

WSR 13-21-003
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed October 3, 2013, 8:58 a.m., effective November 3, 2013]

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

Purpose: Recent legislation authorized the department to transition from a five-year driver's license and identicaid renewal cycle to a six-year cycle. The legislation prorated statutory driver's license and identicaid fees accordingly. Under RCW 46.20.202(4), the additional fee for enhanced driver's licenses and enhanced identicards are set by rule of the department, so the fees for these documents is being prorated to match the new renewal cycle.

Citation of Existing Rules Affected by this Order: Amending WAC 308-105-100.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.202.

Adopted under notice filed as WSR 13-17-088 on August 20, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 3, 2013.

Damon Monroe
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-031, filed 10/29/07, effective 11/29/07)

WAC 308-105-100 Fee. The fee for an enhanced driver's license or enhanced identicaid is ~~((fifteen))~~ eighteen dollars. If the enhanced driver's license or enhanced identicaid is issued, renewed, or extended for a period other than six years, the fee is three dollars for each year that the enhanced driver's license or enhanced identicaid is issued, renewed, or extended. This fee is in addition to the regular drivers' license or identicaid fees.

WSR 13-21-005
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed October 3, 2013, 12:08 p.m., effective November 12, 2013]

Effective Date of Rule: November 12, 2013.

Purpose: Revise SRCAA Regulation I, Article X, Section 10.06 to move SRCAA's air operating permit (AOP) fee into SRCAA's consolidated fee schedule program, and raise the emission fee component of the AOP fee from \$31.11/ton to \$58/ton. Additionally, remove references to Washington emission data system fees in Section 10.06.B, as these fees are no longer assessed.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Section 10.06[.]C. with reference to SRCAA's consolidated fee schedule, and placing the AOP fee component costs and determination formulas in SRCAA's consolidated fee schedule.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380(2).

Adopted under notice filed as WSR 13-17-086 on August 19, 2013.

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

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

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

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

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

Date Adopted: October 3, 2013.

Joe R. Southwell
 Environmental Engineer

AMENDATORY SECTION

REGULATION I, ARTICLE X, SECTION 10.06

SECTION 10.06 REGISTRATION AND OPERATING PERMIT FEES FOR AIR CONTAMINANT SOURCES

A. Each source required by Article IV, Section 4.01 to be registered, each air operating permit source, and each source required by Article V, Section 5.02 to obtain an approved Notice of Construction and Application for Approval is subject to an annual fee for each calendar year, or portion of each calendar year, during which it operates. The owner or operator shall pay the fee, pursuant to the requirements in Section 10.02. Fees received pursuant to the registration program or the operating permit program shall not exceed the actual costs of program administration.

B. The annual fee for each source required by Article IV, Section 4.01 to be registered and that is not subject to Section 10.06.C. of this Regulation shall be determined by adding all of the applicable fees below:

1.	Registration Fee Categories	Fee	Fee Applicability
	Facility Fee ^A	Per the Fee Schedule	Per Source

Registration Fee Categories	Fee	Fee Applicability
Emissions Fee ^B	Per the Fee Schedule	Per Ton
Emission Point Fee ^C	Per the Fee Schedule	Per Stack/Point
Synthetic Minor Fee ^D	Per the Fee Schedule	Per Source
((WEDS Fee ^E	Per the Fee Schedule	Per Hour))

- A Each source is subject to the fee listed in the fee schedule.
- B The additional fee applies to each ton (rounded to the nearest one-tenth of a ton) of each criteria pollutant, volatile organic compound (VOC), and non-VOC toxic air pollutant emitted.
- C The additional fee applies to each stack and other emission points, including sources of fugitive emissions (e.g., fugitive dust emissions from crushing operations; storage piles; mixing and clean-up associated with surface coating). For gasoline stations, each gasoline tank vent is an emission point.
- D The additional fee applies to each Synthetic Minor.
- (E) ~~The additional fee applies to each source required by the Agency to submit an annual emissions inventory for entry into the Washington Emission Data System (WEDS). SRCAA staff time spent processing and reviewing WEDS will be tracked in 15 minute increments and charged at the hourly rates provided in the fee schedule.)~~

2. The Board shall periodically review the fee schedule for registered sources and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board may amend the fee schedule to more accurately recover program costs.

C. The annual fee for each air operating permit source shall be determined as follows:

1. The Board shall periodically review the fees for air operating permit sources and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fees to more accurately recover program costs.

2. For sources that are subject to the air operating permit (AOP) program during any portion of the calendar year, the annual fee shall be determined by adding all of the applicable fees described below

- a. Annual base fee per the Fee Schedule.
- b. Emission fee per the Fee Schedule.
- c. SRCAA time fee, as determined per the Fee Schedule.
- d. AOP Program Cost Correction, as determined per the Fee Schedule.
- e. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined per the Fee Schedule.

- ~~((a. Annual base fee of \$3,000;~~
- ~~b. Emission fee of \$31.11 per ton of actual emissions from the previous calendar year;~~
- ~~e. SRCAA time fee, as determined by the following formula:~~

$$TFI = \frac{(HI + HG) \times RPC}{HT}$$

- ~~Where,~~
- ~~TFI is the SRCAA time fee for AOP source, I;~~
- ~~HI is the total SRCAA staff hours spent on AOP source, not including time spent on Notice of Construction application reviews, I;~~
- ~~HG is the total general hours SRCAA staff spent on the AOP program divided by the total number of sources subject to the AOP program during any portion of the calendar year;~~
- ~~RPC is the remaining SRCAA AOP program cost, calculated by subtracting the sum of the Section 10.06.C.2.a and b. fees from the total SRCAA AOP program costs; and~~
- ~~HT is the total number of hours SRCAA staff spent on the AOP program, including total time spent on the AOP sources and general hours spent on the AOP program.~~

~~Note: HI, HG, HT, and RPC are for the most recent SRCAA fiscal year.~~

~~Note: HI, HG, and HT are obtained from SRCAA time accounting records.~~

~~d. AOP Program Cost Correction, as determined by the following formula:~~

$$PCCI = \frac{AOP \text{ Program Cumulative Deficit or Surplus} \times FI}{FT}$$

- ~~Where,~~
- ~~PCCI is the AOP Program Cost Correction assessed to each AOP source, I;~~
- ~~AOP Program Cumulative Deficit or Surplus is the cumulative financial deficit or surplus for SRCAA's AOP program at the end of the most recent SRCAA fiscal year;~~
- ~~FI is the total individual fee assessed pursuant to Section 10.06.C.2.a., b., and c., of this Regulation; and~~
- ~~FT is the sum of all the individual fees assessed pursuant to Sections 10.06.C.2.a., b., and c. of this Regulation.~~

~~e. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:~~

$$I = \frac{FAE}{FT}$$

- ~~Where,~~
- ~~I is the individual share of the assessment;~~
- ~~FI is the total individual fee assessed pursuant to Section 10.06.C.2.a., b., and c. of this Regulation;~~
- ~~AE is the total Ecology assessment pursuant to RCW 70.94.162(3); and~~
- ~~FT is the sum of all the individual fees assessed pursuant to Sections 10.06.C.2.a., b., and c. of this Regulation.~~

~~3. For affected units under Section 404 (Acid Deposition Standards) of the Federal Clean Air Act (42 USC 7401 et seq):~~

~~a. For time expended in carrying out the fee eligible activities specified in RCW 70.94, an hourly fee will be assessed pursuant to the fee schedule; and~~

~~b. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:~~

$$I = \frac{FI \cdot AE}{FT}$$

~~Where,~~

~~I is the individual share of the assessment;~~

~~FI is the total individual fee assessed pursuant to Section 10.06.C.3.a. of this Regulation;~~

~~AE is the total Ecology assessment pursuant to RCW 70.94.162(3); and~~

~~FT is the sum of all the individual fees assessed pursuant to Sections 10.06.C.3.a. of this Regulation.)~~

3. For affected units under Section 404 (Acid Deposition Standards) of the Federal Clean Air Act (42 USC 7401 et seq), the air operating permit fee shall be determined by adding all of the applicable fees described below:

a. For time expended in carrying out the fee eligible activities specified in RCW 70.94, an hourly fee will be assessed pursuant to the fee schedule; and

b. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined per the Fee Schedule.

~~((as determined by the following formula:~~

$$I = \frac{FI \cdot AE}{FT}$$

~~Where,~~

~~I is the individual share of the assessment;~~

~~FI is the total individual fee assessed pursuant to Section 10.06.C.3.a. of this Regulation;~~

~~AE is the total Ecology assessment pursuant to RCW 70.94.162(3); and~~

~~FT is the sum of all the individual fees assessed pursuant to Sections 10.06.C.3.a. of this Regulation.)~~

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

**WSR 13-21-006
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY**

[Filed October 3, 2013, 12:46 p.m., effective November 12, 2013]

Effective Date of Rule: November 12, 2013.

Purpose: In summary, revisions are designed to make the regulation largely a stand-alone document which will help alleviate the need to routinely cross-reference the Washington Administrative Code (WAC) for applicable requirements. It will incorporate the definitions into applicable subsections, where practical, so that there's no need to jump between the body of the regulation and the definitions section when reading the regulation. For each type of outdoor burning, it lists

applicable requirements. The proposal addresses forest fire training and other types of firefighting instruction fires (e.g., car rescue training fires, simulated fires at permanent fire training facilities, mobile fire training units, etc.). Like other fire training fires in the current regulation, these fires would be allowed by rule (no written permit and no fee). The proposal also allows for flag retirement ceremonies by rule. The revisions include a nuisance provision specific to outdoor burning. All permit waiting periods are made to be consistent with the only fee increase proposal being for social event fires (\$50 to \$55).

Citation of Existing Rules Affected by this Order: Repealing SRCAA Regulation I, Article VI, Section 6.01 and Article X, Section 10.13.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2), 70.94.6518, chapter 173-425 WAC.

Other Authority: Chapter 70.94 RCW.

Adopted under notice filed as WSR 13-16-069 on August 5, 2013.

Changes Other than Editing from Proposed to Adopted Version: A nonsubstantive change was made to SRCAA Regulation I, Article VI, Section 6.01.E.1.a to clarify that fees referenced in Section 10.13 can be found in the fee schedule. The change states, "... burning permit fees are specified in SRCAA's Fee Schedule pursuant to Section 10.13 of this Regulation)" A nonsubstantive change was also made to SRCAA Regulation I, Article X, Section 10.13.A to clarify that Types of Other Outdoor Burning is listed in Section 6.01.D.13. The change is as follows: "Types of Other Outdoor Burning Not Listed in Sections 6.01.D.1-12 (Sect. 6.01.D.13)."

A final cost-benefit analysis is available by contacting Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, phone (509) 477-4727, fax (509) 477-6828, e-mail mholmquist@spokanecleanair.org. This is a local agency rule and RCW 34.05.328 does not apply pursuant to RCW 70.94.141(1).

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 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 0, Repealed 2.

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

Date Adopted: October 3, 2013.

Matt Holmquist
Compliance Administrator

REPEALER

The following section of Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article VI, is repealed:

SECTION 6.01 - OUTDOOR BURNING**NEW SECTION****SECTION 6.01 OUTDOOR BURNING****A. Purpose. (WAC 173-425-010 (1-3))**

This Section establishes controls for outdoor burning in Spokane County in order to:

1. Minimize or prohibit outdoor burning to the greatest extent practicable.

2. Minimize or eliminate the impact of emissions from outdoor burning by defining conditions under which outdoor burning may be conducted.

3. Encourage the development and specify the use of reasonable alternatives to outdoor burning. Reasonable alternatives are methods for disposing of organic refuse (such as natural vegetation) that are available, reasonably economical, and less harmful to the environment than burning.

4. Geographically limit outdoor burning in order to assure continued attainment of the National Ambient Air Quality Standards for carbon monoxide (CO) and fine particulate matter (PM_{2.5}) as specified in 40 CFR Part 50.

B. Applicability. (WAC 173-425-020)

1. This Section applies to all outdoor burning in Spokane County except:

a. Silvicultural burning. (RCW 70.94.6534(1) & Chapter 332-24 WAC)

Silvicultural burning is related to the following activities for the protection of life or property and/or the public health, safety, and welfare:

i. Abating a forest fire hazard;

ii. Prevention of a forest fire hazard;

iii. Instruction of public officials in methods of forest firefighting;

iv. Any silvicultural operation to improve the forest lands of the state; and

v. Silvicultural burning used to improve or maintain fire dependant ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

b. Agricultural Burning. (Section 6.11 of this Regulation)

Agricultural burning is burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.6528 or other authoritative source on agricultural practices.

c. Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreement).

2. This Section specifically applies to:

a. Firefighting Instruction Fires.

i. Aircraft Crash Rescue Fire Training. (Section 6.01.D.1.a)

ii. Extinguisher Training. (Section 6.01.D.1.b)

iii. Forest Fire Training. (Section 6.01.D.1.c)

iv. Structural Fire Training. (Section 6.01.D.1.d)

v. Types of Other Firefighting Instruction Fires. (Section 6.01.D.1.e)

b. Fire Hazard Abatement Fires. (Section 6.01.D.2)

c. Flag Retirement Ceremony Fires. (Section 6.01.D.3)

d. Indian Ceremonial Fires. (Section 6.01.D.4)

e. Land Clearing Fires. (Section 6.01.D.5)

f. Rare and Endangered Plant Regeneration Fires. (Section 6.01.D.6)

g. Recreational Fires. (Section 6.01.D.7)

h. Residential Fires. (Section 6.01.D.8)

i. Social Event Fires. (Section 6.01.D.9)

j. Storm or Flood Debris Fires. (Section 6.01.D.10)

k. Tumbleweed Fires. (Section 6.01.D.11)

l. Weed Abatement Fires. (Section 6.01.D.12)

m. Other Outdoor Fires. (Section 6.01.D.13)

3. The provisions of Chapter 173-425 WAC (Outdoor Burning) are herein incorporated by reference.

4. The provisions of this Section are severable. If any phrase, sentence, paragraph, or provision is held invalid, the application of such phrase, sentence, paragraph, or provision to other circumstances and the remainder of this Section shall not be affected.

C. Definitions. (WAC 173-425-030)

Words and phrases used in this Section shall have the meaning defined in Chapter 173-425 WAC, unless a different meaning is clearly required by context or is otherwise defined in this Section.

1. **Natural Vegetation** means unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood. It does not include dimensional lumber, mills ends, etc.

2. **Outdoor Burning** means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. For the purpose of this rule, "outdoor burning" means all types of outdoor burning except agricultural burning and silvicultural burning. (RCW 70.94.-6511)

3. **Permitting Agency** means the Spokane Regional Clean Air Agency (SRCAA), or one or more of the following entities, whenever SRCAA and an entity have signed an agreement regarding a permitting program or SRCAA has delegated administration of the permitting program to one or more of the following entities, provided such delegation of authority has not been withdrawn: Spokane County, any fire protection agency within Spokane County, Washington State Department of Natural Resources (DNR), or the Spokane County Conservation District. (RCW 70.94.6530)

4. **Person** means any individual(s), firm, public corporation, private corporation, association, partnership, political subdivision, municipality, or government agency. It includes any person who has applied for and received a permit for outdoor burning; any person allowing, igniting, or attending a

fire; or any person who owns or controls property on which outdoor burning occurs.

5. Responsible Person means any person who has applied for and received a permit for outdoor burning, or any person allowing, igniting, or attending to a fire, or any person who owns or controls property on which outdoor burning occurs.

D. Outdoor Burning Permitted.

1. Firefighting Instruction Fires. (WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

Firefighting instruction fires are fires for the purpose of firefighter training, including, but not limited to aircraft crash rescue fire training, extinguisher training, forest fire training, and structural fire training. Unless specified otherwise, this subsection serves as a general permit by SRCAA.

a. Aircraft Crash Rescue Fire Training. (RCW 70.94.-6546 (1-2), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

i. Aircraft crash rescue training fires conducted pursuant to all of the following do not require a permit:

(a) Firefighters participating in the training fires are limited to those who provide firefighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities.

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted.

(c) The number of training fires allowed each year without a written permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements.

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during the training fire.

(e) The organization conducting the training shall notify the local fire district or fire department prior to commencement of the training. The organization conducting the training shall also notify SRCAA prior to commencement of the training.

ii. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to all aircraft crash rescue fire training fires as listed below:

(a) Aircraft crash rescue fire training fires are exempt from the following:

- F.2. Hauled Materials
- F.6. Containers
- F.8. Distances
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area
- F.13. Written Permits
- F.15. Areas Prohibited

(b) Aircraft crash rescue fire training fires are not exempt from the following:

- F.1. Prohibited Materials (except petroleum products)
- F.3. Curtailments
- F.4. Nuisance

F.5. Burning Detrimental to Others

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

iii. Persons conducting aircraft crash rescue fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

b. Extinguisher Training. (WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

Extinguisher training fires of short-duration for instruction on the proper use of hand-held fire extinguishers may be conducted without a written permit provided all of the following requirements are met:

i. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to extinguisher training fires as listed below:

(a) Extinguisher training fires are exempt from the following:

- F.2. Hauled Materials
- F.6. Containers
- F.8. Distances
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area
- F.13. Written Permits
- F.15. Areas Prohibited

(b) Extinguisher training fires are not exempt from the following:

F.1. Prohibited Materials (except as provided for in Section 6.01.D.1.b.ii of this Regulation, below)

- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.7. Extinguishing a Fire
- F.9. Landowner Permission
- F.14. Property Access
- F.16. Other Requirements

ii. Flammable or combustible materials used during the fire extinguisher training shall be limited to:

(1) Less than 2 gallons of clean kerosene or diesel fuel oil per training exercise, provided that gasoline or gasoline mixed with diesel or kerosene may be used only by local fire departments, fire protection agencies, fire marshals, or fire districts;

(2) As much gaseous fuel (propane or natural gas) as required for the training exercise; or

(3) Less than 0.5 cubic yards of clean, solid combustible materials per training exercise. Examples of solid combustible materials are seasoned wood, untreated scrap lumber, and unused paper.

iii. All training must be conducted by fire training officials or an instructor qualified to perform fire training. A copy of the written training plan, and when applicable, instructor qualifications, must be provided to SRCAA upon request.

iii. Prior to the training, the responsible person(s) conducting the exercise must notify the local fire department, fire

marshal, or fire district and meet all applicable local ordinances and permitting requirements.

v. Persons conducting extinguisher training fires are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

c. Forest Fire Training. ((RCW 70.94.6546(4), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

A fire protection agency may conduct forest fire training fires consisting of only natural vegetation without a written permit.

i. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to forest fire training fires as listed below:

(a) Forest fire training fires are exempt from the following:

- F.2. Hauled Materials
- F.6. Containers
- F.8. Distances
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area
- F.13. Written Permits
- F.15. Areas Prohibited

(b) Forest fire training fires are not exempt from the following:

- F.1. Prohibited Materials
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.7. Extinguishing a Fire
- F.9. Landowner Permission
- F.14. Property Access
- F.16. Other Requirements

ii. Grassland or wildland fires used for the purpose of forest fire training fires qualify as forest firefighting instruction fires. Grassland or wildland fires not used for the purpose of forest fire instruction fires shall be performed pursuant to Section 6.01.D.1.e of this Regulation. Section 6.01.D.1.e is Types of Firefighting Instruction Fires Not Listed Above.

iii. Persons conducting forest fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

d. Structural Fire Training. ((RCW 52.12.150(4), (RCW 70.94.6546(3), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

A fire protection agency may conduct structural fire training without a written permit provided all of the following requirements are met:

i. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to structural fire training fires as listed below:

(a) Structural fire training fires are exempt from the following:

- F.1. Prohibited Materials (except as provided for in Section 6.01.D.1.d.iv of this Regulation, below)
- F.2. Hauled Materials
- F.6. Containers

F.8. Distances

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area

F.13. Written Permits

F.15. Areas Prohibited

(b) Structural fire training fires are not exempt from the following:

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

ii. The owner and fire protection agency(ies) must meet the requirements in SRCAA Regulation I, Article IX - Asbestos Control Standards and SRCAA Regulation I, Article X, Section 10.09 - Asbestos Project And Demolition Notification Waiting Period And Fees, prior to conducting the training. This includes clearly identifying structures on the Notice of Intent that will be used for structural fire training.

iii. The fire protection agency(ies) conducting the fire training must have a fire training plan available to SRCAA upon request, and the purpose of the structural fire must be to train firefighters.

iv. Composition roofing, asphalt roofing shingles, asphalt siding materials, miscellaneous debris from inside the structure, carpet, linoleum, and floor tile shall not be burned unless such materials are an essential part of the fire training exercise and are described as such in the fire training plan. Materials removed from the structure(s) must be disposed of in a lawful manner prior to the training exercise.

v. Structural fire training shall not be conducted if, in consideration of prevailing air patterns, the fire is likely to cause a nuisance.

vi. The fire protection agency(ies) conducting the training must provide notice to the owners of property adjoining the property on which the fire training will occur, to other persons who potentially will be impacted by the fire, and to additional persons in a broader manner if specifically requested by SRCAA.

vii. Structural fire training shall be performed in accordance with RCW 52.12.150.

viii. Persons conducting structural fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

e. Types of Firefighting Instruction Fires Not Listed Above. (WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4))

A fire protection agency may conduct firefighting instruction fires not provided for in Section 6.01.D.1.a-d of this Regulation (e.g., car rescue training fires, simulated fires at permanent fire training facilities, simulated fires via mobile fire training units, etc.) if all of the following are met:

i. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to other firefighting instruction fires as listed below:

(a) Other firefighting training fires are exempt from the following:

- F.2. Hauled Materials
- F.6. Containers
- F.8. Distances
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area
- F.13. Written Permits
- F.15. Areas Prohibited

(b) Other firefighting training fires are not exempt from the following:

- F.1. Prohibited Materials (except as provided for in Section 6.01.D.1.e.iii of this Regulation)
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.7. Extinguishing a Fire
- F.9. Landowner Permission
- F.14. Property Access
- F.16. Other Requirements
- ii. The fire protection agency(ies) conducting the fire training must have a fire-training plan available to SRCAA upon request, and the purpose of the structural fire must be to train firefighters.
- iii. The prohibited materials described in Section 6.01.F.2 of this Regulation may not be burned in any fire unless such materials are an essential part of the fire training exercise and are described as such in the fire training plan.
- iv. Persons conducting other firefighting training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

2. Fire Hazard Abatement Fires.

a. A permit from a permitting agency other than SRCAA is required pursuant to Section 6.01.E of this Regulation for fire hazard abatement fires. All fire hazard abatement fires require a written permit unless an alternate permitting method is specified in a written agreement (e.g. Memorandum of Understanding) between SRCAA and the permitting agency.

b. Unless specifically authorized in writing by the permitting agency and pursuant to a written agreement between SRCAA and the permitting agency, the prohibitions/requirements in Section 6.01.F of this Regulation apply as listed below:

i. Fire hazard abatement fires may be exempt from the following at the permitting agency's discretion:

- F.8. Distances
- F.11. Number of Piles
- F.12. Fuel Area

ii. Fire hazard abatement fires are not exempt from the following:

- F.1. Prohibited Materials
- F.2. Hauled Materials
- F.3. Curtailments
- F.4. Nuisance
- F.5. Burning Detrimental to Others
- F.6. Containers
- F.7. Extinguishing a Fire
- F.9. Landowner Permission

F.10. Burn Hours

F.13. Written Permits

F.14. Property Access

F.15. Areas Prohibited

F.16. Other Requirements

3. Flag Retirement Ceremony Fires. (RCW 70.94.6522, WAC 173-425-020 (2)(j), WAC 173-425-030(15), WAC 173-425-040(5), WAC 173-425-060 (1)(b), and WAC 173-425-060 (1), (2)(j) & (3-4))

A flag retirement ceremony fire is a ceremonial fire for the purpose of disposing of cotton or wool flags of the United States of America, by fire, pursuant to 36 United States Code 176(k). A flag retirement ceremony fire is a type of other outdoor fire as provided for in WAC 173-425-030(15). The ceremony generally involves placing the flags one at a time in a small fire during the ceremony until the last flag is burned.

a. This subsection serves as a general permit by SRCAA.

b. The prohibitions/requirements in Section 6.01.F of this Regulation apply to flag retirement ceremony fires as listed below:

i. Unless specifically authorized in writing by SRCAA, flag retirement ceremony fires are exempt from the following:

- F.2. Hauled Materials
- F.6. Containers
- F.8. Distances
- F.10. Burn Hours
- F.11. Number of Piles
- F.12. Fuel Area
- F.13. Written Permits
- F.15. Areas Prohibited

ii. Flag retirement ceremony fires are not exempt from the following:

F.1. Prohibited Materials (except for cotton or wool flags and minimal accelerant necessary to burn the flags)

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

c. A ceremony for disposal of unserviceable cotton or wool flags using methods other than burning (e.g. burying or recycling) or burning a small number of representative cotton or wool flags for the flag retirement ceremony is recommended, but not required.

d. Burning flags made of synthetic materials (e.g. nylon) is prohibited.

4. Indian Ceremonial Fires. (RCW 70.94.6550, WAC 173-425-020 (2)(h), WAC 173-425-030(8)), WAC 173-425-050, WAC 173-425-060 (1), (2)(h) & (3-4))

Indian ceremonial fires are fires using charcoal or clean, dry, bare, untreated wood (for the purpose of this definition, it includes commercially manufactured fire logs) necessary for Native American Ceremonies (i.e. conducted by and for Native Americans) if part of a religious ritual.

a. This subsection serves as a general permit by SRCAA.

b. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply to Indian ceremonial fires as listed below:

i. Indian ceremonial fires are exempt from the following:

F.2. Hauled Materials

F.6.b. Containers

F.10. Burn Hours

F.13. Written Permits

F.15. Areas Prohibited

ii. Indian ceremonial fires are not exempt from the following:

F.1. Prohibited Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.6.a. Containers (burn barrels)

F.7. Extinguishing a Fire

F.8. Distances

F.9. Landowner Permission

F.11. Number of Piles

F.12. Fuel Area

F.14. Property Access

F.16. Other Requirements

5. Land Clearing Fires. (WAC 173-425-020 (2)(b), WAC 173-425-030(9), WAC 173-425-040 (1-5), WAC 173-425-050, WAC 173-425-060 (1)(b) and WAC 173-425-060 (1), (2)(b) & (3-4))

a. All land clearing burning, except for silvicultural-to-agricultural and residential land clearing burning, is prohibited effective January 13, 2002.

b. Silvicultural-to-agricultural burning is prohibited after April 30, 2009.

c. Residential land clearing burning is prohibited after December 31, 2010. Residential land clearing fires are limited to fires consisting of trees, shrubbery, or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused) where the natural vegetation is cleared from less than one acre of forested land on a five acre or larger parcel of land in non-commercial ownership. (RCW 70.94.6526(2)). Residential land clearing fires may also have the effect of abating or prevention of a forest fire hazard and thereby fit the definition of silvicultural burning. In those situations where residential land clearing burning consists of materials cleared from less than 1 acre of forested land on a 5 acre or larger parcel of land in non-commercial ownership is determined by DNR to meet the criteria to be defined as silvicultural burning, SRCAA may defer the decision to DNR to approve the fire and issue a permit pursuant to a Memorandum of Understanding between SRCAA and DNR. In so doing, DNR acknowledges that the fire is silvicultural burning and subject to Chapter 332-24 WAC.

6. Rare and Endangered Plant Regeneration Fires. (RCW 70.94.6524, RCW 70.94.6534(2), WAC 173-425-020 (2)(g), WAC 173-425-030(19), WAC 173-425-050, WAC 173-425-060 (1), (2)(g), (3-4) & (6).)

Rare and endangered plant regeneration fires are fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in Chapter 79.70 RCW.

a. Pursuant to RCW 70.94.6534(2), the appropriate fire protection agency permits and regulates rare and endangered plant regeneration fires on lands where the department of natural resources does not have fire protection responsibility.

b. Unless otherwise allowed or required by the fire protection agency, the prohibitions/requirements in Section 6.01.F of this Regulation apply to rare and endangered plant regeneration fires as listed below:

i. Rare and endangered plant regeneration fires are exempt from the following:

F.8. Distances

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area

F.13. Written Permits

F.15. Areas Prohibited

ii. Rare and endangered plant regeneration fires are not exempt from the following:

F.1. Prohibited Materials

F.2. Hauled Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.6. Containers

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.14. Property Access

F.16. Other Requirements

c. Pursuant to WAC 173-425-060(6), any agency that issues permits, or adopts a general permit for rare and endangered plant regeneration fires is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements of Chapter 173-425 WAC unless another agency has agreed under WAC 173-425-060 (1)(a) to be responsible for certain field response or enforcement activities. Except for enforcing fire danger burn bans as referenced in WAC 173-425-050 (3)(a)(iii), SRCAA may also perform complaint response and enforcement activities.

7. Recreational Fires. WAC 173-425-020 (2)(i), WAC 173-425-030(21), WAC 173-425-050, WAC 173-425-060 (1), (2)(i) & (3-4))

A recreational fire is a small fire with a fuel area no larger than 3 feet in diameter and 2 feet in height and is limited to cooking fires, campfires, and fires for pleasure using charcoal or firewood in designated areas on public lands (e.g. campgrounds) or on private property. Firewood refers to clean, dry (e.g., tree trunk wood that is split and seasoned and has less than 20 percent moisture content), bare, wood from trees. Commercially manufactured fire logs are acceptable fuels unless determined otherwise by SRCAA. Fires fueled by liquid or gaseous fuels (e.g. propane or natural gas barbecues) are not considered recreational fires. Fires used for debris disposal are not considered recreational fires.

a. This subsection serves as a general permit by SRCAA.

b. The prohibitions/requirements in Section 6.01.F of this Regulation apply to recreational fires as listed below:

i. Recreational fires are exempt from the following:

F.2. Hauled Materials

F.6.b. Containers

F.10. Burn Hours

F.13. Written Permits

F.15. Areas Prohibited

ii. Recreational fires are not exempt from the following:

F.1. Prohibited Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.6.a. Containers (burn barrels)

F.7. Extinguishing a Fire

F.8. Distances

F.9. Landowner Permission

F.11. Number of Piles

F.12. Fuel Area

F.14. Property Access

F.16. Other Requirements

8. Residential Fires (also referred to as Residential Burning or Residential Yard and Garden Debris Burning). (WAC 173-425-020 (2)(a), WAC 173-425-030(22), WAC 173-425-040 (1-3) & (5), WAC 173-425-050, WAC 173-425-060 (1), (2)(a) & (3-6))

A residential fire is an outdoor fire consisting of natural yard and garden debris (i.e., dry garden trimmings, dry tree clippings, dry leaves, etc.) originating on the maintained/improved area of residential property (i.e. lands immediately adjacent and in close proximity to a human dwelling), and burned on such lands by the property owner and/or any other responsible person.

a. A permit from a permitting agency other than SRCAA is required pursuant to Section 6.01.E of this Regulation. All residential fires require a written permit unless an alternate permitting method (e.g. general permit adopted by rule) is specified in a written agreement (e.g. Memorandum of Understanding) between SRCAA and the permitting agency.

b. The prohibitions/requirements in Section 6.01.F of this Regulation apply to residential fires as listed below:

i. No exemptions apply to residential fires.

ii. Residential fires are not exempt from the following:

F.1. Prohibited Materials

F.2. Hauled Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.6. Containers

F.7. Extinguishing a Fire

F.8. Distances

F.9. Landowner Permission

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area (except as provided in Section 6.01.D.8.c of this Regulation, below)

F.13. Written Permits

F.14. Property Access

F.15. Areas Prohibited

F.16. Other Requirements

c. The fuel area is limited to 4 feet in diameter and 3 feet in height unless the written permit issued by the permitting agency specifically states otherwise. Under no circumstance shall the fuel area be greater than 10 feet in diameter and 6 feet in height.

d. No vegetation shall exceed 4 inches in diameter unless the permitting agency provides a site-specific exemption in a written permit. If larger diameter vegetation is allowed, the fire shall be constructed using heavy equipment such as a track hoe or excavator with an operator on site at all times. Fans must be employed to improve combustion.

e. Residential fires must be at least 500 feet away from forest slash.

f. Residential fires must be at least 50 feet away from any adjacent land under different ownership unless the permitting agency provides a site-specific exception in the written permit and the respective neighboring landowner or landowner's designated representative gives the person responsible for burning approval to burn within 50 feet of his/her land.

g. In addition to the prohibitions in Section 6.01.F.15, residential burning is prohibited within any area where a permitting agency does not administer a residential burning program.

9. Social Event Fires. (WAC 173-425-020 (2)(i), WAC 173-425-030(21), WAC 173-425-050, WAC 173-425-060 (1), (2)(i) & (4))

A social event fire is a fire that may be greater than 3 feet in diameter and 2 feet in height and unless otherwise approved by SRCAA, is limited to events or celebrations open to the general public. A social event fire is limited to using charcoal or firewood which occurs in designated areas on public lands or on private property. Firewood refers to clean, dry (e.g., tree trunk wood that is split and seasoned with less than 20 percent moisture content), bare, wood from trees. Commercially manufactured fire logs are acceptable fuels. Fires used for debris disposal are not considered social event fires.

a. A written permit from SRCAA is required pursuant to Section 6.01.E of this Regulation and, unless otherwise approved by SRCAA, must be submitted at least 10 working days prior to the first proposed burn date.

b. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply as listed below:

i. Social event fires may be exempt from the following at SRCAA's discretion:

F.2. Hauled Materials

F.6.b. Containers

F.8. Distances

F.10. Burn Hours

F.11. Number of Piles

F.12. Fuel Area

F.15. Areas Prohibited

ii. Social event fires are not exempt from the following:

F.1. Prohibited Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.6.a. Containers (burn barrels)

F.7. Extinguishing a Fire

F.9. Landowner Permission

F.13. Written Permits

F.14. Property Access

F.16. Other Requirements

10. Storm or Flood Debris Fires. (RCW 70.94.743 (1)(c), WAC 173-425-020 (2)(c), WAC 173-425-030(24), WAC 173-425-040(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(c) & (3-4))

Storm and flood debris fires are fires consisting of natural vegetation deposited on lands by storms or floods that occurred within the previous 24 months, and resulted in an emergency being declared or proclaimed in the area by city, county, or state government, and burned by the property owner or other responsible person on lands where the natural vegetation was deposited by the storm or flood.

a. A written permit from SRCAA is required pursuant to Section 6.01.E of this Regulation and, unless otherwise approved by SRCAA, must be submitted at least 10 working days prior to the first proposed burn date.

b. Unless specifically authorized in writing by SRCAA, the prohibitions/requirements in Section 6.01.F of this Regulation apply as listed below:

i. Storm or flood debris fires may be exempt from the following at SRCAA's discretion:

F.12. Fuel Area

ii. Storm or flood debris fires are not exempt from the following:

F.1. Prohibited Materials

F.2. Hauled Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.6. Containers

F.7. Extinguishing a Fire

F.8. Distances

F.9. Landowner Permission

F.10. Burn Hours

F.11. Number of Piles

F.13. Written Permits

F.14. Property Access

F.15. Areas Prohibited

F.16. Other Requirements

11. Tumbleweed Fires. (RCW 70.94.6554)

Tumbleweed fires are fires to dispose of dry plants (e.g., Russian Thistle and Tumbleweed Mustard Plants) that have been broken off, and rolled about, by the wind. Outdoor burning of tumbleweeds is prohibited. However, agricultural operations may burn tumbleweeds pursuant to Section 6.11 of this Regulation and Chapter 173-430 WAC.

12. Weed Abatement Fires. (RCW 70.94.6552, Chapter 16-750 WAC, WAC 173-425-020 (2)(e), WAC 173-425-030(27)), WAC 173-425-040(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(e) & (3-4))

A weed abatement fire is any outdoor fire undertaken for the sole purpose of disposing of noxious weeds identified in the state noxious weed list.

a. A written permit from a permitting agency other than SRCAA is required pursuant to Section 6.01.E of this Regulation.

b. The prohibitions/requirements in Section 6.01.F of this Regulation apply to weed abatement fires as listed below:

i. Weed abatement fires may be exempt from the following at the permitting agency's discretion:

F.11. Number of Piles (refer to Section 6.01.D.11.c of this Regulation, below)

F.12. Fuel Area (refer to Section 6.01.D.11.c of this Regulation, below)

ii. Weed abatement fires are not exempt from the following:

F.1. Prohibited Materials

F.2. Hauled Materials

F.3. Curtailments

F.4. Nuisance

F.5. Burning Detrimental to Others

F.6. Containers

F.7. Extinguishing a Fire

F.8. Distances

F.9. Landowner Permission

F.10. Burn Hours

F.13. Written Permits

F.14. Property Access

F.15. Areas Prohibited

F.16. Other Requirements

c. If burn piles are required by the permitting agency, the fuel area for each burn pile is limited to 10 feet in diameter and 6 feet in height unless the written permit issued by the permitting agency specifically states otherwise.

d. Burning shall be limited to Monday through Friday and shall not be conducted on federally observed holidays.

13. Other Outdoor Fires. (RCW 70.94.6522, WAC 173-425-020 (2)(j), WAC 173-425-030(15), WAC 173-425-040(5), WAC 173-425-060 (1)(b), and WAC 173-425-060 (1), (2)(j) & (3-4))

Other outdoor fires are any type of outdoor fires not specified in WAC 173-425-020 (2)(a-i).

a. Other outdoor burning will generally be limited by SRCAA to outdoor fires necessary to protect public health and safety.

b. Other outdoor burning will generally not be allowed unless SRCAA determines that extenuating circumstances exist that necessitate burning be allowed.

c. A permit application must be submitted at least 10 working days prior to the first proposed burn date unless SRCAA waives the advance application period. A written permit from SRCAA is required pursuant to Section 6.01.E of this Regulation unless SRCAA approves a verbal or electronic permit in lieu of a written permit. The applicant is responsible for payment of a permit application fee in the amount specified in Section 10.13 of this Regulation.

E. Application For and Permitting of Written Outdoor Burning Permits.

Outdoor burning requiring a written permit pursuant to Section 6.01.D of this Regulation is subject to all of the following requirements:

1. Permit Application.

a. It shall be unlawful for any person to cause or allow outdoor burning unless an application for a written permit, including the required fee specified by the permitting agency (SRCAA's outdoor burning permit fees are specified in SRCAA's Fee Schedule pursuant to Section 10.13 of this Regulation) and any additional information requested by the permitting agency, has been submitted to the permitting

agency on approved forms, in accordance with the advance application period as specified by the permitting agency.

a. Incomplete or inaccurate applications may be returned to the applicant as incomplete. The advance application period begins when a complete and accurate application, including the required fee, has been received by the permitting authority.

b. Unless otherwise approved by the permitting agency or unless specified otherwise in Section 6.01, applications will be accepted no more than 90 days prior to the first proposed burn date.

c. A separate application must be completed and submitted to the appropriate permitting agency for each outdoor burn permit requested.

d. A permit for outdoor burning shall not be granted on the basis of a previous permit history.

2. Denial or Revocation of a Permit.

a. The permitting agency may deny a permit if it is determined by the permitting agency that the application is incomplete or inaccurate. The advance application period in Section 10.13 of this Regulation does not begin until a complete and accurate application, including any additional information requested by the permitting agency, is received by the permitting agency.

b. The permitting agency may deny a permit or revoke a previously issued permit if it is determined by the permitting agency that the application contained inaccurate information, or failed to contain pertinent information, and the information is deemed by the permitting agency to be significant enough to have a bearing on the permitting agency's decision to grant a permit.

c. An application for a permit shall be denied if the permitting agency determines that the proposed burning will cause or is likely to cause a nuisance (refer to Section 6.01.F.4 of this Regulation). In making this determination, the permitting agency may consider if the permit can be conditioned in such a way that burning is not likely to cause a nuisance (e.g., limit burning to specific wind directions, restrict burn hours, restrict pile size, etc.).

d. The permitting agency may deny a permit for other reasons and shall provide the reason(s) in the applicant's permit denial.

3. Permit Conditions

Permits may include requirements and restrictions beyond those specified in SRCAA Regulation I.

4. Permit Expiration.

Written permits shall be valid for no more than 30 consecutive calendar days unless specified otherwise in Section 6.01.D or in the permit. In no circumstance will a permit be valid for more than one calendar year.

F. Prohibitions/Requirements. (WAC 173-425-050 & WAC 173-425-060(4))

All of the following apply to all outdoor burning unless specified otherwise in Section 6.01 of this Regulation or pursuant to a written permit:

1. Prohibited Materials. (WAC 173-425-050(1))

It is unlawful to burn prohibited materials. Prohibited materials include all of the following: garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard,

treated or processed wood (other than commercially manufactured fire logs), construction and demolition debris (any material resulting from the construction, renovation, or demolition of buildings, roads, or other man made structures), metal, or any substance (other than natural vegetation or firewood) that releases dense smoke or obnoxious odors when burned, or normally releases toxic emissions when burned. (RCW 70.94.6512(1) and Attorney General Opinion 1993 #17).

2. Hauled Materials. (WAC 173-425-050(2))

It is unlawful for a fire to contain material that has been hauled from an area where outdoor burning of that material is prohibited.

3. Curtailments. (RCW 70.94.6512, RCW 70.94.6516, WAC 173-425-030(2), WAC 173-425-030(7), WAC 173-425-050(3), WAC 173-425-060(4) & WAC 173-433-140)

a. The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day prior to igniting a fire.

b. Outdoor burning is prohibited in specified geographical areas when one or more of the following occur:

i. The Washington State Department of Ecology (Ecology) has declared an air pollution episode.

ii. Ecology or SRCAA has declared impaired air quality.

iii. A fire protection authority of jurisdiction has declared a fire danger burn ban, unless that authority grants an exception.

c. The person responsible for outdoor burning must extinguish the fire when an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning is declared. In this regard:

i. Smoke visible from all types of outdoor burning, except residential land clearing burning, after a time period of 3 hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

ii. Smoke visible from residential land clearing burning after a time period of 8 hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

4. Nuisance. (RCW 70.94.030(2) & WAC 173-425-050(4))

A nuisance refers to an emission of smoke or any other air contaminant that unreasonably interferes with the enjoyment of life and property. In addition to applicable odor nuisance regulations in Section 6.04 of this Regulation, it shall be unlawful for any person to conduct outdoor burning which causes a smoke or particulate nuisance. With respect to smoke or particulate from outdoor burning, SRCAA may take enforcement action under this Section if the Control Officer or authorized representative has documented all of the following:

a. Visible smoke observed with natural or artificial light (e.g. flashlight) crossing the property line of the person making a complaint or particulate deposition on the property of the person making a complaint;

b. An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities, and of such characteristics and duration, so as to unreasonably interfere with their enjoyment of life and property; and

c. The source of the smoke or particulate.

5. Burning Detrimental to Others. (RCW 70.94.040, RCW 70.94.650(1), RCW 70.94.6516, and WAC 173-425-050(4))

It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, or that causes damage to property or business.

6. Containers. (WAC 173-425-050(5))

a. Burn barrels are prohibited.

b. Containers must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings no larger than one-half inch.

7. Extinguishing a Fire. (WAC 173-425-050 (6)(a) & WAC 173-425-060(4))

a. A person(s) capable of completely extinguishing the fire must attend it at all times.

b. Fire extinguishing equipment must be at the fire and ready to use (e.g., charged garden hose, dirt, sand, water bucket, shovel, fire extinguisher, etc.).

c. All fires must be completely extinguished when the fire will be left unattended or when the activity for which the fire was intended is done, whichever occurs first.

d. Any person(s) responsible for unlawful outdoor burning must immediately and completely extinguish the fire. If the person(s) responsible for unlawful outdoor burning are unable or unwilling to extinguish an unlawful fire, they may be charged for fire suppression costs incurred by a fire protection agency.

8. Distances. (WAC 173-425-050 (6)(b) & WAC 173-425-060(4))

a. All fires subject to Section 6.01 of this Regulation must be at least 50 feet away from any structure.

b. When material is burned on the ground, it must be placed on bare soil, green grass, or other similar area free of flammable materials for a distance adequate to prevent escape of the fire.

9. Landowner Permission. (WAC 173-425-050 (6)(c))

Permission from a landowner, or owner's designated representative, must be obtained before outdoor burning on landowner's property.

10. Burn Hours. (WAC 173-425-060(4))

All burning must take place during daylight hours only. Burning shall not commence prior to sunrise, and all debris burning must be completely extinguished at least one hour prior to sunset. Smoke visible from burning within one hour of sunset will constitute prima facie evidence of unlawful outdoor burning.

11. Number of Piles. (WAC 173-425-060 (5)(c)(x))

Only one pile at a time may be burned per contiguous property under same ownership and each pile must be extinguished before lighting another.

12. Fuel Area. (WAC 173-425-060(4))

The fuel area shall be no larger than 3 feet in diameter by 2 feet in height.

13. Written Permits.

a. A copy of the written permit must be kept at the permitted burn site during the permitted burn, and must be made available for review upon request of the permitting agency.

b. All conditions of a written permit issued by the permitting agency must be complied with.

14. Property Access. (RCW 70.94.200 & SRCAA Regulation I, Article II)

The Control Officer, or duly authorized representative, shall be allowed to access property at reasonable times to inspect fires specific to the control, recovery, or release of contaminants into the atmosphere in accordance with SRCAA Regulation I, Article II and RCW 70.94.200. For the purposes of outdoor burning, reasonable times include, but are not limited to, any of the following: when outdoor burning appears to be occurring, when the Control Officer or authorized representative is investigating air quality complaints filed with SRCAA, and/or there is reason to believe that air quality violations have occurred or may be occurring. No person shall obstruct, hamper, or interfere with any such inspection.

15. Areas Prohibited. (WAC 173-425-040)

Outdoor burning is prohibited in all of the following areas:

a. Within the Restricted Burn Area (also referred to as the No Burn Area), as defined by Resolution of the Board of Directors of SRCAA.

b. Within any Urban Growth Area (land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030), and with the exception of Fairchild Air Force Base, any area completely surrounded by any Urban Growth Area (e.g. "islands" of land within an Urban Growth Area).

c. Within any nonattainment area or former nonattainment area.

d. In any area where a reasonable alternative to burning exists for the area where burning is requested. For burning organic refuse, a reasonable alternative is considered one where there is a method for disposing of the organic refuse at a cost that is less than or equivalent to the median of all county tipping fees in the state for disposal of municipal solid waste. SRCAA shall determine the median of all county tipping fees in the state for disposal of municipal solid waste by obtaining the most recent solid waste tipping fees data available from Ecology (e.g. state profile map of Washington solid waste tipping fees available at <https://fortress.wa.gov/ecy/swicpublic>) or other relevant sources. Reasonable alternatives may include, but are not limited to, solid waste curbside pick-up, on-site residential composting or commercial composting operations, public or private chipping/grinding operations, public or private chipper rental service, public or private hauling services, energy recovery or incineration facility, public or private solid waste drop box, transfer station, or landfill.

16. Other Requirements.

All outdoor burning must comply with all other applicable local, state, and federal requirements.

G. Unlawful Outdoor Burning.

a. Failure of any person to comply with Chapter 70.94 RCW, Chapter 173-425 WAC, this Section, or permit conditions, shall be unlawful and may result in criminal or civil enforcement action taken, including penalties.

b. Unlawful burning may result in any outdoor burning permit being permanently rescinded. This applies to written permits, general permits (permits by rule), and electronic and verbal permits. Once rescinded, approval from SRCAA must be obtained to burn again. Applicable fees for a new permit must be paid pursuant to Section 10.13.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

REPEALER

The following section of Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article VI, is repealed:

SECTION 10.13 OUTDOOR BURNING PERMIT FEES

NEW SECTION

SECTION 10.13 OUTDOOR BURNING WAITING PERIOD AND FEES

An outdoor burning permit application must be completed and submitted to SRCAA pursuant to Section 6.01 of this Regulation. Incomplete applications, including applications not received with the applicable fee, will be returned to the applicant.

A. Advance Application Period.

A complete and accurate application must be received by SRCAA in advance of the first proposed burn date by the number of working days specified in the table below.

Type of Outdoor Burning	Working Days
Social Event Fires (Sect. 6.01.D.9)	10
Storm or Flood Debris Burning (Sect. 6.01.D.10)	10
Types of Other Outdoor Burning Not Listed in Sections 6.01.D.1-12 (Sect. 6.01.D.13)	10

B. Permit Application Fees.

1. Flat Fees.

The application shall be accompanied by the full fee as specified in the outdoor burning fee schedule. The fee shall be paid regardless of whether or not burning is conducted under an approved permit. If a permit is denied, the applicant may request a refund for the fee paid less the nonrefundable fee as specified in the outdoor burning fee schedule.

2. Hourly Fees.

For hourly fees, the application shall be accompanied by a minimum nonrefundable fee as specified in the outdoor burning fee schedule. A billing invoice will be sent to the applicant for time spent reviewing the outdoor burning application, determining if it is complete, following up with the applicant as necessary, performing a site inspection (including travel time), and issuing a permit or denying the permit. For hourly fees, the entire fee assessed on the billing invoice is nonrefundable.

WSR 13-21-016

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed October 4, 2013, 3:25 p.m., effective November 4, 2013]

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

Purpose: WAC 458-61A-102 provides definitions that apply throughout chapter 458-61A WAC. The department is amending this rule to correct the definition of "governmental entity" (subsection (9)) so that it is consistent with state and federal law.

Citation of Existing Rules Affected by this Order: Amending WAC 458-61A-102 Real estate excise tax—Definitions.

Statutory Authority for Adoption: RCW 82.01.060, 82.45.150.

Other Authority: 12 U.S.C. §2077 and 531 U.S. 316 (2001); 164 Wn.2d 310, 324 (2008).

Adopted under notice filed as WSR 13-12-048 on May 31, 2013.

Changes Other than Editing from Proposed to Adopted Version:

- Language clarifying "municipal corporation or political subdivision of the state of Washington" was modified and a separate definition of "municipal corporation or political subdivision of the state of Washington" was created.
- The proposed rule read as follows:
 - (9) "Governmental entity" means:
 - (a) The United States;
 - (b) The state of Washington ("state"), including its departments and institutions, as distinct from its corporate agencies or instrumentalities; and
 - (c) Any municipal corporation or political subdivision of the state of Washington, which includes any county, city, town, public utility district, water and/or sewer district, irrigation district, school district, port district, metropolitan municipal corporation, public transportation benefit area, park and recreation district, fire protection district or any other authority described as a municipal corporation or political subdivision of the state of Washington by statute, which is established according to the applicable laws of this state.
- The rule to be adopted reads:
 - (9) "Governmental entity" means:
 - (a) The United States;

(b) The state of Washington ("state"), including its departments and institutions, as distinct from its corporate agencies or instrumentalities; and

(c) Any municipal corporation or political subdivision of the state of Washington.

- The rule to be adopted contains the following definition of "municipal corporation or political subdivision of the state of Washington."

(13) "Municipal corporation or political subdivision of the state of Washington" means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax exemption provided by Article VII of the Washington State Constitution.

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

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

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

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

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

Date Adopted: October 4, 2013.

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 11-16-106, filed 8/3/11, effective 9/3/11)

WAC 458-61A-102 Definitions. For the purposes of chapter 458-61A WAC, the following definitions apply unless the context requires otherwise:

(1) "**Affidavit**" means the real estate excise tax affidavit provided by the department for use by taxpayers in reporting transfers of real property. Both the seller/grantor and the buyer/grantee, or their agents, sign the affidavit under penalty of perjury. The term also includes the form used to report to the department transfers and acquisitions of a controlling interest in an entity owning real property in this state under WAC 458-61A-101.

(2) "**Consideration**" means money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. For example, Lee purchases a home

for \$250,000. He puts down \$50,000, and finances the balance of \$200,000. The full consideration paid for the house is \$250,000.

(a) "Consideration" includes the issue of an ownership interest in any entity in exchange for a transfer of real property to the entity. For example, if Julie transfers title to 20 acres of commercial property to Smith Development, LLC in exchange for a 50% ownership interest in the company, that constitutes consideration for the transfer. In the case of partnerships, consideration includes the increase in the capital account of the partner made as a result of the partner's transfer of real property to the partnership, unless the transfer is otherwise specifically exempt under WAC 458-61A-211 or 458-61A-212.

(b) "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer. For example, Ben buys a residence, valued at \$300,000, from Liza. Liza was purchasing the property on a real estate contract that has an outstanding balance of \$175,000. Ben gives Liza \$125,000 in cash and he assumes the obligation on the real estate contract, which Liza assigns to him. Real estate excise tax is due on \$300,000, which is the total consideration for the sale.

(c) "Consideration" does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements. For example, Mel buys residential property for \$300,000. The title is encumbered by a lien for unpaid property taxes in the amount of \$12,000, and a lien for municipal sidewalk improvements in the amount of \$6,000. Although Mel will become liable for those liens in order to take title to the property, they are not considered part of the purchase price for the purpose of calculating real estate excise tax. The real estate excise tax is due only on the purchase price of \$300,000.

(3) "**Controlling interest**" means:

(a) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(4) "**County**" means the county treasurer or its agent.

(5) "**Date of sale**" means the date (normally shown on the instrument of conveyance or sale) that ownership of or title to real property, or control of the controlling interest in an entity that has a beneficial interest in real property, is delivered to the buyer/transferee in exchange for valuable consideration. In the case of a lease with option to purchase, the date of sale is the date when the purchase option is exercised and the property is transferred. "Date of sale," "date of transfer," "conveyance date," and "transaction date" all have the same meaning and may be used interchangeably in this chapter. The real estate excise tax is due on the date of sale.

(6) "**Department**" means the department of revenue.

(7) "**Domestic partner**" has the same meaning as defined in chapter 26.60 RCW.

(8) **"Floating home"** means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self-propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located.

(9) **"Governmental entity"** means:

(a) ~~The United States (, any agency or instrumentality of the United States);~~

(b) ~~The state of Washington ("state"), ((any government agency, commission, college, university, or other department of the state, any political subdivision of the state, counties, any county agency, council, instrumentality, commission, office, or department, any Washington taxing district, municipal corporations of this state, and any office, council, department, or instrumentality of a Washington municipal corporation)) including its departments and institutions, as distinct from its corporate agencies or instrumentalities; and~~

(c) Any municipal corporation or political subdivision of the state of Washington.

(10) **"Mining property"** is property containing or believed to contain metallic or nonmetallic minerals, and sold or leased under terms that require the buyer or lessee to conduct exploration or mining work thereon, and for no other purpose.

(11) **"Mobile home"** means a mobile home as defined by RCW 46.04.302.

(12) **"Mortgage"** has its ordinary meaning, and includes a "deed of trust" for the purposes of this chapter, unless the context clearly indicates otherwise. The term "underlying debt" may also be used to refer to a mortgage or other security interest.

(13) **"Municipal corporation or political subdivision of the state of Washington"** means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax exemption provided by Article VII of the Washington state Constitution.

(14) **"Park model trailer"** means a park model trailer as defined in RCW 46.04.622.

~~((14))~~ (15) **"Real estate" or "real property"** means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber and crops. The term includes condominiums and individual apartments for which the buyer receives a warranty deed. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land. The term also includes any part of an irrigation system that is underground or affixed to the land. The term does not include irrigation equipment that is above the ground or that is not affixed to land. See RCW 82.12.020 for the tax treatment of sales of irrigation equipment that is not included in the definition of "real estate."

~~((15))~~ (16) **"Real estate contract" or "contract"** means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for the payment of the purchase price. The term does

not include earnest money agreements or options to purchase real property.

~~((16))~~ (17) **"Sale"** means:

(a) Any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such a conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term includes the grant, relinquishment, or assignment of a life estate in property. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(b) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For the purposes of this chapter, all acquisitions of persons acting in concert are aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place. For purposes of establishing the applicable twelve-month period for a transfer or acquisition pursuant to the exercise of an option, see WAC 458-61A-101.

(c) The term "sale" also applies to successive sales of the same property. An owner of real property is subject to payment of the real estate excise tax upon the entry of each successive contract for the sale of the same parcel of property. For example, Bob owns a house that he sells to Sam on a real estate contract. Real estate excise tax is paid on the transfer from Bob to Sam. Sam makes several payments, until he becomes unemployed. Since Sam can no longer make payments on the property, he conveys it back to Bob. Bob then makes a subsequent sale of the house to Sally. Real estate excise tax is due on the transfer from Bob to Sally. See WAC 458-61A-209 for the tax implications on the conveyance from Sam back to Bob.

(d) The term "sale" does not include:

(i) Those real property transfers that are excluded from the definition of "sale" and exempted from the real estate excise tax under RCW 82.45.010(3) and this chapter, including transfers without valuable consideration.

(ii) The transfer of lots or graves in an established cemetery. An established cemetery is one that meets the requirements for ad valorem property tax exemption under chapter 84.36 RCW.

(iii) The transfer of an interest in real property merely to secure a debt or the assignment of a security interest, release of a security interest, satisfaction of a mortgage, or reconveyance under the terms of a mortgage or deed of trust.

(iv) A deed given to a purchaser under a real estate contract upon fulfillment of the terms of the contract provided that the proper tax was paid on the original transaction. The fulfillment deed must be stamped by the county treasurer as required by WAC 458-61A-301, and the stamp must show the affidavit number of the sale for which the deed is fulfilling.

(v) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

(e) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) John paid off his home mortgage and wants to get a loan to make improvements and buy a new car. John obtains an equity loan, secured by his home as collateral. This transaction is not subject to the real estate excise tax.

(ii) Bob purchased real property from Sam pursuant to a real estate contract. Real estate excise tax was paid on the purchase price at the time of the sale. Bob has now paid off the property, and Sam is issuing a fulfillment deed to Bob indicating that the real estate contract has been satisfied. The fulfillment deed from Sam to Bob is not subject to the real estate excise tax.

(iii) Diane has made the final payment on her mortgage, and the bank issues a full reconveyance of her property, indicating that the mortgage is paid in full. The reconveyance is not subject to the real estate excise tax.

(iv) Bill is refinancing his mortgage for a lower interest rate. There is a balloon payment on the new loan that will require that he refinance again in five years. Neither transaction is subject to the real estate excise tax.

~~((17))~~ **(18) "Seller"** means any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, limited liability company, business trust, municipal corporation, quasi municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, but it does not include the United States or the state of Washington. The term "grantor" is used interchangeably with the term "seller" in this chapter and has the same meaning for purposes of the real estate excise tax.

~~((18))~~ **(19) "Selling price"** means the true and fair value of the property conveyed. There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

(c) When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership

transferred, and that amount added to any other consideration to determine the selling price.

(d) In the case of a lease with option to purchase, the selling price is the true and fair value of the property conveyed at the time the option is exercised.

(20) "United States" means:

(a) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

WSR 13-21-022

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 7, 2013, 2:13 p.m., effective November 7, 2013]

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

Purpose: WAC 392-140-915 High poverty funding—Process and definition of eligible schools, requires updating to clarify the eligibility requirement for districts that receive remote and necessary funding for one of their schools.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-915.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Adopted under notice filed as WSR 13-17-029 on August 12, 2013.

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

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

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

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

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

Date Adopted: September 26, 2013.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 12-03-069, filed 1/12/12, effective 2/12/12)

WAC 392-140-915 High poverty funding—Process and definition of eligible schools. For the purposes of this section, an eligible school is one in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building, and the school is not part of a district that receives any type of K-6 small school funding or the school does not receive remote and necessary funding. CEDARS data as of October of the previous school year will be used to determine school eligibility. If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature.

A preliminary CEDARS extract of October data will be pulled on March 31st to be used to determine a preliminary list of eligible schools to be published in April. This list will be used by districts as a basis for estimating the total eligible high poverty enrollment to be put into the F-203 for budgeting purposes. Districts will have until September 30th to make adjustments to this data before it is considered final for funding purposes.

A secondary CEDARS extract of October data will be pulled on July 30th. An updated list of eligible schools will be presented to districts in August.

On September 30th, the October CEDARS data for the previous school year will be considered final for K-3 high poverty funding purposes. A final data extract will be used to determine schools that are eligible for high poverty funding. Final determination of eligible schools for the current school year will be available in mid-October.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's F-203 from September through December. Funding based on average annual full-time equivalent enrollment reported in final approved eligible schools will begin in January and continue through August.

WSR 13-21-023

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 7, 2013, 2:15 p.m., effective November 7, 2013]

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

Purpose: WAC 392-122-421 Full-day kindergarten program—Definitions, requires updating to align the poverty percentage definition with the change that was made previously to WAC 392-122-423.

Citation of Existing Rules Affected by this Order: Amending WAC 392-122-421.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Adopted under notice filed as WSR 13-17-031 on August 12, 2013.

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

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

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

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

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

Date Adopted: September 26, 2013.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 09-11-018, filed 5/8/09, effective 6/8/09)

WAC 392-122-421 Full-day kindergarten program—Definitions. As used in WAC 392-122-420 through 392-122-426, the following definitions shall apply:

(1) Full-day kindergarten (FDK) means an approved program that is eligible for state-funded full-day kindergarten program as provided for in the annual state operating budget;

(2) Full-time equivalent (FTE) has the same meaning as defined in WAC 392-121-122 (1)(a);

(3) "Poverty percentage" means the percentage of a school building's kindergarten through grade 6 students who are eligible for the federal free and reduced price lunch (FRPL) as reported to OSPI for the prior school year October 1st CEDARS reporting.

WSR 13-21-024

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 7, 2013, 2:16 p.m., effective November 7, 2013]

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

Purpose: WAC 392-121-188 Instruction provided under contract, requires updating to align with the personnel S275 reporting requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-188.

Statutory Authority for Adoption: RCW 28A.150.305.

Adopted under notice filed as WSR 13-17-032 on August 12, 2013.

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

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

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

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

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

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

Date Adopted: [September 26, 2013].

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 12-17-111, filed 8/20/12, effective 9/20/12)

WAC 392-121-188 Instruction provided under contract. School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion. A board adopted resolution is not required for online courses purchased by the school district from an online provider approved by the superintendent of public instruction under RCW 28A.250.020;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control;

(5) The contractor charges the student no tuition for enrollment;

(6) Enrollment is voluntary;

(7) No student or person is unlawfully excluded from participation on the grounds of race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap;

(8) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(9) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section;

(10) The curriculum is approved by the district. District approval for online course curriculum is not required for online courses offered by an online provider approved by the superintendent of public instruction under RCW 28A.250.020;

(11) The contractor provides enrollment reports to the school district that comply with this chapter;

(12) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

(13) As of October 1st, if a contractor certificated employee employed by a contractor other than an institution of higher education spends more than twenty-five percent of a full-time equivalent time with students for a given school district (~~(at any time during the school year)~~), the school district must report the individual contractor certificated employee as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(14) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district. School districts that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(15) The school district and contractor establish a process for periodic monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor. School districts that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(16) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;

(17) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and

(18) Full-time equivalent enrollment reported for students served under contract with a community or technical college as defined in RCW 28B.50.030 shall be based on the

credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:

(a) The student is earning credits applicable to a high school diploma.

(b) The program is focused on serving credit deficient students.

(c) The student population served is considered at-risk and meet the following criteria:

(i) The students have already dropped out of high school; or

(ii) The students have not demonstrated success in the traditional high school environment.

(19) The school district requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the school district under contract.

WSR 13-21-026

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 8, 2013, 12:00 p.m., effective November 8, 2013]

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

Purpose: Add references to newly created sections of statute pertaining to off-road vehicles (wheeled all-terrain vehicles) violations, vehicle license and registration fraud, and electric vehicle charging station parking violations to the model traffic ordinance.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-197, 308-330-316, and 308-330-462.

Statutory Authority for Adoption: RCW 46.90.010.

Adopted under notice filed as WSR 13-17-035 on August 12, 2013.

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

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

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

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

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

Date Adopted: October 8, 2013.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles. The following sections of

the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.09.310, 46.09.330, 46.09.350, 46.09.360, 46.09.420, 46.09.440, 46.09.450, 46.09.460, 46.09.470, 46.09.480, ~~((and))~~ 46.09.490, 2013 c 23 s 4, 2013 c 23 s 5, 2013 c 23 s 6, 2013 c 23 s 7, and 2013 c 23 s 9.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.395, 46.37.400, 46.37.410, 46.37.420, 46.37.4215, 46.37.4216, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.465, 46.37.467, 46.37.470, 46.37.480, 46.37.490, 46.37.495, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.518, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.37.630, 46.37.640, 46.37.650, 46.37.660, 46.37.670, 46.37.671, 46.37.672, 46.37.673, 46.37.674, 46.37.675, ~~((and))~~ 46.37.680, and 2013 c 135 s 1.

AMENDATORY SECTION (Amending WSR 97-10-068, filed 5/5/97, effective 6/5/97)

WAC 308-330-462 RCW sections adopted—Stopping, standing, and parking. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle stopping, standing, and parking as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: 2013 c 60 s 1, RCW 46.61.560, 46.61.570, 46.61.575, 46.61.581, 46.61.582, 46.61.583, 46.61.585, 46.61.587, and 46.61.590.

WSR 13-21-027

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 8, 2013, 12:02 p.m., effective July 8, 2014]

Effective Date of Rule: July 8, 2014.

Purpose: Add reference to newly created section of statute pertaining to commercial motor vehicle learner's permit violations to the model traffic ordinance.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-309.

Statutory Authority for Adoption: RCW 46.90.010.

Adopted under notice filed as WSR 13-17-035 on August 12, 2013.

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

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

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

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

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

Date Adopted: October 8, 2013.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04, effective 9/27/04)

WAC 308-330-309 RCW sections adopted—Uniform Commercial Driver's License Act. The following sections of the Revised Code of Washington (RCW) pertaining to the Uniform Commercial Driver's License Act as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.25.010, 46.25.020, 46.25.030, 46.25.-040, 46.25.050, 46.25.055, 46.25.057, 46.25.110, 46.25.120, (~~and~~) 46.25.170, and 2013 c 224 s 5.

**WSR 13-21-029
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY**

[Filed October 8, 2013, 2:38 p.m., effective November 8, 2013]

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

Purpose: The purpose of the proposed rule changes is to replace an existing incorporation by reference of outdated state regulations with a new local rule incorporating currently applicable state regulations.

Citation of Existing Rules Affected by this Order: Repealing Board Resolution 1976-3.

Statutory Authority for Adoption: RCW 43.21C.120.

Adopted under notice filed as WSR 13-13-008 on June 6, 2013.

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 14, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, 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: October 3, 2013.

Robert D. Elliott
Executive Director

NEW SECTION

SWCAA 802-010 Purpose and Authority

This regulation contains the Agency's SEPA policies and procedures. This regulation is adopted under the authority of the State Environmental Policy Act (SEPA), RCW 43.21C.-120. The statewide SEPA rules found in WAC 197-11 must be used in conjunction with this regulation.

NEW SECTION

SWCAA 802-020 Adoption by Reference

The Agency adopts the following sections of WAC 197-11 by reference:

- 197-11-040 Definitions
- 197-11-050 Lead Agency
- 197-11-055 Timing of the SEPA process
- 197-11-060 Content of environmental review
- 197-11-070 Limitations on actions during SEPA process
- 197-11-080 Incomplete or unavailable information
- 197-11-090 Supporting documents
- 197-11-100 Information required of applicants
- 197-11-300 Purpose of this part
- 197-11-305 Categorical exemptions
- 197-11-310 Threshold determination required
- 197-11-315 Environmental checklist
- 197-11-330 Threshold determination process
- 197-11-335 Additional information
- 197-11-340 Determination of nonsignificance (DNS)
- 197-11-350 Mitigated DNS
- 197-11-360 Determination of significance (DS)/initiation of scoping
- 197-11-390 Effect of threshold determination

197-11-400	Purpose of EIS	197-11-706	Addendum
197-11-402	General requirements	197-11-708	Adoption
197-11-405	EIS types	197-11-710	Affected tribe
197-11-406	EIS timing	197-11-712	Affecting
197-11-408	Scoping	197-11-714	Agency
197-11-410	Expanded scoping	197-11-716	Applicant
197-11-420	EIS preparation	197-11-718	Built environment
197-11-425	Style and size	197-11-720	Categorical exemption
197-11-430	Format	197-11-722	Consolidated appeal
197-11-435	Cover letter or memo	197-11-724	Consulted agency
197-11-440	EIS contents	197-11-726	Cost-benefit analysis
197-11-442	Contents of EIS on nonproject proposals	197-11-728	County/city
197-11-443	EIS contents when prior nonproject EIS	197-11-730	Decisionmaker
197-11-444	Elements of the environment	197-11-732	Department
197-11-448	Relationship of EIS to other considerations	197-11-734	Determination of nonsignificance (DNS)
197-11-450	Cost-benefit analysis	197-11-736	Determination of significance (DS)
197-11-455	Issuance of DEIS	197-11-738	EIS
197-11-460	Issuance of FEIS	197-11-740	Environment
197-11-500	Purpose of this part	197-11-742	Environmental checklist
197-11-502	Inviting comment	197-11-744	Environmental document
197-11-504	Availability and cost of environmental documents	197-11-746	Environmental review
197-11-508	SEPA register	197-11-750	Expanded scoping
197-11-535	Public hearings and meetings	197-11-752	Impacts
197-11-545	Effect of no comment	197-11-754	Incorporation by reference
197-11-550	Specificity of comments	197-11-756	Lands covered by water
197-11-560	FEIS response to comments	197-11-758	Lead agency
197-11-570	Consulted agency costs to assist lead agency	197-11-760	License
197-11-600	When to use existing environmental documents	197-11-762	Local agency
197-11-610	Use of NEPA documents	197-11-764	Major action
197-11-620	Supplemental environmental impact statement—Procedures	197-11-766	Mitigated DNS
197-11-625	Addenda—Procedures	197-11-768	Mitigation
197-11-630	Adoption—Procedures	197-11-770	Natural environment
197-11-635	Incorporation by reference—Procedures	197-11-772	NEPA
197-11-640	Combining documents	197-11-774	Nonproject
197-11-650	Purpose of this part	197-11-776	Phased review
197-11-655	Implementation	197-11-778	Preparation
197-11-660	Substantive authority and mitigation	197-11-780	Private project
197-11-680	Appeals	197-11-782	Probable
197-11-700	Definition	197-11-784	Proposal
197-11-702	Act	197-11-786	Reasonable alternative
197-11-704	Action	197-11-788	Responsible official
		197-11-790	SEPA
		197-11-792	Scope
		197-11-793	Scoping

197-11-794	Significant
197-11-796	State agency
197-11-797	Threshold determination
197-11-799	Underlying governmental action
197-11-800	Categorical exemptions
197-11-880	Emergencies
197-11-890	Petitioning DOE to change exemptions
197-11-900	Purpose of this part
197-11-902	Agency SEPA Policies
197-11-916	Application to ongoing actions
197-11-920	Agencies with environmental expertise
197-11-922	Lead agency rules
197-11-924	Determining the lead agency
197-11-926	Lead agency for governmental proposals
197-11-928	Lead agency for public and private proposals
197-11-930	Lead agency for private projects with one agency with jurisdiction
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies
197-11-936	Lead agency for private projects requiring licenses from more than one state agency
197-11-938	Lead agencies for specific proposals
197-11-940	Transfer of lead agency status to a state agency
197-11-942	Agreements on lead agency status
197-11-944	Agreements on division of lead agency duties
197-11-946	DOE resolution of lead agency disputes
197-11-948	Assumption of lead agency status
197-11-960	Environmental checklist
197-11-965	Adoption notice
197-11-970	Determination of nonsignificance (DNS)
197-11-980	Determination of significance and scoping notice (DS)
197-11-985	Notice of assumption of lead agency status
197-11-990	Notice of action

NEW SECTION**SWCAA 802-030 Additional Definitions**

In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

- (1) "Agency" means the Southwest Clean Air Agency.
- (2) "Director" means the executive director of the Southwest Clean Air Agency.

NEW SECTION**SWCAA 802-040 Designation of Responsible Official**

For proposals for which the Agency is the lead agency, the responsible official shall be the Director or an Agency employee designated by the Director. The responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules adopted by reference in SWCAA 802-020. The Agency shall retain all documents required by the SEPA rules (WAC 197-11) and make them available in accordance with Chapter 42.17 RCW.

NEW SECTION**SWCAA 802-050 Lead Agency Determination and Responsibility**

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

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

(3) If the Agency receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the Agency must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the Agency may be initiated by the Director.

(4) The Agency may make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944. The responsible official and any agency that will incur responsibilities as the result of such agreement must both approve the agreement.

(5) When the Agency makes a lead agency determination for a private project, the Agency shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

NEW SECTION

SWCAA 802-060 Additional Timing Considerations

Agency staff receiving a permit application will determine whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the staff person should ask the applicant to complete an environmental checklist. A checklist is not needed if the agency and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also complete an environmental checklist if the staff person is unsure whether the proposal is exempt.

NEW SECTION

SWCAA 802-070 Use of Exemptions

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

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

(3) If a proposal includes both exempt and nonexempt actions, the Agency may authorize exempt actions prior to compliance with the procedural requirements of this regulation, except that:

- (a) The Agency shall not give authorization for:
 - (i) Any nonexempt action,
 - (ii) Any action that would have an adverse environmental impact, or
 - (iii) Any action that would limit the choice of alternatives;
- (b) The Agency may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

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

NEW SECTION

SWCAA 802-080 Environmental Checklist

A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this regulation; except, a checklist is not needed if the Agency and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency.

(1) The environmental checklist shall be in the form provided in WAC 197-11-960. As used throughout this regulation, environmental checklist means the environmental checklist required by this section.

(2) The Agency shall use the environmental checklist to determine the lead agency, and if SWCAA is to be the lead agency, for determining the responsible official and for making the threshold determination.

(3) For private proposals, the Agency will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, the Agency shall complete the environmental checklist. The Agency may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

- (a) The Agency has technical information on a question or questions that is unavailable to the private applicant; or
- (b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

NEW SECTION

SWCAA 802-090 Mitigated DNS

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

(2) An applicant may request early notice of whether issuance of a DS is likely for a proposal. This request for early notice must:

- (a) Be written;
- (b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the Agency is lead agency; and
- (c) Precede the Agency's actual threshold determination for the proposal.

(3) The responsible official or his designee shall respond to the request within 30 working days of receipt. The response shall:

- (a) Be written;
- (b) State whether the Agency currently considers issuance of a DS likely and, if so, indicate the general or specific

area(s) of concern that is/are leading the Agency to consider a DS; and

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

(4) The Agency's written response under subsection (3) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the agency to consider the clarifications or changes in its threshold determination.

(5) The agency shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the agency may require the applicant to submit a new checklist.

(7) If an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the Agency shall base its threshold determination on the changed or clarified proposal and shall make the determination within 30 days of receiving the changed or clarified proposal.

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

(b) If the Agency indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the Agency shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(8) Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to Agency staff reports, studies, or other documents. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the Agency.

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

NEW SECTION

SWCAA 802-100 EIS Preparation

(1) Preparation of draft and final EISs and SEISs is the responsibility of the responsible official. Before the Agency

issues an EIS, the responsible official shall be satisfied that it complies with these rules and chapter 197-11 WAC.

(2) The Agency will normally prepare its own draft and final EISs. It may require an applicant to provide information that the Agency does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under these rules.

(3) If the Agency is unable to prepare a draft and/or final EIS due to its commitments or other constraints, the Agency may allow an applicant the following option for preparation of the draft and/or final EIS for the applicant's proposal:

(a) The Agency retains a mutually agreed upon and independent outside party to prepare the document.

(b) The applicant and the Agency agree upon a method of funding in which the applicant will bear the expense of the EIS preparation, but the outside party will work directly for the Agency.

(c) The outside party prepares the document under the supervision of the responsible official.

(4) Whenever someone other than the Agency prepares a draft or final EIS, the agency shall:

(a) Direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Initiate and coordinate scoping, ensuring that the outside party preparing the EIS receives all substantive information submitted by any agency or person.

(c) Assist in obtaining information on file with another agency that is needed by the outside party preparing the EIS.

(d) Allow the outside party preparing the EIS access to agency records relating to the EIS (under chapter 42.17 RCW — Public disclosure and public records law).

NEW SECTION

SWCAA 802-110 Substantive Authority

The policies and goals set forth in this section supplement those in the existing authority of the Agency.

(1) The Agency designates and adopts by reference the following policies as the basis for the Agency's exercise of substantive authority under SEPA, pursuant to this section:

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

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

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

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

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

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

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

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

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

(2) The Agency may attach conditions to a permit or approval for a proposal if:

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

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

(c) The Agency has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts;

(d) Such conditions are in writing; and

(e) Such conditions are based on one or more policies in subsection (1) of this section and cited in the license or other decision document.

(3) The agency may deny a permit or approval for a proposal on the basis of SEPA if:

(a) Approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this ordinance;

(b) There are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

(c) The denial is based on one or more policies identified in subsection (1) of this section and identified in writing in the decision document.

NEW SECTION

SWCAA 802-120 Public Notice

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

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

(b) If no public notice is required for the permit or approval, the city/county shall give notice of the DNS or DS by:

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

(ii) Posting notice on the Agency website.

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

(3) Whenever the Agency issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license; and at least one of the following methods:

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

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

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

(d) Notifying the news media;

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

(f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists; and/or

(g) Posting notice on the Agency website.

(4) Whenever possible, the Agency shall integrate the public notice required under this section with existing notice procedures for the Agency's nonexempt permit(s) or approval(s) required for the proposal.

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

NEW SECTION

SWCAA 802-130 Fees

The Agency may require the following fees for its activities in accordance with the provisions of this regulation.

(1) Threshold Determination. The Agency may charge and collect the fee specified below from any applicant to cover the costs incurred by the Agency in preparing an environmental checklist or other information needed for the Agency to make a threshold determination. In addition, The Agency may contract directly with a consultant for preparation of an environmental checklist or other information needed for the Agency to make a threshold determination, and may bill such costs and expenses directly to the applicant. The Agency may require the applicant to post bond or otherwise ensure payment of such costs and expenses. If the staff time required to make a threshold determination exceeds the number of work hours associated with the applicable fee, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

SEPA Threshold Determination Fee:

Minor project	\$1,000.00	(14 associated work hours)
Major project	\$2,500.00	(35 associated work hours)

(2) Environmental impact statement.

(a) When SWCAA is the lead agency for a proposal requiring an EIS, and the responsible official determines that the EIS shall be prepared by employees of the Agency, the staff time required to prepare the EIS will be invoiced to the applicant at the rate of \$70.00 per hour. The Agency may also contract directly with a consultant for preparation of the EIS, and may bill such costs and expenses directly to the applicant. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

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

(c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.

(3) Public notice. The Agency may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this regulation relating to the applicant's proposal.

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

(5) The Agency may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by Chapter 42.17 RCW.

NEW SECTION

SWCAA 802-140 Severability

If any provision of this regulation or its application to any person or circumstance is held invalid, the remainder of this regulation, or the application of the provision to other persons or circumstances, shall not be affected.

WSR 13-21-032

PERMANENT RULES

FOREST PRACTICES BOARD

[Filed October 8, 2013, 3:59 p.m., effective December 30, 2013]

Effective Date of Rule: December 30, 2013.

Purpose: These rules fulfill the forest practices rule-making requirement in 2ESSB 6406 (2012), chapter 1, Laws of 2012. The law directed the forest practices board to incorporate into Title 222 WAC those fish protection standards from the hydraulic code rules (chapter 220-110 WAC) applicable to forest practices hydraulic projects (FPHPs). FPHPs will be regulated under the forest practices rules beginning December 30, 2013. The affected rules are in chapters 222-12, 222-16, 222-20, 222-24, 222-30, and 222-50 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 222-12-010, 222-12-030, 222-12-050, 222-12-090, 222-16-010, 222-16-050, 222-20-020, 222-20-040, 222-20-090, 222-24-010, 222-24-020, 222-24-040, 222-24-0511, 222-30-020, 222-30-021, 222-30-022, 222-30-050, 222-30-060, 222-30-070, 222-30-100, and 222-50-020.

Statutory Authority for Adoption: RCW 76.09.040(3).

Adopted under notice filed as WSR 13-11-133 on May 22, 2013.

Changes Other than Editing from Proposed to Adopted Version: 1. Within the published rules were two options for each of two of the definitions in WAC 222-16-010: "Bankfull width" and "forest practices hydraulic project."

Bankfull width. Option 1 (the no-change option) was adopted. Therefore, the following adjustments were made in the final rule:

- The stream width measurement metric, "ordinary high water line," was retained in language within the following WACs that was [were] imported from chapter 220-110 WAC: WAC 222-16-025(4), 222-24-040(7), 222-24-041 (1), (2), and (4), and 222-24-046(1).
- "Based on bankfull width" was deleted in WAC 222-24-041 (6)(b).

Forest practices hydraulic project. Option 1 (including Type N Waters) was adopted. Therefore, several WAC subsections that do not pertain to all water types were modified in the final rule as follows:

WAC 222-16-037(4), inserted "associated with Type S and F Waters."

WAC 222-16-025(4), inserted "in Type S and F Waters."

WAC 222-20-017(1), inserted "in Type S and F and associated Np Waters."

WAC 222-30-100(5), inserted "in Type S and F Waters."

WAC 222-30-060 (5), (7), and (8), specified "Type S and F Waters" and placed under subsection (1). Subsection (6) is also placed under subsection (1).

2. WAC 222-16-010 "ordinary high water mark." This term is changed to "ordinary high water **line**" for consistency with the language imported from the hydraulic code rules (chapter 220-110 WAC). The definition is almost identical to, and has the same effect as, the definition of "ordinary high water line" in WAC 220-110-020(69).

3. Classifications. WAC 222-16-050 Class II and Class III were changed to ensure understanding that a forest practices application (FPA) that includes a hydraulic project can be:

- a. A renewal of a Class III or IV FPA, if the operation or the forest practices hydraulic project design are not modified; and
- b. Any class depending on its potential to damage public resources.

4. Forest practices hydraulic project general provisions. WAC 222-16-025(4) is modified as follows:

- Subsection (4)(b) is deleted because it is not a circumstance that relates to any forest practices hydraulic project;
- Subsection (4)(e) remains on the list because the maintenance of equipment that enters water must be addressed to ensure resource protection and is not covered elsewhere in the forest practices rules;
- Subsection (4)(i) is deleted because WAC 222-24-030(9) covers the disposal of spoils from road construction; and
- Subsection (4)(j) is moved to WAC 222-24-041 under subsection (4) Bridge construction, which is a logical placement for a provision for treated wood.

5. Erosion control. "Or stabilized with other approved erosion control techniques" is added to: WAC 222-16-025 (4)(c), 222-24-041 (4)(c), (5)(h), (6)(d), 222-24-044(9), 222-24-046(5).

6. Fish passage at all life stages, which is the forest practices standard and rule terminology, replaces "free and unimpeded passage for fish" in two rules: WAC 222-24-010(2) first bullet and WAC 222-24-020 (6)(d).

7. Deposit of wastewater from project activities. "Or above the 100-year flood level if present" is added to WAC 222-24-041 (4)(f), (5)(f), and (6)(i) for consistency with forest practices standards.

8. Application reviews for FPAs that include forest practices hydraulic projects. WAC 222-20-017 is changed as follows to ensure understanding that the section only applies to FPAs that include forest practices hydraulic projects in Type S and F and associated Np Waters:

WAC 222-20-017 *Applications and notifications that include forest practices hydraulic projects.

(1) Review for consistency with fish protection standards. *The department review forest practices applications that include forest practices hydraulic projects in Type S and F and associated Np Waters for consistency with fish protection standards.*

9. Felling, bucking, cable yarding. WAC 222-30-050 (1)(a)(iii) and 222-30-060 (1)(c). In regard to limbs and debris that enter Type S and F Waters during felling, bucking and cable yarding, language is changed from "placed outside the 100-year flood plain," to "placed on stable locations outside the stream's influence." There are locations where a 100-year flood plain is not evident, and "stable locations outside the stream's influence" is a logical guideline for landowners to make sure material will not reenter the stream.

K. Cable yarding. WAC 222-20-060(3) Deadfalls. Language is changed from "without an approved forest practices application" to "except with approval by the department." Removal or disturbance of a firmly embedded log in the bed or bank of a Type S or F Water is not allowed unless the department of natural resources (DNR) approves it. Restricting this approval to an FPA would not allow for unexpected or previously unknown circumstances that may occur during the course of a project.

L. Clarifications were made in the following sections:

WAC 222-12-037(2) is deleted and references are moved to WAC 222-16-025(1).

WAC 222-16-010 General definitions.

- "Fish protection standards" was modified to make it clear that the standards are met by certain objectives identified in WAC 222-16-025. Also adds "associated Np Waters" as waters subject to fish protection standards.
- "Forest practice:" The language is changed as follows: "...growing, harvesting, or processing timber, or removing forest biomass ..."
- "Forest practices hydraulic project:" Sentence is added to make it clear that stand-alone proposals involving channel change, dredging, and outfall construction are not forest practices hydraulic projects. Subsection (1) of WAC 222-16-025 "Fish protection standards" is modified accordingly.

WAC 222-16-025(4) "General conditions" is changed to "general provisions" for consistency with similar uses of that term in WAC 222-24-042 (1), (2), and (3).

WAC 222-24-020 (22)(c) is modified to show that fish passage projects will require detailed site plans and designs.

WAC 222-24-040(7): Clarification to "established ford."

(d) Driving a vehicle or operating equipment on or across an established ford does not require a forest practices application. "Established ford" means a crossing place in a watercourse that was in existence and annually used prior to 1986 or subsequently permitted by the department of fish and wildlife or the department, and has identifiable approaches on the banks.

WAC 222-24-0511(5): Changed a date from December 30, 2012, to December 29, 2012 because the rules will become effective December 30, 2013, instead of December 31 as originally thought.

(a) ... One hundred percent public funding shall be provided if an existing barrier was installed under an approved forest practices application, or a hydraulics project approval acquired prior to December 29, 2013, and that barrier becomes a high priority for replacement.

WAC 222-34-040 Site preparation and rehabilitation. This WAC will not be amended. It was determined that the proposed changes in subsection (3) Stream channel alignment, were not necessary. Stream channel realignment is not a forest practices hydraulic project and remains governed by chapters 77.55 RCW and 220-110 WAC. Therefore, it is not appropriate to make the change.

A final cost-benefit analysis is available by contacting Gretchen Robinson, 1111 Washington Street S.E., P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.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 9, Amended 21, Repealed 0.

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

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

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

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

Date Adopted: August 13, 2013.

Aaron Everett
Chair

AMENDATORY SECTION (Amending WSR 11-12-009, filed 5/20/11, effective 6/20/11)

WAC 222-12-010 Authority. These forest practices rules are adopted pursuant to chapter 76.09 RCW, and RCW 76.13.100 through 76.13.130 (~~and RCW 77.85.180 through 77.85.190~~). Where necessary to accomplish the purposes and policies stated in the act, the board is authorized to promulgate forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in the act.

These rules establish minimum standards for forest practices, provide procedures for the voluntary development of resource management plans, set forth necessary administrative provisions, establish procedures for the collection and administration of forest practices fees, allow for the development of watershed analyses, foster cooperative relationships and agreements with affected tribes, and establish the rivers and habitat open space program. The board also establishes which forest practices will be included within each class and is authorized to adopt rules under RCW 76.09.055, 76.09.-370, and 76.13.120((9))(10).

Promulgation of all forest practices rules shall be accomplished so that compliance with such forest practices rules will achieve compliance with the water quality laws.

Those rules marked with an asterisk (*) pertain to water quality protection; pursuant to RCW 76.09.040 they can be amended only by agreement between the board and the department of ecology.

Forest practices rules shall be administered and enforced by the department except as otherwise provided in the act. Such rules shall be administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

WAC 222-12-030 Application information and classes of forest practices. Forest practices are divided into four classes as specified by RCW 76.09.050 and described in WAC 222-16-050. Review periods and application and notification requirements differ as follows:

(1) **Class I forest practices** require no application or notification, but do require compliance with all other forest practices rules.

(2) **Class II forest practices** require a notification to the department, and may begin five calendar days (or such lesser time as the department may determine) after receipt of a complete notification by the department.

(3) **Class III forest practices** must be approved or disapproved within thirty or fewer calendar days of receipt of a complete application by the department. The department is directed to approve or disapprove within fourteen calendar days Class III applications not requiring additional field review. Exceptions are:

(a) Multiyear applications must be approved or disapproved within forty-five days of receipt of a complete application by the department.

(b) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(c) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(4) **Class IV forest practices** are divided into "Class IV-special," and "Class IV-general," and must be approved or disapproved within thirty calendar days of receipt of a complete application by the department. Exceptions are:

(a) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(b) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(c) If a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(5) In certain emergencies as defined in RCW 7.09.060 (7), the application or notification may be submitted within forty-eight hours after commencement of the practice.

NEW SECTION

WAC 222-12-037 *Applications that include forest practices hydraulic projects. (1) The review process for applications that include forest practices hydraulic projects is described in WAC 222-20-017.

(2) Each forest practices hydraulic project included in an application will be reviewed on an individual basis and will be subject to rules and applicable conditions to the forest practices application or notification. Common general provisions applicable to a specific project may be modified or deleted by the department where any of the following is demonstrated by the landowner:

(a) The provision has no logical application to the project.

(b) The applicant provides an alternate plan to the provision and demonstrates that it provides equal or greater protection for fish life.

(c) The modification or deletion of the provision will not contribute to net loss of fish life.

(3) Projects may be subject to additional conditions to address project- or site-specific considerations not adequately addressed by the forest practices application or notification.

(4) The department will place specific time limitations on project activities in forest practices hydraulic projects associated with Type S and F Waters in order to protect fish life. The department and the applicant will consult with the department of fish and wildlife for appropriate work windows for the protection of fish life.

(5) If site conditions change over the course of an approved application, the department may approve a landowner request for an amendment to the application.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-12-050 Notices to comply—Stop work orders. *(1) **Violations.** When a forest practice has been completed, the department may issue a notice to comply requiring the operator or landowner to correct or compensate for damage to public resources where there was:

(a) A violation of the act, or these rules; or

(b) A deviation from the approved application; or

(c) A willful or negligent disregard for potential damage to a public resource.

(2) **Other required action.** When a forest practice has not yet been completed, the department may issue either a notice to comply to the operator and/or landowner, or a stop

work order to the operator, requiring him/her to prevent potential or continuing damage to a public resource where:

(a) The need for additional actions or restrictions has become evident; and

(b) The department determines that a specific course of action is needed to prevent potential or continuing damage to public resources; and

(c) The damage would result or is resulting from the forest practices activities, whether or not the activities involve any violation, unauthorized deviation or negligence.

(3) **No notice to comply** shall be issued to require a person to prevent, correct, or compensate for any damage to public resources which occurs more than ((4)) one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules: Provided, That this provision shall not relieve the forest landowner from any obligation to comply with forest practices rules pertaining to providing continuing road maintenance.

(4) **No notice to comply** to recover money damages shall be issued more than ((2)) two years after the date the damage involved occurs.

*(5) In emergency action, where the department requires the operator or landowner to do immediate work ((#)) that could affect the bed or flow of the stream, the department shall first seek ((approval)) consultation from the department of fish and wildlife.

AMENDATORY SECTION (Amending WSR 11-12-009, filed 5/20/11, effective 6/20/11)

WAC 222-12-090 *Forest practices board manual.

When approved by the board the manual serves as an advisory technical supplement to these forest practices rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.

(2) Standards for identifying channel migration zones and bankfull channel features.

(3) **Guidelines** for forest roads.

(4) **Guidelines** for clearing slash and debris from Type Np and Ns Waters.

(5) **Guidelines** for ((~~landing location and construction~~)) forest practices hydraulic projects.

(6) **Guidelines** for determining acceptable stocking levels.

(7) **Guidelines** for riparian management zones.

(8) **Guidelines** for wetland delineation.

(9) **Guidelines** for wetland replacement or substitution.

(10) A list of nonnative wetland plant species.

(11) The standard methodology for conducting watershed analysis shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The methodology

shall also include a cultural resource module that shall specify the quantitative and qualitative methods, indices of resource conditions, and guidelines for developing voluntary management strategies for cultural resources. Except for cultural resources, the department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) **Guidelines** for forest chemicals.

(a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(b) Guidelines for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.

(13) **Guidelines** for determining fish use for the purpose of typing waters under WAC 222-16-031.

(14) **Survey protocol for marbled murrelets.** The Pacific Seabird Group survey protocol dated January 6, 2003, and formally titled *Methods for Surveying Marbled Murrelets in Forests: A Revised Protocol for Land Management and Research*, shall be used when surveying for marbled murrelets in a stand. Surveys are valid if they were conducted in compliance with the board-recognized Pacific Seabird Group survey protocols in effect at the beginning of the season in which the surveys were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(a) A sampling method to determine platforms per acre in the field;

(b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and

(c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

(16) **Guidelines** for evaluating potentially unstable slopes and landforms.

(17) **Guidelines** for the small forest landowner forestry riparian easement program.

(18) **Guidelines** for rivers and habitat open space program.

(19) **Guidelines** for hardwood conversion.

(20) **Guidelines** for financial assurances.

(21) **Guidelines** for alternate plans.

(22) **Guidelines** for adaptive management program.

(23) **Guidelines** for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) **Guidelines** for interim modification of bull trout habitat overlay.

(25) **Guidelines** for bull trout presence survey protocol.

(26) **Guidelines** for placement strategy for woody debris in streams.

AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the pollution control hearings board established in RCW 43.21B.010.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d), 222-22-060(2), or 222-22-090.

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - Line of mean high water.

(c) For tidal water - Line of mean high tide.

(d) For periodically inundated areas of associated wetlands - Line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within (~~unchanneled~~) unchanneled valleys on hillslopes. (See board manual section 16 for identification criteria.)

"Board" means the forest practices board established by the act.

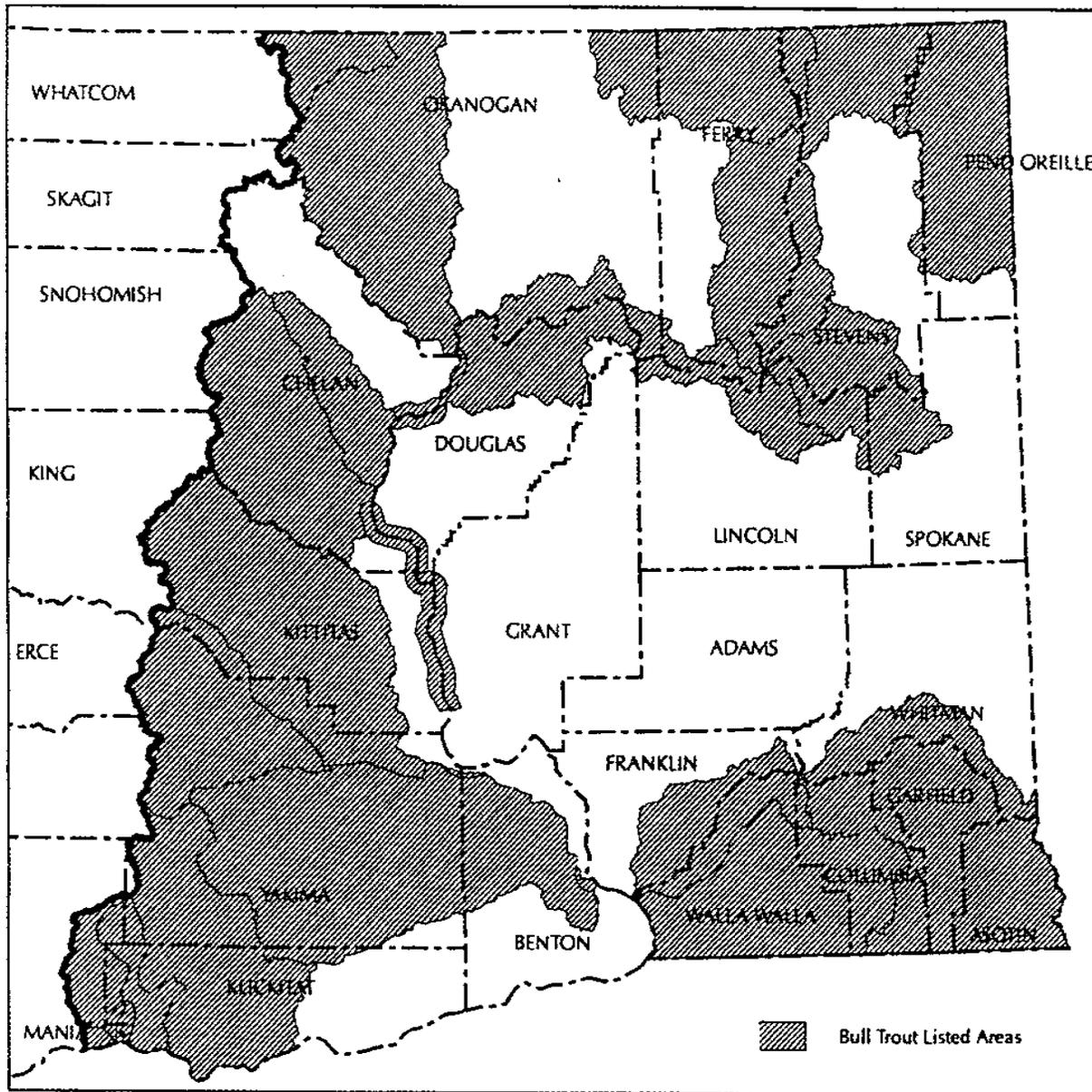
"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an

overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"**Channel migration zone (CMZ)**" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"**Chemicals**" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"**Clearcut**" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation.

Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"**Columbia River Gorge National Scenic Area or CRGNSA**" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"**CRGNSA special management area**" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16

U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion activities" means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).

- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.

- Preparation for, or construction of, any structure requiring local government approval.

- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.

- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - One hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Date of receipt," as that term is defined in RCW 43.21B.001, means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"**Desired future condition (DFC)**" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"**Diameter at breast height (dbh)**" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"**Dispersal habitat**" see WAC 222-16-085(2).

"**Dispersal support**" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEAg goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found

within RMZs, WMZs or other required and voluntary leave areas.

"**Drainage structure**" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"**Eastern Washington**" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



"**Eastern Washington timber habitat types**" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"**Edge**" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"**End hauling**" means the removal and transportation of excavated material, pit or quarry overburden, or landing or

road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"**Equipment limitation zone**" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"**Erodible soils**" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"**Even-aged harvest methods**" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Fish protection standards" means the standards met by fulfilling certain fish protection objectives when conducting forest practices hydraulic projects in Type S and F and associated Np Waters. The objectives, identified in WAC 222-16-025, are met by following rules associated with forest practices hydraulic projects.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a ((+)) one percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest biomass" means material from trees and woody plants that are by-products of forest management, ecosystem restoration, or hazardous fuel reduction treatments on forest land. Although stumps are a by-product of these activities, only those removed for the purpose of road and landing construction, forest health treatments, or conversion activities may qualify as forest biomass.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, or removing forest biomass, including but not limited to:

Activities in and over typed water:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from

forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest practices hydraulic project" means a forest practices activity that includes the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any Type S, F, or N Water. Stand-alone proposals involving channel change and realignment, dredging in fresh water areas, and constructing outfall structures are not forest practices hydraulic projects and remain governed by chapters 77.55 RCW and 220-110 WAC.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(((4+))) (12).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Horizontal distance" means the distance between two points measured at a zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

- Large organic debris;
- Shading; and
- Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Large forest landowner" is a forest landowner who is not a small forest landowner.

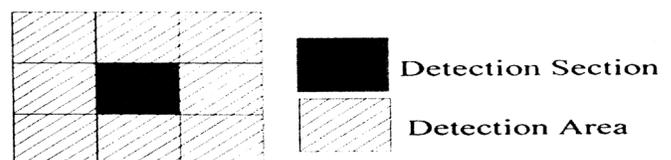
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity,

or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than three years but no longer than five years.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

- Status 1: Pair or reproductive - A male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.
- Status 2: Two birds, pair status unknown - The presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.
- Status 3: Resident territorial single - The presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice of a conversion to a nonforestry use" means a notice issued by the department pursuant to RCW 76.09.060 (3)(b). A landowner who receives such notice is subject to the actions and requirements described in RCW 76.09.460 and 76.09.470.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may

require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water ((mark)) line" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water ((mark)) line cannot be found, the ordinary high-water ((mark)) line adjoining saltwater shall be the line of mean high tide and the ordinary high-water ((mark)) line adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type

- all hardwoods
- ponderosa pine
- western larch
- Douglas-fir
- western red cedar

Mixed conifer habitat type

- all hardwoods
- western larch
- ponderosa pine
- western red cedar
- western white pine
- Douglas-fir
- lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) For Western Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bank-full width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) For Eastern Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

(a) Establishing any new forest road;

(b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

(a) All road work located within an existing forest road prism;

(b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"Small forest landowner" means an owner of forest land who, at the time of submission of required documentation to the department:

- Has harvested no more than an average timber volume of two million board feet per year from their own forest lands in Washington state during the three years prior to submitting required documentation; and
- Certifies they do not expect to exceed that average timber volume for ten years after the department receives the required documentation.

However, a landowner who exceeded or expects to exceed those harvest limits may still be deemed a small forest landowner under circumstances described in RCW 76.09.-450.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of four to fifteen years. Small forest landowners are eligible to submit long-term applications if they meet the definition of "small forest landowner."

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl conservation advisory group" means a three-person advisory group designated by the board as follows: One person shall be a representative of Washington's forest products industry, one person shall be a representative of a Washington-based conservation organization actively involved with spotted owl conservation, and one person shall be a representative of the department's forest practices program. Members of the group shall have a detailed working knowledge of spotted owl habitat relationships and factors affecting northern spotted owl conservation. On an annual basis, beginning November 2010, the board will determine whether this group's function continues to be needed for spotted owl conservation.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate

for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

((+)) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Unconfined stream" see WAC 222-23-010(2).

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff

into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the resource assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-080 and shall include resource assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity and the ongoing reviews and reanalyses completed under WAC 222-22-090.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

NEW SECTION

WAC 222-16-025 *Fish protection standards and objectives for forest practices hydraulic projects. (1) Pursuant to RCW 76.09.040 (3)(a), the fish protection standards in the hydraulic code rules (chapter 220-110 WAC) applicable to forest practices activities are incorporated into the forest practices rules.

(2) The department will evaluate forest practices hydraulic projects on the basis of whether they will meet fish protection standards. The primary objectives of the fish protection standards are to:

- (a) Protect fish life;
- (b) Achieve no-net-loss of productive capacity of fish or shellfish habitat;
- (c) Minimize project-specific and cumulative impacts to fish life; and
- (d) Mitigate for unavoidable impacts to fish life and fish habitat.

(3) "Fish life," "protection of fish life," "mitigation," and "no-net-loss" are defined in WAC 220-110-020 as follows:

(a) "Fish life" means all fish species including, but not limited to, food fish, shellfish, game fish, and other nonclassified fish species and all stages of development of those species.

(b) "Protection of fish life" means prevention of loss or injury to fish or shellfish, and protection of the habitat that supports fish and shellfish populations.

(c) "Mitigation" means actions required as provisions of forest practices hydraulic projects to avoid or compensate for impacts to fish life resulting from the proposed project activity. The type(s) of mitigation required will be considered and implemented, where feasible, in the following sequential order of preference:

(i) Avoiding the impact altogether by not taking a certain action or parts of an action;

(ii) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(iv) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(v) Compensating for the impact by replacing or providing substitute resources or environments; or

(vi) Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.

For projects with potentially significant impacts, a mitigation agreement may be required prior to approval. Replacement mitigation may be required to be established and functional prior to project construction.

(d) No-net-loss means:

(i) Avoidance or mitigation of adverse impacts to fish life; or

(ii) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or

(iii) Avoidance or mitigation of loss of area by habitat type.

Mitigation to achieve no-net-loss should benefit those organisms being impacted.

(4) The following general provisions shall apply to forest practices hydraulic projects in Type S or F Waters:

(a) If fish may be adversely impacted as a result of the project, the landowner may be required to capture and safely move food fish, game fish, or other fish life (at the discretion of the department in consultation with the department of fish and wildlife) to the nearest free-flowing water. See board manual section 5 for further guidance.

(b) Disturbance to the stream bed, banks, and riparian vegetation shall be restricted to that necessary to complete the project.

(c) All disturbed areas shall be protected from erosion. The banks shall be revegetated with native or other approved woody species, or stabilized with other approved erosion control techniques, and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

(d) Equipment shall not enter or operate within the wetted perimeter of a stream unless such activity is approved in a forest practices application.

(e) Equipment shall be inspected, cleaned, and maintained to prevent loss of petroleum products waterward of the ordinary high water line. See board manual section 5 for further guidance.

(f) Excavation for and replacement of footings and foundations shall be landward of the ordinary high water line unless the construction site is separated from typed waters by use of a dike, cofferdam, or other structure.

(g) Structures containing concrete shall be sufficiently cured prior to contact with water.

AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

WAC 222-16-050 *Classes of forest practices. There are four classes of forest practices created by the act. All forest practices (including those in Classes I and II) on nonfed-

eral forest lands must be conducted in accordance with the forest practices rules. The department determines the classification of each forest practices proposal.

(1) **"Class IV-special."** Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be approved.

*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than five thousand board feet within any developed park recreation area and park managed salvage of merchantable forest products.

*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (d)(i) of this subsection that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potentially unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than thirty-five degrees (seventy percent);

(B) Toes of deep-seated landslides, with slopes steeper than thirty-three degrees (sixty-five percent);

(C) Groundwater recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports, review of approved watershed analysis mass wasting prescriptions according to WAC 222-22-090 (6) or other information provided by the applicant.

(iii) An application would not be classified as Class IV-special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a watershed administrative unit (WAU) that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with approved prescriptions from the watershed analysis; and

(C) The applicable prescriptions are specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

*(e) Timber harvest, in a WAU not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest or construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on the following except in (f)(iv) of this subsection:

(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030; or

(ii) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation; or

(iii) Sites containing evidence of Native American cairns, graves, or glyptic records as provided for in chapters 27.44 and 27.53 RCW. The department of archaeology and historic preservation shall consult with affected Indian tribes in identifying such sites.

(iv) A forest practice would not be classified as Class IV-special under this subsection if:

(A) Cultural resources management strategies from an approved watershed analysis conducted under chapter 222-22 WAC are part of the proposed forest practices, and the landowner states this in the application; or

(B) A management plan agreed to by the landowner, the affected Indian tribe, and the department of archaeology and historic preservation is part of the proposed application, and the landowner states this in the application.

*(g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan).

*(h) Filling or draining of more than 0.5 acre of a wetland.

(2) **"Class IV-general."** Applications involving the following circumstances are Class IV-general forest practices unless they are listed in Class IV-special. Forest practices applications classified Class IV-general are subject to the SEPA review process described in subsection (1) of this section.

*(a) Forest practices (other than those in Class I) on lands that are being converted to another use;

(b) Forest practices that would otherwise be Class III, but are taking place on lands that are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(c) Where the regulatory authority for forest practices has not been transferred from the department to the local governmental entity pursuant to RCW 76.09.240(1), forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a permit from a local governmental entity acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable local governmental entity under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the local governmental entity is the lead agency for purposes of compliance with the SEPA.

(3) **"Class I."** Operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in Class IV-special are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*(b) Road maintenance except: Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

*(c) Construction of landings less than one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(d) Construction of less than six hundred feet of road on a sideslope of forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring ~~(a hydraulic permit)~~ an application.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding forty percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(o) Ground application of chemicals, if not within the CRGNSA special management area. See WAC 222-38-020 and 222-38-030.

*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within one hundred feet of lands used for farming, or within two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

*(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

~~((s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.))~~

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, that no forest practice enumerated below may be conducted as a Class II forest practice if the operation ~~((requires a hydraulic project approval (RCW 77.55.021) or))~~ is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a

Class II forest practice if it takes place on lands that are being converted to another use. Unless the conditions described in (f) or (g) of this subsection are met, no forest practice enumerated below involving timber harvest or road construction may be conducted as a Class II if it takes place within urban growth areas designated pursuant to chapter 36.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation or of a forest practices hydraulic project design is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application;

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal; and

(iv) The application is not a multiyear permit that is located within an area subject to reanalysis of a watershed analysis under WAC 222-22-090(6).

*(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than one acre.

*(d) Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a side-slope of greater than forty percent.

*(e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than forty percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of forty percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of five thousand board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than forty percent of the total timber volume is removed in any twelve-month period.

(iv) Any harvest on less than forty acres.

(v) Construction of six hundred or more feet of road, provided that the department shall be notified at least two business days before commencement of the construction.

*(f) Forest practices involving timber harvesting or road construction listed in (a) through (e) of this subsection within urban growth areas (UGAs) designated pursuant to chapter 36.70A RCW, if the landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial timber operations for ten years. This statement must be accompanied by either a written forest management plan acceptable to the department, or documentation that the land is enrolled under the provisions of chapter 84.33 or 84.34 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

*(g) Forest practices listed in (a) through (e) of this subsection within UGAs, and where the regulatory authority for forest practices has been transferred to the local governmental entity pursuant to RCW 76.09.240(1), may nonetheless be Class II forest practices and regulated by the department if:

(i) The forest practice is on a landowner's ownership of contiguous forest land equal to or greater than twenty acres; and

(ii) The landowner provides documentation described in (f)(i) or (ii) of this subsection.

(5) "**Class III.**" Forest practices not listed under Classes IV, I or II above are Class III forest practices. Among Class III forest practices are the following:

*~~(a) ((Those requiring))~~ Forest practices hydraulic projects ((approval (RCW 77.55.021))) except where classed as Class I, II, and IV forest practices.

*(b) Those within the shorelines of the state other than those in a Class I forest practice.

*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

*(f) All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over one acre.

*(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

* (n) Any filling of wetlands, except where classified as Class IV forest practices.

* (o) Multiyear permits.

* (p) Small forest landowner long-term applications that are not classified Class IV-special or Class IV-general, or renewals of previously approved Class III or IV long-term applications.

* (q) Forest practices involving timber harvest or road construction listed in (a) through (p) of this subsection within urban growth areas (UGAs) designated pursuant to chapter 36.70A RCW, if the landowner provides documentation described in subsection (4)(f)(i) or (ii) of this section.

* (r) Forest practices listed in (a) through (p) of this subsection within UGAs, and where the regulatory authority for forest practices has been transferred to the local governmental entity pursuant to RCW 76.09.240(1), may nonetheless be Class III forest practices and regulated by the department if:

(i) The forest practice is on a landowner's ownership of contiguous forest land equal to or greater than twenty acres; and

(ii) The landowner provides documentation described in subsection (4)(f)(i) or (ii) of this section.

(s) Removal of beaver structures from culverts on forest roads.

NEW SECTION

WAC 222-20-017 *Applications that include forest practices hydraulic projects. (1) **Review for consistency with fish protection standards.** The department reviews forest practices applications that include forest practices hydraulic projects in Type S and F and associated Np Waters for consistency with fish protection standards.

(2) Preapplication consultation.

(a) Prospective applicants are encouraged to consult with the department and the department of fish and wildlife, including site visits as needed, prior to submitting a forest practices application to the department.

(b) Preapplication consultation helps to ensure that project design and specifications meet fish protection standards.

(c) Preapplication consultation should take place well before submitting an application to the department and well before the desired work windows.

(3) **Application time limits.** Except for applications involving project types listed in subsection (4)(b) of this section, application time limits for applications that include forest practices hydraulic projects are the same as those listed in WAC 222-20-020.

(4) **Review of forest practices hydraulic projects involving Type S and F Waters by the department of fish and wildlife.** The department of fish and wildlife's review of forest practices hydraulic projects is guided by WAC 220-110-085, and summarized in (a) and (b) of this subsection:

(a) Except for the particular review process for projects listed in (b)(i) of this subsection, the department of fish and wildlife reviews forest practices hydraulic projects involving Type S and F Waters as follows:

(i) The department of fish and wildlife either provides comments to the department or documents that the review has occurred without the need for comments.

(ii) Prior to commenting, or as soon as reasonably practical, the department of fish and wildlife will communicate with the applicant regarding any concerns relating to consistency with fish protection standards.

(iii) The department of fish and wildlife will also strive to maintain communications with the department as concerns arise, and inform the department of its communications with applicants.

(b) Concurrence review.

(i) The following project types involving Type S and F Waters are subject to the department of fish and wildlife conducting a concurrence review according to the process outlined in WAC 220-110-085(3):

- Culvert installation or replacement, and repair at or below the bankfull width in Type S and F Waters that exceed five percent gradient;

- Bridge construction or replacement, and repair at or below the bankfull width of unconfined streams in Type S and F Waters; or

- Fill within the flood level-100 year of unconfined streams in Type S and F Waters.

(ii) After review of these projects, the department of fish and wildlife must provide written notification of concurrence or nonconcurrence to the department within thirty days of the department officially receiving a complete application, stating whether or not the project is consistent with fish protection standards and including any proposed changes needed to meet fish protection standards.

(iii) As indicated in WAC 222-20-020 (1)(e), the department approves, conditions, or disapproves such applications within sixty days of officially receiving an application. The department of fish and wildlife's review is completed within the first thirty days.

(5) Disapproval.

(a) An application will be disapproved if the department determines, after consultation with the department of fish and wildlife, that a forest practices hydraulic project in the application will result in direct or indirect harm to fish life, unless:

(i) Adequate mitigation can be assured by conditioning the application for the project; or

(ii) The project is modified satisfactorily.

(b) If disapproved, the department will provide a statement to the applicant in writing of the specific reason(s) why, and how the proposed project would adversely affect fish life.

AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

WAC 222-20-020 Application time limits. (1) **When the department officially receives an application,** the department will approve, condition or disapprove it within thirty calendar days for Class III and Class IV forest practices, except:

(a) To the extent the department is prohibited from approving the application by the act.

(b) For Class IV applications when the department or the lead agency has determined that a detailed environmental

statement must be made, the application must be approved, conditioned or disapproved within sixty days, unless the commissioner of public lands promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. At least ten days before promulgation of such an order extending the time, the applicant shall be given written notice that the department is requesting such extension; giving the reasons the process cannot be completed within such period; and stating that the applicant may comment in writing to the commissioner of public lands or obtain an informal conference with the department regarding the proposed extension.

(c) When they involve lands described in (c)(i), (ii) or (iii) of this subsection, the applicable time limit shall be no less than fourteen business days from transmittal to the local governmental entity unless the local governmental entity has waived its right to object or has consented to approval of the application:

(i) Lands that are being converted to another use;

(ii) Lands that will not be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-20-050); or

(iii) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW.

(d) Applications for multiyear permits will be approved, conditioned, or disapproved within forty-five days of the department receiving a complete application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09-050 will be required.

(e) Applications requiring a concurrence review of forest practices hydraulic projects listed in WAC 222-20-017 (4)(b) will be approved, conditioned, or disapproved within sixty days of the department officially receiving a complete application. The department of fish and wildlife's review will take place within the first thirty days.

(f) Small forest landowner long-term applications will be reviewed in two steps as described in WAC 222-20-016. The department will review Step 1 and issue a decision within forty-five days of receiving a complete resource and roads assessment. The department will review and approve, condition, or disapprove Step 2 within forty-five days of receiving a complete resource protection strategies portion of the long-term application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(2) **Where a notification** is submitted for operations which the department determines involve Class III or IV forest practices, the department shall issue a stop work order or take other appropriate action. If the operations were otherwise in compliance with the act and forest practices rules, no penalty should be imposed for those operations which occurred prior to the enforcement action: Provided that no damage to a public resource resulted from such operations, and the operations commenced more than five days from receipt by the department of the notification.

(3) **If the department** fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the oper-

ation may commence except that this provision shall not apply where:

(a) The local governmental entity objects and the application involves lands that are being converted to a use other than commercial timber operations where the local governmental entity's right of objection is fourteen business days which may be longer than the approval time limit.

(b) The department is prohibited from approving the application by the act.

(c) Compliance with the State Environmental Policy Act requires additional time.

(4) **If seasonal field** conditions prevent the department from being able to properly evaluate the application, the department may disapprove the application until field conditions allow for an on-site review.

AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

WAC 222-20-040 *Approval conditions. (1) **Whenever an approved** application authorizes a forest practices activity which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when (~~requested~~) required as a condition on the approved application, notify the department two business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

(3) **Local governmental entity conditions—Class IV-general applications.**

(a) RCW 76.09.240(6) allows a local governmental entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local governmental entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to applications on lands that are being converted to a use other than commercial timber operations.

(c) After determining that an application is Class IV-general, the department shall transmit the applications to the appropriate local governmental entity within two business days from the date the department officially receives the application.

(d) The department shall condition the application consistent with the request of the local governmental entity if:

(i) The local governmental entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local governmental entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local governmental entity has entered into an interagency agreement with the department consistent with

WAC 222-50-030 addressing enforcement of forest practices.

(e) The local governmental entity conditions may only cover:

(i) The location and character of open space and/or vegetative buffers;

(ii) The location and design of roads;

(iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or

(iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) The local governmental entity shall file its conditions with the department within twenty-nine days of the department's official receipt of the application or within fourteen business days of the transmittal of the application to the local governmental entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local governmental entity conditions consistent with this subsection as conditions of the forest practices approval.

(h) Any exercise of local governmental entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

(4) Lead agency mitigation measures.

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters 76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under the State Environmental Policy Act. (See WAC 197-11-758.)

(c) The department shall transmit the application to the lead agency within two business days from the date the department officially receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within the later of twenty-nine days of the official receipt of the application by the department, fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local governmental entity; or one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must disapprove the application or require an environmental impact statement. (See WAC 197-11-738.)

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall disapprove the application.

(5) Small forest landowner approval conditions. The department shall not disapprove a small forest landowner's application or notification on the basis that fish passage barriers have not been removed or replaced if the landowner has committed to participate in the department's family forest fish passage program for:

(a) Any barriers on their forest roads located within the boundaries of their application or notification; and

(b) Any barriers on their forest roads needed for their proposed forest practice, but located outside the boundaries of the application or notification.

(6) CRGNSA special management area.

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special management area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirements controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control. Copies of the guidelines can be obtained from the department's Southeast and Pacific Cascade regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on conditioning an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending WSR 87-23-036, filed 11/16/87, effective 1/1/88)

WAC 222-20-090 *Options for filing applications and preapplication consultation for forest practices hydraulic projects. (1) Applicants may schedule an early review of a proposed application with the department prior to official filing, or submit an application with a delayed effective date. Such early review or submission will allow the

department to review multiple applications and bring other forest practices concerns to the attention of the applicant so that such concerns can be addressed prior to official filing and processing of an application. When submitting an application with a delayed effective date, the applicant shall indicate the date when approval is desired.

(2) Preapplication consultation for forest practices hydraulic projects. Landowners are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application involving a forest practices hydraulic project to help ensure that project plans and specifications meet fish protection standards.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-24-010 Policy. *(1) A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems.

*(2) To protect water quality and riparian habitat, roads must be constructed and maintained in a manner that will prevent potential or actual damage to public resources. This will be accomplished by constructing and maintaining roads so as not to result in the delivery of sediment and surface water to any typed water in amounts, at times or by means, that preclude achieving desired fish habitat and water quality by:

- Providing for fish passage at all life stages ~~((see Washington state department of fish and wildlife hydraulic code Title 220 WAC))~~;
- Preventing mass wasting;
- Limiting delivery of sediment and surface runoff to all typed waters;
- Avoiding capture and redirection of surface or groundwater. This includes retaining streams in their natural drainages and routing subsurface flow captured by roads and road ditches back onto the forest floor;
- Diverting most road runoff to the forest floor;
- ~~((Providing for the passage of))~~ Designing water crossing structures to the 100-year flood level to provide for the passage of bedload and some woody debris;
- Protecting stream bank stability, the existing stream channel, and riparian vegetation;
- Minimizing the construction of new roads; ~~((and))~~
- Assuring no-net-loss of wetland function; and
- Assuring no-net-loss of fish habitat.

The ~~rules in this chapter~~ rules for road construction and maintenance ~~((rules in this chapter))~~ and forest practices hydraulic projects must be applied in achieving these goals. Additional guidance is identified in board manual sections 3 and 5. If these goals are not achieved using the rules and the applied guidance, additional management strategies must be employed.

*(3) Extra protection is required during road construction and maintenance and for forest practices hydraulic projects to protect public resources and timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate in the development of road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction.

*(4) This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

(Note: Other laws and rules and/or permit requirements may apply. See chapter 222-50 WAC.)

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-24-020 Road location and design. (1) **Fit the road to the topography** so that a minimum of alterations to the natural features will occur.

*(2) Except for crossings, new stream-adjacent parallel roads shall not be located within natural drainage channels, channel migration zones, sensitive sites, equipment limitation zones, and riparian management zones when there would be substantial loss or damage to fish or wildlife habitat unless the department has determined that other alternatives will cause greater damage to public resources. Proposals with new stream-adjacent parallel roads will require an on-site review by an interdisciplinary team. The appropriate federal representative(s) will be invited to attend the interdisciplinary team to determine if the proposal is in compliance with the Endangered Species Act.

*(3) Roads shall not be constructed in bogs or low nutrient fens.

*(4) Roads shall not be located in wetlands if there would be substantial loss or damage to wetland functions or acreage, unless the department has determined that alternatives will cause greater damage to public resources.

*(5) Minimize the number of stream crossings.

*(6) Where stream crossings are necessary:

(a) Design stream crossings to minimize alterations to natural features;

(b) Locate and design culverts to minimize sediment delivery; ~~((and))~~

(c) Whenever practical, cross streams at right angles to the main channel; and

(d) Design stream crossings in Type S and F Waters so as not to impede fish passage at any life stage.

*(7) Avoid duplicative roads by keeping the total amount of construction to a minimum. Use existing roads whenever practical and avoid isolating patches of timber which, when removed, may require unnecessary road construction.

*(8) All new road construction on side slopes that exceed ~~((60))~~ sixty percent, which have the potential to deliver sediment to any typed water or wetland must utilize full bench construction techniques, including end hauling, over hauling or other special techniques. The department may waive the

full bench construction requirement if a site review is conducted and the absence of delivery potential to any typed water or wetlands is determined.

(9) Use the minimum design standard that produces a road sufficient to carry the anticipated traffic load with reasonable safety.

*(10) Subgrade width should average not more than ~~((32))~~ thirty-two feet for double lane roads and ~~((20))~~ twenty feet for single lane roads, exclusive of ditches, plus any additional width necessary for safe operations on curves and turnouts. Where road location in wetlands is unavoidable (see WAC 222-24-015 (1)(b)), minimize subgrade width.

(11) Balance excavation and embankments so that as much of the excavated material as is practical will be deposited in the roadway fill sections. Where full bench construction is necessary, design suitable embankments so that the excavated material may be end hauled to appropriate deposit areas.

(12) Cut and fill slopes must be designed and constructed in a manner that will assure a high likelihood of remaining stable throughout the life of the road.

*(13) All roads shall be outloped or ditched on the uphill side and appropriate surface drainage shall be provided by the use of adequate drainage structures such as: Cross drains, ditches, drivable dips, relief culverts, water bars, diversion ditches, or other such structures demonstrated to be equally effective.

*(14) Drainage structures shall not discharge onto erodible soils, or over fill slopes unless adequate outfall protection is provided.

*(15) Relief culverts installed on forest roads shall meet the following minimum specifications: (See ~~((the))~~ board manual~~(;))~~ section 3 for culvert spacing.)

(a) Be at least ~~((48))~~ eighteen inches in diameter or equivalent in western Washington and ~~((45))~~ fifteen inches in diameter or equivalent in eastern Washington.

(b) Be installed in a manner that efficiently captures ditchline flow and passes it to the outside of the road.

*(16) Ditch diversion. Where roadside ditches slope toward any typed water, or Type A or B Wetland, a ditch relief structure must be located as close to the stream crossing or wetland as possible so it drains off before reaching the stream. On stream-adjacent parallel roads, relief culverts shall be located at maximum distances from stream channels to minimize sediment delivery. The relief structure must allow the sediment to be deposited onto the forest floor and not carry surface water or sediment into the stream channel or wetland.

*(17) Outslope the road surface where practical. Where outloping is not practical, provide a ditch with drainage structure on the inside of the road, except where roads are constructed in rock or other materials not readily susceptible to erosion.

*(18) Crown or slope the road to prevent the accumulation of water on the road surface.

*(19) Install rock armor headwall inlets on all stream-crossing culverts where the stream gradient above the crossing is greater than ~~((6))~~ six percent.

*(20) Install rock armored headwalls and rock armored ditchblocks for drainage structure culverts located on erod-

ible soils or where the affected road has a gradient greater than ~~((6))~~ six percent.

*(21) Install drainage structures at locations where seeps and springs are known or discovered during construction to route accumulated surface water across the road prism. The water from the seeps and springs must be returned to the forest floor as close to the point of origin as reasonably practicable.

*(22) In addition to information required for a complete application, the department may require ~~((additional))~~ more detailed information for proposed road construction ~~((as part of a complete application))~~, including:

(a) A map with detailed topographic information showing the location and alignment of the road in relation to all typed water and wetlands as required in WAC 222-16-035;

(b) Location, size, alignment and number of water crossing and drainage structures;

(c) Detailed site plans and designs for fish passage projects, bridges, and large culverts or other complex elements of the proposal; and

(d) Other information identified by the department.

NEW SECTION

WAC 222-24-038 *Preapplication consultation and road-related forest practices hydraulic projects. Landowners contemplating forest practices hydraulic projects related to road construction and maintenance are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application to help ensure that project plans and specifications meet fish protection standards.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-24-040 *Water crossing structures for all typed waters. ~~((*) General provisions for all typed waters:~~

~~In addition to the applicable general provisions below, installation, maintenance and removal of water crossing structures in or across the bankfull width of Type S or F Waters are subject to hydraulic code rules, chapter 220-110 WAC, and require hydraulic project approval (HPA) issued by the department of fish and wildlife. HPAs may be required on Type Ns and Np Waters.~~

~~((a))~~ (1) Bridges are required for new crossings and reconstructed crossings of any typed waters regularly used for recreational boating.

~~((b))~~ (2) Structures containing concrete must be sufficiently cured prior to contact with water.

~~((c))~~ (3) One end of each new or reconstructed permanent log or wood bridge shall be tied or firmly anchored if any of the bridge structure is within ~~((40))~~ ten vertical feet of the 100-year flood level.

~~((d))~~ (4) Alterations or disturbance of the stream bed, bank or bank vegetation must be limited to that necessary to construct the project. All disturbed areas must be stabilized and restored according to the recommended schedule and procedures found in ~~((section 3 of the))~~ board manual section 5. This requirement may be modified or waived by the

department, in consultation with the department of fish and wildlife, if precluded by engineering or safety factors.

~~((e))~~ (5) When earthen materials are used for bridge surfacing, only clean sorted gravel may be used, a geotextile lining must be installed and curbs of sufficient size shall be installed to a height above the surface material to prevent surface material from falling into the stream bed.

~~((f))~~ (6) Wood removed from the upstream end of culverts and bridges will be placed at the downstream end of such culverts and bridges in such a way as to minimize obstruction of fish passage and to the extent practical, while avoiding significant disturbance of sediment((-)) in connection with maintenance activities.

~~((2))~~ **Bridges over Type Np and Ns Waters.** In addition to the applicable general provisions above, installation, maintenance, and removal of permanent bridges in or across Type Np and Ns Waters are subject to the following:

(a) Permanent bridges must not constrict clearly defined channels and must be designed and installed to pass the 100-year flood. The bridge and its associated embankments and fills must provide sufficient erosion protection to withstand a 100-year flood event.

(b) Excavation for and placement of the bridge foundation and superstructure must be located and conducted from outside the outer edge of the bankfull width. This requirement may be waived by the department, in consultation with the department of fish and wildlife, if it can be demonstrated that these activities may be conducted in such a manner to prevent damage to public resources.

(c) Earthen embankments constructed for use as bridge approaches must be provided with sufficient erosion protection to withstand a 100-year flood event.

~~*~~(3) **Culvert installation for Type Np and Ns Waters.** In addition to applicable general provisions above, installation, maintenance and removal of permanent culverts in or across Type Np and Ns Waters are subject to the following provisions:

(a) All permanent culverts must be designed to pass the 100-year flood event with consideration for the passage of debris likely to be encountered.

(b) The culvert and its associated embankments and fills must have sufficient erosion protection to withstand the 100-year flood event. Erosion protection may include armored overflows or the use of clean coarse fill material.

(c) If the department determines that because of unstable slopes the culvert size shown in the board manual, section 3, "Determining Culvert Size, Method A" would be inadequate to protect public resources, it may require a larger culvert designed using generally accepted engineering principles that meet the standards in (a) and (b) of this subsection.

(d) No permanent culverts shall be installed that are smaller than:

- (i) 24 inches for Type Np Waters.
- (ii) 18 inches for Type Ns Waters in western Washington.
- (iii) 15 inches for Type Ns Waters in eastern Washington.

(e) The alignment and slope of the culvert shall parallel the natural flow of the stream whenever possible.

(f) Culverts must be designed and installed so they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the project.

(g) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake in consultation with the department of fish and wildlife.

(h) Fill associated with culvert installation must have sufficient erosion protection to withstand the 100-year flood.

(i) Stream beds shall be cleared for a distance of 50 feet upstream from the culvert inlet of such slash or debris that reasonably may be expected to plug the culvert.

(j) The entrance of all culverts shall have adequate catch basins and headwalls to minimize the possibility of erosion or fill failure.

~~*~~(4) **Temporary water crossings in Type Np and Ns Waters.** In addition to the applicable general provisions above, installation, maintenance and removal of temporary bridges or other structures in or across Type Np and Ns Waters are subject to the following:

(a) A temporary water crossing is intended for use during the life of an approved application/notification.

(b) It must be constructed to facilitate abandonment when the intended use is complete or upon seasonal shut-down, whichever is sooner.

(c) Temporary water crossings must be identified on the forest practices application or notification, along with an abandonment date.

(d) Temporary water crossings may be used:

(i) In western Washington if installed after June 1 and removed by September 30 of the same year.

(ii) In eastern Washington if installed after the spring runoff and removed prior to October 15th.

(iii) At other times, when the department and applicant can agree to specific dates of installation and removal and the extended dates result in equivalent levels of resource protection.

(e) Temporary water crossings must be designed to pass the highest peak flow event expected to occur during the length of its intended use.

(f) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake, in consultation with the department of fish and wildlife.

(g) Temporary water crossings shall be promptly removed and abandoned to the specifications approved by the department upon completion of use or by the date specified in the approved forest practices application, whichever is earlier. Approaches to the crossing shall be water barred and stabilized at the time of the crossing removal. The department

may waive removal of the water crossing if the applicant secures an amended forest practices application, and the structure and its approaches meet all of the requirements of a permanent water crossing structure.

~~(h) Temporary wetland crossings shall be abandoned and restored based on a written plan approved by the department prior to construction.~~

~~(i) Temporary water crossings must be designed to provide the same level of protection for public resources as provided by rules during the length of its use.~~

~~*(5) Properly prepared and maintained fords may be used in Type Np and Ns Waters during periods of low water.~~

~~(a) Entry and exit points for each ford must be located as close to perpendicular along the stream as possible, but will not exceed 100 feet upstream or downstream of each other. Approaches to the ford will not run adjacent to the stream.~~

~~(b) Ford locations must be shown on the forest practices application.~~

~~(e) Best management practices for construction, maintenance and use will be utilized as appropriate or as required by conditions on the approved forest practices application.)) (7) Fords.~~

(a) New ford construction requires a forest practices application.

(b) The entry and exit points of a new ford must not be within one hundred feet upstream or downstream of another ford.

(c) The following activities associated with established fords require a forest practices application:

(i) Ford repair with equipment or construction work waterward of the ordinary high water line;

(ii) Driving a vehicle or operating equipment on or across wetted stream beds at areas other than established fords.

(d) Driving a vehicle or operating equipment on or across an established ford does not require a forest practices application. "Established ford" means a crossing place in a watercourse that was in existence and annually used prior to 1986 or subsequently permitted by the department of fish and wildlife or the department, and has identifiable approaches on the banks.

NEW SECTION

WAC 222-24-041 *Water crossing structures in Type S and F Waters. (1) In Type Sand F Waters, bridges are preferred as water crossing structures in order to ensure free and unimpeded fish passage for adult and juvenile fishes and preserve spawning and rearing habitat. Pier placement waterward of the ordinary high water line shall be avoided where practical. Other structures which may be approved include, in descending order of preference: Temporary culverts; bottomless arch culverts; arch culverts; round culverts; and fords. Corrugated culverts are generally preferred over smooth surfaced culverts. Culvert baffles and downstream control weirs are discouraged except to correct fish passage problems at existing structures.

(2) An approved forest practices application is required for construction, structural work, and maintenance associated with any bridge structure. Typical maintenance includes

painting and other activities where there is potential for wastage of paint, sandblasting material, sediments, or bridge parts into the water, or where the work, including equipment operation, occurs waterward of the ordinary high water line.

(3) Water crossing structure projects shall incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat.

(4) Bridge construction.

(a) Excavation for and placement of the foundation and superstructure shall be outside the ordinary high water line unless the construction site is separated from the stream by use of an approved dike, cofferdam, or similar structure.

(b) The bridge structure or stringers shall be placed in a manner to minimize damage to the bed.

(c) Alteration or disturbance of bank or bank vegetation shall be limited to that necessary to construct the project. All disturbed areas shall be protected from erosion within seven days of completion of the project, using vegetation or other means. The banks shall be revegetated with native or other approved woody species, or stabilized with the other erosion control techniques, and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

(d) Removal of existing or temporary structures shall be accomplished so that the structure and associated material does not enter the stream.

(e) The bridge shall be constructed, according to the approved design, to pass the 100-year flood level and debris likely to be encountered. Exception shall be granted if applicant provides hydrologic or other information that supports alternative design criteria.

(f) Wastewater from project activities and water removed from within the work area shall be routed and deposited to the forest floor in an upland area, or above the 100-year flood level if present, to allow removal of fine sediment and other contaminants prior to being discharged to typed waters.

(g) Structures containing concrete shall be sufficiently cured prior to contact with water to avoid leaching.

(h) Abutments, piers, piling, sills, approach fills, etc., shall not constrict the flow so as to cause any appreciable increase (not to exceed 0.2 feet) in backwater elevation (calculated at the 100-year flood level) or channel wide scour and shall be aligned to cause the least effect on the hydraulics of the watercourse.

(i) Riprap materials used for structure protection shall be angular rock and the placement shall be installed according to an approved design to withstand the 100-year flood level.

(j) Wood or other materials treated with preservatives shall be sufficiently cured to minimize leaching into the water or bed. The use of creosote or pentachlorophenol is not allowed.

(5) **Temporary culvert installation.** The allowable placement of temporary culverts and time limitations shall be determined by the department based on the specific fish resources of concern at the proposed location of the culvert. See board manual section 5 for guidance on temporary culvert installation.

(a) Where fish passage is a concern, temporary culverts shall be installed according to an approved design to provide adequate fish passage. In these cases, the temporary culvert

installation shall meet the fish passage design criteria in Table 1 in subsection (6) of this section.

(b) Where culverts are left in place during the period of September 30th to June 15th, the culvert shall be designed to maintain structural integrity to the 100-year flood level with consideration of the debris loading likely to be encountered.

(c) Where culverts are left in place during the period June 16th to September 30th, the culvert shall be designed to maintain structural integrity at a peak flow expected to occur once in 100 years during the season of installation.

(d) Disturbance of the bed and banks shall be limited to that necessary to place the culvert and any required channel modification associated with it. Affected bed and bank areas outside the culvert shall be restored to preproject condition following installation of the culvert.

(e) The culvert shall be installed in the dry, or in isolation from stream flow by the installation of a bypass flume or culvert, or by pumping the stream flow around the work area. Exception may be granted if siltation or turbidity is reduced by installing the culvert in the flowing stream. The bypass reach shall be limited to the minimum distance necessary to complete the project. Fish stranded in the bypass reach shall be safely removed to the flowing stream.

(f) Wastewater from project activities and dewatering shall be routed and deposited to the forest floor in an upland area, or above the 100-year flood level if present, to allow removal of fine sediment and other contaminants prior to being discharged to typed waters.

(g) Imported fill which will remain in the stream after culvert removal shall consist of clean rounded gravel ranging in size from one-quarter to three inches in diameter. The use of angular rock may be approved from June 16th to September 30th, where rounded rock is unavailable. Angular rock shall be removed from the watercourse and the site restored to preproject conditions upon removal of the temporary culvert.

(h) The culvert and fill shall be removed and the disturbed bed and bank areas shall be reshaped to preproject configuration. All disturbed areas shall be protected from erosion, within seven days of completion of the project, using vegetation or other means. The banks shall be revegetated with native or other approved woody species, or stabilized with other approved erosion control techniques, and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

(i) The temporary culvert shall be removed and the approaches shall be blocked to vehicular traffic prior to the expiration of the work window as conditioned for the specific hydraulic project in the forest practices application.

(j) Temporary culverts must be removed prior to the expiration of the forest practices application.

(6) Permanent culvert installation.

(a) In fish bearing waters or waters upstream of a fish passage barrier (which can reasonably be expected to be corrected, and if corrected, fish presence would be reestablished), culverts shall be designed and installed so as not to impede fish passage. Culverts shall only be approved for installation in spawning areas where full replacement of impacted habitat is provided by the applicant.

(b) To facilitate fish passage, culverts shall be designed to the following standards:

(i) Culverts may be approved for placement in small streams if placed on a flat gradient with the bottom of the culvert placed below the level of the stream bed a minimum of twenty percent of the culvert diameter for round culverts, or twenty percent of the vertical rise or structure height for elliptical culverts (this depth consideration does not apply within bottomless culverts). Footings of bottomless culverts shall be buried sufficiently deep so they will not become exposed by scour within the culvert. The twenty percent placement below the stream bed shall be measured at the culvert outlet. The culvert width at the bed, or footing width, shall be equal to or greater than the average width of the bed of the stream.

(ii) Where culvert placement is not feasible as described in (b)(i) of this subsection, the culvert design shall include the elements in(b)(ii)(A) through (E) of this subsection:

(A) Water depth at any location within culverts as installed and without a natural bed shall not be less than that identified in Table 1. The low flow design, to be used to determine the minimum depth of flow in the culvert, is the two-year seven-day low flow discharge for the subject basin or ninety-five percent exceedance flow for migration months of the fish species of concern. Where flow information is unavailable for the drainage in which the project will be conducted, calibrated flows from comparable gauged drainages may be used, or the depth may be determined using the installed no-flow condition.

(B) The high flow design discharge, used to determine maximum velocity in the culvert (see Table 1), is the flow that is not exceeded more than ten percent of the time during the months of adult fish migration. The two-year peak flow may be used where stream flow data are unavailable.

(C) The hydraulic drop is the abrupt drop in water surface measured at any point within or at the outlet of a culvert. The maximum hydraulic drop criteria must be satisfied at all flows between the low and high flow design criteria.

(D) The bottom of the culvert shall be placed below the natural channel grade a minimum of twenty percent of the culvert diameter for round culverts, or twenty percent of the vertical rise or structural height for elliptical culverts (this depth consideration does not apply within bottomless culverts). The downstream bed elevation, used for hydraulic calculations and culvert placement in relation to bed elevation, shall be taken at a point downstream at least four times the average width of the stream (this point need not exceed twenty-five feet from the downstream end of the culvert). The culvert capacity for flood design flow shall be determined by using the remaining capacity of the culvert.

**Table 1
Fish Passage Design Criteria for Culvert Installation**

Criteria	Adult Trout > 6 in. (150 mm)	Adult Pink, Chum Salmon	Adult Chinook, Coho, Sockeye, Steelhead
1. Velocity, Maximum (fps)			
Culvert Length (ft)			
a. 10 - 60	4.0	5.0	6.0

Criteria	Adult Trout > 6 in. (150 mm)	Adult Pink, Chum Salmon	Adult Chinook, Coho, Sockeye, Steelhead
b. 60 - 100	4.0	4.0	5.0
c. 100 - 200	3.0	3.0	4.0
d. > 200	2.0	2.0	3.0
2. Flow Depth Minimum (ft)	0.8	0.8	1.0
3. Hydraulic Drop, Maximum (ft)	0.8	0.8	1.0

(E) Appropriate statistical or hydraulic methods must be applied for the determination of flows in (b)(ii)(A) and (B) of this subsection. These design flow criteria may be modified for specific proposals as necessary to address unusual fish passage requirements, where other approved methods of empirical analysis are provided, or where the fish passage provisions of other special facilities are approved by the department.

(F) Culvert design shall include consideration of flood capacity for current conditions and future changes likely to be encountered within the stream channel, and debris and bedload passage.

(c) Culverts shall be installed according to an approved design to maintain structural integrity to the 100-year flood level with consideration of the debris loading likely to be encountered. Exception may be granted if the applicant provides justification for a different level or a design that routes the flow past the culvert without jeopardizing the culvert or associated fill.

(d) Disturbance of the bed and banks shall be limited to that necessary to place the culvert and any required channel modification associated with it. Affected bed and bank areas outside the culvert and associated fill shall be revegetated with native or other approved woody species, or stabilized with other approved erosion control techniques, and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

(e) Fill associated with the culvert installation shall be protected from erosion to the 100-year flood level.

(f) Culverts shall be designed and installed to avoid inlet scouring and shall be designed in a manner to prevent erosion of stream banks downstream of the project.

(g) Where fish passage criteria are required, the culvert facility shall be maintained by the landowner(s), such that fish passage design criteria in Table 1 are not exceeded. If the structure becomes a hindrance to fish passage, the landowner shall be responsible for obtaining an approved forest practices application and providing prompt repair.

(h) The culvert shall be installed in the dry or in isolation from the stream flow by the installation of a bypass flume or culvert, or by pumping the stream flow around the work area. Exception may be granted if siltation or turbidity is reduced by installing the culvert in the flowing stream. The bypass reach shall be limited to the minimum distance necessary to complete the project. Fish stranded in the bypass reach shall be safely removed to the flowing stream.

(i) Wastewater from project activities and dewatering shall be routed to the forest floor in an upland area, or above the 100-year flood level if present, as necessary to allow removal of fine sediment and other contaminants prior to being discharged to any typed water or wetland.

(7) **Alternative designs** will be considered if they can be demonstrated to meet or exceed fish protection standards. Alternative designs may require additional review.

NEW SECTION

WAC 222-24-042 *Water crossing structures in Type Np and Ns Waters. *(1) Bridges over Type Np and Ns Waters. In addition to the applicable general provisions in WAC 222-24-040, the installation, maintenance, and removal of permanent bridges in or across Type Np and Ns Waters are subject to the following:

(a) Permanent bridges must not constrict clearly defined channels and must be designed and installed to pass the 100-year flood. The bridge and its associated embankments and fills must provide sufficient erosion protection to withstand a 100-year flood event.

(b) Excavation for and placement of the bridge foundation and superstructure must be located and conducted from outside the outer edge of the bankfull width. This requirement may be waived by the department if it can be demonstrated that these activities may be conducted in such a manner to prevent damage to public resources.

(c) Earthen embankments constructed for use as bridge approaches must be provided with sufficient erosion protection to withstand a 100-year flood event.

***(2) Culvert installation for Type Np and Ns Waters.** In addition to applicable general provisions in WAC 222-24-040, the installation, maintenance and removal of permanent culverts in or across Type Np and Ns Waters are subject to the following provisions:

(a) All permanent culverts must be designed to pass the 100-year flood event with consideration for the passage of debris likely to be encountered.

(b) The culvert and its associated embankments and fills must have sufficient erosion protection to withstand the 100-year flood event. Erosion protection may include armored overflows or the use of clean coarse fill material.

(c) If the department determines that because of unstable slopes the culvert size shown in board manual section 5, "Determining Culvert Size, Method A" would be inadequate to protect public resources, it may require a larger culvert designed using generally accepted engineering principles that meet the standards in (a) and (b) of this subsection.

(d) No permanent culverts shall be installed that are smaller than:

- (i) Twenty-four inches for Type Np Waters;
- (ii) Eighteen inches for Type Ns Waters in western Washington; and
- (iii) Fifteen inches for Type Ns Waters in eastern Washington.

(e) The alignment and slope of the culvert shall parallel the natural flow of the stream whenever possible.

(f) Culverts must be designed and installed so they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the project.

(g) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake in consultation with the department of fish and wildlife.

(h) Fill associated with culvert installation must have sufficient erosion protection to withstand the 100-year flood event.

(i) Stream beds shall be cleared for a distance of fifty feet upstream from the culvert inlet of such slash or debris that reasonably may be expected to plug the culvert.

(j) The entrance of all culverts shall have adequate headwalls constructed to minimize the possibility of erosion or fill failure.

***(3) Temporary water crossings in Type Np and Ns Waters.** In addition to the applicable general provisions above, installation, maintenance and removal of temporary bridges or other structures in or across Type Np and Ns Waters are subject to the following:

(a) A temporary water crossing is intended for use during the life of an approved application/notification.

(b) It must be constructed to facilitate abandonment when the intended use is complete or upon seasonal shut-down, whichever is sooner.

(c) Temporary water crossings must be identified on the forest practices application or notification, along with an abandonment date.

(d) Temporary water crossings may be used:

(i) In western Washington if installed after June 1st and removed by September 30th of the same year.

(ii) In eastern Washington if installed after the spring runoff and removed prior to October 15th.

(iii) At other times, when the department and applicant can agree to specific dates of installation and removal and the extended dates result in equivalent levels of resource protection.

(e) Temporary water crossings must be designed to pass the highest peak flow event expected to occur during the length of its intended use.

(f) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake.

(g) Temporary water crossings shall be promptly removed and abandoned to the specifications approved by the department upon completion of use or by the date specified in the approved forest practices application, whichever is earlier. Approaches to the crossing shall be water barred and stabilized at the time of the crossing removal. The department

may waive removal of the water crossing if the applicant secures an amended forest practices application, and the structure and its approaches meet all of the requirements of a permanent water crossing structure.

(h) Temporary wetland crossings shall be abandoned and restored based on a written plan approved by the department prior to construction.

(i) Temporary water crossings must be designed to provide the same level of protection for public resources as provided by rules during the length of its use.

NEW SECTION

WAC 222-24-044 *Temporary bypass culverts, flumes, or channels. Temporary bypass culvert, flume, or channel projects shall incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. The following shall apply to temporary bypass culvert, flume, or channel projects:

(1) The temporary bypass culvert, flume, or channel shall be in place prior to initiation of other work in the wetted perimeter.

(2) A sandbag revetment or similar device shall be installed at the inlet to divert the entire flow through the culvert, flume, or channel.

(3) A sandbag revetment or similar device shall be installed at the downstream end of the culvert, flume, or channel to prevent backwater from entering the work area.

(4) The culvert, flume, or channel shall be of sufficient size to pass flows and debris for the duration of the project.

(5) For diversion of flow into a temporary channel the relevant provisions of WAC 222-110-080, channel change/realignment, shall apply.

(6) Prior to releasing the water flow to the project area, all bank protection or armoring shall be completed. See board manual section 5 for project site preparation best management practices.

(7) Upon completion of the project, all material used in the temporary bypass shall be removed from the site and the site returned to preproject conditions.

(8) The department may require fish capture and safe transport from the project site to the nearest free-flowing water if fish could be adversely impacted as a result of the project. The department of fish and wildlife may assist in capturing and safely removing fish to free-flowing water if personnel are available.

(9) Alteration or disturbance of the banks and bank vegetation shall be limited to that necessary to construct the project. All disturbed areas shall be protected from erosion within seven days of completion of the project using vegetation or other means. The banks shall be revegetated with native or other approved woody species, or stabilized with other approved erosion control techniques, and maintained as necessary to ensure survival. See board manual section 5 for technical guidance.

NEW SECTION

WAC 222-24-046 *Bank protection. Bio-engineering is the preferred method of bank protection where practical. Bank protection projects shall incorporate mitigation mea-

asures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. The following shall apply to bank protection projects:

(1) Bank protection work shall be restricted to work necessary to protect eroding banks.

(2) Bank protection material placement waterward of the ordinary high water line shall be restricted to the minimum amount necessary to protect the toe of the bank, or for installation of mitigation features approved by the department.

(3) The toe shall be designed to protect the integrity of bank protection material.

(4) Bank sloping shall be accomplished in a manner that avoids release of overburden material into the water. Overburden material resulting from the project shall be deposited so as not to reenter the water.

(5) Alteration or disturbance of the bank and bank vegetation shall be limited to that necessary to construct the project. All disturbed areas shall be protected from erosion within seven days of completion of the project using vegetation or other means. The banks, including riprap areas, shall be revegetated with native or other approved woody species, or stabilized with other approved erosion control techniques, and maintained to ensure survival. See board manual section 5 for technical guidance.

(6) Fish habitat components such as logs, stumps, and/or large boulders may be required as part of the bank protection project to mitigate project impacts. These fish habitat components shall be installed according to an approved design to withstand 100-year peak flows.

(7) When rock or other hard materials are approved for bank protection, the following provisions shall apply:

(a) Bank protection material shall be angular rock. The project shall be designed and the rock installed to withstand 100-year peak flows. River gravels shall not be used as exterior armor, except as specifically approved by the department.

(b) Bank protection and filter blanket material shall be placed from the bank or a barge. Dumping onto the bank face shall be permitted only if the toe is established and the material can be confined to the bank face.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-24-0511 *Small forest landowner road maintenance planning. (1) Small forest landowners who own a total of eighty acres or less forest land in Washington state are not required to submit any road maintenance and abandonment plan for any block of forest land that contains twenty contiguous acres or less.

(2) Small forest landowners other than those described in subsection (1) of this section, are only required to submit a checklist road maintenance and abandonment plan when they submit a forest practices application or notification that includes timber harvest or salvage. The checklist must include all their forest roads that are used for the forest practice. Instead of a checklist, landowners may submit a road maintenance and abandonment plan as described in WAC 222-24-051 with the following modifications:

- They are not required to submit an annual report.

- If they participate in the family forest fish passage program, they may schedule their barrier projects accordingly.

(3) Forest roads must be maintained only to the extent necessary to prevent damage to public resources.

*((4)) (4) If the department determines that a road will cause or has the potential to cause damage to a public resource, the department may require the applicant to submit a compliance schedule of work to fix the problem(s) identified by the department.

(5) Fish passage barriers will be assessed on a watershed basis focusing on fixing the worst barriers first.

(a) The department's family forest fish passage program is available to assist with the removal, replacement, or repair of fish passage barriers that were installed prior to May 14, 2003. The program includes limits on landowner costs and the opportunity for in-kind contributions. One hundred percent public funding shall be provided if an existing barrier was installed under an approved forest practices application(~~(, and)~~) or a hydraulics project approval acquired prior to December 29, 2013, and that barrier becomes a high priority for replacement.

(b) Small forest landowners who participate in the family forest fish passage program are not required to remove, replace or repair barriers until cost share funding is available and higher priority barriers on lands within the watershed have been removed or funded. Small forest landowners participating in the program may make use of prioritization without any obligations to receive funding from the program.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-30-020 *Harvest unit planning and design.

(1) **Preapplication consultation and harvest-related forest practices hydraulic projects.**

(a) Landowners contemplating forest practices hydraulic projects related to timber harvest are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application to help ensure that project plans and specifications meet fish protection standards.

(b) Harvest-related forest practices hydraulic projects include, but are not limited to, projects associated with:

(i) Felling and bucking (WAC 222-30-050);

(ii) Cable yarding (WAC 222-30-060); and

(iii) Large woody material removal or repositioning (WAC 222-30-062).

(2) **Logging system.** The logging system, including forest biomass removal operations, should be appropriate for the terrain, soils, and timber type so that yarding or skidding can be economically accomplished and achieve the ecological goals of WAC 222-30-010 (2), (3) and (4) in compliance with these rules.

*(((2))) (3) **Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

*(((3))) (4) **Western Washington riparian management zones.** (See WAC 222-30-021 and 222-30-023.)

*(((4))) (5) **Eastern Washington riparian management zones.** (See WAC 222-30-022 and 222-30-023.)

*~~((5))~~ **(6) Riparian leave tree areas.** (See WAC 222-30-021, 222-30-022, and 222-30-023.)

*~~((6))~~ **(7) Forested wetlands.** Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion ~~((30 to 70%))~~ **thirty to seventy percent** of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) Where riparian associated wetlands are present in the outer zone of a RMZ, trees may be left in the zone to maximize wetland function. See WAC 222-30-021 *~~(1)~~(c)(ii).

(d) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection (11)(e)

of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than ~~((4000))~~ **one thousand** feet from a wildlife reserve tree and green recruitment tree retention area.

(e) Approximate determination of the boundaries of forested wetlands greater than ~~((3))~~ **three** acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(f) The department shall consult with the department of fish and wildlife and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

*~~((7))~~ **(8) Wetland management zones (WMZ).** These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual section 8, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

*~~(a)~~ Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

Wetland Management Zones

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ required	No WMZ required	

* For bogs, both forested and nonforested acres are included.

(b) Within the WMZ, leave a total of ~~((75))~~ **seventy-five** trees per acre of WMZ greater than ~~((6))~~ **six** inches dbh in Western Washington and greater than ~~((4))~~ **four** inches dbh in Eastern Washington, ~~((25))~~ **twenty-five** of which shall be greater than ~~((12))~~ **twelve** inches dbh including ~~((5))~~ **five** trees greater than ~~((20))~~ **twenty** inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed ~~((100))~~ **one hundred** feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than ~~((200))~~

two hundred feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

*~~(e)~~ Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

*~~(f)~~ When ~~((10%))~~ **ten percent** or more of a harvest unit lies within a wetland management zone and either the harvest unit is a clearcut of ~~((30))~~ **thirty** acres or less or the harvest unit is a partial cut of ~~((80))~~ **eighty** acres or less, leave not less than ~~((50%))~~ **fifty percent** of the trees required in (b) of this subsection.

*~~((8))~~ **(9) Type A or B Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A Wetland which meets the definition of a bog.

~~((9))~~ **(10) Future productivity.** Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

~~((10))~~ **(11) Wildlife habitat.** This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of fish and wildlife to identify critical habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to ensure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

~~((11))~~ **(12) Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) For the purposes of this subsection the following defines eastern and western Washington boundaries for wildlife reserve tree management. Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to the SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to the SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to the SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest boundary,

Thence south along forest boundary to the SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to the SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington.

(b) In Western Washington, for each acre harvested ~~((3))~~ three wildlife reserve trees, ~~((2))~~ two green recruitment trees, and ~~((2))~~ two down logs shall be left. In eastern Washington for each acre harvested ~~((2))~~ two wildlife reserve trees, ~~((2))~~ two green recruitment trees, and ~~((2))~~ two down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than ~~((2))~~ two green recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

(c) In Western Washington, only those wildlife reserve trees ~~((10))~~ ten or more feet in height and ~~((12))~~ twelve or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In eastern Washington, only those wildlife reserve trees ~~((10))~~ ten or more feet in height and ~~((10))~~ ten or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment

trees, ~~((40))~~ ten or more inches dbh and ~~((30))~~ thirty or more feet in height and with at least ~~((4/3))~~ one-third of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to ~~((12))~~ twelve inches and a length greater than or equal to ~~((20))~~ twenty feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than ~~((800))~~ eight hundred feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree, which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (e) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

~~(((12)))~~ **(13) Channel migration zones.** No harvest, construction or salvage will be permitted within the boundaries of a channel migration zone except for the construction and maintenance of road crossings in accordance with applicable rules and the creation and use of yarding corridors consistent with WAC 222-24-020(6), 222-30-060(1), and 222-30-045(2) ~~((, and chapter 220-110 WAC (Hydraulic code rules)))~~.

~~(((13)))~~ **(14) Bankfull width.** No harvest or construction will be permitted within the bankfull width of any Type S or F Water or any buffered length of Type Np Water, except for the construction and maintenance of road crossings in accordance with applicable rules and creation and use of yarding corridors consistent with WAC 222-30-020 ~~(((5)(a)))~~ (6) and 222-24-060(1) ~~((, and chapter 220-110 WAC (Hydraulic code rules)))~~. No salvage may take place within the bankfull width of any typed water (see WAC 222-30-045).

AMENDATORY SECTION (Amending WSR 12-05-083, filed 2/17/12, effective 3/19/12)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See board manual section 7 for riparian design and layout guidelines.

*** (1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is one hundred forty years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	325 sq. ft.
II	325 sq. ft.
III	325 sq. ft.
IV	325 sq. ft.
V	325 sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajec-

tory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

~~((A))~~ **(C)** The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

~~((H))~~ **(A)** Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));

- There are fewer than fifty-seven conifer trees per acre eight inches or larger dbh in the conversion area;

- There are fewer than one hundred conifer trees per acre larger than four inches dbh in the conversion area;

- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;

- The landowner owns five hundred feet upstream and five hundred feet downstream of the harvest unit;

- The core and inner zones contain no stream adjacent parallel roads;

- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a seventy-five foot buffer with trees at least forty feet tall on both sides of the stream for five hundred feet upstream and five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);

- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

~~((H))~~ **(B)** In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ♦ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a seventy-five foot buffer of trees at least forty feet tall or:

- ♦ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a seventy-five foot buffer of trees at least forty feet tall.

- Not more than twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

~~((H))~~ **(C)** Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than twenty inches dbh shall not be harvested;

- Not more than ten percent of the conifer stems greater than eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than eight inches dbh.

~~((H))~~ **(D)** Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of one hundred fifty conifer trees greater than eight inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

~~((H))~~ **(E) Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width		Outer zone width	
			(measured from outer edge of core zone)		(measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory

to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed fifty-seven.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width		Outer zone width	
			(measured from outer edge of core zone)		(measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ten feet wide and RMZs in site class I and II for streams greater than ten feet wide. Harvest must comply with the following:

- Harvest is not permitted within thirty feet of the core zone for streams less than or equal to ten feet wide and harvest is not permitted within fifty feet of the core zone for streams greater than ten feet wide;

- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements; outer zone can be reduced only to a minimum of ten trees per

- A minimum of twenty conifers per acre, with a minimum twelve inch dbh, will be retained in any portion of the inner zone where even-age harvest occurs. These riparian leave trees will be counted towards meeting applicable stand requirements. The number of riparian leave trees cannot be reduced below twenty for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (b)(ii)(B)(II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bank-full width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)					
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

** Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (b)(iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (b)(iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (b)(iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not

meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave twenty riparian leave trees per acre after harvest. **"Outer zone riparian leave trees"** are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in ~~((subsection))~~ (c)(ii) ~~((below))~~ of this subsection.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide wind-throw protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030;

(VII) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(f); or

(VIII) Sites containing evidence of Native American cairns, graves or glyptic records as provided for in chapters 27.44 and 27.53 RCW. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) Large woody debris in-channel placement strategy.

(A) In order to reduce the number of required outer zone trees, a landowner may design a LWD placement plan ((~~in cooperation with the department of fish and wildlife. The plan must be~~) for department approval consistent with guidelines in board manual sections 5 and 26. ((The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan.)) Landowners are encouraged to consult with the department and the department of fish and wildlife while designing the plan and prior to submitting a forest practices application.

(B) Reduction of trees in the outer zone must not go below a minimum of ten trees per acre.

(C) If this strategy is chosen, a complete forest practices application must include ((a copy of the WDFW approved hydraulics project approval (HPA) permit)) the LWD placement plan.

(iv) Twenty riparian leave trees must be left after harvest with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

***(2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a thirty-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A fifty-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of one hundred feet in length. If an operating area is located more than five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than twenty percent in the tailed frog habitat range;
- (C) Hyporheic and groundwater influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an

existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-30-022 *Eastern Washington riparian management zones. For eastside forests, riparian management is intended to provide stand conditions that vary over time. It is designed to mimic eastside disturbance regimes within a range that meets functional conditions and maintains general forest health. These desired future conditions are a reference point on the pathway to restoration of riparian functions, not an end point of riparian stand development. These rules apply to all typed waters on forest land in Eastern Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in the following section.

Eastern Washington RMZ for streams with bankfull width of less than or equal to 15 feet wide

Site Class	Total RMZ Width	Core Zone Width <small>From outer edge of bankfull width or outer edge of CMZ, whichever is greater</small>	Inner Zone Width	Outer Zone Width
I	130'	30'	45'	55'
II	110'	30'	45'	35'
III	90'	30'	45'	15'
IV	75'	30'	45'	0'
V	75'	30'	45'	0'

Eastern Washington RMZ for streams with bankfull width of greater than 15 feet wide

Site Class	Total RMZ Width	Core Zone Width <small>From outer edge of bankfull width or outer edge of CMZ, whichever is greater</small>	Inner Zone Width	Outer Zone Width
I	130'	30'	70'	30'
II	110'	30'	70'	10'
III	100'	30'	70'	0'
IV	100'	30'	70'	0'
V	100'	30'	70'	0'

***(1) Eastern Washington RMZs on Type S and F Waters** have three zones: The core zone is nearest to the edge of the bankfull width or outer edge of the CMZ, whichever is greater. The inner zone is the middle zone, and the outer zone is furthest from the water. Permitted forest practices vary by timber habitat type and site class.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in accordance with WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in accordance with WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See ~~(the)~~ board manual~~(s)~~ section 1.

(a) **Core zones.** The core zone extends ~~((30))~~ thirty feet measured horizontally from the edge of the bankfull width or outer edge of the CMZ, whichever is greater, for all timber habitat types. No harvest or construction is allowed in the core zone except as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors must be left on site. Any trees cut as a result of road construction to cross a stream may be removed from the site unless used as part of a large woody debris replacement strategy.

(b) **Inner zones.** Width and leave tree requirements of the inner zone vary by timber habitat type as outlined below.

(i) Ponderosa pine timber habitat type.

(A) The width of the inner zone is ~~((70))~~ seventy feet measured horizontally from the outer edge of the core zone on streams greater than ~~((15))~~ fifteen feet bankfull width or ~~((45))~~ forty-five feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of ~~((15))~~ fifteen feet or less.

(B) No harvest is allowed in the inner zone except as described in (b)(i)(C) or (D) of this subsection, and as allowed for stream crossings and yarding corridors as described ~~((above))~~ in this subsection (1).

(C) **Stands with a high basal area:** Harvest is permitted in the inner zone if the basal area in the inner zone is greater than ~~((140))~~ one hundred ten square feet per acre for conifer and hardwood trees equal to or greater than ~~((6))~~ six inches dbh. The harvest must leave at least ~~((50))~~ fifty trees per acre AND subject to (b)(i)(C)(III) of this subsection, a minimum

leave tree basal area of at least ~~((60))~~ sixty square feet per acre. The trees to be left shall be selected as follows:

(I) The ~~((21))~~ twenty-one largest trees per acre must be left; and

(II) An additional ~~((29))~~ twenty-nine trees per acre that are 10-inch dbh or greater must be left. If there are less than ~~((29-10))~~ twenty-nine ten-inch dbh or greater trees per acre, leave the ~~((29))~~ twenty-nine largest trees. If there are more than ~~((29-10))~~ twenty-nine ten-inch dbh or greater trees per acre, leave ~~((29-10))~~ twenty-nine ten-inch dbh or greater trees per acre based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;
- Trees that are evenly distributed across the inner zone.

(III) If more than ~~((50))~~ fifty trees per acre are needed to meet the minimum leave tree basal area of ~~((60))~~ sixty square feet per acre, then additional trees greater than ~~((6))~~ six-inch dbh must be left. If the minimum basal area cannot be met with fewer than ~~((100))~~ one hundred trees of at least ~~((6))~~ six inches dbh, then no more than ~~((100))~~ one hundred trees per acre of the largest remaining trees will be required to be left regardless of the basal area.

(D) **Stands with low basal areas and high density:** Thinning is permitted if the basal area of all species is less than ~~((60))~~ sixty square feet per acre AND there are more than ~~((100))~~ one hundred trees per acre. The thinning must leave a minimum of ~~((100))~~ one hundred trees per acre. The trees to be left must be selected as follows:

(I) The ~~((50))~~ fifty largest trees per acre must be left; and

(II) An additional ~~((50))~~ fifty trees per acre that are greater than ~~((6))~~ six inches dbh must be left. If there are not ~~((50-6))~~ fifty six-inch dbh or greater trees per acre, then all ~~((6))~~ six-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal ~~((50))~~ fifty trees per acre. Select the additional ~~((50))~~ fifty trees based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;
- Trees that are evenly distributed across the inner zone.

(E) To the extent down wood is available on site prior to harvest, at least twelve tons of down wood per acre must be left following harvest as follows:

(I) Six pieces greater than ~~((16))~~ sixteen inches diameter and ~~((20))~~ twenty feet in length; and

(II) Four pieces greater than ~~((6))~~ six inches in diameter and ~~((20))~~ twenty feet in length.

(III) Landowner/operator is not required to create down wood.

(F) See **stream-adjacent parallel roads for all timber habitat types** in (iv) of this subsection if there is a stream-adjacent parallel road in this zone.

(ii) Mixed conifer timber habitat type.

(A) The width of the inner zone is ~~((70))~~ seventy feet measured horizontally from the outer edge of the core zone on streams greater than ~~((15))~~ fifteen feet bankfull width or ~~((45))~~ forty-five feet measured horizontally from the outer

edge of the core zone on streams with a bankfull width of ~~((15))~~ fifteen feet or less.

(B) No harvest is allowed in the inner zone except as described in (b)(ii)(C) or (D) of this subsection, and as allowed for stream crossings and yarding corridors as described (~~(above)~~) in subsection (1).

(C) Stands with a high basal area:

(I) Harvest is permitted in the inner zone if the combined conifer and hardwood basal area for trees greater than ~~((6))~~ six inches dbh is:

- Greater than ~~((140))~~ one hundred ten square feet per acre on low site indexes (site index less than ~~((90))~~ ninety); or
- Greater than ~~((130))~~ one hundred thirty square feet per acre on medium site indexes (site index between ~~((90))~~ ninety and ~~((140))~~ one hundred ten); or
- Greater than ~~((150))~~ one hundred fifty square feet per acre on high site indexes (site index greater than ~~((140))~~ one hundred ten).

(II) The harvest must leave at least ~~((50))~~ fifty trees per acre AND a minimum leave tree basal area of at least:

- ~~((70))~~ seventy square feet per acre on low site indexes; or
- ~~((90))~~ ninety square feet per acre on medium site indexes; or
- ~~((140))~~ one hundred ten square feet per acre on high site indexes.

(III) The trees to be left shall be selected as follows:

- The ~~((21))~~ twenty-one largest trees per acre must be left; and
- An additional ~~((29))~~ twenty-nine trees per acre that are ~~((40))~~ ten-inch dbh or greater must be left. If there are less than ~~((29-40))~~ twenty-nine ten-inch dbh or greater trees per acre, leave the ~~((29))~~ twenty-nine largest trees. If there are more than ~~((29-40))~~ twenty-nine ten-inch dbh or greater trees per acre, leave ~~((29-40))~~ twenty-nine ten-inch dbh trees per acre based on the following priority order:
 - Trees that provide shade to water;
 - Trees that lean towards the water;
 - Trees of the preferred species, as defined in WAC 222-16-010; or
 - Trees that are evenly distributed across the inner zone.
- If more than ~~((50))~~ fifty trees per acre are needed to meet the minimum leave tree basal area for the site index in (b)(ii)(C)(II) of this subsection, then additional trees greater than ~~((6))~~ six inches dbh must be left. If the minimum basal area cannot be met with fewer than ~~((100))~~ one hundred trees at least ~~((6))~~ six inches dbh, then no more than ~~((100))~~ one hundred trees per acre of the largest remaining trees will be required to be left regardless of the basal area.

(D) Stands with low basal areas and high density: Thinning is permitted if the basal area of all species is less than the minimum requirements for the site index in (b)(ii)(C)(II) of this subsection AND there are more than ~~((120))~~ one hundred twenty trees per acre. The thinning must leave a minimum of ~~((120))~~ one hundred twenty trees per acre. The trees to be left shall be selected as follows:

- (I) The ~~((50))~~ fifty largest trees per acre must be left; and
- (II) An additional ~~((70))~~ seventy trees per acre greater than ~~((6))~~ six inches dbh must be left. If there are not ~~((70-6))~~ seventy six-inch dbh or greater trees per acre, then all ~~((6))~~ six-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal ~~((70))~~ seventy trees per acre. Select the additional ~~((70))~~ seventy trees based on the following priority order:

six-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal ~~((70))~~ seventy trees per acre. Select the additional ~~((70))~~ seventy trees based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010; or
- Trees that are evenly distributed across the inner zone.

(E) To the extent down wood is available on site prior to harvest, ~~((20))~~ twenty tons of down wood per acre is required to be left following harvest as follows:

(I) ~~((8))~~ Eight pieces greater than ~~((16))~~ sixteen inches diameter and ~~((20))~~ twenty feet in length; and

(II) ~~((8))~~ Eight pieces greater than ~~((6))~~ six inches in diameter and ~~((20))~~ twenty feet in length.

(III) Landowner/operator is not required to create down wood.

(F) See **stream-adjacent parallel roads for all timber habitat types** in (b)(iv) of this subsection if there is a parallel road in this zone.

(iii) High elevation timber habitat type.

(A) The width of the inner zone is ~~((45))~~ forty-five feet measured horizontally from the outer edge of the core zone on streams equal to or less than ~~((15))~~ fifteen feet bankfull width or ~~((70))~~ seventy feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of greater than ~~((15))~~ fifteen feet.

(B) Follow stand requirements for western Washington riparian management zones, WAC 222-30-021 (1)(b).

Note: Option 2 is not permitted for eastside use, because of the minimum floor (100') constraint.

(C) To the extent down wood is available prior to harvest, ~~((30))~~ thirty tons per acre of down wood per acre must be left following harvest as follows:

(I) ~~((8))~~ Eight pieces greater than ~~((16))~~ sixteen inches diameter and ~~((20))~~ twenty feet in length; and

(II) ~~((8))~~ Eight pieces greater than ~~((6))~~ six inches in diameter and ~~((20))~~ twenty feet in length.

(III) Landowner/operator is not required to create down wood.

(D) See **stream-adjacent parallel roads for all timber habitat types** in (b)(iv) of this subsection if there is a parallel road in this zone.

(iv) **Stream-adjacent parallel roads for all timber habitat types in the inner zone.** The shade rule, WAC 222-30-040, must be met whether or not the inner zone includes a stream-adjacent parallel road. Where a stream-adjacent parallel road exists in the inner zone and the minimum required basal area cannot be met due to the presence of the road, then the location of the road determines the allowable operations as follows:

(A) For streams with a bankfull width that is greater than ~~((15))~~ fifteen feet:

(I) If the edge of the road closest to the stream is ~~((75))~~ seventy-five feet or more from the outer edge of bankfull width of the stream or outer edge of CMZ, whichever is greater, **no harvest is permitted in the inner zone.** This

includes trees within the inner zone on the uphill side of the road.

(II) No harvest is permitted within the inner zone on the streamside of the road. If the edge of the road closest to the stream is less than ~~((75))~~ seventy-five feet from the outer edge of bankfull width of the stream or outer edge of CMZ, whichever is greater then:

- Additional leave trees equal in total basal area to the trees lost due to the road must be left near the streams in or adjacent to the unit to be harvested; (See ~~((the))~~ board manual section 7.)

- Where the additional leave trees providing fish habitat for water quality function are determined to be not available or not practical by the department, landowners and operators will employ site specific management activities to replace lost riparian functions that may include placement of large woody debris in streams. (See ~~((the))~~ board manual section 7.)

(B) For streams with a bankfull width less than ~~((45))~~ fifteen feet:

(I) If the edge of the road closest to the stream is ~~((50))~~ fifty feet or more from the outer edge of bankfull width or outer edge of CMZ, whichever is greater, no harvest is permitted in the inner zone. This includes trees within the inner zone on the uphill side of the road.

(II) No harvest is permitted within the inner zone on the stream side of the road. If the edge of the road closest to the stream is less than ~~((50))~~ fifty feet from the bankfull width or CMZ, whichever is greater then:

- Additional leave trees equal in total basal area to the trees lost due to the road must be left near the streams in or adjacent to the unit to be harvested. (See ~~((the))~~ board manual section 7.)

- Where the additional leave trees providing fish habitat for water quality function are determined to be not available or not practical by the department, landowners and operators will employ site specific management activities to replace lost riparian functions that may include placement of large woody debris in streams. (See ~~((the))~~ board manual section 7.)

(C) **Wildlife reserve trees.** Leave all wildlife reserve trees within the inner zone of the riparian management zone where operations in the vicinity do not violate the safety regulations (chapter 296-54 WAC and chapter ~~((49-17))~~ 49.17 RCW administered by the department of labor and industries, safety division). Live wildlife reserve trees will contribute to the basal area requirements for inner zone leave trees and to leave tree counts if they are among the ~~((24))~~ twenty-one largest trees per acre; or meet the requirement of an additional ~~((29))~~ twenty-nine leave trees per acre as per (b)(ii)(E) ~~((above))~~ of this subsection.

(c) **Outer zones.** This zone has three categories based on timber habitat type: Ponderosa pine, mixed conifer and high elevation. The width of this zone is ~~((0 to 55))~~ zero to fifty-five feet measured horizontally from the outer edge of the inner zone depending on the site class and stream width. (See WAC 222-16-010 definition of "RMZ outer zone.")

(i) Tree counts that must be left per acre, regardless of the presence of an existing stream-adjacent parallel road in the zone, are:

(A) Ponderosa pine habitat type - ~~((10))~~ Ten dominant or codominant trees.

(B) Mixed conifer habitat type - ~~((15))~~ Fifteen dominant or codominant trees.

(C) High elevation habitat type - See requirements for Western Washington RMZs in WAC 222-30-021 (1)(c).

(ii) Outer zone leave tree requirements in ~~((section (i) above))~~ (c)(i) of this subsection may be reduced to ~~((5))~~ five trees per acre in the ponderosa pine zone, ~~((8))~~ eight trees per acre in the mixed forest habitat type and ~~((10))~~ ten trees per acre in the high elevation habitat type, if the landowner voluntarily implements a LWD placement plan consistent with board manual sections 5 and 26. Landowners are encouraged to consult with the department and the department of fish and wildlife while designing the plan and prior to submitting a forest practices application. If this strategy is chosen, a complete forest practices application must include ~~((a copy of the WDFW approved hydraulics project approval (HPA) permit))~~ the LWD placement plan.

*** (2) Eastern Washington protection along Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30))~~ thirty-foot wide zone measured horizontally from the outer edge of bankfull width of a Type Np or Ns Water where equipment is limited. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil more than ~~((10%))~~ ten percent of the surface area of the zone:

(A) Ground based equipment;

(B) Skid trails;

(C) Stream crossings (other than existing roads); or

(D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions, especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection ~~((2))~~ reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) Type Np Waters.

Within ~~((50))~~ fifty horizontal feet of the outer edge of bankfull width of the stream, the landowner must identify either a partial cut and/or clearcut strategy for each unit to be harvested:

Once approved by the department, the selected strategy will remain in effect until July 1, 2051. If a landowner transfers title of the harvest unit, the landowner must provide written notice of this continuing obligation to the new owner and send a copy to the department. See WAC 222-20-055.

(i) For partial cuts:

(A) Basal areas requirements are the same as those specified for the timber habitat type in the eastern Washington RMZ inner zone.

(B) Where a stream-adjacent parallel road exists, the basal area required in (b)(i)(A) of this subsection is required to be left. (See stream-adjacent parallel roads for Type Np Waters in (c) ~~((below))~~ of this subsection.)

(C) The trees to be included in the basal area determination and left after harvest must include:

(I) The ~~((40))~~ ten largest trees per acre;

(II) Up to an additional ~~((40))~~ forty trees per acre greater than or equal to ~~((40))~~ ten inches dbh must be left. If all or some of the trees are not at least ~~((40))~~ ten inches dbh, then the largest of the remaining trees must be left. Select trees based on the following priority order:

- Provide streambank stability;
- Provide shade to water;
- Lean towards the water;
- Preferred species, as defined in WAC 222-16-010; or
- Evenly distributed; and

If the basal area target has not been met with the trees required above, up to an additional ~~((50))~~ fifty trees are required greater than ~~((6))~~ six inches in dbh based on the above priority order.

(D) Side slope seeps must be protected with a ~~((50))~~ fifty-foot partial cut buffer that meets the basal area and leave tree requirements of ~~(b)(i)(A), (B), and (C) ((above))~~ of this subsection. The buffer shall be measured from the outer perimeter of the perennially saturated soil zone.

(ii) **For clearcuts:**

When the clearcut strategy in this subsection is selected, the landowner must simultaneously designate a ~~((2))~~ two-sided no-harvest ~~((50))~~ fifty-foot buffer along the stream reach in the harvest unit that:

(A) Is equal in total length to the clearcut portion of the stream reach in the harvest unit; and

(B) Meets the upper end of basal area requirements for each respective timber habitat type in the Eastern Washington RMZ inner zone. See WAC 222-30-022 (1)(b)(i), (ii) or (iii).

(C) The streamside boundary of all clearcuts must:

(I) Not exceed in total ~~((30%))~~ thirty percent of the length of the stream reach in the harvest unit;

(II) Not exceed ~~((300))~~ three hundred continuous feet in length;

(III) Not be located within ~~((500))~~ five hundred feet of the intersection of a Type S or F Water; and

(IV) Not occur within ~~((50))~~ fifty feet of the following sensitive sites as defined in WAC 222-16-010:

- The outer perimeter of a soil zone perennially saturated from a headwall seep;
- The outer perimeter of a soil zone perennially saturated from a side-slope seep;
- The center of a headwater spring;
- An alluvial fan;
- The center point of intersection of two or more Type Np Waters.

(c) **Stream-adjacent parallel roads for Type Np Waters.** If a road exists in a Type Np RMZ and the basal area required to be left cannot be met within ~~((50))~~ fifty feet of the outer edge of bankfull width of the stream measured horizontally due to the presence of the road, then the distance of the road to the stream determines the allowable operations as follows:

(i) A road that is within ~~((30 to 49))~~ thirty to forty-nine feet measured horizontally from the outer edge of bankfull width of the stream requires:

(A) A total of ~~((400))~~ one hundred feet of riparian management zone measured horizontally (both sides of the

stream count towards the total) must be left in a manner to provide maximum functions for nonfish use streams. If harvest is taking place on only one side of the stream, then ~~((50))~~ fifty feet of RMZ width must be left, regardless of presence of a stream-adjacent parallel road. The width of the road is not counted as part of the total width of the RMZ.

(B) The location of the riparian management zone required in (A) of this subsection shall be based on the following priority order:

(I) Preferred: The area between the stream and the stream side edge of the road.

(II) The area that provides the most shade to the channel.

(III) The area that is most likely to deliver large woody debris to the channel.

(ii) A road that is within less than ~~((30))~~ thirty feet from the outer edge of bankfull width of the stream measured horizontally requires, in addition to (c)(i)(A) and (B) of this subsection, that all trees between the stream and the streamside edge of the road must be left.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-30-050 Felling and bucking. *(1) Felling along water.

(a) Except when removing or repositioning large woody debris per WAC 222-30-062, no trees will be felled into Type S and F Waters RMZ core zones, sensitive sites, or Type A or B Wetlands except trees which cannot practically and safely be felled outside these areas using techniques in general use. Such felling and removing in Type S or F Waters shall ~~((comply with the hydraulic project approval of the department of fish and wildlife))~~ incorporate mitigation measures necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat as follows:

(i) Trees shall not be felled into or across the stream except where approved by the department.

(ii) Trees or logs that enter a stream during felling shall remain where they enter unless parts or all of the trees or logs are specifically approved to be removed by the department.

(iii) If limbs or other small debris enter the watercourse as a result of felling timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into the watercourse and placed on stable locations outside the stream's influence. Limbs or other small debris shall be removed from dry watercourses prior to the normal onset of high flows. Large woody material which was in place prior to felling timber shall not be disturbed.

(iv) Precautions shall be taken to minimize the release of sediment to waters downstream from the felling activity. See board manual section 5 for technical guidance.

(b) Within RMZ inner and outer zones, and wetland management zones, fell trees favorable to the lead consistent with safety standards to yard or skid away from the waters. The use of directional felling, lining, jacking and staged felling techniques are required.

(c) Trees may be felled into Type Np Water if logs are removed as soon thereafter as practical. See forest practices board manual section 4 guidelines for clearing slash and debris from Type Np and Ns Water.

*** (2) Bucking or limbing along water.**

No bucking or limbing shall be done on trees or portions thereof lying within the bankfull width of Type S, F or Np Waters, in the RMZ core zones, in sensitive sites, or in open water areas of Type A Wetlands, except as necessary to remove the timber from the water, or unless it is part of a proposal to remove or reposition large wood debris per WAC 222-30-062. Such bucking or limbing in Type S or F Waters shall ~~((comply with the hydraulic project approval of the department of fish and wildlife))~~ incorporate the mitigation measures in subsection (1)(a) of this section.

*** (3) Felling near riparian management zones, wetland management zones and setting boundaries.** Reasonable care shall be taken to avoid felling trees into riparian management zones, wetland management zones and areas outside the harvest unit.

(4) Felling in selective and partial cuts. Reasonable care shall be taken to fell trees in directions that minimize damage to residual trees.

(5) Disturbance avoidance for northern spotted owls. Felling and bucking within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1st and August 31st provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(6) Disturbance avoidance for marbled murrelets. Felling and bucking shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-060 Cable yarding. *** (1) Type S and F Waters and sensitive sites.** No timber shall be cable yarded in or across Type S or F Waters except where the logs will not materially damage the bed of waters, banks of sensitive sites, or riparian management zones. If yarding across Type S or F Waters is permitted, then yarding is limited to cable or other aerial logging methods. Any work in or above Type S or F Waters requires ~~((a hydraulic project approval (HPA)))~~ an approved forest practices application. Logs must be fully suspended above the water unless otherwise allowed in the applicable ~~((HPA))~~ forest practices application. Yarding corridors or full suspension shall be required to prevent damage to the bed, banks, and riparian vegetation. Yarding corridors must be no wider or more numerous than necessary to accommodate safe and efficient transport of logs. Generally, yarding corridors should be located no closer to each other than ~~((150))~~ one hundred fifty feet (measured edge to edge) and should be no wider than ~~((30))~~ thirty feet. Safety is a prime consideration in the location of yarding corridors. Total open-

ings resulting from yarding corridors must not exceed ~~((20%))~~ twenty percent of the stream length associated with the forest practices application. When changing cable locations, care must be taken to move cables around or clear of the riparian vegetation to avoid damage to riparian vegetation.

Trees, logs, limbs, and other small debris that enter the water shall be managed as follows:

(a) Trees or logs that enter Type S and F Waters with identifiable bed or banks during yarding shall remain where they enter unless parts or all of the trees or logs are specifically approved to be removed by the department.

(b) Logs transported across Type S or F Waters shall be suspended so no portion of the logs or limbs can enter the watercourse or damage the bed and banks.

(c) If limbs or other small debris enter Type S or F Waters with identifiable bed or banks as a result of yarding timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry and placed on stable locations outside the stream's influence. Limbs or other small debris shall be removed from dry portions of watercourses prior to the normal onset of high flows. Large woody material that was in place prior to yarding of timber shall not be disturbed.

*** (2) Type A or B Wetlands.** No timber shall be cable yarded in or across Type A or B Wetlands ~~((without written approval from))~~ except with approval by the department ~~((and may require a hydraulic project approval from the department of fish and wildlife)).~~

*** (3) Deadfalls.** Logs which are firmly embedded in the bed or bank of Type S or F Waters shall not be removed or disturbed ~~((without hydraulic project approval from the department of fish and wildlife))~~ except with approval by the department.

*** (4) Yarding in riparian management zones, sensitive sites, and wetland management zones.** Where timber is yarded from or across a riparian management zone, sensitive site, or wetland management zone reasonable care shall be taken to minimize damage to the vegetation providing shade to the stream or open water areas and to minimize disturbance to understory vegetation, stumps and root systems. Where practical and consistent with good safety practices, logs shall be yarded in the direction in which they lie and away from Type A or B Wetlands or Type S, F or Np Waters until clear of the wetland management zone or riparian management zone.

*** (5) Precautions shall be taken to minimize the release of sediment to waters downstream from the yarding activity.** See board manual section 5 for technical guidance.

(6) Direction of yarding.

(a) Uphill yarding is preferred.

(b) Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils.

*** (c)** When yarding parallel to a Type S or F Water channel below the 100-year flood level or within the riparian management zone, reasonable care shall be taken to minimize soil disturbance and to prevent logs from rolling into the stream, lake, pond, or riparian management zone.

~~((6))~~ **(7) Disturbance avoidance for northern spotted owls.** The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1st and August 31st provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

~~((7))~~ **(8) Disturbance avoidance for marbled murrelets.** Yarding or operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

NEW SECTION

WAC 222-30-062 *Large woody debris removal or repositioning. Large woody debris removal or repositioning projects shall incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat. The following shall apply to large woody debris removal or repositioning:

(1) Large woody debris removal from streams shall only be approved where necessary to address safety considerations, or where its removal would not diminish the fish habitat quality of the watercourse. The department may approve the repositioning of large woody debris within the watercourse to protect life and property or as needed to conduct a forest practices hydraulic project. Repositioned large woody material shall be placed or anchored to provide stable, functional fish habitat.

(2) Large woody debris removal shall be conducted by equipment stationed on the bank, bridge, or other approved methods.

(3) Unless otherwise authorized, large woody debris shall be suspended during its removal so no portion of the large woody debris or limbs can damage the bed or banks. Yarding corridors or full suspension shall be required to avoid damage to riparian vegetation. It may be necessary to cut the large woody debris in place, to a size that allows suspension during removal.

(4) Smaller limb and bark debris associated with the large woody material shall be removed and disposed of so as not to reenter the typed water.

(5) Large woody debris embedded in a bank or bed shall be left undisturbed and intact except where authorized for removal.

(6) Large woody debris removal or repositioning shall be accomplished in a manner which minimizes the release of bedload, logs, or debris downstream.

(7) Depressions created in gravel bars shall be filled, smoothed over, and sloped upwards toward the bank on a minimum two percent gradient.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-070 Ground-based logging systems.

*** (1) Typed waters and wetlands.**

(a) Ground-based equipment shall not be used in Type S or F Water, except with approval by the department (~~and with a hydraulic project approval issued by the department of fish and wildlife~~). Yarding across Type S or F Waters is limited to cable or other aerial logging methods.

(b) Ground-based transport of logs across Type Np and Ns Waters shall minimize the potential for damage to public resources.

(i) Skidding logs and driving ground-based equipment through defined channels with flowing water is not allowed.

(ii) Ground-based transport of logs to landings across any Typed Np or Ns Water shall minimize the potential to damage public resources.

(iii) Whenever skidding across Type Np or Ns Waters, the direction of log movement between stream banks shall be designed to minimize sediment delivery to the stream.

(c) In order to maintain wetland water movement and water quality, and to prevent soil compaction, ground-based logging systems shall not be used in Type A or B wetlands.

(d) Where harvest in wetlands is permitted, ground-based logging systems shall be limited to low impact harvest systems. Ground-based logging systems operating in wetlands shall only be allowed during periods of low soil moisture or frozen soil conditions.

(e) Locations of temporary stream crossings to Np Waters shall be shown on the base map of the forest practices application. Whenever skidding in or across Type Np or Ns Waters, the direction of log movement between stream banks shall be designed to minimize sediment delivery to the stream. BMPs for stream crossings can be found in ~~(the)~~ board manual section ~~((3))~~ 5.

*** (2) Riparian management zone.**

(a) Logging will be permitted within the riparian management zone subject to riparian management zone protection in chapter 222-30 WAC. However, any use of ground-based yarding machines within the zone must be as described in an approved forest practices application or otherwise approved in writing by the department.

(b) When transporting logs in or through the riparian management zone with ground-based equipment, the number of routes through the zone shall be minimized.

(c) Logs shall be transported so as to minimize damage to leave trees and vegetation in the riparian management zone, to the extent practical and consistent with good safety practices.

*** (3) Wetlands management zones.**

(a) Logging will be permitted within wetland management zones subject to restrictions in WAC 222-30-020~~((7))~~ (8).

(b) Where feasible logs shall be skidded with at least one end suspended from the ground so as to minimize soil disturbance and damage to leave trees and vegetation in the wetland management zone.

(c) Ground-based harvesting systems shall not be used within the minimum WMZ width unless described in an

approved forest practices application or otherwise approved in writing by the department.

*** (4) Deadfalls.** Logs firmly embedded in the bed or bank of Type S or F Waters shall not be removed or disturbed without ((hydraulic project)) approval from the department ((of fish and wildlife)).

*** (5) Moisture conditions.**

(a) Ground-based logging systems shall not be used on exposed erodible soils or saturated soils if sediment delivery is likely to disturb a wetland, stream, lake or pond.

(b) When soil moisture is high and unrestricted operation of ground-based equipment would result in unreasonable soil compaction, operations shall be restricted to methods that ((minimized)) minimize widespread soil compaction, or ((operations)) postponed until site conditions improve such that yarding may proceed without causing unreasonable soil compaction and the long-term impacts to soil productivity and moisture absorption capacity that can result.

(6) Protection of residual timber. Reasonable care shall be taken to minimize damage from skidding to the stems and root systems of residual timber and to young reproduction.

*** (7) Skid trail location and construction.**

(a) Skid trails shall be kept to the minimum width.

(b) Reasonable care shall be taken to minimize the amount of sidecast required and shall only be permitted above the 100-year flood level.

(c) Skid trails shall be outsloped where practical, but be insloped where necessary to prevent logs from sliding or rolling downhill off the skid trail.

(d) Skid trails running parallel or near parallel to streams shall be located outside the no-harvest zone of all typed waters and at least ((30)) thirty feet from the outer edge of the bankfull width of the unbuffered portions of Type Np or Ns Water unless approved in writing by the department.

(e) Skid trails shall cross the drainage point of swales at an angle to minimize the potential for delivering sediment to a typed water or where channelization is likely to occur. See board manual section 3.

*** (8) Skid trail maintenance.**

(a) Upon completion of use and termination of seasonal use, skid trails on slopes in exposed soils shall be water barred where necessary to prevent soil erosion.

(b) Skid trails located within ((200)) two hundred feet horizontal distance of any typed water that directly delivers to the stream network shall use water bars, grade breaks, and/or slash to minimize sediment delivery to the stream. Water bars shall be placed at a frequency to minimize gulying and soil erosion. In addition to water barring, skid trails with exposed soil that is erodible and may be reasonably expected to cause damage to a public resource shall be seeded with a noninvasive plant species (preferably a species native to the state) and adapted for rapid revegetation of disturbed soil, or treated with other erosion control measures acceptable to the department.

*** (9) Slope restrictions.** Ground-based systems shall not be used on slopes where in the opinion of the department this method of operation would cause actual or potential material damage to a public resource.

(10) Disturbance avoidance for northern spotted owls. The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1st and August 31st, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) Disturbance avoidance for marbled murrelets. Operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-30-100 Slash disposal or prescribed burning. (1) **Slash disposal or prescribed burning are prohibited in the core zone.**

(2) **Slash disposal techniques:**

* (a) Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and RMZ core and inner zones, Type Np RMZs, sensitive sites, and on sites where the department determines that a particular method would cause unreasonable risk to leave trees, public resources or site productivity. Conventional methods of slash disposal include the following: Controlled broadcast burning; pile or windrow and burn; pile or windrow without burning; mechanical scatter and compaction; scarification; chip, mulch or lop and scatter; burying; and physical removal from the forest lands: Provided, That on land shown to have low productivity potential the landowner or operator shall obtain the department's approval of its regeneration plan prior to utilizing controlled broadcast burning as a slash disposal technique. In riparian management inner zones, slash disposal shall be by hand, unless approved by the department. Slash disposal methods that employ machine piling, mechanical scatter and/or compaction, scarification or other techniques that result in soil disturbance shall not be allowed in equipment limitation zones. Scarification shall not be allowed within wetlands. Machine piling is not allowed in Type A and B Wetlands. Department approval, through a burning permit, is required for burning within an equipment limitation zone.

(b) All slash burning requires a burning permit from the department which provides for compliance with the smoke management plan and reasonable care to protect Type A and B Wetlands, wetland management zones, riparian management zones, equipment limitation zones, soil, residual timber, public resources, and other property.

(3) **Slash isolation, reduction, or abatement** is required when the department determines there is an extreme fire hazard according to law (see chapter 332-24 WAC).

(4) **Slash disposal** is required where the forest landowner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation.

***(5) Removing slash and debris** from streams.

"Slash" or "debris" which can reasonably be expected to cause significant damage to the public resource shall be removed from Type S, F or Np Waters, to above the 100-year flood level and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substantial accumulations of slash exist below the 100-year flood level of Type S, F or Np Waters, slash disposal is required. See ~~((the forest practices))~~ WAC 222-16-025(4) for general provisions that apply to forest practices hydraulic projects in Type S and F Waters, and board manual section 4 ((for " ")). Guidelines for clearing slash and debris from Type Np and Ns Waters. ~~(())~~

***(6) Fire trails.**

(a) Construct drainage structures as needed to control erosion.

(b) Reasonable care shall be taken to minimize excavation during fire trail construction and sidecast shall only be permitted above the 100-year flood level.

(c) Fire trails shall not be located within Type A or B Wetlands, wetland management zones, equipment limitation zones or riparian zones without prior written approval of the department. Hand constructed fire trails are preferred within forested wetlands. When machine built fire trails are necessary for control of burning, trail width and excavation shall be minimized.

(7) Disturbance avoidance for northern spotted owls. Burning within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1st and August 31st, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(8) Disturbance avoidance for marbled murrelets. Slash disposal or prescribed burning shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-50-020 Other agency requirements. (1) Many other laws and rules apply to the conduct of forest practices. Other agencies administer some of these other regulatory programs. Permits may be required by such agencies prior to the conduct of certain forest practices. The ~~((department will))~~ governor's office of regulatory assistance maintains a list ~~((for distribution))~~ of state, regional, and local regulatory programs including those that apply to forest practices operations. Affected parties are urged to consult with

the specified agencies and independent experts with respect to the regulatory requirements shown on the list.

~~***(2) ((Hydraulics project approval law, chapter 77.55 RCW. A hydraulics project approval must be obtained from the department of fish and wildlife prior to constructing any form of hydraulic project or other work that will use, divert, obstruct, or change the natural flow or bed of any river or stream or that will utilize any of the waters of the state or materials from the stream beds. See chapter 77.55 RCW and WAC 232-14-010.**~~

~~***(3)) Compliance with the Shoreline Management Act, chapter 90.58 RCW, is required. The Shoreline Management Act is implemented by the department of ecology and the applicable local governmental entity. A substantial development permit must be obtained prior to conducting forest practices which are "substantial developments" within the "shoreline" area as those terms are defined by the Shoreline Management Act.**~~

~~**((4)) (3) Wildlife protection, Title 77 RCW.** Nothing in these rules is intended to interfere with any authority of the department of fish and wildlife to protect wildlife under any other statutes or regulations, or under any agreements with landowners.~~

~~**((5)) (4) Federal Endangered Species Act, 16 U.S.C. 1531 et seq., and other federal laws. The federal Endangered Species Act and other federal laws may impose certain obligations on persons conducting forest practices. Compliance with the Forest Practices Act or these rules does not ensure compliance with the Endangered Species Act or other federal laws.**~~

**WSR 13-21-033
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY**

[Filed October 9, 2013, 7:57 a.m., effective November 9, 2013]

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

Purpose: The purpose of the proposed rule changes is to replace existing local rules with similar federal regulations for selected consumer products and spray coatings. The federal regulations will be adopted by reference with provisions to allow for local implementation of the adopted regulations.

Existing local regulations are outdated. The rule changes will make Southwest Clean Air Agency's (SWCAA) program consistent with currently applicable federal requirements.

Citation of Existing Rules Affected by this Order: Amending SWCAA 493-100, 493-200, 493-300, 493-400, 493-500.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 13-13-009 on June 7, 2013.

Changes Other than Editing from Proposed to Adopted Version: Two changes were made from proposed to adopted version.

(1) In response to comments, local exceedance fee provisions were removed from the rule language of SWCAA 493-300.

(2) In response to comments, SWCAA added applicability language to each rule section to clarify that the rules only apply locally.

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

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

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

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

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

Date Adopted: October 3, 2013.

Robert D. Elliott
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-22 issue of the Register.

WSR 13-21-035

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 9, 2013, 10:02 a.m., effective November 9, 2013]

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

Purpose: Correct references in agency rules to vessel permits as necessary to comply with federal law, 46 U.S.C. 12307, regarding recreational vessel registration. The rule changes also remove redundant information in the rules. These changes are necessary to address the findings of a United States Coast Guard review of the department's vessel registration program and to comply with recent Washington state legislation.

Citation of Existing Rules Affected by this Order: Amending WAC 308-93-055 and 308-93-056.

Statutory Authority for Adoption: RCW 88.02.610 and 88.02.620.

Adopted under notice filed as WSR 13-17-113 on August 21, 2013.

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

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

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

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

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

Date Adopted: October 8, 2013.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-025, filed 10/9/06, effective 11/9/06)

WAC 308-93-055 Vessels from out-of-state operating in this state—(~~Identification document~~) Nonresident vessel permit required. (1) (~~What documentation must be carried aboard a vessel from another state or out of country when being operated upon the waters of this state? The current foreign vessel registration is valid for the first sixty days of operation. In addition the following must apply:~~

(a) ~~The vessel must have been issued a valid number under federal law or by an approved issuing authority of the state of principal operation, if the vessel is remaining in this state for personal use or enjoyment.~~

(b) ~~On or before the sixty first day of use, the foreign vessel owner must obtain a vessel sixty day temporary identification document issued by the department, its agents or subagents.~~

(c) ~~A second sixty day temporary identification document must be purchased on or before the one hundred twenty first day of use in this state.~~

~~(2))~~ **What must I provide to obtain a nonresident vessel ((sixty day temporary identification document)) permit? You must provide the following:**

(a) Proof of nonresidency by showing the vessel owner's out-of-state driver's license or out-of-state photo identification;

(b) A copy of the current foreign vessel registration or current United States Coast Guard certificate of documentation;

(c) Date the vessel first came into the state;

(d) A nonrefundable fee of twenty-five dollars plus a filing fee and subagent fee, if applicable(~~(, per vessel sixty day temporary identification document))~~).

~~((3))~~ **(2) How many nonresident vessel ((sixty day temporary identification documents)) permits may be obtained? ((Not more than)) You may obtain two ((may be obtained)) nonresident vessel permits in any continuous twelve-month period for any single vessel. The twelve months begins on the date the vessel first entered this state.**

~~((4))~~ **How do I display the vessel sixty day temporary identification document?**

(a) ~~Keep aboard at all times when moored and during operation;~~

(b) ~~Displayed in the windshield, side window, cockpit or operation area of the vessel, so that it is visible to law enforcement from either the dock or from the water;~~

(c) ~~Protected from the weather.~~

~~((5))~~ **(3) How do I display the vessel visitor permit? The permit must be visible to law enforcement from either the dock or from the water. It must be kept aboard the vessel**

at all times when moored and during operation and protected from the weather.

The permit must be clearly displayed either:

- (a) In the windshield;
- (b) On side window;
- (c) In the cockpit; or
- (d) In the operation area of the vessel.

(4) **If the vessel owner is not available, how do I obtain a nonresident vessel ((sixty-day temporary identification document)) permit?** The person applying for the nonresident vessel ((sixty-day temporary identification document)) permit must have a:

- (a) Notarized(✓) or certified power of attorney from a registered owner of the vessel;
- (b) Copy of the vessel owner's out-of-state driver's license or photo identification; and
- (c) Copy of the out-of-state or out-of-country registration certificate.

AMENDATORY SECTION (Amending WSR 01-03-128, filed 1/23/01, effective 2/23/01)

WAC 308-93-056 Out of country vessel operating in this state—((Identification document)) Vessel visitor permit required. (1) **What documentation must be carried aboard an out of country vessel when being operated upon the waters of this state?**

(a) The current out of country vessel registration or a United States Customs Service Cruising License is valid for the first sixty days of operation when the vessel is remaining in this state for personal use or enjoyment.

(b) The foreign vessel must have been issued a valid number or registration issued by a country other than the United States or a United States Customs Service Cruising License

(c) ~~On or before the sixty first day of use, the out of country vessel owner must obtain a vessel out of country permanent identification document issued by the department, its agents or subagents.~~

(2)) What must I provide to obtain a vessel ((out of country permanent identification document)) visitor permit? You must provide the following:

(a) Proof of ((identification as described in WAC 308-56A-275(2))) nonresidency, by showing the vessel owner's out-of-state driver's license or out-of-state photo identification;

(b) A copy of the current foreign vessel registration ((or current United States Coast Guard certificate of documentation), or United States Customs Service Cruising License;

(c) Date the vessel first came into the state;

(d) A nonrefundable fee of twenty-five dollars plus a filing fee and subagent fee, if applicable.

((3)) (2) How many vessel ((out of country permanent identification documents)) visitor permits may be obtained? You may obtain one((-the)) vessel ((out of country permanent identification document)) visitor permit which is valid as long as the vessel continues to be registered in a country other than the United States or has a United States Customs Service Cruising License.

(3) What if the vessel is sold or transferred to a new owner? If the vessel is sold or transferred, the new owners may apply for a corrected vessel ((out of country permanent identification document)) visitor permit listing the new owner's name and address. The new owner ((shall)) must provide the information in subsection (1) of this section and pay a nonrefundable fee of three dollars plus a filing fee and subagent fee, if applicable.

(4) How do I display the vessel ((out of country permanent identification document)) visitor permit? ((The vessel out of country permanent identification document must be:

(a) Kept aboard the vessel at all times when moored and during operation;

(b) Displayed in the windshield, side window, cockpit or operation area of the vessel, so that it is visible to law enforcement from either the dock or from the water;

(c) ~~Protected from the weather~~) The permit must be visible to law enforcement from either the dock or from the water. It must be kept aboard the vessel at all times when moored and during operation and protected from the weather. The permit must be clearly displayed either:

(a) In the windshield;

(b) On side window;

(c) In the cockpit; or

(d) In the operation area of the vessel.

(5) If the vessel owner is not available, how do I obtain a vessel ((out of country permanent identification document)) visitor permit? ((If the vessel owner is not available;)) The person applying for the vessel ((out of country permanent identification document)) visitor permit must have a:

(a) Notarized(✓) or certified power of attorney from a registered owner of the vessel; and

(b) Copy of the valid registration ((numbers)) issued by a country other than the United States or a United States Customs Service Cruising License.

WSR 13-21-040

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 9, 2013, 12:14 p.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Purpose: Housekeeping changes to update addresses and titles, and to clarify some chemical compounds.

Citation of Existing Rules Affected by this Order: Amending WAC 16-232-410, 16-232-420, 16-232-430, and 16-232-450.

Statutory Authority for Adoption: RCW 17.21.030.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 13-17-095 on August 20, 2013.

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 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 0, Amended 0, Repealed 0.

Date Adopted: October 9, 2013.

Bud Hover
Director

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-410 What pesticides are restricted in the area under order? All formulations containing the active ingredient O,O-diethyl O-(3,5,6-trichloro-2-pyridinyl) phosphorothioate, commonly known as chlorpyrifos (CAS Number 2921-88-2) or the active ingredient O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate, commonly known as diazinon (CAS Number 333-41-5) are use restricted pesticides when applied to cranberries in the area under order.

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-420 What standards are adopted by WSDA? (1) The department adopts the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Practices Standards "Drainage Water Management" CODE 554 (~~((Sept.))~~ Nov. 2011); "SubSurface Drain" CODE 606 (Sept. 2011); "Surface Drain, Main or Lateral" CODE 608 (Nov. 2010); and "Underground Outlet" CODE 620 (Nov. 2010) as requirements for and restrictions on the use of pesticides containing chlorpyrifos or diazinon when applied to cranberries in the area under order.

(2) Copies of the adopted USDA NRCS Practice Standards can be requested by mail from: U.S. Department of Agriculture, 1400 Independence Ave., S.W., Washington, D.C. 20250 or from your local NRCS Office or can be found on the WSDA web site at: (~~((http://www.agr.wa.gov/pestfert))~~) <http://agr.wa.gov/pestfert/>.

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-430 What are the restrictions on the use of pesticides containing chlorpyrifos or diazinon for ditches? (1) Chlorpyrifos or diazinon shall not be applied to cranberries unless all ditches immediately adjacent to the application and all other ditches that will be contacted by the application are adequately protected to prevent entry of chlorpyrifos or diazinon at the time of application.

(2) For the purpose of subsection (1) of this section, "adequately protected" means:

(a) Ditches are cribbed and covered according to USDA NRCS Practice Standards "Drainage Water Management" CODE 554 (~~((Sept.))~~ Nov. 2011); "SubSurface Drain" CODE 606 (Sept. 2011); "Surface Drain, Main or Lateral" CODE 608 (Nov. 2010); and "Underground Outlet" CODE 620 (Nov. 2010), or one of the functional equivalents below.

(i) A functional equivalent for ditch side walls is the installation of side walls with rigid material capable of maintaining ditch integrity for a period of no less than ten years.

(ii) A functional equivalent for ditch coverings is the installation of ditch coverings using rigid material capable of preventing entry of chlorpyrifos or diazinon either through chemigation activities or run-off from irrigation activities into ditches as described in subsection (1) of this section.

(b) Drainage culverts are installed and constructed according to USDA NRCS Practice Standard "Underground Outlet" CODE 620 (Nov. 2010).

(3) All ditches and culverts shall be maintained and kept in good repair as needed in order to achieve the requirements of subsection (1) of this section.

(4) Upon request, the department shall be provided with all available information related to the design, construction, and materials used to protect the ditch as described in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 13-01-034, filed 12/11/12, effective 1/1/14)

WAC 16-232-450 Can a variance to the requirements of this order be obtained in an emergency? (1) In the event of an emergency, as determined by the director, the department may issue permits for the use of chlorpyrifos or diazinon in the use restricted area in variation of any restrictions as defined in WAC 16-232-430 or 16-232-440. An emergency under this section may be declared if the director determines that the situation is:

(a) Urgent and unexpected; and

(b) The risk and amount of economic harm to the crop substantially outweighs the risk and amount of damage likely to occur to the environment if a variance permit is issued.

(2) Application for a permit may be made by e-mail to compliance@agr.wa.gov or by mail, fax, or in person to the Washington State Department of Agriculture, Pesticide Management Division, Natural Resources Building (NRB), Second Floor, 1111 Washington St. S.E., P.O. Box (~~((42589))~~) 42560, Olympia, WA 98504-2560, FAX: 360-902-2093. Permits will not be granted by telephone.

(3) The department may make on-site monitoring of the application a condition of any permit. A representative of the department may condition, deny, or revoke a permit at any time, if the representative determines that the situation at the application site creates an unreasonable risk. In determining whether the situation at the application site creates an unreasonable risk, the representative may consider all relevant factors such as temperature, tides, precipitation, application type, pesticide formulation and application equipment, ditch cover condition, endangered species restrictions, air inversions, time of day, burning restrictions, wind direction, wind velocity, topography, and type and condition of application equipment.

WSR 13-21-048
PERMANENT RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed October 11, 2013, 11:52 a.m., effective November 11, 2013]

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

Purpose: Strike subsection (5) of this section.

Citation of Existing Rules Affected by this Order:
Amending WAC 182-557-0050.

Statutory Authority for Adoption: RCW 41.05.021.

Adopted under notice filed as WSR 13-18-032 on August 28, 2013.

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

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

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

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

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

Date Adopted: October 11, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-12-002, filed 5/22/13, effective 7/1/13)

WAC 182-557-0050 Health home—General. (1) The agency's health home program provides patient-centered care to beneficiaries who:

(a) Have a least one chronic condition as defined in WAC 182-557-0100;

(b) Be at risk of a second chronic condition with a minimum predictive risk score of 1.5; and

(c) Are at risk for high health costs, avoidable admissions to institutional care settings, and poor health outcomes.

(2) Health homes offer six care coordination activities to assist the beneficiary in self-managing his or her condition and navigating the health care system:

(a) Comprehensive or intensive care management including, but not limited to, assessing participant's readiness for self-management, promoting self-management skills, coordinating interventions tailored to meet the beneficiary's needs, and facilitating improved outcomes and appropriate use of health care services;

(b) Care coordination and health promotion;

(c) Comprehensive transitional care between care settings including, but not limited to, after discharge from an inpatient facility (hospital, rehabilitative, psychiatric, skilled nursing, substance use disorder treatment or residential habilitation setting);

(d) Individual and family support services to provide health promotion, education, training and coordination of covered services for beneficiaries and their support network;

(e) Referrals to community and support services; and

(f) Use of health information technology (HIT) to link services between the health home and beneficiaries' providers.

(3) The agency's health home program does not:

(a) Change the scope of services for which a beneficiary is eligible under medicare or a Title XIX medicaid program;

(b) Interfere with the relationship between a beneficiary and his or her chosen agency-enrolled provider(s);

(c) Duplicate case management activities the beneficiary is receiving from other providers or programs; or

(d) Substitute for established activities that are available through programs administered through the agency or other state agencies.

(4) Qualified health home providers must:

(a) Contract with the agency to provide services under this chapter to eligible beneficiaries;

(b) Accept the terms and conditions in the agency's contract;

(c) Be able to meet the network and quality standards established by the agency;

(d) Accept the rates established by the agency; and

(e) Comply with all applicable state and federal requirements.

~~((5) The agency reserves the right to not contract with any otherwise qualified health home provider.))~~

WSR 13-21-050

PERMANENT RULES
BOARD FOR VOLUNTEER

FIREFIGHTERS AND RESERVE OFFICERS

[Filed October 11, 2013, 2:06 p.m., effective November 11, 2013]

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

Purpose: This rule is necessary to lay out a procedure for filing an appeal of a local board or staff decision denying benefits to a participant.

Statutory Authority for Adoption: RCW 41.24.290(2).

Adopted under notice filed as WSR 13-17-016 on October 10 [August 8], 2013.

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 29, 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 29, Amended 0, Repealed 0.

Date Adopted: October 10, 2013.

Brigitte K. Smith
Executive Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-22 issue of the Register.

WSR 13-21-068
PERMANENT RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE
(Shorelines Hearings Board)

[Filed October 16, 2013, 2:24 p.m., effective November 16, 2013]

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

Purpose: The purpose of these changes are to:

1. Comply with SSB 5192, which amended RCW 90.58.090, 90.58.140, 90.58.180, and 90.58.190. These amendments made changes to notice and appeal provisions for amendments to local shoreline master programs, and the starting dates for timelines pertaining to appeals of permit decisions to the shorelines hearings board.

2. Update the name of the agency, its address, and telephone number.

3. Correct a citation to the agency's public records rules.

4. Update references to information on the agency's web site.

Citation of Existing Rules Affected by this Order: Amending WAC 461-08-305, 461-08-315, 461-08-320, 461-08-325, 461-08-330, 461-08-340, 461-08-345, and 461-08-500.

Statutory Authority for Adoption: RCW 90.58.175, 90.58.090, 90.58.140, 90.58.180, 90.58.190.

Adopted under notice filed as WSR 13-11-110 on May 21, 2013.

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 5, 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 4, 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: October 11, 2013.

Kathleen D. Mix
Agency Director

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 461-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Agency" means any state governmental entity.

(2) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in chapter 34.05 RCW. The terms "appeal," "adjudicative proceeding" and "case" are used interchangeably in this chapter.

(3) "Board" means the shorelines hearings board, a quasi-judicial body created pursuant to chapter 90.58 RCW and described in WAC 461-08-315.

(4) "Date of ~~receipt~~" means:

~~(a) Five business days after the date of mailing; or~~

~~(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.)~~ filing" as used in this chapter and RCW 90.58.140(6) has different meanings depending upon the type of local government decision that is being appealed.

(a) "Date of filing" of a local government's approval or denial of a substantial development permit, or local government's denial of a variance or conditional use permit, is the date of actual receipt by the department of the local government's decision.

(b) "Date of filing" of a local government's approval of a conditional use permit or variance is the date that the department transmits its final decision or order to local government.

(c) For substantial development permits filed simultaneously with approvals of conditional use permits or variances, the "date of filing" is the date that the department transmits its final decision or order on the variance or conditional use permit to local government.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board during regular office hours. Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties. Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.

(7) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or water subject to chapter 90.58 RCW.

(8) "Party" means:

(a) A person to whom any local government or agency decision is specifically directed; or

(b) A person named as a party to the appeal, or allowed to intervene or joined as a party by the board.

(9) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(10) "Petition for review" is a document that when properly filed with the board initiates an adjudicative proceeding before the board.

(11) "Presiding officer" means any member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or the vice-chairperson.

(12) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Facsimile transmission with mailing or submission to a commercial delivery service of copies on the same day. Service by facsimile is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to a delivery service of the copies.

(d) Commercial delivery service. Service by commercial delivery service is regarded as complete upon delivery to the delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-315 Board membership, function and jurisdiction. (1) **Members.** The board is made up of six members. Three members are also members of the pollution control hearings board and are appointed by the governor. A fourth member is appointed by the association of Washington cities and a fifth member is appointed by the association of county commissioners. The sixth member is the commissioner of public lands or the commissioner's designee.

(2) **Function and jurisdiction.** This board is a quasi-judicial body with powers of de novo review authorized by chapter 90.58 RCW to adjudicate or determine the following matters:

(a) Appeals from any person aggrieved by the granting, denying or rescinding of a permit issued or penalties incurred pursuant to chapter 90.58 RCW;

(b) Appeals of department rules, regulations or guidelines; and

(c) Appeals from department decisions to approve ~~(or)~~ or reject ~~((or modify))~~ a proposed master program or program amendment of local governments which are not planning under RCW 36.70A.040.

(3) This section is intended to be general and informational only and failure herein to list matters over which the board has jurisdiction shall not constitute a waiver or withdrawal of that jurisdiction.

AMENDATORY SECTION (Amending WSR 02-06-008, filed 2/22/02, effective 3/25/02)

WAC 461-08-320 Office hours, telephone number, telefacsimile number and address of the board. (1) The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. To the extent necessary for rule making, the appeals board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The board is organized within the Environmental and Land Use Hearings Office, ~~((4224 6th Avenue S.E., Building No. 2 Rowe Six, Lacey,))~~ 1111 Israel Road S.W., Tumwater, Washington. The mailing address is:

Shorelines Hearings Board
~~((4224 6th Avenue S.E., Building No. 2, Rowe Six))~~
 P.O. Box 40903
~~((Lacey))~~ Olympia, WA 98504-0903

(3) The telephone number of the board is ~~((360) 459-6327))~~ 360-664-9160. The telefacsimile number is ~~((360) 438-7699))~~ 360-586-2253.

(4) The office hours of the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-325 Public information about practice before the board and public records. (1) Questions about board procedures may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone or by telefacsimile.

(2) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter ~~((198-12))~~ 198-14 WAC are available for public inspection and copying during regular office hours at the environmental hearings office. The form for requests for public records is set forth in WAC ~~((198-12-140))~~ 198-14-050. Any person seeking to make copies of such public records may copy the documents at the environmental and land use hearings office for a reasonable charge per page.

(3) The environmental and land use hearings office maintains a web site with information on the shorelines hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a ~~((handbook))~~ brief description of the appeal process with helpful information for practice before the board, a set of frequently asked questions, sample forms, and links to the board's rules of ~~((practice))~~ procedure and other pertinent statutes and rules. This web site may be accessed via the internet at ~~((http://www.eho.wa.gov))~~ http://www.eluho.wa.gov.

AMENDATORY SECTION (Amending WSR 09-21-032, filed 10/13/09, effective 11/13/09)

WAC 461-08-330 Board decision making on appeals.

The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW 90.58.185, petitions for review that involve a single-family residence or an appurtenance to a single-family residence, including a dock or pier for a single-family residence, and petitions for review involving a penalty of fifteen thousand dollars or less, may be heard by a panel of three board members. The chair of the hearings board may also designate other cases for review by a short-board appeal panel. In designating these cases, the chair shall consider factors such as the complexity and precedential nature of the case and the efficiency and cost-effectiveness of using a short board versus a full board. A short-board appeal panel must have at least one but not more than two members of the pollution control hearings board. Two members of the panel must agree to issue a final decision. The decision of the panel is the final decision of the full board.

(2) **Full-board appeals.** All other appeals are full-board appeals. Four members of the board constitute a quorum for making a decision and may act even if the other two members are unavailable or have not yet been appointed.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental and land use hearings office to be the presiding officer.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 461-08-340 Where to file a petition for review and number of copies. (1) An adjudicative proceeding before the board is initiated by filing a petition for review with the board at the environmental and land use hearings office. The board shall acknowledge filing of the petition for review by a stamp and the board's stamp on the petition is prima facie evidence of the date of filing. The board may thereafter require that additional copies be filed.

(2) **Deadlines for filing a petition for review.** Different deadlines for filing a petition for review apply depending upon the type of shoreline decision or government action taken, and whether local government or the department makes the final decision.

(a) Any person aggrieved by a local government's decision granting, denying or rescinding a shoreline substantial development, or its denial of a shoreline conditional use or variance must file a petition for review with the board within twenty-one days of the "date of ((receipt by the applicant of a written notice from the department that the department has received the local government's shoreline decision)) filing" as defined in WAC 461-08-305 (4)(a).

(b) If local government approves a shoreline conditional use or variance permit, that action will be reviewed by the department, which will make the final decision on the conditional use or variance permit. Any person aggrieved by the department's decision to approve, approve with conditions or deny a conditional use or variance permit must file a petition

for review with the board within twenty-one days of the "date of ((receipt by the local government or applicant of the department's decision)) filing" as defined in WAC 461-08-305 (4)(b).

(c) When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of a shoreline conditional use permit and/or variance, a petition for review of the shoreline substantial development decision must be filed no later than twenty-one days from the "date of ((receipt by the local government or applicant of the department's decision on the conditional use or variance permit)) filing" as defined in WAC 461-08-305 (4)(c).

(d) A petition for review by a person who has incurred a penalty assessment must be filed with the board within thirty days of the date of receipt of the penalty.

(e) A petition for review by any person aggrieved by the department's final decision to approve, or reject a proposed master program, or master program amendment, by a local government that is not planning under the Growth Management Act, RCW 36.70A.040, must be filed with the board within thirty days of the date ((of the department's written notice to the local government of its final decision)) that the department publishes notice of its final decision under RCW 90.58.090(8).

(f) A petition for review of any rules, regulations, or guidelines adopted or approved by the department pursuant to chapter 90.58 RCW must be filed with the board within thirty days of the date of adoption or approval.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 461-08-345 Deadline for filing petition for review of permitting decisions by the department or attorney general. The department or the attorney general may, pursuant to RCW 90.58.180(2), obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition for review with the board and the appropriate local government within twenty-one days from the date ((of receipt of)) the final decision was filed as provided in RCW 90.58.140(6).

AMENDATORY SECTION (Amending WSR 02-06-010, filed 2/22/02, effective 3/25/02)

WAC 461-08-500 Scope and standard of review and burden of proof. (1) Hearings upon petitions for review shall be quasi-judicial in nature. The scope and standard of review shall be *de novo* unless otherwise required by law. However, the board shall conduct the following types of hearings on the record compiled by the department:

(a) Petitions for review of department decisions to adopt or approve rules, regulations or guidelines pursuant to chapter 90.58 RCW; and

(b) Petitions for review to approve ~~(;)~~ or reject ~~((or modify))~~ a proposed master program or master program amendment.

(2) The board shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

(3) Persons requesting review pursuant to RCW 90.58.-180 (1) and (2) shall have the burden of proof in the matter. The issuing agency shall have the initial burden of proof in cases involving penalties or regulatory orders.

WSR 13-21-069
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 16, 2013, 2:42 p.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Purpose: WAC 246-817-990 Dentist fees and renewal cycle, 246-853-990 Osteopathic fees and renewal cycle and 246-922-990 Podiatry fees and renewal cycle, the department of health is reducing application and license renewal fees; eliminating the practice plan fee for osteopathic physician assistants; increasing the surcharge for the impaired dentist program; and making housekeeping changes.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-990, 246-853-990, and 246-922-990.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.280.

Other Authority: HB 1534 (chapter 129, Laws of 2013).

Adopted under notice filed as WSR 13-16-031 on July 29, 2013.

Changes Other than Editing from Proposed to Adopted Version: At the request of stakeholders, the dentist faculty license application fee in WAC 246-817-990 has been reduced from \$560 to \$500, and the osteopathic physician assistant practice plan fee in WAC 246-853-990 has been eliminated.

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 2, Repealed 0.

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

Date Adopted: October 16, 2013.

Jessica Todorovich
 Deputy Secretary
 for John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

WAC 246-817-990 Dentist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application by examination*	
Initial application	\$(700.00) <u>500.00</u>
Original application - Without examination	
Initial application	((700.00)) <u>500.00</u>
Initial license	((700.00)) <u>500.00</u>
Faculty license application	((560.00)) <u>500.00</u>
Resident license application	115.00
Active license renewal:	
Renewal	((551.00)) <u>350.00</u>
Surcharge - Impaired dentist	((25.00)) <u>50.00</u>
Late renewal penalty	288.00
Expired license reissuance	300.00
Inactive license renewal:	
Renewal	((125.00)) <u>125.00</u>
Surcharge - Impaired dentist	<u>50.00</u>
((Inactive)) Late renewal penalty	50.00
Duplicate license	15.00

Title of Fee	Fee
Certification of license	25.00
Anesthesia permit	
Initial application	150.00
Renewal - (Three-year renewal cycle)	150.00
Late renewal penalty	75.00
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-853-990 Osteopathic fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
Endorsement application	\$(600.00) 425.00
Active license renewal	((600.00)) 425.00
Active late renewal penalty	250.00
Active expired license reissuance	250.00
Inactive license renewal	350.00
Expired inactive license reissuance	225.00
Inactive late renewal penalty	175.00
Endorsement/state exam application	500.00
Reexam	100.00
Certification of license	50.00
Limited license application	325.00
Limited license renewal	300.00
Temporary permit application	70.00
Duplicate certificate	20.00
Substance abuse monitoring surcharge	25.00
UW online access fee (HEAL-WA)	16.00

(4) The following nonrefundable fees will be charged for osteopathic physician assistants:

Title of Fee	Fee
Application	\$250.00
Renewal	250.00
Late renewal penalty	150.00
Expired license reissuance	100.00
Certification of license	30.00
((Practice plan	70.00))
Interim permit	200.00
License after exam	100.00
Duplicate certificate	20.00
Substance abuse monitoring surcharge	25.00
UW online access fee (HEAL-WA)	16.00

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-922-990 Podiatry fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except for postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$(975.00) 650.00
License renewal	((975.00)) 650.00
Inactive license renewal	175.00
Inactive late renewal penalty	100.00
Active late renewal penalty	300.00
Active expired license reissuance	300.00
Expired inactive license reissuance	67.50
Duplicate license	30.00
Certification of license	50.00
Retired active status	275.00
Temporary practice permit	50.00
Limited license application	400.00
Limited license renewal	475.00
Substance abuse monitoring surcharge	25.00
UW online access fee (HEAL-WA)	16.00

WSR 13-21-077
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 17, 2013, 12:12 p.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Purpose: WAC 246-822-990, 246-828-990 and 246-847-990, each rule adds an annual surcharge to credential fees to support the University of Washington Health Resources for Washington online resource library (HEAL-WA). The affected professions are dietitians and nutritionists, occupational therapists, occupational therapy assistants, and speech-language pathologists.

Citation of Existing Rules Affected by this Order: Amending WAC 246-822-990, 246-828-990, and 246-847-990.

Statutory Authority for Adoption: RCW 43.70.280.

Other Authority: ESB 5206 (chapter 249, Laws of 2013).

Adopted under notice filed as WSR 13-16-030 on July 29, 2013.

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

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

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

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

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

Date Adopted: October 15, 2013.

Jessica Todorovich
 Deputy Secretary
 for John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-822-990 Dietitian and nutritionist fees and renewal cycle. (1) Certificates must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title	Fee
Application	\$100.00
Renewal	70.00
<u>HEAL-WA* surcharge—Application and renewal</u>	<u>16.00</u>
Late renewal penalty	50.00
Expired certificate reissuance	50.00

Title	Fee
Duplicate certificate	30.00
Certification of certificate	30.00

* HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-828-990 Hearing instrument fitter/dispenser, audiologist, speech language pathologist, and speech language pathology assistant fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Practitioners must pay the following nonrefundable fees:

Audiologist or Speech Language Pathologist	
Fee Type:	Fee
Interim permit	
Application	\$165.00
Permit	140.00
Initial license	
Application	165.00
License	140.00
<u>HEAL-WA* surcharge</u>	<u>16.00</u>
Renewal	110.00
<u>HEAL-WA* surcharge</u>	<u>16.00</u>
Inactive license	60.00
Late renewal penalty	90.00
Expired license reissuance	140.00
Expired inactive license reissuance	90.00
Certification of license	30.00
Duplicate license	30.00

* Surcharge applies to speech language pathologists only. HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

Hearing Instrument Fitter/Dispenser	
Fee Type:	Fee
License application	\$165.00
Initial license	140.00
Renewal	110.00
Inactive license	56.00
Late renewal penalty	90.00
Expired license reissuance	136.00
Expired inactive license reissuance	86.00

Hearing Instrument Fitter/Dispenser

Fee Type:	Fee
Certification of license	30.00
Duplicate license	30.00

Speech Language Pathology Assistant

Fee Type:	Fee
Application	\$125.00
Renewal	70.00
Inactive credential	50.00
Late renewal penalty	50.00
Expired credential reissuance	50.00
Expired inactive credential reissuance	50.00
Certification of credential	15.00
Duplicate credential	15.00

Title of Fee	Fee
Expired license reissuance	70.00
Inactive license	15.00
Expired inactive license reissuance	14.00
Limited permit fee	45.00
Duplicate license	30.00
Certification of license	30.00

* HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-847-990 Occupational therapy fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for occupational therapist:

Title of Fee	Fee
Application and initial license fee	\$175.00
License renewal	145.00
<u>HEAL-WA* surcharge - Initial license and renewal (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
Limited permit fee	55.00
Late renewal fee	80.00
Expired license reissuance	80.00
Inactive license	15.00
Expired inactive license reissuance	15.00
Duplicate license	30.00
Certification of license	30.00

(3) The following nonrefundable fees will be charged for occupational therapy assistant:

Title of Fee	Fee
Application and initial license fee	175.00
License renewal	125.00
<u>HEAL-WA* surcharge - Initial license and renewal (\$16.00 per year for two-year cycle)</u>	<u>32.00</u>
Late renewal fee	70.00

**WSR 13-21-079
PERMANENT RULES
HEALTH CARE AUTHORITY
(Medicaid Program)**

[Filed October 17, 2013, 1:39 p.m., effective November 17, 2013]

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

Purpose: Effective March 18, 2013, the United States Department of Education revised 34 C.F.R. 300.154(d) related to parental consent for school districts to access public benefits or insurances. Parental consent is no longer required annually to pay for medicaid health care-related services under the Individuals with Disabilities Education Act (IDEA) Part B. For this reason, medicaid agency will no longer require annual prior, informal, written notification for parents or guardians by school districts to submit claims for third-party insurance or medicaid reimbursement. In addition, two changes were made in the definition section; and clarification was added that school districts' qualified health care providers must be enrolled with the medicaid agency, and that the supervising therapist must see the child face-to-face at the beginning of services and at least once more during the school year.

Citation of Existing Rules Affected by this Order: Amending WAC 182-537-0200, 182-537-0350, and 182-537-0600.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 34 C.F.R. 300.154(d), chapter 182-502 WAC.

Adopted under notice filed as WSR 13-18-033 on August 28, 2013.

Changes Other than Editing from Proposed to Adopted Version: "Mental retardation" now reads "intellectual disability"; "Disabilities Education Act" now reads "Individuals with Disabilities Education Act."

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

Date Adopted: October 17, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-05-017, filed 2/7/13, effective 3/10/13)

WAC 182-537-0200 School-based health care services for children in special education—Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Agency" - See WAC 182-500-0010.

"Amount, duration, and scope" - A written statement within the individualized education program (IEP) that addresses sufficiency of services to achieve a particular goal (a treatment plan for *how much* of a health care related service will be provided, *how long* a service will be provided, and *what* the service is).

"Assessment" - For purposes of this chapter an assessment is made-up of medically necessary tests given to an individual child by a licensed professional to evaluate whether a child is determined to be a child with a disability, and in need of special education and related services. Assessments are a part of the evaluation and re-evaluation processes and must accompany the IEP.

"Child with a disability" - For purposes of this chapter, a child with a disability is a child evaluated and determined to need special education and related services because of a disability in one or more of the following eligibility categories:

- Autism;
- Deaf/blindness;
- Developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services;
- Hearing loss (including deafness);
- ~~(Mental retardation)~~ Intellectual disability;
- Multiple disabilities;
- Orthopedic impairment;
- Other health impairment;
- Serious emotional disturbance (emotional behavioral disturbance);
- Specific learning disability;
- Speech or language impairment;
- Traumatic brain injury; and
- Visual impairment (including blindness).

"Core provider agreement" - The basic contract the agency holds with providers serving medical assistance clients.

"Direct health care related services" - Services provided directly to a child either one-on-one or in a group setting. This does not include special education.

"Evaluation" - Procedures used to determine whether a child has a disability, and the nature and extent of the special

education and related services are needed. (See WAC 392-172A-03005 through 392-172A-03080.)

"Face-to-face supervision" or "direct supervision" - Supervision that is conducted on-site, in-view, by an experienced licensed health care professional to assist the supervisee to develop the knowledge and skills to practice effectively, including administering the treatment plan.

"Fee-for-service" - See WAC 182-500-0035.

"Health care related services" - Developmental, corrective, and other supportive services required to assist an eligible child to benefit from special education. For the purposes of the school-based health care services program, related services include:

- Audiology;
- Counseling;
- Nursing;
- Occupational therapy;
- Physical therapy;
- Psychological assessments; and
- Speech-language therapy.

"Individualized education program (IEP)" - A written statement of an educational program for a child eligible for special education. (See WAC 392-172A-03090 through 392-172A-03135.)

"Medically necessary" - See WAC 182-500-0070.

"National provider identifier (NPI)" - See WAC 182-500-0075.

"Plan of care" or "treatment plan" - A written document that outlines the health care related needs of a child in special education. The plan is based on input from the health care professional and written approval from the parent or guardian.

"Provider" - See WAC 182-500-0085.

"Qualified health care provider" - See WAC 182-537-0350.

"Reevaluation" - Procedures used to determine whether a child continues to be in need of special education and related services. (See WAC 392-172A-03015.)

"Regular consultation" - Face-to-face contact between the supervisor and supervisee that occurs no less than once per month.

"Revised Code of Washington (RCW)" - Washington state law.

"School-based health care services program" or "SBS" - School-based health care services for children in special education that are diagnostic, evaluative, habilitative, rehabilitative in nature ~~(, and must be based on medical necessity)~~; are based on the child's medical needs; and are included in the child's individualized education plan (IEP). The agency pays school districts for school-based health care services delivered to ~~(medicaid-enrolled)~~ medicaid-eligible children in special education ~~(in accordance with)~~ under Section ((1905)) 1903(c) of the Social Security Act, and to individuals under the Individuals with Disabilities Education Act (IDEA) Part B.

"School-based health care services program specialist" or "SBHS specialist" - An individual identified in the interagency agreement school district reimbursement contract.

"Special education" - Specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education. Refer to WAC 392-172A-01175.

"Washington Administrative Code (WAC)" - Codified rules of the state of Washington.

AMENDATORY SECTION (Amending WSR 13-05-017, filed 2/7/13, effective 3/10/13)

WAC 182-537-0350 School-based health care services for children in special education—Provider qualifications. The medicaid agency pays school districts to provide certain health care-related services (see WAC 182-537-0400). These services must be delivered by qualified health care providers who are enrolled with the medicaid agency and hold a current professional license:

(1) Audiology services must be delivered by a licensed audiologist.

(2) Counseling services must be delivered by:

(a) A licensed independent social worker (LICSW);

(b) A licensed advanced social worker (LIACSW);

(c) A licensed mental health counselor (LMHC); or

(d) A licensed mental health counselor associate (LMHCA) under the supervision of a department of health-approved licensed supervisor.

(3) Nursing services must be delivered by:

(a) A licensed registered nurse (RN);

(b) A licensed practical nurse (LPN) who is supervised by an RN; or

(c) A noncredentialed school employee who is delegated certain limited health care tasks by an RN and is supervised according to professional practice standards (see RCW 18.79.260).

(4) Occupational therapy services must be delivered by:

(a) A licensed occupational therapist (OT); or

(b) A licensed occupational therapist assistant (OTA) who is supervised by a licensed occupational therapist.

(5) Physical therapy services must be delivered by:

(a) A licensed physical therapist (PT); or

(b) A licensed physical therapist assistant (PTA) who is supervised by a licensed physical therapist.

(6) Psychological services must be delivered by a licensed psychologist.

(7) Speech therapy services must be delivered by:

(a) A licensed speech-language pathologist (SLP); or

(b) A speech-language pathology assistant (SLPA) who:

(i) Has graduated from a speech-language pathology assistant program ~~(;)~~ at a board-approved institution; and

(ii) Is directly supervised ~~((by))~~ by a speech-language pathologist with a current certificate of clinical competence (CCC).

(8) For services provided under the supervision of a physical therapist, occupational therapist or speech-language pathologist, nurse, or counselor/social worker, the following requirements apply:

(a) The nature, frequency, and length of the supervision must be provided in accordance with professional practice

standards, and be sufficient to ensure a child receives quality therapy services;

(b) The supervising therapist must see the child face-to-face at the beginning of services and ~~((periodically))~~ at least once more during the school year;

(c) At a minimum, supervision must be face-to-face communication between the supervisor and the supervisee once per month. Supervisors are responsible for approving and cosigning all treatment notes written by the supervisee before submitting claims for payment; and

(d) Documentation of supervisory activities must be recorded and available to the agency or its designee upon request.

(9) ~~((It is the responsibility of))~~ The school district ~~((to))~~ must assure providers meet the professional licensing and certification requirements.

(10) Licensing exemptions found in the following regulations do not apply to federal medicaid reimbursement for the services indicated below:

(a) Counseling as found in RCW 18.225.030;

(b) Psychology as found in RCW 18.83.200;

(c) Social work as found in RCW 18.320.010; and

(d) Speech therapy as found in RCW 18.35.195.

AMENDATORY SECTION (Amending WSR 13-05-017, filed 2/7/13, effective 3/10/13)

WAC 182-537-0600 School-based health care services for children in special education—School district requirements for billing and payment. To receive payment from the medicaid agency for providing school-based health care services to eligible children, a school district must:

(1) Have a current, signed core provider agreement (CPA) with the agency. A copy of the CPA must be on-site within the school district~~((;))~~.

(2) Have a current, signed, and executed interagency agreement with the agency. A copy of the agreement must be on-site within the school district~~((;))~~ for review as requested.

(3) Meet the applicable requirements in chapter 182-502 WAC~~((; and))~~.

(4) Comply with the agency's current, published ProviderOne billing and resource guide~~((;))~~.

(5) Bill according to the agency's current, published school-based health care services for children in special education medicaid provider guide, the school-based health care services fee schedule, and the intergovernmental transfer (IGT) process. After school districts receive their invoice from the agency, they ~~((have))~~ must provide their local match to the agency within one hundred twenty days ~~((to provide the agency with their local match;))~~.

(6) Meet the applicable requirements in chapter 182-537 WAC~~((;))~~.

(7) Provide only health care related services identified through a current individualized education program (IEP)~~((;))~~.

(8) Use only licensed health care professionals, as described in WAC 182-537-0350 and the school-based care services for children in special education medicaid provider guide~~((;))~~.

(9) Meet documentation requirements in WAC 182-537-0700(and

~~(10) Give parents or guardians prior, informal, written notification on an annual basis, that the school district may be submitting claims for third-party insurance or medicaid reimbursement).~~

WSR 13-21-104
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed October 21, 2013, 1:25 p.m., effective November 21, 2013]

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

Purpose: Initiative 502 legalized marijuana for recreational use under certain conditions. I-502 also created three new license types and requirements for each license type. Requirements were also created for the producing, processing, and retail sales of marijuana. This rule making is the first rule making to implement I-502.

This is a new industry in the state of Washington. Rules are needed to clarify the new laws created by I-502 so the public is aware of the qualifications and requirements for marijuana licenses in the state of Washington.

Statutory Authority for Adoption: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345.

Adopted under notice filed as WSR 13-18-086 on September 4, 2013.

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 49, 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 49, 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: October 16, 2013.

Sharon Foster
Chairman

Chapter 314-55 WAC

**MARIJUANA LICENSES, APPLICATION PROCESS,
REQUIREMENTS, AND REPORTING**

NEW SECTION

WAC 314-55-005 What is the purpose of this chapter? The purpose of this chapter is to outline the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana licensee.

NEW SECTION

WAC 314-55-010 Definitions. Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(6) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

(7) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

(8) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(9) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(12) "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

(13) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent,

destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, and insecticides.

(14) "Perimeter" means a property line that encloses an area.

(15) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

(16) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

(17) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

(18) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

(19) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

(20) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

(21) "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

(22) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

NEW SECTION

WAC 314-55-015 General information about marijuana licenses. (1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana-infused products using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

NEW SECTION

WAC 314-55-020 Marijuana license qualifications and application process. Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(3) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for

paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

(4) The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(5) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

(6) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

(7) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of

Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement. Managers or agents who manage a licensee's place of business must also meet the three month residency requirement.

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation including growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

(10) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign

an attestation that, under penalty of denial or loss of licensure, that representation is correct.

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

NEW SECTION

WAC 314-55-035 What persons or entities have to qualify for a marijuana license? A marijuana license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

True party of interest	Persons to be qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> All general partners and their spouses. All limited partners and spouses.
Limited liability company	<ul style="list-style-type: none"> All members and their spouses. All managers and their spouses.
Privately held corporation	<ul style="list-style-type: none"> All corporate officers (or persons with equivalent title) and their spouses. All stockholders and their spouses.
Publicly held corporation	All corporate officers (or persons with equivalent title) and their spouses. All stockholders and their spouses.
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person (inclusive of financiers) that are expecting a percentage of the profits in exchange for a monetary loan or expertise.	Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year.

True party of interest	Persons to be qualified
	Any entity or person who exercises control over the licensed business in exchange for money or expertise. For the purposes of this chapter: <ul style="list-style-type: none"> "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's pre-bonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(3) **Financiers** - The board will conduct a financial investigation as well as a criminal background of financiers.

(4) **Persons who exercise control of business** - The board will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.

NEW SECTION

WAC 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board will administratively close the application.

(3) The board may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment. This exception to the criminal history point assignment will expire on July 1, 2014:

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the board within fourteen days.

NEW SECTION

WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license? The board will conduct an investigation of all applicants' marijuana law or rule administrative violation history. The board will not normally issue a marijuana license to a person, or to an entity with a true party of interest,

who has the following violation history; or to any person who has demonstrated a pattern of disregard for laws or rules.

Violation Type (see WAC 314-55-515)	Period of Consideration
<ul style="list-style-type: none"> Three or more public safety violations; 	<ul style="list-style-type: none"> Violations issued within three years of the date the application is received by the board's licensing and regulation division.
<ul style="list-style-type: none"> Four or more regulatory violations; or 	
<ul style="list-style-type: none"> One to four, or more license violations. 	<ul style="list-style-type: none"> Violations issued within the last three years the true party(ies) of interest were licensed.

NEW SECTION

WAC 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license. Following is a list of reasons the board may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50.331, the board has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

(1) Failure to meet qualifications or requirements for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.

(2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities.

The distance shall be measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds of the entities listed below:

- (a) Elementary or secondary school;
- (b) Playground;
- (c) Recreation center or facility;
- (d) Child care center;
- (e) Public park;
- (f) Public transit center;
- (g) Library; or
- (h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

(12) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

(13) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

(14) The operating plan does not demonstrate, to the satisfaction of the board, the applicant is qualified for a license.

(15) Failure to operate in accordance with the board approved operating plan.

(16) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

NEW SECTION

WAC 314-55-070 Process if the board denies a marijuana license application. If the board denies a marijuana license application, the applicants may:

(1) Request an administrative hearing per chapter 34.05 RCW, the Administrative Procedure Act.

(2) Reapply for the license no sooner than one year from the date on the final order of denial.

NEW SECTION

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is limited to two million square feet. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 – Less than two thousand square feet;
- (b) Tier 2 – Two thousand square feet to ten thousand square feet; and
- (c) Tier 3 – Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

- (a) Outdoor or greenhouse grows – One and one-quarter of a year's harvest; or
- (b) Indoor grows – Six months of their annual harvest.

NEW SECTION

WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license? (1) A marijuana processor license allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.

(2) A marijuana processor is allowed to blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(4) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(5) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

(6) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(7) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

NEW SECTION

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) Internet sales and delivery of product is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

NEW SECTION

WAC 314-55-081 Who can apply for a marijuana retailer license? (1) Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the liquor control board will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. Once the number of locations per city and at large have been identified, the eligible applicants will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party.

(2) The number of marijuana retail licenses determined by the board can be found on the liquor control board web site at www.liq.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses with no multiple location licensee allowed more than thirty-three percent of the allowed licenses in any county or city.

(4) The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana retailer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

NEW SECTION

WAC 314-55-082 Insurance requirements. Marijuana licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the marijuana licensees. Marijuana licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(1) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the

licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. The limits of liability insurance shall not be less than one million dollars.

(2) **Insurance carrier rating:** The insurance required in subsection (1) of this section shall be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) **Additional insured.** The board shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

NEW SECTION

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a complete video surveillance with minimum camera resolution of 640x470 pixel and must be internet protocol (IP) compatible and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.

(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.

(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured on-site in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.

(f) All marijuana or marijuana-infused products that are intended to be removed or transported from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

(g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts and marijuana-infused products must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana-infused product is to be destroyed;

(d) When usable marijuana or marijuana-infused products are transported;

(e) Any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed or a lot or batch of marijuana or marijuana-infused product may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before a lot of marijuana is transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before useable marijuana, or marijuana-infused products are transported from a processor to a retailer.

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happen when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract and marijuana-infused products;

(k) All point of sale records;

(l) Marijuana excise tax records;

(m) All samples sent to an independent testing lab and the quality assurance test results;

(n) All free samples provided to another licensee for purposes of negotiating a sale;

(o) All samples used for testing for quality by the producer or processor;

(p) Samples containing usable marijuana provided to retailers;

(q) Samples provided to the board or their designee for quality assurance compliance checks; and

(r) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.** Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must immediately record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the

amount of each sample and the retailer receiving the sample in the traceability system.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(f) Producers may sample one gram of useable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the useable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection (3) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

NEW SECTION

WAC 314-55-084 Production of marijuana. Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:

(1) Materials listed or registered by the Washington state department of agriculture (WSDA) or Organic Materials Review Institute (OMRI) as allowable for use in organic production, processing, and handling under the U.S. Department of Agriculture's national organics standards, also called the

National Organic Program (NOP), consistent with requirements at 7 C.F.R. Part 205.

(2) Pesticides registered by WSDA under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana. Pesticides must be used consistent with the label requirements.

(3) Commercial fertilizers registered by WSDA under chapter 15.54 RCW.

(4) Potting soil and other growing media available commercially in the state of Washington may be used in marijuana production. Producers growing outdoors are not required to meet land eligibility requirements outlined in 7 C.F.R. Part 205.202.

NEW SECTION

WAC 314-55-085 What are the transportation requirements for a marijuana licensee? (1) **Notification of shipment.** Upon transporting any marijuana or marijuana product, a producer, processor or retailer shall notify the board of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.

(3) **Transportation manifest.** A complete transport manifest containing all information required by the board must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location.

(5) **Transportation of product.** Marijuana or marijuana products that are being transported must meet the following requirements:

- (a) Only the marijuana licensee or an employee of the licensee may transport product;
- (b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;
- (c) Sealed packages or containers cannot be opened during transport;
- (d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the marijuana or marijuana products;
- (e) Any vehicle transporting marijuana or marijuana products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product.

NEW SECTION

WAC 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises? (1) **Notices regarding persons under twenty-one years of age** must be conspicuously posted on the premises as follows:

Type of licensee	Sign must contain the following language:	Required location of sign
Marijuana producer, marijuana processor, and marijuana retailer	"Persons under twenty-one years of age not permitted on these premises."	Conspicuous location at each entry to premises.

The board will provide the required notices, or licensees may design their own notices as long as they are legible and contain the required language.

(2) **Signs provided by the board prohibiting opening a package of marijuana or marijuana-infused product in public or consumption of marijuana or marijuana-infused products in public,** must be posted as follows:

Type of premises	Required location of sign
Marijuana retail	Posted in plain view at the main entrance to the establishment.

(3) **The premises' current and valid master license with appropriate endorsements** must be conspicuously posted on the premises and available for inspection by liquor enforcement officers.

NEW SECTION

WAC 314-55-087 What are the recordkeeping requirements for marijuana licensees? (1) Marijuana licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a three-year period and must be made available for inspection if requested by an employee of the liquor control board:

- (a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;
- (b) Bank statements and canceled checks for any accounts relating to the licensed business;
- (c) Accounting and tax records related to the licensed business and each true party of interest;
- (d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;
- (e) All employee records, to include training;
- (f) Records of each daily application of pesticides applied to the marijuana plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:
 - (i) Full name of each employee who applied the pesticide;
 - (ii) The date the pesticide was applied;
 - (iii) The name of the pesticide or product name listed on the registration label which was applied;
 - (iv) The concentration and total amount of pesticide per plant; and

(v) For outdoor production, the concentration of pesticide that was applied to the field. Liquid applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

(g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing marijuana;

(h) Production and processing records, including harvest and curing, weighing, destruction of marijuana, creating batches of marijuana-infused products and packaging into lots and units;

(i) Records of each batch of extracts or infused marijuana products made, including at a minimum, the lots of usable marijuana or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product produced, such as hash oil, shatter, tincture, infused dairy butter, etc.;

(j) Transportation records as described in WAC 314-55-085;

(k) Inventory records;

(l) All samples sent to an independent testing lab and the quality assurance test results;

(m) All free samples provided to another licensee for purposes of negotiating a sale;

(n) All samples used for testing for quality by the producer or processor;

(o) Sample jars containing usable marijuana provided to retailers; and

(p) Records of any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, marijuana-infused product, or other item containing marijuana.

(2) If the marijuana licensee keeps records within an automated data processing (ADP) and/or point-of-sale (POS) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP and/or POS system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If print-outs of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP and/or POS portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(3) The provisions contained in subsections (1) and (2) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

NEW SECTION

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana licensees must submit monthly report(s) and payments to the board. The required monthly reports must be:

(a) On a form or electronic system designated by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the board.

A marijuana producer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale to a licensed marijuana processor.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale of usable marijuana and marijuana-infused product to a licensed marijuana retailer.

(4) **Marijuana retailer's licensees:** On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana retailer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each retail sale of usable marijuana or marijuana-infused products.

NEW SECTION

WAC 314-55-092 What if a marijuana licensee fails to report or pay, or reports or pays late? (1) If a marijuana licensee does not submit its monthly reports and payment(s) to the board as required in WAC 314-55-089: The licensee is subject to penalties.

Penalties: A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holi-

day, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

(2) Failure to make a report and/or pay the license taxes and/or penalties in the manner and dates outlined in WAC 314-55-089 will be sufficient grounds for the board to suspend or revoke a marijuana license.

NEW SECTION

WAC 314-55-095 Marijuana servings and transaction limitations. Marijuana dosage and transaction limitations are as follows:

(1) **Single serving.** A single serving of a marijuana-infused product amounts to ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(2) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product meant to be eaten or swallowed is ten servings or one hundred milligrams of active THC, or Delta 9. A single unit of marijuana-infused extract for inhalation cannot exceed one gram.

(3) **Transaction limitation.** A single transaction is limited to one ounce of usable marijuana, sixteen ounces of marijuana-infused product in solid form, seven grams of marijuana-infused extract for inhalation, and seventy-two ounces of marijuana-infused product in liquid form for persons twenty-one years of age and older.

NEW SECTION

WAC 314-55-097 Marijuana waste disposal—Liquids and solids. (1) Solid and liquid wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

(2) Wastewater generated during marijuana production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it designates as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC 315-55-104).

(ii) Waste solvents used in the marijuana process (per WAC 315-55-104).

(iii) Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.

(iv) Marijuana extract that fails to meet quality testing.

(b) Marijuana wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A marijuana plant, usable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Marijuana waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, retail facility, or laboratory. Disposal of the marijuana waste rendered unusable must follow the methods under subsection (6) of this section.

(a) Wastes that must be rendered unusable prior to disposal include, but are not limited to, the following:

(i) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

(ii) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

(iii) Solid marijuana sample plant waste possessed by third-party laboratories accredited by the board to test for quality assurance that must be disposed of.

(iv) Other wastes as determined by the LCB.

(b) A producer or processor must provide the board a minimum of seventy-two hours notice in the traceability system described in WAC 314-55-083(4) prior to rendering the product unusable and disposing of it.

(5) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Other methods to render marijuana waste unusable must be approved by LCB before implementation.

Material used to grind with the marijuana falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Marijuana waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

(i) Food waste;

(ii) Yard waste;

(iii) Vegetable based grease or oils; or

(iv) Other wastes as approved by the LCB.

(b) Noncompostable mixed waste: Marijuana waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

(i) Paper waste;

(ii) Cardboard waste;

(iii) Plastic waste;

(iv) Soil; or

(v) Other wastes as approved by the LCB.

(6) Marijuana wastes rendered unusable following the method described in subsection (4) of this section can be disposed.

(a) Disposal of the marijuana waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.

(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the marijuana waste rendered unusable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.

(c) A record of the final destination of marijuana waste rendered unusable.

NEW SECTION

WAC 314-55-099 Standardized scales. (1) Marijuana producer and processor licensees must have at least one scale on the licensed premises for the traceability and inventory of products.

(2) The scales and other measuring devices are subject to chapter 19.94 RCW, and must meet the requirements of the most current version of chapters 16-662 and 16-664 WAC.

(3) Licensees must register scales on a business license application with business license services through the department of revenue as required under chapter 19.94 RCW.

NEW SECTION

WAC 314-55-102 Quality assurance testing. (1) A person with financial interest in an accredited third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests.

(2) As a condition of accreditation, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in

the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(3) As a condition of accreditation, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(4) As a condition of accreditation, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab.

(5) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(6) The general body of required quality assurance tests for marijuana flowers, infused products, and extracts may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(7) Table of required quality assurance tests.

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Flowers to be sold as usable marijuana (see note below)	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (nonsolvent) like kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources	None	None
Extract (nonsolvent) like kief, hashish, bubble hash or infused dairy butter, or oils or fats derived from natural sources	1. Potency analysis 2. Foreign matter inspection 3. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (solvent based), made with a CO ₂ extractor, or with a food grade ethanol or glycerin	1. Foreign matter inspection 2. Microbiological screening	Up to 7 grams

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Extract (solvent based) made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade ethanol	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade glycerin or propylene glycol	1. Potency analysis	Up to 1 gram
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis	1 unit

(8) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (7) of this section for the purposes of completing required quality assurance tests. Labs meeting the board's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab.

(9) Labs meeting the board's accreditation requirements are not limited in the amount of useable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(10) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (7) of this section for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board. All costs of this testing will be borne by the producer or processor.

(11) No lot of usable flower or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing.

(12) Any useable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" useable marijuana or marijuana-infused product will be allowed to be sold.

(13) If a lot of marijuana flowers fail a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also. Upon approval of the board, a lot that fails a quality assurance test may be used to make a CO₂ or solvent

based extract. After processing, the CO₂ or solvent based extract must still pass all required quality assurance tests in WAC 314-55-102.

(14) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

NEW SECTION

WAC 314-55-104 Marijuana processor license extraction requirements. (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in a spark free environment with proper ventilation, and follow all applicable local fire, safety and building codes in processing and the storage of the solvents.

(3) Processors may use a professional grade closed loop CO₂ gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch and follow all applicable local fire, safety and building codes in processing and the storage of the solvents. The CO₂ must be of at least ninety-nine percent purity.

(4) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused

dairy butter, or oils or fats derived from natural sources, and other extracts.

(5) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

(6) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(7) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

NEW SECTION

WAC 314-55-105 Packaging and labeling requirements. (1) All usable marijuana and marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(2) Any container or packaging containing usable marijuana or marijuana products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana or marijuana product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the accredited third-party testing lab and results of the required quality assurance test for any usable marijuana or other marijuana product the customer is considering purchasing.

(4) usable marijuana and marijuana products may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(5) The accredited third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.

(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

- (a) Lot number;
- (b) UBI number of the producer; and
- (c) Weight of the product.

(7) Marijuana-infused products meant to be eaten, swallowed, or inhaled, must be packaged in child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act or use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamper-proof measure. Marijuana-infused product in liquid form may also be sealed using a metal crown cork style bottle cap.

(8) A processor may provide a retailer free samples of usable marijuana packaged in a sample jar protected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of usable marijuana. The

sample jar and the usable marijuana within may not be sold to a customer and must be either returned to the licensed processor who provide the usable marijuana and sample jar or destroyed by the retailer after use in the manner described in WAC 314-55-097 and noted in the traceability system.

(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.

(10) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(11) All usable marijuana when sold at retail must include accompanying material that contains the following warnings that state:

(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";

(b) "There may be health risks associated with consumption of this product";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

(12) All marijuana-infused products sold at retail must include accompanying material that contains the following warnings that state:

(a) "There may be health risks associated with consumption of this product";

(b) "This product is infused with marijuana or active compounds of marijuana";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours";

(g) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to the infused product; and

(h) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(13) Labels affixed to the container or package containing usable marijuana sold at retail must include:

(a) The business or trade name and Washington state unified business identifier number of the licensee that produced, processed, and sold the usable marijuana;

(b) Lot number;

(c) Concentration of THC, THCA, CBD, including a total of active cannabinoids (potency profile);

- (d) Net weight in ounces and grams or volume as appropriate;
- (e) Warnings that state: "This product has intoxicating effects and may be habit forming";
- (f) Statement that "This product may be unlawful outside of Washington state";
- (g) Date of harvest.
- (h) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.
- (14) **Sample label mock up for a container or package containing usable marijuana sold at retail with required information:**

UBI: 1234567890010001
Lot#: 1423

Date of Harvest: 4-14

The Best Resins

Blueberry haze

16.7 % THC 1.5% CBD

Warning – This product has intoxicating effect and may be habit forming

THIS PRODUCT IS UNLAWFUL OUTSIDE WASHINGTON STATE

Net weight: 7 grams

- (15) **Labels affixed to the container or package containing marijuana-infused products sold at retail must include:**
- (a) The business or trade name and Washington state unified business identifier number of the licensee that produced, processed, and sold the usable marijuana;
- (b) Lot numbers of all base marijuana used to create the extract;
- (c) Batch number;
- (d) Date manufactured;
- (e) Best by date;
- (f) Recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;
- (g) Net weight in ounces and grams, or volume as appropriate;
- (h) List of all ingredients and any allergens;
- (i) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours."
- (j) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;
- (k) Warnings that state: "This product has intoxicating effects and may be habit forming";

- (l) Statement that "This product may be unlawful outside of Washington state";
- (m) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.
- (16) **Sample label mock up (front and back) for a container or package containing marijuana-infused products sold at retail with required information:**

(Front of label)

UBI: 1234567890010001
Batch#: 5463

The Best Resins

Space cake

CAUTION: when eaten the effects of this product can be delayed by as much as two hours.

Net weight: 6oz (128grams)

THIS PRODUCT IS UNLAWFUL OUTSIDE WASHINGTON STATE

(Back of label)

Manufactured at: 111 Old Hwy Rd., Mytown, WA on 1/14/14 Best by 2/1/14

INGREDIENTS: Flour, Butter, Canola oil, Sugar, Chocolate, Marijuana, Strawberries,
CONTAINS ALLERGENS: Milk, Wheat,

Serving size: 10 MG of THC

This product contains 10 servings and a total of 100 MG of THC

Warning- This product has intoxicating effects and may be habit forming

NEW SECTION

WAC 314-55-120 Ownership changes. (1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-55-035 for the definition of "true party of interest"):

Type of change	Type of application	Fee
Change in the qualifying persons in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application.	Application fee and annual fee for current license privilege.
Change in the qualifying persons for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder.	\$75
Change in the qualifying persons in a limited liability company.	Application for change of limited liability company member and/or manager.	\$75

(2) The board may inquire into all matters in connection with any such sale of stock/units or proposed change in officers/members.

NEW SECTION

WAC 314-55-125 Change of location. (1) Changing your marijuana license to a new location requires an application, per the process outlined in WAC 314-55-020.

(2) A change of location occurs any time a move by the licensee results in any change to the physical location address.

NEW SECTION

WAC 314-55-130 Change of business name. (1) If you wish to change the name of your business, you must apply for a change of trade name with the department of revenue, business license service.

(2) If you wish to change your corporation or limited liability company name, you must apply for a change of name through the secretary of state.

(3) See chapter 434-12 WAC for guidelines for trade names.

NEW SECTION

WAC 314-55-135 Discontinue marijuana sales. You must notify the board's enforcement and education division in writing if you plan to stop doing business for more than thirty days, or if you plan to permanently discontinue marijuana sales.

NEW SECTION

WAC 314-55-140 Death or incapacity of a marijuana licensee. (1) The appointed guardian, executor, administrator, receiver, trustee, or assignee must notify the board's licensing and regulation division in the event of the death, incapacity, receivership, bankruptcy, or assignment for benefit of creditors of any licensee.

(2) The board may give the appointed guardian, executor, administrator, receiver, trustee, or assignee written approval to continue marijuana sales on the licensed business premises for the duration of the existing license and to renew the license when it expires.

(a) The person must be a resident of the state of Washington.

(b) A criminal background check may be required.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a marijuana license for the business.

NEW SECTION

WAC 314-55-145 Are marijuana license fees refundable? When a license is suspended or canceled, or the licensed business is discontinued, the unused portion of the marijuana license fee will not be refunded.

NEW SECTION

WAC 314-55-147 What hours may a marijuana retailer licensee conduct sales? A marijuana retailer licensee may sell usable marijuana, marijuana-infused products, and marijuana paraphernalia between the hours of 8 a.m. and 12 a.m.

NEW SECTION

WAC 314-55-150 What are the forms of acceptable identification? (1) Following are the forms of identification that are acceptable to verify a person's age for the purpose of purchasing marijuana:

(a) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the District of Columbia, or "identocard" issued by the Washington state department of licensing per RCW 46.20.117;

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport;

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(2) The identification document is not acceptable to verify age if expired.

NEW SECTION

WAC 314-55-155 Advertising. (1) **Advertising by retail licensees.** The board limits each retail licensed premises to one sign identifying the retail outlet by the licensee's business name or trade name that is affixed or hanging in the windows or on the outside of the premises that is visible to the general public from the public right of way. The size of the sign is limited to sixteen hundred square inches.

(2) **General.** All marijuana advertising and labels of useable marijuana and marijuana-infused products sold in the state of Washington may not contain any statement, or illustration that:

- (a) Is false or misleading;
- (b) Promotes over consumption;
- (c) Represents the use of marijuana has curative or therapeutic effects;
- (d) Depicts a child or other person under legal age to consume marijuana, or includes:
 - (i) Objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or
 - (ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(3) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, usable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:

- (a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older;
- (b) On or in a public transit vehicle or public transit shelter; or
- (c) On or in a publicly owned or operated property.
- (4) Giveaways, coupons, and distribution of branded merchandise are banned.
- (5) All advertising must contain the following warnings:
 - (a) "This product has intoxicating effects and may be habit forming.";
 - (b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";
 - (c) "There may be health risks associated with consumption of this product."; and
 - (d) "For use only by adults twenty-one and older. Keep out of the reach of children."

NEW SECTION

WAC 314-55-160 Objections to marijuana license applications. (1) **How can persons, cities, counties, tribal governments, or port authorities object to the issuance of a marijuana license?** Per RCW 69.50.331, the board will notify cities, counties, tribal governments, and port authorities of the following types of marijuana applications. In addition to these entities, any person or group may comment in writing to the board regarding an application.

Type of application	Entities the board will/may notify
<ul style="list-style-type: none"> • Applications for an annual marijuana license at a new location. 	<ul style="list-style-type: none"> • Cities and counties in which the premises is located will be notified. Tribal governments and port authorities in which the premises is located may be notified.
<ul style="list-style-type: none"> • Applications to change the class of an existing annual marijuana license. 	
<ul style="list-style-type: none"> • Changes of ownership at existing licensed premises. 	<ul style="list-style-type: none"> • Cities and counties in which the premises is located will be notified. Tribal governments and port authorities in which the premises is located may be notified.

(2) **What will happen if a person or entity objects to a marijuana license application?** When deciding whether to issue or deny a marijuana license application, the board will give substantial weight to input from governmental jurisdictions in which the premises is located based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises; and other persons or groups. Note: Per RCW 69.50.331, the board shall not issue a new marijuana license if any of the following are within one thousand feet of the premises to be licensed: Any elementary or secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, libraries, game arcade where admission is not restricted to persons twenty-one years of age or older.

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the board, in its discretion, grants the governmental jurisdiction(s) an adju-

dicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a marijuana license application based on the objection from a governmental jurisdiction, the applicant(s) may either:

(i) Reapply for the license no sooner than one year from the date on the final order of denial; or

(ii) Submit a written request on a form provided by the board for an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. The request must be received within twenty days of the date the intent to deny notification was mailed.

NEW SECTION

WAC 314-55-165 Objections to marijuana license renewals. (1) How can local cities, counties, tribal governments, or port authorities object to the renewal of a marijuana license?

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual marijuana licenses in that jurisdiction that are up for renewal.

(b) Per RCW 69.50.331, if a county, city, tribal government, or port authority wants to object to the renewal of a marijuana license in its jurisdiction, it must submit a letter to the board detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

(c) The county, city, tribal government, or port authority may submit a written request to the board for an extension for good cause shown.

(d) This letter must be received by the board at least thirty days before the marijuana license expires. The objection must state specific reasons and facts that show issuance of the marijuana license at the proposed location or to the applicant business how it will detrimentally impact the safety, health, or welfare of the community.

(e) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(f) Objections from the public will be referred to the appropriate city, county, tribal government, or port authority for action under subsection (2) of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate city, county, tribal government, or port authority. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

(2) **What will happen if a city, county, tribal government, or port authority objects to the renewal of a marijuana license?** The board will give substantial weight to a city, county, tribal government, or port authority objection to a marijuana license renewal of a premises in its jurisdiction based upon chronic illegal activity associated with the licensee's operation of the premises. Based on the jurisdiction's input and any information in the licensing file, the board will decide to either renew the marijuana license, or to pursue nonrenewal.

(a) Board decides to renew the marijuana license:	(b) Board decides to pursue nonrenewal of the marijuana license:
<p>(i) The board will notify the jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.</p> <p>(ii) The jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to renew notification was mailed. If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.</p>	<p>(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.</p> <p>(ii) The licensee may contest the nonrenewal action and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to deny notification was mailed.</p> <p>(iii) If the licensee requests a hearing, the governmental jurisdiction will be notified.</p> <p>(iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the marijuana license until a final decision is made.</p>

NEW SECTION

WAC 314-55-505 What are the procedures for notifying a licensee of an alleged violation of a liquor control board statute or regulation? (1) When an enforcement officer believes that a licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee, licensee's agent, or employee.

(2) The AVN notice will include:

(a) A complete narrative description of the violation(s) the officer is charging;

(b) The date(s) of the violation(s);

(c) A copy of the law(s) and/or regulation(s) allegedly violated;

(d) An outline of the licensee's options as outlined in WAC 314-55-510; and

(e) The recommended penalty.

(i) If the recommended penalty is the standard penalty, see WAC 314-55-520 through 314-55-535 for licensees.

(ii) For cases in which there are aggravating or mitigating circumstances, the penalty may be adjusted from the standard penalty.

NEW SECTION

WAC 314-55-506 What is the process once the board summarily suspends a marijuana license? (1) The board may summarily suspend any license after the board's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary suspension order unless otherwise provided in the order.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing shall be held within ninety days of the effective date of the summary suspension ordered by the board.

NEW SECTION

WAC 314-55-507 How may a licensee challenge the summary suspension of his or her marijuana license? (1) Upon summary suspension of a license by the board pursuant to WAC 314-55-506, an affected licensee may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within fifteen days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within fourteen days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

NEW SECTION

WAC 314-55-508 Review of orders on stay. (1) The licensee, or agency, may petition the board for review of an initial order on stay. Any petition for review must be in writing and received by the board within ten days of service of the initial order. If neither party has requested review within ten days of service, the initial order shall be deemed the final order of the board for purposes of RCW 34.05.467.

(2) If the board receives a timely petition for review, the board shall consider the petition within fifteen days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the board on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license.

NEW SECTION

WAC 314-55-510 What options does a licensee have once he/she receives a notice of an administrative violation? (1) A licensee has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) **What happens if a licensee does not respond to the administrative violation notice within twenty days?**

(a) If a licensee does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(3) **What are the procedures when a licensee requests a settlement conference?**

(a) If the licensee requests a settlement conference, the hearing examiner or designee will contact the licensee to discuss the violation.

(b) Both the licensee and the hearing examiner or designee will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or designee will prepare a compromise settlement agreement. The hearing examiner or designee will forward the compromise settlement agreement, authorized by both parties, to the board, or designee, for approval.

(i) If the board, or designee, approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board, or designee, does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hear-

ings examiner or designee, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or designee cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or designee will forward a request for an administrative hearing to the board's hearings coordinator.

NEW SECTION

WAC 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule? (1)

The purpose of WAC 314-55-515 through 314-55-540 is to outline what penalty a marijuana licensee can expect if a licensee or employee violates a liquor control board law or rule. (WAC rules listed in the categories provide reference areas, and may not be all inclusive.)

(2) Penalties for violations by marijuana licensees or employees are broken down into four categories:

(a) Group One—Public safety violations, WAC 314-55-520.

(b) Group Two—Regulatory violations, WAC 314-55-525.

(c) Group Three—License violations, WAC 314-55-530.

(d) Group Four—Producer violations involving the manufacture, supply, and/or distribution of marijuana by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-55-535.

(3) For the purposes of chapter 314-55 WAC, a three-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension, or alternate penalty, during a settlement conference as outlined in WAC 314-55-510(3).

(a) Mitigating circumstances	(b) Aggravating circumstances
<p>Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Having a signed acknowledgment of the business' responsible handling and sales policies on file for each employee; • Having an employee training plan that includes annual training on marijuana laws. 	<p>Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of marijuana license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor control board officer, or when people have sustained injuries.

NEW SECTION

WAC 314-55-520 Group 1 violations against public safety.

Group 1 violations are considered the most serious because they present a direct threat to public safety. Based on chapter 69.50 RCW, some violations have only a monetary option. Some violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4).

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Violations involving minors:	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Sale or service to minor: Sale of marijuana and/or paraphernalia to a person under twenty-one years of age WAC 314-55-079	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Allowing a minor to frequent a restricted area. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	
Employee under legal age. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Licensee and/or employee open and/or consuming marijuana on a retail licensed premises. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct.	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. WAC 314-55-020(8) WAC 314-55-083(4) WAC 314-55-087(1)(f)	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Adulterate usable marijuana with organic or nonorganic chemical or other compound WAC 314-55-105(8)	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized solvents or gases in processing WAC 314-55-104	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Marijuana purchased from an unauthorized source. Marijuana sold to an unauthorized source.	Cancellation of license Cancellation of license			

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Sales in excess of transaction limitations. WAC 314-55-095(3)	Cancellation of license			

NEW SECTION

WAC 314-55-525 Group 2 regulatory violations. Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Hours of service: Sales of marijuana between 12:00 a.m. and 8:00 a.m.	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Advertising: Violations (statements/illustrations). WAC 314-55-155(2)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Advertising violations – Sign exceeding 1600 square inches; within 1000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. RCW 69.50.357 RCW 69.50.369	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Packaging and/or labeling violations (processor/retailer). WAC 314-55-105	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Licensee/employee failing to display required security badge. WAC 314-55-083(1)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 (3), (4), and (5)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to submit monthly tax reports and/or payments. WAC 314-55-089 WAC 314-55-092	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Signs: Failure to post required signs. WAC 314-55-086	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to utilize and/or maintain traceability (processor or retail licensee). WAC 314-55-083(4)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Exceeding maximum serving requirements for marijuana-infused products. WAC 314-55-095(2)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure for a processor to meet marijuana waste disposal requirements. WAC 314-55-097	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain standardized scale requirements (processor/retailer). WAC 314-55-099	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Marijuana processor extraction requirements. WAC 314-55-104	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Retail outlet selling unauthorized products. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Retailer displaying products in a manner visible to the general public from a public right of way. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine

NEW SECTION

WAC 314-55-530 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
True party of interest violation. WAC 314-55-035	Cancellation of license			
Failure to furnish required documents. WAC 314-55-050	Cancellation of license			
Misrepresentation of fact. WAC 314-55-050	Cancellation of license			
Operating plan: Violations of a board-approved operating plan. WAC 314-55-020	5-day suspension or \$500 monetary option	10-day suspension or \$1,500 monetary option	30-day suspension	Cancellation of license
Failing to gain board approval for changes in existing ownership. WAC 314-55-120	30-day suspension	Cancellation of license		
Failure to maintain required insurance. WAC 314-55-080	30-day suspension	Cancellation of license		

NEW SECTION

WAC 314-55-535 Group 4 marijuana producer violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of marijuana by marijuana producer licensees and prohibited practices between a marijuana producer licensee and a marijuana retailer licensee.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Unauthorized sale to a retail licensee. WAC 314-55-075	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to utilize and/or maintain traceability. WAC 314-55-083(4)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Packaging and/or labeling violations (producer). WAC 314-55-105	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Unauthorized product/unapproved storage or delivery.	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure for a producer to meet marijuana waste disposal requirements. WAC 314-55-097	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 (2) and (4) WAC 314-55-092	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain standardized scale requirements (producer). WAC 314-55-099	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation.				

NEW SECTION

WAC 314-55-540 Information about marijuana license suspensions. (1) On the date a marijuana license suspension goes into effect, a liquor control officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a board law or rule.

(2) During the period of marijuana license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable marijuana laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

(3) During the period of marijuana license suspension:

(a) A marijuana retailer or marijuana processor licensee may not operate his/her business during the dates and times of suspension.

(b) There is no sale, delivery, service, destruction, removal, or receipt of marijuana during a license suspension.

(c) A producer of marijuana may do whatever is necessary as a part of the producing process to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsalable during a suspension, provided it does not include processing the product. The producer may not receive any agricultural products used in the production of marijuana during the period of suspension.

WSR 13-21-109
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed October 22, 2013, 8:06 a.m., effective November 22, 2013]

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

Purpose: To align chapter 170-295 WAC with department of health changes to chapter 246-110 WAC by replacing references to "communicable disease" and replacing them with "contagious disease" and revising department of early learning's definition of "communicable disease" to refer to WAC 246-110-010.

Citation of Existing Rules Affected by this Order: Amending WAC 170-295-0010, 170-295-1080, 170-295-3010, 170-295-3030, and 170-295-7060.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-17-066 on August 16, 2013.

Changes Other than Editing from Proposed to Adopted Version: Based on written comments and comments received at public hearing, the adopted version strikes the terms "pink-

eye" and "lice or nits" from WAC 170-295-3030 in the proposed version.

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 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 5, Repealed 0.

Date Adopted: October 22, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-09-060, filed 4/17/12, effective 5/18/12)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"**Anti-bias**" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

"**CACFP**" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"**Capacity**" means the maximum number of children that a licensee is authorized to have on the premises of the child care at any one time.

"**Center**" means the same as "**child care center**."

"**Certification**" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see "**Tribal certification**").

"**Child abuse or neglect**" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent

treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"Child-accessible" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"Child care center" means the same as a **"child day care center"** or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"Clean" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

~~("CACFP" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).)~~

"Commercial kitchen equipment" means equipment designed for business purposes such as restaurants.

~~("(**Communicable**) **Contagious disease**" means ((a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface))) as provided in WAC 246-110-010.~~

"Cultural relevancy" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

"Developmentally appropriate practice":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing a licensee by law to operate a child care center and certifying that the licensee meets the minimum requirements under licensure.

"Licensee" or "you" means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children a licensee can be licensed for based on the amount of ~~((useable))~~ **usable** space (square footage) in the licensee's center. The licensee may be licensed for less than the maximum potential capacity. A licensee may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or "moisture resistant" means a surface incapable of being penetrated by water or liquids.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"**Satellite kitchen**" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"**School-age child**" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"**Staff**" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"**Supervised access**" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

"**Terminal room cleaning**" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a contagious disease before it is occupied by another person.

"**The Washington state training and registry system (STARS)**" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

"**Toddler**" means a child twelve months through twenty-nine months of age.

~~("Terminal room cleaning" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a communicable disease before it is occupied by another person.)~~

"**Tribal certification**" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"**Unsupervised access**" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full background authorization clearance under chapter 170-06 WAC.

"~~(Useable)~~ **Usable space**" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-1080 What topics must my new staff orientation include? You must have an orientation system in place to train each new employee and volunteer about program policies, practices, philosophies and goals. This training must include, but is not limited to, the program policies and practices listed in this chapter such as:

- (1) Minimum licensing requirements;
- (2) Planned daily activities and routines;
- (3) Child guidance and behavior management methods;
- (4) Child abuse and neglect prevention, detection, and reporting policies and procedures;
- (5) Health policies and procedures;
- (6) ~~((Communicable))~~ Contagious disease recognition and prevention;
- (7) Bloodborne pathogens;
- (8) Fire prevention, disaster plan and safety procedures;
- (9) Special health and developmental needs of the individual child;
- (10) Personnel policies, when applicable;
- (11) Limited restraint techniques;
- (12) Cultural relevancy; and
- (13) Age and developmentally appropriate practices and expectations for the age group the staff will work with.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3010 What kind of health policies and procedures must I have? (1) You must have written health policies and procedures that are:

- (a) Written in a clear and easily understood manner;
- (b) Shared with all new staff during orientation;
- (c) Posted for staff and families to review; and
- (d) Reviewed, signed and dated by a physician, a physician's assistant or registered nurse when you change your policies and procedures or type of care that you provide, or at least every three years when you are due for relicensing. (For example, if you go from caring for children from twelve months and older to caring for infants, you must update your health policies and procedures and have them reviewed and signed.)
- (2) Your health policies and procedures must have information on how you plan to:
 - (a) Provide general cleaning of areas including but not limited to bathrooms, floors, walls, and doorknobs;
 - (b) Clean and sanitize areas including but not limited to food contact surfaces, kitchen equipment, diapering areas, toys, toileting equipment and areas, equipment that might be shared with several children such as sleep mats, cribs or high chairs;
 - (c) Prevent, manage and report ~~((communicable))~~ contagious diseases;
 - (d) Handle minor injuries such as nosebleeds, scrapes and bruises;
 - (e) Provide first aid;
 - (f) Screen children daily for illnesses;
 - (g) Notify parents that children have been exposed to infectious diseases and parasites;
 - (h) Handle minor illnesses;
 - (i) Handle major injuries and medical emergencies that require emergency medical treatment or hospitalization;
 - (j) Manage medication;
 - (k) Assist with handwashing and general hygiene including diapering and toileting;
 - (l) Handle food;
 - (m) Provide nutritious meals and snacks;

- (n) Respond during any disasters;
 - (o) Care for children that may have special needs;
 - (p) Care for infants and obtain infant nurse consultation (if licensed for four or more infants); and
 - (q) Place infants to sleep on their backs to reduce the risk of sudden infant death syndrome (SIDS).
- (3) Your health policies and procedures must have information on when you plan to:
- (a) Require ill children to stay home and for how long;
 - (b) Allow the ill child to return; and
 - (c) Call a parent to pick up their child and how you will care for the child until the parent arrives.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3030 When is a child or staff member too ill to be at child care? (1) Your staff must check all children for signs of illness when they arrive at the center and throughout the day.

(2) You must exclude children and staff with the following symptoms from care:

- (a) Diarrhea (three or more watery stools or one bloody stool within twenty-four hours);
- (b) Vomiting (two or more times within twenty-four hours);
- (c) Open or oozing sores, unless properly covered with cloths or with bandages;
- (d) For suspected ~~((communicable))~~ contagious skin infection such as impetigo ~~((,-pinkeye,))~~ and scabies: The child may return twenty-four hours after starting antibiotic treatment; and
- (e) ~~((Lice or nits; and~~ ~~(F))~~ Fever of 100 degrees Fahrenheit or higher and who also have one or more of the following:
 - (i) Earache;
 - (ii) Headache;
 - (iii) Sore throat;
 - (iv) Rash; or
 - (v) Fatigue that prevents participation in regular activities.

(3) Children and staff who have a reportable disease may not be in attendance at the child care center unless approved by the local health authority.

(4) You must not take ear or rectal temperatures. Oral temperatures can be taken for preschool through school age if single use disposable covers are used over the thermometer.

(5) When a child becomes ill or injured while in your care, you must:

- (a) Keep a confidential, individualized, written record in the child's file that includes the:
 - (i) Date of an illness or injury;
 - (ii) Treatment provided while in care; and
 - (iii) Names of the staff providing the treatment.
- (b) Provide a copy of the illness or injury report to the parent; and
- (c) Keep a current, written incident log listing date of illness or injury, the child's name, names of staff involved, and a brief description of the incident for tracking and analysis.

(6) You must notify parents in writing when their children have been exposed to infectious diseases or parasites. The notification may consist of either a letter to parents or posting a notification for parents in a visible location.

(7) You are a mandated disease reporter to the health department per WAC 246-101-415. You can obtain a list of reportable diseases, time frames for reporting and reporting phone numbers from your local health department.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-7060 What injuries and illnesses or child abuse and neglect must I report? You or your staff must report immediately:

(1) A death or a serious injury or illness that requires medical treatment or hospitalization of a child in care must be reported by telephone and in writing to the parent, licensor, and child's social worker, if the child has a social worker;

(2) Any instance when you or your staff have reason to suspect the occurrence of any physical, sexual, or emotional child abuse or child neglect, child endangerment, or child exploitation as required under described in chapter 26.44 RCW. You may make a report by calling the statewide number at 1-800-562-5624 or 1-866-ENDHARM; and

(3) An occurrence of food poisoning or reportable ~~((communicable))~~ contagious disease, as required by the state board of health to the local public health department and to the licensor, by telephone.

**WSR 13-21-110
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed October 22, 2013, 8:08 a.m., effective November 22, 2013]

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

Purpose: To align chapter 170-296A WAC with department of health changes to chapter 246-110 WAC by removing references to "communicable disease" and replacing them with "contagious disease" and revising department of early learning's definition of "communicable disease" to refer to WAC 246-110-010.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296A-2250, 170-296A-3200, 170-296A-3210, and 170-296A-4850.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-17-067 on August 16, 2013.

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 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 0, Amended 4, Repealed 0.

Date Adopted: October 22, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2250 Reporting incidents to a child's parent or guardian and the department. The licensee must report to a child's parent or guardian and the department:

- (1) Immediately:
 - (a) Any incident reported under WAC 170-296A-2200, after calling 911;
 - (b) Any incident reported under WAC 170-296A-2225, after calling 911 and Washington poison center;
 - (c) A child's demonstrated acts, gestures or behaviors that may cause serious intentional harm to self, others or property; or
 - (d) Use of physical restraint with a child.
- (2) Within twenty-four hours:
 - (a) Their child's injury or other health concern that does not require professional medical treatment (report to parent only);
 - (b) Change in child care staff, including serious illness or incapacity of the licensee that may impact child care staffing;
 - (c) Additions to the household of persons sixteen years old or older;
 - (d) Change in the licensee's phone number or e-mail; or
 - (e) Their child's exposure to a ~~((communicable))~~ contagious disease from the list in WAC ~~((170-296A-3210))~~ 246-110-010; and
- (3) The licensee's plans to move, as soon as the licensee plans to move. See WAC 170-296A-1475.

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

WAC 170-296A-3200 Health plan. The licensee must have a written health plan. The health plan must include:

- (1) ~~((Communicable))~~ Contagious disease procedures and exclusion of ill persons under WAC 170-296A-3210;
- (2) Immunization tracking under WAC 170-296A-3250 through 170-296A-3300;
- (3) Medication management under WAC 170-296A-3315 through 170-296A-3550;
- (4) Injury treatment under WAC 170-296A-3575 through 170-296A-3600;
- (5) Handwashing and hand sanitizers under WAC 170-296A-3625 through 170-296A-3675;
- (6) Caring for children with special health needs under WAC 170-296A-0050;
- (7) Cleaning, sanitizing, and disinfecting procedures;
- (8) A bloodborne pathogens plan under WAC 170-296A-1850; and

(9) Notifying the health department when a licensee, staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as required under WAC 170-296A-2325.

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

WAC 170-296A-3210 (~~Communicable~~) Contagious disease procedure. (1) When the licensee becomes aware that he or she, a household member, staff person or child in care has been diagnosed with any of the ~~((following communicable diseases:~~

Disease:	Also known as:
Chickenpox	Varicella
Conjunctivitis (bacterial)	Pink eye
Diphtheria	
E. coli infection	
Giardiasis	
Hepatitis A virus	
Invasive haemophilus influenza disease (except otitis media)	
Measles	
Meningitis (bacterial)	Meningococcal meningitis
Mumps	
Pertussis	Whooping cough
Rubella	German measles
Salmonellosis	Salmonella or "food poisoning"
Shigellosis	Shigella
Tuberculosis (active)	TB

~~((+))~~ contagious diseases described in WAC 246-110-010, the licensee must, within twenty-four hours notify:

- (a) The local health jurisdiction or DOH, except notice is not required for a diagnosis of chickenpox or conjunctivitis;
 - (b) The department; and
 - (c) Parents or guardians of each of the children in care.
- (2) The licensee must follow the health plan before providing care or before readmitting the household member, staff person or child into the child care.
- (3) The licensee's health plan must include provisions for excluding or separating a child, staff person, or household member with ~~((communicable))~~ contagious disease as described in ~~((subsection (1) of this section))~~ WAC 246-110-010 or any of the following:
- (a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:
 - (i) Earache;
 - (ii) Headache;

- (iii) Sore throat;
- (iv) Rash; or
- (v) Fatigue that prevents the individual from participating in regular activities.
- (b) Vomiting that occurs two or more times in a twenty-four hour period;
- (c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period;
- (d) Rash not associated with heat, diapering, or an allergic reaction; or
- (e) Drainage of thick mucus or pus from the eye.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4850 Pet/animal health and safety. Pets or other animals that have contact with children must:

- (1) Have current immunizations for ~~((communicable))~~ contagious diseases if applicable;
- (2) Show no signs of disease, worms or parasites; and
- (3) Be nonaggressive.

**WSR 13-21-111
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed October 22, 2013, 8:09 a.m., effective November 22, 2013]

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

Purpose: To clarify WAC 170-03-0290 regarding stay of DEL action and WAC 170-03-0300 regarding stay of summary suspension of child care license.

Citation of Existing Rules Affected by this Order: Amending WAC 170-03-0290 and 170-03-0300.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-17-076 on August 16, 2013.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 22, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0290 Stay of DEL action. ~~((+ Except))~~ Only as set forth in WAC 170-03-0300, at any point in the proceeding before OAH or the review judge, the appealing party may request that an ALJ or review judge stay (stop) a DEL action until there is a decision entered by the ALJ or review judge.

~~((2) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause the ALJ must determine:~~

~~(a) The party requesting the stay is likely to prevail in the hearing on the merits;~~

~~(b) The party requesting the stay will suffer irreparable injury, if the stay is not granted; and~~

~~(c) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances of the case.)~~

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0300 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) Pursuant to WAC 170-03-0040 and 170-03-0050 a licensee may request a hearing to challenge the decision to summarily suspend a license. A licensee who contests a summary suspension of a license ((by the department)) may obtain a stay of the ((effectiveness)) effective date of ((that order)) the suspension only as set forth in this section.

(3) It shall be the licensee's burden to establish that the stay is in the public interest and is made for good cause.

(4) The ((licensee may)) licensee's request for a stay ((by including such a request in the request for hearing or in a)) of the summary suspension must be made by filing a motion for stay of summary suspension. The motion for stay of summary suspension must be filed with the initial request for hearing, or by subsequent motion. The motion for stay, and documents and pleadings described in subsection (5) of this section, shall be served on the office of administrative hearings, and attorney general's office, by noon on the seventh day before the hearing, unless a shorter time is ordered. Reply affidavits or declarations shall be served on the licensee's attorney, or representative, by noon on the day prior to the hearing. If unrepresented, the reply affidavits or declarations shall be served on the licensee.

(5) The ((request)) motion for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based. The decision to grant or deny the request for a stay shall be based on:

(a) Legal authority; and

(b) Affidavits or declarations signed under penalty of perjury.

(6) The hearing officer shall not allow the presentation of oral testimony at a stay hearing except under the following circumstances:

(a) The party seeking the opportunity to offer oral testimony must file a motion for permission to offer oral testimony. The decision to grant or deny the motion must be based on affidavits filed in support of or opposition to the motion to offer oral testimony.

(b) Oral testimony shall only be permitted if substantial evidence has been presented establishing that the failure to allow oral testimony will deny the moving party the opportunity for a fair stay hearing.

~~((4)) (7) Upon receipt of a ((request)) motion for a stay, the ALJ ((will)) shall schedule a hearing on the ((request. The hearing may be combined with a prehearing conference. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the ALJ may advance the hearing date on its own initiative or by request of the parties.~~

~~(5)) motion, not less than seven days from the date the request is received by the office of administrative hearings.~~

(8) The ALJ shall not grant ((a)) the motion for stay unless the ALJ makes specific findings that the stay is in the public interest ((or)) and is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the merits of the licensing action;

(b) The licensee will suffer irreparable injury((;)) if the stay is not granted; ((and))

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license((-

~~(6) Economic hardship of itself shall be an insufficient reason for a stay of a suspension of a license.)) and~~

(d) Economic hardship of itself shall be an insufficient reason for a finding of irreparable injury under (b) of this subsection.

~~((7)) (9) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a ((request)) motion for ((a)) stay, will expedite the hearing and decision on the merits.~~

~~((8)) (10) The decision on the ((request)) motion for ((the)) stay is subject to review by the review judge at the request of either DEL or the licensee. The request for review must be filed not later than seven days following the date the decision on the ((request)) motion for stay is mailed by OAH to the parties.~~

~~((9)) (11) A request for review by the review judge shall be promptly determined. The decision on the request for review by the review judge shall not be subject to judicial review.~~

**WSR 13-21-112
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed October 22, 2013, 8:11 a.m., effective November 22, 2013]

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

Purpose: To allow family home child care licensees another means of meeting the requirement to have education equivalent to a high school diploma, i.e., by achieving level three in Washington state's quality rating and improvement system, early achievers.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296A-1725.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-17-073 on August 16, 2013.

Changes Other than Editing from Proposed to Adopted Version: Changed title of section from "License applicant minimum education" to "Licensee minimum education" and inserted the words "and continuously maintaining the license" into subsection (3).

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

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

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

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

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

Date Adopted: October 22, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1725 ((License applicant)) Licensee minimum education. (1) For any initial family home child care license issued on or after March 31, 2012, the applicant must have a high school diploma.

(2) If the applicant does not have a high school diploma, he or she must submit written evidence of equivalent education. As used in this section, "equivalent education" means:

(a) Passing the general educational development (GED) tests;

(b) Completion of twelve years of elementary and secondary education;

(c) Possessing a current child development associate (CDA) credential as approved through the council for professional recognition; or

(d) Completion of forty-five credits of post secondary education.

(3) In addition to equivalent education defined within this section, a family home child care licensee licensed prior to March 31, 2012, and continuously maintaining the license may meet the "equivalent education" requirement by achieving a level three rating in the early achievers program, Washington state's quality rating improvement system, prior to March 31, 2017.

**WSR 13-21-113
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed October 22, 2013, 8:12 a.m., effective November 22, 2013]

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

Purpose: To amend sections of, and adding a section to, chapter 170-290 WAC, Working connections and seasonal child care subsidy programs, to comply with sections 8 and 9 of recently enacted 2SHB 1723, enrolled as chapter 323, Laws of 2013, that took effect on July 28, 2013, and 3ESSB 5034, enrolled as chapter 4, Laws of 2013, that took effect on June 30, 2013. As a result, rules for the working connections child care (WCCC) program is [are] revised to:

- Increase the base rate for all WCCC child care providers by two percent.
- Increase the subsidy rate by two percent for WCCC child care providers enrolling in level 2 in the early achievers program. Providers must complete level 2 and advance to level 3 within thirty months in order to maintain this increase.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0200, 170-290-0205, and 170-290-0240.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-18-045 on August 30, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: October 22, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$(28.53)	\$(23.99)	\$(22.67)	\$(21.34)
	Half-Day	<u>29.10</u>	<u>24.47</u>	<u>23.12</u>	<u>21.77</u>
		\$(14.28)	\$(12.00)	\$(11.34)	\$(10.67)
		<u>14.57</u>	<u>12.24</u>	<u>11.57</u>	<u>10.88</u>
Spokane County	Full-Day	\$(29.18)	\$(24.54)	\$(23.19)	\$(21.83)
	Half-Day	<u>29.76</u>	<u>25.03</u>	<u>23.65</u>	<u>22.27</u>
		\$(14.61)	\$(12.28)	\$(11.61)	\$(10.94)
		<u>14.90</u>	<u>12.53</u>	<u>11.84</u>	<u>11.13</u>
Region 2	Full-Day	\$(28.81)	\$(24.05)	\$(22.30)	\$(19.73)
	Half-Day	<u>29.39</u>	<u>24.53</u>	<u>22.75</u>	<u>20.12</u>
		\$(14.41)	\$(12.03)	\$(11.15)	\$(9.88)
		<u>14.70</u>	<u>12.27</u>	<u>11.37</u>	<u>10.08</u>
Region 3	Full-Day	\$(38.13)	\$(31.79)	\$(27.46)	\$(26.67)
	Half-Day	<u>38.89</u>	<u>32.43</u>	<u>28.01</u>	<u>27.20</u>
		\$(19.07)	\$(15.89)	\$(13.73)	\$(13.34)
		<u>19.45</u>	<u>16.21</u>	<u>14.00</u>	<u>13.61</u>
Region 4	Full-Day	\$(44.38)	\$(37.06)	\$(31.09)	\$(28.00)
	Half-Day	<u>45.27</u>	<u>37.80</u>	<u>31.71</u>	<u>28.56</u>
		\$(22.63)	\$(18.54)	\$(15.55)	\$(14.00)
		<u>23.08</u>	<u>18.91</u>	<u>15.86</u>	<u>14.28</u>
Region 5	Full-Day	\$(32.54)	\$(28.00)	\$(24.65)	\$(21.88)
	Half-Day	<u>33.19</u>	<u>28.56</u>	<u>25.14</u>	<u>22.32</u>
		\$(16.26)	\$(14.00)	\$(12.32)	\$(10.95)
		<u>16.59</u>	<u>14.28</u>	<u>12.57</u>	<u>11.17</u>
Region 6	Full-Day	\$(31.99)	\$(27.46)	\$(23.99)	\$(23.46)
	Half-Day	<u>32.63</u>	<u>28.01</u>	<u>24.47</u>	<u>23.93</u>
		\$(16.01)	\$(13.73)	\$(12.00)	\$(11.74)
		<u>16.33</u>	<u>14.00</u>	<u>12.24</u>	<u>11.97</u>

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licenser to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) Base rate. DSHS pays the lesser of the following to a licensed or certified family home child care provider:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$((24.29)) <u>24.78</u>	\$((24.29)) <u>24.78</u>	\$((21.12)) <u>21.54</u>	\$((21.12)) <u>21.54</u>	\$((18.78)) <u>19.16</u>
	Half-Day	\$((12.14)) <u>12.38</u>	\$((12.14)) <u>12.38</u>	\$((10.56)) <u>10.77</u>	\$((10.56)) <u>10.77</u>	\$((9.39)) <u>9.58</u>
Spokane County	Full-Day	\$((24.84)) <u>25.34</u>	\$((24.84)) <u>25.34</u>	\$((21.60)) <u>22.03</u>	\$((21.60)) <u>22.03</u>	\$((19.21)) <u>19.59</u>
	Half-Day	\$((12.42)) <u>12.67</u>	\$((12.42)) <u>12.67</u>	\$((10.80)) <u>11.02</u>	\$((10.80)) <u>11.02</u>	\$((9.60)) <u>9.79</u>
Region 2	Full-Day	\$((25.65)) <u>26.16</u>	\$((25.65)) <u>26.16</u>	\$((22.30)) <u>22.75</u>	\$((19.95)) <u>20.35</u>	\$((19.95)) <u>20.35</u>
	Half-Day	\$((12.82)) <u>13.08</u>	\$((12.82)) <u>13.08</u>	\$((11.15)) <u>11.37</u>	\$((9.97)) <u>10.17</u>	\$((9.97)) <u>10.17</u>
Region 3	Full-Day	\$((34.03)) <u>34.71</u>	\$((34.03)) <u>34.71</u>	\$((29.33)) <u>29.92</u>	\$((25.81)) <u>26.33</u>	\$((23.46)) <u>23.93</u>
	Half-Day	\$((17.02)) <u>17.36</u>	\$((17.02)) <u>17.36</u>	\$((14.67)) <u>14.96</u>	\$((12.91)) <u>13.17</u>	\$((11.74)) <u>11.97</u>
Region 4	Full-Day	\$((40.04)) <u>40.84</u>	\$((40.04)) <u>40.84</u>	\$((34.81)) <u>35.51</u>	\$((29.33)) <u>29.92</u>	\$((28.16)) <u>28.72</u>
	Half-Day	\$((20.03)) <u>20.43</u>	\$((20.03)) <u>20.43</u>	\$((17.42)) <u>17.77</u>	\$((14.67)) <u>14.96</u>	\$((14.08)) <u>14.36</u>
Region 5	Full-Day	\$((26.99)) <u>27.53</u>	\$((26.99)) <u>27.53</u>	\$((23.46)) <u>23.93</u>	\$((22.30)) <u>22.75</u>	\$((19.95)) <u>20.35</u>
	Half-Day	\$((13.50)) <u>13.77</u>	\$((13.50)) <u>13.77</u>	\$((11.74)) <u>11.97</u>	\$((11.15)) <u>11.37</u>	\$((9.97)) <u>10.17</u>
Region 6	Full-Day	\$((26.99)) <u>27.53</u>	\$((26.99)) <u>27.53</u>	\$((23.46)) <u>23.93</u>	\$((23.46)) <u>23.93</u>	\$((22.30)) <u>22.75</u>
	Half-Day	\$((13.50)) <u>13.77</u>	\$((13.50)) <u>13.77</u>	\$((11.74)) <u>11.97</u>	\$((11.74)) <u>11.97</u>	\$((11.15)) <u>11.37</u>

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

NEW SECTION

WAC 170-290-0210 Tiered reimbursement. Starting September 1, 2013, providers receiving payment under the WCCC program will receive a two percent increase in the subsidy rate, calculated on the base rate, for enrolling in level 2 in the early achievers program. Providers must complete level 2, advance to level 3 within thirty months, and maintain a level 3 rating in order to maintain this increase.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0240 Child care subsidy rates—In-home/relative providers. (1) Base rate. When a consumer employs an in-home/relative provider, DSHS pays the lesser

of the following to an eligible in-home/relative provider for child care:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy rate of two dollars and ~~((twenty))~~ twenty-four cents per hour for the child who needs the greatest number of hours of care and two dollars and ~~((seventeen))~~ twenty-one cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DSHS pays the employer's share of the following:

- (a) Social Security and medicare taxes (FICA) up to the wage limit;
- (b) Federal Unemployment Taxes (FUTA); and
- (c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

WSR 13-21-114

**PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed October 22, 2013, 8:14 a.m., effective November 22, 2013]

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

Purpose: The department is amending sections in the department of early learning (DEL) childcare licensing WAC chapters to update the provision for safe food handling. The department of health (DOH) has recently updated their food handlers guide, and DEL needs to reflect the updated require-

ments. This filing amends WAC 170-295-3190 How can I be sure that the food I serve is safe?

Citation of Existing Rules Affected by this Order: Amending WAC 170-295-3190.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-17-064 on August 16, 2013.

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

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

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

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

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

Date Adopted: October 22, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-3190 How can I be sure that the food I serve is safe? ~~((1) You need to develop and implement a system to monitor the temperature of potentially hazardous foods during cooking, reheating, cooling, storing, and hot and cold holding temperatures to be sure that:~~

~~(a) Food will be cooked to at least the minimum correct internal temperature:~~

~~(i) Ground beef and pork sausage 155 degrees Fahrenheit;~~

~~(ii) Pork 150 degrees Fahrenheit;~~

~~(iii) Fish and seafood 140 degrees Fahrenheit;~~

~~(iv) Poultry and stuffing 165 degrees Fahrenheit;~~

~~(v) Eggs 140 degrees Fahrenheit;~~

~~(vi) Beef (not ground) and lamb 140 degrees Fahrenheit.~~

~~(b) Previously prepared food is reheated one time only to an internal temperature of 165 degrees Fahrenheit within sixty minutes;~~

~~(c) Hot food is kept at a temperature of 140 degrees Fahrenheit or above until served;~~

~~(d) Cold food is kept at a temperature of 45 degrees Fahrenheit or less;~~

~~(e) Refrigerators have a thermometer in or near the door and are kept at 45 degrees Fahrenheit or less; and~~

~~(f) Freezers have a thermometer in or near the door and are kept at 10 degrees Fahrenheit or less.)~~ (1) Program staff must follow the safe preparation, cooking, and serving guidelines in the current edition of the food workers manual prepared by the state department of health.

(2) You must develop a system to record the temperature of each perishable food once it arrives from a satellite kitchen or a catering service. The system must include keeping records on site for six months with the following information:

(a) The name and the temperature of the food;

(b) The date and time the temperature was checked; and

(c) The name and signature or recognized initials of the person who is checking and recording the food temperatures.

(3) You may serve previously prepared food that has not been previously served if it was stored at the proper temperature for less than forty-eight hours after preparation. Leftover foods or open foods in the refrigerator must be labeled with the date that they were opened or cooked.

**WSR 13-21-115
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed October 22, 2013, 8:19 a.m., effective November 22, 2013]

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

Purpose: The department is amending sections in the department of early learning (DEL) childcare licensing WAC chapters to update the provision for safe food handling. The department of health (DOH) has recently updated their food handlers guide, and DEL needs to reflect the updated requirements. This filing amends WAC 170-297-7680 Safe food handling.

Citation of Existing Rules Affected by this Order: Amending WAC 170-297-7680.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 13-17-065 on August 16, 2013.

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

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

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

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

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

Date Adopted: October 22, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-7680 Safe food handling. (1) Program staff must follow the safe preparation, cooking, and serving

guidelines in the current edition of the food workers manual prepared by the state department of health.

~~((a))~~ Food must be served at temperatures of not less than one hundred thirty-five degrees Fahrenheit for hot foods and not more than forty-one degrees Fahrenheit for cold foods.

~~(b)~~ All opened moist foods that have not been served must be covered, dated, and maintained at a temperature of forty-one degrees Fahrenheit or lower in the refrigerator or frozen in the freezer.

~~(c)~~ Raw animal foods must be fully cooked to heat all parts of the food to a temperature and for a time of:

~~(i)~~ One hundred forty-five degrees Fahrenheit or above for fifteen seconds for fish and meat;

~~(ii)~~ One hundred sixty degrees Fahrenheit for fifteen seconds for chopped or ground fish, chopped or ground meat or raw eggs; or

~~(iii)~~ One hundred sixty-five degrees Fahrenheit or above for fifteen seconds for poultry or stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish meat or poultry.

~~(d)~~ Potentially hazardous cooked foods must be cooled in an uncovered container, protected from cross-contamination, and in a shallow layer of three inches or less in cooling equipment maintained at an ambient temperature of forty-one degrees Fahrenheit or less.

~~(2)~~ Program staff must:

~~(a)~~ Wash their hands prior to preparing food and after handling raw meats, poultry, or fish; and

~~(b)~~ Not prepare food when ill with vomiting, diarrhea or infectious skin sores that cannot be covered.

~~(3))~~ (2) Previously prepared food may be served if:

~~(a)~~ The food was not previously served; and

~~(b)~~ It was stored at the proper temperature for less than twenty-four hours after preparation.

~~((4))~~ (3) Leftover foods or opened foods in the refrigerator must be labeled with the date that they were opened or cooked.

~~((5))~~ (4) Each staff person preparing or handling food must maintain a current Washington state department of health food worker's permit.

WSR 13-21-123

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 12-02—Filed October 22, 2013, 1:52 p.m., effective November 22, 2013]

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

Purpose: This rule making amends chapter 173-334 WAC, Children's safe products—Reporting rule to add tris(1,3-dichloro-2-propyl)phosphate (TDCPP) (CAS # 13674-87-8) to the reporting list of chemicals, and to remove n-butanol (CAS # 71-36-3) from the reporting list of chemicals. This rule making is in response to new information associated with petitions to the agency. The Washington department of health has also confirmed that TDCPP meets the toxicity and exposure criteria to be included on the chemicals of high concern to children list.

Citation of Existing Rules Affected by this Order: Amending chapter 173-334 WAC.

Statutory Authority for Adoption: Chapter 70.240 RCW.

Adopted under notice filed as WSR 13-15-129 on July 22, 2013.

A final cost-benefit analysis is available by contacting Joshua Grice, Department of Ecology, P.O. Box 47600, Olympia, WA 98504, phone (360) 407-6786, fax (360) 407-6102, e-mail joshua.grice@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 1, Repealed 0.

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

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

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

Date Adopted: October 22, 2013.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

WAC 173-334-130 The reporting list of chemicals of high concern to children (CHCC list).

CAS	Chemical
50-00-0	Formaldehyde
62-53-3	Aniline
62-75-9	N-Nitrosodimethylamine
((71-36-3	n-Butanol))
71-43-2	Benzene
75-01-4	Vinyl chloride
75-07-0	Acetaldehyde
75-09-2	Methylene chloride
75-15-0	Carbon disulfide
78-93-3	Methyl ethyl ketone
79-34-5	1,1,2,2-Tetrachloroethane
79-94-7	Tetrabromobisphenol A
80-05-7	Bisphenol A
84-66-2	Diethyl phthalate
84-74-2	Dibutyl phthalate
84-75-3	Di-n-Hexyl phthalate
85-44-9	Phthalic anhydride
85-68-7	Butyl benzyl phthalate (BBP)

CAS	Chemical
86-30-6	N-Nitrosodiphenylamine
87-68-3	Hexachlorobutadiene
94-13-3	Propyl paraben
94-26-8	Butyl paraben
95-53-4	2-Aminotoluene
95-80-7	2,4-Diaminotoluene
99-76-3	Methyl paraben
99-96-7	p-Hydroxybenzoic acid
100-41-4	Ethylbenzene
100-42-5	Styrene
104-40-5	4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3
106-47-8	para-Chloroaniline
107-13-1	Acrylonitrile
107-21-1	Ethylene glycol
108-88-3	Toluene
108-95-2	Phenol
109-86-4	2-Methoxyethanol
110-80-5	Ethylene glycol monoethyl ester
115-96-8	Tris(2-chloroethyl) phosphate
117-81-7	Di-2-ethylhexyl phthalate
117-84-0	Di-n-octyl phthalate (DnOP)
118-74-1	Hexachlorobenzene
119-93-7	3,3'-Dimethylbenzidine and Dyes Metabolized to 3,3'-Dimethylbenzidine
120-47-8	Ethyl paraben
123-91-1	1,4-Dioxane
127-18-4	Perchloroethylene
131-55-5	Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone
140-66-9	4-tert-Octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol
140-67-0	Estragole
149-57-5	2-Ethylhexanoic acid
556-67-2	Octamethylcyclotetrasiloxane
608-93-5	Benzene, pentachloro
842-07-9	C.I. solvent yellow 14
872-50-4	N-Methylpyrrolidone
1163-19-5	2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209
1763-23-1	Perfluorooctanyl sulphonic acid and its salts; PFOS
1806-26-4	Phenol, 4-octyl-

CAS	Chemical
5466-77-3	2-Ethyl-hexyl-4-methoxycinnamate
7439-97-6	Mercury & mercury compounds including methyl mercury (22967-92-6)
7439-98-7	Molybdenum & molybdenum compounds
7440-36-0	Antimony & Antimony compounds
7440-38-2	Arsenic & Arsenic compounds including arsenic trioxide (1327-53-3) & dimethyl arsenic (75-60-5)
7440-43-9	Cadmium & cadmium compounds
7440-48-4	Cobalt & cobalt compounds
*13674-87-8	<u>Tris(1,3-dichloro-2-propyl)phosphate</u>
25013-16-5	Butylated hydroxyanisole; BHA
25637-99-4	Hexabromocyclododecane
26761-40-0	Diisodecyl phthalate (DIDP)
28553-12-0	Diisononyl phthalate (DINP)

*The presence of Tris(1,3-dichloro-2-propyl)phosphate must be reported in all notices required to be filed after August 31, 2014, according to the phase-in schedule in WAC 173-334-110(2).

WSR 13-21-126
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 22, 2013, 2:21 p.m., effective November 22, 2013]

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

Purpose: The DSHS community services division is amending rules under WAC 388-444-0005, 388-444-0055, 388-444-0065, 388-444-0070, and 388-444-0075 to update Basic Food work requirement rules to be consistent with federal regulations, and Washington approved Basic Food state plan. The department is also removing the requirement to obtain comparable employment after serving a disqualification period for quitting a job without good cause or voluntarily reducing work effort without good cause.

Previous versions of this rule were missing the "voluntarily [voluntary] reduction in work effort" provisions that must be stated and included in the Basic Food work requirements rules to be consistent with federal law.

Also, based on comments received during internal review and preproposal review it was decided we exercise a supplemental nutrition assistance program (SNAP) state agency option and not require individual participants to obtain comparable employment after serving the appropriate disqualification period for quitting a job without good cause or voluntarily reducing work effort without good cause.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0005, 388-444-0055, 388-444-0065, 388-444-0070, and 388-444-0075.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 C.F.R. § 273.7.

Adopted under notice filed as WSR 13-09-027 on April 9, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, 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 5, Repealed 0.

Date Adopted: October 14, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-18-048, filed 8/26/10, effective 10/1/10)

WAC 388-444-0005 Am I required to work or look for work in order to be eligible for Basic Food? Some people must register for work to receive Basic Food.

(1) If you receive Basic Food, we register you for work if you are:

- (a) Age sixteen through fifty-nine with dependents;
- (b) Age sixteen or seventeen, not attending secondary school and not the head-of-household;
- (c) Age fifty through fifty-nine with no dependents; or
- (d) Age eighteen through forty-nine, able-bodied and with no dependents as provided in WAC 388-444-0030.

(2) Unless you are exempt from work registration under WAC 388-444-0010, we register you for work:

- (a) When you apply for Basic Food benefits or are added to someone's assistance unit; and
 - (b) Every twelve months thereafter.
- (3) If we register you for work, you must:
- (a) Contact us as required;
 - (b) Provide information regarding your employment status and availability for work if we ask for it;
 - (c) Report to an employer if we refer you;
 - (d) Not voluntarily quit a job or reduce your work effort as defined under WAC 388-444-0065 unless you have good cause under WAC 388-444-0070; and

(e) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(4) If we register you for work, you must meet all of the requirements under subsection (3) of this section. If you do not meet these requirements, we disqualify you from receiving benefits as described in WAC 388-444-0055, unless you meet the good cause conditions as defined in WAC 388-444-0050.

AMENDATORY SECTION (Amending WSR 10-18-048, filed 8/26/10, effective 10/1/10)

WAC 388-444-0055 What are the penalties if I refuse or fail to meet Basic Food work requirements? (1) If we register you for work you must meet the work requirements under WAC 388-444-0005 or 388-444-0030 unless you have good cause as defined in WAC 388-444-0050. If you do not follow these rules, you will become an ineligible assistance unit member as described under WAC 388-408-0035. The remaining members of the assistance unit continue to be eligible for Basic Food.

(2) If you do not meet work requirements and we find that you did not have good cause, you cannot receive Basic Food for the following periods of time and until you meet program requirements:

- (a) For the first failure, one month;
- (b) For the second failure, three months; and
- (c) For the third or subsequent failure, six months.

(3) If you become exempt under WAC 388-444-0010 and are otherwise eligible, you may begin to receive Basic Food.

(4) If you do not comply with the work requirements of the following programs, you cannot receive Basic Food unless you meet one of the conditions described under WAC 388-444-0010 except subsections ~~((1)-(d))~~ (4) or ~~((e))~~ (5):

- (a) WorkFirst;
- (b) Unemployment compensation;
- (c) The refugee cash assistance program.

(5) Within ten days after learning of your refusal to participate in your program, the financial worker will send you a notice that your Basic Food benefits will end unless you comply with your program requirements.

(6) If you do not comply within ten days, you will be issued a notice disqualifying you from receiving Basic Food until you comply with your program, or until you meet the work registration disqualification requirements in subsection (2) of this section.

(7) After the penalty period in subsection (2) of this section is over, and you meet work requirements and you are otherwise eligible, you may receive Basic Food:

- (a) If you are alone in the assistance unit and apply to reestablish eligibility; or
- (b) If you are a member of an assistance unit, you may resume receiving Basic Food.

(8) During the penalty period, if you begin to participate in one of the programs listed in subsection (4)(a) through (c) and that penalty is removed, the work registration disqualification also ends. If you are otherwise eligible, you may begin to receive Basic Food.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0065 Am I eligible for Basic Food if I quit my job or reduce my work effort? (1) You are not eligible for Basic Food if you voluntarily quit your current job without good cause as defined in WAC 388-444-0070, and ~~((you are in one of the following categories))~~:

- (a) You were working ~~((twenty))~~ or self-employed and working thirty hours or more per week or ~~((the job provided))~~

you had weekly earnings at least equal to the federal minimum wage multiplied by ~~((twenty))~~ thirty hours; and

(b) The quit was within sixty days before you applied for Basic Food or any time after; and

(c) At the time of quit you ~~((were applying for Basic Food and))~~ would have been required to register for work as defined in WAC 388-444-0005(;

~~(d) If you worked or you were self-employed and working thirty hours a week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours)).~~

(2) You are not eligible for Basic Food if you voluntarily reduce your work effort without good cause as defined in WAC 388-444-0070, and:

(a) You were working or self-employed and working thirty hours or more per week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours; and

(b) The reduction was within sixty days before you applied for Basic Food or any time after; and

(c) If after the reduction, you are working less than thirty hours per week or your weekly earnings are not at least equal to the federal minimum wage multiplied by thirty hours; and

(d) At the time of reduction you would have been required to register for work as defined in WAC 388-444-0005.

(3) You are not eligible to receive Basic Food if you have participated in a strike against a federal, state or local government and have lost your employment because of such participation.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0070 What is good cause for quitting my job or reducing my work effort? Unless otherwise specified the following rules apply to all persons receiving Basic Food.

(1) You must have a good reason (good cause) for quitting a job or reducing your work effort, as defined in WAC 388-444-0065, or you will be disqualified from receiving Basic Food under WAC 388-444-0075. Good cause includes the following:

(a) Your employment is unsuitable as under WAC 388-444-0060;

(b) You were discriminated against by an employer based on age, race, sex, color, religious belief, national origin, political belief, marital status, or the presence of any sensory, mental, or physical disability or other reasons in RCW 49.60.180;

(c) Work demands or conditions make continued employment unreasonable, such as working without being paid on schedule;

(d) You accepted other employment or are enrolled at least half time in any recognized school, training program, or institution of higher education;

(e) You must leave a job because another assistance unit member accepted a job or is enrolled at least half time in any recognized school, training program, or institution of higher

education in another county or similar political subdivision and your assistance unit must move;

(f) You are under age sixty and retire as recognized by your employer;

(g) You accept a bona fide offer of employment of ~~((twenty))~~ thirty hours or more a week or where the weekly earnings are equivalent to the federal minimum wage multiplied by ~~((twenty))~~ thirty hours. However, because of circumstances beyond your control, the job either does not materialize or results in employment of ~~((twenty))~~ less than thirty hours ~~((or less))~~ a week or weekly earnings of less than the federal minimum wage multiplied by ~~((twenty))~~ thirty hours;

(h) You leave a job in connection with patterns of employment where workers frequently move from one employer to another, such as migrant farm labor or construction work; and

(i) Circumstances included under WAC 388-444-0050;

(2) You are eligible for Basic Food after quitting a job or reducing your work effort if the circumstances of the job involve:

(a) Changes in job status resulting from ~~((reduced))~~ involuntary reduction of employment hours ~~((of employment))~~ while working for the same employer;

(b) Termination of a self-employment enterprise; or

(c) Resignation from a job at the demand of an employer.

(3) You must provide proof that you had good cause for quitting a job or reducing your work effort. However, we do not deny your application for Basic Food if you are unable to get this proof even with our help.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0075 What are the penalties if I quit a job without good cause? (1) If you have applied for Basic Food and have quit a job without good cause within sixty days before applying for Basic Food, we deny your application and you must have a penalty period as described under subsection (3) from the date of your application.

(2) If you already receive Basic Food and you quit your job without good cause, we send you a letter notifying you that you will be disqualified from Basic Food. The disqualification in subsection (3) of this section begins the first of the month following the notice of adverse action.

(3) You are disqualified for the following minimum periods of time and until the conditions in subsection (4) of this section are met:

(a) For the first quit, one month;

(b) For the second quit, three months; and

(c) For the third or subsequent quit, six months.

(4) You may reestablish eligibility after serving the disqualification period, if otherwise eligible by:

(a) Getting a new job; or

(b) Participating in Workfare as provided in WAC 388-444-0040.

(5) If you become exempt from work registration under WAC 388-444-0010, we end your disqualification for a job quit or reduction of work effort unless you are exempt ~~((for))~~ because you are applying for or receiving unemployment

compensation (UC), or participating in an employment and training program under TANF.

(6) If you are disqualified and move from the assistance unit and join another assistance unit, we continue to treat you as an ineligible member of the new assistance unit for the remainder of the disqualification period.

WSR 13-21-137

PERMANENT RULES

TACOMA COMMUNITY COLLEGE

[Filed October 22, 2013, 4:32 p.m., effective November 22, 2013]

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

Purpose: To establish procedures and reasonable controls for the use of college premises by both college and non-college groups.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 13-14-090 on July 17 [1], 2013.

Changes Other than Editing from Proposed to Adopted Version:

Chapter 132V-135 WAC, change title, Use of college facilities ~~for expressive activities~~.

WAC 132V-135-030 Use of college premises. Add sentence: However, unscheduled events by college groups may be permitted so long as the event does not interfere with any other function of the college.

(1) Change phrasing: Noncollege groups are required to ~~apply for activity approval~~ request accommodation a minimum of three business days in advance of an event.

(2) Change phrasing: College groups and noncollege groups are required to submit, but not limited to, the following information when ~~applying for activity approval~~ requesting accommodation.

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 5, 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 5, 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: October 9, 2013.

Mary A. Chikwinya
Vice-President for
Student Services

Chapter 132V-135 WAC

TACOMA COMMUNITY COLLEGE

USE OF COLLEGE FACILITIES

NEW SECTION

WAC 132V-135-010 Campus policy. Tacoma Community College is an educational institution provided and maintained by the people of the state of Washington. College premises are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities, and other activities related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's premises are dedicated. Accordingly, the college is a designated limited public forum opened for the express purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this chapter.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college premises for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of speech, assembly, or expression. The college recognizes that college groups should be accorded the opportunity to utilize college premises to the fullest reasonable extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

It is the policy of Tacoma Community College to support the educational goals of all students regardless of race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, disability, or status as a disabled veteran. The college is committed to protecting the rights and dignity of each individual in the campus community and so will not tolerate discrimination of any kind, at any level.

NEW SECTION

WAC 132V-135-020 Definitions. The definitions and phrases in this section apply throughout this chapter.

College employee includes any person employed by the college performing assigned administrative or professional responsibilities.

College groups means individuals who are currently enrolled students, current employees of Tacoma Community College or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

College premises includes all land, buildings, facilities, and other property in the possession of, owned, controlled, or leased/rented by the college, and agencies or institutions that have educational agreements with the college, including associated web sites and distance learning classroom environments.

Educational use includes, but is not limited to, instruction, research, public assembly of college groups, student activities, and other activities related to the educational mission of the college.

Expressive activities includes informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of assemblies to share information, perspective, or viewpoints.

Limited public forum areas means those areas of the campus that the college has designated as places for expressive activities including those protected by the first amendment, subject to reasonable time, place, or manner restrictions.

Noncollege groups means individuals or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

Student means any person who is admitted to or enrolled for classes through the college, including any person in affiliated distance learning courses.

Student activity means any event or activity sanctioned by the college.

NEW SECTION

WAC 132V-135-030 Use of college premises. Subject to the regulations and requirements of this policy, noncollege groups may use college premises for expressive activities between the hours of 7:00 a.m. and 10:00 p.m. and no longer than eight hours from beginning to end. College groups may use college premises as approved by the vice-president for student services or designee. Provisions of this section apply to both college and noncollege groups. However, unscheduled events by college groups may be permitted so long as the event does not interfere with any other function of the college.

(1) College groups are required to request accommodation for an activity a minimum of twenty-four hours in advance of an event.

(2) Noncollege groups are required to request accommodation a minimum of three business days in advance of an event.

(3) College groups and noncollege groups are required to submit, but not limited to, the following information when requesting accommodation:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the activity; and

(b) The name, address, and telephone number of a contact person for the sponsoring organization; and

(c) The date, time, and requested location of the activity; and

(d) The nature and purpose of the activity; and

(e) The type of sound amplification devices to be used in connection with the activity, if any; and

(f) The estimated number of people expected to participate in the activity.

(4) All expressive activities will be held in a location the college has designated as a limited public forum area.

(5) All areas impacted by expressive activities will be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization or individual for the costs of extraordinary cleanup or for the repair of damaged property.

(6) There will be no overnight camping on college premises. Camping is defined to include sleeping, cooking, storing personal belongings, personal habitation, or the erection of tents or other shelters or structures used for the purposes of personal habitation.

(7) Posting and displaying signage, banners, posters, etc., will adhere to established college policy.

(8) Sound amplification shall not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity. The college will determine the time, place, and manner of sound amplification devices.

(9) All fire, safety, sanitation, or special regulations specified for the event will be obeyed in accordance with applicable regulations such as the Tacoma Community College security and fire safety report. The college will not allow utility connections, water hookups, or sanitation systems for purposes of expressive activities conducted pursuant to this policy.

(10) The activity will not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic to include interference with ingress or egress to college premises or to college activities or events. The activity will not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees of the college.

(11) The activity will not interfere with educational activities inside or outside any college premises or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event will not materially infringe on the rights and privileges of college students, employees, or invitees to the college.

(12) College premises will not be used for commercial sales, solicitations, advertising, or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office, college administration, or ASTCC constitutionally recognized student club.

(13) The activity will also be conducted in accordance with any other applicable college policies and regulations, college or local ordinances, and state or federal laws.

NEW SECTION

WAC 132V-135-040 Posting and distribution of materials. College groups may post information on bulletin boards, kiosks, and other display areas designated for that purpose, and may distribute materials throughout the open

areas of campus. Noncollege groups may distribute materials only at the site(s) designated for noncollege groups. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information.

NEW SECTION

WAC 132V-135-050 Posting of a bond and hold harmless statement. When using college premises, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with established college policy. When the college grants permission to a college group or noncollege group to use its premises it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

NEW SECTION

WAC 132V-135-060 Consequences for violation of provisions of this chapter. (1) Noncollege groups who violate provisions of this chapter will be advised of the specific nature of the violation and, if they persist in the violation, will be requested by the college president or designee to leave the college premises. Such a request will be deemed to withdraw the license or privilege to enter onto or remain upon any portion of the college premises of the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or municipal ordinance. Remaining on or reentering campus premises after one's license or privilege to be on college premises has been revoked will constitute trespass, and such individuals will be subject to arrest for criminal trespass.

(2) Members of the college community (students, faculty, staff) who do not comply with these regulations will be reported to the appropriate college office or department for action in accordance with established college policies.

WSR 13-21-149

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 23, 2013, 10:28 a.m., effective December 1, 2013]

Effective Date of Rule: December 1, 2013.

Purpose: Amending professional boxing, chapter 36-12 WAC and professional and amateur martial arts, chapter 36-14 WAC for effectiveness, clarity, intent and statutory authority.

Citation of Existing Rules Affected by this Order: Amending WAC 36-12-011 Definitions, 36-12-020 Guidelines for boxing weight classes, weight difference and glove weight, 36-12-030 Weigh-in, 36-12-040 Ring and equipment, 36-12-050 Gloves, 36-12-070 Hand-wraps, 36-12-110 Referee's responsibilities/authority, 36-12-130 Outcome of contests, 36-12-140 Method of counting over a boxer who is down, 36-12-150 When boxer falls from or leaves the ring during a round, 36-12-170 Officials compensation fees to be paid by promoter, 36-12-195 License fees, renewals and requirements, 36-12-196 Organizations approved by the

department to certify experience, skill and training of officials, 36-12-240 To prevent injury to contestants—Physical qualifications and exams, 36-12-270 Matchmakers, 36-12-280 Timekeeper, 36-12-285 Procedure in the event that a referee is incapacitated, 36-12-300 Judges, 36-12-310 Event physician, 36-12-320 Suspensions, 36-12-360 Promoters 36-14-010 Definitions, 36-14-105 Guidelines for kickboxing, Muay Thai weight classes—Weight difference and glove weight, 36-14-106 Weighing time, 36-14-120 Officials compensation fees to be paid by promoter and 36-14-300 Requirements for ring or enclosed area; new sections WAC 36-14-020 Fouls, 36-14-1060 Participants, 36-14-1061 To prevent injury to contestants—Physical qualifications and exams, 36-14-1062 Managers, 36-14-1063 Seconds, 36-14-1064 Matchmakers, 36-14-1065 Timekeeper, 36-14-1066 Announcer, 36-14-1067 Procedure in the event that a referee is incapacitated, 36-14-109 Organizations approved by the department to certify experience, skill and training of officials, 36-14-305 Gloves, 36-14-310 Hand-wraps, 36-14-315 Officials, 36-14-320 Duties of department inspector, 36-14-325 Judges, 36-14-330 Scoring and the use of ten-point-must system, 36-14-335 Referee's responsibilities/authority, 36-14-340 Event physician, 36-14-345 Foul procedures, 36-14-350 Time considerations for fouls, 36-14-355 Outcome of contest, 36-14-360 Suspensions and 36-14-365 Promoters; and repealing WAC 36-12-500 Amateur organization recognition.

Statutory Authority for Adoption: RCW 43.24.023, 67.08.015, 67.08.017.

Adopted under notice filed as WSR 13-18-085 on September 4, 2013.

Changes Other than Editing from Proposed to Adopted Version: WAC 36-12-040 (1)(b), further defined padding in the ring and WAC 36-14-1060(2), clarified gear for females.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 26, Repealed 1.

Date Adopted: October 23, 2013.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-045, filed 7/28/04, effective 8/28/04)

WAC 36-12-011 Definitions. The following definitions will be used throughout this WAC:

(1) "Purse" (~~(will be)~~) is defined as the sum of money or other compensation by way of guarantee, percentage or otherwise, paid to a boxer.

(2) "Knockdown" is defined as when a boxer is knocked to the ring canvas by fair blows, hangs helplessly on the ropes, or the ropes prevent his/her fall, or any part of the body other than the soles of the feet touches the ring canvas.

(3) The "outcome of a contest" occurs when the contest has concluded, a determination has been made described in WAC 36-12-130, and the report to the boxing registry required by the federal Boxing Safety Act of 1996 has been submitted.

(4) "Neutral corner" is defined as one of the two corners of a ring that are not assigned to a boxer for a contest.

(5) A "count" is the audible measure of time signaled by the referee (~~(to a boxer who has been knocked to the ring canvas by fair blows or to a standing boxer who, in the referee's judgment, is momentarily unable to defend him/herself)~~) to a boxer who has been knocked down.

(6) "Scorecard" is defined as the document used by judges to score a contest.

(7) "Ten-point-must system" of scoring is defined as the scoring system used by judges giving ten points to the boxer winning a round and a lesser number of points to the boxer losing a round.

(8) "Foul" is defined as an action by a boxer, identified by the referee that does not meet the definition of "boxing" as described in RCW 67.08.002. Fouls may include, but are not limited to, the following types of contact or acts:

(a) Hitting, a low blow, below the navel or behind the ear;

(b) Hitting an opponent who is knocked down;

(c) Holding an opponent with one hand and hitting with the other;

(d) Holding or deliberately maintaining a clinch;

(e) Wrestling, kicking or roughing;

(f) Pushing an opponent about the ring or into the ropes;

(g) Butting with the head, shoulder, knee, elbow;

(h) Hitting with the open glove, the butt or inside of the hand, or back of the hand, the elbow or the wrist;

(i) Purposely falling down onto the canvas of the ring without being hit or for the purpose of avoiding a blow;

(j) Striking deliberately at that part of the body over the kidneys;

(k) Using the pivot blow (pivoting while throwing a punch) or the rabbit punch (punches thrown to the back of the head and neck areas);

(l) Jabbing the eyes with the thumb of the glove;

(m) Use of abusive language;

(n) Unsportsmanlike conduct causing injury to an opponent that does not meet the definition of "boxing" in RCW 67.08.002;

(o) Hitting on the break;

(p) Intentionally spitting out the mouthpiece;

(q) Hitting on or out of the ropes;

(r) Holding rope and hitting;

(s) Biting/spitting;

(t) Not following referee's instructions;

(u) Stepping on opponent;

(v) Crouching below opponent's belt;

(w) Leaving neutral corner; and

(x) Corner second shouting.

(9) "Fair blow" is defined as ~~((an exchange of))~~ a blow~~(s)~~ delivered with the padded knuckle part of the glove to the front or sides of the head and body above the navel.

(10) "Event official" is defined as an official licensed under RCW 67.08.100 as a judge, referee, timekeeper, event physician, ~~((and/or))~~ inspector, or other officials deemed necessary, and appointed by the department to provide services at a boxing event.

(11) "Manager" is defined as a person licensed under RCW 67.08.100 who contracts with a boxer to receive compensation for service as an agent or representative.

(12) "Second" is defined as a person licensed under RCW 67.08.100 who assists a boxer during a contest.

(13) "Matchmaker" is defined as a person licensed under RCW 67.08.100 who works for a promoter to propose, select or arrange for boxers to participate in a boxing contest.

(14) "Announcer" is defined as a person licensed under RCW 67.08.100 who works for a promoter announcing information to the audience at a boxing event.

(15) "Referee" is defined as an event official and is the chief official supervising a boxing contest.

(16) "Timekeeper" is defined as an event official who keeps the official timing of a contest.

(17) "Judge" is defined as an event official who scores a boxing contest.

(18) "Inspector" is defined as the event official who reports directly to the department and provides overall management of a boxing event.

(19) "Advance notice" is defined as a list of matches for an event submitted by the promoter to the department for approval that includes the names of proposed boxers for a contest, his/her manager or managers and other information that may be required by the department.

(20) "Boxing registry" is defined as the entity certified by the Association of Boxing Commissions for the purposes of maintaining records and identification of boxers and required under the federal "Professional Boxing Safety Act of 1996."

(21) "Contest" is defined as a fight scheduled between boxers appearing at an event.

(22) "Round" is defined as a two- or three-minute time period during which boxers compete in a boxing contest.

(23) "Net gate proceeds" is defined as the total dollar amount received from the face value of all tickets sold with complimentary tickets excluded.

~~((24) "Televised" is defined as any simultaneous or delayed visual broadcast of an event delivered through electronic means for viewing.~~

~~(25) "Recognized amateur boxing organization" means any amateur boxing organization recognized by the department who has not been exempted by statute and provides written documented proof required by WAC 36-12-500.)~~

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-020 Guidelines for boxing weight classes, weight difference and glove weight. The following

guidelines shall be used for contests unless the department waives the weight difference allowance in writing.

Weight Class		Weight Difference Allowance	Glove Weight
((Straw weight)) <u>Mini Flyweight</u>	up to and including 105 pounds	not more than 3 lbs.	8 oz.
Light Flyweight	over 105 to 108 pounds	not more than 3 lbs.	8 oz.
Flyweight	over 108 to 112 pounds	not more than 3 lbs.	8 oz.
Super Flyweight	over 112 to 115 pounds	not more than 3 lbs.	8 oz.
Bantamweight	over 115 to 118 pounds	not more than 3 lbs.	8 oz.
Super Bantamweight	over 118 to 122 pounds	not more than ((5)) 4 lbs.	8 oz.
Featherweight	over 122 to 126 pounds	not more than ((5)) 4 lbs.	8 oz.
Super Featherweight	over 126 to 130 pounds	not more than ((7)) 4 lbs.	8 oz.
Lightweight	over 130 to 135 pounds	not more than ((7)) 5 lbs.	8 oz.
Super Lightweight	over 135 to 140 pounds	not more than ((9)) 5 lbs.	8 oz.
Welterweight	over 140 to 147 pounds	not more than ((9)) 7 lbs.	8 oz.
Super Welterweight	over 147 to 154 pounds	not more than ((11)) 7 lbs.	((8)) 10 oz.
Middleweight	over 154 to 160 pounds	not more than ((11)) 7 lbs.	10 oz.
Super Middleweight	over 160 to 168 pounds	not more than ((12)) 7 lbs.	10 oz.
Light Heavyweight	over 168 to 175 pounds	not more than ((12)) 7 lbs.	10 oz.
Cruiser weight	over 175 to ((195)) 200 pounds	not more than ((20)) 12 lbs.	10 oz.
Heavyweight	over ((195)) 200 pounds	no limit	10 oz.

When two boxers in a contest are above and below the weights described above both boxers shall wear the gloves required for the higher weight.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-030 Weigh-in. (1) Boxers shall be weighed within ~~((twenty-four))~~ thirty hours but not less than six hours prior to the scheduled event, at a time and place

chosen by the promoter and approved by the department. The weigh-in shall take place in the presence of the department and the promoter or the promoter's representative.

(2) The scales used for weigh-in shall be provided by the promoter and approved by the department.

(3) The weight of each boxer shall be recorded on a form provided by the department and signed by the representative of the department.

(4) If a boxer ~~((weighs in))~~ weighs in within ~~((twenty-four))~~ thirty hours, but not less than twelve hours prior to an event's scheduled start time, the boxer shall weigh the weight specified on the boxer/promoter contract referred to in WAC 36-12-360(7). If a boxer weighs more than the weight specified in the boxer/promoter contract, the boxer may:

(a) Lose the weight exceeded in the boxer/promoter contract ~~((at least twelve hours prior to the event's scheduled start time;~~

~~((b) Lose all but two pounds of the weight exceeded in the boxer/promoter contract at least twelve hours prior to the event's scheduled start time and lose the final two pounds at least two hours prior to the event's scheduled start time))~~ no later than two hours after the initial weigh-in;

~~((c))~~ (b) Renegotiate the boxer/promoter contract; or ~~((d))~~ (c) Not do (a) ~~((through (e)))~~ or (b) of this subsection and the contest will be canceled by the department.

(5) If a boxer weighs-in less than twelve hours prior to an event's scheduled start time, the boxer shall weigh the weight specified in the boxer/promoter contract referred to in WAC 36-12-360(7). If a boxer weighs more than ~~((two pounds over))~~ the weight specified in the boxer/promoter contract, the boxer may:

(a) ~~((Lose up to two pounds at least two hours prior to an event's scheduled start time;~~

~~((b))~~ Renegotiate the boxer/promoter contract; or ~~((c))~~ (b) Not do (a) ~~((or (b)))~~ of this subsection and the contest will be canceled by the department.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-040 Ring and equipment. (1) The promoter shall supply a ring that meets the following standards:

(a) The ring shall be not less than a sixteen-foot square or more than a twenty-four foot square measured within the ropes.

(b) The ring floor shall extend at least twenty-four inches beyond the ring ropes and shall be covered with one inch of padding. Padding must extend beyond the ring ropes and over the edge of the platform ~~((covered by))~~, with a top covering of canvas, duck, or similar material, tightly stretched and laced securely ~~((attached))~~ to the ring platform. ~~((Canvas))~~ Material that tends to gather in lumps and ridges may not be used. The top covering must be clean, smooth, free of cracks and splits, and not slippery.

(c) The ring platform shall not be more than four feet above the floor of the building, and shall have safe steps.

(d) Ring posts shall be of metal, not more than four inches in diameter, extending to a height of fifty-eight inches above the ring floor and placed at least twenty-four inches behind the rope corners.

(e) There shall be four ring ropes not less than one inch in diameter, wrapped in soft material. The ropes shall be manila rope of standard manufacture. No wire or cable shall be used. The lower rope shall be eighteen inches above the ring floor, the second rope thirty inches above the floor, the third rope forty-two inches above the floor, and the fourth rope fifty-four inches above the floor. The lower rope shall have at least one-half inch of padding. Two vertical stays or rope spacers shall be evenly spaced between the rope corners on all four sides of the ring.

(2) The promoter shall provide equipment for use by the seconds and boxers at ringside. Equipment shall consist of, but not be limited to, a corner stool, spit bucket, ice, towels, and any other items necessary for the health and safety of the boxers.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-050 Gloves. (1) Promoters shall supply gloves that meet the following standards:

(a) Gloves for all main events and title fights shall be new and fit the hands of the contestants.

(b) Gloves shall be whole, clean, sanitary, in good condition, and subject to inspection by the inspector. Gloves found to be unfit or ill-fitting, shall be replaced. Gloves shall not be twisted, manipulated, or altered in any manner.

(c) One set each of eight-ounce and ten-ounce gloves shall be provided to the inspector prior to the start of the first contest for use in case gloves are damaged during a contest.

~~(2) ((All boxers weighing 154 pounds or less shall wear eight-ounce gloves. All boxers weighing more than 154 pounds shall wear ten-ounce gloves.~~

~~(3) When two boxers in a contest are above and below the weights described in subsection (2) of this section, both boxers shall wear the gloves required for the higher weight.~~

~~(4))~~ Gloves must have the distal portion of the thumb attached to the body of the glove so as to minimize the possibility of injury to an opponent's eye.

~~((5))~~ (3) A glove or set of gloves shall only be used once during each boxing event.

~~((6))~~ (4) In each contest, both boxers must wear gloves of the same manufacture unless it is stated in their contract both opponents agree to wear gloves of different manufacture.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-070 Hand-wraps. (1) Hand-wraps shall be applied in the dressing room. The hand-wraps for each hand shall be applied in the following manner:

(a) Hand-wraps shall be restricted to no more than twenty yards of soft gauze, not more than two inches wide. The gauze shall be held in place by no more than eight feet of adhesive tape no more than one and one-half inches wide.

(b) The adhesive tape shall not cover any part of the knuckles when the hand is clenched to make a fist.

(c) Liquids or other materials shall not be used on the tape or gauze.

(2) The referee, inspector, or department ~~((designee))~~ representative shall inspect and sign the hand-wraps.

(3) Under no circumstances are gloves to be placed on the hands of a boxer until the approval of the referee, inspector, or department representative is received.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-110 Referee's responsibilities/authority.

(1) The referee's primary responsibility shall be to maintain the safety and welfare of the boxers at all times.

(2) Before starting a contest, the referee shall determine the name of the chief seconds for each boxer. The chief second shall be responsible for the conduct of the boxer's other seconds during the contest.

(3) The referee shall call boxers and their chief seconds into the ring at the beginning of each contest for instructions.

(4) The referee shall not allow any person other than the boxers and the event physician to enter the ring during a round.

(5) The referee shall inspect the boxers' bodies and gloves to make sure ~~((that))~~ no substances have been applied to the detriment of an opponent.

(6) Referees who are event officials shall pass a physical examination by the event physician within twenty-four hours prior to an event for the purpose of determining their physical ability to referee the contest. If such examination indicates the referee is physically unable to referee the contest, such inability shall be noted on the ~~((preflight))~~ preflight physical form and immediately be reported to the inspector or department representative.

(7) The referee shall have the authority to stop a contest any time he/she thinks it is too one-sided, or if either boxer is in such condition that to continue might subject them to serious injury.

(8) The referee shall not make a disqualification decision based on one unintentional, low-blow foul. However, if two previous warnings for such fouls have resulted in point deductions, the third foul may be grounds for disqualification.

(9) The referee has authority to decide any matters that arise during a contest and are not covered by these rules.

(10) If a boxer receives an injury that the referee thinks shall incapacitate the boxer, the referee shall ask the event physician to examine the boxer. The event physician shall provide the referee with an opinion as to the seriousness of the injury and either the event physician or the referee shall stop the contest if the injury is serious. When a referee calls the event physician into the ring, the referee shall direct the timekeeper to cease keeping time while the event physician examines the boxer.

(11) The referee may penalize a boxer who fouls an opponent during a contest, by charging such boxer with the loss of points. The referee shall immediately notify the judges of the number of points to be deducted.

(12) The referee shall stop the contest if the boxer's chief second determines that a contest should be stopped, and immediately signals the referee by stepping onto the ring apron.

(13) When a boxer resumes boxing after having been knocked down or fallen or slipped to the floor, the referee shall wipe all foreign material from the boxer's gloves.

(14) The referee shall give a boxer injured by a low-blow foul up to five minutes to recover. Should the boxer be unable to continue at the end of the recovery period, the referee shall declare that the boxer has signaled his/her desire to stop boxing as described in WAC 36-12-130 (1)(b)(iv).

(15) Prior to an event, each referee shall disclose to the department all considerations, including reimbursement for expenses that will be received from any source for participation in the event. The disclosure shall be made on a form supplied by the department.

(16) A decision rendered at the termination of any contest may be changed by the department if the department determines that one of the following occurred:

(a) There was collusion affecting the result of any contest;

(b) The compilation of the scorecard of the judges shows an error which would mean that the decision was given to the wrong contestant; or

(c) There was a violation of the laws or rules governing contests, which affected the result of any contest.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-130 Outcome of contests. (1) If a referee stops a contest, he shall render a decision regarding the outcome of the contest as follows:

(a) Win by knockout if:

(i) Boxer has been knocked down by fair blows and cannot arise before completion of the referee's count; or

(ii) Boxer has been knocked down and the referee waves off the count because of urgency to have the event physician examine the boxer.

(b) Win by technical knockout if:

(i) In the referee's judgment, boxer is outclassed or is unable to continue due to punishment received;

(ii) Boxer does not resume boxing by the end of a referee's count (excluding knockouts);

(iii) Corner man signals referee to terminate the bout; or

(iv) Boxer, after putting forth good effort, signals referee his/her desire to stop boxing.

(c) Win by technical decision if ~~((a contest is stopped after completion of four rounds due to an accidental head butt or foul))~~:

A bout is stopped after the completion of three rounds in bouts scheduled for four rounds and after four rounds in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately. At least two of the judges must have the same boxer ahead on points.

(d) No decision if:

A bout is stopped before the completion of three rounds in bouts scheduled for four rounds and before four rounds ((of a contest)) in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately; or

(e) Technical draw if:

A bout is stopped after the completion of three rounds in bouts scheduled for four rounds and after four rounds ((of a contest)) in bouts scheduled for more than four rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately and the judges are split (one voting for boxer A, one voting for boxer B, and the third judge with an even score); or

(f) No contest if:

(i) The bout is unable to continue due to events other than boxing (fire, riot, ring collapse, etc.); or

(ii) In the referee's judgment, there appears to be collusion affecting the outcome of the contest.

(g) Disqualification:

(i) If points have been deducted from a boxer's scorecard for three separate incidents as described in WAC 36-12-110(11);

(ii) If a boxer, in the referee's judgment, flagrantly fouls an opponent;

(iii) If a boxer quits after putting forth no effort, thereby fostering a sham on the public;

(iv) Second enters the ring during the progress of the bout; or

(v) Following a contest, a boxer tests positive for controlled substances per WAC 36-12-240.

(2) If a contest ends when the scheduled rounds are completed, the outcome of the contest may be as follows:

(a) Winner by unanimous decision if all three judges agree on the same winner;

(b) Winner by split decision if two judges agree on winner and the third judge votes for the other boxer;

(c) Winner by majority decision if two judges agree on winner and the third judge has the score even between the boxers;

(d) A draw if all three judges have the score even between the boxers or are split (one voting for boxer A, one voting for boxer B, and the third judge with an even score); or

(e) A majority draw if two of the judges agree that the score is even between the boxers.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-140 Method of counting over a boxer who is down. (1) The referee shall give an injured boxer a count of eight when a knockdown occurs. The referee does not have to continue to count if in the referee's opinion a boxer is unable to continue to box. The referee shall resume a count where it was left off if a boxer attempts to rise after being knocked down and goes down again immediately.

(2) When the referee determines a boxer has been knocked down, the referee shall require the boxers to cease boxing during the count. If the boxer rises prior to, or when the count is completed, the referee shall determine whether the boxer's reflexes and condition render it appropriate to continue the contest.

(3) If a boxer does not rise when the count of eight is completed, the referee shall continue the count to ten seconds.

(4) If the boxer being given a count by the referee is down on the canvas of the ring when the referee completes

counting to ten seconds, the referee shall wave both arms to indicate that the boxer has been knocked out and shall stop the contest. The referee may raise the hand of the opponent indicating that the opponent has won by a knockout.

(5) The referee's counting of seconds is the official count. However, when a boxer is knocked down, the timekeeper shall assist with starting and maintaining an accurate count by striking the edge of the ring platform once each second with a hammer or other equipment or signaling method.

(6) When a boxer is knocked down, the referee shall direct the opponent to move to the farthest neutral corner of the ring. If the opponent leaves the neutral corner, the referee shall interrupt the count and will not resume the count until the opponent returns to the neutral corner.

(7) If a boxer is knocked down and the referee is still counting when three minutes of a round has elapsed, the bell shall not be sounded until the knocked down boxer rises and the referee indicates that the contest will continue. A boxer cannot be saved by the bell at the end of any round.

(8) If both boxers score simultaneous knockdowns (double knockdown), the referee shall begin a count as in any knockdown. If one contestant does not rise before the count of ten, his opponent shall be declared the winner. If both contestants rise before completion of the count, the bout may continue at the discretion of the referee. If both contestants rise but neither can continue as determined by the referee and/or event physician, the winner will be determined by the scorecards. If both boxers remain down until the count of ten, the bout must be stopped and the decision is a technical draw.

Net gate	Referee (preliminary)	Referee (main event)
0 - \$30,000	\$160	\$200
\$30,000 - \$75,000	\$220	\$275
\$75,000 and above	\$400	\$475

(2) ~~The following minimum fees shall be paid by the promoter of the event to event officials for nontitle, local televised bouts:~~

Judges	\$100.00
Timekeepers	\$100.00
Referee (preliminary)	\$135.00
Referee (main event)	\$200.00
Physician	\$250.00
Event chiropractor	\$200.00

~~(3)) In the event of a (local, state or regional championship, or) title fight, event officials shall be paid by the promoter at the respective and prevailing scale of the sanctioning organization. The event officials pay rate shall not be lower~~

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-150 When boxer falls from or leaves the ring during a round. (1) A boxer who has been knocked through the ropes and over the edge of the ring platform shall be subject to a count of twenty. The boxer ~~((may be helped back into the ring by anyone except his/her seconds or manager))~~ must return to a standing and ready position unassisted by anyone before the count elapses. If assisted by anyone and the action does not cause an unfair advantage over the opponent, the boxer shall receive a mandatory count of eighteen. If the action causes an unfair advantage over the opponent, the boxer shall lose by disqualification. The referee is the sole authority in deciding if the boxer received assistance and whether or not there was an unfair advantage.

(2) A boxer who leaves the ring due to other than fair blows shall be subject to a count of ten only if he/she refuses to reenter the ring.

AMENDATORY SECTION (Amending WSR 02-23-062, filed 11/18/02, effective 1/1/03)

WAC 36-12-170 Officials compensation fees to be paid by promoter. (1) The following minimum fees shall be paid by the promoter of the event to the event officials ~~((for nontitle, nontelevised bouts))~~:

((Judge	\$75.00
Timekeeper	\$75.00
Referee (preliminary)	\$110.00
Referee (main event)	\$125.00
Physician	\$250.00
Event chiropractor	\$200.00))

Judge	Timekeeper	Physician	Chiropractor
\$115	\$115	\$400	\$200
\$150	\$150	\$400	\$200
\$200	\$200	\$400	\$200

than the ~~((televised))~~ rates established in subsection ~~((2))~~ (1) of this section.

~~((4) In the event of a championship, title fight, or nationally televised fight, event officials shall be paid by the promoter at the respective and prevailing scale of the sanctioning organization but shall not be lower than the rates established below:~~

Judges	\$150.00
Timekeepers	\$150.00
Referee (preliminary)	\$175.00
Referee (main event)	\$225.00
Physician	\$250.00
Event chiropractor	\$200.00

~~(5) In the event of a "world" title bout, event officials shall be paid by the promoter at the respective and prevailing scale of the sanctioning organization but shall not be lower than the rates established in subsection (4) of this section. If the "world" title bout is televised, an additional \$200.00 fee per official will be assessed for each judge, timekeeper and referee if the fees listed in subsection (4) of this section are used.~~

~~(6)) (3) Travel mileage shall be paid to event officials at the state rate ((listed on schedule A, chapter 10.90.10.b of the State Administrative and Accounting Manual)) as ((published)) established by the office of financial management.~~

AMENDATORY SECTION (Amending WSR 10-08-037, filed 4/1/10, effective 5/2/10)

WAC 36-12-195 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	\$ 65.00
Referee	-	\$ 65.00
Boxer	-	\$ 25.00
Matchmaker	-	\$ 65.00
Second	-	\$ 25.00
Inspector	-	((F)) \$ 65.00 ((F))
Judge	-	((F)) \$ 65.00 ((F))
Timekeeper	-	((F)) \$ 65.00 ((F))
Announcer	-	((F)) \$ 65.00 ((F))
Event physician	-	No charge
Event chiropractor	-	\$ 65.00
Promoter	-	((F \$ 200.00)) \$500.00

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (boxer and referee only).

(c) Federal identification card (boxer only).

(d) One small current photograph, not more than two years old (boxer only).

(e) Payment of license fee.

(f) Certification from an organization approved by the department under RCW 67.08.100(3) and WAC 36-12-196.

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

AMENDATORY SECTION (Amending WSR 01-22-029, filed 10/29/01, effective 11/29/01)

WAC 36-12-196 Organizations approved by the department to certify experience, skill and training of officials. (1) Any organization wishing to be approved by or

maintain their approval by the department to certify adequate experience, skill and training of officials, pursuant to RCW 67.08.100(3), shall submit the following information to the department annually:

~~((1)) (a) Description of training courses required;~~

~~((2)) (b) List of all persons seeking licensing from Washington state who have received training given by the organization within the past year;~~

~~((3)) (c) Dates training was given; and~~

~~((4)) (d) Assessment of the skill and experience of the person.~~

(2) Training seminars for boxing, kickboxing, and martial arts will be offered at least annually by the department. The training curriculum will provide training for the following types of licenses:

(a) Inspector;

(b) Judge;

(c) Referee;

(d) Timekeeper; or

(e) Other officials deemed necessary by the department.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-240 To prevent injury to contestants—Physical qualifications and exams. (1) A boxer applying for a license to box in this state shall meet the following standards:

(a) Be certified by a physician as described in RCW 67.08.002(11) to be physically fit to safely compete in professional boxing. The examination shall include, but not be limited to:

(i) Eyesight;

(ii) Blood pressure;

(iii) Communicable blood diseases including, but not limited to, HIV, Hepatitis B, and Hepatitis C; and

(iv) Other physical factors the department determines are necessary to show a boxer is physically fit to safely compete in professional boxing.

(b) In addition to the requirements of (a) of this subsection, if a boxer is over thirty-six years old, or has lost six consecutive fights, the physical certification in (a) of this subsection must include proof of:

(i) A complete physical exam which includes ~~((an electroencephalogram (EEG)))~~ a magnetic resonance imaging (MRI) of the brain and an electrocardiogram (EKG); and

(ii) Any other specialized medical testing that may be determined necessary by the department.

(2) The event physician shall examine boxers and referees within twenty-four hours prior to and immediately following an event ~~((to determine that they meet the standards in subsection (1)(a) of this section with the exception of the requirements of RCW 67.08.090(5) unless the department notifies the event physician that drug testing is required following an event))~~ as described under WAC 36-12-310.

(3) A boxer who tests positive for a drug prohibited by the World Anti-doping Agency on a drug test required by RCW 67.08.090(5) ~~((or in subsection (2) of this section shall))~~ may not be allowed to box in ((any)) events.

(4) When a contestant has been knocked out, none of the handlers are to touch the contestant (~~(, except to remove the mouthpiece)~~) until the attending physician enters the ring and personally attends the fallen contestant, and issues such instructions as deemed necessary to the contestant's handlers.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-270 Matchmakers. (1) A matchmaker shall request approval from the department for each boxing contest for boxing events.

(2) The department may approve the contest if the following information about each boxer is similar and the department does not have (~~(undue)~~) undue concern for the safety and welfare of either boxer proposed for a contest:

- (a) Boxing record;
- (b) Boxing experience;
- (c) Boxing skill; and
- (d) Physical condition.

(3) The department shall notify the matchmaker and promoter when a boxing contest is approved by giving preliminary approval to the matchmaker and by approving the advance notice submitted by the promoter.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-280 Timekeeper. (1) The timekeeper supplies the bell and timing equipment.

(2) The bell shall be placed at the ring no higher than the level of the ring platform and be of a clear tone so that the contestants and officials may easily hear it.

(3) Equipment shall include, but is not limited to, (~~(an)~~) two accurate (~~(stopwatch)~~) stopwatches, whistle, hammer, and bell.

(4) The timekeeper shall be seated at ringside with the bell and shall indicate the beginning and ending of each round by striking the bell with a hammer.

(5) Ten seconds before the beginning of each round the timekeeper shall blow the whistle as a warning for everyone but the referee and boxers to leave the ring.

(6) (~~(Five)~~) Ten seconds before the end of each round the timekeeper shall notify the referee that the round is ending by striking a hard surface with a hammer or other similar object.

(7) When a contest terminates before the scheduled rounds are completed, the timekeeper shall inform the inspector of the exact duration of the contest.

(8) The timekeeper shall assist the referee during the knockdown count of a boxer.

(9) The timekeeper shall stop time on the referee's command of "time-out" and shall restart on the referee's command of "time-in" or "box."

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-285 Procedure in the event that a referee is incapacitated. (1) Timekeeper shall ring the bell and stop time.

(2) (~~(Boxers)~~) The inspector or department representative shall (~~(be commanded)~~) command the boxers to stop boxing and (~~(directed)~~) direct the boxers to opposite neutral corners.

(3) Physicians shall attend to the referee.

(4) If the referee cannot continue, an alternate referee shall be assigned by the inspector or department representative.

(5) Boxing and time shall resume at the referee's command of "time-in" or "box."

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-300 Judges. (1) Judges shall be provided scorecards by the inspector. Judges shall score each round of the contest using the scorecard, sign it at the conclusion of the (~~(contest)~~) round and turn it (~~(into)~~) in to the referee or designated official. The referee or designated official shall turn the scorecards in to the inspector who verifies the addition on the scorecards and gives the outcome of the contest to the announcer who announces the outcome to the audience.

(2) Judges shall score all contests using the "ten-point-must system." If a judge determines that both of the boxers are even in a round, each boxer receives ten points for the round. No fraction of points shall be given to a boxer for a round.

(3) If the outcome of an incomplete contest is determined by using the scorecards of the judges, all rounds including partially completed rounds will be scored. If no action has occurred, the round should be scored as an even round at the discretion of the judges.

(4) Judges shall only deduct points from a boxer's score when instructed by the referee. If the referee penalizes either contestant, then the appropriate points shall be deducted when the inspector calculates the final score.

(5) Prior to an event, each judge shall disclose to the department all considerations, including reimbursement for expenses, which will be received from any source for participation at an event. Disclosure shall be made on a form supplied by the department.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-310 Event physician. (1) The event physician shall examine the boxers and referees as required by RCW 67.08.090 and provide a report to the inspector or department representative in writing that discloses the results of the examinations and recommendations.

(2) Medical equipment to be utilized by an event physician for the preflight and post fight examinations of boxers and referees shall consist of, but not be limited to, a blood pressure cuff, stereoscope, ophthalmologic, penlight, reflex hammer, stethoscope, thermometer, and tongue depressor.

(3) If the event physician determines that a boxer or referee should not participate in an event due to a condition found during the preflight examination, the event physician shall recommend to the department that the boxer or referee not participate in the event.

(4) An event physician shall be at ringside during all the contests in an event and shall be prepared to provide medical assistance to a boxer if requested by the referee.

(5) The promoter shall provide the event physician with a suitable place to perform the preflight and post fight physical examinations.

(6) The event physician shall perform a post fight physical on each boxer immediately following an event and may recommend temporary suspension of the boxer's license due to injury incurred during a contest.

(7) The event physician may inspect first-aid equipment used by seconds.

AMENDATORY SECTION (Amending WSR 02-03-069, filed 1/11/02, effective 2/11/02)

WAC 36-12-320 Suspensions. (1) A boxer whose manager has been suspended under chapter 67.08 RCW may continue boxing during the term of such suspension, signing his/her own boxer/promoter contract.

(2) Boxers scheduled for a contest shall sign a letter of agreement with the department accepting temporary suspension of their license if they receive an injury during the contest. The schedule for suspensions is:

(a) Thirty days for a technical knockout;

(b) Sixty days for a knockout;

(c) A period of time different than (a) and (b) of this subsection if serious injury or condition is detected by the event physician during the post fight physical; and

(d) A period of time or an indefinite period of time if serious injury or condition is detected by the event physician. If the suspension is for an indefinite period of time, the boxer may not box again without an examination completed by a physician who has provided written certification to the department that the medical condition no longer exists.

(3) If at any time a boxer's ability to perform is questionable, whether for reasons of health, mental condition, or no longer possessing the ability to compete or for any other reason, the department may recommend that the boxer be retired from further competition.

(4) Boxers who have been recommended for retirement have a right to a hearing under chapter 34.05 RCW, the Administrative Procedure Act.

AMENDATORY SECTION (Amending WSR 11-03-028, filed 1/11/11, effective 2/11/11)

WAC 36-12-360 Promoters. (1) Promoters shall not release the names of boxing contestants in an event to the media or otherwise publicize a contest unless a boxer/promoter contract has been signed and the contest approved by the department.

(2) Promoters shall not schedule an event intermission that exceeds twenty minutes.

(3) Promoters shall dispense drinks only in plastic or paper ~~(cups)~~ containers.

(4) ~~(Promoters shall not schedule less than twenty-six rounds of boxing without approval of the department.~~

~~(5))~~ Advance notices for all boxing shows must be in the office of the department seven days prior to the holding of any boxing show. In addition to the regular scheduled boxers

the advance notice must show the names of boxers engaged by the promoter for an emergency bout.

~~((6))~~ (5) Changes in announced or advertised programs for any contest must be approved prior to the contest by the department. Notice of such change or substitution must also be given to the press, conspicuously posted at the box office, and announced from the ring before the opening contest. If any ticket holders desire a refund, such refund shall be made at the box office prior to the start of the first contest.

~~((7))~~ (6) The promoter of an event shall contract with each boxer for a contest. Original contracts shall be filed with the department at least five days prior to the event. The contract shall be on a form supplied by the department and contain at least the following:

(a) The weight of the boxer at weigh-in;

(b) The amount of the purse to be paid for the contest;

(c) The date and location of the contest;

(d) Any other payment or consideration provided to the boxer;

(e) List of all fees, charges and expenses including training expenses that will be assessed to the boxer or deducted from the boxer's purse;

(f) Any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer; and

(g) The amount of any compensation or consideration that a promoter has contracted to receive from a match.

~~((8))~~ (7) If a boxer/promoter contract is renegotiated, the promoter shall provide the department with the contract at least two hours prior to an event's scheduled start time.

~~((9))~~ (8) If the information from the contract in subsection ~~((7))~~ (6)(e), (f), and (g) of this section is discloseable under Washington state public disclosure law, the promoter may instead provide the information to the Association of Boxing Commissions instead of including the information in the boxer/promoter contract.

~~((10))~~ (9) A promoter for an event shall not be a manager for a boxer who is contracted for ten rounds or more of boxing at that event or have direct or indirect financial interest in a boxer in the event.

~~((11))~~ (10) The promoter of an event shall provide payments for the boxers' purses and event official's fee in the form of checks or money orders to the department prior to an event. The department may allow other forms of payment if arranged in advance. The department shall pay the boxers and officials immediately after the event, but not later than seventy-two hours from the conclusion of the event.

~~((12))~~ (11) Promoters shall provide seats for event officials and department representatives at ringside for each event.

~~((13))~~ (12) Promoters shall provide an ambulance or paramedical unit with transport and resuscitation capabilities, with a minimum of two attendants, to be present at the event location at all times during the event.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 36-12-500 Amateur organization recognition.

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-010 Definitions. The following definition(s) will be used throughout this WAC:

~~("Mixed martial arts" in addition to RCW 67.08.002(20), mixed martial arts does not include muay thai and kickboxing.~~

(2)) "Advance notice" is defined as a list of matches for an event submitted by the promoter to the department for approval that includes the names of proposed participants for a contest, his/her manager or managers and other information that may be required by the department.

"Announcer" is defined as a person licensed under RCW 67.08.100 who works for a promoter announcing information to the audience at an event.

"Contest" is defined as a fight scheduled between participants appearing at an event.

"Event official" is defined as an official licensed under RCW 67.08.100 as a judge, referee, timekeeper, event physician, inspector, or other officials deemed necessary, and appointed by the department to provide services at an event.

"Inspector" is defined as the event official who reports directly to the department and provides overall management of an event.

"Judge" is defined as an event official who scores a contest.

"Manager" is defined as a person licensed under RCW 67.08.100 who contracts with a participant to receive compensation for service as an agent or representative.

"Matchmaker" is defined as a person licensed under RCW 67.08.100 who works for a promoter to propose, select or arrange for participants to participate in an event.

"Mixed martial arts" in addition to RCW 67.08.002(20), mixed martial arts does not include muay thai and kickboxing.

"Net gate proceeds" is defined as the total dollar amount received from the face value of all tickets sold with complementary tickets excluded.

"Neutral corner" is defined as one of the corners that are not assigned to a martial arts participant for a contest.

"Outcome of a contest" occurs when the contest has concluded, a determination has been made described in WAC 36-14-355, and the report to the martial arts registry has been submitted.

"Purse" is defined as the sum of money or other compensation by way of guarantee, percentage or otherwise, paid to a participant.

"Referee" is defined as an event official and is the chief official supervising a contest.

"Round" is defined as a three- or five-minute time period during which participants compete in a contest.

"Scorecard" is defined as the document used by judges to score a contest.

"Second" is defined as a person licensed under RCW 67.08.100 who assists a participant during a contest.

"Ten-point-must system" of scoring is defined as the scoring system used by judges giving ten points to the participant winning a round and a lesser number of points to the participant losing a round.

"Timekeeper" is defined as an event official who keeps the official timing of a contest.

"Training facility" is a location licensed and defined under chapter 67.08 RCW to hold amateur mixed martial arts exhibitions in that location.

NEW SECTION

WAC 36-14-020 Fouls. The following are fouls and will result in penalties if committed:

- (1) Holding or grabbing the fence;
- (2) Holding opponent's shorts or gloves;
- (3) Butting with the head;
- (4) Eye gouging of any kind;
- (5) Biting or spitting at an opponent;
- (6) Hair pulling;
- (7) Fish hooking;
- (8) Groin attacks of any kind;
- (9) Intentionally placing a finger into any orifice, or into any cut or laceration of your opponent;
- (10) Downward pointing of elbow strikes;
- (11) Small joint manipulation;
- (12) Strikes to the spine or the back of the head;
- (13) Heel kicks to the kidney;
- (14) Throat strikes of any kind including, without limitation, grabbing the trachea;
- (15) Clawing, pinching, twisting the flesh or grabbing the clavicle;
- (16) Kicking the head of a grounded opponent;
- (17) Kneeing the head of a grounded opponent;
- (18) Stomping of a grounded opponent;
- (19) The use of abusive language in the fighting area;
- (20) Any unsportsmanlike conduct that causes an injury to an opponent;
- (21) Attacking an opponent on or during the break;
- (22) Attacking an opponent who is under the care of the referee;
- (23) Timidity (avoiding contact, or consistently dropping the mouthpiece, or faking an injury);
- (24) Interference from mixed martial artists seconds;
- (25) Throwing an opponent out of the ring or caged area;
- (26) Flagrant disregard of the referee's instructions;
- (27) Spiking the opponent to the canvas onto the head or neck (pile driving); and
- (28) Attacking an opponent after the bell has sounded the end of the period of unarmed combat.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-14-105 Guidelines for (~~kickboxing and Muay Thai~~) martial arts weight classes(~~(—)~~) and weight difference (~~(and glove weight)~~) allowance. The following guidelines shall be used for contests unless the department waives the weight difference allowance in writing. (~~Glove weight shall be ten ounces for all weight classes.~~

Weight-Class	Weight-Difference-Allowance
Flyweight	12-pounds to no minimum
	not more than 3 lbs.

Weight Class		Weight Difference Allowance
Super Flyweight	112.1 to 115 pounds	not more than 3 lbs.
Bantamweight	115.1 to 118 pounds	not more than 3 lbs.
Super Bantamweight	118.1 to 122 pounds	not more than 5 lbs.
Featherweight	122.1 to 126 pounds	not more than 5 lbs.
Super Featherweight	126.1 to 130 pounds	not more than 7 lbs.
Lightweight	130.1 to 135 pounds	not more than 7 lbs.
Super Lightweight	135.1 to 140 pounds	not more than 9 lbs.
Welterweight	140.1 to 147 pounds	not more than 9 lbs.
Super Welterweight	147.1 to 154 pounds	not more than 11 lbs.
Middleweight	154.1 to 160 pounds	not more than 11 lbs.
Super Middleweight	160.1 to 167 pounds	not more than 12 lbs.
Light Heavyweight	167.1 to 175 pounds	not more than 12 lbs.
Super Light Heavyweight	175.1 to 183 pounds	not more than 20 lbs.
Cruiserweight	183.1 to 190 pounds	not more than 20 lbs.
Heavyweight	190.1 to 220 pounds	no limit
Super Heavyweight	over 220.1 pounds	no limit))

Weight Class		Weight Difference Allowance
Flyweight	<u>up to and including 125 pounds</u>	<u>not more than 5 lbs.</u>
Bantamweight	<u>over 125 to 135 pounds</u>	<u>not more than 10 lbs.</u>
Featherweight	<u>over 135 to 145 pounds</u>	<u>not more than 10 lbs.</u>
Lightweight	<u>over 145 to 155 pounds</u>	<u>not more than 10 lbs.</u>
Welterweight	<u>over 155 to 170 pounds</u>	<u>not more than 15 lbs.</u>
Middleweight	<u>over 170 to 185 pounds</u>	<u>not more than 15 lbs.</u>
Light Heavyweight	<u>over 185 to 205 pounds</u>	<u>not more than 20 lbs.</u>
Heavyweight	<u>over 205 to 265 pounds</u>	<u>not more than 60 lbs.</u>
Super Heavyweight	<u>over 265 pounds</u>	<u>no limit</u>

A one pound allowance for nontitle bouts is acceptable but only if provided for in the written bout contract.

The department may approve catch weight bouts, subject to their review and discretion. For example, the department may still decide to allow the contest if it feels that the contest would still be fair, safe and competitive if a set catch weight is set in advance at 163 pounds, for example.

In addition, if one athlete weighs in at 264 pounds while the opponent weighs in at 267 pounds, the department may still decide to allow the contest if it feels that the contest would still be fair and competitive. This would be despite the fact that the two athletes weighed in at differing weight classes.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-14-106 ((Weighing time)) Weigh-in. (1) Participants shall be weighed within ~~((twenty-four))~~ thirty hours but not less than six hours prior to the scheduled event, at a time and place chosen by the promoter and approved by the department. The weigh-in shall take place in the presence of the department and the promoter or the promoter's representative.

(2) The scales used for weigh-in shall be provided by the promoter and approved by the department.

(3) The weight of each participant shall be recorded on a form provided by the department and signed by the representative of the department.

(4) If a participant ~~((weighs in))~~ weighs in within ~~((twenty-four))~~ thirty hours, but not less than twelve hours prior to an event's scheduled start time, the participant shall weigh the weight specified on the ~~((boxer))~~ participant/promoter contract referred to in WAC ~~((36-12-360(7)))~~ 36-14-365. If a participant weighs more than the weight specified in the ~~((boxer))~~ participant/promoter contract, the participant may:

(a) Lose the weight exceeded in the ~~((boxer))~~ participant/promoter contract ~~((at least twelve hours prior to the event's scheduled start time))~~ no later than two hours after the initial weigh-in;

(b) ~~((Lose all but two pounds of the weight exceeded in the boxer/promoter contract at least twelve hours prior to the event's scheduled start time and lose the final two pounds at least two hours prior to the event's scheduled start time;~~

~~((e)))~~ Renegotiate the ((boxer)) participant/promoter contract; or

~~((d)))~~ (c) Not do (a) ((through (e))) or (b) of this subsection and the contest will be canceled by the department.

(5) If a participant ~~((weighs in))~~ weighs in less than twelve hours prior to an event's scheduled start time, the participant shall weigh the weight specified in the ~~((boxer))~~ participant/promoter contract referred to in WAC ~~((36-12-360))~~ 36-14-365(7). If a participant weighs more than ~~((two pounds over))~~ the weight specified in the ~~((boxer))~~ participant/promoter contract, the participant may:

(a) ~~((Lose up to two pounds at least two hours prior to an event's scheduled start time;~~

~~((b)))~~ Renegotiate the ((boxer)) participant/promoter contract; or

~~((e)))~~ (b) Not do (a) ((or (b))) of this subsection and the contest will be canceled by the department.

NEW SECTION

WAC 36-14-1060 Participants. (1) Participants shall be present in the dressing room at the time designated by the department or at least one hour before the scheduled time of the first contest.

(2) Participants shall compete in mixed martial arts shorts, biking shorts, or kick-boxing shorts, groin protector (males only), sports bra (females only), chest protector is optional (females only), and a custom-made individually fitted mouthpiece. Shoes, gis, shirts, and jewelry or piercing accessories are prohibited during competition.

(3) All female participants must provide a negative pregnancy test within seven days prior to each contest.

(4) Participants shall not use substances on their body or gloves that might handicap an opponent.

(5) If a participant cannot compete in an event for which the participant has a contract with a promoter due to a physical disability, the participant shall be examined by a physician as defined in RCW 67.08.002(11) prior to the scheduled event. The participant shall report the disability to the department prior to the scheduled contest.

(6) After a participant competes in an event, the participant shall not compete again until seven days have passed.

(7) The department may limit the persons allowed in the dressing room of a participant.

(8) Licensees shall not verbally abuse or have physical contact with any event official.

(9) Copies of the annual physical examination required in RCW 67.08.100(2) shall be provided to the department. The examination shall certify that a participant is physically fit to safely compete in a martial arts contest.

(10) Any professional participant engaging in amateur events shall be subject to disciplinary action by the department.

NEW SECTION

WAC 36-14-1061 To prevent injury to contestants—Physical qualifications and exams. (1) A participant applying for a license to compete in this state shall meet the following standards:

(a) Be certified by a physician as described in RCW 67.08.002(11) to be physically fit to safely compete in professional martial arts. The examination shall include, but not be limited to:

(i) Eyesight;

(ii) Blood pressure;

(iii) Communicable blood diseases including, but not limited to, HIV, Hepatitis B, and Hepatitis C; and

(iv) Other physical factors the department determines are necessary to show a participant is physically fit to safely compete in professional martial arts.

(b) In addition to the requirements of (a) of this subsection, if a participant is over thirty-six years old, or has lost six consecutive fights, the physical certification in (a) of this subsection must include proof of:

(i) A complete physical exam which includes a magnetic resonance imaging (MRI) of the brain and an electrocardiogram (EKG); and

(ii) Any other specialized medical testing that may be determined necessary by the department.

(2) The event physician shall examine participants and referees within twenty-four hours prior to and immediately following an event as described under WAC 36-14-340.

(3) A participant who tests positive for a drug prohibited by the World Anti-doping Agency on a drug test required by RCW 67.08.090(5) may not be allowed to compete in events.

(4) When a participant has been knocked out, none of the handlers are to touch the participant until the attending physician enters the ring and personally attends the fallen partici-

pant and issues such instructions as deemed necessary to the participant's handlers.

NEW SECTION

WAC 36-14-1062 Managers. (1) Participants are not required to have a manager.

(2) Managers may serve as seconds for their contracted participants without holding a second's license.

(3) When a participant has a manager, there shall be a contract for services as an agent or representative. Contracts need not be filed with the department, but shall be provided upon request.

NEW SECTION

WAC 36-14-1063 Seconds. (1) During a contest a second may:

(a) Coach at ringside or in the ring or cage during the break between rounds;

(b) Stop bleeding from cuts;

(c) Reduce swelling;

(d) Provide water or other cooling-down techniques.

(2) No more than four seconds can assist each participant during a contest.

(3) Seconds shall remain seated during rounds and shall not excessively coach a participant during rounds.

(4) Before a contest begins, a chief second for each participant shall be identified for the inspector and the referee.

(5) Seconds shall not enter a ring or cage until the sounding device indicates the end of a round. Seconds shall leave the ring or cage at the sound of the timekeeper's sounding device that is given ten seconds before a round begins. Seconds shall remove all items in the ring or cage and on the ring platform prior to the sound indicating the beginning of a round.

(6) The chief second shall signal the referee to stop the fight by mounting the ring or cage platform or stairs during a round.

NEW SECTION

WAC 36-14-1064 Matchmakers. (1) A matchmaker shall request approval from the department for each contest for martial arts events.

(2) The department may approve the contest if the following information about each participant is similar and the department does not have undue concern for the safety and welfare of either participants proposed for a contest:

(a) Participants record;

(b) Participants experience;

(c) Participants skill; and

(d) Physical condition.

(3) The department shall notify the matchmaker and promoter when a contest is approved by giving preliminary approval to the matchmaker and by approving the advance notice submitted by the promoter.

NEW SECTION

WAC 36-14-1065 Timekeeper. (1) The timekeeper supplies the sounding devices and timing equipment.

(2) The sounding device shall be placed at the ring no higher than the level of the ring or cage platform and be of a clear tone so that the contestants and officials may easily hear it.

(3) Equipment shall include, but is not limited to, two accurate stopwatches, whistle, hammer or clapper, and bell or horn.

(4) The timekeeper shall be seated at ringside or cageside with the sounding devices and shall indicate the beginning and ending of each round by sounding the device.

(5) Ten seconds before the beginning of each round the timekeeper shall blow the whistle as a warning for everyone but the referee and participant to leave the ring.

(6) Ten seconds before the end of each round the timekeeper shall notify the referee that the round is ending by striking a hard surface with a hammer or other similar object.

(7) When a contest terminates before the scheduled rounds are completed, the timekeeper shall inform the inspector of the exact duration of the contest.

(8) The timekeeper shall stop time on the referee's command of "time-out" and shall restart on the referee's command of "time-in" or "fight."

NEW SECTION

WAC 36-14-1066 Announcer. (1) At the beginning of a contest, when the participants and their chief seconds are in the ring, the announcer shall announce to the audience the names of the participants, their weight, and other pertinent information.

(2) At the conclusion of a contest, the announcer shall announce the outcome of the contest.

(3) Prior to the first contest, the announcer shall announce any substitutions of participants or changes in an event schedule.

NEW SECTION

WAC 36-14-1067 Procedure in the event that a referee is incapacitated. (1) Timekeeper shall sound the device and stop time.

(2) The inspector or department representative shall command the participants to stop and direct the participants to opposite neutral corners.

	<u>Referee</u> <u>(preliminary)</u>	<u>Referee</u> <u>(main event)</u>
<u>Net gate</u>		
<u>0 - \$30,000</u>	<u>\$160</u>	<u>\$200</u>
<u>\$30,000 - \$75,000</u>	<u>\$220</u>	<u>\$275</u>
<u>\$75,000 and above</u>	<u>\$400</u>	<u>\$475</u>

- (3) Physicians shall attend to the referee.
- (4) If the referee cannot continue, an alternate referee shall be assigned by the inspector or department representative.
- (5) The contest and time shall resume at the referee's command.

NEW SECTION

WAC 36-14-109 Organizations approved by the department to certify experience, skill and training of officials.

(1) Any organization wishing to be approved by or maintain their approval by the department to certify adequate experience, skill and training of officials, pursuant to RCW 67.08.100(3), shall submit the following information to the department annually:

- (a) Description of training courses required;
 - (b) List of all persons seeking licensing from Washington state who have received training given by the organization within the past year;
 - (c) Dates training was given; and
 - (d) Assessment of the skill and experience of the person.
- (2) Training seminars for boxing, kickboxing, and martial arts will be offered at least annually by the department. The training curriculum will provide training for the following types of licenses:
- (a) Inspector;
 - (b) Judge;
 - (c) Referee;
 - (d) Timekeeper; or
 - (e) Other officials deemed necessary by the department.

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-120 Officials compensation fees to be paid by promoter. (1) The following minimum fees shall be paid by the promoter of the event to the event officials (~~for nontitle, nontelevision bouts~~):

((Judge	\$75.00
Timekeeper	\$75.00
Referee (preliminary)	\$110.00
Referee (main event)	\$125.00
Physician	\$250.00
Event chiropractor	\$200.00))

<u>Judge</u>	<u>Timekeeper</u>	<u>Physician</u>	<u>Chiropractor</u>
<u>\$115</u>	<u>\$115</u>	<u>\$400</u>	<u>\$200</u>
<u>\$150</u>	<u>\$150</u>	<u>\$400</u>	<u>\$200</u>
<u>\$200</u>	<u>\$200</u>	<u>\$400</u>	<u>\$200</u>

(2) ~~((The following minimum fees shall be paid by the promoter of the event to event officials for nontitle, televised bouts:~~

Judges	\$100.00
Timekeepers	\$100.00
Referee (preliminary)	\$135.00
Referee (main event)	\$200.00
Physician	\$250.00
Event chiropractor	\$200.00

~~((3)) In the event of a ((local, state or regional championship,)) title fight, ((or local televised fight,)) event officials shall be paid by the promoter at the respective and prevailing scale of the professional sanctioning organization. The event officials pay rate shall not be lower than the ((televised)) rates established in subsection ((2)) (1) of this section.~~

~~((4) In the event of a championship, title fight, or nationally televised fight, event officials shall be paid by the promoter at the respective and prevailing scale of the professional sanctioning organization but shall not be lower than the rates established below:~~

Judges	\$150.00
Timekeepers	\$150.00
Referee (preliminary)	\$175.00
Referee (main event)	\$225.00
Physician	\$250.00
Event chiropractor	\$200.00

~~((5) In the event of a "world" title bout, event officials shall be paid by the promoter at the respective and prevailing scale of the professional sanctioning organization but shall not be lower than the rates established in subsection (4) of this section. If the "world" title bout is televised, an additional \$200.00 fee per official will be assessed for each judge, timekeeper and referee if the fees listed in subsection (4) of this section are used.~~

~~((6)) (3) Travel mileage shall be paid to event officials at the state rate ((listed on schedule A, chapter 10.90.10.b of the State Administrative and Accounting Manual as published)) as established by the office of financial management.~~

~~((7)) (4) Amateur mixed martial arts sanctioning organizations and training facilities may set their own compensation fees for officials.~~

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-300 Requirements for ring ~~((or enclosed area)), cage, and equipment.~~ (1) Mixed martial arts and martial arts contests and exhibitions shall be held in a ring or ~~((in an enclosed area)) cage.~~

(2) A ring used for a contest or exhibition of ~~((mixed))~~ martial arts must meet the following requirements:

(a) The ring must be no smaller than ~~((sixteen))~~ twenty feet square and no larger than thirty-two feet square within the ropes(-);

(b) One of the corners must have a blue designation and the corner directly across must have a red designation;

~~((c))~~ (c) The ring floor must extend at least ~~((twenty-four))~~ eighteen inches beyond the ropes. The ring floor must be padded with ensolite or another similar closed-cell foam, with at least a one-inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, duck, or similar material, tightly stretched and laced securely to the ring platform. Material that tends to gather in lumps and ridges may not be used. The top covering must be clean, smooth, free of cracks and splits, and not slippery;

~~((e))~~ (d) The ring platform ~~((must))~~ shall not be more than four feet above the floor of the building and ~~((must have suitable steps for the use of the participants.))~~ shall have safe steps;

~~((f))~~ (e) Ring posts must be made of metal, not more than ~~((three))~~ four inches in diameter, extending from the floor of the building to a minimum height of fifty-eight inches above the ring floor, and must be properly padded in a manner approved by the department. Ring posts must be at least twenty-four inches away from the ring ropes(-);

~~((g))~~ (f) There may be ~~((no more than))~~ five ring ropes, not less than one inch in diameter and wrapped in soft material. The lowest ring rope must be ~~((at least))~~ no higher than twelve inches above the ring floor(-);

~~((h))~~ (g) There must not be any obstruction or object on any part of the ring floor.

(3) ~~((An enclosed area))~~ A cage used in a contest or exhibition of ~~((mixed))~~ martial arts must meet the following requirements:

(a) ~~((The enclosed area must be circular or have at least four equal sides and must be no smaller than twenty feet wide.~~

~~((b))~~ (b) ~~The floor of the enclosed area must be padded with ensolite or another similar closed-cell foam, with at least a one-inch layer of foam padding, with a top covering of canvas, duck or similar material tightly stretched and laced to the platform of the enclosed area.~~

~~((c))~~ (c) ~~The platform of the enclosed area must not be more than four feet above the floor of the building and must have suitable steps for the use of the participants.~~

~~((d))~~ (d) ~~Enclosure posts must be made of metal, not more than six inches in diameter, extending from the floor of the building to between five and seven feet above the floor of the enclosed area, and must be properly padded in a manner approved by the department.~~

~~((e))~~ (e) ~~The material used to construct the enclosed area must be made of a material that will prevent an unarmed combatant from falling out of the enclosed area or breaking through the enclosed area onto the floor of the building or onto the spectators, including, without limitation, chain link fence coated with vinyl.~~

~~((f))~~ (f) ~~Any metal material used in the enclosed area must be covered and padded in a manner approved by the department and must not be abrasive to the participants.~~

~~((g))~~ (g) ~~The enclosed area must have at least three entranees.)~~ The fighting area canvas shall be no smaller than eighteen feet by eighteen feet and no larger than thirty-two feet by thirty-two feet. The fighting area canvas shall be pad-

ded in a manner as approved by the department, with at least one inch layer of foam padding.

(b) Padding shall extend beyond the fighting area and over the edge of the platform. No vinyl or other plastic rubberized covering shall be permitted.

(c) The fighting area canvas shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the participants.

(d) The fighting area canvas shall be enclosed by a fence made of such material as will not allow a participant to fall out or break through it onto the floor or spectators including, but not limited to, vinyl coated chain link fencing.

(e) All metal parts shall be covered and padded in a manner approved by the department and shall not be abrasive to the contestants.

(f) The fence shall provide two separate entries onto the fighting area canvas.

(g) Posts shall be made of metal not more than six inches in diameter, extending from the floor of the building to a minimum height of fifty-eight inches above the fighting area canvas and shall be properly padded in a manner approved by the department.

(h) There must not be any obstruction on any part of the enclosure surrounding the area in which the participants are to be competing.

(4) The promoter shall provide equipment for use by the seconds and participants at cage or ringside. Equipment shall consist of, but not be limited to, a corner stool, spit bucket, ice, towels, and any other items necessary for the health and safety of the participants.

NEW SECTION

WAC 36-14-305 Gloves. (1) All contestants shall wear gloves which are at least four ounces and are approved by the department. Generally, gloves should not weigh more than six ounces without the approval of the department. Certain larger sized gloves, e.g., 2 XL - 4 XL, may be allowed even though they may slightly exceed six ounces.

(2) Promoters shall supply gloves that meet the following standards:

(a) Gloves for all main events and title fights shall be new and fit the hands of the contestants.

(b) Gloves shall be whole, clean, sanitary, in good condition, and subject to inspection by the inspector. Gloves found to be unfit or ill-fitting shall be replaced. Gloves shall not be twisted, manipulated, or altered in any manner.

(c) One set of gloves in each size being used during an event shall be provided to the inspector prior to the start of the first contest for use in case gloves are damaged during a contest.

(3) A glove or set of gloves shall only be used once during each event.

(4) In each contest, both participants must wear gloves of the same manufacture unless it is stated in their contract both opponents agree to wear gloves of different manufacture.

NEW SECTION

WAC 36-14-310 Hand-wraps. (1) All participants shall be required to gauze and tape their hands prior to all

contests. In all weight classes, the bandages on each contestant's hand shall be restricted to soft gauze cloth not more than fifteen yards in length and two inches in width, held in place by not more than ten feet of surgeon's tape, one inch in width, for each hand. Surgeon's adhesive tape shall be placed directly on each hand for protection near the wrist. However, as opposed to boxing wraps, the tape may cross the back of the hand twice and extend to cover and protect the knuckles, but not over the knuckles, when the hand is clenched to make a fist. The bandages shall be evenly distributed across the hand. Bandages and tape shall be placed on the contestant's hands in the dressing room in the presence of the referee, inspector, or department representative and, if warranted, in the presence of the manager or chief second of his/her opponent.

(2) Under no circumstances are gloves to be placed on the hands of a participant until the approval of the referee, inspector, or department representative is received.

(3) Substances other than tape and gauze shall not be utilized. For example, prewraps shall not be used.

(4) Liquids or other materials shall not be used on the tape or gauze.

(5) The referee, inspector, or department representative shall inspect and sign the hand-wraps.

(6) The referee, inspector, or department representative shall inspect and sign off on the gloves after wraps.

NEW SECTION

WAC 36-14-315 Officials. (1) The department shall appoint at least two referees, a timekeeper, two event physicians, three judges, and an inspector for each event. Additional event officials may be appointed by the department.

(2) In order to ensure the health and safety of the contestants and officials, licensed event officials not appointed to work at an event shall be admitted to an event without charge by the promoter. These officials shall report to the department immediately upon arriving at the event for appointment as back-up to appointed event officials or for other duties.

(3) Event officials shall dress in appropriate attire.

(a) Judges and inspectors should dress in casual business attire (sport coat and dress slacks) to assure a professional appearance. At a minimum, the recommended attire will be dress sport shirt and slacks.

(b) The uniform for referees should consist of:

(i) Black or dark blue trousers;

(ii) Black shoes (boxing shoes or approved soft-soled shoes); and

(iii) Black polo shirt.

(c) Timekeepers should dress in a black and white striped shirt and dress slacks.

NEW SECTION

WAC 36-14-320 Duties of department inspector. (1) The inspector appointed by the department for each event reports directly to the department, and may be a department representative. The inspector shall be responsible for at least the following:

(a) Completion of the event report;

(b) Details of the contest that are not under the jurisdiction of other event officials;

(c) Determining that necessary equipment is provided by the promoter to the participants, event officials and department officials;

(d) Instructing the seconds in their duties;

(e) Delivering the event physician's prefight and post-fight physical reports to the department;

(f) Delivering the statement of weights to the department;

(g) Working with all officials and licensees to assure that all regulations pertaining to the proper conduct of the contest are enforced; and

(h) Inspection of the ring and facilities.

(2) The inspector shall be paid a fee by the promoter, which is two percent of the net gate proceeds of the contest. The fee shall not be less than fifty dollars nor more than one hundred fifty dollars for a closed circuit contest and not less than one hundred dollars nor more than five hundred dollars for all other contests.

(3) Event report forms shall be supplied to the inspector by the department for each event.

(4) The event report shall be completed by the inspector for each event and signed by the event officials.

(5) The inspector report shall contain at least the following information:

(a) Recommendations from event physicians regarding suspensions;

(b) Information regarding possible violations of the law or rules;

(c) Circumstances under which a contest is stopped;

(d) Reason for awarding a decision;

(e) Ending time of match;

(f) Reason for deducting points;

(g) Recommendations for holding the purse or portion of the purse of a participant;

(h) Name of participants;

(i) Number of rounds; and

(j) Weigh-in weight of participants.

NEW SECTION

WAC 36-14-325 Judges. (1) Judges shall be provided scorecards by the inspector. Judges shall score each round of the contest using the scorecard, sign it at the conclusion of the round and turn it in to the referee or designated official. The referee or designated official shall turn the scorecards in to the inspector who verifies the addition on the scorecards and gives the outcome of the contest to the announcer who announces the outcome to the audience.

(2) Judges shall score all contests using the "ten-point-must system." If a judge determines that both of the participants are even in a round, each participant receives ten points for the round. No fraction of points shall be given to a participant for a round.

(3) If the outcome of an incomplete contest is determined by using the scorecards of the judges, all rounds including partially completed rounds will be scored. If no action has occurred, the round should be scored as an even round at the discretion of the judges.

(4) Judges shall only deduct points from a participant's score when instructed by the referee. If the referee penalizes either contestant, then the appropriate points shall be deducted when the inspector calculates the final score.

(5) Prior to an event, each judge shall disclose to the department all considerations, including reimbursement for expenses, which will be received from any source for participation at an event. Disclosure shall be made on a form supplied by the department.

NEW SECTION

WAC 36-14-330 Scoring and the use of ten-point-must system. (1) All bouts will be evaluated and scored by three judges. The ten-point-must system will be the standard system of scoring a bout. Under the ten-point-must scoring system, ten points must be awarded to the winner of the round and nine points or less must be awarded to the loser, except for an even round, which is scored 10-10.

(2) Judges shall evaluate mixed martial arts techniques, such as effective striking, effective grappling, control of the fighting area, effective aggressiveness, and defense. Evaluations shall be made in the order in which the techniques appear, giving the most weight in scoring to effective striking, effective grappling, control of the fighting area and effective aggressiveness, and defense. Effective striking is judged by determining the number of legal strikes landed by a contestant and the significance of such legal strikes.

(3) Effective grappling is judged by considering the amount of successful executions of a legal takedown and reversals. Examples of factors to consider are takedowns from standing position to mount position, passing the guard to mount position, and bottom position using an active, threatening guard.

(4) Fighting area control is judged by determining who is dictating the pace, location and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking; taking down an opponent to force a ground fight; creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.

(5) Effective aggressiveness means moving forward and landing a legal strike or takedown.

(6) Effective defense means avoiding being struck, taken down or reversed while countering with offensive attacks.

(7) The following objective scoring criteria shall be utilized by the judges when scoring a round:

(a) A round is to be scored as a 10-10 round when both contestants appear to be fighting evenly and neither contestant shows dominance in a round;

(b) A round is to be scored as a 10-9 round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling, and other maneuvers;

(c) A round is to be scored as a 10-8 round when a contestant overwhelmingly dominates by striking or grappling in a round;

(d) A round is to be scored as a 10-7 round when a contestant totally dominates by striking or grappling in a round.

(8) There should be scoring of an incomplete round. If the referee penalizes either contestant, then the appropriate

points shall be deducted when the inspector calculates the final score for the partial round.

(9) Fouls may result in a point being deducted by the inspector from the offending participant's score. The inspector, not the judges, will be responsible for calculating the true score after factoring in the point deduction.

(10) Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.

NEW SECTION

WAC 36-14-335 Referee's responsibilities/authority.

(1) The referee's primary responsibility shall be to maintain the safety and welfare of the participants at all times.

(2) Before starting a contest, the referee shall determine the name of the chief seconds for each participant. The chief second shall be responsible for the conduct of the participant's other seconds during the contest.

(3) The referee shall not allow any person other than the participant and the event physician to enter the ring during a round.

(4) The referee shall inspect the participants' bodies and gloves to make sure no substances have been applied to the detriment of an opponent.

(5) Referees who are event officials shall pass a physical examination by the event physician within twenty-four hours prior to an event for the purpose of determining their physical ability to referee the contest. If such examination indicates the referee is physically unable to referee the contest, such inability shall be noted on the prefight physical form and immediately be reported to the inspector or department representative.

(6) The referee shall have the authority to stop a contest any time he/she thinks it is too one-sided, or if either participant is in such condition that to continue might subject them to serious injury.

(7) The referee shall not make a disqualification decision based on one unintentional, low-blow foul. However, if two previous warnings for such fouls have resulted in point deductions, the third foul may be grounds for disqualification.

(8) The referee has authority to decide any matters that arise during a contest and are not covered by these rules.

(9) If a participant receives an injury that the referee thinks shall incapacitate the participant, the referee shall ask the event physician to examine the participant. The event physician shall provide the referee with an opinion as to the seriousness of the injury and either the event physician or the referee shall stop the contest if the injury is serious. When a referee calls the event physician into the ring, the referee shall direct the timekeeper to cease keeping time while the event physician examines the participant.

(10) The referee may penalize a participant who fouls an opponent during a contest, by charging such participant with the loss of points. The referee shall immediately notify the judges of the number of points to be deducted.

(11) The referee shall stop the contest if the participant's chief second determines that a contest should be stopped, and

immediately signals the referee by stepping onto the ring apron, or top step of the cage.

(12) Prior to an event, each referee shall disclose to the department all considerations, including reimbursement for expenses that will be received from any source for participation in the event. The disclosure shall be made on a form supplied by the department.

(13) A decision rendered at the termination of any contest may be changed by the department if the department determines that one of the following occurred:

(a) There was collusion affecting the result of any contest;

(b) The compilation of the scorecard of the judges shows an error which would mean that the decision was given to the wrong contestant; or

(c) There was a violation of the laws or rules governing contests, which affected the result of any contest.

NEW SECTION

WAC 36-14-340 Event physician. (1) The event physician shall examine the participants and referees as required by RCW 67.08.090 and provide a report to the inspector or department representative in writing that discloses the results of the examinations and recommendations.

(2) Medical equipment to be utilized by an event physician for the prefight and postfight examinations of participants and referees shall consist of, but not be limited to, a blood pressure cuff, otoscope, ophthalmoscope, penlight, reflex hammer, stethoscope, thermometer, and tongue depressor.

(3) If the event physician determines that a participant or referee should not participate in an event due to a condition found during the prefight examination, the event physician shall recommend to the department that the participant or referee not participate in the event.

(4) An event physician shall be at ringside during all the contests in an event and shall be prepared to provide medical assistance to a participant if requested by the referee.

(5) The promoter shall provide the event physician with a suitable place to perform the prefight and postfight physical examinations.

(6) The event physician shall perform a postfight physical on each participant immediately following an event and may recommend temporary suspension of the participant's license due to injury incurred during a contest.

NEW SECTION

WAC 36-14-345 Foul procedures. (1) If a foul is committed, the referee shall:

(a) Call time;

(b) Check the fouled mixed martial artist's condition and safety; and

(c) Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges and the inspector.

(2) If a bottom contestant commits a foul, unless the top contestant is injured, the fight shall continue, so as not to jeopardize the top contestant's superior positioning at the time.

(a) The referee shall verbally notify the bottom contestant of the foul.

(b) When the round is over, the referee shall assess the foul and notify both corners' seconds, the judges and the official inspector.

(c) The referee may terminate a bout based on the severity of a foul. For such a flagrant foul, a contestant shall lose by disqualification.

NEW SECTION

WAC 36-14-350 Time considerations for fouls. (1) A participant who has been struck with a low blow is allowed up to five minutes to recover from the foul as long as in the ringside doctor's opinion the participant may continue in the contest. If the participant states they can continue on before the five minutes of time have expired, the referee shall as soon as practical restart the fight. If the participant goes over the five minute time allotment, the fight cannot be restarted and the contest must come to an end with the outcome determined by the round and time in which the fight was stopped.

(2) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the participant who has been fouled can continue or not. If the participant's chance of winning has not been seriously jeopardized as a result of the foul and if the foul did not involve a concussive impact to the head of the participant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five minutes. Immediately after separating the participants, the referee shall inform the department's representative of his/her determination that the foul was accidental.

(3) If a participant is fouled by a blow the referee deems illegal the referee should stop the action and call for time. The referee may take the injured participant to the ringside physician and have the ringside physician examine the participant as to their ability to continue on in the contest. The ringside physician has up to five minutes to make their determination. If the ringside physician determines that the participant can continue in the contest, the referee shall as soon as practical restart the fight. However, unlike the low blow foul rule, the participant does not have up to five minutes of time to use at their discretion.

(4) For a foul other than a low blow, the fouled participant is not guaranteed five minutes of recovery time. If deemed not fit to continue by the referee or ringside physician, the referee must immediately call a halt to the bout. If the participant is deemed not fit to continue by the referee or ringside physician but some of the five minute foul time is still remaining, the participant cannot avail himself of the remaining time.

(5) If the referee stops the contest and employs the use of the ringside physician, the ringside physician's examination shall not exceed five minutes. If five minutes is exceeded, the fight cannot be restarted and the contest must end.

NEW SECTION

WAC 36-14-355 Outcome of contest. (1) Submission by:

(a) Tap out: When a contestant physically uses his/her hand to indicate that he or she no longer wishes to continue; or

(b) Verbal tap out: When a contestant verbally announces to the referee that he or she does not wish to continue or makes audible sounds such as screams indicating pain or discomfort.

(2) Technical knockout if:

(a) Referee stops bout;

(b) Ringside physician stops bout;

(c) An injury as a result of a legal maneuver is severe enough to terminate a bout;

(d) Cornerman signals referee to terminate the bout; or

(e) Participant, after putting forth good effort, signals referee his/her desire to stop fighting.

(3) Knockout by: Failure to rise from the canvas;

(4) Decision via score cards:

(a) Unanimous decision: When all three judges score the bout for the same contestant;

(b) Split decision: When two judges score the bout for one contestant and one judge scores for the opponent; or

(c) Majority decision: When two judges score the bout for the same contestant and one judge scores a draw;

(d) Draws:

(i) Unanimous draw - When all three judges score the bout a draw;

(ii) Majority draw - When two judges score the bout a draw; or

(iii) Split draw - When all three judges score differently and the score total results in a draw.

(5) Disqualification if:

(a) An injury sustained during competition as a result of an intentional foul is severe enough to terminate the contest;

(b) A participant quits after putting forth no effort, thereby fostering a sham on the public;

(c) Following a contest, a participant tests positive for controlled substances per WAC 36-12-240.

(6) Technical decision if: A bout is stopped after the completion of two rounds in bouts scheduled for three rounds and after three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately. At least two of the judges must have the same contestant ahead on points;

(7) Technical draw if: A bout is stopped after the completion of two rounds in bouts scheduled for three rounds and after three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately and the judges are split (one voting for participant A, one voting for participant B, and the third judge with an even score);

(8) No decision if: A bout is stopped before the completion of two rounds in bouts scheduled for three rounds and before three rounds in bouts scheduled for five rounds due to an accidental head butt or foul causing an injury severe enough for the referee to stop the bout immediately;

(9) No contest if:

- (a) The bout is unable to continue due to events other than fighting (fire, riot, ring collapse, etc.); or
- (b) In the referee's judgment, there appears to be collusion affecting the outcome of the contest.

NEW SECTION

WAC 36-14-360 Suspensions. (1) A participant whose manager has been suspended under chapter 67.08 RCW may continue participating during the term of such suspension, signing his/her own participant/promoter contract.

(2) Participants scheduled for a contest shall sign a letter of agreement with the department accepting temporary suspension of their license if they receive an injury during the contest. The schedule for suspensions is:

- (a) Thirty days for a technical knockout;
- (b) Sixty days for a knockout;
- (c) A period of time different than (a) and (b) of this subsection if serious injury or condition is detected by the event physician during the postfight physical; and
- (d) A period of time or an indefinite period of time if serious injury or condition is detected by the event physician. If the suspension is for an indefinite period of time, the participant may not compete again without an examination completed by a physician who has provided written certification to the department that the medical condition no longer exists.

(3) If at any time a participant's ability to perform is questionable, whether for reasons of health, mental condition, or no longer possessing the ability to compete or for any other reason, the department may recommend that the participant be retired from further competition.

(4) Participants who have been recommended for retirement have a right to a hearing under chapter 34.05 RCW, Administrative Procedure Act.

NEW SECTION

WAC 36-14-365 Promoters. (1) Promoters shall not release the names of participants in an event to the media or otherwise publicize a contest unless a participant/promoter contract has been signed and the contest approved by the department.

(2) Promoters shall not schedule an event intermission that exceeds twenty minutes.

(3) Promoters shall dispense drinks only in plastic or paper containers.

(4) Advance notices for all bouts must be in the office of the department seven days prior to the holding of any event. In addition to the regular scheduled participants the advance notice must show the names of participants engaged by the promoter for an emergency bout.

(5) Changes in announced or advertised programs for any contest must be approved prior to the contest by the department. Notice of such change or substitution must also be given to the press, conspicuously posted at the box office, and announced from the ring or cage before the opening bout. If any ticket holders desire a refund, such refund shall be made at the box office prior to the start of the first bout.

(6) The promoter of an event shall contract with each participant for a contest. Original contracts shall be filed with

the department at least five days prior to the event. The contract shall be on a form supplied by the department and contain at least the following:

- (a) The weight of the participant at weigh-in;
- (b) The amount of the purse to be paid for the contest;
- (c) The date and location of the contest;
- (d) Any other payment or consideration provided to the participant;
- (e) List of all fees, charges and expenses including training expenses that will be assessed to the participant or deducted from the participant's purse;

(f) Any reduction in a participant's purse contrary to a previous agreement between the promoter and the participant; and

(g) The amount of any compensation or consideration that a promoter has contracted to receive from a match.

(7) If a participant/promoter contract is renegotiated, the promoter shall provide the department with the contract at least two hours prior to an event's scheduled start time.

(8) If the information from the contract in subsection (6)(e), (f), and (g) of this section is discloseable under Washington state public disclosure law, the promoter may instead provide the information to the Association of Boxing Commissions instead of including the information in the participant/promoter contract.

(9) The promoter of an event shall provide payments for the participants' purses and event official's fee in the form of checks or money orders to the department prior to an event. The department may allow other forms of payment if arranged in advance. The department shall pay the participants and officials immediately after the event, but not later than seventy-two hours from the conclusion of the event.

(10) Promoters shall provide seats for event officials and department representatives at ringside for each event.

(11) Promoters shall provide an ambulance or paramedical unit with transport and resuscitation capabilities, with a minimum of two attendants, to be present at the event location at all times during the event.