, hoist, cranes, and forklifts. Shops may have a finish sanding area as well as a paint area where the vehicle bodies are sprayed with primer, a body bonding material, or a finish coat of paint. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

3402-83 Tool: Manufacturing and machine finishing

Applies to establishments engaged in manufacturing and machine finishing tools. Tools manufactured in this classification are usually hand held instruments such as, but not limited to, wrenches, screw drivers, hammers, torque wrenches, pliers, and sockets. Machinery includes, but is not limited to, air and hand tools, polishers, grinders, inspection equipment, mills, lathes, shapers, and drill presses, some of which may be Computer Numeric Control (CNC). Establishments may have a galvanizing and/or electroplating area for the finish work which is included when performed by employees of employers subject to this classification. Other establishments in this classification send the finish work out. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant; establishments engaged in the manufacture of tools from ferrous materials which are to be reported separately in classification 3402-74; and establishments engaged in tool forging which are to be reported separately in classification 5106.

3402-85 Auto or truck parts: Machining or rebuild not in vehicle

Applies to establishments engaged in machining or rebuilding auto or truck parts such as, but not limited to, water pumps, fuel pumps, transmissions, heads, brake drums, ball joints, and rear ends, which are not in the vehicle. Work contemplated in this classification may also include manufacturing sockets, pulleys, shafts, fittings, flywheels, and/or bearings. Machinery includes, but is not limited to, mills, lathes, grinders, sanders, presses, welders, and balancing 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 all activities away from the shop or plant and establishments engaged in manufacturing

or rebuilding auto, truck, or aircraft engines which are to be reported separately in classification 3402-86.

3402-86 Auto, truck or aircraft engine, N.O.C.: Manufacturing or rebuilding

Applies to establishments engaged in manufacturing or rebuilding auto, truck, or aircraft engines not covered by another classification (N.O.C.), including manufacturing the component parts. Establishments in this classification often specialize in the type of engines they make or rebuild. The basic difference between automobile, truck, and aircraft engines is the size and weight of the parts being worked on. Engine rebuild shops use many specialized machines and air tools to tear the core down to an engine block; then rebuild the engine. After the engine is stripped down to the engine block, it is placed in a machine called a baker which heats to approximately 600 degrees and bakes away the grease. After baking, the engine block is placed in a sand blaster where the surface is cleaned with very fine steel shot. The engine block is then placed in a large pressure washer which removes the steel shot. Next, the crank and cam shafts are ground and turned on machinery similar to lathes. There is usually a separate room or area which is called the "head shop" where the heads and valves are machined on valve grinders, valve facers, and head grinders. Engine rebuild shops that do not have the equipment to grind the crank and cam shafts will contract work out to other shops, or buy new crank shafts and cam shafts. Other machinery includes, but is not limited to, boring bars and hones to polish cylinder walls, small pressure washers for oil pans and other smaller parts, solvent tanks, and hoists or forklifts for lifting the engines or engine parts. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and establishments engaged in machining or rebuilding auto or truck parts, other than engines, which are to be reported separately in classification 3402-85.

3402-91 Bed spring or wire mattress: Manufacturing

Applies to establishments engaged in the manufacture of bed springs or wire mattresses. The wire stock is coiled and cut to length on a coiling machine, then tempered in an oven to produce the spring. The coils are fastened to the frame either by hand or by machine. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and establishments engaged in the manufacture of stuffed mattresses which are to be reported separately in classification 3708.

3402-93 Valve: Manufacturing

Applies to establishments engaged in the manufacture of valves. Valves regulate the flow of air, gases, liquids, or loose material through structures by opening, closing, or obstructing passageways. They are operated manually, electrically, with compressed air, or hydraulic pressure. Valves are usually cut from aluminum, steel, or stainless steel either by a Computer Numeric Controlled machine (CNC) or water jet machine. Depending upon the complexity of the valve, they are assembled in one or several stages. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and establishments engaged in the manufacture of valves made in a die mold which are to be reported separately in classification 3402-74.

3402-94 Precision machined parts, N.O.C.: Manufacturing

Applies to establishments engaged in manufacturing precision machined parts not covered by another classification (N.O.C.). Most of these establishments are "job shops." Job shops make component parts for other businesses according to customer specifications, rather than manufacturing a specific product. Many establishments in this classification manufacture precision parts for the aerospace industry. Machining usually begins with solid blocks of material such as, but not limited to, steel, aluminum, titanium, inconel, or plastic, although some hollow tube, flat bar, and angle stock may also be used. The "rough cuts" are often made on manual machines, and the finish cuts on Computer Numeric Controlled (CNC) machines. Depending on the establishment and the job specifications, a specific part may be sent to one or more additional shops to be tempered, milled, or inspected before the original establishment is through with the manufacturing process. Some parts are so sensitive that climate controlled conditions are necessary. Both manual and CNC mills and lathes are the most common types of machines used. Others include, but are not limited to, saws, drills, and grinding machines. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

3402-95 Storage battery: Manufacturing, assembly or repair

Applies to establishments engaged in the manufacture, assembly, or repair of storage batteries. Lead ingots, weighing 20-25 pounds, are melted and poured into a mold or cast-

ing machine. After the grids are cooled lead oxide is then pumped onto each side of a grid and cured by baking in an oven of about 300 - 400 degrees F. The plates are then assembled by placing a negative separator (zinc) between a positive separator (copper), and so forth until there are enough of these cells to form the battery. Next, they are sent to a burning machine that cures the paste and plates. After the burning process, the plates are placed into a plastic or hard rubber box-like container and cured for two or three days. The plates are welded together and the top is attached to the body of the battery case with an epoxy glue. Diluted sulfuric acid is added to the battery and then it is put on a charger. The battery is then cleaned and packed for shipping. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant; establishments engaged in the manufacture of dry cell (flashlight type) batteries which are to be reported separately in classification 3602; and establishments engaged in battery sales and installation which are to be reported separately in the applicable automotive services classification.

3402-96 Automobile or motorcycle: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of automobiles or motorcycles. Most of the manufacturing operations, such as cutting, milling, and turning, are performed with Computer Numerically Controlled (CNC) machinery. Most of the assembly operations are performed with air and hand tools. Other machinery includes but is not limited to saws, grinders, and drill presses. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant and establishments engaged only in the manufacture of auto bodies which are to be reported separately in classification 3402-77.

3402-98 Machinery, N.O.C.: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of machinery not covered by another classification (N.O.C.). For purposes of this classification, machinery means any combination of mechanical parts constructed primarily with metal. Finished products vary widely and range from hand held machines to those weighing thousands of pounds; products include, but are not limited to, grinding machines, boring machines, conveyer systems, and wood chippers. Machinery used to manufacture these items includes, but is not limited to, lathes, mills, press, breaks,

shears, and welders, some of which may be Computer Numerically Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

3402-99 Photo processing machinery: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of photo processing machinery such as, but not limited to, photo processors or film enlargers. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. 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 all activities away from the shop or plant.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3406 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.). 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; windshield repair

Applies to establishments engaged in providing automobile or truck detailing services and to establishments engaged solely in tinting glass in automobiles or repairing cracks, chips or bullseyes in windshields. 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, services 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 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3414 Classification 3414.

3414-00 Boat dealers

Applies to establishments engaged in the sales, service, and/or repair of boats. Work contemplated by this classification includes, but is not limited to, mechanical and electrical system repairs, vinyl and glass repairs, engine rebuilding and reconditioning, detailing boats, reconditioning seat pads and other accessories, sales and installation of boat accessories, and sales of boat trailers, specialty apparel and fishing gear when performed by employees of an employer subject to this classification. This classification also includes parts department employees, sales employees who also assist in duties described in this classification, and lot personnel.

This classification excludes boat sales personnel who may be reported separately in classification 6301 provided all the conditions of the general reporting rule covering standard exception employees have been met; repairs done in connection with manufacturing operations which are to be reported separately as applicable; and establishments engaged in the repair of fiberglass or sheet metal boat bodies which are to be reported separately in classification 3412 and the repair of wooden boats which is to be reported separately in classification 2903.

3414-01 Marinas and boat house operations: Boat storage facilities

Applies to establishments engaged in providing a variety of boat-related services and facilities, and to service or repair centers. Boat storage facilities may be located in waterways

adjacent to the marina or on dry land and may be operated by a marina or by a separate business. Both types of storage facilities are included within the scope of this classification. Work contemplated by this classification includes, but is not limited to, fuel service, mechanical and electrical repair service, parts departments, boat storage, moorage, sales of fishing gear, wearing apparel, groceries and bait, boat rentals and sales, and boat launching facilities when performed by employees of an employer assigned to this classification. This classification also includes other incidental services and facilities such as, but not limited to, self-service laundry facilities, public showers, holding tank pump out stations, passenger car or truck parking, and dockside electricity.

This classification excludes repairs done in connection with manufacturing operations which are to be reported separately as applicable; establishments engaged in the repair of fiberglass or sheet metal boat bodies which are to be reported separately in classification 3412; seafood or fish processing facilities operated in connection with a marina operation which are to be reported separately in classification 3304; and boat sales personnel who may be reported separately in classification 6301 provided all the conditions of the general reporting rule covering standard exception employees have been met. Overnight lodging facilities and restaurant services provided to customers by a marina operator may be reported separately provided all the conditions of the general reporting rule covering a secondary business have been met.

Special note: Some marina operators will offer boating instructions and charter boat services. Care should be taken in this area as certain boating and charter fishing excursions are not covered by state workers' compensation coverage.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5001 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)) side.

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 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5109 Classification 5109.

5109-46 Heavy machinery & equipment including locomotive engines: Manufacture or repair; Press roller recoating/resurfacing

Applies to establishments engaged in the manufacture, assembly, and repair of heavy equipment. Machinery and equipment subject to this classification are usually made of steel and steel/iron castings and include, but are not limited to, bulldozers, dump trucks, graders, skidders, forklifts and logging towers. The component parts may weigh several hundred to thousands of pounds. Overhead cranes are commonly used in the assembly process. Machinery used in the manufacturing, assembly, and repair includes, but is not limited to, boring mills, lathes, iron workers, welders/cutters, cut saws, and drills. Some establishments use CNC (computer numeric controlled) machinery; however, most establishments in this classification primarily use manual machinery and conventional welders/cutters. Other common operations covered by this classification include paint, welding, and electronic assembly areas. This classification also includes establishments that repair, recoat or resurface press rollers such as, but not limited to, the type rollers used by printing and paper making mills. Operations include repairing the interior shafts of the rollers, then grinding fiberglass or ceramic finishes until they are smooth. For rubber-coated surfaces, they remove the old rubber from the metal surface, sandblast the roller, then recoat it with new rubber. Most establishments that recoat the surface with rubber will mix and extrude their own rubber which is included in this classification when performed by employees of employers subject to this classification.

This classification excludes the manufacture of nonpassenger type vehicles such as semi-trucks which are to be reported in classification 3605; auto or passenger vehicle manufacturing which is to be reported in 3402. Semi-truck repair and service centers are to be reported separately in classification 6409.

Special note: Field work as well as shop work is contemplated as an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken to the job site and reconnected. Some establishments perform this type of field work almost exclusively.

5109-47 Heavy arms: Manufacturing or repair

Applies to establishments engaged in the manufacture or repair of heavy arms including large munitions. This classification applies to all types of guns 20 MM and larger including, but not limited to, aircraft guns, tank guns, naval guns, torpedoes and aircraft gun turrets.

Special note: Field work as well as shop work is contemplated as an integral part of this classification. A vehicle may be equipped with welding equipment and other tools used for field repair. The broken part may be replaced in the field or returned to the shop, repaired if feasible, or a new part is ordered. The part is then loaded onto the field vehicle taken

to the job site and reconnected. Some establishments perform this type of field work almost exclusively.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6409 Classification 6409.

6409-00 Dealers: Machinery/equipment, N.O.C.; Service/repair garages: Machinery/equipment, N.O.C.

Applies to establishments engaged in the sale, lease, rental, service, and/or repair of new or used machinery and equipment not covered by another classification (N.O.C.). For purposes of this classification the terms machinery or equipment includes, but are not limited to, semi trucks, diesel tractors, buses, construction equipment, concrete barriers and other flagging equipment used in construction projects, logging equipment, transportation equipment, freight hauling equipment, well drilling equipment, power generators, and industrial or manufacturing machinery. Operations of dealers include, but are not limited to, the sale, lease, rental, demonstration, service, or repair of their equipment, either on their premises or at the customer's site, and delivery to customer. The variety of merchandise carried by a machinery and equipment dealer varies with the needs of the geographical area and may be displayed in inside showrooms and/or outside yards. Operations of service centers include diagnostic services, all phases of mechanical service such as, but not limited to, tuning, overhauling and/or rebuilding engines, motors, or transmissions, resurfacing heads, repairing carburetors or fuel injection systems and grinding valves or brakes on equipment or machinery owned by others. In addition to parts for the machinery and equipment, establishments in this classification may carry some automobile parts, hardware items, and supplies such as oil, filters, and belts. This classification includes lot sales and lot personnel, service managers and employees, parts department employees who have exposure to the service/repair shop or duties related to the sale of machinery/equipment, towing service for in-shop repairs, and regional sales and/or service representatives who provide factory service or training to local dealers and other customers. Parts department employees who are not exposed to any hazards of the service/repair shop or have no duties related to the sale of machinery/equipment may be reported separately in classification 6309. This classification also includes the rental and installation of temporary fences.

This classification excludes farm machinery and equipment dealers who are to be reported separately in classification 6408; store operations of dairy equipment and supply dealers which is to be reported separately in classification 6407; the installation of industrial plant equipment which is to be reported separately in classification 0603; the installation, service, or repair of dairy machinery or equipment which is to be reported separately in classification 0603; all field installation, service, or repair work of wind machine dealers which is to be reported separately in classification 0603; and the manufacture or structural repair of heavy machinery or equipment which is to be reported separately in classification ((3402)) 5109.

Special note: Care needs to be taken when considering the assignment of classification 6309 for the sale of parts.

Most businesses assigned to classification 6409-00 have an inventory of parts or accessories which they use in the service or repair of machinery or equipment, or maintain as a convenience to their customers. *Only* those businesses that maintain a complete line of replacement parts that is physically separated from the service/repair shop should be considered for classification 6309.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6510 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 or about the home owner's private residence. This classification includes services such as, but not limited to, cooking, house-keeping, 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, gardening, caretaker at homeowner's residence, and transporting members of the household by vehicle to appointments, after school activities, or similar activities. This classification also includes the care of animals not used for a business at the homeowner's residence.

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:

(1) 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.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer...." This classification is also subject to the provisions of RCW 51.12.110 which allows the employer to elect optional coverage for domestic servants and caretakers.

This classification excludes entities whose nature of business is to provide 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))~~ lawn and yard maintenance services which are to be reported separately in classification 0308; skilled or semiskilled nursing care which is to be reported separately in classification 6110; and new construction which would be reported in the classification appropriate for that phase of construction.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6511 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 supported 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. This classification also excludes home care providers covered under the home care quality authority who are to be reported separately under classification ~~((6511-01))~~ 6512.

**WSR 07-12-057
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2006-02—Filed June 4, 2007, 8:11 a.m., effective July 22, 2007]

Effective Date of Rule: July 22, 2007.

Purpose: These are new procedural rules that implement chapter 48.140 RCW (amended by chapter 32, Laws of 2007) and RCW 7.70.140. These rules describe the process and procedures that reporting entities and claimants must use to report medical malpractice closed claim and/or settlement data to the commissioner.

Statutory Authority for Adoption: RCW 48.02.060, 48.140.060, and 7.70.140.

Adopted under notice filed as WSR 07-07-126 on March 21, 2007.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 284-24D-160 was revised to be consistent with chapter 32, Laws of 2007, that amends RCW 48.140.-020 and becomes effective July 22, 2007.

2. WAC 284-24E-060 was split into two sections (WAC 284-24E-060 and 284-24E-063) because the content of the section was inconsistent with the heading. Information related to the types of claims that must be reported was left in WAC 284-24E-060, and information related to when a claim is considered settled was moved to WAC 284-24E-063. These sections are now consistent with WAC 284-24D-060 and 284-24D-080.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 4, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 56, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 56, Amended 0, Repealed 0.

Date Adopted: June 4, 2007.

Mike Kreidler
Insurance Commissioner

Chapter 284-24E WAC

MEDICAL MALPRACTICE CLAIM SETTLEMENT DATA REPORTING RULES FOR ATTORNEYS AND CLAIMANTS

NEW SECTION

WAC 284-24E-010 Purpose. This chapter contains procedural rules to implement RCW 7.70.140. This chapter describes the rules, practices and procedures that claimants and their attorneys must use to report claim settlement data to the commissioner.

NEW SECTION

WAC 284-24E-020 Definitions. The definitions in this section apply throughout this chapter.

- (1) "Claim" means the same as in RCW 48.140.010(1).
- (2) "Claimant" means the same as in RCW 48.140.010(2), and, for reporting purposes, includes a claimant's legal representative.
- (3) "Commissioner" means the insurance commissioner.
- (4) "Facility" means the same as in RCW 48.140.010(6).
- (5) "Insuring entity" means the same as in RCW 48.140.010(8).
- (6) "Medical malpractice" means the same as in RCW 48.140.010(9).
- (7) "OIC" means office of insurance commissioner.
- (8) "Provider" means the same as in RCW 48.140.010(7).
- (9) "Record identifier" means the number assigned to a claim by the reporting site when a person first enters claim settlement information.
- (10) "Reporting site" means the OIC web-based application that attorneys and claimants must use to report medical malpractice claim settlement data.
- (11) "Self-insurer" means the same as in RCW 48.140.010(11).
- (12) "User ID" is a permanent number assigned by the reporting site to any claimant or attorney who reports claim settlement data.

NEW SECTION

WAC 284-24E-030 How will the commissioner ensure data confidentiality under RCW 48.140.060(2)?

RCW 42.56.400(11) protects data filed under RCW 7.70.140 from public disclosure. To ensure data confidentiality, the commissioner will:

- (1) Develop a secure web-based data reporting application;
- (2) Train OIC staff on applicable laws and agency practices related to protecting confidential and privileged information;
- (3) Limit access to the claim data base to OIC staff responsible for preparing the statistical summaries and annual report;
- (4) Develop and implement confidentiality procedures to be used by staff that has access to the closed claim data base;
- (5) Develop procedures to use if data are accidentally released; and
- (6) Use aggregate data in summaries and reports so that individual claim data cannot be identified.

NEW SECTION

WAC 284-24E-040 How is claim settlement data reported to the commissioner? Persons reporting claim settlement data must use the reporting site maintained by the commissioner. To help attorneys and claimants collect data, the commissioner will post a reporting form on the OIC internet site so that claim settlement data can be organized before it is entered into the reporting site.

NEW SECTION

WAC 284-24E-050 How will the OIC assign user ID codes? The reporting site will assign a permanent user ID to an attorney or claimant the first time the attorney or claimant enters claim settlement data into the reporting site.

NEW SECTION

WAC 284-24E-060 What types of settled claims must be reported to the commissioner? If a medical malpractice claim is actionable under chapter 7.70 RCW and the claimant receives an indemnity payment from an insuring entity, self-insurer, facility or provider, the claimant or his or her attorney must report claim settlement data to the commissioner.

NEW SECTION

WAC 284-24E-063 When is a claim considered settled and subject to reporting with the OIC? A claim is settled when the claimant:

- (1) Receives final indemnity payment(s) from all defendants;
- (2) Pays all related legal expenses; and
- (3) Pays all related attorney fees agreed to by the claimant and his or her attorney.

NEW SECTION

WAC 284-24E-070 Are write-offs or other small sums of money provided as customer service gestures considered claims? If a self-insurer, facility or provider waives copayments, forgives bills or deductibles, or makes

other similar accommodations to a client, it is not a claim under RCW 48.140.010(1). Claimants are not required to report these types of accommodations to the commissioner.

NEW SECTION

WAC 284-24E-080 Who has the primary responsibility for reporting claim settlement data to the commissioner? (1) If a claimant is represented by an attorney, the attorney must report claim settlement data to the commissioner after the claim is settled.

(2) If a claimant is not represented by an attorney:

(a) The claimant must report claim settlement data to the commissioner; and

(b) An insuring entity, self-insurer or provider may assist or inform the claimant of his or her reporting responsibilities.

NEW SECTION

WAC 284-24E-090 When are claim reports due? Under RCW 7.70.140, a claimant or his or her attorney must report claims settled in the preceding calendar year to the commissioner.

(1) Beginning in 2009, claim settlement reports for the prior calendar year are due by March 1.

(2) An attorney or claimant may enter data into the reporting site at any time after the claim is settled, but no later than March 1.

NEW SECTION

WAC 284-24E-100 Can settlement reports be reopened to make changes or corrections to previously reported data? The reporting site will allow an attorney or claimant to change previously reported claim settlement data, subject to these rules:

(1) OIC will freeze data contained in the reporting site from March 15 through June 30 each year so the OIC can prepare reports and statistical summaries can be prepared as required by RCW 48.140.040 and 48.140.050. The commissioner may accept changes to previously reported data if a correction or omission will significantly affect the conclusions stated in the annual report.

(2) After June 30, the reporting site will allow an attorney or claimant to change previously reported data.

(a) An attorney or claimant can reopen a claim report using their permanent user ID and the record identifier and make changes or corrections to data.

(b) Changes and corrections submitted after June 30 of each year will appear in future reports and statistical summaries.

NEW SECTION

WAC 284-24E-110 How should claim disposition information be reported? When reporting the final method of claim disposition under RCW 7.70.140 (2)(b)(v), an attorney or claimant must describe the method of claim disposition using one of the descriptions listed below:

(1) Claim is settled by the parties.

(2) Claim is disposed of by a court when the court issues a:

(a) Directed verdict for plaintiff;

(b) Judgment notwithstanding verdict for defendant (judgment for plaintiff);

(c) Judgment for plaintiff; or

(d) Judgment for plaintiff after appeal.

(3) Claim settled by alternative dispute resolution process, whether resolved by:

(a) Arbitration;

(b) Mediation;

(c) Private trial; or

(d) Other type of alternative dispute resolution process.

NEW SECTION

WAC 284-24E-120 How should information about the timing of the settlement be reported? Persons reporting claims must report whether the claim is settled:

(1) Before filing suit, requesting arbitration or mediation hearing;

(2) Before trial, arbitration or mediation;

(3) During trial, arbitration or mediation;

(4) After trial or hearing, but before judgment or award;

(5) After judgment or decision, but before appeal;

(6) During an appeal; or

(7) After an appeal.

NEW SECTION

WAC 284-24E-130 How is the judgment or settlement amount reported? Persons reporting claims must report the total amount paid by all defendants to the claimant to settle the claim.

NEW SECTION

WAC 284-24E-140 How are structured settlements reported? (1) If a claim is settled with a structured settlement agreement, the attorney or claimant must report the lump-sum payment that is paid for the annuity.

(2) If a claim is settled with a combination of a lump-sum payment to the claimant and a structured settlement, the attorney or claimant must report the sum of both payments.

NEW SECTION

WAC 284-24E-150 How should claims settlement data be reported if there is more than one defendant? An attorney or claimant must wait until all claims are settled before reporting under RCW 7.70.140. After all claims are settled, the person reporting claim settlement data must report these data to the commissioner:

(1) The total of all settlements paid by all defendants; and

(2) The total amounts paid by the claimant for legal expenses, itemized by:

(a) Court costs;

(b) Expert witnesses fees; and

(c) Attorney fees and expenses.

Chapter 284-24D WAC**MEDICAL MALPRACTICE CLOSED
CLAIM DATA REPORTING RULES
FOR FACILITIES AND PROVIDERS**NEW SECTION

WAC 284-24D-010 Purpose. This chapter contains procedural rules to implement chapter 48.140 RCW. This chapter describes the rules, practices and procedures that insuring entities, self-insurers, health care facilities and providers must use to report data to the commissioner as required by chapter 48.140 RCW.

NEW SECTION

WAC 284-24D-020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Allocated loss adjustment expense" or "ALAE" means defense and cost containment expenses paid or incurred for defense, litigation and medical cost containment expenses and services. Either internal staff, such as in-house counsel or professional medical staff, or external staff, such as defense counsel or expert witnesses, may provide defense and cost containment services.

(a) Defense and cost containment expenses and services include:

(i) Defense services provided by:

(A) Attorneys or expert witnesses; and

(B) Private investigators, hearing representatives or fraud investigators.

(ii) Cost containment activities and services performed by external or internal experts to defend the claim, including:

(A) Case evaluation, such as evaluating whether the medical care provided met professional standards;

(B) Risk assessment;

(C) Case preparation and management;

(D) Medical record review; and

(E) Settlement negotiations.

(iii) Specific case-related expenses, such as:

(A) Surveillance expenses;

(B) Court costs;

(C) Medical examination fees;

(D) The costs of laboratory, X-ray and other medical tests;

(E) Autopsy expenses;

(F) Stenographic expenses;

(G) Fees associated with witnesses and summonses; and

(H) The costs to obtain copies of documents.

(b) Allocated loss adjustment expenses do not include:

(i) Expenses incurred to determine whether coverage is available; or

(ii) Expenses or costs associated with external or internal claims adjusting staff.

(2) "Claim" means the same as in RCW 48.140.010(1).

(3) "Claim identifier" means the unique number assigned to a claim by the reporting entity as required by RCW 48.140.030 (1)(a).

(4) "Claimant" means the same as in RCW 48.140.010 (2).

(5) "Closed claim" means the same as in RCW 48.140.-010(3).

(6) "Commissioner" means the insurance commissioner.

(7) "Companion claims" means the same as in RCW 48.140.030 (1)(b).

(8) "Economic damages" means the same as in RCW 4.56.250 (1)(a).

(9) "Excess insuring entity" means an insuring entity that provides insurance coverage above the limits of primary insurance or a self-insured retention.

(10) "Facility" means the same as in RCW 48.140.010 (6).

(11) "Paid and estimated economic damages" means economic damages paid to a claimant based on:

(a) Objectively verifiable evidence; and

(b) Estimates developed from the injured person's available personal data and related economic data. Estimated economic damages typically include, but are not limited to:

(i) Lost earnings and benefits;

(ii) Lost earnings potential;

(iii) Lost value of household services; and

(iv) Future medical care costs.

(12) "Incident identifier" means the unique number assigned by the reporting entity to a series of closed claims that result from a single incident or related series of incidents of actual or alleged medical malpractice.

(13) "Insuring entity" means the same as in RCW 48.140.010(8).

(14) "Medical malpractice" means the same as in RCW 48.140.010(9).

(15) "OIC" means office of insurance commissioner.

(16) "Primary insuring entity" means the insuring entity that originates the primary layer of insurance coverage.

(17) "Provider" means the same as in RCW 48.140.010 (7).

(18) "Record identifier" means a number assigned to a claim by the reporting site when a reporting entity first enters closed claim data.

(19) "Reporting entity" means any person or entity required to report data under RCW 48.140.020.

(20) "Reporting site" means the OIC web-based application that insuring entities, facilities, providers, and self-insurers must use to report medical malpractice closed claim data.

(21) "Self-insurer" means the same as in RCW 48.140.-010(11).

(22) "User ID" is a permanent number assigned by the reporting site to each insuring entity, self-insurer, facility or provider.

NEW SECTION

WAC 284-24D-030 How will the commissioner ensure data confidentiality under RCW 48.140.060(2)? RCW 42.56.400(11) protects data filed under chapter 48.140 RCW from public disclosure. To ensure data confidentiality, the commissioner will:

(1) Develop a secure web-based data reporting applica-

(2) Train OIC staff on applicable laws and agency practices related to protecting confidential and privileged information;

(3) Limit access to the claim data base to OIC staff responsible for preparing the statistical summaries and annual report;

(4) Develop and implement confidentiality procedures to be used by staff that has access to the closed claim data base;

(5) Develop procedures to use if data are accidentally released; and

(6) Use aggregate data in summaries and reports so that individual claim data cannot be identified.

NEW SECTION

WAC 284-24D-040 How are closed claims reported to the commissioner? (1) Except as provided in subsection (2) of this section, reporting entities must use the reporting site maintained by the OIC to report closed claims. To help reporting entities collect data, the commissioner will post reporting forms on the OIC internet site so that reporting entities can organize data before entering data into the reporting site.

(2) The commissioner may permit a reporting entity to transmit data electronically in an alternative format if the reporting entity develops, at its own expense, an interface that is compatible with the OIC closed claim data base.

NEW SECTION

WAC 284-24D-050 How will the OIC assign user ID codes to reporting entities? The reporting site will assign a permanent user ID to each reporting entity the first time it enters a closed claim into the reporting site.

NEW SECTION

WAC 284-24D-060 What types of claims must be reported to the commissioner? The types of closed medical malpractice claims that must be reported to the OIC include:

(1) Claims closed with an indemnity payment;

(2) Claims closed with paid allocated loss adjustment expenses; and

(3) Claims closed with both indemnity payments and allocated loss adjustment expenses.

NEW SECTION

WAC 284-24D-070 Are write-offs or other small sums of money provided as customer service gestures considered claims? If a self-insurer, facility or provider waives copayments, forgives bills or deductibles, or makes other similar accommodations to a client, it is not a claim under RCW 48.140.010(1). Reporting entities are not required to report these types of accommodations to the commissioner.

NEW SECTION

WAC 284-24D-080 When is a claim considered closed? A claim is closed on the date the reporting entity

takes final administrative action to close the claim. Final administrative action occurs after the reporting entity:

(1) Issues the final payment to the claimant in the form of a check or draft;

(2) Pays all outstanding bills for allocated loss adjustment expenses; and

(3) If applicable, receives all indemnity and allocated loss adjustment expense claim payment data needed for reporting under this chapter from a facility, provider or excess insuring entity.

NEW SECTION

WAC 284-24D-090 When are closed claim reports due? Under RCW 48.140.020, reporting entities must report all claims closed in the preceding calendar year to the commissioner.

(1) Beginning in 2009, closed claim reports for the prior calendar year are due by March 1.

(2) A reporting entity may report a closed claim any time after the claim is closed, but no later than March 1.

NEW SECTION

WAC 284-24D-100 Can a reporting entity reopen a claim or make changes to previously reported data? The reporting site will allow the reporting entity to change previously reported closed claim data, subject to these rules:

(1) OIC will freeze data contained in the reporting site from March 15 through June 30 each year so the OIC can prepare reports and statistical summaries as required by RCW 48.140.040 and 48.140.050. The commissioner may accept changes to previously reported data if a correction or omission will significantly affect the conclusions stated in the annual report.

(2) After June 30, the reporting site will allow a reporting entity to change previously reported data.

(a) The reporting entity can reopen a claim report using their permanent user ID and the record identifier and make changes or corrections to data.

(b) Changes and corrections submitted by reporting entities after June 30 of each year will appear in future reports and statistical summaries.

NEW SECTION

WAC 284-24D-110 How should reporting entities assign claim and incident identifiers? (1) Consistent with requirements of RCW 48.140.030(1), the reporting entity must assign a different claim identification number to each closed claim report.

(a) The claim identifier must consist solely of numbers. When the reporting entity enters a claim into the reporting site, the site will automatically combine the reporting entity's user ID with the claim identifier to create a unique record identifier for each claim.

(b) The OIC will use the record identifier to trace the claim for auditing purposes.

(2) If a claimant makes claims against more than one facility or provider, the insuring entity or self-insurer must

report each claim separately and include an incident identifier.

(a) The incident identifier for companion claims must consist solely of numbers.

(b) The insuring entity or self-insurer is responsible to report claims only if it provides insurance coverage for a facility or provider and defends the claim.

NEW SECTION

WAC 284-24D-120 When is the primary insuring entity responsible for reporting closed claims to the commissioner? Primary insuring entities are principally responsible for reporting closed claim data required under chapter 48.140 RCW and this chapter to the commissioner.

(1) The primary insuring entity must report the total amounts paid to settle the claim, including any claim payments or ALAE payments made by:

- (a) A facility or provider;
- (b) An excess insuring entity; or
- (c) Any other person or entity on behalf of the provider.

(2) Facilities or providers insured by the primary insuring entity must cooperate and assist the primary insuring entity in the reporting process.

(3) If a primary insuring entity and one or more excess insuring entities combine to pay a claim:

(a) The primary insuring entity must report all paid indemnity and allocated loss adjustment expense; and

(b) The excess insuring entity must cooperate and assist the primary insuring entity in the reporting process.

NEW SECTION

WAC 284-24D-130 When is an excess insuring entity responsible for reporting closed claims to the commissioner? (1) If an excess insuring entity insures a self-insurer and makes indemnity payments or incurs allocated loss adjustment expenses, the excess insuring entity is principally responsible to report closed claim data required under chapter 48.140 RCW and this chapter.

(a) Self-insurers must report all claim payments and allocated loss adjustment expenses to the excess insuring entity for reporting purposes; and

(b) The excess insuring entity must report data on behalf of itself and the self-insurer.

(2) An excess insurer is not responsible to report closed claim data reported by a primary insuring entity under WAC 284-24D-120.

NEW SECTION

WAC 284-24D-140 When is a self-insurer responsible for reporting closed claims to the commissioner? If a closed claim payment falls within its self-insured retention, the self-insurer must report closed claim data required under chapter 48.140 RCW and this chapter to the commissioner.

NEW SECTION

WAC 284-24D-150 May a self-insurer report claims on behalf of itself and an excess insuring entity? A self-

insurer may designate itself to be the principal reporting entity and report closed claim data on behalf of itself and any excess insurer. If the self-insurer designates itself to be the principal reporting entity, the self-insurer must:

(1) Notify the commissioner in writing of this arrangement;

(2) Report closed claim data required under chapter 48.140 RCW and this chapter on behalf of itself and the excess insuring entity; and

(3) Accept responsibility for compliance with RCW 48.140.020(2).

NEW SECTION

WAC 284-24D-160 When is a facility or provider principally responsible for reporting closed medical malpractice claims to the commissioner? Under RCW 48.140.020(1), a facility or provider must report closed claims if the facility or provider:

(1)(a) Makes indemnity payments directly to the claimant or incurs ALAE expenses to defend the claim, or both; and

(b) There is no insurance coverage available from an insuring entity or self-insurer to defend or pay for the claim; or

(2) Is insured by a risk retention group and the risk retention group refuses to report closed claim data and asserts that the federal Liability Risk Retention Act (95 Stat. 949; 15 U.S.C. 3901 net seq.) preempts state law; or

(3) Is insured by an unauthorized insurer and the unauthorized insurer refuses to report closed claim data and asserts a federal exemption or other jurisdictional preemption.

NEW SECTION

WAC 284-24D-170 What does "date of notice" mean? RCW 48.140.030 (8)(b) says that reporting entities must report the date that the insuring entity, self-insurer, facility or provider is presented with the claim. For reporting purposes, the "date of notice" is the date on which the:

(1) Insured notifies the primary insuring entity or self-insurer of a claim if insurance coverage is available; or

(2) Claimant notifies the facility or provider of a claim if insurance coverage is not available.

NEW SECTION

WAC 284-24D-180 How should the type of medical specialty be reported? When reporting medical specialties as required under RCW 48.140.030(2), reporting entities must use the *Specialty Codes* published by the National Practitioner Data Bank (NPDB).

NEW SECTION

WAC 284-24D-190 How should the type of health care facility be reported? When reporting the type of health care facility under RCW 48.140.030(3), the reporting entity must use the *Type of Organization Codes* published by the NPDB. Public facilities, such as prisons and universities,

must review the NPDB *Type of Organization Codes* and enter the most similar classification.

NEW SECTION

WAC 284-24D-200 What should be reported as the primary location where the medical malpractice incident occurred? When reporting the location within a facility where the incident occurred under RCW 48.140.030(4), the reporting entity must use the incident locations published by the Physician Insurers Association of America in conjunction with its data-sharing project. The reporting entity must report one of these locations:

- (1) Catheterization lab;
- (2) Critical care unit;
- (3) Dispensary;
- (4) Emergency department;
- (5) Labor and delivery room;
- (6) Laboratory;
- (7) Nursery;
- (8) Operating room;
- (9) Outpatient department;
- (10) Patient room;
- (11) Pharmacy;
- (12) Physical therapy department;
- (13) Radiation therapy department;
- (14) Radiology department;
- (15) Recovery room;
- (16) Rehabilitation center;
- (17) Special procedure room;
- (18) Location other than an inpatient facility:
 - (a) Clinical support center, such a laboratory or radiology center;
 - (b) Office;
 - (c) Walk-in clinic; or
 - (d) Other;
- (19) Other department in hospital;
- (20) Unknown; and
- (21) Other.

NEW SECTION

WAC 284-24D-210 How should the incident city be reported? When reporting the incident city under RCW 48.140.030(5), the reporting entity must report the incident city based on the location of the facility where the incident occurred. If more than one incident led to the claim, the reporting entity must choose the location where the incident occurred that most directly caused the injury.

NEW SECTION

WAC 284-24D-220 How should injury severity be reported using the National Practitioner Data Bank (NPDB) severity scale? When reporting the severity of an injury under RCW 48.140.030(7), the reporting entity must report using the NPDB severity scale. This scale shows the medical outcome for temporary and permanent injuries, and is included below.

- (1) Temporary injuries include:

- (a) Emotional injury only, such as fright, where no physical damage occurred;

- (b) Insignificant injury such as lacerations, contusions, minor scars or rash where no delay in recovery occurs;

- (c) Minor injury such as infection, fracture set improperly, or a fall in the hospital, where recovery is complete but delayed; or

- (d) Major injury such as burns, surgical material left, drug side effect, brain damage, where recovery is complete but delayed.

(2) Permanent injuries include:

- (a) Minor injury such as loss of fingers, loss or damage to organs, where the injury is not disabling;

- (b) Significant injury such as deafness, loss of limb, loss of eye, loss of one kidney or lung;

- (c) Major injury such as paraplegia, blindness, loss of two limbs, brain damage;

- (d) Grave injury such as quadriplegia, severe brain damage, life long care or fatal prognosis; or

- (e) Death.

- (3) The reporting entity should report the principal injury if several injuries are involved.

NEW SECTION

WAC 284-24D-230 What should be reported as the reason for the medical malpractice claim? When reporting the reason for a medical malpractice claim under RCW 48.140.030(11), the reporting entity must use the same *Allegation Group and Specific Allegation Codes* published by the National Practitioner Data Bank.

NEW SECTION

WAC 284-24D-240 How should claim disposition information be reported? When reporting the final method of claim disposition under RCW 48.140.030(9), reporting entities must describe the method of claim disposition using one of the descriptions listed below:

- (1) Claim abandoned by claimant.

- (2) Claim settled by the parties.

- (3) Claim is disposed of by a court when the court issues a:

- (a) Directed verdict for plaintiff;

- (b) Directed verdict for defendant;

- (c) Judgment notwithstanding verdict for plaintiff (judgment for defendant);

- (d) Judgment notwithstanding verdict for defendant (judgment for plaintiff);

- (e) Involuntary dismissal;

- (f) Judgment for plaintiff;

- (g) Judgment for defendant;

- (h) Judgment for plaintiff after appeal; or

- (i) Judgment for defendant after appeal.

- (4) Claim settled by alternative dispute resolution process, whether resolved by:

- (a) Arbitration award for plaintiff;

- (b) Arbitration for defense;

- (c) Mediation;

- (d) Private trial; or

- (e) Other type of alternative dispute resolution process.

NEW SECTION

WAC 284-24D-250 How should information about the timing of the settlement be reported? When reporting the timing of the settlement under RCW 48.140.030(9), reporting entities must report whether the claim is settled:

- (1) Before filing suit, requesting arbitration or mediation hearing;
- (2) Before trial, arbitration or mediation;
- (3) During trial, arbitration or mediation;
- (4) After trial or hearing, but before judgment or award;
- (5) After judgment or decision, but before appeal;
- (6) During an appeal; or
- (7) After an appeal.

NEW SECTION

WAC 284-24D-260 Are claim payments reported on a gross or net basis? Reporting entities must report claim payments on a gross basis and provide the total amount paid to the claimant to settle the claim. The reporting entity must not deduct the value of offsets or recoverables, such as:

- (1) Reimbursement for a deductible by the insured;
- (2) Reimbursement for claim payments by a reinsurer; or
- (3) Anticipated subrogation recoveries.

NEW SECTION

WAC 284-24D-270 What does an insuring entity report when the damages exceed policy limits? When damages exceed the policy limits, the insuring entity must report the total amount it paid on behalf of its insured. The reporting entity must report:

- (1) The actual claim payment, which may be either:
 - (a) The policy limit; or
 - (b) The actual amount paid on behalf of the insured. The actual amount paid by the insuring entity may be either higher or lower than the policy limit, depending on the settlement agreement.
- (2) Additional payments made to the claimant by an insured facility or provider; and
- (3) Allocated loss adjustment expenses paid by both the insuring entity and the insured.

NEW SECTION

WAC 284-24D-280 Are subrogation recoveries subject to reporting? Subrogation between insuring entities or self-insurers may occur if there is a dispute over which entity should respond to a lawsuit. If an insuring entity or self-insurer receives a subrogation payment, it must report subrogation proceeds and any ALAE incurred to obtain those proceeds. If necessary, the insuring entity may reopen the claim under WAC 284-24D-100.

NEW SECTION

WAC 284-24D-290 How are structured settlements reported? (1) If a claim is paid with a structured settlement agreement, the reporting entity must report the lump-sum payment for the purchase of the annuity.

(2) If a claim is paid with a combination of a lump-sum payment to the claimant and a structured settlement, the reporting entity must report the sum of both payments.

NEW SECTION

WAC 284-24D-300 If the court itemizes damages, what information must be reported? If the court itemizes damages, the reporting entity must report these itemized damages:

- (1) The total amount of the verdict, judgment, or settlement;
- (2) The gross amount paid to indemnify the claimant;
- (3) Itemized economic and noneconomic damages as allocated by the court; and
- (4) Allocated loss adjustment expenses paid by the insuring entities and the insured.

NEW SECTION

WAC 284-24D-310 What information must be reported if the court does not itemize damages or a claim is settled by the parties? When reporting claims under RCW 48.140.030 (10)(b), the reporting entity must report losses on a gross basis, including:

- (1) The total amount of the verdict, judgment, or settlement;
- (2) The gross amount paid to indemnify the claimant;
- (3) Paid and estimated economic damages; and
- (4) Allocated loss adjustment expenses paid by the insuring entities and the insured.

NEW SECTION

WAC 284-24D-320 How should "companion claims" be reported? If more than one claim is filed with a reporting entity due to an incident of medical malpractice, the reporting entity must report companion claims in this manner:

- (1) If a claimant makes a claim against more than one facility or provider, the reporting entity must assign the same incident identifier to each "companion claim."
- (2) The reporting entity must maintain all data required under chapter 48.140 RCW and this chapter for each facility or provider it defends.
- (3) Indemnity payments and allocated loss adjustment expenses paid to defend and settle each claim must be reported separately for each facility or provider. The reporting entity must allocate:
 - (a) Indemnity payments between defendants based on an assessment of comparative fault; and
 - (b) ALAE payments between defendants based on which defendant benefited from the defense services.
- (4) If the reporting entity makes payments in the absence of clear legal liability, it may allocate claim or ALAE payments equally among all defendants.
- (5) Under this section, the reporting entity is responsible for reporting incident level data only for its own claims.

NEW SECTION**WAC 284-24D-330 How much detail is required when reporting allocated loss adjustment expenses?**

When reporting allocated loss adjustment expenses under RCW 48.140.030 (10)(a)(v) or (b)(iv), the reporting entity must report:

- (1) ALAE for defense counsel, including both in-house and outside counsel;
- (2) ALAE for expert witnesses, including both in-house and outside experts;
- (3) All other ALAE; and
- (4) Total ALAE.

NEW SECTION**WAC 284-24D-340 If defense services are provided by company employees, must company overhead be reported with ALAE?**

(1) Some insuring entities and self-insurers use the services of internal staff to defend claims. For example, an insuring entity or self-insurer may:

- (a) Ask its professional medical staff to:
 - (i) Evaluate medical care;
 - (ii) Review medical records; or
 - (iii) Assist in case preparation.
- (b) Retain in-house legal counsel to:
 - (i) Assess risk of litigation;
 - (ii) Evaluate legal issues;
 - (iii) Engage in case preparation or management activities, or settlement negotiations.
- (2) When calculating ALAE, a reporting entity that uses internal staff to defend a claim as described in subsection (1) of this section and WAC 284-24D-020(1):
 - (a) Must include salary, benefits and an allocation for overhead for those employees; and
 - (b) May use average salaries and time studies when calculating ALAE.

NEW SECTION

WAC 284-24D-350 How are economic damages allocated under RCW 48.140.030 (10)(b)(iii)? If the reporting entity makes indemnity payments to a claimant, the reporting entity must allocate economic damages based on documented evidence obtained during the claim resolution process. Reporting entities may not allocate using a fixed formula, such as fifty percent of total paid indemnity, to economic damages.

NEW SECTION

WAC 284-24D-360 What elements of economic loss must a reporting entity include when reporting economic damages? When reporting paid and estimated economic damages, reporting entities must use reasonable judgment to estimate the following elements of loss:

- (1) Medical expenses;
- (2) Loss of earnings;
- (3) Burial costs;
- (4) Cost of obtaining substitute domestic services;
- (5) Loss of employment; and

- (6) Loss of business or employment opportunities.

NEW SECTION

WAC 284-24D-362 What process must a person use to estimate economic damages? If a reporting entity makes indemnity payments to a claimant that include compensation for future economic damages, the person calculating damages must use the principles listed in this section.

(1) Where appropriate, the person estimating economic damages must:

- (a) Project the elements of loss listed in WAC 284-24D-360:
 - (i) For the duration of the injury or disability; or
 - (ii) In the event of death, for the anticipated life span of the injured person; and
- (b) Discount damages to present value;
- (c) Consider related factors, such as:
 - (i) Issues of negligence and liability;
 - (ii) The relative strength of the defense; and
 - (iii) The component of the claim payment driven by economic damages.
- (2) Reporting entities must select reasonable discount factors when estimating economic damages.

NEW SECTION

WAC 284-24D-364 What sources of information can a reporting entity use to estimate economic damages?

When estimating economic damages, the person estimating damages may use data from public sources, such as the Bureau of Labor Statistics, to supplement data collected during the claim investigation.

NEW SECTION

WAC 284-24D-366 Will the OIC provide guidelines or tools which reporting entities can use when estimating economic damages?

From time to time, the OIC may publish information or suggestions that reporting entities can use when estimating economic damages. Periodically, the OIC will update its internet site to include links to documents or information of interest to reporting entities.

NEW SECTION

WAC 284-24D-370 How are paid and estimated economic damages reported under RCW 48.140.040 (10)(b)(iii)? A reporting entity must:

- (1) Combine all elements of paid and estimated economic loss described in WAC 284-24D-360; and
- (2) Report one figure for paid and estimated economic loss to the commissioner.

WSR 07-12-073
PERMANENT RULES
DEPARTMENT OF CORRECTIONS

[Filed June 5, 2007, 9:47 a.m., effective July 6, 2007]

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

Purpose: Administrative updates and changes to the listed WAC chapters. The changes update statutory and other references, update titles of executive management, change addresses and other similar changes which do not change the effect of the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 137-04-020 Structure of the department; WAC 137-08-010, 137-08-060, 137-08-150, and 137-08-160, public records; WAC 137-10-005 Petition for rule; WAC 137-67-015 Transfer of foreign citizens; WAC 137-68-010 Interstate corrections compact; WAC 137-70-060 and 137-70-070, criminal justice costs; WAC 137-75-020 Jail costs; and WAC 137-80-020, correctional industries.

Statutory Authority for Adoption: RCW 72.01.090.

Adopted under notice filed as WSR 07-08-081 on April 14 [2], 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, 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 12, Repealed 0.

Date Adopted: June 5, 2007.

H. W. Clarke
Secretary

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-80-020 Definitions. (1) "Secretary" means the secretary of the department of corrections or his/her designee.

(2) "Program administrator" means the administrator of the institutional industries program appointed by the secretary.

(3) "Institutional industries board of directors" means the board established by the authority of the Corrections Reform Act of 1981, RCW 72.09.070.

(4) "Free venture industries" means any industry producing goods or services for sale to both the public and private sector which is operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. Inmates shall be paid a wage by the organization of not less than sixty percent of the approximate prevailing wage within the state for

the occupation, as determined by the director, or minimum wage, whichever is greater.

(5) "Tax reduction industries" means any state-owned and operated enterprises designed to reduce the cost for services and goods for tax supported agencies and for nonprofit organizations which assist persons who are poor or infirm. Products of these enterprises may be sold to public agencies and to nonprofit organizations which assist persons who are poor or infirm. Inmates shall be paid for their work on a gratuity scale, approved by the director, which shall not exceed the federal minimum wage.

(6) "Institutional support industries" means any industry operated by the department of corrections designed and managed to provide basic work training and experience to the inmate. All able and eligible inmates who are assigned work and who are not working in other classes of industries are included in this class. Inmates shall be paid for their work in accordance with an inmate gratuity scale adopted by the secretary.

(7) "Community work industries" means any industry operated by the department of corrections designed and managed to provide services in the inmate's resident community at a reduced cost. Services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations which assist the poor or infirm. Inmates shall receive a gratuity from a unit of local government which shall not exceed the minimum wage.

(8) "Community restitution programs" means any program operated by the state, local unit of government, or a nonprofit agency which assists persons who are poor or infirm which is subject to supervision by the department of corrections which enables an offender, placed on probation, to work off all or part of a community service order as ordered by the sentencing court.

(9) "Department" means the department of corrections.

(10) "Institutional industries" means the program within the department of corrections (~~(office of correctional operations)~~) charged with developing and managing comprehensive work programs to provide work skills, work experience and exposure to the work ethic for offenders under the jurisdiction of the department.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-75-020 Definitions. As used in this chapter, the following words shall have the following meanings:

(1) "Secretary" shall mean the secretary of the department of corrections or the secretary's designee;

(2) "Department" shall mean the department of corrections;

(3) "Deputy secretary" shall mean the deputy secretary, (~~(office of correctional operations)~~) prisons division or his/her designee.

(4) "Institution" shall mean a facility designated in RCW 72.01.050(2), any similar facility hereafter established, and a work release facility;

(5) "Work release facility" shall mean a community residence operated pursuant to chapter 72.65 RCW;

(6) "Jail" shall mean a city or county holding facility as defined in RCW 70.48.020(1);

(7) "Parole hold" shall mean a detention of a person pursuant to an order of parole suspension or revocation issued in accordance with RCW 9.95.120;

(8) All references to the singular shall include the plural, unless otherwise noted.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-70-060 Billing procedure. (1) All requests for reimbursement under this chapter must be submitted on a standard Washington State Invoice Voucher Form, A-19, in triplicate, showing the total reimbursement requested, accompanied by a completed request for reimbursement form issued by the department. The vouchers and form should be mailed or delivered to the Department of Corrections, (~~Office of Administrative Services,~~) Contracts and Legal Affairs, P.O. Box 41114, Olympia, Washington 98504-1114.

(2) The department may require the requesting political subdivision to submit such other documentation and information the department deems necessary to further support or explain the request.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-70-070 Department review. (1) All requests for reimbursement shall be reviewed by the administrator.

(2) The administrator shall approve or disapprove the requests for payment. If a request is disapproved in total or in part, the administrator shall notify the requesting political subdivision in writing, setting forth the reasons for disapproval.

(3) The administrator's decision shall be final unless appealed to the department's impact appeals panel within twenty days after a political subdivision receives notice of disapproval. The impact appeals panel shall be composed of the deputy secretary, (~~office of correctional operations~~) prisons division and the deputy secretary, (~~office of~~) administrative services division, or his/her designee.

(4) An appeal from the administrator's decision disapproving a political subdivision's request for reimbursement must be in writing and must set forth the reasons why the political subdivision believes its request should be approved. The appeal shall be addressed to the Impact Appeals Panel, Department of Corrections, P.O. Box 41114, Olympia, WA 98504-1114, attention: Contracts and Legal Affairs.

(5) The decision of the impact appeals panel shall be deemed to be the department's final administrative action with respect to the appeal.

AMENDATORY SECTION (Amending WSR 01-03-079, filed 1/16/01, effective 2/16/01)

WAC 137-04-020 Structure of the department. (1) The executive head of the department is the secretary who is appointed by the governor with the consent of the senate, and serves at the pleasure of the governor. The secretary manages the department and is responsible for the administration

of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons.

(2) The department is organized into three (~~offices: The office of the secretary; the office of correctional operations; and the office of administrative services. The office of correctional operations and the office of administrative services are~~) divisions and three subdepartments: The prisons division, the community corrections division, the administrative services division, the communications department, the health services department and the risk management department. Each division is headed by a deputy ((secretaries)) secretary who reports to the secretary. The responsibilities of ((these offices)) each division are:

(a) (~~The office of the secretary is responsible for providing a variety of services for the department, including, government relations and constituent affairs, public information, planning and research, quality programs, workplace diversity, and victim witness and community protection.~~

(b)) The (~~office of correctional operations~~) prisons division is responsible for (~~the supervision of adult felony offenders placed under the department's jurisdiction by the superior courts or the indeterminate sentencing review board and~~) the operation of all adult correctional facilities, including the Washington State Penitentiary; the Washington Corrections Center; the Monroe Correctional Complex; the McNeil Island Corrections Center; the Airway Heights Corrections Center; the Clallam Bay Corrections Center; the Stafford Creek Corrections Center; the Washington Corrections Center for Women; the Cedar Creek Corrections Center; the Coyote Ridge Corrections Center; the Larch Corrections Center; the Olympic Corrections Center; the Ahtanum View assisted living facility; the Pine Lodge (~~prerelease facility~~) Corrections Center for Women; (~~the Tacoma prerelease facility~~) the Mission Creek Corrections Center for Women; and such other state correctional institutions, camps or facilities as may hereafter be established. (~~The office of correctional operations is also responsible for the supervision of adult felony offenders within the community, including offenders in the work release program and other community residential programs.~~) The (~~office also administers~~) division includes the correctional industries((-all offender)) program((-s, and policy)).

(b) The community corrections division is responsible for the supervision of adult felony offenders within the community, including offenders in the work release program and other community residential programs.

(c) The (~~office of~~) administrative services division is responsible for providing a variety of services to the other (~~offices~~) divisions of the department including financial and management services; information technology; capital planning and development; (~~siting;~~) rules, contracts, (~~and public disclosure;~~) budget development and planning and research; and human resources((-and risk management and safety)).

AMENDATORY SECTION (Amending Order 82-3, filed 1/26/82)

WAC 137-08-010 Purpose. The purpose of this chapter shall be to ensure compliance by the department of corrections with the provisions of the Public Records (~~(Disclosure)~~) Act, chapter 42.56 RCW (~~((42.17.250 through 42.17.340))~~).

AMENDATORY SECTION (Amending Order 86-05, filed 4/29/86)

WAC 137-08-060 Public records available. (1) Requests for any identifiable public record may be initiated at any office of the department during normal business hours.

(2) The department shall at all times take the most timely possible action on requests for disclosure, and shall be required to respond in writing within ~~((ten))~~ five working days of receipt of the request for disclosure. The department's failure to so respond shall entitle the person seeking disclosure to petition the public disclosure officer pursuant to WAC 137-08-140.

AMENDATORY SECTION (Amending Order 85-06, filed 6/10/85)

WAC 137-08-150 Exemptions to public records disclosure. The department reserves the right to determine if a public record requested in accordance with the procedures outlined in WAC 137-08-090 is exempt or nondisclosable under RCW (~~((42.17.250 through 42.17.340))~~) 42.56.210 through 42.56.480.

Nondisclosable records include, but are not limited to:

(1) Personal information in any files concerning a prisoner, probationer, or parolee to the extent required by RCW (~~((42.17.310 (1)(a)))~~) 42.56.230(1); however, disclosure may be made to that person or that person's representative, except as otherwise prohibited by these rules;

(2) Data (including information revealing the identity of persons who file complaints, except as the complainant may authorize) contained in intelligence, investigative, and other related files compiled by investigative, law enforcement or penology agencies, and state agencies vested with the responsibility to discipline members of any profession. This data is nondisclosable to the extent required by RCW (~~((42.17.310 (1)(d) and (e)))~~) 42.56.240, 10.97.080 and chapter 446-20 WAC;

(3) Certain juvenile justice or juvenile care records to the extent required by chapter 13.50 RCW;

(4) Personal information in files maintained for an employee of the department to the extent required by RCW (~~((42.17.310 (1)(b)))~~) 42.56.230;

(5) Deliberative material, as opposed to facts upon which a decision is based, contained in preliminary drafts, notes, recommendations, and intraagency memoranda in which opinions are expressed or policies formulated or recommended; except that a specific record shall be disclosable when publicly cited by the department in connection with any action to the extent required by RCW (~~((42.17.310 (1)(i)))~~) 42.56.290;

(6) Records which are relevant to a controversy to which the department is a party but which records would not be

available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the department and the office of the attorney general privileged under RCW 5.60.060(2).

(7) Criminal history records information the disclosure of which is prohibited by chapter 10.97 RCW.

AMENDATORY SECTION (Amending Order 82-3, filed 1/26/82)

WAC 137-08-160 Qualifications on nondisclosure. (1) To the extent that nondisclosable information can be deleted from the specific records sought, the remainder of the records shall be disclosable.

(2) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW (~~((42.17.310(2)))~~) 42.56.210 (1).

(3) Inspection and copying of any specific records otherwise nondisclosable is permissible pursuant to an order of the superior court enforcing a subpoena in accordance with the provisions of RCW (~~((42.17.310(3)))~~) 42.56.210(2), or an order of the office of hearings enforcing a subpoena.

AMENDATORY SECTION (Amending Order 85-11, filed 12/31/85)

WAC 137-10-005 Purpose. The purpose of this rule is to establish the procedures by which an interested party may petition the department of corrections for the promulgation, amendment, or repeal of a rule pursuant to RCW (~~((34.04-060))~~) 34.05.330, or for a declaratory ruling pursuant to RCW (~~((34.04.080))~~) 34.05.240.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-67-015 Definitions. (1) "Department" is the department of corrections.

(2) "Adult correctional institution" and "institution" is a facility identified in RCW 72.01.050(2) and any similar facility hereafter established.

(3) "Secretary" is the secretary of the department of corrections or the secretary's designee.

(4) "Deputy secretary" is the deputy secretary, (~~(office of correctional operations))~~ prisons division, of the Washington state department of corrections or his/her designee.

(5) "Superintendent" is a superintendent of an adult correctional institution or the superintendent's designee.

(6) "Treaty nation" is a country which has entered into a treaty with the United States on the execution of penal sentences.

(7) "Treaty" is a treaty under which an offender, sentenced in the courts of one country, may be transferred to the country of which the offender is a citizen or national, for the purpose of serving the sentence.

(8) "Country of origin or citizenship" is the country in which the inmate was born or in which the inmate has duly recognized citizenship.

(9) "OIA" is the Office of International Affairs, Criminal Division, United States Department of Justice.

(10) "United States" is the United States of America.

(11) "Detainer" is a hold or request for notification placed by any local, state, or federal law enforcement, penal, or prosecutorial agency based on untried charges, parole or probation violation, escape, unexpired sentence, bond-jumping, or any other fugitive matter.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-68-010 Definitions. (1) "Compact" is the interstate compact for supervision of probationers and parolees as codified in RCW 9.95.270.

(2) "Compact administrator" is the deputy secretary, ~~((office of correctional operations))~~ prisons division, department of corrections, who is responsible for the administration of the interstate compact for the supervision of adult probationers and parolees.

(3) "Deputy compact administrator" is a person appointed by the compact administrator and delegated responsibility for the administration of the interstate compact.

(4) "Sending state" is the state in which the individual was granted probation or parole and in which the jurisdiction of the case is retained.

(5) "Receiving state" is the state providing supervision of the parolee or probationer under the interstate compact.

(6) "Probationer" is a person under jurisdiction of a state superior or circuit court who is being supervised under the compact.

(7) "Parolee" is a person under jurisdiction of a paroling authority who is being supervised under the interstate compact.

(8) "Parole officer" is a state community corrections officer (CCO) employed by the department of corrections.

(9) "Supervising community corrections officer" is a CCO assigned to supervise a probationer or parolee as required by the interstate compact and to act in regard to all matters connected with hearings conducted pursuant to the interstate compact rules.

(10) "Violations specified" are charges and/or allegations made against probationer or parolee by a parole officer in regard to violation of law or failure to comply with the general conditions of probation or parole or special instructions and conditions as set forth by the court of jurisdiction or the paroling authority.

(11) "Preliminary hearing" is a hearing conducted in accordance with RCW 10.88.290.

(12) "Hearing officer" is a person authorized by the compact administrator to hear cases involving alleged violations of conditions of parole or probation. Neither the person making the allegations of violation or his or her direct supervisor shall act as hearing officer.

WSR 07-12-075

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 5, 2007, 10:16 a.m., effective July 6, 2007]

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

Purpose: Chapter 16-436 WAC, Washington standards for peaches, establishes the requirements and standards for Washington grown fresh peaches. The changes to this rule are the result of the department's ongoing commitment to review and revise its rules, when necessary as mandated by Executive Order 97-02. The purpose of this rule is to use the expedited rule-making process to rewrite the peach standards in a clear and usable format in order to clarify the language of the rule.

Two sections of the chapter, WAC 16-436-002 Promulgation and 16-436-003 Promulgation, are repealed because the rules represent an outdated method of rule writing that is no longer used and are no longer necessary. WAC 16-436-150 Cull peach requirements, is repealed and the language merged with WAC 16-436-140 Cull peaches. WAC 16-436-166 Tolerances—Sizes, is repealed and the language added to WAC 16-436-160 and 16-436-165. WAC 16-436-200 Definitions, is repealed and replaced with WAC 16-436-060 Definitions, at the beginning of the chapter. WAC 16-436-225 is repealed and the language moved to WAC 16-436-080 Standards and grades of Washington grown peaches. WAC 16-436-230 Effective date, is repealed because this rule is no longer necessary. No amendments change the rules' effects.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-436-002, 16-436-003, 16-436-150, 16-436-166, 16-436-200, 16-436-225 and 16-436-230; and amending WAC 16-436-140, 16-436-160 and 16-436-165; and new WAC 16-436-060, and 16-436-080.

Statutory Authority for Adoption: Chapters 15.17 and 34.05 RCW.

Adopted under notice filed as WSR 07-08-114 on April 4, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 7.

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 5, Repealed 7.

Date Adopted: June 5, 2007.

Valoria Loveland
Director

NEW SECTION

WAC 16-436-060 Definitions. The following definitions are important to this chapter, and where appropriate, apply to all Washington state commercial grades of peaches:

"At destination" means the final point of delivery by a commercial carrier or the wholesale or retail facility where the peaches are held.

"Damage" means any injury or defect that materially affects a peach's appearance, edible quality, or shipping quality.

"Department" means the Washington state department of agriculture.

"Diameter" means the greatest distance measured through the center of the peach at right angles to a line running from the stem to the blossom end.

"Director" means the director of the department or the director's designee.

"En route" means the peaches have left their original shipping point and are in transit or are being held in an intermediate storage facility before arriving at their final destination.

"Fairly well formed" means that the shape of the peach must be consistent with the characteristic shape of the variety and must not be so misshapen that the appearance is more than moderately affected.

"Loose or jumble pack" means the peaches are not placed in the container in cups, compartments, or trays.

"Mature" means a peach has reached a stage of growth that will ensure a proper completion of the ripening process.

"Not badly misshapen" means a peach may be more irregularly shaped than "fairly well formed" but must not be deformed as to seriously affect its utility or general appearance.

"Serious damage" means any injury or defect that seriously affects the appearance, edible quality, or shipping quality of the peach.

"Soft or overripe" means a peach has very little resistance to pressure. Such peaches are also called "dead ripe."

"Standard peach box" means a container with minimum inside dimensions of 4-1/4 to 6 inches by 11-1/2 to 16 inches.

NEW SECTION

WAC 16-436-080 Standards and grades of Washington grown peaches. (1) The following grades apply to peaches grown in Washington state:

- (a) Washington extra fancy;
- (b) Washington fancy;
- (c) Washington combination extra fancy and fancy; and
- (d) Cull peaches.

(2) In addition to the standards contained in this chapter for Washington grown peaches, the department adopts the United States Standards for Grades of Peaches, effective May 21, 2004, for use by producers or shippers. Peaches must meet the Washington state standards contained in this chapter.

AMENDATORY SECTION (Amending WSR 92-11-076, filed 5/20/92, effective 6/20/92)

WAC 16-436-100 Washington extra fancy (~~(grade)~~) peaches. (1) (~~(Shall)~~) Washington extra fancy peaches consist (~~(of peaches)~~) of one variety (~~(which)~~) that are:

- (a) Mature, but not soft or overripe;
- (b) Fairly well formed; (~~(and which are)~~)
- (c) Free from decay, broken skin, worms, or worm holes; (~~(and)~~)
- (d) Free from damage caused by bruises(~~(:)~~), dirt or other foreign material(~~(:)~~), bacterial spot(~~(:)~~), scab(~~(:)~~), scale(~~(:)~~), growth cracks(~~(:)~~), hail injury(~~(:)~~), leaf or limb rubs (~~(or)~~), russeting(~~(:)~~), split pits(~~(:)~~), stem pull(~~(:)~~), rough suture(~~(:)~~), and other diseases, insects or mechanical or other means.

(2) (~~(Size. Such peaches shall measure not less than 2-1/4 inches in diameter. Provided, That such peaches shall also meet requirements of WAC 16-436-187 Minimum size. Definitions for the above grade will be found under WAC 16-436-160, 16-436-180, 16-436-185, 16-436-190, 16-436-200, 16-436-210, and 16-436-220.)~~) Washington extra fancy peaches must be at least 2-1/4 inches in diameter and must also meet the minimum size requirements of WAC 16-436-187.

AMENDATORY SECTION (Amending WSR 92-11-076, filed 5/20/92, effective 6/20/92)

WAC 16-436-110 Washington fancy (~~(grade)~~) peaches. (1) (~~(Shall)~~) Washington fancy peaches consist (~~(of peaches)~~) of one variety (~~(which)~~) that meet all (~~(of the requirements of)~~) Washington extra fancy requirements, except: (~~(Provided,)~~)

- (a) Split pits (~~(not to exceed)~~) no more than 3/8 inch in length (~~(shall be)~~) are allowed(~~(:)~~); and
- (b) Damage, but not serious damage, for rough suture (~~(shall be)~~) is allowed (~~(in this grade)~~).

(2) (~~(Size. Such)~~) Washington fancy peaches (~~(shall measure not less than)~~) must be at least 2-1/4 inches in diameter(~~(: Provided, That such peaches shall)~~) and must also meet the minimum size requirements of WAC 16-436-187 (~~(Minimum size. Definitions for the above grade will be found under WAC 16-436-165, 16-436-180, 16-436-185, 16-436-190, 16-436-200, 16-436-210, and 16-436-220).~~)

AMENDATORY SECTION (Amending Order 1203, filed 5/14/71, effective 6/14/71)

WAC 16-436-120 Washington combination extra fancy and fancy (~~(grade)~~) peaches. (~~(When extra fancy and fancy peaches are packed together, the box shall be marked)~~) (1) Washington combination (~~(extra fancy and fancy and shall)~~) peaches consists of extra fancy and fancy peaches packed together in the same container.

(2) Containers must be marked "Washington combination extra fancy and fancy" and must contain at least (~~(75%)~~) seventy-five percent Washington extra fancy peaches. (~~(Definitions for the above grade will be found under WAC 16-436-160, 16-436-180, 16-436-185, 16-436-190, 16-436-200, 16-436-210, and 16-436-220.)~~)

AMENDATORY SECTION (Amending WSR 92-11-076, filed 5/20/92, effective 6/20/92)

WAC 16-436-140 Cull (~~(grade)~~) peaches. (~~(Shall consist of)~~) Cull peaches (~~(which)~~) are peaches not graded in conformity with the foregoing grades described in this chapter.

(1) The words "cull peaches" must be marked clearly and legibly in at least 2-1/2 inch letters on the top and side of the container and on any container label.

(2) The container lid or labels must be marked in at least 1/2 inch letters with the:

(a) Name and address of the grower, shipper, or packer;

(b) Variety;

(c) Minimum diameter; and

(d) Net weight.

(3) Peaches identified as culls must be packed in one-bushel baskets with lids and ring faced with the peaches in the ring representative of the size and quality of those in the container.

(4) Every bill of lading, invoice, memorandum, or other document referring to the peaches must identify the peaches as culls.

AMENDATORY SECTION (Amending Order 1977, filed 5/16/88)

WAC 16-436-160 Tolerances for Washington extra fancy and combination extra fancy and fancy peaches. In order to allow for variations incident to proper grading (~~(and)~~), handling, and sizing the following tolerances (~~(shall)~~), by count, apply to (~~(the)~~) Washington extra fancy (~~(WAC 16-436-100)~~;) and (~~(the)~~) Washington combination extra fancy and fancy (~~(WAC 16-436-120)~~;) peaches.

(1) Not more than (~~(10% by count)~~) ten percent of the peaches in any lot may fail to meet (~~(the)~~) grade requirements (~~(of this grade but)~~).

(a) Not more than (~~(1/2 of this amount, or 5%, shall be)~~) five percent is allowed for defects causing serious damage (~~(; as defined under WAC 16-436-220, and)~~).

(b) Not more than (~~(1/5 of this amount, or 1%, shall be)~~) one percent is allowed for decay at the shipping point (~~(; Provided,)~~).

(2) At the time of packing, an additional tolerance of not more than (~~(10% by count, of the peaches)~~) ten percent is allowed in any lot (~~(may be damaged)~~) for damage, but not (~~(seriously damaged)~~) serious damage, by bruising (~~(at packing time as defined under WAC 16-436-210 and 16-436-220)~~).

(3) Not more than ten percent of the peaches in any lot may be below the specified minimum size.

(4) Not more than fifteen percent of the peaches in any lot may be above any specified maximum size.

(5) When applying (~~(the foregoing)~~) these tolerances to (~~(the)~~) combination grades, no part of any tolerance (~~(shall be)~~) is allowed to reduce, for the lot as a whole, the (~~(75%)~~) seventy-five percent of peaches of the higher grade required in the combination (~~(; but)~~). Individual containers (~~(shall)~~) must have (~~(not less than 65%)~~) at least sixty-five percent of the higher grade.

(6) En route or at destination, an additional tolerance of (~~(2% shall be)~~) two percent is allowed for soft, overripe, or decayed peaches (~~(en route or at destination as defined under WAC 16-436-200)~~).

AMENDATORY SECTION (Amending Order 1977, filed 5/16/88)

WAC 16-436-165 Tolerances for Washington fancy peaches. In order to allow for variations incident to proper grading (~~(and)~~), handling, and sizing, the following tolerances (~~(shall)~~), by count, apply to (~~(the)~~) Washington fancy (~~(WAC 16-436-110)~~;) peaches.

(1) Not more than (~~(20% by count)~~) twenty percent of the peaches in any lot may fail to meet the grade requirements (~~(of this grade, but)~~).

(a) Not more than (~~(1/4 of this amount, or 5% shall be)~~) five percent is allowed for defects causing serious damage (~~(; as defined under WAC 16-436-220 and)~~).

(b) Not more than (~~(1/5 of this amount, or 1% shall be)~~) one percent is allowed for decay (~~(at shipping point)~~).

(2) Not more than ten percent of the peaches in any lot may be below the specified minimum size.

(3) Not more than fifteen percent of the peaches in any lot may be above any specified maximum size.

(4) En route or at destination, an additional tolerance of (~~(2% shall be)~~) two percent is allowed for soft, overripe, or decayed peaches (~~(en route or at destination as defined under WAC 16-436-200)~~).

AMENDATORY SECTION (Amending Order 1203, filed 5/14/71, effective 6/14/71)

WAC 16-436-180 Application of tolerances to individual packages. (~~(Applying to all grades-~~

~~(+))~~) The contents of individual packages of peaches in (~~(the)~~) a lot (~~(; based on sample inspection,)~~) are subject to the following limitations (~~(; Provided,)~~) as long as the average (~~(s)~~) for the entire lot (~~(are)~~) of peaches of a specific grade is within the tolerances specified for (~~(this)~~) that grade.

(~~(2) For~~) (1) Packages (~~(which contain)~~) containing more than (~~(10)~~) ten pounds (~~(; and)~~) with a tolerance of (~~(10%)~~) ten percent or more (~~(is provided, individual packages in any lot shall)~~) must have (~~(not)~~) no more than 1-1/2 times the tolerance specified. (~~(For)~~)

(2) Packages (~~(which contain)~~) containing more than (~~(10)~~) ten pounds (~~(and)~~) with a tolerance of less than (~~(10% is provided, individual packages in any lot shall)~~) ten percent must have (~~(not)~~) no more than double the tolerance specified.

(3) (~~(For)~~) Packages (~~(which contain 10)~~) containing ten pounds or less (~~(; individual packages in any lot)~~) are not restricted as to the percentage of defects and sizes (~~(; Provided, That not more than)~~). However, only one peach (~~(which)~~) that is seriously damaged by insects or affected by decay may be (~~(permitted)~~) in any package.

AMENDATORY SECTION (Amending WSR 92-11-076, filed 5/20/92, effective 6/20/92)

WAC 16-436-185 Requirements for Washington standard packs. ~~((Applies))~~ To allow for variations incident to proper packing, no more than ten percent of the packages in any lot may be out of compliance with the following requirements. These requirements apply to all grades except culls.

(1) Each package ~~((shall))~~ must be packed so that the peaches in the shown face ~~((shall be))~~ are reasonably representative in size, color, and quality of the contents ~~((of))~~ in the package.

(2) ~~((Baskets))~~ Peaches packed in U.S. Standard bushel baskets~~(;)~~ or half-bushel baskets ~~((shall))~~ with lids must be ring faced and tightly packed with sufficient bulge to prevent any appreciable movement of the peaches within the packages ~~((when lidded))~~.

(3) ~~((Boxes))~~ Peaches packed in standard western boxes ~~((shall))~~ must comply with the following:

(a) The peaches must be reasonably uniform in size and arranged in ~~((the))~~ packages, such as tray packed, place packed, or jumble filled, according to the approved and recognized methods.

~~((Each))~~ (b) When wrapped, each peach ~~((shall))~~ must be fairly well enclosed by its individual wrapper.

(c) All packages ~~((shall))~~ must be well filled and tightly packed but the contents ~~((shall))~~ must not show excessive or unnecessary bruising because of being over-filled ~~((packages))~~.

(d) The number of peaches ~~((in the box shall))~~ must not vary by more than ~~((4))~~ four from the number indicated on the ~~((box))~~ container.

~~((4))~~ Peaches packed in other type boxes such as fibre-board boxes or corrugated cartons may be place packed, or jumble packed faced, and all packs shall be well filled.

(5) Peaches packed in boxes equipped with cell compartments or molded trays shall be of the proper size for the cells or the molds in which they are packed.

(6) Peaches placed in individual paper cups and packed in boxes shall be in cups of the proper size for the peaches.

~~((7))~~ In order to allow for variations incident to proper packing, not more than 10% of the packages in any lot may not meet these requirements.

AMENDATORY SECTION (Amending WSR 92-11-076, filed 5/20/92, effective 6/20/92)

WAC 16-436-187 Minimum size requirements. (1) Fresh peaches ~~((of any variety))~~, except ~~((peaches of the))~~ for Elberta varieties, must be at least 2-3/8 inches in diameter when packed and marketed in any container except ~~((the))~~ a standard peach box ~~((, shall measure not less than 2 3/8 inches in diameter))~~.

(2) Fresh peaches of any variety must be at least 2-1/4 inches in diameter when packed and marketed in ~~((the))~~ a standard peach box ~~((shall measure not less than 2 1/4 inches in diameter))~~.

(3) Fresh Elberta varieties of peaches ~~((of the Elberta varieties))~~ must be at least 2-1/4 inches in diameter when

marketed in any container ~~((shall measure not less than 2 1/4 inches in diameter))~~.

AMENDATORY SECTION (Amending WSR 92-11-076, filed 5/20/92, effective 6/20/92)

WAC 16-436-190 Marking requirements. ~~((Applies))~~ The following marking requirements apply to all grades except culls.

(1) All containers ~~((shall))~~ must be conspicuously and legibly stamped with the:

(a) Name and address of the grower, shipper or packer ~~((the))~~;

(b) Fruit variety ~~((;))~~;

(c) Grade ~~((;))~~; and

(d) Numerical count ~~((;))~~ or minimum diameter.

(2) When the numerical count is not shown on the container, the minimum diameter and net weight ~~((shall))~~ must be plainly stamped or otherwise marked on the container.

(3) Minimum size must be stated on the container in terms of:

(a) Whole inches, such as 3 inches minimum; or

(b) Whole and half inches, such as 2-1/2 inches minimum; or

(c) Whole and quarter inches, such as 2-1/4 inches minimum; or

(d) Whole and eighth inches, (as 3 inches minimum, 2-1/4 inches minimum, 2-3/8 inches minimum, in accordance with the facts. The) such as 2-3/8 inches minimum.

(4) Both minimum and maximum diameters may ~~((both))~~ be stated ~~((in accordance with the facts))~~ on the container.

~~((3))~~ (5) The grade ~~((shall))~~ must be stamped on the container in letters that are at least 1/4 inch high. The following abbreviations may be used:

(a) Washington ~~((may be abbreviated as))~~; Wash ~~((;))~~ or ~~((Wa.))~~ WA;

(b) Extra fancy ~~((may be abbreviated as ex. fcy.))~~; Ex fcy or extra fcy ~~((;))~~;

(c) Fancy ~~((may be abbreviated as))~~; Fcy ~~((;))~~; and

(d) Combination ~~((may be abbreviated as))~~; Comb.

AMENDATORY SECTION (Amending WSR 92-11-076, filed 5/20/92, effective 6/20/92)

WAC 16-436-210 ~~((Definition))~~ Damage—Specific defects. ~~((Applies to Wash. ex. fancy (WAC 16-436-100); Wash. fancy (WAC 16-436-110); Wash. comb. ex. fancy and fancy (WAC 16-436-120). "Damage" means any injury or defect which materially affects the appearance or the edible or shipping quality of the peach.))~~ Any ~~((one))~~ of the following defects ~~((;))~~ or ~~((any))~~ combination ~~((thereof))~~ of them are considered damage when the seriousness of (which) the combination exceeds the maximum allowed for any (one) specific defect ~~((, shall be considered as damage))~~.

(1) Bruises ~~((where any bruise discolors))~~ on peaches 2-1/4 inches or smaller in diameter are considered damage if they:

(a) Discolor the flesh to a depth greater than 3/16 of an inch; or

(b) Discolor((s)) the skin in an area greater than 1/2 inch in diameter; or

(c) Are an aggregate of smaller bruises ((aggregating)) totaling more than 1/2 inch in diameter. ((Areas or depths of bruises are applicable to a peach 2-1/4 inches or smaller in diameter. Correspondingly greater areas or depths shall be allowed on larger peaches as follows:

2-1/2 inches in dia.	5/9 in. area dia.	5/24 in. deep
2-3/4 inches in dia.	11/18 in. area dia.	11/48 in. deep
3 inches in dia.	2/3 in. area dia.	1/4 in. deep
3-1/4 inches in dia.	13/18 in. area dia.	13/48 in. deep
3-1/2 inches in dia.	7/9 in. area dia.	7/24 in. deep
3-3/4 inches in dia.	15/18 in. area dia.	5/16 in. deep
4 inches in dia.	8/9 in. area dia.	1/3 in. deep))

(2) Bruises on peaches larger than 2-1/4 inches in diameter are considered damage when any discoloring of the flesh or skin affects correspondingly greater areas or depths than identified in subsection (1) of this section. The following lists the depths and diameters of flesh discoloration allowed before the discoloring is considered damage on peaches that are:

(a) 2-1/2 inches in diameter: Discoloration 5/24 inch deep and 5/9 inch in diameter;

(b) 2-3/4 inches in diameter: Discoloration 11/48 inch deep and 11/18 inch in diameter;

(c) 3 inches in diameter: Discoloration 1/4 inch deep and 2/3 inch in diameter;

(d) 3-1/4 inches in diameter: Discoloration 13/48 inch deep and 13/18 inch in diameter;

(e) 3-1/2 inches in diameter: Discoloration 7/24 inch deep and 7/9 inch in diameter;

(f) 3-3/4 inches in diameter: Discoloration 5/16 inch deep and 15/18 inch in diameter;

(g) 4 inches in diameter: Discoloration 1/3 inch deep and 8/9 inches in diameter.

(3) Bacterial spot((:)) when cracked((:)) or ((when)) aggregating more than 3/8 inch in diameter((:)).

((3)) (4) Scab spot((:)) when cracked((:)) or ((when)) aggregating more than 3/8 inch in diameter((:)).

((4)) (5) Scale((:)) when concentrated((:)) or ((when)) scattered and aggregating more than 1/4 inch in diameter((:)).

((5)) (6) Growth cracks((:)) when unhealed((:)) or more than 1/2 inch in length((:)).

((6)) (7) Hail injury ((which is)) when unhealed((:)) or deep, or when aggregating more than 1/4 inch in diameter((:)) or more than 1/8 inch in depth((:)).

((7)) (8) Leaf or limb rubs or russetting((:)) when exceeding 1-1/4 inches in diameter when smooth and light colored, or when exceeding 1/2 inch in diameter when rough or dark colored((:)).

((8)) (9) Split pit((:)) when causing any unhealed crack((:)) or when causing any crack ((which)) that is readily apparent, or when affecting the peach's shape to the extent that the fruit is not fairly well formed((:)).

((9)) (10) Stem pulls larger than 1/2 inch in diameter, including stem area((:)).

((10)) (11) Rough suture when the length((:)) is more than half way down side of peach and exceeds 1/4 inch wide and 1/32 inch high.

AMENDATORY SECTION (Amending WSR 92-11-076, filed 5/20/92, effective 6/20/92)

WAC 16-436-220 ((Definition—)) **Serious damage—****Specific defects.** ((Applying to Washington extra fancy (WAC 16-436-100); Wash. fancy (WAC 16-436-110); Wash. comb. ex. fancy and fancy (WAC 16-436-120). "Serious damage" means any injury or defect which seriously affects the appearance, or the edible or shipping quality of the peach.)) Any ((one)) of the following defects((:)) or any combination ((thereof,)) of them, when the seriousness of ((which)) the combination exceeds the maximum allowed for any ((one)) specific defect, ((shall be)) is considered ((as)) serious damage.

(1) Bruises((:)) when aggregated and causing a waste in excess of ((10%)) ten percent by area on any peach or ((with)) when any one bruise ((causing)) causes a waste in excess of ((5%)) five percent by area or exceeding 3/8 ((of an)) inch in depth. ((Areas or depths of bruises specified are applicable to a peach 2-1/4 inches or smaller in diameter. Correspondingly greater areas or depths shall be allowed on definitely larger peaches;))

(2) Bacterial spot((:)) when any cracks are not well healed, or when ((aggregating)) the aggregate area is more than 1/2 inch in diameter((:)).

(3) Scab spots((:)) when cracked((:)) or when healed and aggregating more than one inch in diameter((:)).

(4) Scale((:)) when ((aggregating)) the aggregate area is more than 1/2 inch in diameter((:)).

(5) Growth cracks((:)) when unhealed((:)) or more than 5/8 inch in length((:)).

(6) Hail injury((:)) when;

(a) Unhealed((:)); or

(b) Shallow ((hail injury when aggregating)) and the aggregate area is more than 3/4 inch in diameter((:)); or

(c) Deep ((hail injury which)) and seriously ((deforms)) deforming the ((fruit)) peach; or ((which aggregates))

(d) Aggregating more than 1/2 inch in diameter((:)); or

(e) Aggregating more than 1/8 inch in depth((:)).

(7) Leaf or limb rubs((, when smooth and light colored and aggregating)) or russetting when the aggregate area is more than 1-1/2 inches in diameter when smooth and light, or ((dark or rough and barklike sears aggregating)) when the aggregate area is more than 1/2 inch in diameter((:)) when dark and bark-like.

(8) Split pit((:)) when causing any unhealed crack, or when it is healed and ((aggregating)) the aggregate area is more than 1/2 inch in length including any part of the crack ((which may)) that might be covered by the stem((:)).

(9) Stem pulls when they are larger than 5/8 inch in diameter, including stem area((:)).

(10) Punctures when they are not on the shoulder area, or ((punctures)) when they are on the shoulder area and are larger than 3/16 of an inch in diameter((:)).

(11) Rough suture((:)) when the entire length of the suture exceeds 1/4 inch wide((:)) and 1/16 inch high.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-436-002	Promulgation.
WAC 16-436-003	Promulgation.
WAC 16-436-150	Cull peach requirements.
WAC 16-436-166	Tolerances—Size.
WAC 16-436-200	Definitions.
WAC 16-436-225	Adoption of United States standards as state standards.
WAC 16-436-230	Effective date.

Date Adopted: June 5, 2007.

Valoria Loveland
Director

AMENDATORY SECTION (Amending WSR 06-12-116, filed 6/7/06, effective 7/8/06)

WAC 16-414-005 (~~What~~) Definitions (~~are important to this chapter?~~). "Clean" means cherries are practically free from dirt, dust, spray residue, or other foreign material. For example, clean means the product is practically free from leaves, fruit spurs, bark, twigs, dirt or foreign material.

"Condition defects" means defects that may develop or change during shipment or storage. Condition defects include, but are not limited to, decayed or soft cherries and such other factors as pitting, shriveling, sunken areas, brown discoloration and bruising that, because of its location appears to have occurred after packing.

"Damage" means any injury or specific defect described in WAC 16-414-045 or any equally objectionable variation of those defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible quality or marketing quality of the fruit.

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

"Diameter" means the greatest dimension measured at right angles to a line from the stem to the blossom end of the cherry.

"Director" means the director of the Washington state department of agriculture or the director's designee.

"Face packed" means the cherries in the top layer of any container are placed so the stem ends are pointing downward toward the bottom of the container.

"Fairly well colored" means that at least ninety-five percent of the surface of the cherry shows characteristic color for mature cherries of the variety.

"Firm" means the cherries:

- (1) Possess a firm, fleshy texture;
- (2) Retain their approximate original shape;
- (3) Are not shriveled; and
- (4) Do not show more than slight collapsed areas of flesh.

"Mature" means cherries have reached the stage of growth that will insure the proper completion of the ripening process. Rainier cherries or other varieties of "light colored sweet cherries" shall meet a minimum of seventeen percent soluble solids as determined from a composite sample by refractometer prior to packing, at time of packing, or at time of shipment; provided that individual lots shall not be combined with other lots to meet soluble solids requirements.

"Permanent defects" means defects that are not subject to change during shipping or storage. Permanent defects include, but are not limited to, factors of shape, scarring, skin breaks, injury caused by hail or insects, and mechanical injury that, because of its location, appears to have occurred before shipment.

"Off-size" means a cherry whose diameter fails to meet a designated size when measured at right angles to a line from its stem to its blossom end.

WSR 07-12-076**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed June 5, 2007, 10:17 a.m., effective July 6, 2007]

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

Purpose: Chapter 16-414 WAC, Washington standards for cherries, establishes the requirements and standards for Washington grown fresh sweet cherries and sulphured cherries. The following housekeeping changes are made to chapter 16-414 WAC: (1) Clarifying section titles for ease of use; and (2) replacing tables with standard text format in WAC 16-414-010, 16-414-012, 16-414-045, 16-414-065, 16-414-107, 16-414-108, 16-414-125, 16-414-145, and 16-414-155. There are no substantive changes to chapter 16-414 WAC.

Replacing the tables with the standard text is necessary because the table format makes the rules nearly unreadable and unusable when the WAC is accessed using the internet.

Citation of Existing Rules Affected by this Order: Amending WAC 16-414-010, 16-414-012, 16-414-045, 16-414-065, 16-414-107, 16-414-108, 16-414-125, 16-414-145, and 16-414-155.

Statutory Authority for Adoption: Chapters 15.17 and 34.05 RCW.

Adopted under notice filed as WSR 07-08-113 on April 4, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 9, 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 9, Repealed 0.

"**Serious damage**" means any specific defect described in WAC 16-414-065 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects that seriously detracts from the appearance, edible quality or marketing quality of cherries.

"**Shipping point**" means:

- (1) The point of origin of the shipment in the producing area or at the port of loading; or
- (2) The port of entry into the United States in the case of shipments from outside the continental United States.

"**Similar varietal characteristics**" means the cherries in any container are similar in color and shape.

"**Well formed**" means a cherry has the normal shape characteristic of the variety. Mature well-developed doubles are considered well formed if the halves are approximately evenly formed with a variation of no more than 2/64 of an inch.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-010 (~~What are~~) Washington No. 1 grade and Northwest No. 1 grade sweet (~~cherries~~) cherry requirements. ((The following table describes the characteristics of Washington No. 1 grade and Northwest No. 1 grade sweet cherries:

Washington No. 1 Grade Sweet Cherries	Northwest No. 1 Grade Sweet Cherries
Washington No. 1 sweet cherries must meet the following requirements:	Northwest No. 1 sweet cherries must meet the:
(1) Similar varietal characteristics;	(1) Quality requirements of Washington No. 1 sweet cherries listed in this table; and
(2) Mature;	(2) Size requirements listed in WAC 16-414-011.
(3) Not soft overripe or shriveled;	
(4) Fairly well colored;	
(5) Well formed;	
(6) No underdeveloped doubles;	
(7) Clean;	
(8) Free from decay, insect larvae or holes caused by them and sunscald; and	
(9) Free from damage by any other cause.)	

(1) Washington No. 1 grade and Northwest No. 1 grade sweet cherries are cherries with similar varietal characteristics that are:

- (a) Mature;
- (b) Not soft, overripe or shriveled;
- (c) Fairly well colored;

(d) Well formed;

(e) Clean;

(f) Free from underdeveloped doubles, decay, or sunscald;

(g) Free from insect larvae or insect holes; and

(h) Free from damage by any other cause.

(2) Northwest No. 1 grade sweet cherries must meet the size requirements listed in WAC 16-414-011.

AMENDATORY SECTION (Amending WSR 06-12-116, filed 6/7/06, effective 7/8/06)

WAC 16-414-011 (~~What~~) Size requirements (~~apply to~~) ~~Sweet cherries~~(~~?~~). (1) The minimum diameter of each cherry must be at least 54/64 inch.

(2) The maximum diameter of the cherries in any lot may be specified according to the facts.

(3) For the Rainier variety and similar varieties commonly referred to as "light colored sweet cherries," at least ninety percent, by count, of the cherries in any lot shall measure not less than 61/64 inch in diameter and not more than five percent, by count, may be less than 57/64 inch in diameter.

(4) When containers of cherries are marked with a row count/row size designation, the row count/row size marked must comply with the corresponding minimum diameter size as shown in the following table:

(If containers of cherries are marked with the following row count/row size designations:) Row count/Row size	(Then minimum diameter size of the cherries in inches must be:) Minimum diameter in inches
8	84/64
8 1/2	79/64
9	75/64
9 1/2	71/64
10	67/64
10 1/2	64/64
11	61/64
11 1/2	57/64
12	54/64

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-012 (~~What tolerances apply to Washington No. 1 and Northwest No. 1 grade sweet cherries at their shipping point and en route or at their destination?~~) Tolerances for Washington No. 1 and Northwest No. 1 grade sweet cherries. (1) **Washington No. 1:**

(a) To allow for variations incident to proper grading and handling at the shipping point, (~~en route or at their destination,~~) the following tolerances, by count, are established (~~for Washington No. 1 and Northwest No. 1 grade sweet cherries~~):

(Washington No. 1 Grade Sweet Cherries	Northwest No. 1 Grade Sweet Cherries
(1) Tolerances applied at shipping point	(1) Tolerances applied at shipping point
(a) Eight percent for cherries that fail to meet the requirements for Washington No. 1 grade.	(a) Ten percent for cherries in any inspection lot that fail to meet the requirements for Northwest No. 1 grade.
(b) Of the total tolerance of eight percent, no more than four percent is allowed for defects causing serious damage.	(b) Of the total tolerance of ten percent, no more than five percent is allowed for defects causing serious damage.
(c) Of the four percent tolerance for serious damage defects, no more than one-half of one percent is allowed for cherries affected by decay.	(c) Of the five percent tolerance for serious damage defects, no more than one percent is allowed for cherries affected by decay.
	(d) The contents of individual samples or containers in any lot must not be limited to the percentage of grade defects discussed in WAC 16-414-020.
(2) Tolerances applied en route or at destination	(2) Tolerances applied en route or at destination
(a) Twenty-four percent for cherries in any lot that fail to meet the requirements for Washington No. 1 grade.	(a) Twenty-four percent for cherries in any inspection lot that fail to meet the requirements for Northwest No. 1 grade.
(b) Of the total tolerance of twenty-four percent, no more than eight percent is allowed for cherries that fail to meet the requirements for Washington No. 1 grade because of permanent defects.	(b) Of the total tolerance of twenty-four percent, no more than ten percent, by count, is allowed for cherries that fail to meet the requirements for Northwest No. 1 grade because of permanent defects.
(c) Of the total tolerance of twenty-four percent, no more than six percent is allowed for cherries that are seriously damaged, including no more than:	(c) Of the total tolerance of twenty-four percent, no more than seven percent, by count, is allowed for cherries that are seriously damaged, including no more than:
(i) Four percent for cherries seriously damaged by permanent defects; and (ii) Two percent for cherries affected by decay.	(i) Five percent for cherries seriously damaged by permanent defects; and (ii) Two percent for cherries affected by decay.)

(i) Eight percent of cherries that fail to meet the requirements of the grade are allowed.

(ii) Of the total tolerance of eight percent, no more than four percent is allowed for defects causing serious damage.

(iii) Of the four percent tolerance for serious damage defects, no more than one-half of one percent is allowed for cherries affected by decay.

(b) To allow for variations incident to proper grading and handling en route or at destination, the following tolerances, by count, are established:

(i) Twenty-four percent of cherries in any lot may fail to meet the requirements of the grade.

(ii) Of the total tolerance of twenty-four percent, no more than eight percent is allowed for cherries that fail to meet the grade requirements because of permanent defects.

(iii) Of the total tolerance of twenty-four percent, no more than six percent is allowed for cherries that are seriously damaged, including no more than four percent of cherries seriously damaged by permanent defects and two percent for cherries affected by decay.

(2) Northwest No. 1:

(a) To allow for variations incident to proper grading and handling at the shipping point, the following tolerances are established:

(i) Ten percent of cherries in any inspection lot that fail to meet the requirements of the grade are allowed.

(ii) Of the total tolerance of ten percent, no more than five percent is allowed for defects causing serious damage.

(iii) Of the five percent tolerance for serious damage defects, no more than one percent is allowed for cherries affected by decay.

(iv) The contents of individual samples or containers in any lot must not be limited to the percentage of grade defects discussed in WAC 16-414-020.

(b) To allow for variations incident to proper grading and handling en route or at destination, the following tolerances, by count, are established:

(i) Twenty-four percent of cherries in any lot may fail to meet the requirements of the grade.

(ii) Of the total tolerance of twenty-four percent, no more than ten percent, by count, is allowed for cherries that fail to meet the grade requirements because of permanent defects.

(iii) Of the total tolerance of twenty-four percent, no more than seven percent, by count, is allowed for cherries that are seriously damaged, including no more than five percent for cherries seriously damaged by permanent defects and two percent for cherries affected by decay.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-014 ((What)) Tolerances ((apply to)) for "off-size" sweet cherries ((that are "off-size"?) To allow for variations in size incident to proper grading and handling, the following tolerances, by count, are established for off-size grade sweet cherries:

(1) No more than ten percent of the cherries in any inspection lot must measure less than 54/64 inches in diameter.

(2) Ten percent for cherries that fail to meet any specified maximum diameter when that maximum diameter is

marked on the container or specified in terms of fractions of inches.

(3) When containers are marked with row count/row size or a lot is specified by row count/row size, no more than ten percent of the cherries in any inspection lot may fail to meet the corresponding diameter size listed in the table in WAC 16-414-011(3).

(4) When containers are marked with a "minimum diameter," no more than five percent of the cherries in the container may fail to meet the corresponding diameter.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-016 ((Does)) Washington state adopts the U.S. standards for grades of sweet cherries(?) In addition to the standards for sweet cherries contained in this chapter, the Washington state department of agriculture adopts the United States standards for grades of sweet cherries (effective May 7, 1971) as they apply to U.S. No. 1 grade cherries, except the minimum size of cherries and tolerances for undersize cherries must meet the requirements for Washington No. 1 grade.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-020 ((How are individual sample tolerances applied to)) Washington No. 1 and Northwest No. 1 grade sweet cherries(?)—Individual sample tolerances. Tolerances are applied to Washington No. 1 and Northwest No. 1 sweet cherries as follows:

(1) Individual samples must have no more than double the tolerances specified. However, if the averages for the entire lot are within the tolerances specified for the grade, at least two defective and two off-size specimens may be allowed in any sample.

(2) When containers are marked with row count/row size or when a lot is specified by row count/row size, the individual samples or containers must not be limited by the percentage of cherries that are smaller than the diameter corresponding to the particular row count/row size. However, no more than twenty percent, by count, of the cherries in any sample or container must measure less than 54/64 inches in diameter.

(3) When marked with minimum size, individual samples may have no more than double the tolerances specified.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-045 ((What)) Damage to fresh, sweet cherries—Specific defects ((are considered damage to Washington standards?)) ((The defects listed in the following table are considered "damage":

DEFECT	DESCRIPTION
(1) Cracks within the stem cavity	Cracks within the stem cavity are considered damage when:

DEFECT	DESCRIPTION
	<ul style="list-style-type: none"> • Deep or not well healed; or • The cherry's appearance is affected to a greater extent than a cherry that has a superficial well-healed crack one sixteenth inch in width extending one-half the greatest circumference of the stem cavity.
(2) Cracks outside of the stem cavity	Cracks outside of the stem cavity are considered damage when: <ul style="list-style-type: none"> • Deep or not well healed; or • The crack has weakened the cherry to the extent that it is likely to split or break in the process of proper grading, packing and handling; or • Materially affecting the cherry's appearance.
(3) Hail marks	Hail marks are considered damage when: <ul style="list-style-type: none"> • Deep or not well healed; or • The aggregate area exceeds the area of a circle three-sixteenths inch in diameter.
(4) Evidence of insects	Evidence of insects is considered damage when: <ul style="list-style-type: none"> • Seal or more than one seal mark is present; or • Any insect materially affects the cherry's appearance.
(5) Limb rubs	Limb rubs are considered damage when they affect the cherry's appearance more than the amount of scarring that is permitted.
(6) Pulled stems	Pulled stems are considered damage when the skin or flesh is slightly torn.
(7) Russetting	Russetting is considered damage when affecting the cherry's appearance more than the amount of scarring permitted.
(8) Blemished	Any of the following blemishes are considered damage: <ul style="list-style-type: none"> • Bird peeks; • Sunburn; • Other blemishes or combinations of blemishes that materially affect the appearance of the cherry; or • Any cherry with flesh that is materially discolored.
(9) Sears	Sears are considered damage when:

DEFECT	DESCRIPTION
	<ul style="list-style-type: none"> • Excessively deep or rough or dark colored and the aggregate area exceeds the area of a circle three-sixteenths inch in diameter; or • Smooth or fairly smooth, light colored and superficial and the aggregate area exceeds the area of a circle one-fourth inch in diameter.
(10) Skin-breaks	Skin breaks are considered damage when: <ul style="list-style-type: none"> • Not well healed; or • The cherry's appearance is materially affected.
(11) Sutures	Sutures are considered damage when: <ul style="list-style-type: none"> • Excessively deep; or • Causing the cherry's shape to be less than well formed.)

The following defects are considered damage to fresh, sweet cherries:

(1) Cracks within the stem cavity when they are deep or not well healed, or when the cherry's appearance is affected to a greater extent than a cherry that has a superficial well healed crack 1/16 inch in width and extending one-half the greatest circumference of the stem cavity.

(2) Cracks outside the stem cavity when they are deep or not well healed, or when they materially affect the cherry's appearance, or when the crack has weakened the cherry to the extent that it is likely to split or break in the process of proper grading, packing and handling.

(3) Hail marks when they are deep or not well healed, or when the aggregate area exceeds 3/16 inch in diameter.

(4) Evidence of insects when scale is present, or when any insect materially affects the cherry's appearance.

(5) Limb rubs when they affect the cherry's appearance more than the amount of scarring that is allowed.

(6) Pulled stems when the skin or flesh is slightly torn.

(7) Russeting when it affects the cherry's appearance more than the amount of scarring that is allowed.

(8) Blemishes including bird pecks, sunburn, other blemishes or combinations of blemishes that materially affect the appearance of the cherry, or any materially discolored flesh.

(9) Scars when excessively deep or rough or dark colored and when the aggregate area exceeds 3/16 inch in diameter, or when smooth or fairly smooth, light colored, superficial, and the aggregate area exceeds 1/4 inch in diameter.

(10) Skin breaks when they are not well healed, or when the cherry's appearance is materially affected.

(11) Sutures when they are excessively deep or cause the cherry's shape to be less than well formed.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-065 ((What)) Serious damage to fresh, sweet cherries—Specific defects ((are considered "serious

damage" to Washington standards?)), ((The defects listed in the following table are considered "serious damage":

DEFECT	DESCRIPTION
(1) Cracks	Cracks are considered serious damage if they are not well healed.
(2) Insect larvae or holes caused by them	The presence of insect larvae or holes caused by insect larvae is considered serious damage.
(3) Pulled stems	Pulled stems are considered serious damage if they cause: <ul style="list-style-type: none"> • A more than slight tear in the cherry skin or flesh; or • The cherry to leak.
(4) Skin breaks	Skin breaks are considered serious damage if they are not well healed.
(5) Decay	Any sign of decay is considered serious damage.)

The following defects are considered serious damage to fresh, sweet cherries:

(1) Cracks when they are not well healed;

(2) Insect larvae or insect holes;

(3) Pulled stems if they cause more than a slight tear in the cherry skin or flesh, or when they cause the cherry to leak;

(4) Skin breaks when they are not well healed; and

(5) Decay.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-090 ((What marking requirements apply to)) Sweet cherry container((s?)) marking requirements. (1) Containers must be conspicuously and legibly stamped with the:

(a) Name and the address of the grower, packer or shipper;

(b) Net weight; and

(c) True variety name or "sweet cherries."

(2) The containers may be marked with the grade name Washington No. 1, U.S. No. 1, or Northwest No. 1.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-105 ((What)) Definitions ((are important to))—Sulphured cherries((?)). "Damage" means any injury or specific defect described in WAC 16-414-145 or any equally objectionable variation of those defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible quality or marketing quality of the fruit.

"Fairly well bleached" means the cherries possess a reasonably uniform color typical of reasonably well bleached sulphured cherries for that variety.

"Pit" means an entire pit or portion of a pit that is attached to a sulphured cherry or located within the pit cavity.

"Properly matured" means that stage of ripeness when a cherry is ready for brining.

"**Serious damage**" means any injury that seriously affects the appearance or market quality of the product.

"**Sulphured cherries**" means properly matured whole cherries of similar varietal characteristics packed in a solution of sulphur dioxide of sufficient strength to preserve the cherries without adding hardening agents.

"**Sulphured cherries with pits**" means whole cherries, with or without stems, from which the pits have not been removed. If:

(1) Without stems, not more than twenty percent, by weight, of all the cherries may have the stems removed.

(2) With stems, not more than one-half of one percent, by weight, of all the cherries may have the stems attached.

"**Sulphured cherries without pits**" means whole cherries with or without stems from which the pits have been removed. If:

(1) Without stems (cocktail), not more than seven percent, by weight, of all the cherries may have the stems removed.

(2) With stems, not more than one-half of one percent, by weight, of all the cherries may have the stems attached.

"**Unclassified cherries**" means sulphured cherries that do not conform to the descriptions of "sulphured cherries with pits" or sulphured cherries without pits.

"**Well bleached**" means the cherries possess a practically uniform color that is typical of well bleached sulphured cherries for that variety.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-107 ((What are the) Washington state grades for sulphured cherries((?)). ((The following table lists and describes the various grades of Washington state sulphured cherries:

IF THE GRADE IS:	THEN THE CHERRIES MUST BE:
(1) Washington No. 1 grade sulphured whole cherries	<ul style="list-style-type: none"> • Properly matured; • Of similar varietal characteristics; • Clean; • Firm; • Well formed; • Well bleached; and • Free from damage caused by mechanical injury, surface discoloration, rain cracks, blemishes or other means.
(2) Washington No. 1 grade sulphured halved cherries	<ul style="list-style-type: none"> • Portions of sliced cherries with no particle smaller than an estimated one-third or larger than an estimated two-thirds of a whole cherry; • Properly matured; • Of similar varietal characteristics; • Clean;

IF THE GRADE IS:	THEN THE CHERRIES MUST BE:
	<ul style="list-style-type: none"> • Firm; • Well formed; • Well bleached; and • Free from damage caused by mechanical injury, surface discoloration, rain cracks, blemishes or other means.
(3) Washington No. 2 grade sulphured whole cherries	<ul style="list-style-type: none"> • Properly matured; • Of similar varietal characteristics; • Clean; • Fairly firm; • Well formed; • Fairly well bleached; and • Free from serious damage caused by mechanical injury, surface discoloration, rain cracks, blemishes or other means.
(4) Washington No. 2 grade sulphured halved cherries	<ul style="list-style-type: none"> • Properly matured cherries; • Of similar varietal characteristics; • Clean; • Fairly firm; • Well formed; • Fairly well bleached; and • Free from serious damage caused by mechanical injury, surface discoloration, rain cracks, blemishes or other means.
(5) Washington combination grade sulphured cherries	<ul style="list-style-type: none"> • A combination of Washington No. 1 and Washington No. 2 cherries of any style; and • Unless otherwise specified, packed in a lot that averages at least fifty percent Washington No. 1 quality cherries.
(6) Washington No. 3 grade sulphured cherries	<ul style="list-style-type: none"> • Cherries that fail to meet the requirements of the above grades; and • Practically free of stems, leaves, fruit spurs, bark, dirt or foreign material.)

(1) Washington No. 1 grade sulphured whole cherries are cherries of similar varietal characteristics that are:

- (a) Properly matured;
- (b) Clean;
- (c) Firm;
- (d) Well formed;

(e) Well bleached; and

(f) Free from damage caused by mechanical injury, surface discoloration, rain cracks, blemishes, or other means.

(2) Washington No. 1 grade sulphured halved cherries are portions of sliced cherries of similar varietal characteristics where no particle is smaller than an estimated one-third or larger than an estimated two-thirds of a whole cherry and are:

(a) Properly matured;

(b) Clean;

(c) Firm;

(d) Well formed;

(e) Well bleached; and

(f) Free from damage caused by mechanical injury, surface discoloration, rain cracks, blemishes, or other means.

(3) Washington No. 2 grade sulphured whole cherries are cherries of similar varietal characteristics that are:

(a) Properly matured;

(b) Clean;

(c) Fairly firm;

(d) Well formed;

(e) Fairly well bleached; and

(f) Free from serious damage caused by mechanical injury, surface discoloration, rain cracks, blemishes, or other means.

(4) Washington No. 2 grade sulphured halved cherries are portions of sliced cherries of similar varietal characteristics that are:

(a) Properly matured;

(b) Fairly firm;

(c) Well formed;

(d) Fairly well bleached; and

(e) Free from serious damage caused by mechanical injury, surface discoloration, rain cracks, blemishes, or other means.

(5) Washington combination grade sulphured cherries are a combination of Washington No. 1 and Washington No. 2 cherries of any style that are, unless otherwise specified, packed in a lot that averages at least fifty percent Washington No. 1 quality cherries.

(6) Washington No. 3 grade sulphured cherries are cherries that fail to meet the requirements of the above grades and are practically free of stems, leaves, fruit spurs, bark, dirt, or foreign material.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-108 (~~What are the~~) **Tolerances for Washington sulphured cherries**(?). ((The following table describes the tolerances for various grades of Washington sulphured cherries:

IF THE GRADE IS:	THEN THE TOLERANCES ARE:
(1) Washington No. 1 grade sulphured whole cherries	<ul style="list-style-type: none"> • At least ninety five percent of the cherries of any lot must meet the requirements of "firm." • In addition, not more than ten percent of the cherries of any lot may be below the remaining requirements of this grade, of which not more than one half or five percent must be allowed for defects classified as serious damage.
(2) Washington No. 1 grade sulphured halved cherries	<ul style="list-style-type: none"> • At least ninety five percent of the cherries of any lot must meet the requirements of "firm." • In addition, not more than ten percent of the cherries of any lot may be below the remaining requirements of this grade, of which not more than one half or five percent must be allowed for defects classified as serious damage.
(3) Washington No. 2 grade sulphured whole cherries	<ul style="list-style-type: none"> • At least ninety percent of the cherries of any lot must meet the requirements of "fairly firm." • In addition, not more than ten percent of the cherries of any lot may be below the remaining requirements of this grade.
(4) Washington No. 2 grade sulphured halved cherries	<ul style="list-style-type: none"> • At least ninety percent of the cherries of any lot must meet the requirements of "fairly firm." • In addition, not more than ten percent of the cherries of any lot may be below the remaining requirements of this grade.
(5) Washington combination grade sulphured cherries	<ul style="list-style-type: none"> • A tolerance of not more than ten percent is allowed for cherries that are below the requirements of Washington No. 2 grade. • The tolerances for combination grade sulphured cherries are on a container basis. However, individual containers in any lot may vary from the specified tolerances, if the averages for the entire lot, based on sample inspections, are within the specified tolerances.

IF THE GRADE IS:	THEN THE TOLERANCES ARE:
	<ul style="list-style-type: none"> • For the entire lot, no part of any tolerance must reduce the requirement that fifty percent of cherries in the combination must be of the higher grade. However, individual containers may have at least thirty-five percent of the higher grade or be more than twenty percent below the requirements of Washington No. 2 grade. • When other combinations are specified, individual containers may not have more than fifteen percent less than the percentage specified of the higher grade or be more than twenty percent below the requirements of Washington No. 2 grade.
(6) Washington No. 3 grade sulphured cherries	There are no applicable tolerances for Washington No. 3 grade sulphured cherries.)

(1) Washington No. 1 grade sulphured whole cherries:
 (a) At least ninety-five percent of the cherries in any lot must meet the requirements of "firm."

(b) Not more than ten percent of the cherries in any lot may be below the remaining requirements of this grade, of which not more than one-half or five percent must be allowed for defects classified as serious damage.

(2) Washington No. 1 grade sulphured halved cherries:

(a) At least ninety-five percent of the cherries of any lot must meet the requirements of "firm."

(b) Not more than ten percent of the cherries in any lot may be below the remaining requirements of this grade, of which not more than one-half or five percent must be allowed for defects classified as serious damage.

(3) Washington No. 2 grade sulphured whole cherries:

(a) At least ninety-five percent of the cherries of any lot must meet the requirements of "fairly firm."

(b) Not more than ten percent of the cherries in any lot may be below the remaining requirements of this grade.

(4) Washington No. 2 grade sulphured halved cherries:

(a) At least ninety percent of the cherries in any lot must meet the requirements of "fairly firm."

(b) Not more than ten percent of the cherries of any lot may be below the remaining requirements of this grade.

(5) Washington combination grade sulphured cherries:

(a) A tolerance of not more than ten percent is allowed for cherries that are below the requirements of Washington No. 2 grade.

(b) The tolerances for combination grade sulphured cherries are on a container basis. However, individual containers in any lot may vary from the specified tolerances if the averages for the entire lot, based on sample inspections, are within the specified tolerances.

(c) For the entire lot, no part of any tolerance must reduce the requirement that fifty percent of cherries in the combination must be of the higher grade. However, individual containers may have at least thirty-five percent of the higher grade or be more than twenty percent below the requirements of Washington No. 2 grade.

(d) When other combinations are specified, individual containers may not have more than fifteen percent less than the percentage specified of the higher grade or be more than twenty percent below the requirements of Washington No. 2 grade.

(6) Washington No. 3 grade sulphured cherries: There are no applicable tolerances for Washington No. 3 grade sulphured cherries.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-110 ((What are the)) Size requirements for all grades of Washington sulphured whole cherries((?)). (1) The following table lists the standard sizes for all grades of Washington whole sulphured cherries.

SIZE DESIGNATION	SIZE RANGE
Extra small	14 mm to and including 16 mm
Small	16 mm to and including 18 mm
Medium	18 mm to and including 20 mm
Large	20 mm to and including 22 mm
Extra large	22 mm and over

(2) The following tolerances are allowed:

(a) Five percent for cherries that fail to meet the specified minimum diameter; and

(b) Ten percent for cherries that fail to meet the specified maximum diameter.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-120 ((What are the)) Tolerance requirements for the certification of lots of Washington No. 1 and Washington No. 2 grade sulphured cherries((?)). (1) Tolerances for the certification of lots of Washington No. 1 or Washington No. 2 grades of sulphured cherries must be on a container basis.

(2) At least one-sixth of the individual containers in any lot may vary from the specified tolerances if the averages for the entire lot, based on sample inspection, are within the specified tolerances.

(3) For a tolerance of ten percent or more, individual containers in any lot may contain no more than one and one-half times the specified tolerance.

(4) For a tolerance of less than ten percent, individual containers in any lot may contain no more than double the specified tolerances.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-125 ((What)) Tolerances ((apply to)) for sulphured pitted cherries((?)). The following tolerances apply to sulphured pitted cherries:

((IF THE CHERRY SIZE IS:	THEN THE TOLERANCE IS:
(1) Extra small and small sizes	No more than two pits per each forty ounces of cherries
(2) Medium, large or mixed sizes	No more than one pit per each forty ounces of cherries
(3) Extra large size	No more than one pit per each sixty ounces of cherries))

(1) For extra small and small sized cherries, the tolerance is no more than two pits per each forty ounces of cherries.

(2) For medium, large, or mixed size cherries, the tolerance is no more than one pit per each forty ounces of cherries.

(3) For extra large size cherries, the tolerance is no more than one pit per each sixty ounces of cherries.

AMENDATORY SECTION (Amending WSR 05-12-037, filed 5/25/05, effective 6/25/05)

WAC 16-414-145 ((What specific defects are considered)) Damage to ((Washington standards for)) sulphured cherries((?))—Specific defects. The following defects ((listed in the following table)) are considered ("damage") damage for sulphured cherries:

((DEFECT	DESCRIPTION
(1) Mechanical injury	Any of the following mechanical injuries are considered damage: <ul style="list-style-type: none"> • Open pitter hole; or • Pitter hole where there is a material loss of flesh; or • Pitter tear or pitter tears; or • Other mechanical injuries that materially affect the appearance of the cherry.
(2) Surface discoloration	Surface discoloration for Washington No. 1 whole cherries is considered damage when any: <ul style="list-style-type: none"> • Light surface discoloration exceeds, in the aggregate, one-eighth of the cherry's surface; or • Dark surface discoloration exceeds, in the aggregate, the area of a circle three-sixteenths inches in diameter, but does not exceed, in the aggregate, one-eighth of the cherry's surface.

((DEFECT	DESCRIPTION
(3) Surface discoloration	Surface discoloration for Washington No. 1 halved cherries is considered damage when any: <ul style="list-style-type: none"> • Light surface discoloration exceeds, in the aggregate, one-eighth of the cherry's surface; or • Dark surface discoloration exceeds, in the aggregate, the area of a circle one-sixteenth inch in diameter.
(4) Rain cracks	Rain cracks on Washington No. 1 whole cherries are considered damage if: <ul style="list-style-type: none"> • In the stem basin and more than one-fourth inch in length; or • Outside the stem basin and more than three-sixteenths of an inch in length, measured on the circumference.
(5) Rain cracks	Rain cracks on Washington No. 1 halved cherries are considered damage if: <ul style="list-style-type: none"> • In the stem basin and more than one-eighth inch in length; or • Outside the stem basin. (Note: No rain cracks are allowed outside the stem basin.)
(6) Blemished	Any of the following blemishes are considered damage: <ul style="list-style-type: none"> • Insect injury; • Bird pecks; • Limb rub; • Hail marks; • Sunburn; • Solution cracks; • Other blemishes or combinations of blemishes that materially affect the appearance of the cherry; or • Any cherry with flesh that is materially discolored.)

(1) Mechanical injury. Any of the following mechanical injuries are considered damage:

- (a) Open pitter hole;
- (b) Pitter hole where there is a material loss of flesh;
- (c) One or more pitter tears; or
- (d) Other mechanical injuries that materially affect the appearance of the cherry.

(2) Surface discoloration of Washington No. 1 whole cherries when:

- (a) Light surface discoloration exceeds, in the aggregate, one-eighth of the cherry's surface; or

(b) Dark surface discoloration exceeds, in the aggregate, an area 3/16 inch in diameter, but does not exceed one-eighth of the cherry's surface.

(3) Surface discoloration of Washington No. 1 halved cherries when:

(a) Light surface discoloration exceeds, in the aggregate, one-eighth of the cherry's surface; or

(b) Dark surface discoloration exceeds, in the aggregate, an area 1/16 inch in diameter.

(4) Rain cracks on Washington No. 1 whole cherries if they are in the stem basin and more than 1/4 inch in length, or if they are outside the stem basin and are more than 3/16 inch in length, measured on the circumference.

(5) Rain cracks on Washington No. 1 halved cherries if they are in the stem basin and more than 1/8 inch in length. No rain cracks are allowed outside the stem basin.

(6) Blemishes including insect injury, bird pecks, limb rub, hail marks, sunburn, solution cracks, other blemishes or combinations of blemishes that materially affect the appearance of the cherry, or any materially discolored flesh.

AMENDATORY SECTION (Amending WSR 05-20-075, filed 10/4/05, effective 11/4/05)

WAC 16-414-155 (~~What specific defects are considered~~) **Serious damage to** (~~Washington standards for~~) **sulphured cherries** ~~(?)~~ **—Specific defects.** The following defects (~~listed in the following table~~) are considered serious damage for sulphured cherries:

((DEFECT	DESCRIPTION
(1) Deformed cherry or double cherry	Any deformed sulphured cherry or double sulphured cherry is considered serious damage.
(2) Mechanical injury	Mechanical injury to Washington No. 2 whole cherries is considered serious damage if it causes any: <ul style="list-style-type: none"> • Open pitter holes; • Pitter hole where there is a serious loss of flesh; • Pitter tears; or • Other mechanical injury that seriously affects the cherry's appearance.
(3) Mechanical injury	Mechanical injury to Washington No. 2 halved cherries is considered serious damage if it causes any: <ul style="list-style-type: none"> • Open pitter holes; • Pitter hole where there is a serious loss of flesh; • Pitter tears; or • Other mechanical injury that seriously affects the cherry's appearance.

((DEFECT	DESCRIPTION
(4) Surface discoloration	Surface discoloration is considered serious damage when any: <ul style="list-style-type: none"> • Light surface discoloration exceeds, in the aggregate, 1/2 of the cherry's surface; or • Dark surface discoloration exceeds, in the aggregate, 1/8 of the cherry's surface.
(5) Rain cracks	Rain cracks on Washington No. 2 whole cherries are considered serious damage if: <ul style="list-style-type: none"> • In the stem basin and more than 1/2 inch in length; or • Outside the stem basin and more than 3/8 of an inch in length, measured on the circumference.
(6) Rain cracks	Rain cracks on Washington No. 2 halved cherries are considered serious damage if: <ul style="list-style-type: none"> • In the stem basin and more than 1/4 inch in length; or • Outside the stem basin more than 3/16 of an inch in length, measured on the circumference.
(7) Blemished	Any blemish or combination of blemishes are considered serious damage if they seriously: <ul style="list-style-type: none"> • Affect the appearance of the cherry; or • Discolor the flesh of the cherry.)

- (1) Any deformed or double sulphured cherry.
- (2) Mechanical injury to Washington No. 2 whole and No. 2 halved cherries if it causes:
 - (a) Open pitter holes;
 - (b) Pitter hole with a serious loss of flesh;
 - (c) Pitter tears; or
 - (d) Other mechanical injury that seriously affects the cherry's appearance.
- (3) Surface discoloration when:
 - (a) Light surface discoloration exceeds, in the aggregate, one-half of the cherry's surface; or
 - (b) Dark surface discoloration exceeds, in the aggregate, one-eighth of the cherry's surface.
- (4) Rain cracks on Washington No. 2 whole cherries if they are in the stem basin and more than 1/2 inch in length, or are outside the stem basin and more than 3/8 inch in length, measured on the circumference.
- (5) Rain cracks on Washington No. 2 halved cherries if they are in the stem basin and more than 1/4 inch in length, or are outside the stem basin and more than 3/16 inch in length, measured on the circumference.
- (6) Blemishes when they affect the appearance of the cherry or discolor the cherry's flesh.

WSR 07-12-080
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 5, 2007, 11:06 a.m., effective July 6, 2007]

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

Purpose: WAC 220-56-235 Possession limits—Bottomfish, the Pacific Fisheries Management Council has changed the size limit for lingcod in Management and Catch Reporting Areas 1 through 3. The proposed action will be complimentary to federal rules and will provide for coordinated enforcement in these areas. The council process has provided for extensive public input on these actions.

No written comments were received. The commission has delegated rule-making authority on this issue to the director, pursuant to RCW 77.65.200.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-235 (Amending Order 04-218, filed 8/17/04, effective 9/17/04).

Statutory Authority for Adoption: RCW 77.12.047 and 77.65.200.

Adopted under notice filed as WSR 07-08-012 on March 23, 2007.

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

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

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

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

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

Date Adopted: June 5, 2007.

Loreva M. Preuss
 for Jeff Koenings
 Director

AMENDATORY SECTION (Amending Order 04-218, filed 8/17/04, effective 9/17/04)

WAC 220-56-235 Possession limits—Bottomfish. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time shall not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4) - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod - 2 fish (~~minimum length 24 inches~~):

(i) Minimum length 22 inches in Catch Record Card Areas 1 through 3.

(ii) Minimum length 24 inches in Catch Record Card Area 4.

(b) Rockfish - 10 fish. Release all canary and yelloweye rockfish.

(c) Surfperch (excluding shiner perch) - 15 fish.

(d) Wolf-eel - 0 fish from Catch Record Card Area 4.

(e) Cabezon - 2 fish east of the Bonilla-Tatoosh line.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish except	1 fish May 1 through September 30
in Marine Area 5 west of Slip Point	3 fish of which no more than 1 may be other than black rockfish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pacific hake	2 fish

(b) Catch Record Card Area 7 - 15 fish in the aggregate of all species of bottomfish, which may include no more than:

Rockfish	1 fish May 1 through September 30
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pollock	2 fish
Pacific hake	2 fish

(c) Catch Record Card Areas 8-1 through 11 and 13 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish in Area 9 May 1 through September 30 and in Areas 8-1, 8-2, 10, 11 and 13 when lingcod or salmon seasons are open. Rockfish closed in Area 12	1 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish

Wolf-eel	0 fish
Cabezon	2 fish
Pacific hake	0 fish

(d) Catch Area 12: Closed.

(e) It is unlawful to possess lingcod taken by angling less than 26 inches in length or greater than 40 inches in length.

(f) The daily limit taken by spear fishing may include no more than one lingcod. There is no size restriction on the one lingcod allowed in the daily limit if taken by spear fishing.

(g) It is unlawful to retain cabezon taken from Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(h) It is unlawful to retain six-gill shark taken from Catch Record Card Areas 5 through 13.

(i) It is unlawful to retain canary or yelloweye rockfish taken from Catch Record Card Areas 5 through 13.

(j) It is unlawful to take rockfish by spear fishing in Catch Record Card Areas 5 through 13.

(k) In Catch Record Areas 5 through 11 and 13, the daily limit for rockfish is the first legal rockfish caught, except in Area 5 west of Slip Point the daily limit for rockfish is the first three legal rockfish caught, provided that no more than one of the three may be other than black rockfish. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

WSR 07-12-090
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Psychology)

[Filed June 6, 2007, 10:03 a.m., effective July 7, 2007]

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

Purpose: Adopting new WAC 246-924-445 and 246-924-467. These rules provide clear guidance for the psychologists to follow when assessing their patients and reporting their findings. By establishing standards, parenting evaluations will be more consistent and reliable, increasing public and court confidence. The rule should help minimize the number of complaints and/or disciplinary actions against psychologists in Washington state.

Statutory Authority for Adoption: RCW 18.83.050.

Adopted under notice filed as WSR 07-22-098 [07-02-098] on January 3, 2007.

Changes Other than Editing from Proposed to Adopted Version: The adopted rule language adds substance abuse evaluations as an example of relevant records for review when completing a parenting evaluation in WAC 246-924-445 (5)(i), WAC 246-924-445 was also modified by moving WAC 246-924-445 (5)(m) to the beginning of WAC 246-924-445(5). The examining board of psychology (EBOP) believes these elements needed to be modified in order to provide clear guidance.

A final cost-benefit analysis is available by contacting Betty J. Moe, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4912, fax (360) 236-4909, e-mail Betty.Moe@doh.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: June 6, 2007.

Betty J. Moe
for Ray Harry, Chair
Public Member

NEW SECTION

WAC 246-924-445 Parenting evaluations—Standards. Psychologists may be called upon to evaluate members of a family to assist in determining an appropriate residential arrangement, parental duties, or parental relationship with respect to a minor child. These rules establish minimum standards for conducting parenting evaluations. The psychologist must perform the evaluation focusing on the best interest of the child. In the event that there is more than one child in the family, these rules apply to each child in the family.

(1) The psychologist shall assess relevant ethnic and cultural issues and shall consider the following factors:

(a) The relative strength, nature, and stability of the child's relationship with each parent;

(b) Which parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(c) Each parent's past and potential ability to perform parenting functions; and

(d) The emotional needs and developmental level of the child.

(2) The psychologist may consider the following:

(a) Any voluntary agreements of the parties;

(b) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(c) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(d) Each parent's employment schedule.

(3) In conducting parenting evaluations, the psychologist shall not discriminate based on age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis prohibited by law.

(4) The psychologist may make recommendations regarding the primary residential parent, shared residential

time, decision-making authority or other variables involving more than one of the parties. If recommendations are made, the parenting evaluation must include an assessment of each of the relevant parties being considered and their ability to function as a parent.

(5) In reaching a conclusion or making a recommendation, the psychologist shall consider the existence of limiting factors as outlined in RCW 26.09.191. The psychologist shall be familiar with or obtain consultation regarding the psychological aspects of child abuse, domestic violence, substance abuse, and family conflict. Recommendations and conclusions, if any, reached in an evaluation must be based on information from more than one source and must be supported by the data collected. Sources of information may include:

- (a) Face-to-face interviews with the parties;
 - (b) Collateral contact interviews;
 - (c) An opportunity for each party to express concerns or issues in writing;
 - (d) A review of pleadings;
 - (e) Written input from collateral sources;
 - (f) Written documentation from the parties;
 - (g) Direct observation of the parties with their children;
 - (h) Psychological testing of the parties and/or their children;
 - (i) A review of relevant records (e.g., school or counseling records, child protective services records, substance abuse evaluations);
 - (j) Prior criminal convictions;
 - (k) Current involvement of law enforcement; and
 - (l) Face-to-face interviews with the children.
- (6) If the psychologist uses psychological testing as part of the evaluation, the psychologist must interpret the test(s) consistent with current research or standards of practice.

(7) The psychologist shall not have provided therapeutic services to any party involved in the evaluation. Unless there are mitigating circumstances, the psychologist shall decline to perform a parenting evaluation. Providing service in a rural or underserved area with limited professional options is an example of a possible mitigating circumstance.

(8) The psychologist shall avoid multiple relationships when conducting parenting evaluations. If the previous or current relationship is substantially likely to impair objectivity, the psychologist shall decline the appointment or withdraw. The psychologist shall disclose multiple relationships to the parties or their legal representatives and document the disclosure in the client records.

(9) Relevant comments about a person not personally evaluated may be included if the report clearly identifies the source for the comment and states that the person to which the comment relates was not evaluated by the psychologist.

(10) Psychologists shall maintain a written record of the evaluation. At a minimum, the written record shall include the following:

- (a) Court order or signed consent from all parties to conduct the evaluation;
- (b) Written retainer agreement;
- (c) Appropriate court order or signed authorizations for release of information;

(d) Documentation of dates of service, nature of service and fee charged;

(e) A copy of the evaluation report; and

(f) The information and sources used for the evaluation.

(11) The psychologist shall disclose the following specific information to the parties in writing at the outset of the evaluation assignment. All requests for records must be processed in accordance with chapter 70.02 RCW.

(a) The entity or individual that has requested the evaluation if it is done at the request of a third party;

(b) The entity or individual that is responsible for the bill;

(c) Fee structure;

(d) The entity, agency or individual that will receive the results or the report;

(e) Limits on confidentiality; and

(f) General procedures to be followed.

(12) The psychologist shall make available upon request to the clients or their counsel:

(a) The documents the psychologist relied upon during the evaluation process;

(b) The identity of collateral contacts;

(c) Notes taken during all interviews of the parties or collaterals;

(d) If, however, the psychologist believes that release of information provided by the child, may be harmful to the child, the psychologist may withhold those notes unless directed to do otherwise by the court. The psychologist shall document the reasons for withholding the information in the file;

(e) Dates of evaluation procedures and charges;

(f) All correspondence associated with the case;

(g) The psychologist shall not provide raw test data including test questions, answer sheets, profile scores, computer generated interpretations, or copyrighted materials to nonpsychologists. The psychologist may provide this information to another psychologist or another individual who is qualified to interpret it, with proper authorization from the client or the client's attorney. Protected test materials and raw data may be provided as directed by the court.

NEW SECTION

WAC 246-924-467 Limited services related to parenting evaluations. (1) A psychologist may perform limited evaluative services related to, but not intended to be, a full parenting evaluation. Examples of these services include:

(a) Evaluating the parenting ability of a party;

(b) Evaluating substance abuse status of a party;

(c) Assessing psychological functioning of a party;

(d) Performing a sexual deviance evaluation;

(e) Conducting a domestic violence assessment;

(f) Assessing allegations of sexual or physical abuse of a child; and

(g) Performing a vocational assessment of a party. The evaluator shall limit conclusions and recommendations to the scope of the requested assessment.

(2) With an appropriate authorization, a psychologist who has provided therapeutic services may provide informa-

tion to the court or an evaluator regarding a client. Relevant information may include, but is not limited to:

- (a) Diagnosis, clinical and personality assessment;
- (b) Treatment plan, or prognosis.

WSR 07-12-091

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed June 6, 2007, 10:03 a.m., effective July 7, 2007]

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

Purpose: WAC 246-853-600/246-854-200 Sexual misconduct and WAC 246-853-610/246-854-210 Abuse, the rules establish consistent and enforceable definitions of abuse and sexual misconduct with current or former patients of osteopathic physicians and physician assistants. The rules will help the practitioners avoid inappropriate behavior and will educate the public on the type of behavior expected of their practitioner.

Statutory Authority for Adoption: RCW 18.57.005, 18.130.050.

Other Authority: Chapters 18.57, 18.57A RCW.

Adopted under notice filed as WSR 06-24-138 on December 6, 2006.

Changes Other than Editing from Proposed to Adopted Version: Language was added noting that the definitions of "osteopathic physician," "patient" and "key third party" in new WAC 246-853-600 apply to the same terms in new WAC 246-853-610, and the definitions of "osteopathic physician assistant," "patient" and "key third party" in new WAC 246-854-200 apply to the same terms in WAC 246-854-210. These revisions clarify the rules without changing their intent.

A final cost-benefit analysis is available by contacting Arlene Robertson, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4945, fax (360) 236-2406, e-mail arlene.robertson@doh.wa.gov.

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

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

Date Adopted: June 5, 2007.

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-853-600 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the osteopathic physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the osteopathic physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Osteopathic physician" means a person licensed to practice osteopathic medicine and surgery under chapter 18.57 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An osteopathic physician shall not engage in sexual misconduct with a current patient or a key third party. An osteopathic physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the osteopathic physician or masturbation by the osteopathic physician while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the osteopathic physician.

(3) An osteopathic physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the osteopathic physician:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the osteopathic physician's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;

- (d) The length of time of the professional relationship;
 - (e) The extent to which the patient has confided personal or private information to the osteopathic physician;
 - (f) The nature of the patient's health problem;
 - (g) The degree of emotional dependence and vulnerability.
- (5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.
- (6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.
- (7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-853-610 Abuse. (1) An osteopathic physician commits unprofessional conduct if the osteopathic physician abuses a patient or key third party. "Osteopathic physician," "patient" and "key third party" are defined in WAC 246-853-600. An osteopathic physician abuses a patient when he or she:

- (a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;
 - (b) Removes a patient's clothing or gown without consent;
 - (c) Fails to treat an unconscious or deceased patient's body or property respectfully;
 - (d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.
- (2) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-854-200 Sexual misconduct. (1) Definitions:

- (a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the osteopathic physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the osteopathic physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.
- (b) "Osteopathic physician assistant" means a person licensed to practice osteopathic medicine and surgery under chapter 18.57A RCW.
- (c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An osteopathic physician assistant shall not engage in sexual misconduct with a current patient or a key third party. An osteopathic physician assistant engages in sexual miscon-

duct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the osteopathic physician assistant or masturbation by the osteopathic physician assistant while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the osteopathic physician assistant.

(3) An osteopathic physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the osteopathic physician assistant:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the osteopathic physician assistant's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the osteopathic physician assistant;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

(5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-854-210 Abuse. (1) An osteopathic physician assistant commits unprofessional conduct if the osteopathic physician assistant abuses a patient or key third party.

"Osteopathic physician assistant," "patient" and "key third party" are defined in WAC 246-854-200. An osteopathic physician assistant abuses a patient when he or she:

(a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;

(b) Removes a patient's clothing or gown without consent;

(c) Fails to treat an unconscious or deceased patient's body or property respectfully; or

(d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.

WSR 07-12-092

PERMANENT RULES

DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed June 6, 2007, 10:05 a.m., effective July 7, 2007]

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

Purpose: WAC 246-922-600 Sexual misconduct and 246-922-620 Abuse, the rules establish consistent and enforceable definitions of abuse and sexual misconduct by podiatric physicians with current or former patients. The rules will help podiatric physicians avoid inappropriate behavior and will educate the public on the type of behavior to expect from their podiatric physician.

Statutory Authority for Adoption: RCW 18.22.015, 18.130.050.

Other Authority: RCW 18.130.180.

Adopted under notice filed as WSR 06-24-135 on December 6, 2006.

Changes Other than Editing from Proposed to Adopted Version: Language was added noting that the definitions of "podiatric physician," "patient" and "key third party" in new WAC 246-922-600 apply to the same terms in new WAC 246-922-620. These revisions clarify the rules without changing their intended effect as proposed.

A final cost-benefit analysis is available by contacting Arlene Robertson, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4945, fax (360) 236-2406, e-mail arlene.robertson@doh.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: June 5, 2007.

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-922-600 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the podiatric physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the podiatric physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Podiatric physician" means a person licensed to practice podiatric medicine and surgery under chapter 18.22 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, domestic partners, parents, siblings, children, guardians and proxies.

(2) A podiatric physician shall not engage in sexual misconduct with a current patient or a key third party. A podiatric physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;

(b) Oral to genital contact;

(c) Genital to anal contact or oral to anal contact;

(d) Kissing in a romantic or sexual manner;

(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment; (f) Examination or touching of genitals without using gloves;

(g) Not allowing a patient the privacy to dress or undress;

(h) Encouraging the patient to masturbate in the presence of the podiatric physician or masturbation by the podiatric physician while the patient is present;

(i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;

(j) Soliciting a date;

(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the podiatric physician.

(3) A podiatric physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the podiatric physician:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the podiatric physician's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the podiatric physician;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

(5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this section shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-922-620 Abuse. (1) A podiatric physician commits unprofessional conduct if the podiatric physician abuses a patient or key third party. "Podiatric physician," "patient" and "key third party" are defined in WAC 246-922-600. A podiatric physician abuses a patient when he or she:

- (a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;
- (b) Removes a patient's clothing or gown without consent;
- (c) Fails to treat an unconscious or deceased patient's body or property respectfully;
- (d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this section shall constitute grounds for disciplinary action.