

**WSR 08-14-065**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)

[Filed June 25, 2008, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-024 and 07-21-121.

Title of Rule and Other Identifying Information: Chapter 388-97 WAC, Nursing homes.

- The department is renumbering the entire chapter to four digits for ease of reading and reference.
- The WAC revisions shown below have been made and will be incorporated into the renumbered chapter.
- The department is adding WAC 388-97-0380 Electronic monitoring equipment—Audio monitoring and video monitoring and 388-97-0400 Electronic monitoring equipment—Resident requested use.
- The department is repealing WAC 388-97-565 Department review of nursing home license renewal.

The department has made revisions to WAC 388-97-005 Definitions, 388-97-027 Nursing facility admission, 388-97-047 Discharge or leave of a nursing facility resident, 388-97-07015 Protection of resident funds, 388-97-077 Resident protection program, chunking into ten new sections, 388-97-147 Surveillance, management and early identification of individuals with active tuberculosis, chunking into twelve new sections, 388-97-155 Care of residents with active tuberculosis, 388-97-160 General administration, 388-97-162 Required notification and reporting, 388-97-180 Clinical records, 388-97-29510 New construction compliance, 388-97-29520 Fire standards and approval, 388-97-32550 Utility service rooms, 388-97-32580 Janitors closets, 388-97-33050 Resident room size variance, 388-97-347 Laundry services, 388-97-36040 Illumination levels in new buildings and additions, 388-97-36050 Night lights in new construction, 388-97-35060 Special egress control devices on a dementia care unit, 388-97-385 Sewage and liquid waste disposal, 388-97-40010 Preliminary new construction documents, 388-97-401 Final new construction documents, 388-97-405 Exemptions to new construction requirements, 388-97-410 State building code in new construction, 388-97-415 Electrical codes, 388-97-420 Elevator codes, 388-97-430 Entrances and exits, 388-97-47020 Ventilation systems, 388-97-555 Nursing home license renewal, 388-97-595 Relocation of resident, 388-97-615 Acceptable and unacceptable plans of correction, 388-97-620 Informal department review, and 388-97-625 Notice and appeal rights.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 27, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery

4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to:

- Update references to reflect current standards, codes and federal requirements;
- Chunk larger sections into smaller sections;
- Simplify and clarify resident protection program sections;
- Add language on electronic monitoring;
- Delete and update sections on department review of nursing home renewal licenses; and
- Renumber and make WAC sections four digit numbers for clearer order and reference as requested by stakeholders.

Reasons Supporting Proposal: The reasons for these proposed rule changes are to make the rules:

- Clearer, easier to read, understand and apply;
- Easier to find information by chunking larger sections; and
- Up-to-date with current practices.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52.

Statute Being Implemented: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Johnson, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, Assistant Director, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Residential care services has analyzed the proposed rules and concludes that there are no new requirements in these rules that will impose more than minor costs, if any new costs at all, on nursing homes. The primary purposes of the proposed rules are to clarify preexisting requirements and to update existing rules to changes in procedures, or in state or federal laws. In addition, the department has included clarification of the use of electronic monitoring equipment.

As a result, the preparation of a small business economic impact statement is not required.

A copy of the statement may be obtained by contacting Judy Johnson, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail [johnsjm1@dshs.wa.gov](mailto:johnsjm1@dshs.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be

obtained by contacting Judy Johnson, P.O. Box 45600, Mail-stop 45600, Olympia, WA 98405-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@dshs.wa.gov.

June 20, 2008  
Stephanie E. Schiller  
Rules Coordinator

## Chapter 388-97 WAC

### NURSING HOMES

#### SUBCHAPTER I

### RESIDENT RIGHTS, CARE AND RELATED SERVICES

#### Definitions

#### NEW SECTION

**WAC 388-97-0001 Definitions. "Abandonment"** means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements.

(3) **"Sexual abuse"** means any form of nonconsensual, sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

**"Administrative law judge (ALJ)"** means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

**"Administrator"** means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

**"Advanced registered nurse practitioner (ARNP)"** means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

**"Applicant"** means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

**"ASHRAE"** means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

**"Attending physician"** means the doctor responsible for a particular individual's total medical care.

**"Berm"** means a bank of earth piled against a wall.

**"Chemical restraint"** means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms.

**"Civil fine"** is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

**"Condition on a license"** means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

**"Deficiency"** is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a Medicare and Medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal Medicare and Medicaid regulations.

**"Deficiency citation"** or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

**"Deficient facility practice"** or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

**"Dementia care"** means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

**"Denial of payment for new admissions"** is an action imposed on a nursing home (facility) by the department that prohibits payment for new Medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide Medicare and Medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

**"Department"** means the state department of social and health services (DSHS).

**"Department on-site monitoring"** means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

**"Dietitian"** means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

**"Disclosure statement"** means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

**"Drug"** means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

**"Drug facility"** means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

**"Emergency closure"** is an order by the department to immediately close a nursing home.

**"Emergency transfer"** means immediate transfer of residents from a nursing home to safe settings.

**"Entity"** means any type of firm, partnership, corporation, company, association, or joint stock association.

**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any individual for his or her profit or advantage.

**"Habilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

**"Highest practicable physical, mental, and psychosocial well-being"** means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and ser-

vices provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For Medicaid and Medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal Medicare and Medicaid regulations.

**"Informal department review"** is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

**"Inspection"** or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

**"Intermediate care facility for the mentally retarded (ICF/MR)"** means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

**"License revocation"** is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

**"License suspension"** is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

**"Licensee"** means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

**"Licensed practical nurse"** means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

**"Mandated reporter"** as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of boarding home, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

**"Misappropriation of resident property"** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

**"NFPA"** means National Fire Protection Association, Inc.

**"Neglect":**

(1) For a nursing home licensed under chapter 18.51 RCW, neglect means that an individual or entity with a duty of care for nursing home residents has:

(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or

(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

(2) For a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

**"Noncompliance"** means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

**"Nursing assistant"** means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

**"Nursing facility (NF)"** or **"Medicaid-certified nursing facility"** means a nursing home that has been certified to provide nursing services to Medicaid recipients under Section 1919(a) of the federal Social Security Act.

**"Nursing home"** means any facility licensed to operate under chapter 18.51 RCW.

**"Officer"** means an individual serving as an officer of a corporation.

**"Owner of five percent or more of the assets of a nursing home"** means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

**"Partner"** means an individual in a partnership owning or operating a nursing home.

**"Person"** means any individual, firm, partnership, corporation, company, association or joint stock association.

**"Pharmacist"** means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

**"Pharmacy"** means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

**"Physical restraint"** means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

**"Physician's assistant (PA)"** means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

**"Plan of correction"** is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

**"Reasonable accommodation"** and **"reasonably accommodate"** has the meaning given in federal and state anti-discrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

**"Receivership"** is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

**"Recurring deficiency"** means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

**"Registered nurse"** means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

**"Rehabilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

**"Resident"** generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

**"Resident care unit"** means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

**"Respiratory isolation"** is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

**"Siphon jet clinic service sink"** means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

**"Skilled nursing facility (SNF)"** or **"Medicare-certified skilled nursing facility"** means a nursing home that has been certified to provide nursing services to Medicare recipients under Section 1819(a) of the federal Social Security Act.

**"Social/therapeutic leave"** means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

**"Staff work station"** means a location at which nursing and other staff perform charting and related activities throughout the day.

**"Stop placement"** or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

**"Substantial compliance"** means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for Medicaid certified facility, no deficiencies higher than a scope and severity "C."

**"Surrogate decision maker"** means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

**"Survey"** means the same as **"inspection"** as defined in this section.

**"Temporary manager"** means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

**"Termination"** means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's Medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to Medicaid or Medicare recipients, or both.

**"Toilet room"** means a room containing at least one toilet fixture.

**"Uncorrected deficiency"** is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

**"Violation"** means the same as **"deficiency"** as defined in this section.

**"Volunteer"** means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

**"Vulnerable adult"** includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

**"Whistle blower"** means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

### Admission, Transfer and Discharge

#### NEW SECTION

**WAC 388-97-0020 Nursing facility care.** The nursing facility must provide items, care, and services in accordance with this chapter and with federal regulations under 42 C.F.R. § 483.1 through 483.206, or successor laws, and other applicable federal requirements.

#### NEW SECTION

**WAC 388-97-0040 Discrimination prohibited.** (1) A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services covered under the state Medicaid plan for all individuals regardless of source of payment.

(2) A nursing facility must not require or request:

(a) Residents or potential residents to waive their rights to Medicare or Medicaid;

(b) Oral or written assurance that residents or potential residents are not eligible for, or will not apply for Medicare or Medicaid benefits; and

(c) A third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(3) A nursing facility must inform, in writing, a prospective resident, and where applicable, the resident's representative, before or at the time of admission, that a third party may not be required or requested to personally guarantee payment to the nursing home, as specified in subsection (2)(c) of this section.

(4) A nursing facility must readmit a resident, who has been hospitalized or on therapeutic leave, immediately to the first available bed in a semiprivate room if the resident:

(a) Requires the services provided by the facility; and

(b) Is eligible for Medicaid nursing facility services.

(5) A nursing facility must not:

(a) Deny or delay admission or readmission of an individual to the facility because of the individual's status as a Medicaid recipient;

(b) Transfer a resident, except from a single room to another room within the facility, because of the resident's status as a Medicaid recipient;

(c) Discharge a resident from a facility because of the resident's status as a Medicaid recipient; or

(d) Charge Medicaid recipients any amounts in excess of the Medicaid rate from the date of eligibility, except for any supplementation that may be permitted by department regulation.

(6) A nursing facility must maintain only one list of names of individuals seeking admission to the facility, which is ordered by the date of request for admission, and must:

(a) Offer admission to individuals in the order they appear on the list, except as provided in subsection (7), as long as the facility can meet the needs of the individual with available staff or through the provision of reasonable accommodations required by state or federal laws;

(b) Retain the list of individuals seeking admission for one year from the month admission was requested; and

(c) Offer admission to the portions of the facility certified under Medicare and Medicaid without discrimination against persons eligible for Medicaid, except as provided in subsection (7).

(7) A nursing facility is permitted to give preferential admission to individuals who seek admission from a board-

ing home, licensed under chapter 18.20 RCW, or from independent retirement housing, if:

(a) The nursing facility is owned by the same entity that owns the boarding home or independent housing; and

(b) They are located within the same proximate geographic area; and

(c) The purpose of the preferential admission is to allow continued provision of culturally or faith-based services, or services provided by a continuing care retirement community as defined in RCW 74.38.025.

(8) A nursing facility must develop and implement written policies and procedures to ensure nondiscrimination in accordance with this section and RCW 74.42.055.

#### NEW SECTION

**WAC 388-97-0060 Nursing facility admission and payment requirements.** Refer to WAC 388-106-0350 through 388-106-0360

#### NEW SECTION

**WAC 388-97-0080 Discharge planning.** (1) A resident has the right to attain or maintain the highest practicable physical, mental, and psychosocial well-being, and to reside in the most independent setting. Therefore, the nursing home must:

(a) Utilize a formal resident discharge planning system with identical policies and practices for all residents regardless of source of payment;

(b) Inform the resident or resident's representative in writing of the nursing home's discharge planning system when the resident is admitted or as soon as practical after the resident's admission, including:

(i) Specific resources available to assist the resident in locating a lesser care setting;

(ii) The name of the nursing home's discharge coordinator(s);

(iii) In the case of a Medicaid certified nursing facility, the address and telephone number for the department's local home and community services office; and

(iv) In the case of a resident identified through pre-admission screening and resident review (PASRR) as having a developmental disability or mental illness, the address and telephone number for the division of developmental disabilities or the mental health PASRR contractor.

(2) The nursing home must prepare a detailed, written transfer or discharge plan for each resident determined to have potential for transfer or discharge within the next three months. The nursing home must:

(a) Develop and implement the plan with the active participation of the resident and, where appropriate, the resident's representative;

(b) In the case of a Medicaid resident, coordinate the plan with the department's home and community services staff;

(c) In the case of a resident identified through PASRR as having a developmental disability or mental illness, coordinate the plan with the division of developmental disabilities or the mental health PASRR contractor;

(d) Ensure the plan is an integral part of the resident's comprehensive plan of care and, as such, includes measurable objectives and timetables for completion;

(e) Incorporate in the plan relevant factors to include, but not be limited to the:

(i) Resident's preferences;

(ii) Support system;

(iii) Assessments and plan of care; and

(iv) Availability of appropriate resources to match the resident's preferences and needs.

(f) Identify in the plan specific options for more independent placement; and

(g) Provide in the plan for the resident's continuity of care, and to reduce potential transfer trauma, including, but not limited to, pretransfer visit to the new location whenever possible.

(3) For a resident whose transfer or discharge is not anticipated in the next three months, the nursing home must:

(a) Document the specific reasons transfer or discharge is not anticipated in that time frame; and

(b) Review the resident's potential for transfer or discharge at the time of the quarterly comprehensive plan of care review. If the reasons documented under subsection (3)(a) of this section are unchanged, no additional documentation of reasons is necessary at the time of plan of care review.

(4) The nursing home must initiate discharge planning on residents described in subsection (3) of this section:

(a) At the request of the resident or the resident's representative; and

(b) When there is a change in the resident's situation or status which indicates a potential for transfer or discharge within the next three months.

(5) Each resident has the right to request transfer or discharge and to choose a new location. If the resident chooses to leave, the nursing home must assist with and coordinate the resident's transfer or discharge. The Medicaid resident, resident's representative, or nursing facility may request assistance from the department's home and community services or, where applicable, the division of developmental disabilities or mental health in the transfer or discharge planning and implementation process.

(6) The nursing home must coordinate all resident transfers and discharges with the resident, the resident's representative and any other involved individual or entity.

(7) When a nursing home anticipates discharge, a resident must have a discharge summary that includes:

(a) A recapitulation of the resident's stay;

(b) A final summary of the resident's status to include items in WAC 388-97-1000(1), at the time of discharge that is available for release to authorized individuals and agencies, with the consent of the resident or and surrogate decision maker; and

(c) A postdischarge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

NEW SECTION

**WAC 388-97-0100 Utilization review.** (1) To assure appropriate use of Medicaid services, the nursing facility must determine whether each Medicaid resident's health has improved sufficiently so the resident no longer needs nursing facility care.

(a) The nursing facility must base its determination on:

- (i) An accurate, comprehensive assessment process; and
- (ii) Documentation by the resident's physician.

(b) The nursing facility must not make this determination for residents the department is responsible to assess under WAC 388-97-1960.

(2) When the nursing facility determines a resident no longer needs nursing facility care under subsection (1) of this section, the nursing facility must initiate transfer or discharge in accordance with WAC 388-97-0120, 388-97-0140, and 42 C.F.R. § 483.12, or successor laws, unless the resident voluntarily chooses to transfer or discharge.

(3) When a nursing facility initiates a transfer or discharge of a Medicaid recipient under subsection (2) of this section:

(a) The resident will be ineligible for Medicaid nursing facility payment:

- (i) Thirty days after the receipt of written notice of transfer or discharge; or
- (ii) If the resident appeals the facility determination, thirty days after the final order is entered upholding the nursing home's decision to transfer or discharge a resident.

(b) The department's home and community services may grant extension of a resident's Medicaid nursing facility payment after the time specified in subsection (3)(a) of this section, when the department's home and community services staff determine:

- (i) The nursing facility is making a good faith effort to relocate the resident; and
- (ii) A location appropriate to the resident's medical and other needs is not available.

(4) Department designees may review any assessment or determination made by a nursing facility of a resident's need for nursing facility care.

NEW SECTION

**WAC 388-97-0120 Individual transfer and discharge rights and procedures.** (1) The skilled nursing facility and nursing facility must comply with all of the requirements of 42 C.F.R. § 483.10 and § 483.12, and RCW 74.42.450, or successor laws, and the nursing home must comply with all of the requirements of RCW 74.42.450 (1) through (4) and (7), or successor laws, including the following provisions and must not transfer or discharge any resident unless:

(a) At the resident's request;

(b) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(c) The transfer or discharge is appropriate because the resident's health has improved enough so the resident no longer needs the services provided by the facility;

(d) The safety of individuals in the facility is endangered;

(e) The health of individuals in the facility would otherwise be endangered; or

(f) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

(2) The following notice requirements apply if a nursing home/facility initiates the transfer or discharge of a resident. The notice must:

(a) Include all information required by 42 C.F.R. § 483.12 when given in a nursing facility;

(b) Be in writing, in language the resident understands;

(c) Be given to the resident, the resident's surrogate decision maker, if any, the resident's family and to the department;

(d) Be provided thirty days in advance of a transfer or discharge initiated by the nursing facility, except that the notice may be given as soon as practicable when the facility cannot meet the resident's urgent medical needs, or under the conditions described in (1)(c), (d), and (e) of this section; and

(e) Be provided fifteen days in advance of a transfer or discharge initiated by the nursing home, unless the transfer is an emergency.

(3) The nursing home must:

(a) Provide sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the nursing home;

(b) Attempt to avoid the transfer or discharge of a resident from the nursing home through the use of reasonable accommodations unless agreed to by the resident and the requirements of WAC 388-97-0080 are met; and

(c) Develop and implement a bed-hold policy. This policy must be consistent with any bed-hold policy that the department develops.

(4) The nursing home must provide the bed-hold policy, in written format, to the resident, and a family member, before the resident is transferred or goes on therapeutic leave. At a minimum the policy must state:

(a) The number of days, if any, the nursing home will hold a resident's bed pending return from hospitalization or social/therapeutic leave;

(b) That a Medicaid eligible resident, whose hospitalization or social/therapeutic leave exceeds the maximum number of bed-hold days will be readmitted to the first available semi-private bed, provided the resident needs nursing facility services. Social/therapeutic leave is defined under WAC 388-97-0001. The number of days of social/therapeutic leave allowed for Medicaid residents and the authorization process is found under WAC 388-97-0160; and

(c) That a Medicaid eligible resident may be charged if he or she requests that a specific bed be held, but may not be charged a bed-hold fee for the right to return to the first available bed in a semi-private room.

(5) The nursing facility must send a copy of the federally required transfer or discharge notice to:

(a) The department's home and community services when the nursing home has determined under WAC 388-97-0100, that the Medicaid resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; and

(b) The department's designated local office when the transfer or discharge is for any of the following reasons:

- (i) The resident's needs cannot be met in the facility;
- (ii) The health or safety of individuals in the facility is endangered; or
- (iii) The resident has failed to pay for, or to have paid under Medicare or Medicaid, a stay at the facility.

NEW SECTION**WAC 388-97-0140 Transfer and discharge appeals for resident in Medicare or Medicaid certified facilities.**

(1) A skilled nursing facility and a nursing facility that initiates transfer or discharge of any resident, regardless of payor status, must:

- (a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;
- (b) Attach a department-designated hearing request form to the transfer or discharge notice;
- (c) Inform the resident in writing, in a language and manner the resident can understand, that:
  - (i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and
  - (ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges; and
  - (iii) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged.

(3) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in chapter 388-02 WAC and this chapter. In such appeals, the following will apply:

- (a) In the event of a conflict between a provision in this chapter and a provision in chapter 388-02 WAC, the provision in this chapter will prevail;
- (b) The resident must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;
- (c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;
- (d) If a Medicare certified or Medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by a nursing facility or skilled nursing facility;
- (e) Any review of the administrative law judge's initial decision shall be conducted under WAC 388-02-0600(1).

NEW SECTION

**WAC 388-97-0160 Discharge or leave of a nursing facility resident.** (1) A nursing facility must send immediate written notification of the date of discharge or death of a Medicaid resident to the department's local home and community service office.

(2) The nursing facility must:

- (a) Notify the department of nursing facility discharge and readmission for all Medicaid recipients admitted as hospital inpatients; and
  - (b) Document in the resident's clinical record all social/therapeutic leave exceeding twenty-four hours.
- (3) The department will pay the nursing facility for a Medicaid resident's social/therapeutic leave not to exceed a total of eighteen days per calendar year per resident.
- (4) The department's home and community services may authorize social/therapeutic leave exceeding eighteen days per calendar year per resident when requested by the nursing facility or by the resident. In the absence of prior authorization from the department's home and community services, the department will not make payment to a nursing facility for leave days exceeding eighteen per calendar year per resident.
- (5) An individual who is on social/therapeutic leave retains the status of a nursing facility resident.

**Resident Rights**NEW SECTION

**WAC 388-97-0180 Resident rights.** (1) The nursing home must meet the resident rights requirements of this section and those in the rest of the chapter.

- (2) The resident has a right to a dignified existence, self-determination, and communication with, and access to individuals and services inside and outside the nursing home.
- (3) A nursing home must promote and protect the rights of each resident, including those with limited cognition or other barriers that limit the exercise of rights.
- (4) The resident has the right to:
  - (a) Exercise his or her rights as a resident of the nursing home and as a citizen or resident of the United States. Refer to WAC 388-97-0240;
  - (b) Be free of interference, coercion, discrimination, and reprisal from the nursing home in exercising his or her rights; and
  - (c) Not be asked or required to sign any contract or agreement that includes provisions to waive:
    - (i) Any resident right set forth in this chapter or in the applicable licensing or certification laws; or
    - (ii) Any potential liability for personal injury or losses of personal property.
- (5) The nursing home must take steps to safeguard residents and their personal property from foreseeable risks of injury or loss.

NEW SECTION

**WAC 388-97-0200 Free choice.** The resident has the right to:

- (1) Choose a personal attending physician.

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being.

(3) Participate in planning care and treatment or changes in care and treatment.

#### NEW SECTION

**WAC 388-97-0220 Statute implemented in resident decision making, informed consent, and advance directives.** WAC 388-97-0240, 388-97-0260, and 388-97-0280 implement the federal Patient Self-Determination Act and clarify requirements under chapters 11.94, 7.70, 70.122, 11.88 and 11.92 RCW.

#### NEW SECTION

**WAC 388-97-0240 Resident decision making.** (1) At the time of admission, or not later than the completion of the initial comprehensive resident assessment, the nursing home must determine if the resident:

(a) Has appointed another individual to make his or her health care, financial, or other decisions;

(b) Has created any advance directive or other legal documents that will establish a surrogate decision maker in the future; and

(c) Is not making his or her own decisions, and identify who has the authority for surrogate decision making, and the scope of the surrogate decision maker's authority.

(2) The nursing home must review the requirements of (1) of this section when the resident's condition warrants the review or when there is a significant change in the resident's condition.

(3) In fulfilling its duty to determine who, if anyone, is authorized to make decisions for the resident, the nursing home must:

(a) Obtain copies of the legal documents that establish the surrogate decision maker's authority to act; and

(b) Document in the resident's clinical record:

(i) The name, address, and telephone number of the individual who has legal authority for substitute decision making;

(ii) The type of decision making authority such individual has; and

(iii) Where copies of the legal documents are located at the facility.

(4) In accordance with state law or at the request of the resident, the resident's surrogate decision maker is, in the case of:

(a) A capacitated resident, the individual authorized by the resident to make decisions on the resident's behalf;

(b) A resident adjudicated by a court of law to be incapacitated, the court appointed guardian; and

(c) A resident who has been determined to be incapacitated, but is not adjudicated incapacitated established through:

(i) A legal document, such as a durable power of attorney for health care; or

(ii) Authority for substitute decision making granted by state law, including RCW 7.70.065.

(5) Determination of an individual's incapacity must be a process according to state law not a medical diagnosis only and be based on:

(a) Demonstrated inability in decision making over time that creates a significant risk of personal harm;

(b) A court order; or

(c) The criteria contained in a legal document, such as durable power of attorney for health care.

(6) The nursing home must promote the resident's right to exercise decision making and self-determination to the fullest extent possible, taking into consideration his or her ability to understand and respond. Therefore, the nursing home must presume that the resident is the resident's own decision maker unless:

(a) A court has established a full guardianship of the individual;

(b) The capacitated resident has clearly and voluntarily appointed a surrogate decision maker;

(c) A surrogate is established by a legal document such as a durable power of attorney for health care; or

(d) The facility determines that the resident is an incapacitated individual according to RCW 11.88.010 and (5)(a) of this section.

(7) The nursing home must honor the exercise of the resident's rights by the surrogate decision maker as long as the surrogate acts in accordance with this section and with state and federal law which govern his or her appointment.

(8) If a surrogate decision maker exercises a resident's rights, the nursing home must take into consideration the resident's ability to understand and respond and must:

(a) Inform the resident that a surrogate decision maker has been consulted;

(b) Provide the resident with the information and opportunity to participate in all decision making to the maximum extent possible; and

(c) Recognize that involvement of a surrogate decision maker does not lessen the nursing home's duty to:

(i) Protect the resident's rights; and

(ii) Comply with state and federal laws.

(9) The nursing home must:

(a) Regularly review any determination of incapacity based on (4)(b) and (c) of this section;

(b) Except for residents with a guardian, cease to rely upon the surrogate decision maker to exercise the resident's rights, if the resident regains capacity, unless so designated by the resident or by court order; and

(c) In the case of a guardian notify the court of jurisdiction in writing if:

(i) The resident regains capacity;

(ii) The guardian is not respecting or promoting the resident's rights;

(iii) The guardianship should be modified; or

(iv) A different guardian needs to be appointed.

#### NEW SECTION

**WAC 388-97-0260 Informed consent.** (1) The nursing home must ensure that the informed consent process is followed with:

(a) The resident to the maximum extent possible, taking into consideration his or her ability to understand and respond; and

(b) The surrogate decision maker when the resident is determined to be incapacitated as established through the provision of a legal document such as durable power of attorney for health care, a court proceeding, or as authorized by state law, including RCW 7.70.065. The surrogate decision maker must:

(i) First determine if the resident would consent or refuse the proposed or alternative treatment;

(ii) Discuss determination of consent or refusal with the resident whenever possible; and

(iii) When a determination of the resident's consent or refusal of treatment cannot be made, make the decision in the best interest of the resident.

(2) The informed consent process must include, in words and language that the resident, or if applicable the resident's surrogate decision maker, understands, a description of:

(a) The nature and character of the proposed treatment;

(b) The anticipated results of the proposed treatment;

(c) The recognized possible alternative forms of treatment;

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment including nontreatment; and

(e) The right of the resident to choose not to be informed.

(3) To ensure informed consent or refusal by a resident, or if applicable the resident's surrogate decision maker, regarding plan or care options, the nursing home must:

(a) Provide the informed consent process to the resident in a neutral manner and in a language, words, and manner the resident can understand;

(b) Inform the resident of the right to consent to or refuse care and service options at the time of resident assessment and plan of care development (see WAC 388-97-1000 and 388-97-1020 and with condition changes, as necessary to ensure that the resident's wishes are known);

(c) Inform the resident at the time of initial plan of care decisions and periodically of the right to change his or her mind about an earlier consent or refusal decision;

(d) Ensure that evidence of informed consent or refusal is consistent with WAC 388-97-1000 and 388-97-1020; and

(e) Where appropriate, include evidence of resident's choice not to be informed as required in subsections (2) and (3) of this section.

#### NEW SECTION

**WAC 388-97-0280 Advance directives.** (1) "Advance directive" as used in this chapter means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney, health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

(2) The nursing home must carry out the provisions of this section in accordance with the applicable provisions of WAC 388-97-0240 and 388-97-0260, and with state law.

(3) The nursing home must:

(a) Document in the clinical record whether or not the resident has an advance directive;

(b) Not request or require the resident to have any advance directives and not condition the provision of care or otherwise discriminate against a resident on the basis of whether or not the resident has executed an advance directive;

(c) In a language and words the resident understands, inform the resident in writing and orally at the time of admission, and thereafter as necessary to ensure the resident's right to make informed choices, about:

(i) The right to make health care decisions, including the right to change his or her mind regarding previous decisions;

(ii) Nursing home policies and procedures concerning implementation of advance directives, including how the nursing home implements emergency responses; and

(d) Review and update as needed the resident advance directive information:

(i) At the resident's request;

(ii) When the resident's condition warrants review; and

(iii) When there is a significant change in the resident's condition.

(4) When the nursing home becomes aware that a resident's health care directive is in conflict with facility practices and policies which are consistent with state and federal law, the nursing home must:

(a) Inform the resident of the existence of any nursing home practice or policy which would preclude implementing the health care directive;

(b) Provide the resident with written policies and procedures that explain under what circumstances a resident's health care directive will or will not be implemented by the nursing home;

(c) Meet with the resident to discuss the conflict; and

(d) Determine, in light of the conflicting practice or policy, whether the resident chooses to remain at the nursing home:

(i) If the resident chooses to remain in the nursing home, develop with the resident a plan in accordance with chapter 70.122 RCW to implement the resident's wishes. The nursing home may need to actively participate in ensuring the execution of the plan, including moving the resident at the time of implementation to a care setting that will implement the resident's wishes. Attach the plan to the resident's directive in the resident's clinical record; or

(ii) If, after recognizing the conflict between the resident's wishes and nursing home practice or policy the resident chooses to seek other long-term care services, or another physician who will implement the directive, the nursing home must assist the resident in locating other appropriate services.

(5) If a terminally ill resident, in accordance with state law, wishes to die at home, the nursing home must:

(a) Use the informed consent process as described in WAC 388-97-0260, and explain to the resident the risks associated with discharge; and

(b) Discharge the resident as soon as reasonably possible.

#### NEW SECTION

##### **WAC 388-97-0300 Notice of rights and services. (1)**

The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under Medicare or Medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to Medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of the items, services and activities:

(i) That are included in nursing facility services under the Medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from Medicare or Medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on Medicare or Medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, ser-

vices or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, pre-paid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation,

and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under Medicare or Medicaid, with the applicable federal requirements.

#### NEW SECTION

**WAC 388-97-0320 Notification of changes.** (1) A nursing home must immediately inform the resident, consult with the resident's physician, and if known, notify the resident's surrogate decision maker, and when appropriate, with resident consent, interested family member(s) when there is:

(a) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(b) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychological status in either life-threatening conditions or clinical complications); refer to WAC 388-97-0240;

(c) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(d) A decision to transfer or discharge the resident from the facility.

(2) The nursing home must also promptly notify the resident and, if known, the resident's surrogate decision maker, and when appropriate, with the resident's consent, interested family member(s) when there is:

(a) A change in room or roommate assignment, refer to the timing requirements in WAC 388-97-0580; or

(b) A change in resident rights under federal or state law or regulations as specified in WAC 388-97-0300.

(3) The nursing home must record and periodically update the address and phone number of the resident's legal surrogate decision maker and interested family member(s).

#### NEW SECTION

**WAC 388-97-0340 Protection of resident funds.** (1) The resident has the right to manage his or her financial affairs and the nursing home may not require residents to deposit their personal funds with the nursing home.

(2) Upon written authorization of a resident, the nursing home must hold, safeguard, manage and account for the personal funds of the resident deposited with the nursing home.

(3) The nursing home must establish and maintain a system that assures a full, complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing home on the resident's behalf and must:

(a) Deposit any resident's personal funds in excess of fifty dollars, one hundred dollars for Medicare residents, in an interest-bearing resident personal fund account or accounts, separate from any nursing home operating accounts, and credit all interest earned to the account;

(b) Keep personal funds under fifty dollars, one hundred dollars for Medicare residents, in a noninterest-bearing account or petty cash fund maintained for residents; and

(c) Make the individual financial record available to the resident or his or her surrogate decision maker through quarterly statements and on request.

(4) The nursing facility must notify each resident that receives Medicaid benefits:

(a) When the amount in the resident's account reaches two hundred dollars less than the SSI resource limit for one individual; and

(b) That if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one individual, the resident may lose eligibility for Medicaid or SSI.

(5) The nursing home must convey the resident's funds, and a final accounting of those funds, to the resident or to the individual or jurisdiction administering the resident's estate, within thirty days of the discharge, transfer or death of any resident with a personal fund deposited with the nursing home. The funds of a deceased Medicaid resident must be sent to the state of Washington, department of social and health services, office of financial recovery.

(6) The nursing facility must purchase a surety bond, or an approved alternative, to assure security of personal funds of residents deposited with the facility.

(7) Medicare certified and Medicaid certified facilities may not impose a charge against a resident's personal funds for any item or service for which payment is made under Medicaid or Medicare as described in 42 C.F.R. § 483.10 (c)(8).

(8) Medicare certified and Medicaid certified nursing facilities must:

(a) Not charge a resident (or the resident's representative) for any item or service not requested by the resident;

(b) Not require a resident, or the resident's representative, to request any item or service as a condition of admission or continued stay; and

(c) Inform the resident, or the resident's representative, requesting an item or services for which a charge will be made that there will be a charge for the item or service and what the charge will be.

(9) When a resident's financial eligibility for nursing facility services is established by the department, the facility must refund to the resident:

(a) Any deposit that was required prior to eligibility; and

(b) Any payments for services that will be covered retroactively by Medicaid.

NEW SECTION**WAC 388-97-0360 Privacy and confidentiality.** (1)

The resident has the right to personal privacy and confidentiality of his or her personal and clinical records. Personal privacy includes:

- (a) Accommodations;
- (b) Medical treatment;
- (c) Written and telephone communications;
- (d) Personal care;
- (e) Visits; and
- (f) Meetings with family and resident groups.

(2) The resident may approve or refuse the release of personal and clinical records to any individual outside the nursing home, unless the resident has been adjudged incapacitated according to state law.

(3) The resident's right to refuse release of personal and clinical records does not apply when:

- (a) The resident is transferred to another health care institution; or
- (b) Record release is required by law.

NEW SECTION**WAC 388-97-0380 Electronic monitoring equipment—Audio monitoring and video monitoring.** (1)

Except as provided in this section or in WAC 388-97-0400, the nursing home must not use the following in the facility:

- (a) Audio monitoring equipment; or
- (b) Video monitoring equipment if it includes an audio component.

(2) The facility may video monitor and video record activities in the facility, without an audio component, only in the following areas:

- (a) Entrances and exits as long as the cameras are:
  - (i) Focused only on the entrance or exit doorways; and
  - (ii) Not focused on areas where residents gather.
- (b) Outdoor areas not commonly used by residents; and
- (c) Designated smoking areas, subject to the following conditions:

- (i) Residents have been assessed as needing supervision for smoking;
- (ii) A staff person watches the video monitor at any time the area is used by such residents;
- (iii) The video camera is clearly visible;
- (iv) The video monitor is not viewable by general public; and
- (v) The facility notifies all residents in writing of the use of video monitoring equipment.

NEW SECTION

**WAC 388-97-0400 Electronic monitoring equipment—Resident requested use.** (1) The nursing home must not use audio or video monitoring equipment to monitor any resident unless:

- (a) The resident has requested the monitoring; and
- (b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.

(2) If the resident requests audio or video monitoring, before any electronic monitoring occurs, the nursing home must ensure:

- (a) That the electronic monitoring does not violate chapter 9.73 RCW;
- (b) The resident has identified a threat to the resident's health, safety or personal property;
- (c) The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and

(d) The resident and the nursing home have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.

(3) The nursing home must:

- (a) Re-evaluate the need for the electronic monitoring with the resident at least quarterly; and
- (b) Have each re-evaluation in writing, signed and dated by the resident.

(4) The nursing home must immediately stop electronic monitoring if the:

- (a) Resident no longer wants electronic monitoring;
- (b) Roommate objects or withdraws the consent to the electronic monitoring; or

(c) The resident becomes unable to give consent.

(5) For the purposes of consenting to video electronic monitoring without an audio component, the term "resident" includes the resident's surrogate decision maker.

(6) For purpose of consenting to any audio electronic monitoring, the term "resident" includes:

- (a) The individual residing in the nursing home; or
- (b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.

(7) If a resident's decision maker consents to audio electronic monitoring as specified in (6) above, the nursing home must maintain a copy of the court order authorizing such consent in the resident's record.

NEW SECTION

**WAC 388-97-0420 Work.** The resident has the right to:

- (1) Refuse to perform services for the nursing home; and
- (2) Perform services for the nursing home, if he or she chooses, when:

- (a) The facility has documented the need or desire for work in the plan of care;
- (b) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
- (c) Compensation for paid services is at or above prevailing rates; and
- (d) The resident agrees to the work arrangement described in the plan of care.

NEW SECTION

**WAC 388-97-0440 Self-administration of drugs.** A resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe.

NEW SECTION

**WAC 388-97-0460 Grievance rights.** A resident has the right to:

(1) Voice grievances without discrimination or reprisal. Grievances include those with respect to treatment which has been furnished as well as that which has not been furnished.

(2) Prompt efforts by the nursing home to resolve voiced grievances, including those with respect to the behavior of other residents.

(3) File a complaint, contact, or provide information to the department, the long-term care ombudsman, the attorney general's office, and law enforcement agencies without interference, discrimination, or reprisal. All forms of retaliatory treatment are prohibited, including those listed in chapter 74.39A RCW.

(4) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

NEW SECTION

**WAC 388-97-0480 Examination of survey results.** (1) The resident has the right to examine the results of:

(a) The most recent survey of the nursing home conducted by federal and state surveyors;

(b) Surveys related to any current or subsequent complaint investigation; and

(c) Any required accompanying plan of correction, completed or not.

(2) Upon receipt of any deficiency citation report, the nursing home must publicly post a notice:

(a) That the results of the survey or complaint investigation, or both, are available regardless of whether the plan of correction is completed or not; and

(b) Of the location of the deficiency citation reports.

(3) For a report posted prior to the plan of correction being completed, the nursing home may attach an accompanying notice that explains the purpose and status of the plan of correction, informal dispute review, administrative hearing and other relevant information.

(4) Upon receipt of any citation report, the nursing home must publicly post a copy of the most recent full survey and all subsequent complaint investigation deficiency citation reports, including the completed plans of correction, when one is required.

(5) The notices and any survey reports must be available for viewing or examination in a place or places:

(a) Readily accessible to residents, which does not require staff interventions to access; and

(b) In plain view of the nursing home residents, including individuals visiting those residents, and individuals who inquire about placement in the nursing home.

NEW SECTION

**WAC 388-97-0500 Resident mail.** The resident has the right and the nursing home must provide immediate access to any resident by the following:

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationary, postage and writing implements at the resident's own expense.

NEW SECTION

**WAC 388-97-0520 Access and visitation rights.** (1) The resident has the right and the nursing home must provide immediate access to any resident by the following:

(a) For Medicare and Medicaid residents any representative of the U.S. department of health and human services (DHHS);

(b) Any representative of the state;

(c) The resident's personal physician;

(d) Any representative of the state long term care ombudsman program (established under section 307 (a)(12) of the Older American's Act of 1965);

(e) Any representative of the Washington protection and advocacy system, or any other agency (established under part c of the Developmental Disabilities Assistance and Bill of Rights Act);

(f) Any representative of the Washington protection and advocacy system, or any agency (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(g) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(h) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The nursing home must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The nursing home must allow representatives of the state ombudsman, described in subsection (1)(d) of this section, to examine a resident's clinical records with the permission of the resident or the resident's surrogate decision maker, and consistent with state law. The ombudsman may also, under federal and state law, access resident's records when the resident is incapacitated and has no surrogate decision maker, and may access records over the objection of a surrogate decision maker if access is authorized by the state ombudsman pursuant to 42 U.S.C. § 3058g(b) and RCW 43.190.065.

NEW SECTION

**WAC 388-97-0540 Telephone.** The resident has the right to have twenty-four hour access to a telephone which:

(1) Provides auditory privacy;

(2) Is accessible to an individual with a disability and accommodates an individual with sensory impairment; and

(3) Does not include the use of telephones in staff offices and at the nurses station(s).

NEW SECTION

**WAC 388-97-0560 Personal property.** (1) The resident has the right, unless to do so would infringe upon the rights or health and safety of other residents, to:

- (a) Retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits;
  - (b) Provide his or her own bed and other furniture, if desired and space permits; and
  - (c) Not be required to keep personal property locked in the facility office, safe, or similar arrangement.
- (2) The nursing home must:
- (a) Not request or require residents to sign waivers of potential liability for losses of personal property; and
  - (b) Have a system in place to safeguard personal property within the nursing home that protects the personal property and yet allows the resident to use his or her property.

#### NEW SECTION

**WAC 388-97-0580 Roommates/rooms.** (1) A resident has the right to:

- (a) Share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement; and
- (b) Receive three days notice of change in room or roommate except:
  - (i) For room changes: The move is at the resident's request; and
  - (ii) For room or roommate changes: A longer or shorter notice is required to protect the health or safety of the resident or another resident; or an admission to the facility is necessary, and the resident is informed in advance. The nursing home must recognize that the change may be traumatic for the resident and take steps to lessen the trauma.

(2) The nursing home must make reasonable efforts to accommodate residents wanting to share the same room.

#### NEW SECTION

**WAC 388-97-0600 Refusal of certain transfers.** In dually certified facilities all beds are Medicaid certified. Therefore the beds in a certified distinct part for Medicare are also nursing facility beds for Medicaid.

(1) Each resident has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate:

- (a) A resident from the Medicare distinct part of the facility to a part of the facility that is not a Medicare distinct part; or
- (b) A resident from the part of the facility that is not a Medicare distinct part to the Medicare distinct part of the facility.

(2) A resident's exercise of the right to refuse transfer under subsection (1)(a) of this section does not affect the individual's eligibility or entitlement to Medicare or Medicaid benefits.

(3) The skilled nursing facility or nursing facility must inform residents of their rights under subsection (1) and (2) of this section at the time of the proposed transfer or relocation.

#### NEW SECTION

**WAC 388-97-0620 Chemical and physical restraints.** (1) The resident has the right to be free from any physical or chemical restraint imposed for purposes of:

- (a) Discipline or convenience, and not required to treat the resident's medical symptoms; or
  - (b) Preventing or limiting independent mobility or activity.
- (2) The nursing home must develop and implement written policies and procedures governing:
- (a) The emergency use of restraints;
  - (b) The use of chemical and physical restraints, required for the treatment of the resident's medical symptoms, not for discipline or convenience;
  - (c) The personnel authorized to administer restraints in an emergency; and
  - (d) Monitoring and controlling the use of restraints.
- (3) Physical restraints may be used in an emergency only when:

- (a) It has been assessed as necessary to prevent a resident from inflicting injury to self or to others;
- (b) The restraint is the least restrictive form of restraint possible;
- (c) A physician's order is obtained:
  - (i) Within twenty-four hours; and
  - (ii) The order includes treatments to assist in resolving the emergency situation and eliminating the need for the restraint.
- (d) The resident is released from the restraint as soon as the emergency no longer exists.

(4) In certain situations, chemical or physical restraints may be necessary for residents with acute or chronic mental or physical impairments. When chemical or physical restraints are used the nursing home must ensure that:

- (a) The use of the restraint is related to a specific medical need or problem identified through a multidisciplinary assessment;
  - (b) The informed consent process is followed as described under WAC 388-97-0260; and
  - (c) The resident's plan of care provides approaches to reduce or eliminate the use of the restraint, where possible.
- (5) The nursing home must ensure that any resident physically restrained is released:
- (a) At intervals not to exceed two hours; and
  - (b) For periods long enough to provide for ambulation, exercise, elimination, food and fluid intake, and socialization as independently as possible.

#### NEW SECTION

**WAC 388-97-0640 Prevention of abuse.** (1) Each resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(2) The nursing home must develop and implement written policies and procedures that:

- (a) Prohibit abandonment, abuse, and neglect of residents, financial exploitation, and misappropriation of resident property; and

(b) Require staff to report possible abuse, and other related incidents, as required by chapter 74.34 RCW, and for skilled nursing facilities and nursing facilities as required by 42 C.F.R. § 483.13.

(3) The nursing home must not allow staff to:

- (a) Engage in verbal, mental, sexual, or physical abuse;
- (b) Use corporal punishment;
- (c) Involuntarily seclude, abandon, neglect, or financially exploit residents; or
- (d) Misappropriate resident property.

(4) The nursing home must report any information it has about an action taken by a court of law against an employee to the department's complaint resolution unit and the appropriate department of health licensing authority, if that action would disqualify the individual from employment as described in RCW 43.43.842.

(5) The nursing home must ensure that all allegations involving abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, including injuries of unknown origin, are reported immediately to the department, other applicable officials, and the administrator of the facility. The nursing home must:

(a) Ensure that the reports are made through established procedures in accordance with state law including chapter 74.34 RCW, and guidelines developed by the department; and

(b) Not have any policy or procedure that interferes with the requirement of chapter 74.34 RCW that employees and other mandatory reporters file reports directly with the department, and also with law enforcement, if they suspect sexual or physical assault has occurred.

(6) The nursing home must:

(a) Have evidence that all alleged violations are thoroughly investigated;

(b) Prevent further potential abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property while the investigation is in progress; and

(c) Report the results of all investigations to the administrator or his designated representative and to other officials in accordance with state law and established procedures (including the state survey and certification agency) within five working days of the incident, and if the alleged violation is verified appropriate action must be taken.

(7) When a mandated reporter has:

(a) Reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, financially exploited, or a resident's property has been misappropriated, the individual mandatory reporter must immediately report the incident to the department's aging and disability services administration (ADSA);

(b) Reason to suspect that a vulnerable adult has been sexually or physically assaulted, the individual mandatory reporter must:

(i) Immediately report the incident to the department's aging and disability services administration (ADSA);

(ii) Notify local law enforcement in accordance with the provisions of chapter 74.34 RCW.

(8) Under RCW 74.34.053, it is:

(a) A gross misdemeanor for a mandated reporter knowingly to fail to report as required under this section; and

(b) A misdemeanor for a person to intentionally, maliciously, or in bad faith make a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

#### NEW SECTION

**WAC 388-97-0660 Resident protection program definition.** As used in WAC 388-97-0680 through 388-97-0840, the term "**individual**," means anyone, including a volunteer, used by the facility to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident or misappropriated a resident's property.

#### NEW SECTION

**WAC 388-97-0680 Investigation of mandated reports.** (1) The department will review all allegations of resident abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, as defined in this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

(a) The review of facility and state agency records;

(b) Interviews with anyone who may have relevant information about the allegation; and

(c) The collection of any evidence deemed necessary by the investigator.

#### NEW SECTION

**WAC 388-97-0700 Preliminary finding.** If, after review of the results of the investigation, the department makes a preliminary determination that an individual abandoned, abused, neglected, financially exploited a resident, or misappropriated resident's funds, the department will make a preliminary finding to that effect. However, a preliminary finding of neglect will not be made if the individual is able to demonstrate that the neglect was caused by factors beyond the control of the individual.

#### NEW SECTION

**WAC 388-97-0720 Notification of preliminary finding.** (1) Within ten working days of making its preliminary determination, the department will send notice of the preliminary finding:

(a) To the individual by first class and certified mail, return receipt requested. The department may choose to substitute personal service for certified mail;

(b) To the current administrator of the facility where the incident occurred; and

(c) To the appropriate licensing agency.

(2) The notice will include the following information:

(a) A description of the allegation;

(b) The date and time of the incident, if known;

(c) That the individual may appeal the preliminary finding;

(d) That the preliminary finding will become final unless the individual makes a written request for a hearing within thirty days of the date of the notice; and

(e) That if the finding becomes final, it will be reported to the department's registry and the appropriate licensing authority.

(3) In a manner consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may also provide notification of a preliminary finding to:

(a) Other divisions within the department;

(b) The agency, program or employer with which the individual was associated including the current employer, if known;

(c) Law enforcement; and

(d) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW.

#### NEW SECTION

##### **WAC 388-97-0740 Disputing a preliminary finding.**

(1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of the notice of the preliminary finding; except under the circumstances described in subsection (4).

(4) If, an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary finding and the individual can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing.

#### NEW SECTION

**WAC 388-97-0760 Hearing procedures to dispute preliminary finding.** Upon receipt of a written request for a hearing from an individual, the office of administrative hearings will schedule a hearing, taking into account the following requirements:

(1) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request; except as provided in subsection (6);

(2) Neither the department nor the individual can waive the one hundred twenty day requirement;

(3) The hearing will be conducted at a reasonable time and at a place that is convenient for the individual;

(4) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC, or its successor regulations;

(5) A continuance may be granted for good cause upon the request of any party, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal; except under the circumstances described in subsection 6;

(6) If the administrative law judge finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the administrative law judge may extend the one hundred twenty-day requirement a maximum of sixty days; and

(7) To comply with the time limits described in this section, the individual must be available for the hearing and other preliminary matters. If the decision is not rendered within the time limit described in subsection (1), or if appropriate under subsection (6), the administrative law judge shall issue an order dismissing the appeal and the finding will become final.

#### NEW SECTION

**WAC 388-97-0780 Finalizing the preliminary finding.** (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding; and

(b) The individual does not ask for an administrative hearing within the timeframe provided under WAC 388-97-0740 (3); or

(c) The administrative law judge:

(i) Dismisses the appeal following withdrawal of the appeal or default;

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-97-0760; or

(iii) Issues an initial order upholding the finding and the individual does not appeal the initial order to the department's board of appeals within the required timeframe; or

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent, except under the circumstances described in (3).

(3) A final finding may be removed from the department's registry and any other department lists of individuals found to have abandoned abused, neglected, misappropriated property or financially exploited a vulnerable adult under the following circumstances:

(a) It is rescinded following judicial review;

(b) The department determines the finding was in error;

(c) At least one year after the finding has been finalized, the department may remove a single finding of neglect from the department's registry or department lists based upon a written petition by the individual and in accordance with requirements of federal law, 42 U.S.C. 1396r (g)(1)(D); or

(d) The department is notified of the individual's death.

#### NEW SECTION

**WAC 388-97-0800 Appeal of administrative law judge's initial order or finding.** (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as

provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

#### NEW SECTION

**WAC 388-97-0820 Reporting final findings.** The department will report a final finding of abandonment, abuse, neglect, financial exploitation of a resident, and misappropriation of resident property within ten working days to the following:

- (1) The individual;
- (2) The current administrator of the facility in which the incident occurred;
- (3) The administrator of the facility that currently employs the individual, if known;
- (4) The department's registry;
- (5) The appropriate licensing authority; and
- (6) Any other lists maintained by a state or federal agency as appropriate.

#### NEW SECTION

**WAC 388-97-0840 Disclosure of investigative and finding information.** (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, misappropriation of property, and financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information about resident and mandated reporters provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

(3) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from the documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

### Quality of Life

#### NEW SECTION

**WAC 388-97-0860 Resident dignity and accommodation of needs.** (1) Dignity. The nursing home must ensure that:

(a) Resident care is provided in a manner to enhance each resident's dignity, and to respect and recognize his or her individuality; and

(b) Each resident's personal care needs are provided in a private area free from exposure to individuals not involved in providing the care.

(2) Accommodation of needs. Each resident has the right to reasonable accommodation of personal needs and

preferences, except when the health or safety of the individual or other residents would be endangered.

#### NEW SECTION

**WAC 388-97-0880 Environment.** The nursing home must provide and maintain:

(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Comfortable and safe temperature levels:

(a) Facilities licensed after October 1, 1990 must maintain a temperature range of seventy-one to eighty-one degrees Fahrenheit; and

(b) Regardless of external weather conditions, all nursing homes must develop and implement procedures and processes to maintain a temperature level that is comfortable and safe for residents;

(4) Comfortable sound levels, to include:

(a) Minimizing the use of the public address system to ensure each use is in the best interest of the residents; and

(b) Taking reasonable precautions with noisy services so as not to disturb residents, particularly during their sleeping time; and

(5) Lighting suitable for any task the resident chooses to do, and any task the staff must do.

#### NEW SECTION

**WAC 388-97-0900 Self-determination and participation.** The resident has the right to:

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plan of care;

(2) Interact with members of the community both inside and outside the nursing home;

(3) Make choices about aspects of his or her life in the facility that are significant to the resident; and

(4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the nursing home.

#### NEW SECTION

**WAC 388-97-0920 Participation in resident and family groups.** (1) A resident has the right to organize and participate in resident groups in the nursing home.

(2) The nursing home must provide a resident or family group, if one exists, with private space.

(3) Staff or visitors may attend meetings only at the group's invitation.

(4) The nursing home must provide a designated staff individual responsible for providing assistance and responding to written requests that result from group meetings.

(5) When a resident or family group exists, the nursing home must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

(6) A resident's family has the right to meet in the nursing home with the families of other residents in the facility.

#### NEW SECTION

**WAC 388-97-0940 Activities.** The nursing home must:

(1) Provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident;

(2) Provide activities meaningful to the residents at various times throughout every day and evening based on each resident's need and preference; and

(3) Ensure that the activities program is directed by a qualified professional who:

(a) Is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990; or

(b) Has two years of experience in a social or recreational program within the last five years, one of which was full-time in a patient activities program in a health care setting; or

(c) Is a qualified occupational therapist or occupational therapy assistant.

#### NEW SECTION

**WAC 388-97-0960 Social services.** The nursing home must:

(1) Provide medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; and

(2) Employ a qualified social worker on a full-time basis if the nursing home has more than one hundred twenty beds. A qualified social worker is an individual with:

(a) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and

(b) One year of supervised social work experience in a health care setting working directly with patients or residents.

#### NEW SECTION

**WAC 388-97-0980 Pets.** (1) Each resident must have a reasonable opportunity to have regular contact with animals, if desired.

(2) The nursing home must:

(a) Consider the recommendations of nursing home residents, resident councils, and staff;

(b) Determine how to provide residents access to animals;

(c) Determine the type and number of animals available in the facility, which the facility can safely manage. Such animals should include only those customarily considered domestic pets;

(d) Ensure that any resident's rights, preferences, and medical needs are not compromised by the presence of an animal; and

(e) Ensure any animal visiting or living on the premises has a suitable temperament, is healthy, and otherwise poses no significant health or safety risks to residents, staff, or visitors.

(3) Animals living on the nursing home premises must:

(a) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state; and

(b) Be veterinarian certified to be free of diseases transmittable to humans.

(4) Pets must be restricted from:

(a) Central food preparation areas; and

(b) Residents who object to the presence of pets.

#### **Resident Assessment and Plan of Care**

#### NEW SECTION

**WAC 388-97-1000 Resident assessment.** (1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) At the time each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

(g) Psychosocial well-being;

(h) Physical functioning and structural problems;

(i) Continence;

(j) Disease diagnosis and health conditions;

(k) Dental and nutritional status;

(l) Skin conditions;

(m) Activity pursuit;

(n) Medications;

(o) Special treatments and procedures;

(p) Discharge potential;

(q) Documentation of summary information regarding the assessment performed; and

(r) Documentation of participation in assessment.

(3) The nursing home must conduct comprehensive assessments:

- (a) No later than fourteen days after the date of admission;
- (b) Promptly after a significant change in the resident's physical or mental condition; and
- (c) In no case less often than once every twelve months.
- (4) The nursing home must ensure that:
  - (a) Each resident is assessed no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and
  - (b) The results of the assessment are used to develop, review and revise the resident's comprehensive plan of care under WAC 388-97-1020.
- (5) The skilled nursing facility and nursing facility must:
  - (a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;
  - (b) Place copies of the completed state approved RAI in each resident's clinical record, unless all charting is computerized;
  - (c) Maintain all copies of resident assessments completed within the resident's active clinical record for fifteen months;
  - (d) Assess each resident not less than every three months, using the state approved assessment instrument; and
  - (e) Transmit all state and federally required RAI information for each resident to the department:
    - (i) In a manner approved by the department;
    - (ii) Within ten days of completion of any RAI required under this subsection; and
    - (iii) Within ten days of discharging or readmitting a resident.

#### NEW SECTION

- WAC 388-97-1020 Comprehensive plan of care.** (1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental and psychosocial needs that are identified in the comprehensive assessment.
- (2) The comprehensive plan of care must:
    - (a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;
    - (b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);
    - (c) Be developed within seven days after completion of the comprehensive assessment;
    - (d) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the residents needs;
    - (e) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

- (f) Include the ongoing participation of the resident to the fullest extent possible, the resident's family or the resident's surrogate decision maker.
- (3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.
- (4) The nursing home must:
  - (a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;
  - (b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;
  - (c) Include in the interdisciplinary plan of care process:
    - (i) Staff members requested by the resident; and
    - (ii) Direct care staff who work most closely with the resident.
  - (d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions;
  - (e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and
  - (f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.
- (5) The nursing home must ensure that each comprehensive plan of care:
  - (a) Designates the discipline of the individuals responsible for carrying out the program; and
  - (b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

#### NEW SECTION

- WAC 388-97-1040 Dementia care.** (1) A nursing home must ensure that it provides residents with dementia with an environment designed to attain or maintain the highest level of functioning and well-being possible, taking into consideration the resident's medical condition and functional status. Therefore, the nursing home must:
- (a) Have a program designed to meet the identified needs of the residents;
  - (b) Develop and implement program policies and procedures; and
  - (c) Train all staff, who have resident contact, in the special needs and care approaches applicable to residents with dementia. This training must be ongoing and consistent with requirements under WAC 388-97-1680 (2)(b).
  - (2) A nursing home that has a locked or secured dementia unit must:
    - (a) Always have staff present in the unit, available to meet the needs of the residents and to protect them in the event of an emergency;
    - (b) Have staff available to assist residents, as needed, in accessing outdoor areas;

(c) Have admission, transfer, and discharge criteria which ensures that:

(i) The process of informed consent is followed before admission to or transfer/discharge from the unit;

(ii) The resident is provided with unit specific admission or transfer/discharge criteria, prior to admission to the unit;

(iii) The resident's need for admission to the unit from another part of the nursing home, or transfer/discharge from the unit, is based on the comprehensive assessment and plan of care;

(iv) Through an evaluation prior to admission, a resident admitted directly from outside the nursing home meets the cognitive and functional criteria of the unit; and

(v) In the case of an individual admitted directly to the unit from outside the nursing home, as specified in subsection (2)(b)(iv) above, the nursing home may complete the comprehensive assessment after the individual's admission to the unit, provided that the nursing home complies with required time frames for completion of the resident assessment under WAC 388-97-1000.

(d) Provide private pay residents, or their surrogate decision maker written notification:

(i) If admitted from outside the nursing home, of additional charges, if any, for services, items, and activities in the unit, prior to admission; and

(ii) If admitted from another part of the nursing home, thirty days in advance of changes to those charges.

(e) Comply with physical plant requirements in WAC 388-97-2800 through 388-97-2920, for existing facilities and for new construction.

### Quality of Care

#### NEW SECTION

**WAC 388-97-1060 Quality of care.** (1) Consistent with resident rights, the nursing home must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and plan of care.

(2) Based on the comprehensive assessment of a resident, the nursing home must ensure that:

(a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The nursing home must ensure that the appropriate care and services are provided to the resident in the following areas, as applicable in accordance with the resident's individualized assessments and plan of care:

(a) Vision and hearing;

(b) Skin;

(c) Continence;

(d) Range of motion;

(e) Mental and psychosocial functioning and adjustment;

(f) Nasogastric and gastrostomy tubes;

(g) Accident prevention;

(h) Nutrition;

(i) Hydration;

(j) Special needs, including:

(i) Injections;

(ii) Parenteral and enteral fluids;

(iii) Colostomy, ureterostomy, or ileostomy care;

(iv) Tracheostomy care;

(v) Tracheal suction;

(vi) Respiratory care;

(vii) Dental care;

(viii) Foot care; and

(ix) Prostheses.

(k) Medications, including freedom from:

(i) Unnecessary drugs;

(ii) Nursing home error rate of five percent or greater; and

(iii) Significant medication errors.

(l) Self-administration of medication; and

(m) Independent living skills.

(4) The nursing home must ensure that each resident is monitored for desired responses and undesirable side effects of prescribed drugs.

### Nursing Services

#### NEW SECTION

**WAC 388-97-1080 Nursing services.** (1) The nursing home must ensure that a sufficient number of qualified nursing personnel are available on a twenty-four hour basis seven days per week to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care.

(2) The nursing home must:

(a) Designate a registered nurse or licensed practical nurse to serve as charge nurse, who is accountable for nursing services on each tour of duty; and

(b) Have a full time director of nursing service who is a registered nurse.

(3) The nursing home must have:

(a) A registered nurse on duty directly supervising resident care a minimum of sixteen hours per day, seven days per week; and

(b) A registered nurse or licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week. **"Directly supervising"** means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments

and other direct care of residents; and oversight of supervised staff.

(4) The nursing home must ensure that staff respond to each resident's requests for assistance in a manner which promptly meets the quality of life and quality of care needs of all the residents.

(5) The director of nursing services is responsible for:

- (a) Coordinating the plan of care for each resident;
- (b) Ensuring that registered nurses and licensed practical nurses comply with chapter 18.79 RCW; and
- (c) Ensuring that the nursing care provided is based on the nursing process in accordance with nationally recognized and accepted standards of professional nursing practice.

#### NEW SECTION

**WAC 388-97-1100 Dietary services.** The nursing home must:

- (1) Provide each resident with a nourishing, palatable, well-balanced diet that meets their daily nutritional and special dietary needs.
- (2) Serve food in an attractive manner and at temperatures safe and acceptable to each resident.
- (3) Ensure that food service is in compliance with chapter 246-215 WAC.
- (4) Retain dated menus, dated records of foods received, a record of the number of meals served, and standardized recipes for at least three months for department review as necessary.

#### NEW SECTION

**WAC 388-97-1120 Meal provision.** The nursing home must:

- (1) Provide a minimum of three meals in each twenty-four period, at regular times similar to normal meal times in the community;
- (2) Make fresh fruits and vegetables, in season, available to residents on a daily basis;
- (3) Make reasonable efforts to:
  - (a) Accommodate individual mealtime preferences and portion sizes, as well as preferences for between meal and evening snacks when not medically contraindicated;
  - (b) Offer a late breakfast or an alternative to the regular breakfast for late risers; and
  - (c) Provide food consistent with the cultural and religious needs of the residents.
- (4) Use input from residents and the resident council, if the nursing home has one, in meal planning, scheduling, and the meal selection process.

#### NEW SECTION

**WAC 388-97-1140 Individual dietary needs.** The nursing home must:

- (1) Encourage residents to continue eating independently;
- (2) Provide effective adaptive utensils as needed to promote independence;
- (3) Allow sufficient time for eating in a relaxed manner;
- (4) Provide individualized assistance as needed;

(5) Provide table service, for all residents capable of eating at a table, in a dining area/room, located outside of the resident's room; and

(6) Offer a substitute of similar nutritive value when a resident refuses food served.

#### NEW SECTION

**WAC 388-97-1160 Dietary personnel.** The nursing home must have sufficient support personnel capable of carrying out the functions of dietary services and must:

- (1) Employ a qualified dietitian either full-time, part-time or on a consultant basis who must:
  - (a) Approve regular and therapeutic menus which meet the dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;
  - (b) Prepare dated menus for general and modified diets at least three weeks in advance;
  - (c) Provide services which include:
    - (i) Nutrition assessment;
    - (ii) Liaison with medical and nursing staff, and administrator;
    - (iii) Inservice training; and
    - (iv) Guidance to the director of food service, and food service staff.
- (2) If a qualified dietitian is not employed full-time as the food service manager the nursing home must employ a food service manager to serve as the director of food service.
- (3) The food service manager means:
  - (a) An individual who is a qualified dietitian; or
  - (b) An individual:
    - (i) Who has completed a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association/Dietary Manager Association; and
    - (ii) Receives regularly scheduled consultation from a qualified dietitian.

#### NEW SECTION

**WAC 388-97-1180 Dietary menus.** The nursing home must:

- (1) Ensure that menus are followed;
- (2) Post the current dated general menu, including substitutes, in the food service area and in a place accessible and conspicuous to residents and visitors, in print the residents can read; and
- (3) Note any changes to the regular menu on the posted menu.

#### NEW SECTION

**WAC 388-97-1200 Dietary orders.** The nursing home must:

- (1) Ensure that residents' diets are provided as prescribed by the physician. Diet modifications, for texture only, may be used as an interim measure when ordered by a registered nurse; and
- (2) Provide supplementary fluid and nourishment in accordance with each resident's needs as determined by the assessment process.

NEW SECTION

**WAC 388-97-1220 Modified diets.** The nursing home must review a resident's modified diet to ensure that the food form and texture are consistent with the resident's current needs and functional level:

- (1) At the request of the resident.
- (2) When the resident's condition warrants.
- (3) At the time of the plan of care review.

NEW SECTION

**WAC 388-97-1240 Tube feedings.** If the nursing home prepares tube feeding formula, or mixes additives to the prepared formula it must ensure that:

- (1) Each resident's tube feedings are of uniform consistency and quality; and
- (2) Tube feeding formulas are prepared, stored, distributed, and served in such a manner so as to maintain uniformity and to prevent contamination.

**Physician Services**

NEW SECTION

**WAC 388-97-1260 Physician services.** (1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

- (a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;
- (b) Another physician supervises the medical care of residents when their attending physician is unavailable; and
- (c) Physician services are provided twenty-four hours per day, in case of emergency.

(4) The physician must:

- (a) Write, sign and date progress notes at each visit;
- (b) Sign and date all orders; and
- (c) In Medicare and Medicare/Medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsections (6), (7), and (9) of this section, a physician may delegate tasks to a physician's assistant or advanced registered nurse practitioner who is:

- (a) Licensed by the state;
- (b) Acting within the scope of practice as defined by state law; and
- (c) Under the supervision of the physician.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) If the resident's primary payor source is Medicare, the physician may:

- (a) Alternate federally required physician visits between personal visits by:
  - (i) The physician; and
  - (ii) An advanced registered nurse practitioner or physician's assistant; and
- (b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first thirty days of admission to the facility.

(8) If the resident's payor source is Medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(9) If the resident's payor source is not Medicare or Medicaid:

- (a) In the Medicare only certified facility or in the Medicare certified area of a Medicare/Medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.
- (b) In the Medicaid only certified facility or in the Medicaid certified area of a Medicare/Medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(10) The following table describes the physician visit requirements related to Medicare or Medicaid certified area and payor type.

	Beds in Medicare only certified area	Beds in Medicare/Medicaid certified area	Beds in Medicaid only certified area
Payor source:	Initial by physician	Initial by physician	N/A
Medicare	Physician may delegate alternate visits	Physician may delegate alternate visits	
Payor source:	N/A	Delegate all tasks	Delegate all tasks
Medicaid		Nonemployee	Nonemployee
Payor source:	Initial by physician	Initial by physician	Delegate all tasks
Others: such as insurance, private pay, Veteran Affairs	Physician may delegate alternate visits	Physician may delegate alternate visits	Nonemployee

(11) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(12) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

### Specialized Habilitative and Rehabilitative Services

#### NEW SECTION

**WAC 388-97-1280 Specialized habilitative and rehabilitative services.** (1) If specialized habilitative and rehabilitative services such as, but not limited to, physical therapy, speech-language pathology, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation, are required in the resident's comprehensive plan of care, the facility must:

(a) Provide the required services; or

(b) Obtain the required services from an outside provider of specialized rehabilitative services.

(2) As determined by the resident's individualized comprehensive plan of care, qualified therapists, as defined in RCW 74.46.020(40), will provide specialized habilitative or rehabilitative services under the written order of the physician. According to state law and at the qualified therapist's discretion, certain services may be delegated to and provided by support personnel under appropriate supervision.

(3) The nursing facility must:

(a) Ensure that residents who display mental or psychosocial adjustment difficulties receive appropriate treatment and services to correct the assessed problem; and

(b) Provide or arrange for the mental health or mental retardation services needed by residents that are of a lesser intensity than the specialized services defined at WAC 388-97-1960.

(4) The nursing home may provide specialized rehabilitative and habilitative services to outpatients on the facility premises, only if the nursing home continues to also meet the needs of current residents.

#### NEW SECTION

**WAC 388-97-1300 Pharmacy services.** (1) The nursing home must:

(a) Obtain routine and emergency drugs and biologicals for its residents under an agreement with a licensed pharmacy;

(b) Ensure that pharmaceutical services:

(i) Meet the needs of each resident;

(ii) Establish and monitor systems for the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals; and

(c) Employ or obtain the services of a licensed pharmacist who must:

(i) Provide consultation on all aspects of the provision of pharmacy services in the nursing home;

(ii) Determine that nursing home drug records are in order;

(iii) Perform regular reviews at least once each month of each resident's drug therapy; and

(iv) Document and report drug irregularities to the attending physician and the director of nursing.

(2) Drugs and biologicals used in the nursing home must be labeled and stored in accordance with applicable state and federal laws.

(3) The nursing home must provide pharmaceutical services that:

(a) Meet recognized and accepted standards of pharmacy practice; and

(b) Comply with chapter 246-865 WAC, except nursing home staff administering drugs to residents may document administration at the time of pouring the drug or immediately after administration.

(4) The nursing home must ensure:

(a) Education and training for nursing home staff by the licensed pharmacist on drug-related subjects including, but not limited to:

(i) Recognized and accepted standards of pharmacy practice and applicable pharmacy laws and rules;

(ii) Appropriate monitoring of residents to determine desired effect and undesirable side effects of drug regimens; and

(iii) Use of psychotropic drugs.

(b) Reference materials regarding medication administration, adverse reactions, toxicology, and poison center information are readily available;

(c) Pharmacist monthly drug review reports are acted on in a timely and effective manner;

(d) Accurate detection, documentation, reporting and resolution of drug errors and adverse drug reactions; and

(e) Only individuals authorized by state law to do so will receive drug orders and administer drugs;

(5) The resident has the right to a choice of pharmacies when purchasing prescription and nonprescription drugs as long as the following conditions are met to ensure the resident is protected from medication errors:

(a) The medications are delivered in a unit of use compatible with the established system of the facility for dispensing drugs; and

(b) The medications are delivered in a timely manner to prevent interruption of dose schedule.

**Infection Control**NEW SECTION

**WAC 388-97-1320 Infection control.** (1) The nursing home must:

(a) Establish and maintain an effective infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection;

(b) Prohibit any employee with a communicable disease or infected skin lesion from direct contact with residents or their food, if direct contact could transmit the disease; and

(c) Require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(2) Under the infection control program, the nursing home must:

(a) Investigate, control and prevent infections in the facility;

(b) Decide what procedures should be applied in individual circumstances; and

(c) Maintain a record of incidence of infection and corrective action taken.

(3) Nursing home personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(4) The nursing home must develop and implement effective methods for the safe storage, transport and disposal of garbage, refuse and infectious waste, consistent with all applicable local, state, and federal requirements for such disposal.

(5) The nursing home must provide areas, equipment, and supplies to implement an effective infection control program and ensure:

(a) Ready availability of hand cleaning supplies and appropriate drying equipment or material at each sink;

(b) Safe use of disposable and single service supplies and equipment;

(c) Effective procedures for cleaning, disinfecting or sterilizing according to equipment use;

(d) Chemicals and equipment used for cleaning, disinfecting, and sterilizing, including chemicals used to launder personal clothing, are used in accordance with manufacturer's directions and recommendations; and

(e) Safe and effective procedures for disinfecting:

(i) All bathing and therapy tubs between each resident use; and

(ii) Swimming pools, spas and hot tubs.

NEW SECTION

**WAC 388-97-1340 Influenza and pneumococcal immunizations.** (1) The nursing home shall provide residents access on-site or make available elsewhere, the ability to obtain the influenza virus immunization on an annual basis.

(2) Upon admission, the nursing home shall inform residents or the resident's representative, verbally and in writing, of the benefits of receiving the influenza virus immunization and the pneumococcal disease immunization.

(3) Nursing homes who rely exclusively upon treatment by nonmedical religious healing methods, including prayer, are exempt from the above rules.

NEW SECTION**WAC 388-97-1360 Surveillance, management and early identification of individuals with active tuberculosis.**

(1) The nursing home must develop and implement policies and procedures that comply with nationally recognized tuberculosis standards set by the Centers for Disease Control (CDC), and applicable state law. Such policies and procedures include, but are not limited to, the following:

(a) Evaluation of any resident or employee with symptoms suggestive of tuberculosis whether tuberculin skin test results were positive or negative;

(b) Identifying and following up residents and personnel with suspected or actual tuberculosis, in a timely manner; and

(c) Identifying and following up visitors and volunteers with symptoms suggestive of tuberculosis.

(2) The nursing home must comply with chapter 49.17 RCW, Washington industrial safety and health act (WISHA) requirements to protect the health and safety of employees.

NEW SECTION**WAC 388-97-1380 Tuberculosis—Testing required.**

(1) The nursing home must develop and implement a system to ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission.

(2) The nursing home must also ensure that facility personnel are tested annually.

(3) For the purposes of WAC 388-97-1360 through 388-97-1580 "person" means facility personnel and residents.

NEW SECTION

**WAC 388-97-1400 Tuberculosis—Testing method—Required.** The nursing home must ensure that all tuberculosis testing is done through a nationally recognized testing method such as:

(1) Intradermal (Mantoux) administration or

(2) QuantiFERON TB Gold Blood Test.

NEW SECTION

**WAC 388-97-1420 Tuberculosis—Mantoux skin testing.** The nursing home must ensure that when Mantoux skin testing is done:

(1) The results are read within forty-eight to seventy-two hours of the test;

(2) The results are read by a trained professional; and

(3) The results are recorded in millimeters of duration.

NEW SECTION

**WAC 388-97-1440 Tuberculosis—No skin testing.** The nursing home is not required to have a person tested for tuberculosis if the person has:

(1) A documented history of a previous positive skin test results; or

- (2) Documented evidence of:
- (a) Adequate therapy for active disease; or
  - (b) Adequate preventive therapy for infection.

NEW SECTION

**WAC 388-97-1460 Tuberculosis—Mantoux one step testing.** The nursing home is only required to have a person take a one-step skin test upon admission or employment if the person has any of the following:

- (1) A documented history of a negative result from previous two step testing; or
- (2) A documented negative result from one step skin testing in the previous twelve months.

NEW SECTION

**WAC 388-97-1480 Tuberculosis—Mantoux two step testing.** Unless the person meets the requirement for having no skin testing or only a one step skin test, the nursing home must ensure that each person has the following two-step testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test.

NEW SECTION

**WAC 388-97-1500 Tuberculosis—Positive reaction.** When there is a positive reaction to tuberculosis testing the nursing home must:

- (1) Ensure that the individual has a chest X ray within seven days;
- (2) Evaluate each resident or employee, with a positive test result, for signs and symptoms of tuberculosis; and
- (3) Follow the direction of the local health department if it requires additional tuberculin testing of residents or personnel for contact investigation.

NEW SECTION

**WAC 388-97-1520 Tuberculosis—Negative reaction.** The nursing home may be required by the public health official or licensing authority to ensure that persons with negative QuantiFERON or Mantoux test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis;
- (2) When tuberculosis symptoms are present; or
- (3) For periodic testing as determined by a health official.

NEW SECTION

**WAC 388-97-1540 Tuberculosis—Declining a test.** The nursing home may accept a signed statement from a person who has reason to decline skin testing; if:

- (1) The signed statement includes the reason for declining; and
- (2) Additional evidence is provided to support the reason.

NEW SECTION

**WAC 388-97-1560 Tuberculosis—Reporting—Required.** When, based upon symptoms or diagnosis, the nursing home suspects that a person has tuberculosis, the nursing home must:

- (1) Notify the local public health officer so that appropriate contact investigation can be performed;
- (2) Institute appropriate measures for the control of the transmission of droplet nuclei;
- (3) Apply living or work restrictions where residents or personnel are, or may be, infectious and pose a risk to other residents and personnel; and
- (4) Ensure that personnel caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

NEW SECTION

**WAC 388-97-1580 Tuberculosis—Test records.** The nursing home must:

- (1) Keep any records such as tuberculin test results, reports of X-ray findings, physician or public health official orders and the person's statement declining the test in the nursing home;
- (2) Retain employee tuberculin testing results for the duration of employment; and
- (3) Provide the employee a copy of his/her testing results.

NEW SECTION

**WAC 388-97-1600 Care of residents with active tuberculosis.** (1) When the nursing home accepts the care of a resident with suspected or confirmed tuberculosis, the nursing home must:

- (a) Coordinate the resident's admission, nursing home care, discharge planning, and discharge with the local health officer or officer designee;
- (b) Provide necessary education about tuberculosis for staff, visitors, and residents; and
- (c) Ensure that personnel caring for a resident with active tuberculosis comply with the WISHA standards for respiratory protection, chapter 296-842 WAC.

(2) For a resident who requires respiratory isolation for tuberculosis, the nursing home must:

- (a) Provide a private or semiprivate isolation room:
  - (i) In accordance with WAC 388-97-2480;
  - (ii) In which, construction review of the department of health determines that room air is maintained under negative pressure; and appropriately exhausted, either directly to the outside away from intake vents or through properly designed, installed, and maintained high efficiency particulate air (HEPA) filters, or other measures deemed appropriate to protect others in the facility;
  - (iii) However, when a semiprivate isolation room is used, only residents requiring respiratory isolation for confirmed or suspected tuberculosis are placed together.
- (b) Provide supplemental environment approaches, such as ultraviolet lights, where deemed to be necessary;

- (c) Provide appropriate protective equipment for staff and visitors; and
- (d) Have measures in place for the decontamination of equipment and other items used by the resident.

### Administration

#### NEW SECTION

**WAC 388-97-1620 General administration.** (1) The nursing home must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

- (2) The nursing home must:
  - (a) Be licensed under chapter 18.51 RCW;
  - (b) Operate and provide services in compliance with:
    - (i) All applicable federal, state and local laws, regulations, and codes;
    - (ii) Accepted professional standards and principles that apply to professionals providing services in nursing homes; and
  - (c) Have a governing body or designated individuals functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing home.
  - (3) The governing body of the nursing home must appoint the administrator who:
    - (a) Is licensed by the state;
    - (b) Is responsible for management of the nursing home;
    - (c) Keeps the licensee informed of all surveys and notices of noncompliance;
    - (d) Complies with all requirements of chapter 18.52 RCW, and all regulations adopted under that chapter;
    - (e) Is an on-site, full-time individual in active administrative charge at the premises of only one nursing home, a minimum of four days and an average of forty hours per week. Exception: On-site, full-time administrator with small resident populations or in rural areas will be defined as an individual in active administrative charge at the premises of only one nursing home:

- (i) A minimum of four days and an average of twenty hours per week at facilities with one to thirty beds; or
- (ii) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine beds.
- (4) Nursing homes temporarily without an administrator may operate up to four continuous weeks under a responsible individual authorized to act as nursing home administrator designee.

(a) The designee must be qualified by experience to assume designated duties; and

(b) The nursing home must have a written agreement with a nursing home administrator, licensed in the state of Washington, who must be readily available to consult with the designee.

(c) The nursing home may make a written request to the department's designated aging and disability services administration field office for an extension of the four weeks by stating why an extension is needed, how a resident's safety or well-being is maintained during an extension and giving the

estimated date by which a full-time, qualified nursing home administrator will be on-site.

(5) The nursing home must employ on a full-time, part time or consultant basis those professionals necessary to carry out the requirements of this chapter.

(6) If the nursing home does not employ a qualified professional individual to furnish a specific service to be provided by the nursing home, the nursing home must:

(a) Have that service furnished to residents by an individual or agency outside the nursing home under a written arrangement or agreement; and

(b) Ensure the arrangement or agreement referred to in (a) of this subsection specifies in writing that the nursing home assumes responsibility for:

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in nursing homes; and

(ii) The timeliness of services.

(7) The nursing home must:

(a) Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance which threatens any individual's welfare and safety;

(b) Identify, investigate, and report incidents involving residents, according to department established nursing home guidelines; and

(c) Comply with "whistle blower" rules as defined in chapter 74.34 RCW.

(8) The department will:

(a) Investigate complaints, made to the department according to established protocols including protocols described in RCW 74.39A.060;

(b) Take action against a nursing home that is found to have used retaliatory treatment toward a resident or employee who has voiced grievances to nursing home staff or administration, or lodged a good faith complaint with the department; and

(c) Report to local law enforcement:

(i) Any mandated reporter that knowingly fails to report in accordance with WAC 388-97-0640; and

(ii) Any person that intentionally, maliciously or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) Refer also to WAC 388-97-1840, Retaliation.

#### NEW SECTION

**WAC 388-97-1640 Required notification and reporting.** (1) The nursing home must immediately notify the department's aging and disability services administration of:

(a) Any allegations of resident abandonment, abuse, or neglect, including substantial injuries of an unknown source, financial exploitation and misappropriation of a resident's property;

(b) Any unusual event, having an actual or potential negative impact on residents, requiring the actual or potential implementation of the nursing home's disaster plan. These unusual events include but are not limited to those listed under WAC 388-97-1740 (1)(a) through (k), and could

include the evacuation of all or part of the residents to another area of the nursing home or to another address; and

(c) Circumstances which threaten the nursing home's ability to ensure continuation of services to residents.

(2) Mandated reporters must notify the department and law enforcement as directed in WAC 388-97-0640, and according to department established nursing home guidelines.

(3) The nursing home must notify the department's aging and disability services administration of:

(a) Physical plant changes, including but not limited to:

- (i) New construction;
- (ii) Proposed resident area or room use change;
- (iii) Resident room number changes; and
- (iv) Proposed bed banking.

(b) Mechanical failure of equipment important to the everyday functioning of the nursing home, which cannot be repaired within a reasonable time frame, such as an elevator; and

(c) An actual or proposed change of ownership (CHOW).

(4) The nursing home must notify, in writing, the department's aging and disability services administration and each resident, of a loss of, or change in, the nursing home's administrator or director of nursing services at the time the loss or change occurs.

(5) The nursing home licensee must notify the department's aging and disability services administration in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.

(6) If a licensee operates in a building it does not own, the licensee must immediately notify the department of the occurrence of any event of default under the terms of the lease, or if it receives verbal or written notice that the lease agreement will be terminated, or that the lease agreement will not be renewed.

(7) The nursing home must report any case or suspected case of a reportable disease to the appropriate department of health officer and must also notify the appropriate department(s) of other health and safety issues, according to state and local laws.

(8) The nursing home licensee must notify the department in writing of a nursing home's voluntary closure.

(a) The licensee must send this written notification sixty days before closure to the department's designated local aging and adult administration office and to all residents and resident representatives.

(b) Relocation of residents and any required notice to the Centers for Medicare and Medicaid Services and the public must be in accordance with WAC 388-97-4320(2).

(9) The nursing home licensee must notify the department in writing of voluntary termination of its Medicare or Medicaid contract.

(a) The licensee must send this written notification sixty days before contract termination, to the department's designated local aging and disability services administration office and to all residents and resident representatives.

(b) If the contractor continues to provide nursing facility services, the contract termination will be subject to federal law prohibiting the discharge of residents who are residing in

the facility on the day before the effective date of the contract termination.

(10) The nursing home licensee must notify the Centers for Medicare and Medicaid Services of voluntary termination of its Medicare provider agreement in accordance with the requirements of 42 C.F.R. 489.52 or successor regulations.

#### NEW SECTION

**WAC 388-97-1660 Staff and equipment.** (1) The nursing home must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services safely under routine conditions, as well as fire, emergency, and disaster situations;

(b) Adequate equipment, supplies and space are available to carry out all functions and responsibilities of the nursing home;

(c) All staff, including management, provide care and services consistent with:

(i) Empowering each resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being, self-care and independence;

(ii) Respecting resident rights; and

(iii) Enhancing each resident's quality of life.

(2) The nursing home must ensure that any employee giving direct resident care, excluding professionally licensed nursing staff:

(a) Has successfully completed or is a student in a DSHS-approved nursing assistant training program; and

(b) Meets other requirements applicable to individuals performing nursing related duties in a nursing home, including those which apply to minors.

(3) The nursing home must ensure:

(a) Students in an DSHS-approved nursing assistant training program:

(i) Complete training and competency evaluation within four months of beginning work as a nursing assistant;

(ii) Complete at least sixteen hours of training in communication and interpersonal skills, infection control, safety/emergency procedures including the Heimlich maneuver, promoting residents' independence, and respecting residents' rights before any direct contact with a resident; and

(iii) Wear name tags which clearly identify student or trainee status at all times in all interactions with residents and visitors in all nursing homes, including the nursing homes in which the student completes clinical training requirements and in which the student is employed.

(b) Residents and visitors have sufficient information to distinguish between the varying qualifications of nursing assistants; and

(c) Each employee hired as a nursing assistant applies for registration with the department of health within three days of employment in accordance with chapter 18.88A RCW.

#### NEW SECTION

**WAC 388-97-1680 Staff development.** (1) The nursing home must have a staff development program that is under the direction of a designated registered nurse or licensed practical nurse.

(2) The nursing home must:

(a) Ensure each employee receives initial orientation to the facility and its policies and is initially assigned only to duties for which the employee has demonstrated competence;

(b) Ensure all employees receive appropriate inservice education to maintain a level of knowledge appropriate to, and demonstrated competence in, the performance of ongoing job duties consistent with the principle of assisting the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being. To this end, the nursing home must:

(i) Assess the specific training needs of each employee and address those needs; and

(ii) Determine the special needs of the nursing home's resident population which may require training emphasis.

(c) Comply with other applicable training requirements, such as, but not limited to, the bloodborne pathogen standard.

#### NEW SECTION

**WAC 388-97-1700 Medical director.** (1) The nursing home must designate a physician to serve as medical director.

(2) The medical director is responsible for:

(a) Implementation of resident care policies; and

(b) The coordination of medical care in the facility.

#### NEW SECTION

**WAC 388-97-1720 Clinical records.** (1) The nursing home must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(i) Transfer to another health care institution;

(ii) Law;

(iii) Third party payment contract; or

(iv) The resident.

(2) The nursing home must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

(b) Medical information required under WAC 388-97-1260;

(c) Physician's orders;

(d) Assessments;

(e) Plans of care;

(f) Services provided;

(g) In the case of the Medicaid-certified nursing facility, records related to preadmission screening and resident review;

(h) Progress notes;

(i) Medications administered;

(j) Consents, authorizations, releases;

(k) Allergic responses;

(l) Laboratory, X ray, and other findings; and

(m) Other records as appropriate.

(3) The nursing home must:

(a) Designate an individual responsible for the record system who:

(i) Has appropriate training and experience in clinical record management; or

(ii) Receives consultation from a qualified clinical record practitioner, such as a registered health information administrator or registered health information technician.

(b) Make all records available to authorized representatives of the department for review and duplication as necessary; and

(c) Maintain the following:

(i) A master resident index having a reference for each resident including the health record number, if applicable; full name; date of birth; admission dates; and discharge dates; and

(ii) A chronological census register, including all admissions, discharge, deaths and transfers, and noting the receiving facility. The nursing home must ensure the register includes discharges for social leave and transfers to other treatment facilities in excess of twenty-four hours.

(4) The nursing home must ensure the clinical record of each resident:

(a) Is documented and authenticated accurately, promptly and legibly by individuals giving the order, making the observation, performing the examination, assessment, treatment or providing the care and services. "**Authenticated**" means the authorization of a written entry in a record by signature, including the first initial and last name and title, or a unique identifier allowing identification of the responsible individual; and:

(i) Documents from other health care facilities that are clearly identified as being authenticated at that facility will be considered authenticated at the receiving facility; and

(ii) The original or a durable, legible, direct copy of each document will be accepted.

(b) Contains appropriate information for a deceased resident including:

(i) The time and date of death;

(ii) Apparent cause of death;

(iii) Notification of the physician and appropriate resident representative; and

(iv) The disposition of the body and personal effects.

(5) In cases where the nursing home maintains records by computer rather than hard copy, the nursing home must:

(a) Have in place safeguards to prevent unauthorized access; and

(b) Provide for reconstruction of information.

(6) The nursing home licensee must:

(a) Retain health records for the time period required in RCW 18.51.300:

(i) For a period of no less than eight years following the most recent discharge of the resident; except

(ii) That the records of minors must be retained for no less than three years following the attainment of age eighteen

years, or ten years following their most recent discharge, whichever is longer.

(b) In the event of a change of ownership, provide for the orderly transfer of clinical records to the new licensee;

(c) In the event a nursing home ceases operation, make arrangements prior to cessation, as approved by the department, for preservation of the clinical records. The nursing home licensee must provide a plan for preservation of clinical records to the department's designated local aging and disability services administration office no later than seven days after the date of notice of nursing home closure as required by WAC 388-97-1640 (8) and (9) unless an alternate date has been approved by the department; and

(d) Provide a resident access to all records pertaining to the resident as required under WAC 388-97-0300(2).

#### NEW SECTION

**WAC 388-97-1740 Disaster and emergency preparedness.** (1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

#### NEW SECTION

**WAC 388-97-1760 Quality assessment and assurance.** (1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

- (a) Seeks out and incorporates input from the resident and family councils, if any, or individual residents and support groups; and

- (b) Reviews expressed concerns and grievances.

#### NEW SECTION

**WAC 388-97-1780 Policies and procedures.** (1) The nursing home must develop and implement written policies and procedures, including those specified in RCW 74.42.430, for all services provided in the facility.

(2) The nursing home must ensure the written policies and procedures:

(a) Promote and protect each resident's:

- (i) Rights, including health care decision making;
- (ii) Personal interests; and
- (iii) Financial and property interests.

(b) Are readily available to staff, residents, members of residents' families, the public, and representatives of the department;

(c) Are current, and continued without interruption in the event of staff changes; and

(d) Are consistent with other state and federal laws applicable to nursing home operations.

#### NEW SECTION

**WAC 388-97-1800 Criminal history disclosure and background inquiries.** (1) A nursing home licensed under chapter 18.51 RCW must make a background inquiry request to one of the following:

- (a) The Washington state patrol;
- (b) The department;

(c) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or

(d) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home; and

(e) A nursing home may not rely on a criminal background inquiry from a former employer, including a nursing pool, if the nursing home knows or has reason to know that the individual applying for the job has, or may have, a disqualifying conviction or finding.

(2) Nursing homes must:

(a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and

(b) Notify appropriate licensing or certification agency of any individual resigning or terminated as a result of having a conviction record.

(3) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:

(a) Inform the individual that the nursing home must make a background inquiry and require the individual to sign a disclosure statement, under penalty or perjury and in accordance with RCW 43.43.834;

(b) Inform the individual that he or she may make a request for a copy of a completed background inquiry of this section; and

(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and

(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.

(4) The nursing home must establish procedures ensuring that:

(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;

(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;

(c) Disclosure statements and background inquiry responses are used for employment purposes only;

(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:

(i) The individual about whom the nursing home made the disclosure or background inquiry;

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided under subsection (1) of this section.

(e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.

(5) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

#### NEW SECTION

**WAC 388-97-1820 Disqualification from nursing home employment.** (1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:

(a) Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health, or by the department's resident protection program;

(b) Against whom a finding of abuse, neglect, exploitation, misappropriation of property or abandonment has been entered on any state registry, including the nursing assistant registry; or

(c) Who has been subject to an order of protection under chapter 74.34 RCW for abandonment, abuse, neglect, or financial exploitation of a vulnerable adult, or misappropriation of resident property.

(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volun-

teer or student, any individual who may have unsupervised access to residents if the individual:

(a) Has been convicted of a "crime against children and other persons" as defined in RCW 43.43.830, unless the individual has been convicted of one of the five crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;

(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed;

(iii) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;

(iv) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or

(v) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.

(b) Has been convicted of crimes relating to financial exploitation as defined under RCW 43.43.830.

(3) The term "**vulnerable adult**" is defined in RCW 74.34.020; the term "**unsupervised access**" is defined in RCW 43.43.830.

#### NEW SECTION

**WAC 388-97-1840 Retaliation or discrimination prohibited.** (1) The licensee or the nursing home must not discriminate or retaliate in any manner against a resident or employee in its nursing home who has initiated or participated in any action or proceeding authorized under nursing home licensing law. Examples of such participation include, but are not limited to the following:

(a) The resident, or someone acting on behalf of the resident, or the employee:

(i) Made a complaint, including a whistle blower complaint, to the department, the department of health, the long-term care ombudsman, attorney general's office, the courts or law enforcement;

(ii) Provided information to the department, the department of health, the long-term care ombudsman, attorney general's office, the courts or law enforcement; or

(iii) Testified in a proceeding related to the nursing home or its staff.

(2) For purposes of this chapter, "**retaliation**" or "**discrimination**" against a resident means an act including, but not limited to:

(a) Verbal or physical harassment or abuse;

(b) Any attempt to expel the resident from the facility;

(c) Nonmedically indicated social, dietary, or mobility restriction(s);

(d) Lessening of the level of care when not medically appropriate;

(e) Nonvoluntary relocation within a nursing home without appropriate medical, psychosocial, or nursing justification;

(f) Neglect or negligent treatment;

- (g) Withholding privileges;
- (h) Monitoring resident's phone, mail or visits without resident's permission;
- (i) Withholding or threatening to withhold food or treatment unless authorized by terminally ill resident or the resident's representative;
- (j) Persistently delaying responses to resident's request for services of assistance; or
- (k) Infringement on a resident's rights described in chapter 74.42 RCW, RCW 74.39A.060(7), WAC 388-97-0180, and also, for Medicaid and Medicare certified nursing facilities, in federal laws and regulations.

(3) For purposes of this chapter, "**retaliation**" or "**discrimination**" against an employee means an act including, but not limited to:

- (a) Harassment;
- (b) Unwarranted firing;
- (c) Unwarranted demotion;
- (d) Unjustified disciplinary action;
- (e) Denial of adequate staff to perform duties;
- (f) Frequent staff changes;
- (g) Frequent and undesirable office changes;
- (h) Refusal to assign meaningful work;
- (i) Unwarranted and unsubstantiated report of misconduct under Title 18 RCW;
- (j) Unsubstantiated letters of reprimand;
- (k) Unsubstantiated unsatisfactory performance evaluations;
- (l) Denial of employment;
- (m) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistle blower; or
- (n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180 (3)(b).

(4) For purposes of this chapter, a "**whistle blower**" is defined in WAC 388-97-0001.

(5) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the nursing home, or is subjected to any type of discriminatory treatment, there will be a presumption that the action was in retaliation for the filing of the complaint. Under these circumstances, the nursing home will have the burden of establishing that the action was not retaliatory, in accordance with RCW 18.51.220 and 74.34.180(2).

### Miscellaneous Services

#### NEW SECTION

**WAC 388-97-1860 Laundry services.** (1) The nursing home must meet the requirements of WAC 388-97-2780, and:

- (a) Launder nursing home linens on the premises; or
  - (b) Contract with a laundry service capable of meeting quality standards, infection control, and turn-around time requirements; and
  - (c) Make provision for laundering of residents' personal clothing.
- (2) For residents' personal clothing, the nursing home:

(a) Must have a system in place to ensure that personal clothing is not damaged or lost during handling and laundering; and

(b) May use a chemical disinfectant in lieu of hot water disinfection provided that the nursing home:

(i) Uses the product according to the manufacturer's instructions; and

(ii) Has readily available, current documentation from the manufacturer that supports the claim that the product is effective as a laundry disinfectant and such documentation is based on scientific studies or other rational data. "Disinfectant" means a germicide that inactivates virtually all recognized pathogenic microorganisms (but not necessarily all microbial forms, such as bacterial spores) on inanimate objects.

#### NEW SECTION

**WAC 388-97-1880 Short-term care, including respite services and adult day or night care.** (1) The nursing home may provide short-term care to individuals which include:

(a) Respite services to provide relief care for families or other caregivers of individuals with disabilities which must:

(i) Provide short-term care and supervision in substitution for the caregiver;

(ii) Be for short-term stays up to a maximum of thirty-one days; and

(iii) Not be used as a short-term placement pending the individual's admission to the nursing home.

(b) Adult day or night care to provide short-term nursing home care:

(i) Not to exceed sixteen hours each day; and

(ii) May be on a regular or intermittent basis.

(2) The nursing home providing respite services, and adult day or night care must:

(a) Develop and implement policies and procedures consistent with this section;

(b) Ensure that individuals receiving short-term services under respite or adult day or night care are treated and cared for in accordance with the rights and choices of long-term residents, except for transfer and discharge rights which are provided under the program for short-term services which covers the individual in the nursing home;

(c) Have appropriate and adequate staff, space, and equipment to meet the individual's needs without jeopardy to the care of regular residents;

(d) Before or at the time of admission, obtain sufficient information to meet the individual's anticipated needs. At a minimum, such information must include:

(i) The name, address, and telephone number of the individual's attending physician, and alternate physician if any;

(ii) Medical and social history, which may be obtained from a respite care assessment and service plan performed by a case manager designated by an area agency on aging under contract with the department, and mental and physical assessment data; and

(iii) Physician's orders for diet, medication and routine care consistent with the individual's status on admission.

(e) Ensure the individuals have assessments performed, where needed, and where the assessment of the individual reveals symptoms of tuberculosis, follow tuberculosis testing requirements under WAC 388-97-1360 through 388-97-1580;

(f) With the participation of the individual and, where appropriate, their representative, develop a plan of care to maintain or improve their health and functional status during their stay or care in the nursing home;

(g) Provide for the individual to:

(i) Bring medications from home in accordance with nursing home policy; and

(ii) Self-medicate where determined safe.

(h) Promptly report injury, illness, or other adverse change in health condition to the attending physician; and

(i) Inquire as to the need for and comply with any request of the individual, or where appropriate, the individual's representative, to secure cash and other valuables brought to the nursing home during the stay/care.

(3) The nursing home may, in lieu of opening a new record, reopen the individual's clinical record with each period of stay or care up to one year from the previous stay or care, provided the nursing home reviews and updates the recorded information.

(4) Medicaid certified nursing facilities must complete the state-approved resident assessment instrument, within fourteen days, for any individual whose respite stay exceeds fourteen days.

#### NEW SECTION

**WAC 388-97-1900 Dialysis services.** (1) The nursing home must ensure that appropriate care, treatment, and services are provided to each nursing home resident receiving dialysis. "Dialysis" means the process of separating crystalloids and colloids in solution by means of the crystalloids and colloids unequal diffusion through a natural or artificial semi-permeable membrane.

(2) Dialysis for acute renal failure must not be administered in a nursing home.

(3) A nursing home may only administer maintenance dialysis in the nursing home after the:

(a) Analysis of other options and elimination of these options based on the resident's best interest; and

(b) Decision is made jointly by a team of individuals representing the kidney center, the resident, the resident's nephrologist, and the nursing home. A "**kidney center**" means those facilities as defined and certified by the federal government to provide end stage renal (ESRD) services.

(4) The nursing home must ensure that:

(a) A current written agreement is in effect with each kidney center responsible for the management and care of each nursing home resident undergoing dialysis; and

(b) Such agreement delineates the functions, responsibilities, and services of both the kidney center and the nursing home.

(5) The kidney center must assist the nursing home in ensuring appropriate care, treatment, and services related to dialysis. Responsibilities of the kidney center must include, but not be limited to:

(a) The provision of clinical and chemical laboratory services;

(b) The services of a qualified dietitian;

(c) Social services;

(d) Preventative maintenance and emergency servicing of dialysis and water purification equipment;

(e) The certification and continuing education of dialysis helpers and periodic review and updating of dialysis helpers' competencies. A "dialysis helper" means an individual who has completed an inservice class approved by the kidney center and has been hired by the resident to provide to the resident care related only to the dialysis treatment;

(f) An in-hospital dialysis program for the care and treatment of a dialysis resident with a complication or acute condition necessitating hospital care;

(g) A continuing in-service education program for nursing home staff working with a dialysis resident;

(h) A program for periodic, on-site review of the nursing home's dialysis rooms;

(i) Selection, procurement, and installation of dialysis equipment;

(j) Selection and procurement of dialysis supplies;

(k) Proper storage of dialysis supplies; and

(l) Specification, procurement, and installation of the purification process for treatment of water used as a diluent in the dialyzing fluid.

(6) Only a registered nurse from the kidney center or a dialysis helper may administer dialysis in the nursing home.

(a) A dialysis helper may be a registered nurse; and

(b) When a dialysis helper is not a registered nurse, the nursing home must have a registered nurse who has completed an in-service class approved by the kidney center, on the premises during dialysis.

(7) A physician, designated or approved by the kidney center, must be on call at all times dialysis is being administered in the nursing home.

(8) The resident's attending physician and the kidney center must provide, or direct and supervise, the continuing medical management and surveillance of the care of each nursing home resident receiving dialysis.

(9) The nursing home must:

(a) Ensure the kidney center develops a dialysis treatment plan; and

(b) Incorporate this treatment plan into the resident's comprehensive plan of care and include specific medical orders for medications, treatment, and diet.

(10) The dialysis room in the nursing home must be in compliance with federal standards established for ESRD facilities. This includes:

(a) Storage space available for equipment and supplies;

(b) A telephone at the bedside of each dialysis resident; and

(c) A mechanical means of summoning additional staff to the dialysis area in the event of a dialysis emergency.

**Preadmission Screening and Resident Review (PASRR)  
in Medicaid Certified Facilities.**

NEW SECTION

**WAC 388-97-1920 Preadmission screening—Level I.**

(1) Preadmission screening (PAS) is a process by which individuals are evaluated:

(a) For the presence of a serious mental illness or a developmental disability, before admission to the nursing facility;

(b) For nursing facility level of care; and

(c) If the individual does have either a serious mental illness or a developmental disability, to determine whether there is a need for specialized services, or services of a lesser intensity.

(2) The referring hospital, physician, or other referral source must:

(a) Perform the identification screen using a standardized department-specified Level I screening form for all individuals seeking admission to a nursing facility unless they:

(i) Are being readmitted to the nursing facility from the hospital; or

(ii) Are being transferred from one nursing facility to another, with or without an intervening hospital stay.

(b) Identify whether the individual may have a serious mental illness or a developmental disability as defined under 42 C.F.R. § 483.102, or successor laws; and

(c) Refer all individuals identified as likely to have a serious mental illness or a developmental disability to the department for a nursing facility level of care assessment and a Level II screening.

NEW SECTION

**WAC 388-97-1940 Advanced categorical determinations, not subject to preadmission screening—Level II.** Individuals identified as having symptoms of mental illness or a developmental disability and meeting any of the advanced categorical determinations do not need to be referred for a Level II screening. The determinations include that the individual:

(1) Is admitted to the nursing facility for respite care as defined under WAC 388-97-1880, or convalescent care, following treatment in an acute care hospital, not to exceed thirty days;

(2) Cannot accurately be diagnosed because of delirium. NOTE: The individual would be subject to a Level II screening when the delirium cleared;

(3) Has been certified by a physician to be terminally ill as defined under section 1861 (dd)(3)(A) of the Social Security Act;

(4) Has been diagnosed with a severe physical illness such as coma, ventilator dependence, and is functioning at a brain stem level;

(5) Has a severe level of impairment from diagnoses such as:

(a) Chronic obstructive pulmonary disease;

(b) Parkinson's disease;

(c) Huntington's chorea;

(d) Amyotrophic lateral sclerosis;

(e) Congestive heart failure; or

(6) Has a primary diagnosis of dementia, including Alzheimer's disease or a related disorder. NOTE: There must be evidence to support this determination.

NEW SECTION

**WAC 388-97-1960 Preadmission screening—Level II.**

(1) For individuals likely to have a serious mental illness or developmental disability, the department must determine their need for nursing facility level of care. If they meet the nursing facility level of care, the department refers them to the department's designee, either the mental health PASRR contractor or the division of developmental disabilities, for a Level II screening.

(2) In the Level II screening, the department's designee will verify the diagnosis and determine whether the referred individuals need specialized services, or services of a lesser intensity:

(a) "**Specialized services**" for an individual with mental retardation or related conditions is defined under 42 C.F.R. § 483.120 (a)(2), and 42 C.F.R. § 483.440 (a)(1), or successor laws. These specialized services do not include services to maintain a generally independent individual able to function with little supervision or in the absence of a treatment program; and

(b) "**Specialized services**" for an individual with a serious mental illness is defined under 42 C.F.R. § 483.120 (a)(1), or successor laws. These services are generally considered acute psychiatric inpatient care, emergency respite care, or stabilization and crisis services.

(3) The need for specialized services, for a nursing facility applicant, will be determined as follows:

(a) If the individual is identified as likely to have a serious mental illness, a qualified mental health professional will verify whether the individual has a serious mental illness and, if so, will recommend whether the individual needs specialized services; and

(b) If the individual is identified as likely to have a developmental disability, a licensed psychologist will verify whether the individual has a developmental disability and, if so, staff of the division of developmental disabilities will assess and determine whether the individual requires specialized services.

NEW SECTION

**WAC 388-97-1980 Resident review.** After a resident's admission the nursing facility must:

(1) Review the Level I screening form for accuracy and make changes as needed if the resident develops a qualifying diagnosis or if the resident's symptoms were undetected or misdiagnosed;

(2) Refer residents who have qualifying diagnoses and who require further PASRR assessment to the mental health PASRR contractor or division of development disabilities;

(3) Record the identification screen information or subsequent changes on the resident assessment instrument according to the schedule required under 42 C.F.R. § 483.20;

(4) Maintain the identification screen form and PASRR assessment information, including recommendations, in the resident's active clinical record; and

(5) Promptly notify the mental health PASRR contractor or division of developmental disabilities after a significant change in the physical or mental condition of any resident that is mentally ill or mentally retarded.

#### NEW SECTION

##### **WAC 388-97-2000 Preadmission screening and resident review (PASRR) determination and appeal rights.**

(1) The resident has the right to choose to remain in the nursing facility and receive specialized services if:

(a) He or she has continuously resided in a nursing facility since October 1, 1987; and

(b) The department determined, in 1990, that the resident required specialized services for a serious mental illness or developmental disability but did not require nursing facility services.

(2) In the event that residents chose to remain in the nursing facility as outlined in subsection (1) above, the department, or designee, will clarify the effect on eligibility for Medicaid services under the state plan if the resident chooses to leave the facility, including its effect on readmission to the facility.

(3) An individual applying for admission to a nursing facility or a nursing facility resident who has been adversely impacted by a PASRR determination may appeal the department's determination that the individual is:

(a) Not in need of nursing facility care as defined under WAC 388-106-0350 through 388-106-0360;

(b) Not in need of specialized services as defined under WAC 388-97-1960; or

(c) Need for specialized services as defined under WAC 388-97-1960.

(4) The nursing facility must assist the individual applying for admission or resident, as needed, in requesting a hearing to appeal the department's PASRR determination.

(5) If the department's PASRR determination requires that a resident be transferred or discharged, the department will:

(a) Provide the required notice of transfer or discharge to the resident, the resident's surrogate decision maker, and if appropriate, a family member or the resident's representative thirty days or more before the date of transfer or discharge;

(b) Attach a hearing request form to the transfer or discharge notice;

(c) Inform the resident, in writing in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge;

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date of transfer or discharge set forth in the written transfer or discharge notice; and

(iii) The resident will be ineligible for Medicaid nursing facility payment:

(A) Thirty days after the receipt of written notice of transfer or discharge; or

(B) If the resident appeals under subsection (1)(a) of this section, thirty days after the final order is entered upholding the department's decision to transfer or discharge a resident.

(6) The department's home and community services may pay for the resident's nursing facility services after the time specified in subsection (5)(c)(iii) of this section, if the department determines that a location appropriate to the resident's medical and other needs is not available.

(7) The department will:

(a) Send a copy of the transfer/discharge notice to the resident's attending physician, the nursing facility and, where appropriate, a family member or the resident's representative;

(b) Suspend transfer or discharge:

(i) If the office of administrative hearings receives an appeal on or before the date set for transfer or discharge or before the resident is actually transferred or discharged; and

(ii) Until the office of appeals makes a determination; and

(c) Provide assistance to the resident for relocation necessitated by the department's PASRR determination.

(8) Resident appeals of PASRR determinations will be in accordance with 42 C.F.R. § 431 Subpart E, chapter 388-02 WAC, and the procedures defined in this section. In the event of a conflict between a provision in this chapter and a provision in chapter 388-02 WAC, the provision in this chapter will prevail.

#### **Intermediate Care Facilities for the Mentally Retarded**

#### NEW SECTION

**WAC 388-97-2020 Intermediate care facilities for the mentally retarded.** (1) ICF/MR nursing facilities must meet the requirements of 42 C.F.R. § 483 Subpart I and the requirements of this subchapter except that in an ICF/MR nursing facility:

(a) There must be at least one registered nurse or licensed practical nurse on duty eight hours per day, and additional licensed staff on any shift if indicated. WAC 388-97-1080 (2)(a) and (3)(a) and (b) do not apply to ICF/MR nursing facilities; and

(b) A medical director is not required.

(2) Staff from the division of developmental disabilities will approve of social/therapeutic leave for individuals who reside in ICF/MR nursing facilities.

#### **SUBCHAPTER II**

#### **PHYSICAL ENVIRONMENT**

#### **General**

#### NEW SECTION

**WAC 388-97-2040 Design.** The design of a nursing home must facilitate resident-centered care and services in a safe, clean, comfortable and homelike environment that allows the resident to use his or her personal belongings to the greatest extent possible.

NEW SECTION

**WAC 388-97-2060 New construction compliance.** The nursing home must ensure that:

- (1) New construction complies with all the requirements of subchapter II of this chapter;
- (2) New construction approved by the department of health, certificate of need and construction review, before the effective date of this chapter complies with the rules in effect at the time of the plan approval;
- (3) The department of health, certificate of need and construction review, is contacted for review and issues an applicable determination and approval for all new construction; and
- (4) The department has done a pre-occupancy survey and has notified the nursing home that they may begin admitting residents.

NEW SECTION

**WAC 388-97-2080 Fire standards and approval, and other standards.** The nursing home must:

- (1) Conform to at least the minimum standards for the prevention of fire, and for the protection of life and property against fire, according to the International Fire Code, RCW 19.27.031, the federal Life Safety Code, 42 C.F.R. 483.70(a), and additional state requirements in chapter 212-12 WAC; and
- (2) Comply with all other applicable requirements of state and federal law.

NEW SECTION

**WAC 388-97-2100 Maintenance and repair.** All nursing homes must:

- (1) Maintain electrical, mechanical, and patient care equipment in safe and operating condition; and
- (2) Ensure floors, walls, ceilings, and equipment surfaces are maintained in clean condition and in good repair.

NEW SECTION

**WAC 388-97-2120 Noise.** (1) All nursing homes must maintain comfortable sound levels, to include minimizing the use of the public address system and taking reasonable precautions with noisy services so residents are not disturbed, particularly during their sleeping time; and

- (2) In new construction, the nursing home must:
  - (a) Have walls, floor/ceiling and roof/ceiling assemblies constructed with materials that provide comfortable sound levels in all resident areas, rated at an STC 50 or greater; and
  - (b) Utilize an alternative to the public address system for nonemergency communication that best serves the residents' needs.

NEW SECTION

**WAC 388-97-2140 Accessibility in new construction.** The nursing home must be readily accessible to a person with disability and comply with WAC 388-97-3520.

NEW SECTION

**WAC 388-97-2160 Types of new construction.** New construction includes, but is not limited to:

- (1) New structures.
  - (a) A new building to be licensed as a nursing home; or
  - (b) An addition to a building currently licensed as a nursing home.
- (2) Existing buildings.
  - (a) Conversion of another building to a nursing home;
  - (b) Change in the use of space for access by residents within an existing nursing home; and
  - (c) Alterations including physical, mechanical, or electrical changes made to an existing nursing home, except for normal routine maintenance and repair.
- (3) See WAC 388-97-3400(3) for less extensive alterations.

NEW SECTION

**WAC 388-97-2180 ICF/MR exceptions to physical plan requirements.** The following regulations do not apply to nursing homes certified exclusively under 42 C.F.R. § 483, Subpart I, or successor laws:

- (1) WAC 388-97-2440, regarding the required number of square feet per bed; and
- (2) WAC 388-97-2660, regarding cubicle curtains.

NEW SECTION

**WAC 388-97-2200 Emergency power.** (1) The nursing home must have an alternate source of power and automatic transfer equipment to connect the alternate source within ten seconds of the failure of the normal source.

- (2) The nursing home must ensure the alternate source is a generator:
  - (a) With on-site fuel supply;
  - (b) Permanently fixed in place;
  - (c) Approved for emergency service; and
  - (d) An on premises emergency generator, as defined in NFPA 99, Health care facilities, when life support systems are used.

(3) The nursing home must ensure the emergency power supply provides a minimum of four hours of effective power for lighting for night lights, exit signs, exit corridors, stairways, dining and recreation areas, work stations, medication preparation areas, boiler rooms, electrical service room and emergency generator locations.

(4) A nursing home first licensed on or after October 1, 1981, must have emergency power supplied to:

- (a) Communication systems, all alarm systems, an elevator that reaches every resident floor including the ground floor, equipment to provide heating for resident rooms or a room to which all residents can be moved; and
- (b) Electrical outlets located in medication preparation areas, pharmacy dispensing areas, staff work stations, dining areas, resident corridors, and resident bed locations designated for use with life support systems.

(5) **In new construction** the emergency power equipment must meet the:

- (a) Earthquake standards for the facility's geographic locale; and
- (b) Requirements in NFPA 110, Generators.

### Resident Care Unit

#### NEW SECTION

##### **WAC 388-97-2220 Location of the resident care unit.**

The nursing home must ensure that:

- (1) Each resident care unit is located to minimize through traffic to any general service, diagnostic, treatment, or administrative area; and
- (2) **In new construction**, the resident care unit, and the services to support resident care and nursing needs, are designed to serve a maximum of sixty beds on the same floor.

#### NEW SECTION

**WAC 388-97-2240 Required service areas on resident care units.** (1) The nursing home must ensure each resident care unit has at least the following required service areas:

- (a) A staff work station;
  - (b) A medicine storage and preparation area;
  - (c) A utility room that maintains separated clean and soiled functions;
  - (d) Storage space for linen, other supplies, and equipment; and
  - (e) Housekeeping services and janitor's closet.
- (2) **In new construction** resident care units may share required services if the units are in close proximity to each other and the combined units serve a total of not more than sixty residents; except the nursing home must have a separate staff work station on a secured dementia care unit.

#### NEW SECTION

**WAC 388-97-2260 Staff work stations on resident care units.** (1) On each unit, the nursing home must have a staff work station appropriate to the needs of staff using the space. At a minimum, the nursing home must equip the area with:

- (a) A charting surface;
  - (b) A rack or other storage for current health records;
  - (c) Storage for record and clerical supplies;
  - (d) A telephone;
  - (e) A resident call system; and
  - (f) A clock.
- (2) **In new construction** the work station space must be open to the corridor.

#### NEW SECTION

**WAC 388-97-2280 Call systems on resident care units.** The nursing home must provide the following, or an equivalent system that meets these standards:

- (1) A wired or wireless communication system which registers a call by distinctive light at the room door and by distinctive light and audible tone at the staff work station. The system must be equipped to receive resident calls from:

- (a) The bedside of each resident;
  - (b) Every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and
  - (c) Resident toilet, bath and shower rooms.
- (2) An emergency signal device activated by a nonconductive pull cord, or adapted to meet the needs of the resident. The nursing home must locate the signal device for easy reach by the resident. A signal device must be adapted to meet resident needs and, in the dementia unit, may be adapted for staff and family use, see WAC 388-97-2990.

#### NEW SECTION

##### **WAC 388-97-2300 Telephones on resident care units.**

The nursing home must provide twenty-four hour access to a telephone for resident use which:

- (1) Provides auditory privacy;
- (2) Is accessible to a person with a disability and accommodates a person with sensory impairment;
- (3) Is not located in a staff office or at a nurse's station; and
- (4) Does not require payment for local calls.

#### NEW SECTION

**WAC 388-97-2320 Utility service rooms on resident care units.** (1) All nursing homes must:

- (a) Provide utility rooms designed, equipped, and maintained to ensure separation of clean and sterile supplies and equipment from those that are contaminated;
- (b) Ensure that each clean utility room has:
  - (i) A work counter;
  - (ii) A sink equipped with single use hand drying towels and soap for handwashing; and
  - (iii) Closed storage units for supplies and small equipment; and
- (c) Ensure that each soiled utility room has:
  - (i) A work counter and a sink large enough to totally submerge the items being cleaned and disinfected;
  - (ii) Storage for cleaning supplies and other items, including equipment, to meet nursing home needs;
  - (iii) Locked storage for cleaning agents, disinfectants and other caustic or toxic agents;
  - (iv) Adequate space for waste containers, linen hampers, and other large equipment; and
  - (v) Adequate ventilation to remove odors and moisture.

##### **(2) In new construction:**

- (a) A resident room must not be more than ninety feet from a clean utility room and a soiled utility room;
- (b) The clean utility room and the soiled utility room must be separate rooms;
- (c) Each soiled utility room must contain:
  - (i) A double-compartment sink with inside dimensions of each compartment deep enough to totally submerge items being cleaned and disinfected;
  - (ii) Sufficient, available work surface on each side of the sink to adequately process and dry equipment with a minimum of three feet of work surface on the clean side;
  - (iii) Drying/draining racks for wet equipment;

(iv) Work counters, sinks, and other fixed equipment arranged to prevent intermingling of clean and contaminated items during the cleaning process; and

(v) A siphon jet type clinic service sink or equivalent installed on the soiled side of the utility room away from the door.

(d) The nursing home's space for waste containers, linen hampers, and other large equipment must not block work areas; and

(e) The utility rooms must meet the ventilation requirements of Table 6 in WAC 388-97-4040.

#### NEW SECTION

**WAC 388-97-2340 Drug facilities on resident care units.** The nursing home must provide an area designed and equipped for drug preparation and locked storage convenient to each work station. The nursing home must ensure:

(1) The drug facilities are well illuminated, ventilated, and equipped with a work counter, sink with hot and cold running water, and drug storage units;

(2) The drug storage units are one or more of the following:

(a) Locked cabinetry constructed in accordance with board of pharmacy regulations for drug storage which has:

(i) Separately keyed storage for Schedule II and III controlled substances; and

(ii) Segregated storage of different residents' drugs; or

(b) An automated medication distribution device or storage.

(3) There is a refrigerator for storage of thermolabile drugs in the drug facility;

(4) Locks and keys for drug facilities are different from other locks and keys within the nursing home; and

(5) **In new construction**, the drug facility must be a separate room.

#### NEW SECTION

**WAC 388-97-2360 Linen storage on resident care units.** The nursing home must provide:

(1) A clean area for storage of clean linen and other bedding. This may be an area within the clean utility room;

(2) A soiled linen area for the collection and temporary storage of soiled linen. This may be within the soiled utility room; and

(3) **In new construction**, storage for linen barrels and clean linen carts.

#### NEW SECTION

**WAC 388-97-2380 Janitors closets on resident care units.** (1) The nursing home must have a janitor's closet with a service sink and adequate storage space for housekeeping equipment and supplies convenient to each resident unit.

(2) **In new construction** a janitor's closet must meet the ventilation requirements of Table 6, in WAC 388-97-4040.

## Resident Rooms

#### NEW SECTION

**WAC 388-97-2400 Resident rooms.** (1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor;

(b) Is located on an exterior wall with a transparent glass window; and

(c) Is located to prevent through traffic.

(2) **In a new building or addition**, each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least one-tenth of the bedroom usable floor area;

(ii) Located twenty-four feet or more from another building or the opposite wall of a court, or ten feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least ten feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

#### NEW SECTION

**WAC 388-97-2420 Capacity of resident rooms.** (1) The nursing home must ensure that any resident bedroom has:

(a) No more than two beds between any resident bed and exterior window wall; and

(b) A maximum capacity of four beds.

(2) **In a new building, addition, or change of use to a resident bedroom** the maximum capacity is two beds per room, for plans submitted after September 1, 1995.

#### NEW SECTION

**WAC 388-97-2440 Size of resident rooms.** The nursing home must ensure that minimum usable room space exclusive of toilet rooms, closets, lockers, wardrobes, must:

(1) In existing facilities, be at least eighty square feet per bed in each multibed room and at least one hundred square feet for each single bed room;

(2) **In a new building or addition**, be one-hundred and ten square feet per bed in multibed rooms, and one-hundred square feet in single bed rooms;

(3) **In new construction**, ensure that the minimum usable room space is also exclusive of vestibules; and

(4) For exceptions to room size requirements refer to WAC 388-97-2180.

NEW SECTION

**WAC 388-97-2460 Privacy in resident rooms.** The nursing home must ensure that each resident bedroom is designed or equipped to ensure full visual privacy for each resident.

NEW SECTION

**WAC 388-97-2480 Resident isolation rooms.** If a nursing home provides an isolation room, the nursing home must ensure the room is uncarpeted and contains:

- (1) A handwashing sink with water supplied through a mixing valve;
- (2) Its own adjoining toilet room containing a bathing facility; and
- (3) **In new construction**, the handwashing sink must be located between the entry door and the nearest bed.

NEW SECTION

**WAC 388-97-2500 Resident room size variance.** The director of residential care services, aging and disability services administration, or their designee, may permit exceptions to WAC 388-97-2420 (1)(a) and 388-97-2440(1) when the nursing home demonstrates in writing that the exception:

- (1) Is in accordance with the special needs of the resident; and
- (2) Will not adversely affect any resident's health or safety.

**Resident Room Equipment**NEW SECTION

**WAC 388-97-2520 Resident room equipment.** The nursing home must determine a resident's furniture and equipment needs at the time of admission and routinely thereafter to ensure resident comfort. Except as specified in WAC 388-97-0560, the nursing home must provide each resident with the following items required in WAC 388-97-2540 through 388-97-2680.

NEW SECTION

**WAC 388-97-2540 Resident bed and bedside equipment.** The nursing home must provide:

- (1) A comfortable bed of size and height to maximize a resident's independent functioning. Beds may be arranged to satisfy the needs and desires of the individual resident provided the arrangement does not negatively impact the health or safety of other residents;
- (2) Appropriate bedding; and
- (3) A bedside cabinet that allows for storage of small personal articles and a separate drawer or enclosed compartment for storage of resident care utensils/equipment.

NEW SECTION

**WAC 388-97-2560 Lockable storage space in a resident room.** The nursing home must provide:

- (1) A lockable storage space accessible to each resident for storage of small personal items, upon request; and
- (2) **In a new building or addition**, a lockable cabinet space or drawer for storage of personal belongings for each resident bed, in addition to the bedside cabinet.

NEW SECTION

**WAC 388-97-2580 Wardrobes in a resident room.** The nursing home must provide:

- (1) A separated, enclosed wardrobe or closet for each resident's clothing and belongings accessible to the resident; and
- (2) **In a new building or addition**, each bed in each room must have a separate, enclosed wardrobe or closet accessible to the resident with:
  - (a) Minimum inside dimensions of twenty-two inches deep by a minimum of twenty-six inches wide by sixty inches high; and
  - (b) Inside space including a rod, at least fifteen inches long, and allowing for fifty-four inches of clear hanging length adjustable to meet the needs of the resident.

NEW SECTION

**WAC 388-97-2600 Seating in a resident room.** The nursing home must provide comfortable seating for residents and visitors, not including resident care equipment, that provides proper body alignment and support.

NEW SECTION

**WAC 388-97-2620 Lighting in resident rooms.** The nursing home must provide a permanently mounted or equivalent light suitable for any task the resident chooses to do or any task the staff must do.

NEW SECTION

**WAC 388-97-2640 Call signal device in resident rooms.** The nursing home must provide a resident call signal device that complies with WAC 388-97-2280.

NEW SECTION

**WAC 388-97-2660 Cubicle curtains in resident rooms.** The nursing home must provide:

- (1) Flame-retardant cubicle curtains in multibed rooms that ensures full visual privacy for each resident;
- (2) **In a new building or addition**, the cubicle curtain or enclosed space ensures full visual privacy for each bed in a multibed room with enclosed space containing at least sixty-four square feet of floor area with a minimum dimension of seven feet. "Full visual privacy" in a multibed room prevents staff, visitors and other residents from seeing a resident in bed, while allowing staff, visitors, and other residents access to the toilet room, handwashing sink, exterior window, and the entrance door;
- (3) For exceptions to cubicle curtain requirements refer to WAC 388-97-2180.

NEW SECTION

**WAC 388-97-2680 Miscellaneous equipment in resident rooms in a new building or addition.** The nursing home must provide:

- (1) A phone jack for each bed in each room;
- (2) A handwashing sink in each multibed room and a handwashing sink in each single room that does not have an adjoining toilet room containing a handwashing sink. A handwashing sink located in a resident bedroom must be located between the corridor entry door and the nearest resident bed; and
- (3) Storage that meets the requirements of WAC 388-97-3000, 388-97-3020, and 388-97-3040.

**Resident Toilet and Bathing Facilities**NEW SECTION

**WAC 388-97-2700 Resident toilet facilities or rooms.** The nursing home must ensure that:

- (1) Each resident room is equipped with or located convenient to toilet facilities.
- (2) **For new construction**, a toilet room must:
  - (a) Be directly accessible from each resident room and from each bathing facility without going through or entering a general corridor while maintaining resident dignity;
  - (b) Serve two bedrooms or less;
  - (c) Be designed to accommodate a person in a wheelchair;
  - (d) Contain at least one handwashing sink; and
  - (e) Provide a properly located and securely mounted grab bar at each side and the back of each toilet fixture in each toilet room and stall. Grab bars on the open side must be located twelve to eighteen inches from the center line of the toilet. Grab bars on the open side must be able to swing up.

NEW SECTION

**WAC 388-97-2720 Resident bathing facilities or rooms.** The nursing home must ensure:

- (1) Each resident room is equipped with or located near bathing facilities;
- (2) At least one bathing unit for no more than thirty residents that is not located in a room served by an adjoining bathroom;
- (3) At least one bathing device for immersion per floor;
- (4) At least one roll in shower or equivalent on each resident care unit:
  - (a) Designed and equipped for unobstructed ease of shower chair entry and use; and
  - (b) With a spray attachment equipped with a backflow prevention device.
- (5) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.
- (6) **For new construction**, in each bathing unit containing more than one bathing facility:
  - (a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;
  - (b) The entry wall may be a "shower" type curtain or equivalent;

- (c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;
- (d) Shower and tub surfaces are slip-resistant;
- (e) Bathing areas are constructed of materials that are impervious to water and cleanable; and
- (f) Grab bars are installed on all three sides of a shower with the shower head grab bar being "L" shaped.

NEW SECTION

**WAC 388-97-2740 Locks in toilet and bathing facilities.** The nursing home must ensure:

- (1) All lockable toilet facilities and bathrooms have a readily available means of unlocking from the outside; and
- (2) Locks are operable from the inside with a single motion.

**Dining, Dayrooms, and Resident Activity Areas**NEW SECTION

**WAC 388-97-2760 Dining, dayrooms, and resident activity areas.** (1) The nursing home must provide one or more rooms designated for resident dining and activities that are:

- (a) Well lighted;
- (b) Well ventilated;
- (c) Adequately furnished; and
- (d) Large enough to accommodate all activities.

(2) **In a new building or addition**, the nursing home must design space for dining rooms, dayrooms, and activity areas for resident convenience and comfort and to provide a homelike environment. These areas must be located on the same floor as the residents who will use the areas. The nursing home must:

- (a) Ensure these rooms or areas are exterior rooms with windows that have a maximum sill height of thirty-six inches;
- (b) Provide space for dining, day use, and activities with a minimum combined total of thirty square feet for each licensed bed;
- (c) Design any multipurpose rooms to prevent program interference with each other;
- (d) Locate a day room on each resident care unit;
- (e) Provide storage spaces for all activity and recreational equipment and supplies, adjoining or adjacent to the facilities provided; and
- (f) Locate a common use toilet facility, with handwashing sink and accessories, providing direct access from the hallway and within a maximum of forty feet from these spaces.

**Laundry Services**NEW SECTION

**WAC 388-97-2780 Laundry services and storage.** The nursing home must comply with WAC 388-97-1860 and ensure:

(1) Sufficient laundry washing and drying facilities to meet the residents' care and comfort needs without delay.

(2) That the nursing home linen is disinfected in accordance with:

(a) The temperature and time of the cycle as specified by the manufacturer; or

(b) The hot water cycle using the following table:

Water Temperature	Cycle Length
160 degrees F	At least 5 minutes
140 degrees F	At least 15 minutes

(3) **In new construction**, soiled linens and soiled clothing are stored and sorted in a room ventilated according to Table 6 in WAC 388-97-4040. The room must:

- (a) Have self-closing doors;
- (b) Be separated from the washing and drying facilities;
- (c) Contain a handwashing sink;
- (d) Have a floor drain; and
- (e) Contain a clinic service sink.

(4) **In new construction**, clean linen is stored in a room ventilated according to Table 6 in WAC 388-97-4040. The room must:

- (a) Be separated from the washing and drying facilities; and
- (b) Have self closing doors.

**Dementia Care Unit**

NEW SECTION

**WAC 388-97-2800 Dementia care unit.** A nursing home that began operating a dementia care unit at any time after November 13, 1989, must meet all requirements of this section, WAC 388-97-2820 through 388-97-2920, and the resident care unit requirements of WAC 388-97-2220 through 388-97-2380. Refer to WAC 388-97-1040, for program requirements.

NEW SECTION

**WAC 388-97-2820 Dining areas on a dementia care unit.** (1) The nursing home must provide dining areas in the dementia care unit which may also serve as day areas for the unit.

(2) **In a new building or addition**, the dining, dayroom, and activity area or areas on the unit must provide a minimum of thirty square feet per resident.

NEW SECTION

**WAC 388-97-2840 Outdoor areas on a dementia care unit.** The nursing home must provide the dementia care unit with:

- (1) Secured outdoor space and walkways;
- (2) An ambulation area with accessible walking surfaces that:
  - (a) Are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between sidewalk and adjoining landscape areas;

(b) Have slip-resistant surfaces if subject to wet conditions; and

(c) Sufficient space and outdoor furniture with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids.

(3) Nontoxic outdoor plants in areas accessible to residents.

(4) In new construction the outdoor areas must also meet the requirements of WAC 388-97-3740.

NEW SECTION

**WAC 388-97-2860 Indoor areas on a dementia care unit.** The nursing home must provide the dementia care unit with:

- (1) Indoor ambulation areas that meet the needs of the residents and are maintained free of equipment; and
- (2) Nontoxic indoor plants in areas accessible to residents.

NEW SECTION

**WAC 388-97-2880 Ambulation route on a dementia care unit in a new building or addition.** The nursing home must ensure that the dementia care unit has a continuous ambulation route which may include outdoor ambulation areas and allows the resident to return to the resident's starting point without reversing direction.

NEW SECTION

**WAC 388-97-2900 Physical plant on a dementia care unit.** The nursing home must:

- (1) Provide a staff toilet room with a handwashing sink;
- (2) Ensure that floors, walls, and ceiling surfaces display contrasting color for identification:
  - (a) Surfaces may have a disguise design to obscure or conceal areas that residents should not enter, except for exit doors and doorways; and
  - (b) Exit doors must be marked so that they are readily distinguishable from adjacent construction and the way of exit travel is obvious and direct.
- (3) Ensure that door thresholds are one-half inch high or less;
- (4) Provide a signal device adapted:
  - (a) To meet residents' needs; and
  - (b) For staff and family use, if necessary.
- (5) Ensure that the public address system is used only for emergency use; and
- (6) Refer to WAC 388-97-470(2) for dementia care unit exceptions to individual temperature controls.

NEW SECTION

**WAC 388-97-2920 Special egress control devices on a dementia care unit.** In dementia care units the nursing home must:

- (1) Have proof that required approvals for any special egress control devices were obtained from the state fire marshal, department of social and health services, and the local

official who enforces the International Building Code and International Fire Code; and

(2) **In a new building or addition, or when adding** special egress control devices to be used on doors and gates which are a part of the exit system, the building must:

(a) Have obtained approval from department of health construction review and the local official who enforces the International Building Code and International Fire Code;

(b) Have an approved automatic fire alarm system;

(c) Have an approved supervised automatic fire sprinkler system which is electrically interconnected with the fire alarm system; and

(d) Have a system which must:

(i) Automatically release if power to the system is lost;

(ii) Automatically release with activation of the building's fire alarm system;

(iii) Release with an override switch installed at each staff work station or at a constantly staff attended location within the building; and

(iv) Have directions for releasing the device at each egress controlled door and gate; and

(e) Prohibit the use of keyed locks at all doors and gates in all egress pathways.

### Specialized and Outpatient Rehabilitation

#### NEW SECTION

**WAC 388-97-2940 Specialized rehabilitation.** (1) If nursing homes initially licensed after October 1, 1981 provide inpatient specialized rehabilitation, they must ensure that those services provide:

(a) Easy access in general service areas;

(b) Exercise, treatment, and supportive equipment as required by the narrative program in the construction documents;

(c) Adequate space for exercise equipment and treatment tables with sufficient work space on each side;

(d) Privacy cubicle curtains on tracks or the equivalent around treatment areas;

(e) A sink in the treatment area and a toilet and hand-washing sink in a toilet room nearby;

(f) Space and a desk or equivalent for administrative, clerical, interviewing, and consultative functions;

(g) Adequate enclosed storage cabinets for clean linen and supplies and locked storage for cleaning chemicals in the rehabilitation room or nearby janitor's closet;

(h) Adequate storage space for large equipment;

(i) A janitor's closet close to the area;

(j) Soiled linen storage; and

(k) A separate room or area for hydrotherapy tanks, or the equivalent, if provided.

(2) **For any new construction** under WAC 388-97-2160, nursing homes licensed before October 1, 1981, must comply with the requirements in subsection (1) of this section.

#### NEW SECTION

**WAC 388-97-2960 Outpatient rehabilitation.** The nursing home must ensure that facilities with outpatient programs provide:

(1) A designated reception and waiting room or area and space for interviewing or counseling individual outpatients and their families;

(2) Adequate space for the program so that disruption to designated resident care units is minimized;

(3) Accessible toilet and shower facilities nearby;

(4) Lockers or a safe place to store outpatient personal belongings;

(5) A separate room or area for hydrotherapy tanks, or the equivalent, if provided; and

(6) **In new construction**, required access must come from the exterior without passing through the interior of the facility.

### Food Services Areas

#### NEW SECTION

**WAC 388-97-2980 Food service areas.** The nursing home must ensure food service areas are in compliance with chapter 246-215 WAC, state board of health rules governing food service sanitation. The nursing home must:

(1) Ensure food service areas are provided for the purpose of preparing, serving, and storing food and drink unless food service is provided from another licensed food service facility;

(2) Ensure food service areas are located to facilitate receiving of food supplies, disposal of kitchen waste, and transportation of food to dining and resident care areas;

(3) Locate and arrange the kitchen to avoid contamination of food, to prevent heat and noise entering resident care areas, and to prevent through traffic;

(4) Locate the receiving area for ready access to storage and refrigeration areas;

(5) Conveniently locate a handwashing sink near the food preparation and dishwashing area, and include a waste receptacle and dispensers stocked with soap and paper towels;

(6) Adequately ventilate, light, and equip the dishwashing room or area for sanitary processing of dishes;

(7) Locate the garbage storage area in a well-ventilated room or an outside area;

(8) Provide hot and cold water and a floor drain connected to the sanitary sewage system in a can wash area, unless located in outside covered area;

(9) Provide space for an office or a desk and files for food service management located central to deliveries and kitchen operations; and

(10) Include housekeeping facilities or a janitor's closet for the exclusive use of food service with a service sink and storage of housekeeping equipment and supplies.

## Storage

### NEW SECTION

**WAC 388-97-3000 Storage of equipment.** The nursing home must:

- (1) Provide adequate storage space for wheelchairs and other ambulation equipment;
- (2) Ensure stored equipment does not impinge upon the required corridor space; and
- (3) **In new construction**, provide adequate storage of four square feet or more of storage space per bed which does not impinge upon required corridor space.

### NEW SECTION

**WAC 388-97-3020 Storage of resident room equipment in a new building or addition.** The nursing home must provide separate storage for extra pillows and blankets for each bed. This may be in a location convenient to the resident room or combined with the wardrobe or closet if it does not impinge upon the required space for clothing.

### NEW SECTION

**WAC 388-97-3040 General storage in new construction.** A nursing home must have general storage space of not less than five square feet per bed in addition to the closets and storage required in WAC 388-97-2560.

## Lighting and Electrical

### NEW SECTION

**WAC 388-97-3060 Lighting.** The nursing home must ensure that lighting and lighting levels:

- (1) Are adequate and comfortable for the functions being conducted in each area of the nursing home;
- (2) Are suitable for any task the resident chooses or any task the staff must do;
- (3) Support the independent functioning of the resident;
- (4) Provide a homelike environment; and
- (5) Minimize glare.

### NEW SECTION

**WAC 388-97-3080 Natural or artificial light.** (1) The nursing home must ensure that adequate natural or artificial light for inside illumination is provided in every useable room area, including but not limited to storerooms, attic and basement rooms, hallways, stairways, inclines, and ramps.

(2) **In new buildings and additions**, the nursing home must utilize:

- (a) Windows and skylights to minimize the need for artificial light and to allow a resident to experience the natural daylight cycle; and
- (b) Windows and skylights near entrances/exits in order to avoid difficulty in adjusting to light levels when entering or leaving the facility.

### NEW SECTION

**WAC 388-97-3100 Outside lighting.** The nursing home must ensure:

- (1) Lighting levels in parking lots and approaches to buildings are appropriate for resident and visitor convenience and safety; and
- (2) All outside areas where nursing home equipment and machinery are stored have proper lighting.

### NEW SECTION

**WAC 388-97-3120 Light shields.** The nursing home must ensure that light shields are provided in food preparation and serving areas, utility rooms, medication rooms, exam rooms, pool enclosures, laundry areas, and on ceiling mounted fluorescent lights in resident rooms.

### NEW SECTION

**WAC 388-97-3140 Illumination levels in new buildings and additions.** The nursing home must ensure:

- (1) Lighting fixtures and circuitry provide at least the illumination levels appropriate to the task;
- (2) Design takes into consideration that lighting systems normally decrease in output with age and dirt accumulation; and
- (3) Light fixture locations and switching arrangements are appropriate for the needs of the occupants of the spaces and follow Illuminating Engineering Society (IES) recommendations for health care facilities.

### NEW SECTION

**WAC 388-97-3160 Night lights in new construction.** The nursing home must install in each resident room a night light that is:

- (1) Flush mounted on the wall;
- (2) Designed to prevent viewing the light source from thirty inches or more above the floor;
- (3) Located to provide safe pathway lighting for the staff and residents; and
- (4) Controlled by a switch at each resident room entrance door or by a master switch.

### NEW SECTION

**WAC 388-97-3180 Switches in new construction.** The nursing home must install quiet operating switches for general illumination adjacent to doors in all areas and accessible to residents in resident rooms.

### NEW SECTION

**WAC 388-97-3200 Electrical outlets.** (1) The nursing home must provide enough electrical outlets to meet the care and personal appliance needs of each resident. An approved power tap may be used only for portable appliances with specific overcurrent protection needs, such as a computer. A "power tap" is a device for indoor use consisting of an attachment plug on the end of a flexible cord and two or more

receptacles on the opposite end, with overcurrent protection. A power tap must be:

- (a) Polarized or grounded;
- (b) UL listed; and
- (c) Directly connected to a permanently installed electrical outlet.

(2) **In new construction**, the nursing home must ensure:

- (a) There are a minimum of seven outlets:
  - (i) Four hospital grade electrical outlets located convenient to each residents' bed and centered at forty to forty-four inches above the floor, with a minimum of:
    - (A) Two additional electrical outlets at separate, convenient locations in each resident room; and
    - (B) One duplex electrical outlet located adjacent to each handwashing sink intended for resident use.
  - (b) All electrical outlets located within five feet of any sink, toilet, bath, or shower must be protected by a ground fault circuit interrupter.

### Safety

#### NEW SECTION

**WAC 388-97-3220 Safety.** The nursing home must provide:

- (1) A safe, functional, sanitary, and comfortable environment for the residents, staff, and the public; and
- (2) Signs to designate areas of hazard.

#### NEW SECTION

**WAC 388-97-3240 Safety—Poisons and nonmedical chemicals.** The nursing home must ensure that poisons and nonmedicinal chemicals are stored in containers identified with warning labels. The containers must be stored:

- (1) In a separate locked storage when not in use by staff; and
- (2) Separate from drugs used for medicinal purposes.

#### NEW SECTION

**WAC 388-97-3260 Safety—Storage of equipment and supplies.** The nursing home must ensure that the manner in which equipment and supplies are stored does not jeopardize the safety of residents, staff, or the public.

#### NEW SECTION

**WAC 388-97-3280 Safety—Handrails.** The nursing home must:

- (1) Provide handrails on each side of all corridors and stairwells accessible to residents; and
- (2) **In new construction** ensure that:
  - (a) Ends of handrails are returned to the walls;
  - (b) Handrails are mounted thirty to thirty-four inches above the floor and project not more than three and three-quarters inches from the wall; and
  - (c) Handrails terminate not more than six inches from a door.

### Water Supply

#### NEW SECTION

**WAC 388-97-3300 Water supply.** The nursing home must comply with the requirements of the group A, Public Water Systems, chapter 246-290 WAC or group B, Public Water Systems, chapter 246-291 WAC.

#### NEW SECTION

**WAC 388-97-3320 Hot water.** The nursing home must ensure:

- (1) The hot water system maintains water temperatures at one hundred ten degrees Fahrenheit, plus or minus ten degrees Fahrenheit, at fixtures used by residents and staff.
- (2) For laundry temperatures, refer to WAC 388-97-2780.
- (3) For dishwashing temperatures, refer to chapter 246-215 WAC.

#### NEW SECTION

**WAC 388-97-3340 Cross connections.** The nursing home must:

- (1) Prohibit all cross connections between potable and nonpotable water;
- (2) Use backflow prevention devices on plumbing fixtures, equipment, facilities, buildings, premises or areas which are actual or potential cross-connections to prevent the backflow of water or other liquids, gases, mixtures or substances into a water distribution system or other fixtures, equipment, facilities, buildings or areas; and
- (3) Follow guidelines, practices, procedures, interpretations and enforcement as outlined in the manual titled "Accepted Procedure and Practice in Cross-Connection Control; Pacific NW Edition; American Waterworks Association," or any successor manual, referenced in chapter 246-290 WAC for public water supply.

### Pest Control and Sewage and Waste Disposal

#### NEW SECTION

**WAC 388-97-3360 Pest control.** The nursing home must:

- (1) Maintain an effective pest control program so that the facility is free of pests such as rodents and insects;
- (2) Construct and maintain buildings to prevent the entrance of pests such as rodents and insects; and
- (3) Provide mesh screens or equivalent with a minimum mesh of one-sixteenth inch on all windows and other openings that can be left open.

#### NEW SECTION

**WAC 388-97-3380 Sewage and liquid waste disposal.** The nursing home must ensure:

- (1) All sewage and liquid wastes are discharged into an approved public sewage system where such system is available; or

(2) Sewage and liquid wastes are collected, treated, and disposed of in an on-site sewage system in accordance with chapter 246-272A WAC and meets with the approval of the local health department and/or the state department of health.

### New Construction Documents

#### NEW SECTION

**WAC 388-97-3400 General new construction documents.** (1) The project sponsor must submit plans for all new construction to the department of health, construction review, for review and approval. Documents must be approved before the work begins. The project sponsor must also submit documents to department of health, certificate of need for review and applicable determination.

(2) The nursing home may request exemptions to new construction requirements as described in WAC 388-97-3500.

(3) If the proposed project is not extensive enough to require professional architectural or engineering services, the project sponsor must submit a written description to the department of health, construction review, to determine if WAC 388-97-3440 applies.

#### NEW SECTION

**WAC 388-97-3420 Preliminary new construction documents.** If preliminary documents and specifications are submitted, they must:

(1) Include a narrative program with drawings. Copies of these documents must be sent to the department of health, certificate of need and construction review, and to aging and disability services administration. The narrative program must identify:

- (a) How the design promotes a homelike environment and facilitates resident-centered care and services;
- (b) Functional space requirements;
- (c) Staffing patterns;
- (d) Each function to be performed;
- (e) Types of equipment required; and
- (f) Services that will not be provided directly, but will instead be provided through contract.

(2) Refer to WAC 388-97-3400(3), if the proposed project is not extensive enough to require professional architectural or engineering services.

(3) Be drawn to scale and include:

(a) A site plan showing streets, entrance ways, drive-ways, parking, design statements for adequate water supply, sewage and disposal systems, space for the storage of recycled materials, and the arrangement of buildings on the site noting handicapped accessible parking and entrances;

(b) Floor plans showing existing and proposed arrangements within the building, including the fixed and major movable equipment; and

(c) Each room, space, and corridor identified by function and number.

(4) Include a general description of construction and materials, including interior finishes.

#### NEW SECTION

**WAC 388-97-3440 Final new construction documents.** (1) Construction must not start until at least two sets of final construction documents drawn to scale with complete specifications have been submitted to and approved by the department of health, construction review, in coordination with aging and disability services administration and the department of health, certificate of need.

(2) An architect or engineer licensed by the state of Washington must prepare, stamp, sign, and date the final construction documents.

(3) Construction documents that are changed after approval by the department of health, construction review, require resubmission before any construction on the proposed change is started.

(4) The construction of the facility must follow the final approved construction documents.

(5) These drawings and specifications must show complete details to be furnished to contractors for construction of the buildings, including:

- (a) Site plan;
- (b) Drawings of each floor of the building, including fixed equipment;
- (c) Elevations, sections, and construction details;
- (d) Schedule of floor, wall, and ceiling finishes, door and window sizes and types, and door finish hardware;
- (e) Mechanical and electrical systems;
- (f) Provision for noise, dust, smoke, and draft control, fire protection, safety and comfort of the residents if construction work takes place in or near occupied areas; and
- (g) Landscape plans and vegetation planting schedules for dementia care units.

(6) A reduced set of the final construction floor plans on eight and one half by eleven inch or eleven by seventeen inch sheets showing each room function and number must be submitted.

#### NEW SECTION

**WAC 388-97-3460 Preinstallation submissions for new construction.** The department of health, construction review, must receive and approve preinstallation submissions prior to installation. Preinstallation submissions may include any or all of the following:

(1) Stamped shop drawings, hydraulic calculations, and equipment information sheets for fire sprinkler system(s);

(2) Shop drawings, battery calculations, and equipment information sheets for fire detection and alarm systems;

(3) Shop drawings and equipment information sheets for a kitchen hood and duct automatic fire extinguishing system;

(4) Drawings and equipment information sheets for special egress control devices; and

(5) Drawings and/or a finish schedule denoting areas to be carpeted with:

(a) A coding system identifying type of carpet in each area;

(b) A copy the manufacturer's specifications for each type of carpet; and

(c) A copy of a testing laboratory report of the radiant panel and smoke density tests for each type of carpet.

NEW SECTION

**WAC 388-97-3480 New construction timelines.** (1) Construction documents must be resubmitted for review as a new project according to current requirements if construction:

- (a) Has not started within one year from the date of approval; or
  - (b) Is not completed within two years from the date of approval.
- (2) To obtain an extension beyond two years, a written request must be submitted and approved thirty days prior to the end of the two-year period.

NEW SECTION

**WAC 388-97-3500 Exemptions to new construction requirements.** (1) The director of residential care services, aging and disability services administration, may grant exemptions to new construction requirements for:

- (a) Alterations when the applicant demonstrates the proposed alterations will serve to correct deficiencies or will upgrade the nursing home in order to better serve residents; and
- (b) Substitution of procedures, materials, or equipment for requirements specified in this chapter when such procedures, materials, or equipment have been demonstrated to the director's satisfaction to better serve residents.

(2) The nursing home must ensure requests for exemptions are in writing and include any necessary approvals from the local code enforcement authority and the state fire marshal.

(3) The nursing home must ensure all exemptions granted under the foregoing provisions are kept on file at the nursing home.

**Codes and Standards in New Construction**NEW SECTION

**WAC 388-97-3520 State building code in new construction.** The nursing home must through its design, construction and necessary permits demonstrate compliance with the following codes and local jurisdiction standards. The nursing home that submitted plans for construction review after July 1, 2007 must also comply with the following International Building Codes and Standards:

(1) The International Building Code, and International Building Code Standards, as published by the International Conference of Building Officials as amended and adopted by the Washington state building code council and published as chapter 51-50 WAC, or successor laws;

(2) The International Mechanical Code, including chapter 22, Fuel Gas Piping, Appendix B, as published by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials as amended and adopted by the Washington state building code council and published as chapter 51-52 WAC, or successor laws;

(3) The International Fire Code, and International Fire Code Standards, as published by the International Confer-

ence of Building Officials and the Western Fire Chiefs Association as amended and adopted by the Washington state building code council and published as chapter 51-54 WAC, or successor laws;

(4) The Uniform Plumbing Code, and Uniform Plumbing Code Standards, as published by the International Association of Plumbing and Mechanical Officials, as amended and adopted by the Washington state building code council and published as chapters 51-56 and 51-57 WAC, or successor laws;

(5) The Washington state ventilation and indoor air quality code, as adopted by the Washington state building code council and filed as chapter 51-13 WAC, or successor laws; and

(6) The Washington state energy code, as amended and adopted by the Washington state building code council and filed as chapter 51-11 WAC, or successor laws.

NEW SECTION

**WAC 388-97-3540 Electrical codes and standards in new construction.** The nursing home must ensure that all electrical wiring complies with state and local electrical codes including chapter 296-46B WAC and the National Electric Code of the National Fire Protection Association (NFPA-70) as adopted by the Washington state department of labor and industries.

NEW SECTION

**WAC 388-97-3560 Elevator codes in new construction.** The nursing home must ensure that elevators are installed in accordance with chapter 296-96 WAC.

NEW SECTION

**WAC 388-97-3580 Local codes and ordinances in new construction.** The nursing home must:

- (1) Follow all local ordinances relating to zoning, building, and environmental standards; and
- (2) Obtain all local permits before construction and keep permits on file at the nursing home.

**Administration and Public Areas in New Construction**NEW SECTION

**WAC 388-97-3600 Entrances and exits in new construction.** The nursing home must have the main entrances and exits sheltered from the weather and barrier free accessible in accordance with chapter 51-50 WAC.

NEW SECTION

**WAC 388-97-3620 Lobbies in new construction.** The nursing home must have a lobby or area in close proximity to the main entrance that is barrier free accessible and includes:

- (1) Waiting space with seating accommodations;
- (2) A reception and information area;
- (3) Space to accommodate persons in wheelchairs;
- (4) A public restroom;

- (5) A drinking fountain; and
- (6) A public telephone.

NEW SECTION

**WAC 388-97-3640 Interview space in new construction.** The nursing home must have interview spaces for private interviews relating to social service and admission.

NEW SECTION

**WAC 388-97-3660 Offices in new construction.** The nursing home must provide:

- (1) Office space convenient to the work area for the administrator, the director of nursing services, medical records staff, social services staff, activities director, and other personnel as appropriate;
- (2) Work space for physicians and outside consultants;
- (3) Space for locked storage of health records which provides for fire and water protection; and
- (4) Space for the safe storage and handling of financial and business records.

NEW SECTION

**WAC 388-97-3680 Inservice education space in new construction.** The nursing home must provide space for employee inservice education that will not infringe upon resident space.

NEW SECTION

**WAC 388-97-3700 Staff areas in new construction.** The nursing home must ensure a lounge, lockers, and toilets are provided convenient to the work areas for employees and volunteers.

### Visiting, Private, and Outdoor Recreation Space and Walkways in New Construction

NEW SECTION

**WAC 388-97-3720 Visiting and private space in new construction.** The nursing home must design a separate room or areas for residents to have family and friends visit and for residents to spend time alone. The nursing home must ensure these areas provide:

- (1) Space which facilitates conversation and privacy; and
- (2) Access to a common-use toilet facility.

NEW SECTION

**WAC 388-97-3740 Outdoor recreation space and walkways in new construction.** A nursing home must provide a safe, protected outdoor area for resident use. The nursing home must ensure the outdoor area has:

- (1) Shaded and sheltered areas to meet residents needs;
- (2) Accessible walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between sidewalk and adjoining landscape areas;

(3) Sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;

(4) Shrubs, natural foliage, and trees; and

(5) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

### Pools and Pharmacies in New Construction

NEW SECTION

**WAC 388-97-3760 Pools in new construction.** The nursing home must ensure swimming pools, spas, and tubs which remain filled between uses meet the requirements in chapter 246-260 WAC.

NEW SECTION

**WAC 388-97-3780 Pharmacies in new construction.** The nursing home must ensure that an on-site pharmacy meets the requirements of the Washington state board of pharmacy per chapters 18.64 RCW and 246-865 WAC.

### General Design Requirements in New Construction

NEW SECTION

**WAC 388-97-3800 Elevators in new construction.** The nursing home must:

- (1) Ensure that all buildings having residential use areas or service areas that are not located on the main entrance floor, have an elevator; and
- (2) Have at least one elevator sized to accommodate a resident bed and attendant for each sixty beds on floors other than the main entrance floor.

NEW SECTION

**WAC 388-97-3820 Stairways, ramps, and corridors in new construction.** The nursing home must ensure stairways, ramps, and corridors conform with Uniform Building Code.

NEW SECTION

**WAC 388-97-3840 Walking surfaces in a new building or addition.** The nursing must ensure that:

- (1) An abrupt change in the walking surface level including at door thresholds which are greater than one quarter inch are beveled to a one vertical in two horizontal; and
- (2) Changes in the walking surface level greater than one half inch are accomplished by means of a ramp with a maximum slope of one vertical in twelve horizontal.

NEW SECTION

**WAC 388-97-3860 Doors in new construction.** The nursing home must ensure doors to:

- (1) Resident rooms provide a minimum of forty-four inches clear width;

(2) Resident bathrooms and toilet rooms are a minimum of thirty-two inches clear width for wheelchair access;

(3) All resident toilet rooms and bathing facilities open outward except if doors open directly into a resident occupied corridor;

(4) Toilet rooms and bathrooms have single action locks, and a means of unlocking doors from the outside;

(5) Occupied areas do not swing into corridors; and

(6) All passages are arranged so that doors do not open onto or obstruct other doors while maintaining resident dignity.

#### NEW SECTION

**WAC 388-97-3880 Floor finishes in new construction.** The nursing home must ensure:

(1) Floors at all outside entrances have slip-resistant finishes both inside and outside the entrance even when wet; and

(2) All uncarpeted floors are smooth, nonabsorbent and easily cleanable.

#### NEW SECTION

**WAC 388-97-3900 Carpets in new construction.** The nursing home must ensure that department of health, construction review approves of all carpet installation.

(1) Carpets may be used in all areas except: Toilet rooms, bathrooms, kitchen, laundry, utility rooms, medication rooms, maintenance, isolation rooms if provided, and areas subject to high moisture or flooding. Specifications for acceptable carpeting are:

(a) Pile yarn fibers are easily cleanable;

(b) Pile is looped texture in all resident use areas. Cut pile may be used in nonresident use areas;

(c) Average pile density of five thousand ounces per cubic yard in resident use areas and four thousand ounces per cubic yard in nonresident areas. The formula for calculating the density of the carpet is: Yarn weight in ounces times 36, divided by pile height in inches equals ounces per cubic yard of density; and

(d) A maximum pile height of .255 inches in resident use areas and .312 inches in nonresident use areas.

(2) Carpets must:

(a) Be cemented to the floor; and

(b) Have the edges covered and top set base with toe at all wall junctures.

(3) When recarpeting, the safety of residents must be assured during and after recarpeting installation within the room or area. The nursing home must ensure the room or area is:

(a) Well ventilated;

(b) Unoccupied; and

(c) Unavailable for use until room is free of volatile fumes and odors.

#### NEW SECTION

**WAC 388-97-3920 Coving in new construction.** The nursing home must ensure:

(1) Kitchens, restrooms, laundry, utility rooms, and bathing areas have integral coves of continuous commercial grade

sheet vinyl, bullnose ceramic tile or sealed bullnose quarry tile at least six inches in height; and

(2) All other wall junctions have either integral coving or top set base with toe.

#### NEW SECTION

**WAC 388-97-3940 Walls in new construction.** The nursing home must ensure:

(1) Wall finishes are easily cleanable;

(2) A water-resistant finish extends above the splash line in all rooms or areas subject to splash or spray, such as bathing facilities with tubs only, toilet rooms, janitors' closets, and can-wash areas; and

(3) Bathing facilities with showers have a water-resistant finish extending to the ceiling.

#### NEW SECTION

**WAC 388-97-3960 Accessories in new construction.** The nursing home must provide the following accessories with the necessary backing, if required, for mounting:

(1) Usable countertop area and mirror at each handwashing sink in toilet rooms and resident rooms;

(2) Towel or robe hooks at each handwashing sink in resident rooms and at each bathing facility;

(3) A robe hook at each bathing facility, toilet room and in examination room or therapy area, including outpatient therapy rooms;

(4) A securely mounted toilet paper holder properly located within easy reach of the user at each toilet fixture;

(5) Sanitary seat covers at each public and employee use toilet;

(6) Open front toilet seats on all toilets;

(7) Dispensers for paper towels and handwashing soap at each handwashing sink, and bathing facility;

(8) Sanitary napkin dispensers and disposers in public and employee women's toilet rooms; and

(9) Grab bars that are easily cleanable and resistant to corrosion and securely mounted.

#### NEW SECTION

**WAC 388-97-3980 Miscellaneous in new construction.** The nursing home must ensure:

(1) Rooms and service areas are identified by visible and tactile signs, refer to WAC 388-97-2900(2) for possible exceptions; and

(2) Equipment and casework is designed, manufactured and installed for ease of proper cleaning and maintenance, and suitable for the functions of each area.

### **Heating, Ventilation, and Air Conditioning Systems in New Construction**

#### NEW SECTION

**WAC 388-97-4000 Heating systems in new construction.** The nursing home must ensure:

(1) The heating system is capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occu-

pied by residents and seventy degrees Fahrenheit for nonresident areas;

(2) Resident rooms have individual temperature control, except in a dementia care unit controls may be covered, locked, or placed in an inconspicuous place;

(3) The following is insulated within the building:

(a) Pipes conducting hot water which are exposed to resident contact; and

(b) Air ducts and casings with outside surface temperatures below ambient dew point.

(4) Insulation on cold surfaces includes an exterior vapor barrier; and

(5) Electric resistant wall heat units are prohibited in new construction.

**NEW SECTION**

**WAC 388-97-4020 Cooling systems in new construction.** The nursing home must have:

(1) A mechanical cooling system capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents; and

(2) A cooling system that has mechanical refrigeration equipment to provide summer air conditioning to resident areas, food preparation areas, laundry, medication rooms, and therapy areas by either a central system with distribution ducts or piping, or packaged room or zonal air conditioners.

**NEW SECTION**

**WAC 388-97-4040 Ventilation systems in new construction.** The nursing home must ensure:

(1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;

(2) All habitable space is mechanically ventilated including:

(a) Air-supply and air-exhaust systems;

(b) Installation of air-handling duct systems according to the requirements of the International Mechanical Code and chapter 51-52 WAC;

(c) Installation of supply registers and return air grilles at least three inches above the floor;

(d) Installation of exhaust grilles on or near the ceiling; and

(e) Outdoor air intakes located a minimum of twenty-five feet from the exhaust from any ventilating system, combustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents. The nursing home must locate the bottom of outdoor air intakes serving central systems a minimum of three feet above adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.

(3) Minimum ventilation requirements meet the pressure relationship and ventilation rates per ASHRAE 2007 HVAC Applications Chapter 7.11 Table 6, Pressure Relationships and Ventilation of Certain Areas of Nursing Homes.

**TABLE 6  
PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS OF NURSING HOMES**

Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors	Air Recirculated Within Room Units
<b>RESIDENT CARE</b>					
Resident room (holding room)	±	2	4	Optional	Optional
Resident corridor	±	Optional	2	Optional	Optional
Toilet room	N	Optional	10	Yes	No
Resident gathering (dining, activity)	±	2	4	Optional	Optional
<b>DIAGNOSTIC AND TREATMENT</b>					
Examination room	±	2	6	Optional	Optional
Physical therapy <sup>3</sup>	N	2	6	Optional	Optional
Occupational therapy <sup>3</sup>	N	2	6	Optional	Optional
Soiled workroom or soiled holding	N	2	10	Yes	No
Clean workroom or clean holding	P	2	4	Optional	Optional
<b>STERILIZING AND SUPPLY</b>					
Sterilizer exhaust room	N	Optional	10	Yes	No
Linen and trash chute room	N	Optional	10	Yes	No
Laundry, general <sup>3</sup>	±	2	10	Yes	No

Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors	Air Recirculated Within Room Units
Soiled linen sorting and storage	N	Optional	10	Yes	No
Clean linen storage	P	Optional	2	Yes	No
<b>SERVICE</b>					
Food preparation center <sup>3</sup>	±	2	10	Yes	Yes
Warewashing room <sup>3</sup>	N	Optional	10	Yes	Yes
Dietary day storage	±	Optional	2	Yes	No
Janitor closet	N	Optional	10	Yes	No
Bathroom	N	Optional	10	Yes	No
Personal services (barber/salon)	N	2	10	Yes	No

1/ P=Positive N=Negative ±=Continuous directional control not required.  
 2/ Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).  
 3/ The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.

(4) Individual exhaust systems meet the following requirements:

(a) Where individual mechanical exhaust systems are used to exhaust individual toilet rooms or bathrooms, the individual ventilation fans are interconnected with room lighting to ensure ventilation while room is occupied. The ventilation fan must have a time delay shutoff to ensure that the exhaust continues for a minimum of five minutes after the light switch is turned off; and

(b) The volume of air removed from the space by exhaust ventilation is replaced directly or indirectly by an equal amount of tempered/conditioned air.

(5) Central exhaust systems meet the following requirements:

(a) All fans serving central exhaust systems are located to prevent a positive pressure in the duct passing through an occupied area; and

(b) Fire and smoke dampers are located and installed in accordance with the International Building Code, Standards and amendments in chapter 51-50 WAC.

(6) Air filters meet the following requirements:

(a) All central ventilation or air-conditioning systems are equipped with filters per ASHRAE 2007 HVAC Applications Chapter 7.11 Table 5, Filter Efficiencies for Central Ventilation and Air Conditioning Systems in Nursing Homes and meet the following requirements:

FUNCTION AREA	Minimum Number of Filter Beds	Filter Efficiency of Main Filter Bed, MERV*
Resident care, treatment, diagnostic, and related areas	1	15
Food preparation areas and laundries	1	8

FUNCTION AREA	Minimum Number of Filter Beds	Filter Efficiency of Main Filter Bed, MERV*
Administrative, bulk storage, and soiled holding areas	1	6

\*MERV = Minimum Efficiency Reporting Value

(b) Central ventilation or air conditioning systems means any system serving more than a single room used by residents or by any group of rooms serving the same utility function (i.e., the laundry);

(c) Filter efficiency is warranted by the manufacturer and is based on atmospheric dust spot efficiency per ASHRAE Standard 52.2;

(d) The filter bed is located upstream of the air-conditioning equipment, unless a prefilter is employed. In which case, the prefilter is upstream of the equipment and the main filter bed may be located downstream;

(e) Filter frames are durable and provide an airtight fit with the enclosing duct work. All joints between filter segments and enclosing duct work are gasketed or sealed;

(f) All central air systems have a manometer installed across each filter bed with an alarm to signal high pressure differential; and

(g) Humidifiers, if provided, are a steam type.

**Plumbing and Fixtures in New Construction**

NEW SECTION

**WAC 388-97-4060 Handwashing sinks in new construction.** The nursing home must provide a handwashing sink in each toilet room and exam room.

NEW SECTION

**WAC 388-97-4080 Drinking fountains in new construction.** Where drinking fountains are installed, the nursing

home must ensure the fountains are of the inclined jet, sanitary type.

#### NEW SECTION

**WAC 388-97-4100 Mixing valves or mixing faucets in new construction.** The nursing home must provide each fixture, except toilet fixtures and special use fixtures, with hot and cold water through a mixing valve or mixing faucet.

#### NEW SECTION

**WAC 388-97-4120 Spouts in new construction.** The nursing home must ensure all lavatories and sinks in resident rooms, resident toilet rooms, and utility and medication areas have gooseneck spouts, without aerators in areas requiring infection control.

#### NEW SECTION

**WAC 388-97-4140 Faucet controls in new construction.** The nursing home must provide wrist blade, single-lever controls or their equivalent at all sinks and lavatories. The nursing home must:

- (1) Provide at least four inch wrist blades and/or single-levers;
- (2) Provide sufficient space for full open and closed operation; and
- (3) Color-code and label faucet controls to indicate "hot" and "cold."

### SUBCHAPTER III

#### NURSING HOME LICENSE

##### Initial License Application

#### NEW SECTION

**WAC 388-97-4160 Initial nursing home license.** (1) A complete nursing home license application must be:

- (a) Submitted at least sixty days prior to the proposed effective date of the license on forms designated by the department;
  - (b) Signed by the proposed licensee or the proposed licensee's authorized representative;
  - (c) Notarized; and
  - (d) Reviewed by the department in accordance with this chapter.
- (2) All information requested on the license application must be provided. At minimum, the nursing home license application will require the following information:
- (a) The name and address of the proposed licensee, and any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee;
  - (b) The names of the administrator, director of nursing services, and, if applicable, the management company;
  - (c) The specific location and the mailing address of the facility for which a license is sought;
  - (d) The number of beds to be licensed; and

(e) The name and address of all nursing homes that the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee has been affiliated with in the past ten years.

(3) The proposed licensee must be:

- (a) The individual or entity responsible for the daily operation of the nursing home;
- (b) Denied the license if any individual or entity named in the application is found by the department to be unqualified.

(4) For initial licensure of a new nursing home, the proposed licensee must submit the annual license fee with the initial license application. The nonrefundable nursing home license fee is two hundred seventy-five dollars per bed per year.

(5) If any information submitted in the initial license application changes before the license is issued, the proposed licensee must submit a revised application containing the changed information.

(6) If a license application is pending for more than six months, the proposed licensee must submit a revised application containing current information about the proposed licensee or any other individuals or entities named in the application.

#### License Renewal

#### NEW SECTION

**WAC 388-97-4180 Nursing home license renewal.** (1) All nursing home licenses must be renewed annually.

(2) License renewals must be:

- (a) Submitted at least thirty days prior to the license's expiration date on forms designated by the department;
- (b) Signed by the current licensee; and
- (c) Reviewed by the department in accordance with this chapter.

(3) The current licensee must provide all information on the license renewal form or other information requested by the department.

(4) The application for a nursing home license renewal must be made by the individual or entity currently licensed and responsible for the daily operation of the nursing home.

(5) The nursing home license renewal fee must be submitted at the time of renewal. The nonrefundable nursing home license renewal fee is two hundred seventy-five dollars per bed per year.

(6) In unusual circumstances, the department may issue an interim nursing home license for a period not to exceed three months. The current licensee must submit the prorated nursing home license fee for the period covered by the interim license. The annual date of license renewal does not change when an interim license is issued.

(7) A change of nursing home ownership does not change the date of license renewal and fee payment.

**Department Review of License Applications and Appeals**NEW SECTION

**WAC 388-97-4200 Department review of initial nursing home license applications.** (1) All initial nursing home license applications must be reviewed by the department under this chapter.

(2) The department will not begin review of an incomplete license application.

(3) The proposed licensee must respond to any department request for additional information within five working days.

(4) When the application is determined to be complete, the department will consider the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee, separately and jointly, in its review. The department will review:

- (a) The information contained in the application;
  - (b) Survey and complaint investigation findings in every facility each individual and entity named in the application has been affiliated with during the past ten years;
  - (c) Compliance history;
  - (d) Financial assessments;
  - (e) Actions against the proposed licensee (i.e., revocation, suspension, refusal to renew, etc.);
  - (f) All criminal convictions, and relevant civil or administrative actions or findings including, but not limited to, findings under 42 C.F.R. § 488.335, disciplinary findings, and findings of abuse, neglect, exploitation, or abandonment; and
  - (g) Other relevant information.
- (5) The department will notify the proposed licensee of the results of the review.

NEW SECTION

**WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.** (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

- (a) Failed or refused to comply with the:
  - (i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and regulations adopted under these chapters; or
  - (ii) Medicaid requirements of Title XIX of the Social Security Act and Medicaid regulations.
- (b) A history of significant noncompliance with federal or state regulations in providing nursing home care;
- (c) No credit history or a poor credit history;
- (d) Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830;

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) Been convicted of a felony or other crime that would be prohibited under RCW 74.39A.050(8), if it reasonably relates to the competency of the individual to own or operate a nursing home;

(j) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.

(k) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

(l) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or license renewal, in attached data, or in matters under department investigation;

(m) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

(n) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

(o) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

(p) Discriminated against Medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has been:

(a) Convicted of a "crime against children or other persons" as defined under RCW 43.43.830;

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830;

(c) Found by a court in a criminal proceeding or a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;

(d) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;

(e) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

(f) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor; or

(g) Found to have abused, neglected, abandoned or financially exploited or mistreated residents or misappropriated their property, and that finding has been entered on a nursing assistant registry.

#### NEW SECTION

**WAC 388-97-4240 Appeal of the department's licensing decision.** A proposed or current licensee contesting a department licensing decision must file a written request for an administrative hearing within twenty days of receipt of the decision.

The appeals process and requirements are set forth in WAC 388-97-4440.

#### **Management Agreements and Changes of Ownership**

#### NEW SECTION

**WAC 388-97-4260 Management agreements.** (1) The licensee is responsible for the daily operations of the nursing home.

(2) As used in this section:

(a) "**Management agreement**," means a written, executed, agreement between the licensee and another individual or entity regarding the provision of certain services in a nursing home; and

(b) "**Manager**" refers to the individual or entity providing services under a management agreement.

(3) The licensee may not give the manager responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services of the facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(4) The proposed licensee or the current licensee must notify the residents and their representatives sixty days before entering into a management agreement.

(5) The department must receive a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations:

(a) Sixty days before:

(i) The proposed change of ownership date;

(ii) The initial licensure date; or

(iii) The effective date of the management agreement; or

(b) Thirty days before the effective date of any amendment to an existing management agreement.

(6) Management agreements, at minimum must:

(a) Create a principal/agent relationship between the licensee and the manager;

(b) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;

(c) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;

(d) Provide for maintenance and retention of all records as applicable according to rules and regulations;

(e) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;

(f) Require the licensee to participate in monthly oversight meetings and quarterly on-site visits to the facility;

(g) Require the manager to immediately send copies of surveys and notices of noncompliance to the licensee;

(h) State that the licensee is responsible for ensuring all licenses, certifications, and accreditations are obtained and maintained;

(i) State that the manager and licensee will review the management agreement annually and notify the department of changes according to applicable regulations;

(j) Acknowledge that the licensee is the party responsible for meeting state and federal licensing and certification requirements;

(k) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the nursing home and care of the residents, including but not limited to, staffing plans, orientation, and training;

(l) Require that, even if day-to-day management of the trust funds are delegated, the licensee:

(i) Retains all fiduciary and custodial responsibility for funds that have been deposited with the nursing home by the resident; and

(ii) Is directly accountable to the residents for such funds.

(m) Provide that if any responsibilities for the day-to-day management of the resident trust fund are delegated to the manager, then the manager must:

(i) Provide the licensee with a monthly accounting of the resident funds; and

(ii) Meet all legal requirements related to holding, and accounting for, resident trust funds; and

(n) State that the manager will not represent itself or give the appearance it is the licensee.

(7) Upon receipt of a proposed management agreement, the department may require:

(a) The licensee or manager to provide additional information or clarification;

(b) Any changes necessary to:

(i) Bring the management agreement into compliance with this section; and

(ii) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility; and

(c) More frequent contact between the licensee and manager under subsection (6)(f).

(8) The licensee and manager must act in accordance with the terms of the management agreements. If the department determines that they are not, then the department may take action deemed appropriate.

#### NEW SECTION

**WAC 388-97-4280 Change of ownership.** (1) A change of ownership occurs when there is a substitution, elimination, or withdrawal of the licensee or a substitution of control of the licensee. "**Control**," as used in this section, means the possession, directly or indirectly, of the power to direct the management, operation, and policies of the licensee, whether through ownership, voting control, by agreement, by contract or otherwise. Events which constitute a change of ownership include, but are not limited to, the following:

(a) The form of legal organization of the licensee is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The licensee transfers ownership of the nursing home business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(c) Dissolution or consolidation of the entity;

(d) Merger unless the licensee survives the merger and there is not a change in control of the licensee;

(e) If, during any continuous twenty-four month period, fifty percent or more of the entity is transferred, whether by a single transaction or multiple transactions, to:

(i) A different party (e.g., new or former shareholders); or

(ii) An individual or entity that had less than a five percent ownership interest in the nursing home at the time of the first transaction; or

(f) Any other event or combination of events that the department determines results in a:

(i) Substitution, elimination, or withdrawal of the licensee; or

(ii) Substitution of control of the licensee responsible for the daily operational decisions of the nursing home.

(2) Ownership does not change when the following, without more, occur:

(a) A party contracts with the licensee to manage the nursing home enterprise in accordance with the requirements of WAC 388-97-4260; or

(b) The real property or personal property assets of the nursing home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee.

(3) When a change of ownership is contemplated, the current licensee must notify the department and all residents and their representatives at least sixty days prior to the proposed date of transfer. The notice must be in writing and contain the following information as specified in RCW 18.51-530:

(a) Name of the proposed licensee;

(b) Name of the managing entity;

(c) Names, addresses, and telephone numbers of department personnel to whom comments regarding the change may be directed;

(d) Names of all officers and the registered agent in the state of Washington if proposed licensee is a corporation; and

(e) Names of all general partners if proposed licensee is a partnership.

(4) The proposed licensee must comply with license application requirements. The operation or ownership of a nursing home must not be transferred until the proposed licensee has been issued a license to operate the nursing home.

#### **Licensed Bed Capacity, Relocation of Residents and License Relinquishment**

#### NEW SECTION

**WAC 388-97-4300 Licensed bed capacity.** A nursing home must not be licensed for a capacity that exceeds the number of beds permitted under:

(1) This chapter;

(2) Chapter 70.38 RCW and regulations thereunder; or

(3) Applicable local zoning, building or other such regulations.

NEW SECTION

**WAC 388-97-4320 Relocation of residents.** (1) In the event of license revocation or suspension, decertification, or other emergency closures the department must:

(a) Notify residents and, when appropriate, resident representatives of the action;

(b) Assist with residents' relocation and identify possible alternative living choices and locations; and

(c) The nursing home will assist the residents to the extent it is directed to do so by the department.

(2) When a resident's relocation occurs due to a nursing home's voluntary closure, or voluntary termination of its Medicare or Medicaid contract or both, the nursing home must:

(a) Notify the department and all residents and resident representatives in accordance with WAC 388-97-1640;

(b) Notify the Centers for Medicare and Medicaid Services and the public as required by 42 C.F.R. 489.52, or a successor regulation, if the closure or termination affects the provision of Medicare services; and

(c) Provide appropriate discharge planning and coordination for all residents including a plan to the department for safe and orderly transfer or discharge of residents from the nursing home.

(3) The department may provide residents assistance with relocation.

NEW SECTION

**WAC 388-97-4340 License relinquishment.** (1) A nursing home licensee must voluntarily relinquish its license when:

(a) The nursing home ceases to do business as a nursing home; and

(b) Within twenty-four hours after the last resident is discharged from the facility.

(2) The license must be returned to the department.

(3) If a nursing home licensee fails to voluntarily relinquish its license, the department will revoke the license.

**SUBCHAPTER IV****NURSING HOME LICENSURE  
PROGRAM ADMINISTRATION**NEW SECTION

**WAC 388-97-4360 Inspections and deficiency citation report.** (1) The department may inspect nursing homes at any time in order to determine compliance with the requirements of chapters 18.51 or 74.42 RCW and this chapter. Types of state inspections in nursing homes include pre-occupancy, licensing, revisit, and complaint investigation. In the case of a Medicaid or Medicare contractor, or both, the department may also inspect Medicare and Medicaid certified nursing homes to determine compliance with the requirements of Title XVIII and/or XIX of the Social Security Act and federal Medicare and Medicaid regulations.

(2) The department will provide to the nursing home written documentation (notice) of the nursing home's defi-

ciency(ies), the requirement that the deficiency(ies) violates, and the reasons for the determination of noncompliance with the requirements (RCW 18.51.091).

(3) The department may revisit the nursing home to confirm that corrections of deficiencies has been made. Revisits will be made:

(a) In accordance with RCW 74.39A.060 (5)(e);

(b) In the case of a Medicare or Medicaid contractor, or both, in accordance with the requirements of Title XVIII or XIX, or both of the Social Security Act and federal Medicare and Medicaid regulations; and

(c) At the department's discretion.

(4) The licensee or nursing home must:

(a) Ensure that department staff have access to the nursing home residents, staff and all resident records; and

(b) Not willfully interfere or fail to cooperate with department staff in the performance of official duties. Examples of willful interference or failure to cooperate include, but are not limited to, not allowing department staff to talk to residents or staff in private or not allowing department staff access to resident records.

NEW SECTION

**WAC 388-97-4380 Plan of correction.** (1) The licensee or nursing home must, within ten calendar days of notification of the cited deficiencies prepare, sign, date and provide to the department a detailed written plan of correction. Such plan of correction will provide notification to the department of the date by which the nursing home will complete the correction of cited deficiencies. The plan of correction must be completed regardless of whether the licensee requests an informal department review in accordance with WAC 388-97-4420.

(2) A plan of correction is not required for deficiencies at a severity level 1/isolated scope as described in WAC 388-97-4500, unless specifically requested by the department.

(3) In the case of actual or imminent threat to resident health or safety/immediate jeopardy (severity level 4 as described in WAC 388-97-4500), the department may require the licensee or nursing home to submit a document alleging that the imminent threat has been removed within a time frame specified by the department. The document must specify the steps the nursing home has taken or will take to correct the imminent harm. An allegation that the imminent harm has been removed does not substitute for the plan of correction as required by subsection (1) of this section but it will become a part of the completed plan of correction.

NEW SECTION

**WAC 388-97-4400 Acceptable and unacceptable plans of correction.** (1) A plan of correction must:

(a) Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice;

(b) Address how the nursing home will identify other residents having the potential to be affected by the same deficient practice;

(c) Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;

(d) Indicate how the nursing home plans to monitor its performance to make sure that solutions are sustained, including how the plan of correction will be integrated into the nursing home's quality assurance system;

(e) Give the title of the person who is responsible for assuring lasting correction; and

(f) Give the date by which the correction will be made.

(2) The department will review the nursing home's plan of correction to determine whether it is acceptable.

(3) When deficiencies involve nursing home alterations, physical plant plan development, construction review, or other circumstances where extended time to complete correction may be required, the department's designated local aging and disability services administration field office or other department designee may accept a plan of correction as evidence of substantial compliance under the following circumstances:

(a) The plan of correction must include the steps that the nursing home needs to take, the time schedule for completion of the steps, and concrete evidence that the plan will be carried out as scheduled; and

(b) The nursing home must submit progress reports and/or updated plans to the department in accordance with a schedule specified by department.

(c) The department's acceptance of a plan of correction is solely at the department's discretion and does not rule out the imposition of optional remedies.

#### NEW SECTION

**WAC 388-97-4420 Informal department review.** (1) For Medicare or Medicaid certified nursing homes, the informal department review process described in this section is the only opportunity for the nursing home to dispute the federal deficiency citation report, unless a federal sanction is imposed.

(2) The nursing home licensee has the right to an informal department review of disputed state or federal citations, or both.

(3) A licensee must make a written request for an informal department review within ten calendar days of receipt of the department's written deficiency citation(s) report. The request must be directed to the department's designated local aging and disability services administration office and must identify the deficiencies that are being disputed.

(4) At the informal department review, the licensee or nursing home may provide documentation and verbal explanations related to the disputed federal or state deficiencies, or both.

(5) When modifications or deletions are made to the disputed federal or state deficiency citations, or both, the licensee or nursing home must modify or delete the relevant portions of the plan of correction within five days of receipt of the modified or deleted deficiency(ies). The licensee or nursing home may request from the department a clean copy of the revised deficiency citation report.

(6) If the licensee or nursing home is unwilling to provide the modified plan of correction, the department may impose a per day civil fine for failure to return the modified deficiency citation report to the department in accordance with this subsection.

#### NEW SECTION

**WAC 388-97-4440 Notice and appeal rights.** (1) The notification and hearing rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. Notification and appeals requirements for resident protection program findings are described in WAC 388-97-0720 and 388-97-0740.

(2) The following actions may be appealed:

(a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;

(b) An action by the department such as a denial of a license under RCW 18.51.054, a license suspension under RCW 18.51.067 or a condition on a license under RCW 74.39A.050; or

(c) Deficiencies cited on the state survey report.

(3) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chapter 388-02 WAC and this chapter. If any provision in this chapter conflicts with chapter 388-02 WAC, the provision of this chapter will govern.

(4) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(5) The applicant, licensee or nursing home must receive a request for an administrative hearing with the office of administrative hearings within twenty days of receipt of written notification of the department's action as defined in subsection (2) of this section. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearing (OAH) web site: [www.oah.wa.gov](http://www.oah.wa.gov).

(6) Orders of the department imposing a stop placement, license suspension, emergency closure emergency transfer of residents, temporary management or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

(7) Deficiencies cited on the federal survey report may not be appealed through the state administrative appeals process. If a federal remedy is imposed, the Centers for Medicare and Medicaid Services will notify the nursing facility of appeal rights under the federal administrative appeals process.

(8) The department's decision to petition to remove a finding of neglect under WAC 388-97-0780 (3)(c) may not be appealed.

#### NEW SECTION

##### **WAC 388-97-4460 Remedies. Mandatory Remedies**

(1) In accordance with RCW 18.51.060 (5)(a), the department must impose a stop placement order when the department determines that the nursing home is not in sub-

stantial compliance with applicable laws or regulations and the cited deficiency(ies):

- (a) Jeopardize the health and safety of the residents; or
- (b) Seriously limit the nursing home's capacity to provide adequate care.

(2) When required by RCW 18.51.060(3), the department must deny payment to a nursing home that is certified to provide Medicaid services for any Medicaid-eligible individual admitted to the nursing home. Nursing homes that are certified to provide Medicare services or both Medicare and Medicaid services may be subject to a federal denial of payment for new admissions, in accordance with federal law.

(3) The department must deny, suspend, revoke or refuse to renew a proposed or current licensee's nursing home license in accordance with WAC 388-97-4220(3).

#### Optional Remedies

(4) When the department determines that a licensee has failed or refused to comply with the requirements under chapter 18.51, 74.39A or 74.42 RCW, or this chapter; or a Medicaid contractor has failed or refused to comply with Medicaid requirements of Title XIX of the Social Security Act or Medicaid regulations, the department may impose any or all of the following optional remedies:

- (a) Stop placement;
- (b) Immediate closure of a nursing home, emergency transfer of residents or both;
- (c) Civil fines;
- (d) Appoint temporary management;
- (e) Petition the court for appointment of a receiver in accordance with RCW 18.51.410;
- (f) License denial, revocation, suspension or nonrenewal;
- (g) Denial of payment for new Medicaid admissions;
- (h) Termination of the Medicaid provider agreement (contract);
- (i) Department on-site monitoring as defined under WAC 388-97-0001; and
- (j) Reasonable conditions on a license as authorized by chapter 74.39A RCW. Examples of conditions on a license include but are not limited to training related to the deficiency(ies); consultation in order to write an acceptable plan of correction; demonstration of ability to meet financial obligations necessary to continue operation.

#### NEW SECTION

**WAC 388-97-4480 Criteria for imposing optional remedies.** (1) The criteria set forth in this section implement the requirements under RCW 18.51.060(8). The criteria do not replace the standards for imposition of mandatory remedies under RCW 18.51.060 (3) and (5), or for the imposition of mandatory remedies in accordance with WAC 388-97-4460 (1), (2) and (3).

(2) The department must consider the imposition of one or more optional remedy(ies) when the nursing home has:

- (a) A history of being unable to sustain compliance;
- (b) One or more deficiencies on one inspection at severity level 2 or higher as described in WAC 388-97-4500;

(c) Been unable to provide an acceptable plan of correction after receiving assistance from the department about necessary revisions;

(d) One or more deficiencies cited under general administration and/or nursing services;

(e) One or more deficiencies related to retaliation against a resident or an employee for whistle blower activity under RCW 18.51.220, 74.34.180 or 74.39A.060 and WAC 388-97-1820;

(f) One or more deficiencies related to discrimination against a Medicare or Medicaid client under RCW 74.42.055, and Titles XVIII and XIX of the Social Security Act and Medicare and Medicaid regulations; or

(g) Willfully interfered with the performance of official duties by a long-term care ombudsman.

(3) The department, in its sole discretion, may consider other relevant factors when determining what optional remedy or remedies to impose in particular circumstances.

(4) When the department imposes an optional remedy or remedies, the department will select more severe penalties for nursing homes that have deficiency(ies) that are:

- (a) Uncorrected upon revisit;
- (b) Recurring (repeated);
- (c) Pervasive; or
- (d) Present a threat to the health, safety, or welfare of the residents.

(5) The department will consider the severity and scope of cited deficiencies in accordance with WAC 388-97-4500 when selecting optional remedy(ies). Such consideration will not limit the department's discretion to impose a remedy for a deficiency at a low level severity and scope.

#### NEW SECTION

##### WAC 388-97-4500 Severity and scope of deficiencies.

(1) "**Severity of a deficiency**" means the seriousness of the deficiency. Factors the department will consider when determining the severity of a deficiency may include, but are not limited to:

- (a) Whether harm to the resident has occurred, or could occur, including but not limited to a violation of resident's rights;
- (b) The Impact of the actual or potential harm on the resident; and
- (c) The degree to which the nursing home failed to meet the resident's highest practicable physical, mental, and psychosocial well-being as defined in WAC 388-97-0001.

##### (2) Severity levels

###### (a) Severity level 4—Imminent harm or immediate jeopardy

Level 4 means that a resident(s)' health or safety is imminently threatened or immediately jeopardized as a result of deficient nursing home practice. This level includes actual harm or potential harm, or both, to resident(s)' health or safety that has had or could have a severe negative outcome or critical impact on resident's well-being, including death or severe injury. Severity Level 4 requires immediate corrective action to protect the health and safety of resident(s).

**(b) Severity level 3—Actual harm**

Level 3 means that actual harm has occurred to resident(s) as the result of deficient nursing home practice.

(i) **"Serious harm"** is harm that results in a negative outcome that significantly compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental and psychosocial well-being. Serious harm does not constitute imminent danger/immediate jeopardy (Severity Level 4).

(ii) **"Moderate harm"** is harm that results in a negative outcome that more than slightly but less than significantly compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental and psychosocial well-being.

(iii) **"Minimal harm"** is harm that results in a negative outcome that to a small degree compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental well-being.

**(c) Severity level 2—Potential for harm**

Level 2, **"potential for harm"** means that if the deficient nursing home practice is not corrected, resident(s) may suffer actual harm.

**(d) Severity level 1—No harm or minimal impact**

Level 1 means a deficient nursing home practice that does not compromise the resident(s)' ability to maintain or reach, or both, the highest practicable physical, mental and psychosocial well-being. Deficiencies at level 1 are those that have no direct or potential for no more than minimal impact on the resident. Examples include certain structure deficiencies, certain physical environment deficiencies and process deficiencies.

(3) **"Scope of a deficiency"** means the frequency, incidence, or extent of the occurrence of the deficiency.

**(4) Scope categories**

(a) **"Isolated or limited scope"** means a relatively few number of residents have been affected or have the potential to be affected, by the deficient nursing home practice.

(b) **"Moderate or pattern scope"** scope means more than an isolated and less than a widespread number of residents have been affected, or have the potential to be affected by the deficient nursing home practice.

(c) **"Widespread"** or **"systemic scope"** means most or all of the residents are affected or have the potential to be affected, by the deficient nursing home practice.

(5) Determination of scope will be made by the department in its sole discretion. Factors the department will consider may include:

- (a) Size of the nursing home;
- (b) Size of the sample;
- (c) Number and location of affected residents;
- (d) Whether the deficiency applies to all or a subset of the residents;
- (e) Other factors relevant to the particular circumstances.

NEW SECTION

**WAC 388-97-4520 Separate deficiencies—Separate remedies.** (1) Each deficiency cited by the department for noncompliance with a statute or regulation is a separate deficiency subject to the assessment of a separate remedy.

(2) Each day upon which the same deficiency occurs is a separate deficiency subject to the assessment of a separate remedy.

NEW SECTION

**WAC 388-97-4540 Stop placement.** (1) The department must impose a stop placement order when required by RCW 18.51.060(5) and WAC 388-97-4460(1) and may impose a stop placement order as an optional remedy in accordance with WAC 388-97-4480. The department's stop placement order becomes effective upon verbal or written notice.

(2) The nursing home has the right to an informal department review to refute the federal or state deficiencies, or both, cited as the basis for the stop placement and must request such review in accordance with WAC 388-97-4420(3).

(3) The department will not delay or suspend a stop placement order because the nursing home requests an administrative hearing or informal department review.

(4) The stop placement order must remain in effect until:

(a) The department terminates the stop placement order;

or

(b) The stop placement order is terminated by a final agency order following appeal conducted in accordance with chapter 34.05 RCW.

(5) The department must terminate the stop placement when:

(a) The nursing home states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(b) Within fifteen working days of the nursing home's notification, department staff confirm by on-site revisit of the nursing home that:

(i) The deficiencies that necessitated the stop placement action have been corrected; and

(ii) The nursing home exhibits the capacity to maintain adequate care and services and correction of deficiencies.

(6) After lifting the stop placement, the department may continue to perform on site monitoring to verify that the nursing home has maintained correction of deficiencies.

(7) While a stop placement order is in effect, the department may approve a readmission to the nursing home from the hospital in accordance with RCW 18.51.060 (5)(b) and department guidelines for readmission decisions.

NEW SECTION

**WAC 388-97-4560 Amount of civil fine.** (1) Except as otherwise provided in statute, the range for a:

(a) Per day civil fine is fifty dollars to three thousand dollars; and

(b) Per instance civil fine is one thousand to three thousand dollars.

(2) In the event of continued noncompliance, nothing in this section must prevent the department from increasing a civil fine up to the maximum amount allowed by law.

#### NEW SECTION

**WAC 388-97-4580 Civil fine accrual and due dates and interest.** (1) Accrual of a per day civil fine begins on the first date the department verifies that the nursing home has or had a specific deficiency. Accrual of the per day civil fine will end on the date the department determines the nursing home corrected the deficiency.

(2) A per instance fine may be assessed for a deficiency, regardless of whether or not the deficiency had been corrected by the time the department first identified it.

(3) Civil fine(s) are due twenty days after the nursing home is notified of the civil fine(s) if the nursing home does not request a hearing.

(4) If the nursing home requests a hearing, the civil fine(s) including interest, if any, is due twenty days after:

(a) A hearing decision ordering payment of the fine(s) becomes final in accordance with chapter 388-02 WAC;

(b) The appeal is withdrawn;

(c) A settlement agreement and order of dismissal is entered, unless otherwise specified in the agreement; or

(d) An order of dismissal is entered.

(5) Interest on the civil fine(s) begins to accrue at a rate of one percent per month, thirty days after the nursing home is notified of the fine, unless a settlement agreement includes other provisions for payment of interest. If the amount of the civil fine is reduced following an appeal, interest on the reduced civil fine(s) accrues from thirty days after the nursing home was notified of the original civil fine(s).

(6) When a nursing home fails to pay a civil fine when due under this chapter, the department may:

(a) Withhold an amount equal to the fine plus interest, if any, from the nursing home's Medicaid payment;

(b) Impose an additional fine; or

(c) Suspend the nursing home license under WAC 388-97-570(1). Such license suspension must continue until the fine is paid.

#### NEW SECTION

**WAC 388-97-4600 Civil penalty fund.** (1) The department must deposit civil penalties collected under chapter 18.51 or 74.42 RCW into a special fund administered by the department to be applied to the protection of the health or property of residents of nursing homes found to be deficient.

(2) The funds must be administered by the department according to department procedures. Uses of the fund include, but are not limited to:

(a) Payment for the costs of relocation of residents to other facilities;

(b) Payment to maintain operation of a nursing home pending correction of deficiencies or closure; and

(c) Reimbursement of residents for personal funds or property lost when the resident's personal funds or property cannot be recovered from the nursing home or third party insurer.

#### NEW SECTION

**WAC 388-97-4620 Temporary management.** (1) When the department appoints a temporary manager, the department must order the licensee to:

(a) Cease operating the nursing home; and

(b) Immediately turn over to the temporary manager possession and control of the nursing home including, but not limited to, all patient care records, financial records, and other records necessary for continued operation of the nursing home while temporary management is in effect.

(2) The temporary manager will have authority to temporarily relocate some or all residents if the:

(a) Temporary manager determines the resident's health, security, or welfare is jeopardized; and

(b) Department concurs with the temporary manager's determination that relocation is necessary.

(3) The department's authority to order temporary management is discretionary in all cases.

#### NEW SECTION

**WAC 388-97-4640 Receivership.** (1) Receivership is authorized under RCW 18.51.400 through 18.51.520 and the following regulations.

(2) After receivership is established, the department may recommend to the court that all residents be relocated and the nursing home closed when:

(a) Problems exist in the physical condition of the premises which cannot be corrected in an economically prudent manner; or

(b) The department determines the former licensee or owner:

(i) Is unwilling or unable to manage the nursing home in a manner ensuring residents' health, safety, and welfare; and

(ii) Has not entered into an enforceable agreement to sell the nursing home within three months of the court's decision to grant receivership.

#### NEW SECTION

**WAC 388-97-4660 Temporary managers and receivers—Application.** (1) The department may recruit individuals, partnerships, corporations and other entities interested in serving as a temporary manager or receiver of a nursing home.

(2) Individuals, partnerships, corporations, or other entities interested in being appointed as a temporary manager or receiver must complete and submit to the department the required application on department forms.

(3) Individuals, partnerships, corporations, or other entities with experience in providing long-term health care and a history of satisfactory nursing home operation may submit an application to the department at any time. Applicants will be subject to the criteria established for licensees found in WAC 388-97-4220, except the department may waive the requirement that it have at least sixty days to review the application.

(4) The department must not appoint or recommend the appointment of a person (including partnership, corporation or other entity) to be a temporary manager or receiver if that person:

(a) Is the licensee, administrator, or partner, officer, director, managing employee, or owner of five percent or more of the licensee of the nursing home subject to temporary management or receivership;

(b) Is affiliated with the nursing home subject to temporary management or receivership; or

(c) Has owned or operated a nursing home ordered into temporary management or receivership in any state.

#### NEW SECTION

**WAC 388-97-4680 Temporary managers and receivers—Considerations before appointment.** (1) The department's authority to appoint a temporary manager or to recommend appointment of a specific individual or entity to act as receiver is discretionary in all cases.

(2) The department, in appointing a temporary manager or recommending appointment of a receiver, may consider one or more of the following factors:

(a) Potential temporary manager's or receiver's willingness to serve as a temporary manager or receiver for the nursing home in question;

(b) Amount and quality of the potential temporary manager's or receiver's experience in long-term care;

(c) Quality of care, as determined by prior survey reports, provided under the potential temporary manager's or the potential receiver's supervision, management or operation;

(d) Potential temporary manager's or receiver's prior performance as a temporary manager or receiver;

(e) How soon the potential temporary manager or receiver is available to act as a temporary manager or receiver;

(f) Potential temporary manager's or receiver's familiarity and past compliance with Washington state and federal regulations applicable to nursing homes.

#### NEW SECTION

**WAC 388-97-4700 Duties and powers of temporary manager and receiver.** (1) The temporary manager or receiver must protect the health, security and welfare of the residents for the duration of the temporary management or receivership. The temporary manager or receiver must perform all acts reasonably necessary to ensure residents' needs are met. Such acts may include, but are not limited to:

(a) For receivers, the powers in RCW 18.51.490;

(b) Correcting cited deficiencies;

(c) Hiring, directing, and managing all consultants and employees and discharging them for just cause, discharging the administrator of the nursing home, recognizing collective bargaining agreement, and settling labor disputes;

(d) Receiving and expending in a prudent and business-like manner all current revenues of the home provided priority will be given to debts and expenditures directly related to providing care and meeting residents' needs;

(e) Making necessary purchases, repairs, and replacements, provided such expenditures in excess of five thousand dollars are approved by the department, or in the case of a receiver, approved by court;

(f) Entering into contracts necessary for the operation of the nursing home, provided that, the court must approve contracts extending beyond the period of receivership;

(g) Preparing all department-required reports;

(h) Overseeing facility closure, when appropriate;

(i) Planning required relocation with residents and residents' legal representative, family, or significant others in conjunction with home and community services division field staff;

(j) Meeting regularly with and informing staff, residents, and residents' families or significant others of:

(i) Plans for correcting the cited deficiencies;

(ii) Progress achieved in correction of deficiencies;

(iii) Plans for facility closure and relocation; and

(iv) Plans for continued operation of the nursing home, including training of staff.

(2) The temporary manager or receiver must make a detailed monthly accounting of all expenditures and liabilities to the department and to the owner of the nursing home, and to the court when required.

(3) The receiver must consult the court in cases of extraordinary or questionable debts incurred prior to the receiver's appointment and will not have the power to close the home or sell any of the nursing home's assets without prior court approval.

(4) The temporary manager or receiver must comply with all applicable state and federal laws and regulations. If the nursing home is certified and is providing care to Medicaid clients, the temporary manager or receiver must become the Medicaid contractor for the duration of the temporary management or receivership period.

#### NEW SECTION

**WAC 388-97-4720 Termination of temporary management and receivership.** (1) The department will terminate temporary management:

(a) After three months unless good cause is shown to continue the temporary management. Good cause for continuing the temporary management exists when returning the nursing home to its former licensee would subject residents to a threat to health, safety, or welfare;

(b) When all residents are transferred and the nursing home is closed;

(c) When deficiencies threatening residents' health, safety, or welfare are eliminated and the former licensee agrees to department-specified conditions regarding the continued facility operation; or

(d) When a new licensee assumes control of the nursing home.

(2) The department may appoint an alternate temporary manager:

(a) When the temporary manager is no longer willing to serve as a temporary manager;

(b) If a temporary manager is not making acceptable progress in correcting the nursing home deficiencies or in closing the nursing home; or

(c) If the department determines the temporary manager is not operating the nursing home in a financially responsible manner.

(3) The receivership will terminate in accordance with RCW 18.51.450 and 18.51.460.

(4) The department may recommend to the court an alternate receiver be appointed:

(a) When the receiver is no longer willing to serve as a receiver; or

(b) If a receiver is not making acceptable progress in correcting the deficiencies in the nursing home.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-97-005	Definitions.	WAC 388-97-07050	Access and visitation rights.
WAC 388-97-012	Nursing facility care.	WAC 388-97-07055	Telephone.
WAC 388-97-017	Discrimination prohibited.	WAC 388-97-07060	Personal property.
WAC 388-97-027	Nursing facility admission and payment requirements.	WAC 388-97-07065	Roommates/rooms.
WAC 388-97-032	Discharge planning.	WAC 388-97-07070	Refusal of certain transfers.
WAC 388-97-037	Utilization review.	WAC 388-97-075	Chemical and physical restraints.
WAC 388-97-042	Individual transfer and discharge rights and procedures.	WAC 388-97-076	Prevention of abuse.
WAC 388-97-043	Transfer and discharge appeals for residents in Medicare or Medicaid certified facilities.	WAC 388-97-077	Resident protection program.
WAC 388-97-047	Discharge or leave of a nursing facility resident.	WAC 388-97-08010	Resident dignity and accommodation of needs.
WAC 388-97-051	Resident rights.	WAC 388-97-08020	Environment.
WAC 388-97-052	Free choice.	WAC 388-97-08030	Self-determination and participation.
WAC 388-97-053	Statutes implemented in resident decision making, informed consent and advance directives.	WAC 388-97-08040	Participation in resident and family groups.
WAC 388-97-055	Resident decision making.	WAC 388-97-08050	Activities.
WAC 388-97-060	Informed consent.	WAC 388-97-08060	Social services.
WAC 388-97-065	Advance directives.	WAC 388-97-08070	Pets.
WAC 388-97-07005	Notice of rights and services.	WAC 388-97-085	Resident assessment.
WAC 388-97-07010	Notification of changes.	WAC 388-97-090	Comprehensive plan of care.
WAC 388-97-07015	Protection of resident funds.	WAC 388-97-097	Dementia care.
WAC 388-97-07020	Privacy and confidentiality.	WAC 388-97-110	Quality of care.
WAC 388-97-07025	Work.	WAC 388-97-115	Nursing services.
WAC 388-97-07030	Self-administration of drugs.	WAC 388-97-120	Dietary services.
WAC 388-97-07035	Grievance rights.	WAC 388-97-12010	Meal provision.
WAC 388-97-07040	Examination of survey results.	WAC 388-97-12020	Individual dietary needs.
WAC 388-97-07045	Resident mail.	WAC 388-97-12030	Dietary personnel.
		WAC 388-97-12040	Dietary menus.
		WAC 388-97-12050	Diet orders.
		WAC 388-97-12060	Modified diets.
		WAC 388-97-12070	Tube feedings.
		WAC 388-97-125	Physician services.
		WAC 388-97-130	Specialized habilitative and rehabilitative services.
		WAC 388-97-135	Pharmacy services.
		WAC 388-97-140	Infection control.
		WAC 388-97-143	Influenza and pneumococcal immunizations.
		WAC 388-97-147	Surveillance, management and early identification of individuals with active tuberculosis.

WAC 388-97-155	Care of residents with active tuberculosis.	WAC 388-97-29540	Noise.
WAC 388-97-160	General administration.	WAC 388-97-29550	Accessibility in new construction.
WAC 388-97-162	Required notification and reporting.	WAC 388-97-29560	Types of new construction.
WAC 388-97-165	Staff and equipment.	WAC 388-97-310	ICF/MR exceptions to physical plant requirements.
WAC 388-97-170	Staff development.	WAC 388-97-315	Emergency power.
WAC 388-97-175	Medical director.	WAC 388-97-325	Location of the resident care unit.
WAC 388-97-180	Clinical records.		
WAC 388-97-185	Disaster and emergency preparedness.	WAC 388-97-32510	Required service areas on resident care units.
WAC 388-97-190	Quality assessment and assurance.	WAC 388-97-32520	Staff work stations on resident care units.
WAC 388-97-195	Policies and procedures.	WAC 388-97-32530	Call systems on resident care units.
WAC 388-97-202	Criminal history disclosure and background inquiries.	WAC 388-97-32540	Telephones on resident care units.
WAC 388-97-203	Disqualification from nursing home employment.	WAC 388-97-32550	Utility service rooms on resident care units.
WAC 388-97-204	Retaliation or discrimination prohibited.	WAC 388-97-32560	Drug facilities on resident care units.
WAC 388-97-205	Laundry services.	WAC 388-97-32570	Linen storage on resident care units.
WAC 388-97-212	Short-term care, including respite services and adult day or night care.	WAC 388-97-32580	Janitors closets on resident care units.
WAC 388-97-220	Dialysis services.		
WAC 388-97-247	Preadmission screening—Level I.	WAC 388-97-330	Resident rooms.
		WAC 388-97-33010	Capacity of resident rooms.
WAC 388-97-249	Advanced categorical determinations, not subject to preadmission screening—Level II.	WAC 388-97-33020	Size of resident rooms.
		WAC 388-97-33030	Privacy in resident rooms.
WAC 388-97-251	Preadmission screening—Level II.	WAC 388-97-33040	Resident isolation rooms.
		WAC 388-97-33050	Resident room size variance.
WAC 388-97-253	Resident review.	WAC 388-97-335	Resident room equipment.
WAC 388-97-260	Preadmission screening and resident review (PASRR) determination and appeal rights.	WAC 388-97-33510	Resident bed and bedside equipment.
		WAC 388-97-33520	Lockable storage space in a resident room.
WAC 388-97-285	Intermediate care facilities for the mentally retarded (ICF/MR).	WAC 388-97-33530	Wardrobes in a resident room.
WAC 388-97-295	Design.	WAC 388-97-33540	Seating in a resident room.
WAC 388-97-29510	New construction compliance.	WAC 388-97-33550	Lighting in resident rooms.
		WAC 388-97-33560	Call signal device in resident rooms.
WAC 388-97-29520	Fire standards and approval, and other standards.		
		WAC 388-97-33570	Cubicle curtains in resident rooms.
WAC 388-97-29530	Maintenance and repair.		

WAC 388-97-33580	Miscellaneous equipment in resident rooms in a new building or addition.	WAC 388-97-36070	Electrical outlets.
		WAC 388-97-365	Safety.
WAC 388-97-340	Resident toilet facilities or rooms.	WAC 388-97-36510	Safety—Poisons and non-medical chemicals.
WAC 388-97-34010	Resident bathing facilities or rooms.	WAC 388-97-36520	Safety—Storage of equipment and supplies.
WAC 388-97-34020	Locks in toilet and bathing facilities.	WAC 388-97-36530	Safety—Handrails.
WAC 388-97-345	Dining, dayrooms, and resident activity areas.	WAC 388-97-370	Water supply.
WAC 388-97-347	Laundry services and storage.	WAC 388-97-37010	Hot water.
WAC 388-97-350	Dementia care unit.	WAC 388-97-37020	Cross connections.
WAC 388-97-35010	Dining areas on a dementia care unit.	WAC 388-97-375	Pest control.
WAC 388-97-35020	Outdoor areas on a dementia care unit.	WAC 388-97-385	Sewage and liquid waste disposal.
WAC 388-97-35030	Indoor areas on a dementia care unit.	WAC 388-97-400	General new construction documents.
WAC 388-97-35040	Ambulation route on a dementia care unit in a new building or addition.	WAC 388-97-40010	Preliminary new construction documents.
WAC 388-97-35050	Physical plant on a dementia care unit.	WAC 388-97-401	Final new construction documents.
WAC 388-97-35060	Special egress control devices on a dementia care unit.	WAC 388-97-402	Preinstallation submissions for new construction.
WAC 388-97-352	Specialized rehabilitation.	WAC 388-97-403	New construction timelines.
WAC 388-97-353	Outpatient rehabilitation.	WAC 388-97-405	Exemptions to new construction requirements.
WAC 388-97-355	Food service areas.	WAC 388-97-410	State building code in new construction.
WAC 388-97-357	Storage of equipment.	WAC 388-97-415	Electrical codes and standards in new construction.
WAC 388-97-35710	Storage of resident room equipment in a new building or addition.	WAC 388-97-420	Elevator codes in new construction.
WAC 388-97-35720	General storage in new construction.	WAC 388-97-425	Local codes and ordinances in new construction.
WAC 388-97-360	Lighting.	WAC 388-97-430	Entrances and exits in new construction.
WAC 388-97-36010	Natural or artificial light.	WAC 388-97-43010	Lobbies in new construction.
WAC 388-97-36020	Outside lighting.	WAC 388-97-43020	Interview space in new construction.
WAC 388-97-36030	Light shields.	WAC 388-97-43030	Offices in new construction.
WAC 388-97-36040	Illumination levels in new buildings and additions.	WAC 388-97-43040	Inservice education space in new construction.
WAC 388-97-36050	Night lights in new construction.	WAC 388-97-43050	Staff areas in new construction.
WAC 388-97-36060	Switches in new construction.	WAC 388-97-455	Visiting and private space in new construction.

WAC 388-97-45510	Outdoor recreation space and walkways in new construction.		tion of, or refusal to renew a nursing home license.
WAC 388-97-460	Pools in new construction.	WAC 388-97-575	Appeal of the department's licensing decision.
WAC 388-97-46010	Pharmacies in new construction.	WAC 388-97-580	Management agreements.
WAC 388-97-465	Elevators in new construction.	WAC 388-97-585	Change of ownership.
WAC 388-97-46510	Stairways, ramps, and corridors in new construction.	WAC 388-97-590	Licensed bed capacity.
WAC 388-97-46520	Walking surfaces in a new building or addition.	WAC 388-97-595	Relocation of residents.
WAC 388-97-46530	Doors in new construction.	WAC 388-97-600	License relinquishment.
WAC 388-97-46540	Floor finishes in new construction.	WAC 388-97-605	Inspections and deficiency citation report.
WAC 388-97-46550	Carpets in new construction.	WAC 388-97-610	Plan of correction.
WAC 388-97-46560	Coving in new construction.	WAC 388-97-615	Acceptable and unacceptable plans of correction.
WAC 388-97-46570	Walls in new construction.	WAC 388-97-620	Informal department review.
WAC 388-97-46580	Accessories in new construction.	WAC 388-97-625	Notice and appeal rights.
WAC 388-97-46590	Miscellaneous in new construction.	WAC 388-97-630	Remedies.
WAC 388-97-470	Heating systems in new construction.	WAC 388-97-635	Criteria for imposing optional remedies.
WAC 388-97-47010	Cooling systems in new construction.	WAC 388-97-640	Severity and scope of deficiencies.
WAC 388-97-47020	Ventilation systems in new construction.	WAC 388-97-645	Separate deficiencies—Separate remedies.
WAC 388-97-480	Handwashing sinks in new construction.	WAC 388-97-650	Stop placement.
WAC 388-97-48010	Drinking fountains in new construction.	WAC 388-97-655	Amount of civil fine.
WAC 388-97-48020	Mixing valves or mixing faucets in new construction.	WAC 388-97-660	Civil fine accrual and due dates and interest.
WAC 388-97-48030	Spouts in new construction.	WAC 388-97-665	Civil penalty fund.
WAC 388-97-48040	Faucet controls in new construction.	WAC 388-97-670	Temporary management.
WAC 388-97-550	Initial nursing home license.	WAC 388-97-675	Receivership.
WAC 388-97-555	Nursing home license renewal.	WAC 388-97-680	Temporary managers and receivers—Application.
WAC 388-97-560	Department review of initial nursing home license applications.	WAC 388-97-685	Temporary managers and receivers—Considerations before appointment.
WAC 388-97-565	Department review of nursing home license renewals.	WAC 388-97-690	Duties and powers of temporary manager and receiver.
WAC 388-97-570	Reasons for denial, suspension, modification, revoca-	WAC 388-97-695	Termination of temporary management and receivership.

**WSR 08-15-007**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed July 3, 2008, 3:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-10-109.

Title of Rule and Other Identifying Information: Chapter 388-530 WAC, Outpatient drug program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 27, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will improve provider community understanding about the outpatient drug program, setting the limitations to the expansion of the smoking cessation benefit. The proposed rule will also explain elements of the over-the-counter (OTC) coverage that answer small clarifying questions that the department receives from the pharmacy provider community. The following is a list of the proposed changes to chapter 388-530 WAC:

- Expand the smoking cessation benefit.
- Correct typographical and grammatical errors.
- Reinstate and clarify rules for vitamin and mineral coverage which were inadvertently omitted from the previous pharmacy WAC revision.
- Reinstate and clarify rules for OTC coverage, which were inadvertently omitted from the previous pharmacy WAC revision.
- Clarify (broaden) fluoride coverage, including age of children receiving fluoride.
- Remove reference to the prior authorization requirements for the number of brand name drugs filled in a calendar month because the therapeutic consultation service has been eliminated.
- Include combination drugs in the Washington PDL that have been studied by the evidence-based practice center and have been reviewed by the P&T committee.
- Clarify that some preferred drugs may require prior authorization or have specific limitations and still be subject to the therapeutic interchange program.

Reasons Supporting Proposal: The department continues to support transparent outpatient drug program rules.

Statutory Authority for Adoption: RCW 74.04.050 and 74.08.090.

Statute Being Implemented: RCW 74.09.700, chapter 245, Laws of 2008 (SB 6421).

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jonell O. Blatt, P.O. Box 45504, Olympia, WA 98504-5504 [98504-5504], (360) 725-1571; Implementation and Enforcement: Dr. Siri Childs, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1564.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on small business affected by the rule changes. Therefore, the preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for all proposed significant legislative rules when the rules have only housekeeping changes (typographical errors, address or name changes, or clarification of existing rule language), and when the rules have content dictated by statute.

June 26, 2008

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

**WAC 388-530-1000 Outpatient drug program—General.** (1) The purpose of the outpatient drug program is to ~~((pay))~~ reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to department rules and subject to the limitations and requirements in this chapter.

(2) The department reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 388-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 388-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with ~~((prescribing))~~ prescriptive authority (see exceptions for family planning and emergency contraception for ~~((woman [women]))~~ women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(a)(v);

(c) Within the scope of an eligible client's medical assistance program;

(d) Medically necessary as defined in WAC 388-500-0005 and determined according to the process found in WAC 388-501-0165; and

- (e) Authorized, as required within this chapter;
- (f) Billed according to WAC 388-502-0150 and 388-502-0160; and
- (g) Billed according to the requirements of this chapter.
- (3) Coverage determinations are decided by the department:
- (a) According to federal guidelines;
- (b) In consultation with the drug use review (DUR board); or
- (c) As recommended by the department's medical consultants and the department's pharmacists.
- (4) The department may not ~~((pay))~~ reimburse for prescriptions written by healthcare practitioners whose application for a core provider agreement (CPA) has been denied, or whose CPA has been terminated.
- ~~((4))~~ (5) The department may not ~~((pay))~~ reimburse for prescriptions written by non-CPA healthcare practitioners who do not have a current core provider agreement with the department when the department determines there is a potential danger to the client's health and/or safety.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

**WAC 388-530-1050 Definitions.** In addition to the definitions and abbreviations found in WAC 388-500-0005, Medical definitions, the following definitions apply to this chapter.

**"Active ingredient"** - The chemical component of a drug responsible for a drug's prescribed/intended therapeutic effect. The department limits coverage of active ingredients to those with an eleven-digit national drug code (NDC) and those specifically authorized by the department.

**"Actual acquisition cost (AAC)"** - The net cost a provider paid for a drug, device, or drug-related supply marketed in the package size purchased. The ~~((ACC))~~ AAC includes discounts, rebates, charge backs and other adjustments to the price of the drug, device or drug-related supply, but excludes dispensing fees.

**"Administer"** - Includes the direct application of a prescription drug or device by injection, insertion, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

**"Appointing authority"** - For the evidence-based prescription drug program of the participating agencies in the state-operated health care programs, the following persons acting jointly: The administrator of the health care authority (HCA), the secretary of the department of social and health services (DSHS), and the director of the department of labor and industries (L&I).

**"Automated authorization"** - Adjudication of claims using submitted NCPDP data elements or claims history to verify that the department's authorization requirements have been satisfied without the need for the department to request additional clinical information.

**"Automated maximum allowable cost (AMAC)"** - The rate established by the department for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.

**"Average manufacturer price (AMP)"** - The average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies.

**"Average sales price (ASP)"** - The weighted average of all nonfederal sales to wholesalers net of charge backs, discounts, rebates, and other benefits tied to the purchase of the drug product, whether it is paid to the wholesaler or the retailer.

**"Average wholesale price (AWP)"** - The average price of a drug product that is calculated from wholesale list prices nationwide at a point in time and reported to the department by the department's drug file contractor.

**"Combination drug"** - A commercially available drug including two or more active ingredients.

**"Compendia of drug information"** includes the following:

- (1) The American Hospital Formulary Service Drug Information;
- (2) The United States Pharmacopeia Drug Information; and
- (3) DRUGDEX Information System.

**"Compounding"** - The act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

**"Deliver or delivery"** - The transfer of a drug or device from one person to another.

**"Dispense as written (DAW)"** - An instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

**"Dispensing fee"** - The fee the department sets to pay pharmacy providers for dispensing department-covered prescriptions. The fee is the department's maximum reimbursement for expenses involved in the practice of pharmacy and is in addition to the department's reimbursement for the costs of covered ingredients.

**"Drug evaluation matrix"** - The criteria-based scoring sheet used to objectively and consistently evaluate the food and drug administration (FDA) approved drugs to determine drug coverage status.

**"Drug file"** - A list of drug products, pricing and other information provided to the department and maintained by a drug file contractor.

**"Drug file contractor"** - An entity which has been contracted to provide regularly updated information on drugs, devices, and drug-related supplies at specified intervals, for the purpose of pharmaceutical claim adjudication. Information is provided specific to individual national drug codes, including product pricing.

**"Drug rebates"** - Reimbursements provided by pharmaceutical manufacturers to state Medicaid programs under the terms of the manufacturers' agreements with the Department of Health and Human Services (DHHS).

**"Drug-related supplies"** - Nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

**"Drug use review (DUR)"** - A review of covered outpatient drug use that assures prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

**"Effectiveness"** - The extent to which a given intervention is likely to produce beneficial results for which it is intended in ordinary circumstances.

**"Efficacy"** - The extent to which a given intervention is likely to produce beneficial effects in the context of the research study.

**"Emergency kit"** - A set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

**"Endorsing practitioner"** - A practitioner who has reviewed the Washington preferred drug list (PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

**"Estimated acquisition cost (EAC)"** - The department's estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler.

**"Evidence-based"** and **"evidenced-based medicine (EBM)"** - The application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a healthcare service is safe, effective and beneficial when making population-based coverage policies or individual medical necessity decisions.

**"Evidence-based practice center"** - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) of the U.S. government to conduct systematic reviews of all the evidence to produce evidence tables and technology assessments to guide health care decisions.

**"Federal upper limit (FUL)"** - The maximum allowable reimbursement set by the Centers for Medicare and Medicaid Services (CMS) for a multiple-source drug.

**"Four brand name prescriptions per calendar month limit"** - The maximum number of paid prescription claims for brand name drugs that the department allows for each client in a calendar month without a complete review of the client's drug profile.

**"Generic drug"** - A nonproprietary drug that is required to meet the same bioequivalency tests as the original brand name drug.

**"Inactive ingredient"** - A drug component that remains chemically unchanged during compounding but serves as the:

(1) Necessary vehicle for the delivery of the therapeutic effect; or

(2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

**"Ingredient cost"** - The portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

**"Innovator multiple source drug"** - As set forth in Section 1927 (k)(7)(A)(ii) of the Social Security Act, includes all covered outpatient drugs approved under a new drug application (NDA), product license approval (PLA), establishment license approval (ELA), or antibiotic drug

approval (ADA). A covered outpatient drug marketed by a cross-licensed producer or distributor under the approved new drug application will be included as an innovator multiple source drug when the drug product meets this definition.

**"Less than effective drug"** or **"DESI"** - A drug for which:

(1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

(2) The secretary of the Department of Health and Human Services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

**"Long-term therapy"** - A drug regimen a client receives or will receive continuously through and beyond ninety days.

**"Maximum allowable cost (MAC)"** - The maximum amount that the department reimburses for a drug, device, or drug-related supply.

**"Medically accepted indication"** - Any use for a covered outpatient drug:

(1) Which is approved under the federal Food, Drug, and Cosmetic Act; or

(2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter.

**"Modified unit dose delivery system"** (also known as blister packs or "bingo/punch cards") - A method in which each patient's medication is delivered to a nursing facility:

(1) In individually sealed, single dose packages or "blisters"; and

(2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

**"Multiple-source drug"** - A drug marketed or sold by:

(1) Two or more manufacturers or labelers; or

(2) The same manufacturer or labeler:

(a) Under two or more different proprietary names; or

(b) Under a proprietary name and a generic name.

**"National drug code (NDC)"** - The eleven-digit number the FDA and manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The NDC is composed of digits in 5-4-2 groupings. The first five digits comprise the labeler code assigned to the manufacturer by the Food and Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

**"Noncontract drugs"** - Are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services.

**"Nonpreferred drug"** - A drug that has not been selected as a preferred drug within the therapeutic class(es) of drugs on the preferred drug list.

**"Obsolete NDC"** - A national drug code replaced or discontinued by the manufacturer or labeler.

**"Over-the-counter (OTC) drugs"** - Drugs that do not require a prescription before they can be sold or dispensed.

**"Peer reviewed medical literature"** - A research study, report, or findings regarding the specific use of a drug that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

**"Pharmacist"** - A person licensed in the practice of pharmacy by the state in which the prescription is filled.

**"Pharmacy"** - Every location licensed by the state board of pharmacy in the state where the practice of pharmacy is conducted.

**"Pharmacy and therapeutic (P&T) committee"** - The independent Washington state committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the department, the committee may serve as the drug use review board provided for in WAC 388-530-4000.

**"Point-of-sale (POS)"** - A pharmacy claims processing system capable of receiving and adjudicating claims on-line.

**"Practice of pharmacy"** - The practice of and responsibility for:

- (1) Accurately interpreting prescription orders;
- (2) Compounding drugs;
- (3) Dispensing, labeling, administering, and distributing of drugs and devices;
- (4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;
- (5) Monitoring of drug therapy and use;
- (6) Proper and safe storage of drugs and devices;
- (7) Documenting and maintaining records;
- (8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and
- (9) Participating in drug use reviews and drug product selection.

**"Practitioner"** - An individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person authorized by state law as a practitioner.

**"Preferred drug"** - Drug(s) of choice within a selected therapeutic class that are selected based on clinical evidence of safety, efficacy, and effectiveness.

**"Preferred drug list (PDL)"** - The department's list of drugs of choice within selected therapeutic drug classes.

**"Prescriber"** - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

**"Prescription"** - An order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

**"Prescription drugs"** - Drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

**"Prospective drug use review (Pro-DUR)"** - A process in which a request for a drug product for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

**"Reconstitution"** - The process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

**"Retrospective drug use review (Retro-DUR)"** - The process in which drug utilization is reviewed on an ongoing periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or not medically necessary care.

**"Risk/benefit ratio"** - The result of assessing the side effects of a drug or drug regimen compared to the positive therapeutic outcome of therapy.

**"Single source drug"** - A drug produced or distributed under an original new drug application approved by the Food and Drug Administration (FDA).

**"Substitute"** - To replace a prescribed drug, with the prescriber's authorization, with:

- (1) An equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or
- (2) A therapeutically equivalent drug other than the identical base or salt.

**"Systematic review"** - A specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

**"Terminated NDC"** - [a] An eleven-digit national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

**"Therapeutic alternative"** - A drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

**"Therapeutic class"** - A group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

**"Therapeutic interchange"** - To dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See therapeutic interchange program (TIP).

**"Therapeutic interchange program (TIP)"** - The process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

**"Therapeutically equivalent"** - Drug products that contain different chemical structures but have the same effi-

cacy and safety when administered to an individual, as determined by:

- (1) Information from the Food and Drug Administration (FDA);
- (2) Published and peer-reviewed scientific data;
- (3) Randomized controlled clinical trials; or
- (4) Other scientific evidence.

**"Tiered dispensing fee system"** - A system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

**"True unit dose delivery"** - A method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

**"Unit dose drug delivery"** - True unit dose or modified unit dose delivery systems.

**"Usual and customary charge"** - The fee that the provider typically charges the general public for the product or service.

**"Washington preferred drug list (Washington PDL)"** - The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for purchase of drugs in state-operated health care programs.

**"Wholesale acquisition cost"** - The price paid by a wholesaler for drugs purchased from a manufacturer.

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

**AMENDATORY SECTION** (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

**WAC 388-530-3000 When the department requires authorization.** Pharmacies must obtain authorization for covered drugs, devices, or drug-related supplies in order to receive reimbursement as described in this section.

(1) The department's pharmacists and medical consultants:

(a) Have determined that authorization for the drug, device, or drug-related supply is required, as described in WAC 388-530-3100; or

(b) Have not yet reviewed the manufacturer's dossier of drug information submitted in the Academy of Managed Care Pharmacy (AMCP) format.

(2) The drug, device, or drug-related supply is in the therapeutic drug class on the Washington preferred drug list and the product is one of the following:

(a) Nonpreferred as described in WAC 388-530-4100; and

(i) The prescriber is a nonendorsing practitioner; or  
(ii) The drug is designated as exempt from the therapeutic interchange program per WAC 388-530-4100(6) or 388-530-4150 (2)(c);

(b) Preferred for a special population or specific indication and has been prescribed by a nonendorsing practitioner under conditions for which the drug, device, or drug-related supply is not preferred; or

(c) Determined to require authorization for safety.

(3) For the purpose of promoting safety, efficacy, and effectiveness of drug therapy, the department identifies cli-

ents or groups of clients who would benefit from further clinical review.

(4) The department designates the prescriber(s) as requiring authorization because the prescriber(s) is under department review or is sanctioned for substandard quality of care.

(5) Utilization data indicate there are health and safety concerns or the potential for misuse and abuse. Examples of utilization concerns include:

(a) Multiple prescriptions filled of the same drug in the same calendar month;

(b) Prescriptions filled earlier than necessary for optimal therapeutic response;

(c) Therapeutic duplication;

(d) Therapeutic contraindication;

(e) Excessive dosing, excessive duration of therapy, or subtherapeutic dosing as determined by FDA labeling or the compendia of drug information; and

(f) ~~((Number of brand prescriptions filled per calendar month; and~~

~~(g)))~~ Number of prescriptions filled per month in total or by therapeutic drug class.

(6) The pharmacy requests reimbursement in excess of the maximum allowable cost and the drug has been prescribed with instructions to dispense as written.

**AMENDATORY SECTION** (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

**WAC 388-530-3200 The department's authorization process.** (1) The department may establish automated ways for pharmacies to meet authorization requirements for specified drugs, devices, and drug-related supplies, or circumstances as listed in WAC 388-530-3000(4) including, but are not limited to:

(a) Use of expedited authorization codes as published in the department's prescription drug program billing instructions and numbered memoranda;

(b) Use of specified values in national council of prescription drug programs (NCPDP) claim fields;

(c) Use of diagnosis codes; and

(d) Evidence of previous therapy within the department's claim history.

(2) When the automated requirements in subsection (1) of this section do not apply or cannot be satisfied, the pharmacy provider must request authorization from the department before dispensing. The pharmacy provider must:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug, device, drug-related supply, or circumstance as listed in WAC 388-530-3000(4); and

(b) Keep documentation on file of the prescriber's medical justification that is communicated to the pharmacy by the prescriber at the time the prescription is filled. The records must be retained for the period specified in WAC 388-502-0020 (1)(c).

(3) When the department receives the request for authorization:

(a) The department acknowledges receipt:

(i) Within twenty-four hours if the request is received during normal state business hours; or

(ii) Within twenty-four hours of opening for business on the next business day if received outside of normal state business hours.

(b) The department reviews all evidence submitted and takes one of the following actions within fifteen business days:

(i) Approves the request;

(ii) Denies the request if the requested service is not medically necessary; or

(iii) Requests the prescriber submit additional justifying information.

(A) The prescriber must submit the additional information within ten days of the department's request.

(B) The department approves or denies the request within five business days of the receipt of the additional information.

(C) If the prescriber fails to provide the additional information within ten days, the department will deny the requested service. The department sends a copy of the request to the client at the time of denial.

(4) The department's authorization may be based on, but not limited to:

(a) Requirements under this chapter and WAC 388-501-0165;

(b) Client safety;

(c) Appropriateness of drug therapy;

(d) Quantity and duration of therapy;

(e) Client age, gender, pregnancy status, or other demographics; and

(f) The least costly therapeutically equivalent alternative ~~((between two or more products of equal effectiveness))~~.

(5) The department evaluates request for authorization of covered drugs, devices, and drug-related supplies that exceed limitations in this chapter on a case-by-case basis in conjunction with subsection (4) of this section and WAC 388-501-0169.

(6) If a provider needs authorization to dispense a covered drug outside of normal state business hours, the provider may dispense the drug without authorization only in an emergency. The department must receive justification from the provider within seventy-two hours of the fill date, excluding weekends and Washington state holidays, to be paid for the emergency fill.

(7) The department may remove authorization requirements under WAC 388-530-3000 for, but not limited to, the following:

(a) Prescriptions written by specific practitioners based on consistent high quality of care; or

(b) Prescriptions filled at specific pharmacies and billed to the department at the pharmacies' lower acquisition cost.

(8) Authorization requirements in WAC 388-530-3000 are not a denial of service.

(9) Rejection of a claim due to the authorization requirements listed in WAC 388-530-3000 is not a denial of service.

(10) When a claim requires authorization, the pharmacy provider must request authorization from the department. If the pharmacist fails to request authorization as required, the department does not consider this a denial of service.

(11) Denials that result as part of the authorization process will be issued by the department in writing.

(12) The department's authorization:

(a) Is a decision of medical appropriateness; and

(b) Does not guarantee payment.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

**WAC 388-530-4100 Washington preferred drug list (PDL).** Under RCW 69.41.190 and 70.14.050, the department, and other state agencies cooperate in developing and maintaining the Washington preferred drug list.

(1) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(3) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL, under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL, that have been studied by the evidence-based practice center(s) and reviewed by the P&T committee, and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as Written (DAW) rules under WAC 388-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug, which the department determines as covered, is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met department established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) Combination drugs ~~((are not on the Washington PDL and are considered for authorization according to WAC 388-530-3100))~~ that have been studied by the evidence-based practice center and have reviewed by the P&T committee may be included in the Washington PDL.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

**WAC 388-530-4150 Therapeutic interchange program (TIP).** This section contains the department's rules for the endorsing practitioner therapeutic interchange program (TIP). TIP is established under RCW 69.41.190 and 70.14.-

050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The therapeutic interchange program (TIP) applies only to drugs:

- (a) Within therapeutic classes on the Washington PDL;
- (b) Studied by the evidence-based practice center(s);
- (c) Reviewed by the P&T committee; and
- (d) Prescribed by an endorsing practitioner.

(2) TIP does not apply:

- (a) ~~((To drugs that require authorization;~~
- ~~(b) To drugs with specific limitations;~~
- ~~(c))~~ When the pharmacy and therapeutics (P&T) committee determines that TIP does not apply to the therapeutic class on the PDL; or

~~((c))~~ (b) To a drug prescribed by a nonendorsing practitioner.

(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner, under the provisions of chapter 182-50 WAC.

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's population or indication, and indicates that substitution is permitted, the pharmacist must:

- (a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and
- (b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) When an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

- (a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);
- (b) The pharmacist dispenses the nonpreferred drug as prescribed; and
- (c) The department does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.

(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage, and samples):

- (a) Antipsychotic;
- (b) Antidepressant;
- (c) Chemotherapy;
- (d) Antiretroviral;
- (e) Immunosuppressive; or
- (f) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

**WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies.** (1) The department covers:

(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100; ~~((and))~~

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-7500 which describes the drug rebate program; and

(v) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(g).

(b) Family planning drugs, devices, and drug-related supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

(iii) Fluoride varnish for children under the early and periodic screening, diagnosis, and treatment (EPSDT) program.

(d) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under chapter 388-543 WAC Durable medical equipment and supplies should be available at retail pharmacies.

(e) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

(f) Over-the-counter (OTC) drugs, without a prescription, to promote smoking cessation only for clients who are

eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(g) Prescription drugs to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(2) Coverage determinations for the department are decided by:

(a) The department in consultation with federal guidelines; or

(b) The drug use review (DUR) board; and

(c) The department's medical consultants and the department's pharmacist(s).

(3) The department does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

**WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies.** (1) The department does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction; or

(iv) For cosmetic purposes or hair growth(~~or~~

~~(v) To promote tobacco cessation, except as described in WAC 388-533-0400(2) tobacco cessation for pregnant women).~~

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete national drug code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(h) Free pharmaceutical samples.

(i) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a department-approved cessation program.

(2) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

## WSR 08-15-008

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 3, 2008, 3:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-05-004.

Title of Rule and Other Identifying Information: Chapter 388-845 WAC, Division of developmental disabilities home and community based services waivers.

The department of social and health services, aging and disability services administration, division of developmental disabilities (DDD), is amending rules governing chapter 388-845 WAC, DDD home and community based services waivers.

These rules are necessary to amend the procedures for administering the home and community based services waivers. They incorporate changes reflected in the waivers approved by the federal Centers for Medicare and Medicaid Services under Section 1915(c) of the Social Security Act. They also clarify the existing rules.

The major components of the chapter are:

- Adding definitions regarding employment services;
- Clarifying definitions of services provided;
- Revising grammar for clarity;
- Increasing the maximum dollar amounts for employment/day program services;
- Expanding and clarifying the limitations on services; and
- Specifically, limiting a personal care provider to sixty miles per month in mileage reimbursement.

Washington Administrative Code	Effect of Rule Change	Impact Small Business?
388-845-0001 Definitions -amended "CAP Waiver" - removed "Gainful employment" - added "Integrated settings" - added "Living wage" - added	This definition is obsolete. Adds the definition of "gainful employment." Adds the definition of "integrated settings." Adds the definition of "living wage."	No No No No
388-845-0045 - amended	Clarifies that needs refer to the identified health and welfare needs.	No
388-845-0205 - amended	Increases the maximum allowable amount for employment/day program services.	No
3388-845-0210 - amended	Increases the maximum allowable amount for employment/day program services and that this amount may be exceeded by exception to rule.	No
388-845-0600 - amended	Rewords the definition of community access services for clarity.	No
388-845-0605 - amended	Rewords who can be providers of community access services for clarity.	No
388-845-0610 - amended	Clarifies that community access is a service.	No
388-845-0750 - amended	Clarifies that community transition services may be available when moving from an institutional setting or from a provider operated setting to a community setting in which you live in your own home or apartment and are responsible for your living expenses.	No
388-845-0760 - amended	Clarifies that community transitional services may not be used for rent.	No
388-845-1200 - amended	Clarifies the definition of person-to-person services.	No
388-845-1205 - amended	Grammatical change only.	No
388-845-1210 - amended	Clarifies the limitations of person-to-person services.	No
388-845-1305 - amended	Clarifies that providers of personal care services must be contracted with ADSA rather than DDD.	No
388-845-1310 - amended	Clarifies that homecare agencies must be contracted with ADSA rather than DDD.	No
388-845-1400 - amended	Expands the definition of prevocational services.	No
388-845-1410 - amended	Expands the limitations of prevocational services to require prior approval, that these services are time-limited and when a review of these services may be required.	No
388-845-1600 - amended	Clarifies the definition of respite care.	No
388-845-1620 - amended	Expands the limitations on respite care regarding parent providers.	No
388-845-1650 - amended	Changes the term deviation to deviancy and expands the definition for clarity.	No
388-845-1655 - amended	Changes the term deviation to deviancy.	No
388-845-1660 - amended	Changes the term deviation to deviancy.	No
388-845-2100 - amended	Revises and expands the definition of supported employment services.	No
388-845-2105 - amended	Rewords the grammar for clarity.	No
388-845-2110 - amended	Clarifies the limitations on supported employment services.	No
388-845-2210 - amended	Adds a limitation of sixty miles per month for transportation services provided by a personal care provider.	Yes

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Courtesy Tire. A map or directions

are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 27, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are necessary to amend the procedures for administering the home and community based services waivers. They incorporate changes reflected in the waivers approved by the federal Centers for Medicare and Medicaid Services under Section 1915(c) of the Social Security Act. They also clarify the existing rules.

Reasons Supporting Proposal: By amending these rules, the department is able to claim additional federal Title XIX funding.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: Title 71A RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98504-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 404-0955; Implementation: Christie Seligman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98504-5310, e-mail seligcl@dshs.wa.gov, (360) 725-3445, fax (360) 404-0955; and Enforcement: Don Clintzman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98504-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

The division of developmental disabilities has analyzed the rule amendments and has determined that some personal care providers may be impacted by these changes. Specifically, reimbursement for transportation services is limited to sixty miles per month when provided by personal care providers.

This limitation is part of the letter of agreement with the Service Employees International Union (SEIU) and, as such, cannot be mitigated without a revision of the agreement.

DDD has concluded that no jobs will be created or lost due to the implementation of these rules.

**INVOLVEMENT OF INDUSTRY AND OTHER STAKEHOLDERS:** DDD filed a preproposal statement of inquiry (WSR 08-05-004) on February 6, 2008, and notified interested persons that it intended to develop and adopt rules regarding the division of developmental disabilities home and community based services waivers.

Additionally, DDD has received input from the SEIU and the counties responsible for providing employment services.

**EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS:** Since the amendments "make significant amendments to a policy or regulatory program" (see RCW 34.05.-328 (5)(c)(iii)), DDD has determined the rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(c), DDD has analyzed the probable costs and probable benefits of the amendments, taking into account both the qualitative and quantitative benefits and costs. Providers of personal care services and individuals eligible for personal care services from DDD may be impacted by these amended rules. DDD's analysis concludes that no other agencies or individuals are negatively impacted by these rules.

**COST OF COMPLIANCE:** To fairly consider the costs of compliance, DDD has comprehensively identified those changes to its rules, examining their impact on clients and agencies, weighing perceived costs against potential benefits.

As stated above, some personal care service providers may receive lower reimbursement for transportation services. Without amendments to the letter of agreement with SEIU, this potential lower reimbursement is unavoidable. DDD's analysis revealed that there are no other additional costs imposed by the rules.

#### BENEFITS:

- These rules do not impose additional costs for services.
- These rules do not impose additional costs to clients.
- Services to clients will improve as these rules establish clear definitions of services that are available. Clients will receive services for which they qualify.
- The department will be able to claim Title XIX match under Section 1915 (c) of the Social Security Act.

**CONCLUSION:** DDD has given careful consideration to the possible impact of the rules in chapter 388-845 WAC on those impacted by the rules.

DDD has concluded that no jobs will be created or lost due to the implementation of these rules.

DDD has concluded that these rules may impact some personal care providers by limiting the maximum number of miles that these providers may [be] reimbursed for. These limitations cannot be mitigated unless the letter of agreement between the department and SEIU is amended.

Even with the possible lower mileage reimbursement to personal care providers, DDD concludes that the benefits outweigh these costs.

Please contact Steve Brink at (360) 725-3416 or by e-mail at brinksc@dshs.wa.gov if you have any questions.

A copy of the statement may be obtained by contacting Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3416, fax (360) 404-0955, e-mail [brinksc@dshs.wa.gov](mailto:brinksc@dshs.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3416, fax (360) 404-0955, e-mail [brinksc@dshs.wa.gov](mailto:brinksc@dshs.wa.gov).

June 24, 2008  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0001 Definitions.** "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

~~("CAP waiver" means the community alternatives program waiver.)~~

"CARE" means the comprehensive assessment and reporting evaluation.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"DDD assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

"Department" means the department of social and health services.

"Employment/day program services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse, natural, adoptive or step parents; grandparents; brother; sister; step-brother; stepsister; uncle; aunt; first cousin; niece; or nephew.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means your present or intended place of residence.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual support plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

"Plan of care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs until the DDD assessment is administered and the individual support plan is developed.

"Providers" means an individual or agency who meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment, a benefit administered by the department intended to augment an individual's SSI.

"State funded services" means services that are funded entirely with state dollars.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled?** When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people from the statewide data base in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060(9).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0205 Basic waiver services.**

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1454 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed <del>\$(6634))</del> <u>6804</u> per year
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by the DDD assessment
	Personal care	Limits are determined by the CARE tool used as part of the DDD assessment

BASIC WAIVER	SERVICES	YEARLY LIMIT
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0210 Basic Plus waiver services.**

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment Adult foster care (adult family home) Adult residential care (boarding home)	May not exceed <del>\$(9694))</del> <u>9944</u> per year  <u>This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need</u>

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Determined per department rate structure Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0600 What ~~(is)~~ are community access services?** Community access ~~(is a)~~ services are provided in the community to enhance or maintain ~~((the person's competence,))~~ your community integration, physical or mental skills.

(1) If you are age sixty-two or older, ~~((this service is))~~ these services are available to assist you to participate in activities, events and organizations in the community in ways similar to others of retirement age.

(2) ~~((This service is))~~ These services are available ~~((to adults))~~ in the Basic, Basic Plus, and CORE waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0605 Who ~~(is a)~~ are qualified providers of community access services?** ~~((The))~~ Providers of community access services must be a county or an individual or agency contracted with a county or DDD.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0610 Are there limits to community access services I can receive?** The following limits apply to your receipt of community access services:

- (1) You must be age sixty-two or older.
- (2) You cannot be authorized to receive community access services if you receive prevocational services or supported employment services.
- (3) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0750 What are community transition services?** (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for ~~((an individual))~~ you to establish ~~((his or her))~~ your basic living arrangement) associated with moving from:

(a) An institutional setting to a community setting in which you are living in your own home or apartment, responsible for your own living expenses and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510; or

(b) A provider operated setting, such as a group home, staffed residential, or companion home in the community to a community setting in which you are living in your own home or apartment, responsible for your own living expenses, and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510.

(2) Community transition services include:

- (a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;
- (b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;
- (c) Moving expenses required to occupy ~~((and use a community domicile))~~ your own home or apartment;
- (d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and
- (e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

(3) Community transition services are available in the CORE and community protection waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-0760 Are there limitations to community transition services I can receive?** (1) Community transition services do not include:

- (a) Diversional or recreational items such as televisions, cable TV access, VCRs, MP3, CD or DVD players; and
- (b) Computers ~~((whose use is))~~ if primarily ~~((diversional or recreational))~~ used as a diversional or for recreation.

(2) ~~((Community transition services are available only to individuals that are moving from an institution to a community setting and are enrolled in either the CORE or community protection waiver))~~ Rent assistance is not available as a community transition service.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1200 What ~~((is-a))~~ are "person-to-person" services?** (1) "Person-to-person" ~~((is-a-day-program))~~ services are intended to assist ~~((participants))~~ you ~~((progress-toward))~~ achieve the outcome of gainful employment ~~((goals))~~ in an integrated setting through ~~((individualized-planning, skill instruction, information and referral, and one to one relationship building))~~ a combination of services, which may include:

(a) Development and implementation of self-directed employment services;

(b) Development of a person centered employment plan;

(c) Preparation of an individualized budget; and

(d) Support to work and volunteer in the community, and/or access the generic community resources needed to achieve integration and employment.

(2) ~~These~~ ~~((This))~~ services may be provided in addition to community access, prevocational services, or supported employment.

(3) ~~These~~ ~~((This))~~ services ~~((is))~~ are available ~~((to adults))~~ in all four HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1205 Who ~~((is-a))~~ are qualified providers of person-to-person services?** ~~((The))~~ Providers of "person-to-person" services must be a county or an individual or agency contracted with a county or DDD.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1210 Are there limits to the person-to-person service I can receive?** (1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school or age twenty-two or older to receive person-to-person services.

(2) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(3) These services will be provided in an integrated environment.

(4) Your service hours are determined by the level of assistance you need to reach your employment outcomes and might not equal the number of hours you spend on the job or in job related activities.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1305 Who are the qualified providers of personal care services?** (1) Qualified providers of personal care services may be individuals or licensed homecare agencies contracted with ~~((DDD))~~ ADSA.

(2) All individual providers and homecare agency providers must meet provider qualifications for in-home caregivers in WAC 388-71-0500 through 388-71-0556.

(3) Providers of personal care services for adults must comply with the training requirements in these rules governing Medicaid personal care providers in WAC 388-71-05670 through 388-71-05799.

(4) Natural, step, or adoptive parents can be the personal care provider of their adult child age eighteen or older.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-1310 Are there limits to the personal care services I can receive?** (1) You must meet the programmatic eligibility for Medicaid personal care in chapters 388-106 and 388-71 WAC governing Medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE).

(2) The maximum hours of personal care you may receive are determined by the CARE tool used as part of the DDD assessment.

(a) Provider rates are limited to the department established hourly rates for in-home Medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with ~~((DDD))~~ ADSA.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1400 What are prevocational services?** (1) Prevocational services occur in a segregated setting and are designed to prepare ~~((an-adult))~~ you ~~((paid-or-unpaid))~~ gainful employment in an integrated setting through ~~((the-teaching-of-such-concepts-as-compliance, attendance, task-completion, problem-solving-and-safety))~~ training and skill development.

(2) Prevocational ~~((These))~~ services are available in all four HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1410 Are there limits to the prevocational services I can receive?** The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

(2) ~~((You-are-not-expected-to-be-competitively-employed-within-one-year-(excluding-supported-employment-programs))~~ New referrals for prevocational services require

prior approval by the DDD regional administrator and county coordinator or their designees.

(3) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual vocational assessment will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals;

(c) Your expressed interest in competitive employment; and/or

(d) Recommendation by your individual support plan team.

~~((3))~~ (4) You ~~(cannot)~~ will not be authorized to receive prevocational services ~~(if you receive)~~ in addition to community access services or supported employment services.

~~((4))~~ (5) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(6) Your service hours are determined by the assistance you need to reach your employment outcomes.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1600 What is respite care?** Respite care is ~~(intended to provide)~~ short-term intermittent relief for persons normally providing care for waiver individuals. This service is available in the Basic, Basic Plus, and CORE waivers.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-1620 Are there limits to the respite care I can receive?** The following limitations apply to the respite care you can receive:

(1) The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) Prior approval by the DDD regional administrator or designee is required:

(a) To exceed fourteen days of respite care per month; or

(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your home or place of residence. This limitation does not prohibit your respite care provider from taking you into the community, per WAC 388-845-1610(2).

(3) Respite cannot replace:

(a) Daycare while ~~(a parent or guardian)~~ your parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

(4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

~~((6))~~ (7) ~~Your caregiver cannot provide~~ Your caregiver will not be paid to provide DDD services for you or other persons at the same time you receive respite services.

~~((6))~~ (8) If your personal care provider is your parent, your parent provider will not be paid to provide respite services ~~(for you or other persons during your respite care hours)~~ to any client in the same month that you receive respite services.

~~((7))~~ (9) DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

~~((7))~~ (10) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1650 What are sexual ~~(deviancy)~~ deviancy evaluations?** (1) Sexual ~~(deviancy)~~ deviancy evaluations;

(a) Are professional evaluations ~~(of sexual deviancy to determine the need for psychological, medical or therapeutic services)~~ that assess the person's needs and the person's level of risk of sexual offending or sexual recidivism;

(b) Determine the need for psychological, medical or therapeutic services; and

(c) Provide treatment recommendations to mitigate any assessed risk.

(2) Sexual deviancy evaluations are available in all four waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1655 Who is a qualified provider of sexual ~~(deviancy)~~ deviancy evaluations?** The provider of sexual deviancy evaluations must:

(1) Be a certified sexual offender treatment provider (SOTP); and

(2) Meet the standards contained in WAC 246-930-030 (education required prior to examination) and WAC 246-930-040 (professional experience required prior to examination).

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-1660 Are there limitations to the sexual ~~(deviancy)~~ deviancy evaluations I can receive?** (1)

~~(The)~~ Sexual deviancy evaluations must meet the standards contained in WAC 246-930-320.

(2) Sexual ~~((deviation))~~ deviancy evaluations require prior approval by the DDD regional administrator or designee.

(3) The costs of sexual ~~((deviation))~~ deviancy evaluations do not count toward the dollar limits for aggregate services in the Basic or Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-2100 What ~~((is))~~ are supported employment services?** Supported employment services provide ~~((s))~~ you with intensive ongoing ~~((individual or group))~~ support ~~((in a work setting to adults with developmental disabilities))~~ if you need individualized assistance to gain and/or maintain employment. ~~((This service is))~~ These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in all four HCBS waivers.

(1) Individual supported employment services include ~~((s))~~ activities needed to sustain ~~((paid work by individuals receiving waiver services, including supervision and training))~~ minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

(a) Creation of work opportunities through job development;

(b) On-the-job training;

(c) Training for your supervisor and/or peer workers to enable them to serve as natural supports to you on the job;

(d) Modification of your work site tasks;

(e) Employment retention and follow along support; and

(f) Development of career and promotional opportunities.

(2) ~~((Supported employment is conducted in a variety of settings; particularly work sites in which persons without disabilities are employed))~~ Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

(a) The activities outlined in individual supported employment services;

(b) Daily supervision by a qualified employment provider; and

(c) Groupings of no more than eight workers with disabilities.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-2105 Who ~~((is a))~~ are qualified providers of supported employment services?** ~~((A))~~ Supported employment services providers must be a county, or agencies or individuals contracted with a county or DDD.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-2110 Are there limits to the supported employment services I can receive?** The following limitations apply to your receipt of supported employment ser-  
VICES:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive supported employment services.

(2) Payment will be made only for the ~~((adaptations, supervision, training, and))~~ employment support ~~((with the activities of daily living))~~ you require as a result of your disabilities.

(3) Payment ~~((is excluded for))~~ for individual supported employment excludes the supervisory activities rendered as a normal part of the business setting.

(4) You ~~((cannot))~~ will not be authorized to receive supported employment services ~~((if you receive))~~ in addition to community access ~~((services))~~ or prevocational services.

(5) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.

(6) Your service hours are determined by the assistance you need to reach your employment outcomes and might not equal the number of hours you spend on the job or in job related activities.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-2210 Are there limitations to the transportation services I can receive?** The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a Medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace Medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(11) Transportation services require prior approval by the DDD regional administrator or designee.

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the Basic or Basic Plus waiver.

**WSR 08-15-017**  
**PROPOSED RULES**  
**SPOKANE REGIONAL**  
**CLEAN AIR AGENCY**

[Filed July 7, 2008, 11:56 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article IX—Asbestos Control Standards and SRCAA Regulation I, Article X, Section 10.09—Asbestos Notification Period and Fees.

Hearing Location(s): Spokane County Public Works Building, Lower Level Hearing Room, 1026 West Broadway, Spokane, WA 99201, on September 4, 2008, at 9:00 a.m.

Date of Intended Adoption: September 4, 2008.

Submit Written Comments to: Matt Holmquist, 1101 West College, Suite 403, Spokane, WA 99201, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by 4:30 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on August 26, 2008, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify and update definitions (e.g., remove reference to 40 C.F.R. Part 763.85 and 763.87 from the definition of asbestos survey); clarify what exceptions exist from asbestos survey requirements; allow for notifications and notification amendments to be filed electronically; better ensure that asbestos-containing material, which has been disturbed or will likely be disturbed, be properly removed or repaired; no longer require that alternative work plans be submitted to the agency for approval; adjust the notification waiting period for certain project categories.

Reasons Supporting Proposal: Provide clarification and allow for notifications to be filed electronically. Asbestos is a known human carcinogen. The goal is to prevent and minimize asbestos fiber release in order to protect public health.

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

Statute Being Implemented: Chapter 70.94 RCW and U.S.C. 7401 et seq., 42 U.S.C. 7412.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Spokane Regional Clean Air Agency (SRCAA), formerly known as Spokane County Air Pollution Control Authority (SCAPCA), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 1101 West College, Suite 403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

July 7, 2008

Matt Holmquist

Compliance Administrator

AMENDATORY SECTION

The following sections of Spokane Regional Clean Air Agency, Regulation I, Article IX are amended:

Section 9.01 Purpose

Section 9.02 Definitions

Section 9.03 Asbestos Survey Requirements

Section 9.04 Notification Requirements

Section 9.05 Asbestos Removal Requirements

Section 9.06 Procedures for Asbestos Projects

Section 9.07 Procedures for Nonfriable Asbestos-Containing Roofing Material

Section 9.08 Alternate Means of Compliance

Section 9.09 Disposal of Asbestos-Containing Waste Material

Section 9.10 Compliance With Other Rules

**ARTICLE IX**

**ASBESTOS CONTROL STANDARDS**

**ADOPTED: September 5, 1991**

**REVISED: (~~July 12, 2007~~) September 4, 2008**

**EFFECTIVE: (~~August 12, 2007~~) October 7, 2008**

**SECTION 9.01 PURPOSE**

The Board of Directors of the Spokane Regional Clean Air Agency recognizes that airborne asbestos is a serious health hazard. Asbestos fibers released into the air can be inhaled and cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board of Directors has adopted this regulation to control asbestos emissions primarily resulting from asbestos (~~removal~~) projects, renovation projects, and demolition projects in order to protect the public health.

**SECTION 9.02 DEFINITIONS**

A. ASBESTOS Building Inspector means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E(~~(1-B-3))~~) and whose certification is current.

B. ASBESTOS Project Designer means a person who has successfully completed the training requirements for an

abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E(~~(-I-B-5-))~~) and whose certification is current.

C. Asbestos means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

D. Asbestos-Containing Material means any material containing more than one percent (1%) asbestos as determined using the method specified in ~~((EPA regulations Appendix A, Subpart F, 40 CFR Part 763, Section I, Polarized Light Microscopy))~~ the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA. It includes any material presumed ~~((or assumed))~~ to be asbestos-containing.

E. Asbestos-Containing Waste Material means any waste that contains or is contaminated with asbestos-containing material, except for nonfriable asbestos-containing roofing that remains nonfriable. Asbestos-containing waste material includes asbestos-containing material that has been disturbed or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable.

G. Asbestos Survey means a written report resulting from a thorough inspection performed pursuant to Section 9.03 of this Regulation. ~~((using the procedures and analysis in EPA regulations (40 CFR 763.85, 40 CFR 763.86 and 40 CFR 763.87), or an alternate asbestos survey method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos. In addition to requirements in 40 CFR 763.85, 40 CFR 763.86 & 40 CFR 763.87 asbestos surveys shall contain the approximate quantity and location of each material determined to contain asbestos and a schematic showing the locations where each bulk asbestos sample was taken. The condition and friability of asbestos-containing materials shall also be described in the asbestos survey. Any material presumed or assumed to be asbestos-containing material need not be sampled and tested for asbestos, but materials presumed to be asbestos-contain-~~

~~ing material shall be identified as such in the asbestos survey.))~~

H. Competent Person means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

I. Contiguous means properties adjoining one another or in close proximity (e.g., structures separated only by a public roadway) that have the same property owner.

J. Component means any equipment, pipe, structural member, or other item or material.

K. Controlled Area means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

L. Demolition means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. Pursuant to the EPA asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, it includes wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations.

M. Disposal Container means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

N. Friable Asbestos-Containing Material means asbestos-containing material that, when dry, can be crumbled, ~~((disintegrated,))~~ pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes ~~((+e,))~~ asbestos-containing material that, when dry, can be: ~~((+e))~~

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; ~~((b) disintegrated or p)~~

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or ~~((e)†)~~

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal).

Such materials include, but are not limited to, thermal system insulation, surfacing material, Nicolet roofing paper, and cement asbestos products.

O. Leak-Tight Container means a dust-tight and liquid tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

P. Nonfriable Asbestos-Containing Material means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, ~~((disintegrated,))~~ pulverized, or

reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

Q. Nonfriable Asbestos-Containing Roofing means an asbestos-containing roofing material where all of the following apply:

1. The roofing is a nonfriable asbestos-containing material (~~((not asphalt coated asbestos felting or similar built-up roofing))~~);

2. The roofing is in good condition and is not peeling, cracking, or crumbling;

3. The roofing binder is petroleum-based and asbestos fibers are suspended in that base with individual fibers still encapsulated; and

4. The roofing binder exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing and disposing of it.

R. Owner-Occupied, Single-Family Residence means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g., utility bills). This term includes houses, mobile homes, trailers, detached garages, outbuildings, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property, multiple unit buildings (e.g., duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g., a business being operated out of a residence), structure, or installation that contains a residential unit. This term does not include structures used for structural fire training exercises (~~((performed pursuant to))~~ (Regulation I, Article VI, Section 6.01 and 40 CFR Part 61, Subpart M).

S. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, ~~((or))~~ demolition, or property subject to Article IX of this Regulation. It also includes the person(s) submitting ~~((signing an NOI))~~ a notification pursuant to Section 9.04 of this Regulation and/or performing the asbestos survey.

T. Person means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

U. Renovation means altering a structure or component in any way, other than demolition.

V. Structure means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, foundations, equipment, and other parts and miscellaneous components. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

W. Surfacing Material means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fire-proofing material on structural members, or other material on surfaces for decorative purposes.

X. Suspect Asbestos-Containing Material means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g., as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993).

Y. Thermal System Insulation means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

Z. Visible Emissions means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AA. Wallboard System means joint compound and tape specifically applied to cover nail holes, ~~((cracks))~~ joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. Wallboard systems where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

BB. Waste Generator means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

CC. Workday means Monday through Friday 8:00 a.m. to 4:30 p.m. excluding legal holidays observed by the ~~((Authority))~~ Agency.

~~((DD. Work Schedule Fax Program means a program whereby the property owner or owner's agent provides prior notice by facsimile to the Authority of the specific location and date of the asbestos project or demolition on a form approved by the Authority.))~~

**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.

### SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS

~~((Except as provided below, an AHERA building inspector shall perform an asbestos survey as defined in Section 9.02.G of this Regulation prior to renovation or demolition.~~

#### A. Requirements for Renovations:

~~Except as provided for in Section 9.03.A.1, Prior to performing any renovation activity the property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials in the work area. The property owner or the owner's agent shall obtain an asbestos survey of any suspect asbestos-containing materials. The asbestos survey shall be performed by an AHERA (Asbestos Hazard Emergency Response Act) building inspector.~~

#### 1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant:

~~Asbestos surveys associated with the renovation of an owner-occupied, single-family residence by the owner-occupant, need not be performed by an AHERA building inspector and need not be an asbestos survey as defined in Section~~

9.02.G of this Regulation. An owner-occupant's assessment for the presence of asbestos prior to renovation of an owner-occupied, single-family residence will suffice. A written asbestos survey is not required.

~~2. Asbestos Survey Posting.~~

~~Except as provided for in Section 9.03.A.1<sub>2</sub> of this Regulation, a summary of the results of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.~~

~~3. Asbestos Survey Retention.~~

~~The property owner or owner's agent and the AHERA building inspector that performed the survey, when applicable, shall retain a complete copy of the asbestos survey for at least 2 years and make it available to the Authority upon request.~~

~~4. Determination of the Presence of Asbestos-Containing Material.~~

~~a. Except as provided for in Section 9.03.A.1<sub>2</sub>, only an AHERA building inspector may determine, by performing an asbestos survey as defined in Section 9.02.G, that a suspect material does not contain asbestos.~~

~~b. It is not required that an AHERA building inspector evaluate any material presumed to be asbestos containing.~~

~~B. Requirements for Demolition.~~

~~It shall be unlawful for any person to cause or allow any demolition, except as provided by RCW 52.12.150(6) unless prior to demolition, the property owner or the owner's agent obtains an asbestos survey, performed by an AHERA building inspector.~~

~~1. Asbestos Survey Posting.~~

~~Except as provided for in Section 9.03.A.1<sub>2</sub> of this Regulation, a summary of the results of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.~~

~~2. Asbestos Survey Retention.~~

~~The property owner or owner's agent and the AHERA building inspector that performed the survey when applicable shall retain a complete copy of the asbestos survey for at least 2 years and make it available to the Authority upon request.~~

~~3. Determination of the Presence of Asbestos-Containing Material.~~

~~a. Except as provided by RCW 52.12.150(6), only an AHERA building inspector may determine by performing an asbestos survey that a suspect material does not contain asbestos.~~

~~b. It is not required that an AHERA building inspector evaluate any material presumed to be asbestos containing.))~~

~~A. Except as provided for in Section 9.03.F of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.~~

~~B. Asbestos Survey Procedures.~~

~~1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 CFR 763.86 or an alternate asbestos survey method pursuant to Section~~

9.03.F of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a suspect asbestos-containing material does not contain asbestos. Per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86, the required number of bulk asbestos samples must be collected and analyzed pursuant to Section 9.02.D of this Regulation to determine that material does not contain asbestos.

3. Bulk samples must be analyzed for asbestos pursuant to Section 9.02.D of this Regulation by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).

C. Asbestos Survey Report.

Except where additional information is required pursuant to EPA Regulation 40 CFR Part 763.85, asbestos surveys shall contain, at a minimum, all of the following information:

1. General Information.

a. Date that the inspection was performed;

b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;

c. Site address(es)/location(s) where the inspection was performed;

d. Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);

e. The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;

f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);

g. Identify all suspect-asbestos containing materials and their locations, except where limitations of the asbestos survey identified in Section 9.03.C.1.f (above) prevented such identification;

h. Identify materials presumed to be asbestos-containing material;

i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other description);

j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

i. Laboratory name, address and NVLAP certification number;

ii. Bulk sample numbers;

iii. Bulk sample descriptions;

iv. Bulk sample results showing asbestos content; and

v. Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

a. Describe the color of each asbestos-containing material;

b. Identify the location of each asbestos-containing material (e.g., schematic and/or other description); and

c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet).

((C. Alternate Asbestos Survey Method.

An alternate asbestos survey method shall be submitted to the Control Officer for approval prior to sampling, at a minimum, on occasions when conventional sampling methods required in Section 9.02.G of this Regulation can not or will not be exclusively performed. For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof, rubble or debris piles, and ash or soil, because they are not structures with intact materials and identifiable homogeneous areas. Alternate asbestos survey methodology may be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically involves random sampling according to a grid pattern, but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.)

D. Asbestos Survey Posting.

Except as provided for in Section 9.03.F of this Regulation, a complete copy of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. If an AHERA Building Inspector determines there are no suspect asbestos-containing materials in the work area, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.

E. Asbestos Survey Retention.

The property owner or owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), shall retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and make it available to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g., sample and test) any material presumed to be asbestos-containing material. All other requirements of this Regulation remain in effect.

3. Alternate Asbestos Survey

A written alternate asbestos survey method shall be prepared and used on occasions when conventional sampling methods required in EPA regulations 40 CFR 763.86 can not be exclusively performed (all other asbestos survey requirements in Section 9.03 of this Regulation apply). For example, conventional sampling methods may not be possible on

fire damaged buildings or portions thereof, rubble or debris piles, and ash or soil, because they are not structures with intact materials and identifiable homogeneous areas. Alternate asbestos survey methodology may be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g., random composite bulk samples at incremental 1" depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

4. Demolition by Fire Fighting Instruction Fires.

Pursuant to RCW 52.12.150(6), asbestos surveys need not be performed by an AHERA Building Inspector. However, pursuant to Section 9.04.A.6 of this Regulation, the project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

5. Underground Storage Tanks.

An asbestos survey is not required prior to renovation or demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the renovation or demolition of an underground storage tank, work shall cease until it is determined pursuant to Section 9.03.B and C of this Regulation whether or not the suspect asbestos-containing material is asbestos-containing material. All other requirements of this Regulation remain in effect.

**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.

**SECTION 9.04 NOTIFICATION REQUIREMENTS**

**A. General Requirements.**

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency (~~((Authority on approved forms by the property owner or owner's agent))~~), in accordance with the ~~((advance))~~ notification waiting period requirements ~~((contained))~~ in Article X, Section 10.09 of this Regulation. The notification must be submitted by the property owner or owner's agent on approved forms through the Agency's website, submitted at the Agency's place of business in person or via U.S. mail, or for those contractors using the Agency's prepayment account, notifications may be submitted via facsimile. Prepayment accounts will no longer be offered and notifications submitted via facsimile will no longer be accepted once the Agency begins accepting notifications via its website.

**1. When the Notification Waiting Period Begins**

The ~~((advance))~~ notification waiting period shall begin on the workday a complete notification is received by the ~~((Authority))~~ Agency and shall end after the ~~((advance))~~ notification waiting period in Section 10.09 has passed (e.g., The

((~~advance~~)) notification waiting period for a notification submitted after 4:30 p.m. on a Friday shall not begin until the following Monday, provided Monday is not a holiday observed by the ((~~Authority~~)) Agency. A 10-day notification period means work on an asbestos project or demolition can begin on day 11.)

## 2. Asbestos Project Duration

The duration of an asbestos project shall be commensurate with the amount of work involved.

~~((3. Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project.~~

4. Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

5. Notification is not required for renovations involving owner-occupied, single-family residences. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

6. Notification is required for all demolitions involving structures with a projected roof area greater than 120 square feet, even if no asbestos-containing material is present. All other demolition requirements remain in effect.

7. A copy of the notification, all amendments to the notification, the asbestos survey, and any Order of Approval for an alternate means of compliance shall be made available for inspection at all times at the asbestos project or demolition site.

## 8) 3. Multiple Asbestos Projects or Demolitions.

Notification for multiple asbestos projects or demolitions may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to contiguous properties having the same owner.

b. The work will be performed by the same abatement and/or demolition contractor.

c. The notification includes the site address for each structure. ((~~A work plan is submitted that includes:~~))

d. The notification includes the amount and type of asbestos-containing material in each structure.

~~((1) a map of the structures involved in the project;~~

~~2) the site address for each structure;~~

~~3) the amount and type of asbestos-containing material in each structure;~~

~~4) the schedule for performing asbestos project and demolition work (for projects where a detailed work schedule cannot be provided, the property owner or owner's agent shall participate in the Authority's work schedule fax program and will continue to participate in the program throughout the duration of the project);~~

~~5) a copy of the asbestos survey for all structures that do not contain asbestos-containing material; and~~

~~6) any other information requested by the Authority.~~

9. The property owner or owner's agent shall retain a copy of all asbestos notification records for at least 2 years

~~and make them available to the ((Authority)) Agency upon request.~~

## 10. Fee for Work Done Without Notification.

~~Where any work on an asbestos project or demolition, for which notification is required, is commenced or performed prior to making notification, except as provided for in Section 9.04.C, the Control Officer may conduct a compliance investigation and assess a fee. In such case, a compliance investigation fee, as established in Section 10.09(e) of this Regulation, shall be paid by the applicant in addition to the fees required in Section 10.09(a) of this Regulation. Payment of fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.~~

## ~~11) 4. Notification Expiration.~~

~~Notifications are valid for no more than ((twelve months)) 365 days from the earliest original notification start date. A new notification shall be submitted to the ((Authority)) Agency for work to be performed beginning or continuing more than ((twelve months)) 365 days from the earliest original notification start date and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09((~~a~~)) of this Regulation.~~

## 5. Record Keeping.

a. A copy or printout of the notification, all amendments to the notification, and the complete asbestos survey shall be made available for inspection at all times at the asbestos project or demolition site.

b. The property owner or owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the Agency upon request.

## 6. Notification Exceptions.

### a. Asbestos Project Thresholds.

Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project (per structure, per calendar year).

b. Nonfriable Asbestos-Containing Materials: Caulking, Window-Glazing, Roofing.

Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window-glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

### c. Owner-Occupied, Single-Family Residences.

Notification is not required for renovations involving owner-occupied, single-family residences. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

### d. Underground Storage Tanks.

Notification is not required for demolition of underground storage tanks with no asbestos. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

e. Demolition of Structures With a Projected Roof Area ≤ 120 Square Feet.

Notification is not required for demolition of structures with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article IX.

f. Demolition by Fire Fighting Instruction Fires.

The project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

g. Abandoned Asbestos-Containing Material.

The Control Officer may waive part or all of the notification period and project fee, by written authorization, for disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other requirements remain in effect.

h. Emergencies.

The advance notification period may be waived if an asbestos project or demolition must be conducted immediately because of any of the following:

- i. There was a sudden, unexpected event that resulted in a public health or safety hazard;
- ii. The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;
- iii. Asbestos-containing materials were encountered that were not identified during the asbestos survey; or
- iv. The project must proceed to avoid imposing an unreasonable financial burden.

B. Amendments.

1. Mandatory Amendments.

Amendments must be submitted by the person or party that originally submitted the notification or, if applicable, submitted the most recent notification amendment on file with the Agency, unless that person or party explicitly names another person or party that is authorized to file an amendment to the original notification or most recent amendment filed with the Agency. An amendment shall be submitted to the ((Authority)) Agency for any of the following changes in notification, must be submitted in accordance with the advance notification requirements in Section 10.09 of this Regulation (e.g., In order to change the asbestos project start date or place a project "on hold", an amendment must be submitted prior to the asbestos project start date listed on the original notification or, if applicable, prior to the start date submitted on the most recent notification amendment on file with the Agency.), and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09((a)) of this Regulation:

a. Project Type.

Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition) or cancellation of a project filed under a notification,((:))

b. Job Size.

Increases in the job size category which increase the fee or changes the advance notification period,((:)) For an amendment where the project type or job size category is

associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted.

c. Type of Asbestos.

Changes in the type of asbestos-containing material that will be removed,((:))

d. Start Date.

Changes in the asbestos project start date or demolition start date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new start date has not been confirmed) or canceling a notification altogether,((:))

e. Completion Date.

Changes in the asbestos project or demolition completion date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new end date has not been confirmed),((:))

~~(f. Work Schedule.~~

Changes in the asbestos project work schedule, including days and hours of work (Asbestos contractors or property owners participating in the Authority's work schedule fax program, as defined in this Regulation, are not required to submit amendments for work schedule changes such as days of the week and hours of the day occurring between the asbestos project start and completion date); or

g. An amendment must be submitted to the Authority for any other change in a notification (e.g., changing a demolition contractor-))

2. Opportunity for Amendment.

a. Last Asbestos Removal Completion Date on Record.

In no case shall an amendment be accepted ((and approved)) by the ((Authority)) Agency if it is filed after the last completion date on record. In the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the ((Authority)) Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09((a)) of Article X of this Regulation.

b. Canceled Notification.

Once a property owner or owner's agent cancels a notification, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a new, complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency on approved forms through the Agency's website or in person at the Agency's place of business by the property owner or owner's agent, in accordance with the advance notification period requirements contained in Article X, Section 9.04.A and 10.09 of this Regulation).

c. Project Sites.

Amendments may not be used to add or change project site addresses listed on a previously submitted notification.

~~(C. Emergencies.~~

1. Advance Notice.

The Control Officer may waive the advance notification period, if the property owner or owner's agent submits a written request, demonstrating to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

- a. ~~There was a sudden, unexpected event that resulted in a public health or safety hazard;~~
- b. ~~The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;~~
- c. ~~Asbestos-containing materials were encountered that were not identified during the asbestos survey; or~~
- d. ~~The project must proceed to avoid imposing an unreasonable financial burden.~~

#### 2. ~~When Advance Notice is Not Possible~~

~~Advance notification shall not be required to commence an asbestos project or demolition which would normally require advance notification pursuant to Section 9.04 and 10.09 of this Regulation, if all of the following criteria are met:~~

- a. ~~A notification shall be filed with the Authority not later than the first working day after the asbestos project or demolition is commenced and shall be accompanied by a written request from the property owner or owner's agent, demonstrating to the Control Officer that an asbestos project or demolition was conducted without advance notification because of life endangerment or other serious consequences.~~
- b. ~~For purposes of compliance with Section 9.04 and 10.09, the Control Officer shall determine whether the asbestos project or demolition, commenced before approval by the Authority, meets the requirements of this subsection.)~~

**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.

### SECTION 9.05 ASBESTOS REMOVAL REQUIREMENTS (~~PRIOR TO RENOVATION OR DEMOLITION~~)

#### A. ~~Removal of Asbestos ((Prior to Renovation or Demolition)).~~

1. ~~Except as provided in Sections 9.08.B-C((9.05.B, 9.07.B (Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition), and 9.08.C.)) of this Regulation, it shall be unlawful for any person to cause or allow any renovation, ((or)) demolition, or other action or inaction that may:~~

- a. ~~((d))Disturb asbestos-containing material without first removing all asbestos-containing material in accordance with the requirements of this Regulation; or~~
- b. ~~((d))Damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this Regulation.~~

2. ~~Except as provided in Sections ((9.07.B and)) 9.08.A-C of this Regulation, it shall be unlawful for any person to create or allow a condition, involving an existing structure, that will likely result in the disturbance of asbestos-containing material (e.g., not removing all asbestos-containing material in a structure scheduled for demolition; ((or partially)) not completely removing asbestos-containing material identified for removal by the last asbestos removal completion date on record; ((and)) leaving ((remaining)) asbestos-containing material in a state that makes it more susceptible to being disturbed; asbestos-containing material that is peeling, delaminating, crumbling, blistering, or other similar condition; etc.).~~

3. ~~Asbestos-containing material need not be removed from a component if((, prior to renovation or demolition,)) the component is removed for reuse, stored for reuse, or transported for reuse without disturbing or damaging the asbestos-containing material.~~

4. ~~Suspect asbestos-containing material that has been disturbed must be removed as soon as possible and disposed of in accordance with this Regulation unless an asbestos survey, performed in accordance with Section 9.03 of this Regulation, demonstrates that suspect asbestos-containing materials are not asbestos-containing materials.~~

#### ~~((B. Exception for Hazardous Conditions.~~

~~Asbestos-containing material need not be removed prior to a demolition, if the property owner or owner's agent demonstrates to the Control Officer that it is not accessible (e.g., asbestos survey cannot be performed or asbestos cannot be removed prior to demolition) because of hazardous conditions such as: structures or buildings that are structurally unsound or in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner or owner's agent must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition and disposal of the asbestos-containing waste material. The Exception for Hazardous Conditions plan (i.e., hazardous conditions determination and procedures) shall be submitted to the Authority for approval with a complete notification pursuant to Section 9.04 of this Regulation.~~

1. ~~At a minimum, all of the following procedures shall be incorporated into the Exception for Hazardous Conditions plan and followed by the owner or owner's agent unless equally effective work practices and procedures are submitted to, and approved by, the Authority:~~

- a. ~~Presume that the structure contains friable and nonfriable asbestos-containing material and treat all demolition debris as asbestos-containing waste material;~~
- b. ~~Follow the procedures for asbestos projects in Section 9.06 of this Regulation;~~
- c. ~~Remove and dispose of a minimum of six inches of soil beneath and six feet of soil around the demolition debris pile as asbestos-containing waste material or submit a sampling plan for approval, for demonstrating that soil has not been contaminated from the asbestos project; and~~
- d. ~~Make air monitoring data available for the Authority to review, upon request, for 2 years from the date the Control Officer approves the plan.)~~

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

### SECTION 9.06 PROCEDURES FOR ASBESTOS PROJECTS

#### A. Training Requirements.

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection

Agency (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Asbestos (~~(Removal)~~) Project Work Practices.

Except as provided in Sections 9.08.A-C (~~(9.07.A (Method of Removal for Nonfriable Asbestos-Containing Roofing Materials) and Section 9.08 (Alternate means of Compliance))~~) of this Regulation, it shall be unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project shall be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or (~~(temporarily)~~) off-site).

2. Negative Pressure Enclosure.

If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material (~~(surfaces)~~) exposed during removal shall be (~~(wetted)~~) immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

(~~(4)~~) b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. (~~(They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers.)~~) Any dry surfaces of nonabsorbent asbestos-containing material exposed during removal shall be (~~(wetted)~~) immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

(~~(5)~~) c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

(~~(6)~~) 4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

a. All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers.

(~~(7)~~) b. All asbestos-containing waste material resulting from an asbestos project shall be (~~(kept wet and shall be)~~) sealed in leak-tight containers (~~(while still wet,)~~) as soon as possible after removal, but no later than the end of each work shift.

(~~(8)~~) c. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

(~~(9)~~) d. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

(~~(10)~~) e. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(~~(11)~~) f. (~~(The a)~~) Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a waste disposal site approved to accept asbestos-containing waste material.

(~~(12)~~) 6. Visible Emissions

No visible emissions shall result from an asbestos project.

**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.

**SECTION 9.07 PROCEDURES FOR NONFRIABLE ASBESTOS-CONTAINING ROOFING MATERIAL**

A. Method of Removal for Nonfriable Asbestos-Containing Roofing Material.

All of the following asbestos removal methods shall be employed for nonfriable asbestos-containing roofing material as defined in Section 9.02 of this Regulation:

1. The nonfriable asbestos-containing roofing material shall be removed using methods, such as spud bar and knife, which do not render the material friable. Removal methods such as sanding, grinding, abrading, or sawing shall not be employed unless the material that is disturbed is handled (~~(as friable asbestos-containing material)~~) in accordance with Section 9.06.B of this Regulation.

2. After being removed, (~~(N)~~) nonfriable asbestos-containing roofing material shall be transferred to a disposal container as soon as possible after removal, (~~(- but no later than the)~~) In no case shall the transfer occur later than the end of each work shift.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

4. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

~~((B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.~~

~~Nonfriable asbestos-containing roofing material may be left in place during demolition, except for demolition by burning, if all of the following are met:~~

~~1. A signed and dated written determination is submitted to SRCAA with the notification for demolition, and includes all of the following:~~

~~a. the person making the determination is an AHERA Project Designer;~~

~~b. a summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;~~

~~c. a summary of the work practices and engineering controls that will be used;~~

~~d. a determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and~~

~~e. any other information requested by the Authority.~~

~~2. The proposal is approved by the Authority.~~

~~3. The owner or owner's agent complies with any conditions of approval.)~~

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

#### SECTION 9.08 ALTERNATE MEANS OF COMPLIANCE

~~((The plan for using an alternate means of compliance as provided below shall be submitted to the Authority for Approval with a complete notification pursuant to Section 9.04 of this Regulation.~~

~~A. Friable Asbestos-Containing Material Removal Alternative.~~

~~An alternate asbestos removal method may be employed for friable asbestos-containing material if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to the Control Officer that the planned control method will be equally as effective as the work practices contained in Section 9.06.B of this Regulation in controlling asbestos emissions.~~

~~The property owner or the owner's agent shall document through air monitoring, both upwind and downwind or at the exhaust from the controlled area, that the asbestos fiber concentrations outside the controlled area do not exceed 0.01 fiber/cc, 8 hour average.~~

~~The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the Order of Approval for cause.~~

~~B. Nonfriable Asbestos-Containing Material Removal Alternative.~~

~~An alternate asbestos removal method may be employed for nonfriable asbestos-containing material if a Competent~~

~~Person or AHERA Project Designer has evaluated the work area, the type of asbestos-containing material, the proposed work practices, and the engineering controls, and demonstrates to the Control Officer that the planned control method will be equally as effective as the work practices contained in Section 9.06.B of this Regulation in controlling asbestos emissions.~~

~~The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the Order of Approval for cause.~~

~~C. Leaving Nonfriable Asbestos-Containing Material in Place During Demolition (Other than Nonfriable Asbestos-Containing Roofing Material per Section 9.07.B of this Regulation).~~

~~Nonfriable asbestos-containing material may be left in place during a demolition, if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type and condition of asbestos-containing materials involved, the proposed work practices, and the engineering controls, and demonstrates to the Control Officer that the asbestos-containing material will remain nonfriable during all demolition activities and the subsequent disposal of the debris.~~

~~The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the Order of Approval for cause.)~~

~~A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Demolition.~~

~~Where standard asbestos project work practices in Section 9.06.B can not be utilized to remove asbestos-containing material (financial considerations aside) prior to demolition, when demolition has already occurred, or a similar situation exists (typically leaving a pile/area of debris, rubble, ash, and/or soil), an alternate asbestos removal method may be employed provided it complies with all of the following:~~

~~1. Qualifications of Person Preparing an Alternate Work Plan (AWP).~~

~~An AHERA Project Designer who is also a Certified Industrial Hygienist or a Licensed Professional Engineer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 9.06.B of this Regulation.~~

~~2. AWP Contents.~~

~~The AWP must contain all of the following information:~~

~~a. Reason(s) why standard work practices can not be utilized;~~

~~b. Date the work area was evaluated by the AHERA Project Designer that prepared the AWP;~~

~~c. Site address(es)/location(s) where the inspection was performed;~~

~~d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet~~

methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);

e. If an asbestos survey was performed, incorporate it by reference;

f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;

h. The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in the AWP will be as effective as the work practices in Section 9.06.B; and

i. Signature of the AHERA Project Designer that prepared the AWP, AHERA Project Designer certification number, and date certification expires.

### 3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 9.03 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

### 4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). Unless alternate procedures are specified in the AWP by an AHERA Project Designer who is also a Certified Industrial Hygienist or a Licensed Professional Engineer, the AWP shall include all of the following requirements in Section 9.08.A.4.a-f of this Regulation:

#### a. Controlled Area.

The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. The controlled area shall protect persons outside the controlled area from potential exposure to airborne asbestos.

#### b. Wetting.

All materials and debris shall be handled in a wet condition.

i. Absorbent materials shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal shall be wetted immediately.

ii. Nonabsorbent materials shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal shall be wetted immediately.

#### c. Asbestos-Containing Waste Materials.

i. All asbestos-containing waste material and/or asbestos contaminated waste material shall be kept wet and shall be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

ii. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with

an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

iii. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

iv. Leak-tight containers shall be kept leak-tight.

v. The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

#### d. Air Monitoring.

Procedures that shall be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

i. The procedures shall require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work shall stop until an AHERA Project Designer (who is also a Certified Industrial Hygienist or a Licensed Professional Engineer) has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

ii. The Agency shall immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work shall stop until an AHERA Project Designer (who is also a Certified Industrial Hygienist or a Licensed Professional Engineer) has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

#### e. Competent Person.

i. A competent person shall be present for the duration of the asbestos project (includes demolition) and shall observe work activities at the site.

ii. The competent person shall stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

iii. The competent person shall stop work if AWP procedures are not be followed and shall ensure that work does not resume until procedures in the AWP are followed.

#### f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures shall be included in the AWP. In addition to these procedures, the following requirements apply:

i. The AWP shall identify what materials will be separated from the asbestos-containing material waste stream and shall describe the procedures that will be used for separating and cleaning the materials. All materials removed from the

asbestos-containing waste material stream shall be free of asbestos-containing material.

ii. A competent person shall ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

5. Visible Emissions.

No visible emissions shall result from an asbestos project.

6. Record Keeping.

a. The AWP shall be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP shall retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project shall also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and make it available to the Agency upon request. The person(s) preparing and performing such tests shall also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

7. Other Requirements.

All applicable local, state, and federal regulations must be complied with.

B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.

Nonfriable asbestos-containing roofing material as defined in Section 9.02 of this Regulation may be left in place during demolition, except for demolition by burning, if all of the following are met:

1. A signed and dated written determination was made by an AHERA Project Designer that includes all of the following:

a. A summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;

b. A summary of the work practices and engineering controls that will be used;

c. A determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and

d. The property owner or owner's agent and the AHERA Project Designer that performed the determination shall retain a complete copy of the determination for at least 24 months from the date it was performed and make it available to the Agency upon request.

2. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

C. Exception for Hazardous Conditions (Leaving Friable and/or Nonfriable Asbestos-Containing Material (Other than Nonfriable Roofing) in Place During Demolition).

Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g., asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. At a minimum, the owner and owner's agent must comply with all of the following:

1. Qualifications of Person Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer who is also a Certified Industrial Hygienist or a Licensed Professional Engineer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an Alternative Work Plan (AWP) that ensures the planned control methods will be protective of public health.

2. Determination of a Hazardous Condition.

An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health.

3. AWP Contents.

The AWP must contain all of the following information:

a. Date the work area was evaluated by the AHERA Project Designer that prepared the AWP;

b. Site address(es)/location(s) where the inspection was performed;

c. A copy of the hazardous conditions determination from a government official or licensed structural engineer;

d. If an asbestos survey was performed, incorporate it by reference;

e. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

f. The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in the AWP will be protective of public health; and

g. Signature of the AHERA Project Designer that prepared the AWP, AHERA Project Designer certification number, and date certification expires.

4. AWP Procedures.

The requirements of Section 9.08.A.3-7 of this Regulation shall be complied with.

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

**SECTION 9.09 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL**

**A. Disposal Within 10 Days of Removal.**

Except as provided in Section 9.09.C((-)) (Temporary Storage Site) of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

### B. Waste Tracking Requirements.

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

1. Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

a. The name, address, and telephone number of the waste generator.

b. The approximate quantity in cubic meters or cubic yards.

c. The name and telephone number of the disposal site operator.

d. The name and physical site location of the disposal site.

e. The date transported.

f. The name, address, and telephone number of the transporter.

g. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

2. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

3. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

4. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

5. Retain a copy of all waste shipment records for at least ~~((2 years))~~ 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to the ~~((Authority))~~ Agency upon request.

### C. Temporary Storage Site.

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the ~~((Authority))~~ Agency.

2. The application must be accompanied by a ~~((55))~~ non-refundable fee as set in the fee schedule.

3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.

4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.

5. The storage area must be locked except during transfer of asbestos-containing waste material.

6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 calendar days.

7. ~~((Effective January 1, 2008, Temporary Storage of asbestos-containing waste material approvals))~~ Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for ~~((the))~~ one calendar year ~~((in which they are issued))~~ unless a different time frame is specified in the permit.

### D. Disposal of Asbestos Cement Pipe.

Asbestos cement pipe used on public right-of-ways, public easements, or other places receiving the prior written approval of the Control Officer may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

## SECTION 9.10 COMPLIANCE WITH OTHER RULES

### A. Other Requirements.

1. Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the Washington State Department of Labor and Industries. Nothing in the ~~((Authority's))~~ Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

2. The ~~((Authority))~~ Agency implements and enforces the requirements of 40 CFR Part 61 Subpart M (except for asbestos on roadways, asbestos demolition or renovation activities subject to 40 CFR 61.145).

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

## AMENDATORY SECTION

### SECTION 10.09 ASBESTOS PROJECT AND DEMOLITION NOTIFICATION WAITING PERIOD AND FEES

A. Written notification, as required in Article IX, Section 9.04, shall be in accordance with the waiting period in the tables that follow and shall be accompanied by the appropriate nonrefundable fee, as specified in the fee schedule. ~~((follows:~~

<b>Project</b>	<b>Size or Type</b>	<b>Notification Period</b>	<b>Project Fee</b>
Owner Occupied, Single family Residence Asbestos Project (excluding demolition)	Notification Not Required	None	None
Owner Occupied, Single Family Residence Demolition	All	Prior Notice	Per the Fee Sched- ule
All Other Demolitions with no asbestos project	All	10 Days	Per the Fee Sched- ule
Asbestos Project includes demolition fee*	10-259 linear ft 48-159 square ft	3 Days	Per the Fee Sched- ule
Asbestos Project includes demolition fee	260-999 linear ft 160-4,999 square ft	10 Days	Per the Fee Sched- ule
Asbestos Project includes demolition fee	≥ 1,000 linear ft ≥ 5,000 square ft	10 Days	Per the Fee Sched- ule
Amendment***	9.04.B	Prior Notice	Per the Fee Sched- ule
Emergency	9.04.C	Prior Notice**	Additional fee- equal to project fee
Exception for Hazardous Conditions	9.05.B	Concurrent with Project	Regular Project fee
Leaving Nonfriable Asbestos Containing Roofing Material in Place During Demolition	9.07.B	Concurrent with Project	Per the Fee Sched- ule
Alternate Means of Compliance friable- asbestos-removal alternative, nonfriable- asbestos-removal alternative, and leaving nonfriable asbestos in place during demoli- tion (except roofing)	9.08.A, B, and C	10 Days	((Additional fee- equal to project fee)) Per the Fee- Schedule

- \* Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.
- \*\* Except in the case where advance notice is not required pursuant to Section 9.04.C.2.
- \*\*\* For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted.)

<b>Owner-occupied, single-family residence</b>	<b>Waiting Period</b>
≥ 0 ln ft and/or ≥ 0 sq ft asbestos	Notification Not Required
All Demolition	3 Days

<b>Not owner-occupied, single-family residence</b>	<b>Waiting Period</b>
≤ 10 ln ft and/or ≤ 48 sq ft asbestos	Notification Not Required
10-259 ln ft and/or 48-159 sq ft asbestos	3 Days
260-999 ln ft and/or 160-4,999 sq ft asbestos	10 Days
≥ 1,000 ln ft and/or ≥ 5,000 sq ft asbestos	10 Days
All Demolition	10 Days

<b>Additional categories</b>	<b>Waiting Period</b>	<b>Reference</b>
Emergency	Prior Notice	Section 9.04.A.6.h
Amendment	Prior Notice	Section 9.04.B
Alternate Asbestos Project Work Practices	10 days	Section 9.08.A
Demolition with Nonfriable Asbestos Roofing	10 days	Section 9.08.B
Exception for Hazardous Conditions	10 days	Section 9.08.C

~~((1. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 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 fee schedule to more accurately recover program costs.~~

~~B. The Control Officer may waive part or all of the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos containing materials. All other asbestos project and demolition requirements remain in effect.~~

~~C. Where a compliance investigation is conducted pursuant to Section 9.04 of this Regulation, the compliance investigation fee shall be equal to \$50 per hour of compliance investigation.~~

~~D. The asbestos project fee in Section 10.09.a is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection is an asbestos survey, as defined in Section 9.02.G, performed by an AHERA Building Inspector, as defined in Section 9.02.A.~~

~~E. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied:))~~

B. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 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. 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 fee schedule to more accurately recover program costs.

**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.

**WSR 08-15-025**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 8, 2008, 12:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-07-053.

Title of Rule and Other Identifying Information: Chapter 392-142 WAC, Transportation—Replacement and depreciation allocation, revisions to this chapter need to be made in response to legislative changes regarding the school bus reimbursement process.

Hearing Location(s): Office of Superintendent of Public Instruction, Brouillet Conference Room, 600 South Wash-

ington Street, Olympia, WA 98504, on August 26, 2008, at 9:30 a.m.

Date of Intended Adoption: August 27, 2008.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504-7200, e-mail [ajjones@ospi.wednet.edu](mailto:ajjones@ospi.wednet.edu), fax (360) 586-6124, by August 25, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by August 25, 2008, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2005 Washington state legislature allowed the office of the superintendent of public instruction to use a two-year transition system for migration of the school bus replacement system to a model based on a five-year average of school bus prices. The current WAC language refers to this transition process. As of September 2007, that transition no longer exists. Removing the language referring to the transition process will result in improved clarity.

Also, clarified the calculation of the final payment of a bus if the school district disposes of the bus prior to the end of its useful life.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: RCW 28A.160.195.

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

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Martin Mueller, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These revisions only apply to public school districts.

A cost-benefit analysis is not required under RCW 34.05.328. These revisions only apply to public school districts.

July 7, 2008  
Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 05-19-072, filed 9/16/05, effective 10/17/05)

**WAC 392-142-231 Calculation of system price.** The ~~((system price of a school bus shall be calculated as following:~~

~~(1) For the 2005-06 school year, the system price for an individual school bus shall be determined by selecting the first condition that applies, as follows:~~

~~(a) If a school bus is in its final year on the replacement system, the system price is the state-determined purchase price.~~

~~(b) If the average price for the school bus is greater or equal to the 2004 or the 2005 state-determined purchase price, the system price is the average price.~~

~~(c) If the average price for the school bus is less than the 2004 state-determined purchase price, the system price is the 2005 weighted price.~~

~~(d) If the 2005 weighted price for the school bus is less than the 2004 actual price, the system price is the 2004 actual price.~~

~~(2) For the 2006-07 school year, the system price for an individual school bus shall be determined by selecting the first statement that applies, as follows:~~

~~(a) If a school bus is in its final year on the replacement system, the system price is the actual price.~~

~~(b) If the 2005 system price for the bus was the 2005 average price, the 2006 system price is the 2006 average price.~~

~~(c) If the 2006 average price for the school bus is greater or equal to the 2005 system price, the system price is the 2006 average price.~~

~~(d) If the 2006 average price for the school bus is less than the 2005 system price, the system price is the 2006 weighted price.~~

~~(3) Effective September 1, 2007, the~~) system price for an individual school bus is the state-determined purchase price if a school bus is in its final year on the replacement system. For a school bus not in its final year on the replacement system, the system price is the average price.

AMENDATORY SECTION (Amending WSR 05-19-072, filed 9/16/05, effective 10/17/05)

**WAC 392-142-265 Maintenance and operation.** (1) To the extent possible, school districts shall operate vehicles not less than the number of years of useful lifetime now, or hereafter, assigned to the category of vehicles by the superintendent of public instruction.

(2) A school bus that continues to possess a valid operation permit and operates its useful vehicle life shall be considered to be properly maintained in accordance with general accepted maintenance and operation standards. A school bus which does not operate its useful vehicle life shall be considered as not being properly maintained in accordance with generally accepted maintenance and operation standards unless proven otherwise by the school district. Prima facie evidence of such proof shall include unforeseen events which shorten the useful vehicle life, including but not limited to, fire, flood, explosion, storm, earthquake, or volcanic eruption.

(3) If a district fails to follow generally accepted standards of maintenance and operation or, if a district disposes of a bus prior to the end of its useful life time, the superintendent of public instruction shall discontinue reimbursement system payments, including ~~((recovering))~~ adjusting the ~~((prorated))~~ amount of the current year payment ~~((according to the number of months in the current year the bus was not operated))~~ to be the final payment by:

(a) Determining the total number of months the bus operated;

(b) Dividing the number of months the bus operated by the "useful life" of the bus, in months. Multiply the result by the "state-determined purchase price" for the current year, than subtract previous "total school bus replacement payments," "assumed interest earnings," and the "salvage value."

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-142-174      Definition—Weighting factor.
- WAC 392-142-176      Definition—2005 weighted price.
- WAC 392-142-178      Definition—2006 weighted price.

**WSR 08-15-026  
PROPOSED RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed July 8, 2008, 12:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-128.

Title of Rule and Other Identifying Information: Chapter 392-144 WAC, School bus driver qualifications.

Hearing Location(s): Office of Superintendent of Public Instruction, Brouillet Conference Room, 600 South Washington Street, Olympia, WA 98504-7200, on August 26, 2008, at 9:00 a.m.

Date of Intended Adoption: August 27, 2008.

Submit Written Comments to: Allan J. Jones, Director, Pupil Transportation, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by August 25, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by August 25, 2008, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Technical changes have been made throughout the chapter. Specifically, the approval of temporary extensions will now be done by the office of superintendent of public instruction (OSPI), the due date of the verification statement and confirmation of updated records (Form 1799) will be changed to coincide with the due date school districts submit their annual required student transportation reports no later than the last business day of October; clarified the definition of a medical examination; clarified the bus driver and district reporting requirements concerning the department of licensing's action; and provided school districts the ability to develop and implement an alternative assessment of physical strength and agility upon approval from OSPI.

Statutory Authority for Adoption: RCW 28A.160.20 [28A.160.210].

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charles Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Martin Mueller, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These revisions only apply to public school districts.

A cost-benefit analysis is not required under RCW 34.05.328. These revisions only apply to public school districts.

July 7, 2008

Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 08-07-054, filed 3/14/08, effective 4/14/08)

**WAC 392-144-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "School bus driver" means a person, who is employed by a school district including contracted drivers under WAC 392-144-040 (1) and (2) and as part of that employment or contract, operates a school bus as defined in WAC 392-143-010, or other motor vehicles for the regularly scheduled transportation of students between home and school. School buses shall be operated by authorized school bus drivers when transporting students. An authorized school bus driver may also transport students on field trips and other school related activities.

(2) "A school bus driver's authorization" means an authorization issued by the superintendent of public instruction indicating that the person has met the requirements to operate a school bus or other motor vehicle for the purpose of transporting students to and from school routinely on scheduled routes and/or school activities. A school bus driver must be authorized prior to transporting students and such authorization shall continue in effect as long as the person continues to meet the requirements of this chapter. A school bus driver authorization is not valid if suspended, revoked or lapsed.

(3) "School bus driver instructor's authorization" means an authorization issued by the superintendent of public instruction to a person successfully completing the superintendent of public instruction approved school bus driver instructor course. This authorization qualifies a person to train and verify the training of school bus drivers. This authorization shall lapse unless the holder successfully completes an annual school bus driver instructor's in-service course.

(4) "School bus driver training course" means a course established by the superintendent of public instruction and taught by an authorized school bus driver instructor. This course shall be successfully completed by all applicants for a school bus driver's authorization.

(5) "School bus driver annual in-service training course" means an annual course taught by an authorized school bus driver instructor. The content and minimum time requirements of such course shall be annually determined by the superintendent of public instruction and shall be required to be completed no earlier than August 1st and no later than November 1st by all authorized school bus drivers.

(6) "School bus driver instructor's course" means a training program authorized by the superintendent of public instruction to qualify a person as a school bus driver instructor.

(7) "School bus driver instructor's annual in-service course" means an annual required course, the content of which shall be determined by the superintendent of public instruction. Successful completion of this course prevents the instructor's authorization from lapsing.

(8) "Serious behavioral problem" includes, but is not limited to, conduct which indicates unfitness to carry out the responsibilities related to the occupation or job performance of transporting children, such as: Dishonesty; immorality; or misuse of alcohol, a controlled substance, or a prescription drug; or furnishing alcohol or controlled substances to a minor or student. It does not include the orderly exercise during off-duty hours of any rights guaranteed under the law to citizens generally, except where such conduct indicates a safety risk for the transportation of students.

(9) "Medical examiner's certificate" means a written verification of passing a medical examination in accordance with the standards established in 49 CFR 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations.

(a) School bus drivers must provide verification of passing a medical examination at a minimum of every twenty-four months.

(b) School bus drivers must continue to meet these medical requirements during the time between examinations.

(c) A school district may require more frequent examinations of any school bus driver. If a school district requires a school bus driver to be examined by a district selected physician, the school district must pay for the cost of such exam. If the driver objects to the district selected physician, a physician must be selected that is mutually acceptable.

(d) An individual who is a diabetic being treated with insulin may hold a school bus driver authorization if they meet the following requirements:

(i) Possess a valid commercial driver license intrastate medical waiver for diabetes from the Washington state department of licensing or a valid interstate exemption certificate for diabetes issued by the Federal Motor Carrier Safety Administration;

(ii) Provide at a minimum of every twenty-four months to the authorizing school district(s) or employer a completed, signed copy of Form SPI 1643, Application Section, and a completed, signed copy of Form SPI 1643, Physician Evaluation Section indicating the driver's medical condition allows them to safely operate a school bus while using insulin. The Physician Evaluation Section must indicate that within the past three years, the driver has completed instruction including diabetes management and driving safety; the signs and symptoms of hypoglycemia and hyperglycemia, and what procedures must be followed if complications arise. Physi-

cian verification of participation in a diabetes education program covering these topics is required at least every three years in order to remain qualified for a school bus driver authorization;

(iii) Provide at a minimum of every twelve months to the authorizing school district(s) or employer a completed, signed copy of Form SPI 1643, Vision Evaluation Section indicating the driver does not have any vision problems that might impair safe driving;

(iv) Provide at a minimum of every six months to the authorizing school district(s) or employer a completed, signed copy of Form SPI 1643, HbA1c Report Section indicating values more than 5.9 and less than 9.6 (unless accompanied by the signed medical opinion that the event was incidental and not an indication of failure to control glucose levels);

(v) Self-monitor blood glucose using an FDA approved device and demonstrate conformance with requirements (more than 100 mg/dl and less than 300 mg/dl):

(A) Within one hour before driving vehicles transporting students; and

(B) Approximately every four hours while on duty;

(vi) Maintain a daily log of all glucose test results for the previous six-month period and provide copies to the authorizing school district(s) or employer, and the medical examiner or physician upon request;

(vii) Carry a source of readily absorbable/fast-acting glucose while on duty;

(viii) Report immediately to their employer, any failure to comply with specific glucose level requirements as listed in (d)(iv) or (v) of this subsection, or loss of consciousness or control;

(ix) Individuals who have had a loss of consciousness or loss of control (cognitive function) due to a diabetic event do not qualify for a school bus driver authorization for one year, provided there has not been a recurrent hypoglycemic reaction requiring assistance of another person within the previous five years;

(x) A school bus driver is no longer authorized to operate a school bus and must be immediately removed from driving duties for any of the following:

(A) Results of the most recent HbA1c test indicating values less than 6.0 or greater than 9.5 unless accompanied by the signed medical opinion that the event was incidental and not an indication of failure to control glucose levels;

(B) Results of self-monitoring indicate glucose levels less than 100 mg/dl or greater than 300 mg/dl, until self-monitoring indicates compliance with specifications;

(C) Experiencing a loss of consciousness or control relating to diabetic condition;

(D) Failing to maintain or falsifying the required records, including self-monitoring records and any section of Form SPI 1643;

(xi) The authorizing school district or employer may request medical review of any or all signed, completed sections of Form SPI 1643, Washington State Authorized School Bus Driver Diabetes Exemption Program, and the driver's daily glucose test logs by a medical examiner or physician of their choice. The cost of this review shall be paid by the school district or employer.

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

**WAC 392-144-102 Continuing requirements for authorized school bus drivers.** Every authorized school bus driver must continue to meet the following requirements:

(1) Have a valid driver's license or commercial driver's license, as required by law, issued by the state department of licensing.

(2) Satisfactorily complete the annual school bus driver in-service training course.

(3) Hold a current and valid first-aid card which certifies that the applicant has completed a course in first aid.

(4) Submit annually to the school district a disclosure of all crimes against children or other persons and all civil adjudications in a dependency action or in a domestic relation action and all disciplinary board final decisions of sexual abuse or exploitation or physical abuse as required by RCW 43.43.834(2) and disclosure of all convictions which may be grounds for denial, suspension, or revocation of authorization under WAC 392-144-103.

(5) Every authorized school bus driver must continue to meet the following physical requirements:

(a) Is physically able to maneuver and control a school bus under all driving conditions; and

(b) Is physically able to use all controls and equipment found on state minimum specified school buses; and

(c) Is physically able to perform daily routine school bus vehicle safety inspections; and

(d) Has sufficient strength and agility to move about in a school bus as required to provide assistance to students in evacuating the bus. The driver must be able to move from a seated position in a sixty-five passenger school bus, or the largest school bus the driver will be operating, to the emergency door, open the emergency door, and exit the bus through the emergency door, all within twenty-five seconds. A school district may develop and implement an alternative assessment of physical strength and agility. The alternate assessment must be submitted by the school district superintendent for approval by OSPI; and

(e) Provide verification of holding a current and valid medical examiner's certificate.

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

**WAC 392-144-103 Disqualifying conditions for authorized school bus drivers.** A school bus driver's authorization will be denied, suspended, or revoked as a result of the following conditions:

(1) Misrepresenting or concealing a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

(2) Having a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding five years or have had their commercial driver's license disqualified, suspended, or revoked within the preceding five years; a certified copy of the disqualification, suspension, or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension, or revocation.

(3) ~~(Incurring)~~ Having been convicted of three or more speeding tickets of ten miles per hour or more over the speed limit within the last five years.

(4) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a lapsed, suspended, surrendered, or revoked school bus driver's authorization in a position for which authorization is required under this chapter.

(5) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended or revoked driver's license or a suspended, invalid, disqualified, or revoked commercial driver's license.

(6) Having refused to take a drug or alcohol test as required by the provisions of 49 CFR 382 within the preceding five years. Provided, That this requirement shall not apply to any refusal to take a drug or alcohol test prior to January 31, 2005.

(7) Having a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other coworkers.

(8) Having been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a plea of guilty or *nolo contendere* is the basis for the conviction) or being under a deferred prosecution under chapter 10.05 RCW where the conduct or alleged conduct is related to the occupation of a school bus driver, including, but not limited to, the following:

(a) The physical neglect of a child under chapter 9A.42 RCW;

(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;

(c) The sexual exploitation of a child under chapter 9.68A RCW;

(d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;

(e) The promotion of prostitution of a child under chapter 9A.88 RCW;

(f) The sale or purchase of a child under RCW 9A.64.030;

(g) Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription drug within the last ten years;

(h) Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last five years;

(i) Provided, That the general classes of felony crimes referenced within this subsection shall include equivalent federal crimes and crimes committed in other states;

(j) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;

(k) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea.

(9) Having been convicted of any crime within the last ten years, including motor vehicle violations, which would

materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver, the following and any other relevant considerations shall be weighed:

(a) Age and maturity at the time the criminal act was committed;

(b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;

(c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;

(d) Criminal history and the likelihood that criminal conduct will be repeated;

(e) The permissibility of service as an authorized school bus driver within the terms of any parole or probation;

(f) Proximity or remoteness in time of the criminal conviction;

(g) Any evidence offered which would support good moral character and personal fitness;

(h) If this subsection is applied to a person currently authorized as a school bus driver in a suspension or revocation action, the effect on the school bus driving profession, including any chilling effect, shall be weighed; and

(i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or authorized school bus driver has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or authorized school bus driver.

AMENDATORY SECTION (Amending WSR 07-13-067, filed 6/18/07, effective 7/19/07)

**WAC 392-144-110 Temporary authorizations—Requirements and issuing procedures.** (1) A temporary school bus driver authorization may be issued by the superintendent of public instruction upon application by an authorized representative of the employing school district when the following has been provided:

(a) Verification of successful completion of the school bus driver training course.

(b) Verification that it has on file a copy of a current and valid medical examiner's certificate.

(c) Verification that it has on file an original, current and complete school bus driver's abstract, including departmental actions, of the applicant's employment and nonemployment driving record obtained from the department of licensing verifying compliance with all provisions of this chapter. The issue date of this abstract must be within sixty calendar days prior to the date the application is being submitted for temporary authorization.

(d) Verification that it has on file a disclosure statement in compliance with preemployment inquiry regulations in WAC 162-12-140, signed by the applicant, specifying all convictions which relate to fitness to perform the job of a school bus driver under WAC 392-144-103 and all crimes

against children or other persons, that meets the requirements of RCW 43.43.834(2).

(e) Verification that it has requested a criminal record check as required under chapter 28A.400 RCW and the date of such request.

(f) Verification that it has on file an applicant's disclosure of all serious behavioral problems which explains the nature of all such problems and/or conditions, a listing of the names, addresses, and telephone numbers of all doctors, psychologists, psychiatrists, counselors, therapists, or other health care practitioners of any kind or hospitals, clinics, or other facilities who have examined and/or treated the applicant for such problems and/or conditions and dates of examinations, therapy, or treatment and the school district has determined that any reported serious behavioral problem does not endanger the education welfare or personal safety of students, teachers, bus drivers, or other colleagues.

(g) Verification that the applicant complies with all of the requirements for authorized school bus drivers set forth in this chapter except for a first-aid card and/or the results of a criminal record check.

(2) Upon approval of the temporary authorization, notice will be provided to the employing school district.

(3) The temporary authorization shall be valid for a period of sixty calendar days. The temporary authorization may be renewed by approval of the (~~regional transportation coordinator~~) superintendent of public instruction when the results of the criminal background check have not been received.

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

**WAC 392-144-130 Discipline—Grounds for denial, suspension, or revocation of authorization—Emergency suspension—Appeals—Adjudicative proceedings.** (1) A request for an authorization may be denied or an authorization issued under this chapter may be suspended or revoked for failure to meet any of the minimum requirements set forth in WAC 392-144-101 and 392-144-102 or for disqualifying conditions set forth in WAC 392-144-103, established by a preponderance of the evidence.

(2) Conduct, which by a preponderance of the evidence, amounts to a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other colleagues is grounds for denial, suspension, or revocation whether or not the conduct constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to denial, suspension, or revocation action. Upon such conviction, however, the judgment and sentence is conclusive evidence at the ensuing hearing of the guilt of the authorized driver or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based.

(3)(a) Any person in a court-ordered treatment program for alcohol or other drug misuse shall have his or her authorization suspended until treatment is satisfactorily completed and the completion is confirmed by a state-approved alcohol

or drug treatment program at which time the authorization will be reinstated.

(b) In all cases of deferred prosecution under chapter 10.05 RCW, the authorization shall be suspended until the court confirms successful completion of the court approved treatment program at which time the authorization will be reinstated.

(4) Emergency suspension. If the superintendent of public instruction finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, emergency suspension of an authorization may be ordered pending proceedings for revocation or other action. In such cases, the superintendent of public instruction shall expedite all due process actions as quickly as possible.

(5)(a) Appeals and adjudicative proceedings. Any person desiring to appeal a denial, suspension, or revocation of a school bus driver authorization may do so to the superintendent of public instruction or designee in accordance with the adjudicative proceedings in RCW 34.05.413 through 34.05.494, and the administrative practices and procedures of the superintendent of public instruction in chapter 392-101 WAC.

(b) The superintendent of public instruction may assign the adjudicative proceeding to the office of administrative hearings and may delegate final decision-making authority to the administrative law judge conducting the hearing.

(c) The superintendent of public instruction may appoint a person to review initial orders and to prepare and enter final agency orders in accordance with RCW 34.05.464.

(d) Any person who disagrees with the school district's determination of failure to meet any school bus driver authorization qualifications may request that the school district forward the pertinent records to the superintendent of public instruction. After review or investigation, the superintendent of public instruction shall grant, deny, suspend, or revoke the authorization.

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

**WAC 392-144-140 School bus driver—Reporting.**

(1) Every person authorized under this chapter to operate a motor vehicle to transport children shall, within twenty calendar days, notify his or her employer in writing of the filing of any criminal charge involving conduct listed in WAC 392-144-103. The authorized driver shall also notify his or her employer of any disqualifying traffic convictions, or license suspension, disqualification, or revocation orders issued by the department of licensing. In cases where the employer is providing transportation services through a contract with the school district, the contractor shall immediately notify the school district superintendent or designee.

(2) The notification in writing shall identify the name of the authorized driver, his or her authorization number, the court in which the action is commenced, and the case number assigned to the action.

(3) The failure of an authorized driver to comply with the provisions of this section is an act of unprofessional conduct

and constitutes grounds for authorization suspension or revocation by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

**WAC 392-144-150 School district—Reporting.** (1) Every school district employing authorized school bus drivers to transport children or contracting with a private firm who provides such authorized drivers as a part of a contract shall, within twenty calendar days, notify the superintendent of public instruction in writing of knowledge it may have of disqualifying traffic convictions or the filing of any criminal charge involving the conduct listed in WAC 392-144-103 against any authorized school bus driver.

(2) The notification in writing shall be by certified or registered mail and shall identify the name of the authorized school bus driver, his or her authorization number, the court in which the action is commenced, and the case number assigned to the action.

AMENDATORY SECTION (Amending WSR 07-13-067, filed 6/18/07, effective 7/19/07)

**WAC 392-144-160 School district—Verification of driver's continuing compliance.** (1) Every school district shall evaluate each authorized school bus driver for continuing compliance with the provisions of this chapter annually. The results of this evaluation of all drivers shall be (~~forwarded to the superintendent of public instruction~~) included with the annual Required Student Transportation Reports submitted to the regional transportation coordinator on SPI Form 1799, Verification Statement and Confirmation of Updated Records, no later than ((November 15th)) the last business day in October of each year.

(2) This report shall verify that each authorized school bus driver's medical examination certificate expiration date, first-aid expiration date, driver's license expiration date and most recent school bus driver in-service training date has been updated in compliance with OSPI procedures.

(3) This report shall verify that each authorized school bus driver has made an updated disclosure in writing and signed and sworn under penalty of perjury which updates the disclosure required in WAC 392-144-102(4).

(4) This report shall verify that a current and original school bus driver's abstract has been obtained from the department of licensing on each authorized school bus driver and the driving record is in compliance with WAC 392-144-103.

(5) This report shall verify that each authorized school bus driver remains in compliance with the physical requirements of WAC 392-144-102(5).

(6) This report shall be a written verification that the evaluation has been conducted in accordance with the requirements of this chapter and that all drivers are in compliance, or if all drivers are not in compliance, a list of drivers who are out of compliance and the reason for noncompliance shall be provided.

**WSR 08-15-034**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

[Filed July 9, 2008, 11:18 a.m.]

We hereby request the withdrawal of CR-102, WSR 08-14-153, due to an error in the "date of intended adoption."

We will file a new CR-102 with the corrected date as soon as possible.

If you have any questions, please contact Linda K. Jekel at (360) 902-8778.

Linda K. Jekel, Director  
 Division of Credit Unions

**WSR 08-15-041**  
**PROPOSED RULES**  
**TRANSPORTATION IMPROVEMENT BOARD**

[Filed July 11, 2008, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-080.

Title of Rule and Other Identifying Information: Developing a new WAC necessary to implement the small city pavement preservation and sidewalk account, chapter 83, Laws of 2005.

Hearing Location(s): Best Western Lakeside Lodge, 2313 West Woodin Avenue, Chelan, WA 98816, (509) 682-4396, on September 26, 2008, at 9:00 a.m.

Date of Intended Adoption: September 26, 2008.

Submit Written Comments to: Rhonda Reinke, P.O. Box 40901, Olympia, WA 98504-0901, e-mail rhondar@tib.wa.gov, fax (360) 586-1165, by September 5, 2008.

Assistance for Persons with Disabilities: Contact Eileen Bushman by September 5, 2008, (360) 586-1146.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Develop rules to support RCW 47.26.345, which finds that it is in the state's interest to support the economic vitality of all cities and towns, recognizing that those cities and towns with a population of less than 5,000 are unable to fully maintain and preserve their street and sidewalk system.

Reasons Supporting Proposal: The new rules would establish what cities and towns and which projects would be eligible to receive funding. In addition, the rules would outline the granting criteria, project selection, match requirements, if any, and the granting process, including, but not limited to, submission requirements and payments.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Statute Being Implemented: RCW 47.26.345 and 47.26.340.

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

Name of Proponent: Washington state transportation improvement board, governmental.

Name of Agency Personnel Responsible for Drafting: Rhonda Reinke, P.O. Box 40901, Olympia, WA 98504-0901, (360) 586-1155; Implementation and Enforcement: Stevan

Gorchester, P.O. Box 40901, Olympia, WA 98504-0901, (360) 586-1139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Customers are local government entities.

A cost-benefit analysis is not required under RCW 34.05.328. Not required under RCW 34.05.328(5).

July 10, 2008  
Stevan Gorchester  
Executive Director

## Chapter 479-10 WAC

### SMALL CITY PAVEMENT PRESERVATION AND SIDEWALK ACCOUNT

#### NEW SECTION

**WAC 479-10-005 Purpose and authority.** The board adopts reasonable rules necessary to administer the small city pavement preservation and sidewalk account pursuant to RCW 47.26.340, 47.26.345 and 47.26.164.

#### NEW SECTION

**WAC 479-10-011 Programs funded from the small city pavement preservation and sidewalk account.** The small city pavement preservation and sidewalk account funds both the small city preservation program and the city hardship assistance program.

#### NEW SECTION

**WAC 479-10-100 Intent of the small city preservation program.** The intent of the small city preservation program is to provide funding for small cities to provide proper pavement management and extend infrastructure longevity.

#### NEW SECTION

**WAC 479-10-110 Who is eligible for small city preservation program funds.** Agencies eligible to receive small city pavement program funding are incorporated cities with a population less than five thousand.

#### NEW SECTION

**WAC 479-10-120 Projects that are eligible for small city preservation program funds.** Eligible roadway and sidewalk projects are those that maintain, repair, and/or resurface the existing infrastructure that is municipally owned and appropriate under Article II Section 40, 18th Amendment of the Washington state Constitution.

#### NEW SECTION

**WAC 479-10-121 Types of street system treatments allowed under small city preservation program.** The type of treatment will be based on the pavement condition rating, treatment types available in the area, and concurrence by the local agency. Treatments may include crack sealing, patch-

ing, ditching, chip sealing, overlay, cold in place recycling of roadway, or other treatment as deemed cost effective and/or necessary by TIB staff.

#### NEW SECTION

**WAC 479-10-122 Qualification for the small city preservation program—Pavement condition ratings.** To qualify for funding in the current program year, a city's pavement condition rating must be less than four years old on or by the application date.

For the cities' convenience, TIB staff will conduct all pavement condition ratings on a rotational basis every four years. If the city maintains their own pavement condition rating, the methods used for scoring must comply with TIB's methodology. If scores submitted by the city are substantially different than the TIB pavement scores, the difference will be resolved through an on-site review coordinated between TIB and city staff.

#### NEW SECTION

**WAC 479-10-130 Identification of funding requests for the small city preservation program.** To be considered for a project under the small city preservation program, an eligible agency may submit a funding application in response to either a standard TIB call for projects or identification and notification by TIB staff based on other opportunities available in the area to decrease material or labor costs associated with project delivery.

#### NEW SECTION

**WAC 479-10-140 Project selection for the small city preservation program.** Projects may be selected by the board or the executive director based on need, economy of scale opportunities, and criteria listed in RCW 47.26.345.

#### NEW SECTION

**WAC 479-10-150 Project phases for the small city preservation program.** Small city preservation program projects will have three phases. Each phase will require specific documentation as described below and each phase must be approved before the applicant agency is eligible to receive the related funding:

(1) Application phase - The city shall submit an application form as well as documentation showing route and treatment plan.

(2) Design and construction phase - TIB will provide documents for the city to sign and return. The city must submit the following agreements where utilized:

(a) Fuel tax agreement (except if services are provided by WSDOT).

(b) Rights of entry agreement (if applicable).

(c) Consultant agreement (if applicable).

If pavement services will be provided through WSDOT, TIB will maintain the task order agreement and subsequent amendments.

(3) Project closeout phase - All necessary project cost documentation must be received prior to final payment.

NEW SECTION

**WAC 479-10-160 City matching funds or services for small city preservation program.** The board will consider a city's ability to provide matching funds or in-kind services when allocating funds under this program. Cash or in-kind match may be provided by the local agency in the form of:

(1) Cash match based on ability to contribute:

(a) If the city assessed valuation is greater than five hundred million, a match of ten percent will be contributed.

(b) If the city assessed valuation is from one hundred million to five hundred million, a five percent match will be contributed.

(2) If the city assessed valuation is under one hundred million, no cash match is necessary.

(3) Match is not expected or accepted if the construction services will be provided to the city by WSDOT.

(4) All in-kind contributions must relate directly to the project and are limited to time, material, or real property donated to the agency to fulfill project requirements. In-kind match may include:

(a) Community involvement including volunteer participation.

(b) City force labor, materials, and/or equipment (excluding costs incurred for qualification in WAC 479-10-122 or application for funds).

(c) Other street beautification.

(d) In-kind match must be documented with labor reports, equipment reports, receipts, and/or citizen volunteer time with hourly rate (not to exceed fifteen dollars per hour).

(e) Contributions of overhead, per diem, travel expenses, time spent at advisory groups or meetings, or time from individuals receiving compensation through the grant will not be accepted as in-kind match.

NEW SECTION

**WAC 479-10-200 Intent of the city hardship assistance program.** The city hardship assistance program provides rehabilitation and maintenance funds for eligible routes pursuant to RCW 47.26.164.

NEW SECTION

**WAC 479-10-210 Who is eligible for city hardship assistance program funds.** Eligible cities are those with a population of twenty thousand or less with a net gain in cost responsibility due to a road jurisdictional transfer.

NEW SECTION

**WAC 479-10-220 What routes are eligible for city hardship assistance program funds.** The following routes are eligible to receive city hardship assistance funds for maintenance:

(1) Clarkston, Old SR 128, 0.13 Miles, SR 12 to Poplar Street;

(2) Kelso, Old SR 431, 0.90 Miles, SR 5 to Cowlitz Way; Old I-5, 1.20 Miles, north end of Coweeman River Bridge to 2,480 feet south of Haussler Road and those sections of Kelso Drive, Minor Road, Grade Street and Kelso Avenue referred

to in the memorandum of understanding for this turn back, approximately 2.7 miles;

(3) Leavenworth, Old SR 209, 0.11 Miles, SR 2 to 260 feet north of Fir Street;

(4) Milton, Old SR 514, 2.46 Miles, Junction SR 99 to 50 feet west of SR 161;

(5) Napavine, Old SR 603, 0.79 Miles, 810 feet southwest of Lincoln Street to 8th Avenue West;

(6) Pomeroy, Old SR 128, 0.72 Miles, SR 12 to 2,690 feet south of Arlington Avenue;

(7) Sequim, Washington Avenue - Simdars Road to Sunnyside Avenue and 3rd Avenue to 9th Avenue;

(8) Skykomish, Old SR 2 Spur, 0.16 Miles, SR 2 to Railroad Avenue;

(9) Stanwood, Old SR 530, 1.59 Miles, 790 feet north of 86th Drive NW to 740 feet northwest of 72nd Avenue NW;

(10) Toledo, Old SR 505, 0.12 Miles, Fifth Street to 210 feet northwest of Sixth Street;

(11) Toppenish, Old SR 220, 0.27 Miles, Junction SR 22 to 630 feet east of Linden Road;

(12) Vader, Old SR 411, 0.25 Miles, 520 feet south of SR 506 to 1,840 feet south of SR 506;

(13) Washougal, Old SR 140, 0.70 Miles, SR 14 to west end of Washougal River Bridge;

(14) Winlock, Old SR 603, 0.61 Miles, Walnut Street to 160 feet south of Olequa Creek Bridge.

NEW SECTION

**WAC 479-10-230 How to request city hardship assistance program funds.** To request funding for eligible routes, the city should submit a letter of application including a treatment plan and cost estimate for the project. The request will be due by August 31st of the year prior to treatment, unless otherwise authorized by the executive director.

NEW SECTION

**WAC 479-10-240 Phases for city hardship assistance program.** City hardship assistance program projects will have the following phases:

(1) Application phase - Letter of application including the treatment plan and cost estimate submitted under WAC 479-10-230.

(2) Design and construction phase - Documents that must be received prior to phase approval:

(a) Fuel tax agreement or WSDOT task order agreement.

(b) Consultant agreement (if applicable).

(3) Project closeout phase - Project cost documentation must be received prior to final payment.

NEW SECTION

**WAC 479-10-250 Funding limitations for city hardship assistance program projects.** Funding is to be used for maintenance and rehabilitation of existing facilities and not for adding additional capacity or facilities.

NEW SECTION

**WAC 479-10-260 No match is required for city hardship assistance program projects.** There is no local agency matching funds requirement for city hardship assistance program projects.

NEW SECTION

**WAC 479-10-270 Spending any residual amount of city hardship assistance program funds.** Any residual funds remaining at the end of the biennium will be spent on small city preservation program projects.

**WSR 08-15-044**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Division of Credit Unions)  
[Filed July 11, 2008, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-119.

Title of Rule and Other Identifying Information: Fees charged to credit unions and other persons, chapter 208-418 WAC, regarding fees and assessments of credit unions.

Hearing Location(s): John A. Cherberg Building, State Capitol Campus, Olympia, WA 98501, on August 27, 2008, at 10 a.m. to 12 noon.

Date of Intended Adoption: November 26, 2008.

Submit Written Comments to: Joanne Conrad, Regulatory Analyst, Department of Financial Institutions, P.O. Box 41200, Olympia, WA 98504-1200, e-mail jconrad@dfi.wa.gov, fax (360) 704-6490, by August 27, 2008.

Assistance for Persons with Disabilities: Contact Rhonda Mires by e-mail rmires@dfi.wa.gov or (360) 902-8718.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule increases credit union assessments and fee rates, in accordance with the "fiscal growth factor" under chapter 43.135 RCW, and makes related technical changes.

Reasons Supporting Proposal: The regulation for safety and soundness of state-chartered credit unions is supported by industry fees and assessments, not the general fund. The last fee increase was in 2002. This proposed increase is necessary to support the statutory mandate of the division of credit unions.

Statutory Authority for Adoption: Chapter 43.135 RCW; RCW 43.320.040, chapter 285, Laws of 2008.

Statute Being Implemented: RCW 31.12.516(6); chapter 285, Laws of 2008.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This fee increase is needed in order to provide for an increase in assessment and fee rates, in accordance

with the "fiscal growth" factor under chapter 43.135 RCW. See proposed amendments to chapter 208-418 WAC for text of fee increase and related changes.

Name of Proponent: Division of credit unions, department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Joanne Conrad, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8813; Implementation and Enforcement: Linda K. Jekel, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8778.

No small business economic impact statement has been prepared under chapter 19.85 RCW. 1. Credit union fees are already asset-based on size of credit union.

2. Small credit unions may also be granted waivers to prevent hardship.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is to provide for a routine fee increase, to an existing fee structure, in order to enable the division of credit unions to maintain its statutory mission. The department of financial institutions is not one of the agencies specified in RCW 34.05.328 (5)(i), and the rule is a "rule that sets or adjusts fees or rates pursuant to legislative standards," RCW 34.05.328 (5)(b)(vi).

July 2, 2008

Linda Jekel, Director  
Division of Credit Unions

AMENDATORY SECTION (Amending WSR 01-12-004, filed 5/23/01, effective 6/23/01)

**WAC 208-418-010 Definitions.** Unless the context clearly requires otherwise, as used in this chapter:

(1) "Credit union" includes a Washington credit union, an out-of-state credit union and a foreign credit union.

(2) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction, that is operating a branch in Washington in accordance with RCW 31.12.471.

(3) "Hourly fee" means a fee of ~~\$(57.42))~~ 64.35 per hour per examiner or other staff person of the division.

(4) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or U.S. territory or possession, that is operating a branch in Washington in accordance with RCW 31.12.471.

(5)(a) "Total assets" of a Washington credit union includes all assets of the credit union as reported on the credit union's most recent form 5300 or similar financial report.

(b) "Total assets" of an out-of-state or foreign credit union is derived from the following fraction:

$$\frac{\text{Total assets x in-state ((branch)) shares and deposits}}{\text{Total shares and deposits}}$$

"Total assets" and "shares and deposits" include respectively all assets and shares and deposits as reported on the credit union's most recent form 5300 or similar financial report.

(6) "Washington credit union" means a credit union organized and operating under chapter 31.12 RCW.

AMENDATORY SECTION (Amending WSR 01-12-004, filed 5/23/01, effective 6/23/01)

**WAC 208-418-040 Quarterly asset assessments.** (1)

The director will charge each credit union a quarterly asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January 1, April 1, July 1, and October 1. Asset assessments must be paid no later than thirty days after their due date. The assessments will be computed on total assets as of the prior June 30 for the October 1 and January 1 assessments, and as of the prior December 31 for the April 1 and July 1 assessments.

(2) Credit Union's Total Assets	Quarterly Asset Assessment
over \$500M	<del>\$(18,883 + 0.00001543)</del> <u>21,163 + .00001729</u> x total assets over \$500M
over \$100M up to \$500M	<del>\$(5,250 + 0.00003408)</del> <u>5,883 + .00003819</u> x total assets over \$100M
over \$25M up to \$100M	<del>((0.00005250))</del> <u>0.00005883</u> x total assets
over \$10M up to \$25M	<del>\$(1,157)</del> <u>1,296</u>
over \$2M up to \$10M	<del>\$(771)</del> <u>863</u>
over \$500K up to \$2M	<del>\$(514)</del> <u>575</u>
up to \$500K	\$0

M = Million K = Thousand

(3) Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the quarter. A credit union converting to state charter will pay a prorated quarterly asset assessment for the quarter during which the conversion is completed.

(4) From time to time, the director may determine that asset assessments on an out-of-state credit union or foreign credit union are inappropriate relative to the level of examination and supervision of that credit union by the division. In that event, the director may charge the credit union hourly fees for examination and supervision of the credit union, including, but not limited to, off-site monitoring, in lieu of asset assessments. Such fees are due upon receipt of billing from the division.

AMENDATORY SECTION (Amending WSR 01-12-004, filed 5/23/01, effective 6/23/01)

**WAC 208-418-050 Pass through of attorney general costs.** (1) The director ~~((with))~~ may charge each credit union

the actual cost incurred by the division of credit unions for certain legal assistance rendered by an assistant attorney general or special counsel in regard to ~~((the))~~ that credit union. Legal assistance includes legal assistance rendered in connection with: Supervisory committee meetings and board meetings; receiverships, conservatorships, liquidations and declarations of insolvency; enforcement agreements or actions; collection actions; administrative hearings; declaratory orders; and opinions requested by a credit union or the

division of credit unions. Charges are due upon receipt of billing from the division.

(2) The division will notify a credit union before the division incurs expense for legal assistance which may be charged to the credit union under this section.

AMENDATORY SECTION (Amending WSR 01-12-004, filed 5/23/01, effective 6/23/01)

**WAC 208-418-070 Other fees.** (1) The director will charge hourly fees as follows:

(a) An hourly fee will be charged to a person other than a credit union or a subsidiary of one or more credit unions for each ~~((electronic data processing))~~ information systems and technology examination of the person by the division of credit unions.

(b) An hourly fee will be charged to a credit union for the ~~((processing))~~ examination of the credit union's application to add a community group to its field of membership.

(c) An hourly fee will be charged to a credit union for a fraud investigation or examination of the credit union and/or persons involved with the credit union by the division.

(d) An hourly fee will be charged to an out-of-state or foreign credit union for examination and supervision by the division under WAC 208-418-040(4).

(e) An hourly fee will be charged to an out-of-state or foreign credit union for the ~~((processing))~~ examination of the credit union's application to operate a branch in this state.

(f) An hourly fee will be charged to other divisions or agencies for examinations, investigations, or similar undertakings performed on their behalf by the division.

(g) An hourly fee will be charged for investigation or examination of conversion applications.

(h) An hourly fee will be charged for initial and annual examination of alternative share insurers that apply for authorization to do business with Washington state chartered credit unions.

(i) An hourly fee will be charged for examination of credit union service organizations and their subsidiaries.

(2) In addition, the director will charge a credit union or other person for the actual cost incurred by the division for an examination or investigation of the credit union or person performed under personal services contract by third parties.

(3) Charges under this section are due upon receipt of billing from the division.

AMENDATORY SECTION (Amending WSR 01-12-004, filed 5/23/01, effective 6/23/01)

**WAC 208-418-100 Waiver of fees.** The director may waive any or all of the fees and assessments imposed under WAC 208-418-040 and 208-418-070, in whole or in part, when ~~((he or she))~~ the director determines that ~~((both of the following factors are present:~~

~~(1) The credit union program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and~~

~~(2) That))~~ such course of action would be fiscally prudent.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-418-090 Rate increase.

**WSR 08-15-056**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Health and Recovery Services Administration)  
 [Filed July 14, 2008, 8:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-125.

Title of Rule and Other Identifying Information: The department is amending [repealing] WAC 388-544-0475 Noncovered services, eyeglasses, and contact lenses.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 27, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is making this housekeeping change to repeal a redundant section.

Reasons Supporting Proposal: The department recently reorganized and updated chapter 388-544 WAC, Vision care. The permanent rule was filed on June 24, 2008, under WSR 08-14-052. In the newly revised rule, a new section (WAC 388-544-0575 Vision care—Noncovered services, eyeglasses, and contact lenses) was created to replace WAC 388-544-0475. The department inadvertently missed listing WAC 388-544-0475 as repealed under the permanent rules filed under WSR 08-14-052, on June 24, 2008.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

Name of Proponent: Department of social and health services, health and recovery services administration, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforce-

ment: Marlene Black, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1577.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No new costs are incurred by this repeal.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(viii) relating to housekeeping changes.

July 3, 2008  
Stephanie E. Schiller  
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-544-0475 Vision care—Noncovered services, eyeglasses, and contact lenses.

**WSR 08-15-057**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Special Commitment Center)  
 [Filed July 14, 2008, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-022.

Title of Rule and Other Identifying Information: Amending WAC 388-885-005 Purpose, 388-885-010 Definitions, 388-885-015 Limitations of funds, 388-885-020 Maximum allowable reimbursement for civil commitment costs, 388-885-025 Billing procedures, 388-885-030 Exceptions, and 388-885-035 Fee schedule; and new section WAC 388-885-013 Limitations on reimbursement costs related to expert evaluations.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 27, 2008.

Submit Written Comments to: DSHS rules coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of

these proposed rule changes is to clarify our business practices and expectations as they pertain to county government obtaining cost reimbursements from DSHS for legal and expert evaluation costs pursuant to civil commitment proceedings under chapter 71.09 RCW.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 71.09 RCW, RCW 72.01.090.

Statute Being Implemented: Chapter 71.09 RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Davis, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 617-6283; Implementation and Enforcement: Linda Egge, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 583-5927.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and concluded that they pertain to state reimbursement paid to county governments and they do not impact small businesses. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared because these rules are an "interpretive rule" under RCW 34.05.328. A violation of this rule does not subject a person to a penalty or sanction, and the rule change serves only to set forth the agency's interpretation of statutory provisions it administers.

June 30, 2008

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending Order 3263 [WSR 99-21-002], filed 10/6/99, effective 10/6/99)

**WAC 388-885-005 Purpose.** These rules establish the standards and procedures for reimbursing counties for the cost incurred during civil commitment trial, annual evaluation, and review processes and release procedures related to chapter 71.09 RCW.

The department's reimbursement to counties is limited to appropriated funds and is intended to minimize primary or direct costs to counties for proceedings and related to civil commitment of sexually violent predators.

Indirect costs and costs incurred in excess of or different from those allowed by the itemized schedule of reimbursements as described in WAC 388-885-035 are the responsibility of the county.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 3736 [WSR 99-21-002], filed 10/6/99, effective 10/6/99)

**WAC 388-885-010 Definitions.** (1) "Attorney cost" means the fully documented (~~fee~~) itemized hourly cost

directly related to the violent sexual predator civil commitment process for:

(a) A single assigned prosecuting attorney;  
(b) When the person is indigent, a single court-appointed attorney; (~~and~~)

(c) Additional counsel, for the defense or prosecution when additional defense counsel is approved by the trial judge for good cause (~~(- Said fee includes the cost of paralegal services-); and~~

(d) Paralegal services and other costs, itemized based on a schedule of reimbursements as described in WAC 388-885-035.

(2) "Department" means the department of social and health services.

(3) "Evaluation by expert cost" (~~(means a county-incurred service fee directly resulting from the completion of a comprehensive examination and/or a records review, by a single examiner selected by the county, of a person:~~

~~(a) Investigated for "sexually violent predator" probable cause;~~

~~(b) Alleged to be a "sexually violent predator" and who has had a petition filed; or~~

~~(c) Committed as a "sexually violent predator" and under review for release.~~

In the case where the person is indigent, "evaluation by expert cost" includes the fee for a comprehensive examination and/or records review by a single examiner selected by the person examined. When additional examiners are approved by the trial judge for good cause, "evaluation by expert cost" includes the cost of additional examiners) is as described in WAC 388-885-013.

(4) "Incidental cost" means county-incurred efforts or costs that are not otherwise covered and are exclusively attributable and necessary to the trial of a person alleged to be a "sexually violent predator."

(5) "Investigative cost" means a cost incurred by a police agency or other investigative (~~agency~~) service in the course of investigating issues specific to:

(a) Filing or responding to a petition alleging a person is a "sexually violent predator;" or

(b) Testifying at a hearing to determine if a person is a "sexually violent predator."

(6) "Medical cost" means a county-incurred extraordinary medical expense beyond the routine services of a jail.

(7) "Secretary" means the secretary of the department of social and health services.

(8) "Transportation cost" means the cost a county incurs when transporting a person alleged to be, or having been found to be, a "sexually violent predator," to and from a sexual predator program facility.

(9) "Trial cost" means the costs a county incurs as the result of filing a petition for the civil commitment of a person alleged to be a "sexually violent predator" under chapter 71.09 RCW. This cost is limited to fees for:

(a) Judges (~~(- including court clerk and bailiff services));~~

(b) Court (~~(reporter services))~~ clerk;

(c) (~~(Transcript typing and preparation))~~ Bailiff services;

(d) (~~(Expert and nonexpert witnesses))~~ Court reporter services;

(e) (~~(Jury; and))~~ transcript typing and preparation;

- (f) ~~((Jail facilities))~~ Expert and nonexpert witnesses;  
 (g) Jury; and  
 (h) Jail facilities.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

#### NEW SECTION

**WAC 388-885-013 Limitations on reimbursement costs related to expert evaluations.** (1) "Evaluation by expert cost" means a county-incurred itemized hourly service rate directly resulting from the completion of a comprehensive examination and/or a records review and other costs, itemized based on the schedule of reimbursements as described in WAC 388-885-035, by a single examiner selected and appointed by the court of a person who is indigent, when:

(a) Investigated for "sexually violent predator" probable cause;

(b) Alleged to be a "sexually violent predator" and who has had a petition filed; or

(c) Committed as a "sexually violent predator" and under review for release.

(2) The department will reimburse a county for costs related to the evaluation of an indigent person by an additional examiner only upon a finding by the superior court that such appointment is for good cause. In making its finding of good cause the superior court shall consider and issue written findings on whether:

(a) Any previous expert(s) appointed to assist the indigent person lack expertise to address a new area of concern;

(b) The request for an additional expert is being requested merely because the opinion of a prior expert was not favorable to respondent's position;

(c) The request is being interposed for the purpose of delaying the proceeding; or

(d) The previously appointed expert is unavailable for testimony at trial.

(3) The department will not reimburse a county for expert evaluation costs under the following circumstances:

(a) Where the appointed expert lacks appropriate qualifications as provided for in WAC 388-880-033; or

(b) For any charges related to international travel by an expert to or from a destination outside of North America, including but not limited to, airfare, meals, hourly rates, and accommodations.

AMENDATORY SECTION (Amending Order 3736 [WSR 99-21-002], filed 10/6/99, effective 10/6/99)

**WAC 388-885-015 Limitation of funds.** The department shall:

(1) Reimburse funds to a county when funds are available;

(2) Limit a county's reimbursement to costs of civil commitment trials or hearings as described under this chapter;

(3) Restrict a county's reimbursement to documented investigation, expert evaluation, attorney, transportation, trial, incidental, and medical costs;

(4) Not pay a county a cost under the rules of this section when said cost is otherwise reimbursable under law;

(5) Pay a county's claim for a trial or hearing occurring during each biennium in the order in which the claim is received ~~((at the office of accounting services, special commitment center)),~~ until the department's biennial appropriation is expended.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 3736 [WSR 99-21-002], filed 10/6/99, effective 10/6/99)

**WAC 388-885-020 Maximum allowable reimbursement for civil commitment cost.** (1) The department shall reimburse a county for actual costs incurred up to the maximum allowable rate as specified(~~(:~~

~~(1) Attorney cost—Up to forty nine dollars and forty one cents per hour;~~

~~(2) Evaluation by expert cost—Actual costs, within reasonable limits, plus travel and per diem according to state travel policy;~~

~~(3) Trial costs:~~

~~(a) Judge—Up to forty six dollars and five cents per hour;~~

~~(b) Court reporters—Up to twenty dollars and seventy one cents per hour;~~

~~(c) Transcript typing and preparation services—Up to four dollars and thirteen cents per page;~~

~~(d) Expert witnesses—Actual costs within reasonable limits plus travel and per diem according to state travel policy;~~

~~(e) Nonexpert witnesses—Actual compensation, travel and per diem paid to witnesses, provided compensation is in accordance with chapter 2.40 RCW and state travel policy;~~

~~(f) Jurors—Actual compensation, travel, and per diem paid to jurors provided compensation is in accordance with chapter 2.36 RCW and state travel policy;~~

~~(g) Jail facilities—Thirty dollars per day.~~

~~(4) Investigative cost—Up to twenty dollars and sixty six cents per hour. Medical costs—Up to fifty dollars per day, not to exceed five consecutive days; and~~

~~(5) Transportation cost—Actual compensation paid to transport staff, plus mileage and per diem at the rate specified in the state travel policy)) in a biennial reimbursement rate schedule created and maintained by the department and approved by the legislature for reimbursement rates and expenses authorized under this chapter.~~

(2) The reimbursement schedule shall be developed and reviewed by the department for adequacy each biennium.

(a) In developing the reimbursement schedule, the special commitment center will accept input and comment from the public and counties in the form of written substantive documented evidence that reflects a need to change the reimbursement rates found in WAC 388-885-035.

(b) Substantive evidence may be submitted to the special commitment center during the month of June on even numbered years.

(c) Evidence of need should be sent to: DSHS Special Commitment Center, Attn: Chief Financial Officer, P.O. Box 88450, Steilacoom, WA 98388-0646.

(d) Evidence of need will be compiled and reviewed for reimbursement rate change consideration and budget proposal recommendations.

(3) A revised reimbursement schedule shall be presented for legislative review each biennial year as part of the budget proposal for the special commitment center.

(4) When the reimbursement schedule or the related budget is approved by the legislature:

(a) The reimbursement schedule rates found in WAC 388-885-035 will be updated;

(b) A notice of the revised reimbursement rates will be published by the department and sent to each county public defender and prosecutor's office; and

(c) The reimbursement schedule shall be included in any memorandum of understanding, contract, or other document related to reimbursements under this rule which may be communicated by the special commitment center, or entered into between the special commitment center and the counties.

(5) Included in the reimbursement schedule shall be rates for:

(a) Attorney fees;

(b) Legal assistant/paralegal;

(c) Evaluation by expert costs, reimbursable according to the nature of the work performed;

(d) Trial costs, to include the trial judge, court reporters, bailiff, court clerk, transcript preparation services, and compensation for nonexpert witnesses and jurors;

(e) Investigative services;

(f) Medical costs; and

(g) Jail costs.

(6) Travel costs and per diem shall be reimbursed for investigators, attorneys, judges, legal assistant/paralegal, expert evaluators, nonexpert witnesses, jurors, and transporting staff. Reimbursement rates shall be in accordance with applicable state law and state travel policy.

(7) With the submission of an itemized invoice, attorneys and expert evaluators and expert witnesses may also be reimbursed for reasonable time spent in travel.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 3736 [WSR 99-21-002], filed 10/6/99, effective 10/6/99)

**WAC 388-885-025 Billing procedure.** (1) When a county requests the department reimburse a county's cost, the county shall:

(a) Make a claim using the state of Washington invoice voucher, Form A 19 1-A;

(b) Attach to the claim necessary documentation, support, and justification materials (the department may require use of an itemized invoice);

(c) Report expenses billed by the hour in one-quarter hour increments unless smaller increments are provided to the county by the vendor; and

(d) Include the name of the person for whom the costs were incurred and the cause number when it exists.

(2) The department may subject a county's claim documentation to periodic audit at the department's discretion.

(3) Only an authorized administrator, or the county administrator's designee, may submit to the department a request for a county's cost reimbursement.

(4) A county shall submit a reimbursement claim to the department within thirty days of ~~((final costs))~~ receipt of itemized expenditures for services incurred to assure proper handling of the claim.

(5) When a county submits a reimbursement claim ~~((the county shall submit a reimbursement claim to the special commitment center, offices of accounting services))~~ on a state invoice voucher (Form A-19 1-A) sent to the Special Commitment Center, Attn: Business Office, P.O. Box 88450, Steilacoom, WA 98388-0646.

(6) If the department's reimbursement appropriation becomes exhausted before the end of a biennium, a county may continue to make a claim for reimbursement. The department may use the reimbursement claim to justify a request for adequate department funding during future biennia.

(7) Claims for reimbursement of costs associated with the subject of this rule will not be accepted if the span of time between the time the services were rendered and the bill was submitted is greater than twelve months.

(8) When the reimbursement fee schedule in WAC 388-885-035 changes following legislative approval there is a transitional period where bills are being received for services rendered prior to the approved increase to the reimbursement schedule rates, such as, bills received for services rendered shall be paid based on the reimbursement schedule rate that existed at the time services were rendered, not the rate that exists at the time the bill is submitted to SCC.

(9) In submitting bills for reimbursement under this rule, the billing entity agrees to maintain records of their billed services and make those records available for auditing by DSHS, or other state auditing service, for a period of thirty-six months following the submission of the bill.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 3736 [WSR 99-21-002], filed 10/6/99, effective 10/6/99)

**WAC 388-885-030 Exceptions.** (1) The secretary may grant exceptions to the rules of this chapter. Exceptions granted by the secretary may not include exceptions to the biennial reimbursement rate schedule which is set by legislative mandate.

(2) ~~((A county seeking an exception shall request the exception, in writing from the secretary or secretary's designee))~~ Exceptions may be allowed on a case-by-case basis for:

(a) Unanticipated expenditures;

(b) For a rate or cost increase related to a single commitment proceeding; or

(c) For a new type or class of expenditure.

(3) A request for exception may only be made by a county administration or an entity of county government that has been independently elected, not from a sub-agency of a county or contractor to a county. A county seeking an exception from the secretary shall request the exception, in writing, to the secretary, through the chief financial officer of the special commitment center.

(4) The department shall deny a claim which does not follow the rules of this chapter unless the secretary or secretary's designee granted an exception before the claim was filed.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**AMENDATORY SECTION** (Amending Order 3263 [WSR 99-21-002], filed 10/6/99, effective 10/6/99)

**WAC 388-885-035 ((Effective date)) Reimbursement rate schedule.** When a county submits a reimbursement claim according to this chapter, the claim shall be only for costs incurred as defined in this chapter(~~(on or after July 1, 1990))~~ and for the rates provided in this schedule. This schedule of reimbursement rates is effective as of July 1, 2007.

(1) Attorney per hour rate of eighty-five dollars and sixty-five cents (travel and per diem per state schedule).

(2) Legal assistant/paralegal per hour rate of forty-six dollars (travel and per diem per state schedule).

(3) Investigator per hour rate of forty-six dollars (travel and per diem per state schedule).

(4) Evaluation by expert actual cost (travel and per diem per state schedule).

(5) Judge per hour rate of forty-six dollars and five cents.

(6) Court clerk actual hourly salary.

(7) Bailiff actual hourly salary.

(8) Court reporter per hour rate of twenty dollars and seventy-one cents (transcript preparation per page rate of four dollars and thirteen cents).

(9) Expert witnesses actual cost (travel and per diem per state schedule).

(10) Nonexpert witnesses actual cost (travel and per diem per state schedule).

(11) Juror's actual compensation (travel and per diem per state schedule).

(12) Jail facilities daily rate of thirty dollars.

(13) Incidentals - actual costs based on receipts.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 08-15-060**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed July 14, 2008, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-095.

Title of Rule and Other Identifying Information: The department is amending WAC 388-470-0055 How do my resources count toward the resource limit for Basic Food?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs>.

[wa.gov/msa/rpau/docket.html](http://wa.gov/msa/rpau/docket.html) or by calling (360) 664-6097, on August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 27, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rule describes what resources must be counted and which ones are excluded when the department determines if a household is eligible for food stamp benefits. The proposed amendments made under this filing exclude these types of resources for households that are not categorically eligible for Basic Food and remain subject to the resource limits for the program.

Reasons Supporting Proposal: The 2008 Farm Bill, Public Law 110-234, has amended the Food Stamp Act to exclude certain retirement and educational accounts for the food stamp program effective October 1, 2008. The proposed amendments to this rule implement the mandatory provisions of this law related to countable resources for the food stamp program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, Public Law 110-234.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 74.08.090, Public Law 110-234.

Rule is necessary because of federal law, Title IV of Public Law 110-234 - The Food, Conservation, and Energy Act of 2008.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it adopts resource exclusions for the Washington Basic Food program to comply with requirements of the federal food stamp program as amended by the Food, Conservation, and Energy Act of 2008.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

July 9, 2008

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

**WAC 388-470-0055 How do my resources count toward the resource limit for Basic Food?** (1) For Basic Food, if your assistance unit (AU) is not categorically eligible (CE) (~~for Basic Food~~) under WAC 388-414-0001, we count the following resources toward your AU's resource limit (~~for Basic Food~~) to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

~~(iv) ((Keogh plans that do not involve a contractual agreement with someone outside of the assistance unit, less any withdrawal penalty;~~

~~(v) Individual Retirement Accounts (IRAs) less any withdrawal penalty;~~

~~(vi))~~ Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

~~((vii))~~ (v) Available trusts or trust accounts; or

~~((viii))~~ (vi) Lump sum payments. A lump sum payment is money owed to you from a past period of time that you get but do not expect to get on a continuing basis.

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) below.

(c) Vehicles as described in WAC 388-470-0075.

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward your resource limit:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing; or

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005.

(d) Household goods

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) above;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned Income Tax Credits (EITC):

(i) For twelve months, if you were a Basic Food recipient when you got the EITC and you remain on Basic Food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting Basic Food when you got the EITC.

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets SSI, TANF/SFA, or GA benefits; ~~(and)~~

(q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;

(r) Education funds or accounts in a tuition program under section 529 or 530 of the Internal Revenue Code; and

(s) Resources specifically excluded by federal law.

(3) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(4) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

#### WSR 08-15-066

#### PROPOSED RULES

#### GAMBLING COMMISSION

[Filed July 14, 2008, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-011.

Title of Rule and Other Identifying Information: New sections WAC 230-06-150 Defining "gross gambling receipts," 230-06-155 Defining "gross sales," 230-06-160 Defining "net gambling receipts," 230-06-165 Defining "net gambling income," 230-06-170 Defining "net win," 230-06-175 Defining "cost" and 230-03-052 Resident agent to be appointed by out-of-state applicants and licensees; and amending WAC 230-13-169 Annual activity reports for commercial amusement game licensees.

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 858-1111, on September 12, 2008, at 9:30 a.m.

Date of Intended Adoption: September 12, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In these first six rules we are adding back definitions. These definitions are used for the activity reports that the commission requires. We are adding back in the rule requiring all out-of-state applicants and licensees to appoint a resident agent within the state. This rule mistakenly says commercial amusement game licensees must report twice per year when activity reports are actually only required once per year.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 15 [14], 2008

Susan Arland

Rules Coordinator

NEW SECTION

**WAC 230-03-052 Resident agent to be appointed by out-of-state applicants and licensees.** (1) All applicants and licensees that do not have a business office or licensed premises within Washington state must appoint a resident agent for receiving and accepting service of process and other communications from us.

(2) The resident agent must be:

(a) A natural person who is a resident living in Washington state; and

(b) At least eighteen years old.

(3) The resident agent's name, business address, and home address must be filed with us.

NEW SECTION

**WAC 230-06-150 Defining "gross gambling receipts."** (1) "Gross gambling receipts" means the amount due to any operator of a gambling activity for:

(a) Purchasing chances to play a punch board or pull-tab series; and

(b) Purchasing chances to enter a raffle; and

(c) Fees or purchase of cards to participate in bingo games; and

(d) Fees to participate in an amusement game, including rent or lease payments paid to licensees or franchisers for allowing operation of an amusement game on their premises; and

(e) "Net win" from a house-banked card game; and

(f) Tournament entry fees; and

(g) Administrative fees from player-supported jackpots; and

(h) Fees to participate in a nonhouse-banked card game (for example, time, rake, or per hand fee).

(2) The amount must be stated in U.S. currency.

(3) The value must be before any deductions for prizes or other expenses.

(4) "Gross gambling receipts" does not include fees from players to enter player-supported jackpots. However, any portion of wagers deducted for any purpose other than increasing current prizes or repayment of amounts used to seed prizes are "gross gambling receipts."

NEW SECTION

**WAC 230-06-155 Defining "gross sales."** (1) "Gross sales" means the amount received for all nongambling goods and services sold or occurring on the premises.

(2) The amount must be stated in U.S. currency minus any sales taxes or discounts.

(3) Income received from sales made on behalf of others or in partnership with third parties, commission income, or income splitting schemes, must be recorded at the net amount realized.

NEW SECTION

**WAC 230-06-160 Defining "net gambling receipts."** "Net gambling receipts" means all gross gambling receipts from any gambling activity minus:

(1) The value for cash prizes; and

(2) The actual cost of any merchandise prizes that were awarded.

NEW SECTION

**WAC 230-06-165 Defining "net gambling income."** (1) "Net gambling income" means net gambling receipts

minus all other expenses related to the operation of a licensed activity paid out during the same reporting period.

(2) Expenses must be reported on the accrual basis if the records are normally maintained on that basis.

#### NEW SECTION

**WAC 230-06-170 Defining "net win."** "Net win" means gross wagers received from gambling activities or fund-raising events minus the:

- (1) Amount paid to players for winning wagers; and
- (2) Accrual of prizes for progressive jackpot contests; and
- (3) Repayment of amounts used to seed guaranteed progressive jackpot prizes.

#### NEW SECTION

**WAC 230-06-175 Defining "cost."** (1) "Cost" means the amount paid or owed by the purchaser, for any gambling or nongambling product or service, at the time of the transaction and documented on the sales receipt/transfer document.

- (2) "Cost" does not include:
  - (a) Sales taxes paid by the purchaser; or
  - (b) Any markup or value added by the purchaser.

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

**WAC 230-13-169 Annual activity reports for commercial amusement game licensees.** Commercial amusement game licensees must submit an annual activity report to ~~((the commission. The activity reports must be))~~ us in the format we require and must:

- (1) Cover the ~~((periods:~~
  - ~~(a) January 1 through June 30; and~~
  - ~~(b) July 1 through December 31))~~ license year of one calendar year or less; and
- (2) Be received at our administrative office or post-marked no later than thirty days following the end of the reporting period; and
- (3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the commercial amusement game licensee or its employee prepares the report, then it must provide the preparer's name and business telephone number; and
- (4) ~~((Be filed even if they do not renew their license. They must file a report for the period between the previous report filed and the expiration date of the license))~~ Submit a report for any period of time their license was valid, even if they had no activity or did not renew their license; and
- (5) Complete the report according to the instructions furnished with the report.

#### **WSR 08-15-067**

#### **PROPOSED RULES**

#### **DEPARTMENT OF TRANSPORTATION**

[Filed July 15, 2008, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-119.

Title of Rule and Other Identifying Information: WAC 468-310-020 Contents of standard prequalification questionnaire and financial statement and 468-310-050 Classification and capacity rating.

The subject WAC rules are amended to modify the financial prequalification requirements for the new Port Townsend/Keystone ferry procurement in order to promote the competitive process by increasing the number of potential bidders.

Hearing Location(s): Washington State Department of Transportation, Ferries Division, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, on August 27, 2008, at 10:30 a.m.

Date of Intended Adoption: August 27, 2008.

Submit Written Comments to: Tim McGuigan, Director of Legal Services and Contracts, WSDOT Ferries Division, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, e-mail mcguigan@wsdot.wa.gov, fax (206) 515-3605, by August 27, 2008.

Assistance for Persons with Disabilities: Contact WSDOT ferries division by August 27, 2008, TTY (206) 515-3400 or (206) 515-3600.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 6794 is emergency legislation authorizing the new construction of small auto ferries. The legislation was signed into law on February 14, 2008, and took effect immediately. These rule revisions modify the financial prequalification requirements for the new Port Townsend/Keystone ferry procurement. The revisions are the subject of an emergency rule-making order filed under WSR 08-05-100 on February 15, 2008, and under WSR 08-10-005 on April 24, 2008. The rule revisions are required in order to promote the competitive process by increasing the number of potential bidders.

Reasons Supporting Proposal: To promote the competitive process by increasing the number of potential bidders.

Statutory Authority for Adoption: RCW 47.60.680 and 47.60.690.

Statute Being Implemented: RCW 47.60.690.

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

Name of Proponent: Washington state department of transportation, ferries division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tim McGuigan, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3601.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Washington state ferries has reviewed RCW 19.85.030 and determined that the proposed rule revisions do not impose more than minor costs on businesses in an industry. Only those businesses choosing to seek prequalification on the Port Townsend/Keystone ferry

procurement are covered by the proposed revisions. The revisions do not impose additional regulatory, reporting, recordkeeping, compliance, or additional professional services costs.

Further, the proposed revisions will modify the financial prequalification criteria for the Port Townsend/Keystone ferry project only, making them less restrictive, and thus increase (not decrease) competition among qualified shipyards. There is no adverse impact or cost to the affected shipyards resulting from the proposed revisions.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule revisions do not fit within the requirements of RCW 34.05.328.

July 15, 2008  
Stephen T. Reinmuth  
Chief of Staff

AMENDATORY SECTION (Amending WSR 04-11-004, filed 5/5/04, effective 6/5/04)

**WAC 468-310-020 Contents of standard prequalification questionnaire and financial statement.** The standard prequalification questionnaire and financial statement shall be transmitted to the director of Washington state ferries. The contractor shall provide the following information:

(1) The name, address, phone number, contractor registration number and type of organization (corporation, copartnership, individual, etc.) of the contractor seeking prequalification.

(2) The contract size in dollars and the class or classes of work for which the contractor seeks prequalification (such as vessel dry-docking and hull repairs, vessel electrical repairs, etc.) as enumerated in WAC 468-310-050(6).

(3) Ownership of the contractor and if a corporation, the name of the parent corporation (if any) and any affiliated companies or subsidiaries.

(4) An accurate and complete record of the fifteen largest contracts in excess of ten thousand dollars performed by the contractor in whole or in part within the preceding three years both in Washington and elsewhere, including subcontracts, giving the contract amount, the date completed, the class of work, the name, address and phone number of the owner/agency representative, and any liquidated damages assessed against the contractor by an owner arising out of the performance of the contract.

(5) The principal officers and key employees showing the number of years each engaged in the class or classes of work for which the contractor seeks prequalification. The department may require resumes of such personnel as deemed proper for making its determination.

(6) Except as otherwise provided in this section or WAC 468-310-050(8), a contractor requesting prequalification certification to perform work in excess of ten million dollars shall submit copies of its audited annual statements for the previous three years as audited by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The financial statement shall not be more than twelve months old when submitted.

Any wholly owned subsidiary corporation may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for such subsidiary providing the financial statement otherwise meets the requirements of the preceding two sentences. If a consolidated financial statement is filed on behalf of a subsidiary corporation, a bid of the subsidiary corporation will be considered only if there is on file with the department a letter from the parent corporation guaranteeing performance by the subsidiary corporation of its contract with the department of transportation in an amount at least equal to the amount of the bid. A letter of guarantee by a parent corporation may cover a specific contract bid by its subsidiary or all contracts bid by its subsidiary within a stated period of time.

(7) A list of all major items of equipment to be used in those classes of work for which prequalification certification is requested including the original cost, age, location and condition of such equipment. The schedule shall show whether the equipment is owned, leased or rented. All major items of useful equipment should be listed even though fully depreciated but no obsolete or useless equipment should be included. In the event the contractor seeks prequalification certification to perform work on ferry vessels, the schedule shall also describe plant facilities of the contractor including shipyards, dry docks, repair facilities and other plant facilities.

(8) Such other information as may be required by the prequalification questionnaire.

(9) Notwithstanding the provisions of this section, a contractor who wishes to prequalify for the department's procurement of new auto ferries for the Port Townsend/Keystone ferry route, pursuant to the department's 2008 invitation for bids, shall submit a reviewed financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The reviewed financial statement shall be prepared by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the department's invitation for bids and is subject to modification by addendum during the bid process. This subsection applies in lieu of the form and quantity of audited financial statements specified in subsection (6) of this section for the Port Townsend/Keystone vessel procurement only. It does not replace or modify any other provisions in this chapter or governing prequalification statutes that authorize the department to evaluate a contractor's financial ability to perform the contract.

AMENDATORY SECTION (Amending WSR 04-11-004, filed 5/5/04, effective 6/5/04)

**WAC 468-310-050 Classification and capacity rating.** (1) Except as otherwise specified in this section, each contractor seeking prequalification under these rules will be classified for one or more of the classes of work listed in subsection ((8)) (6)(a) of this section and will be given a maximum capacity rating in accordance with its financial ability,

the adequacy of its equipment and plant facilities to perform the class or classes of work for which it has sought prequalification, the extent of the contractor's experience in performing contracts of the class or classes for which prequalification is sought, and the adequacy of the experience and capability of the contractor's officers and key employees in performing contracts of the class or classes for which prequalification is sought. The maximum capacity rating will limit the quantity of uncompleted work which the contractor shall have under contract at any one time either as a prime contractor or a subcontractor.

(2) Except as provided in subsections (7) through (9) of this section, the maximum capacity rating for a contractor applying for a rating in excess of fifty thousand dollars will be ten times the contractor's net worth as set forth in the standard prequalification questionnaire and financial statement. A properly executed letter of credit from an acceptable financial institution may be considered as an asset increasing the contractor's maximum capacity rating by the amount of the credit, but without the use of a multiplier. The maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ten million dollars: Provided, That in all cases the contractor's maximum capacity rating may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant, and experience.

(3) Consideration will be given to raising, by an amount not to exceed fifty percent, the maximum capacity rating of a contractor who qualifies with respect to actual capacity based upon organization, personnel, equipment and plant facilities, and experience, upon receipt of evidence of a current bonding capacity of such additional amount with a corporate surety. Such evidence shall be in the form of a letter of commitment executed by an officer of the surety who is authorized to bind the surety. Notwithstanding the provisions of this subsection, the maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ten million dollars.

(4) The certificate of prequalification issued by the department will establish a contractor's maximum capacity rating which will be subject to reduction by the total value of its current uncompleted work regardless of its location and with whom it may be contracted to determine the contractor's bidding capacity at the particular time.

(5) Notwithstanding the provisions of this section, a contractor will be allowed to submit a bid for an amount up to \$50,000 on a class or classes of work for which it is prequalified without regard to any financial maximum capacity rating or financial current capacity rating: Provided, That the contractor's current capacity may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant facilities, and experience.

(6)(a) Construction, repair and maintenance work on ferry vessels for which prequalification certification under these rules may be granted are classified as follows:

Class 81	Vessel construction and renovation;
Class 82	Dry-docking and hull repairs;
Class 83	Vessel metal fabrication repairs;

Class 84	Vessel electrical repairs;
Class 85	Vessel miscellaneous repairs;

(b) A contractor currently prequalified under RCW 47.28.070 to perform those classes of work required in the construction, improvement and repair of ferry terminal facilities will initially be deemed prequalified under these rules to perform such classes of work with the same capacity rating as approved by the department for highway related work.

(7) Notwithstanding the provisions of this section, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, must submit evidence of their ability, if awarded the contract, to obtain contract security in the amount of thirteen million dollars. The department estimates such amount to be adequate to protect one hundred percent of the department's estimated exposure to loss on the vessel construction contract, as calculated by the department prior to issuance of the request for proposals. Such amount shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. The actual contract security amount for the project construction contract will be a percentage of the successful proposer's total bid price. Such percentage shall be specified in the construction contract within the request for proposals. For the new 130-auto ferries contract, this provision applies in lieu of the maximum capacity rating formula specified in subsection (2) of this section.

(8) Notwithstanding the provisions of this section or WAC 468-310-020, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, shall, in addition to the evidence of contract security required in subsection (7) of this section, submit an audited financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The audited financial statement shall be performed by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. For the new 130-auto ferries contract, this provision applies in lieu of the quantity of audited financial statements specified in WAC 468-310-020.

(9) This subsection shall apply to the Port Townsend/Keystone vessel procurement only and shall be used in lieu of the requirements of subsections (1) through (5) of this section. It does not replace or modify any other provisions in this chapter or governing prequalification statutes. The department may prequalify a contractor under a Class 81 classification to bid on the Port Townsend/Keystone vessel procurement pursuant to this section based on the department's evaluation of the following criteria:

(a) Whether the contractor has adequate equipment and plant facilities available to accomplish the work;

(b) Whether the contractor has trained personnel available to perform the work;

(c) Whether the contractor has demonstrated experience in the type of work;

(d) Whether the contractor has an organization and technical staff with the size, training, experience and capability to accomplish the work;

(e) Whether the contractor has adequate financial resources to perform the type and size of work, or the ability to timely secure such resources. In evaluating such financial resources, the department may consider the contractor's overall financial condition including, but not limited to:

(i) Level of capitalization;

(ii) Cash flow;

(iii) Level of business activity;

(iv) Credit history;

(v) Debts;

(vi) Assets; and

(vii) Ability to obtain financing, including but not limited to, irrevocable lines of credit, and parent company guarantees.

A contractor does not have adequate financial resources when, based upon the totality of the circumstances, it lacks the financial resources reasonably expected of a contractor capable of performing the work on time and without interruption.

### WSR 08-15-073

#### PROPOSED RULES

#### LIQUOR CONTROL BOARD

[Filed July 15, 2008, 9:15 a.m.]

Supplemental Notice to WSR 08-06-107.

Exempt from preproposal statement of inquiry under WSR 07-17-087.

**Title of Rule and Other Identifying Information:** This series of rules covers official documents to prove age when purchasing tobacco products and the requirements and restrictions for sampling of tobacco products: WAC 314-10-050 Sales to persons under 18 years of age, 314-10-090 Tobacco sampling—Licenses, and 314-10-100 Sampler's license—Distribution of tobacco products.

**Hearing Location(s):** Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA, on August 27, 2008, at 10:00 a.m.

**Date of Intended Adoption:** September 10, 2008.

**Submit Written Comments to:** Pam Madson, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 704-4921, by September 5, 2008.

**Assistance for Persons with Disabilities:** Contact Pam Madson by September 5, 2008, TTY (800) 885-2880 or (360) 664-1648.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** RCW 70.155.050 bans the use of sampling as a marketing tool for both cigarettes and other tobacco products. As a result of a challenge to this law by R. J. Reynolds Tobacco Company, the ban as to cigarettes is preempted by federal law. This means cigarettes sampling is allowed. That leaves a state ban on sampling for other tobacco products. The Washington state liquor control

board (WSLCB) rules must be updated as a result of legislative action and the resulting lawsuit settlement.

RCW 70.155.090 authorizes the use of enrollment cards issued by the governing authority of a federally recognized Indian tribe located in Washington as identification for the purchase of alcohol or tobacco. The enrollment card must incorporate security features comparable to those implemented by the department of licensing for Washington drivers' licenses. The tribe must give the liquor control board at least ninety days' notice of intent to use the tribal enrollment card for the purpose of purchasing alcohol or tobacco. The liquor control board will notify licensees of the new tribal enrollment card. WSLCB recently changed its rules to reflect this law change for alcohol. This is the corresponding rule for tobacco.

**Reasons Supporting Proposal:** The proposed rule changes will update rules that conflict with state and federal law and will eliminate an unnecessary rule.

**Statutory Authority for Adoption:** RCW 66.08.030.

**Statute Being Implemented:** RCW 70.155.050 and 70.155.090.

Rule is necessary because of federal law, Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334.

**Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters:** This proposal replaces an earlier proposal filed under WSR 08-06-107. The proposed rule requires sampling licensees to notify the WSLCB forty-five days prior to any sampling activity.

**Name of Proponent:** WSLCB, governmental.

**Name of Agency Personnel Responsible for Drafting:** Pam Madson, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1648; **Implementation:** Tim Thompson, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1722; and **Enforcement:** Pat Parmer, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared. This proposal imposes only minor impact on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required.

July 9, 2008

Lorraine Lee

Chairman

**AMENDATORY SECTION** (Amending WSR 96-19-018, filed 9/6/96, effective 10/7/96)

**WAC 314-10-090 ((Tobacco sampling—Licenses.))**  
**What tobacco products may be used for sampling promotions?** (1) No person may engage in providing ((tobacco)) samples of tobacco products other than cigarettes within Washington state.

(2) No person may engage in providing samples of cigarettes without a valid sampler's license. A firm contracting with a tobacco manufacturer to distribute samples of a manufacturer's product is deemed to be the person engaged in the business of sampling. The liquor control board will issue any sampler's licenses.

~~((2))~~ (3) The annual fee for a manufacturer's cigarette samplers license within the state is \$500 and is designated a Class T1 license. The fee for independent businesses that provide samples of ~~((tobacco products))~~ cigarettes is \$50 and is designated a Class T2 license. All sampler's licenses expire on the 30th day of June each year and must be renewed annually.

In adopting the language of ~~((WAC 314-10-090(3)))~~ subsection (4) of this section, the board affirms that sampling does have a direct impact upon the availability of product to minors. Many sampling activities, because of the large volume of product offered, promote secondary distribution to bystanders, especially minors. Addiction to nicotine can occur quickly after the use of a relatively small amount of product. It is the board's intention to limit this amount thereby reducing the opportunity and potential for product to be redistributed to minors.

~~((3))~~ (4) A sample is the smallest portion representative of the product that is available for retail sales and distribution. T1 and T2 license holders may distribute samples of ~~((tobacco products))~~ cigarettes pursuant to chapter 70.155 RCW and chapter 314-10 WAC as follows:

(a) Cigarettes: No more than one sample package may be furnished per eligible customer per day. Such sample shall not contain more than twenty cigarettes per sample package.

~~((Cigars: No more than one sample of any single brand and type and no more than two samples may be furnished per eligible customer per day. Such sample shall not contain more than one cigar per sample package.~~

~~((Smokeless tobacco products: No more than one sample can, package or pouch may be furnished per eligible customer per day. Such sample can, package or pouch shall not exceed the size of the smallest unit available for sale at retail.~~

~~((All other tobacco products: No more than one sample unit may be furnished per eligible customer per day. Such sample unit shall not exceed the size of the smallest unit available for sale at retail.~~

~~((e))~~ T1 and T2 licensees that have sample packages available that contain ~~((less tobacco product))~~ fewer cigarettes than allowed by this section are encouraged to provide such alternative sizes.

AMENDATORY SECTION (Amending WSR 93-23-016, filed 11/5/93, effective 12/6/93)

**WAC 314-10-100 ~~((Samplers license—Distribution of tobacco products.))~~ How may cigarette sampling activity be conducted?** (1) The cigarette sampler's license entitles the licensee, and employees or agents of the licensee, to distribute samples at any lawful location in the state during the term of the license. The person engaged in sampling shall carry the Class T1 or T2 license or a copy of the license at all times and produce same at the request of an enforcement officer as defined in RCW 7.80.040.

(2) No person may distribute or offer to distribute samples in a public place. This prohibition does not apply to:

(a) An area to which persons under 18 years of age are denied admission,

(b) A store or concession to which a cigarette retailers license has been issued, or

(c) At or adjacent to a production, repair or outdoor construction site or facility.

(3) Notwithstanding subsection (2) ~~((above))~~ of this section, no person may distribute or offer to distribute samples within or on a public street, sidewalk, or park that is within 500 feet of a playground, school, or other facility where that facility is being used primarily by persons under 18 years of age for recreational, educational or other purposes.

(4) Class T1 and T2 licensees shall provide the board, ~~((upon request))~~ forty-five days prior to a sampling event, the locations, dates and times sampling activities will take place.

(5) All T1 and T2 licensees must provide to the liquor control board, in a format prescribed by the board, a listing of the location, date, hours and quantities of ~~((tobacco products))~~ cigarettes distributed in the state for the previous six months.

(a) A report for the period covering January 1st through June 30th of each year is due by no later than July 31st of each year.

(b) A report for the period covering July 1st through December 31st is due by no later than January 30th of the immediately following year.

(c) The board may take administrative action against any ~~((tobacco))~~ cigarette sampler who fails to submit the required reports.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-10-050

Sales to persons under 18 years of age.

#### **WSR 08-15-083**

#### **PROPOSED RULES**

#### **DEPARTMENT OF LICENSING**

[Filed July 16, 2008, 12:04 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Private security guards, chapter 18.170 RCW, fee increase.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98507, on September 4, 2008, at 10:30 a.m.

Date of Intended Adoption: September 12, 2008.

Submit Written Comments to: Mary Haglund, Department of Licensing, Public Protection Service Section, P.O. Box 9649, Olympia, WA 98502, e-mail Security@dol.wa.gov, fax (360) 570-7888, by September 2, 2008.

Assistance for Persons with Disabilities: Contact administrative staff, TTY (360) 664-8885 or (360) 664-6611.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Please see the document below for the specific rule changes.

Reasons Supporting Proposal: In the 2008 legislative session, the department of licensing's security guard program was granted an increase in spending authority to pay for increased expenditures. Because the program must be self supporting under RCW 43.24.086, the funds to pay program expenses must come from licensing fees. An increase in security guard applicants and the requirement to electronically transmit fingerprint cards to the Washington state patrol (WSP) has resulted in a workload increase that is beyond the capacity of the current data entry staff of 2.4 FTEs.

- An increase in original applications of approximately 25%.
- An increase in background checks due to passage of the Federal Intelligence Reform and Terrorism Prevention Act of 2004 (Section 6402-6403).
- Use of card scan technology to communicate data with the Washington state patrol.

Statutory Authority for Adoption: Chapter 18.170 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mary Haglund, Olympia, Washington, (360) 664-6658; and Enforcement: Pat Brown, Olympia, Washington, (360) 664-6658.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement.

July 14, 2008  
Shelly L. Hagen  
Deputy Assistant Director

AMENDATORY SECTION (Amending WSR 07-01-032, filed 12/12/06, effective 2/15/07)

**WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees.** Licenses issued to private security guard companies and private security guards expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private security guard company/principal:	
Application/includes first examination	\$ 350.00
Reexamination	25.00
License renewal	300.00
Late renewal with penalty	400.00
Change of principal/includes first examination	100.00
Principal armed endorsement	10.00

Title of Fee	Fee
Private security guard:	
Original license	<del>((85.00))</del> <u>111.00</u>
Armed endorsement	10.00
Transfer fee	25.00
Licensees with inactive licenses are not required to pay late renewal penalty fees.	
License renewal	<del>((55.00))</del> <u>85.00</u>
<del>((Note: License renewals without a Federal Bureau of Investigation background check will be required to pay additional background check fees.))</del>	
License late renewal with penalty.	<del>((70.00))</del>
Late fee is not due if submitting a renewal with a transfer or rehire application.	<u>90.00</u>
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00
Duplicate license	10.00

**WSR 08-15-084**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed July 16, 2008, 12:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-015.

Title of Rule and Other Identifying Information: An act relating to bail bond agents and bail bond recovery agents, amending chapter 18.185 RCW, requires rules to be amended or added as new.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Building 2, Conference Room 2209, Olympia, WA 98502-5046, on August 28, 2008, at 10:00 a.m.

Date of Intended Adoption: September 23, 2008.

Submit Written Comments to: Mary Haglund, Department of Licensing, Business and Professions Division, Bail Bond Agents, P.O. Box 9649, Olympia, WA 98507-9649, e-mail Security@dol.wa.gov, fax (360) 570-7888, by August 26, 2008.

Assistance for Persons with Disabilities: Contact Mary Haglund by August 26, 2008, TTY (360) 664-8885 or (360) 664-6611.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The passing of ESSB 6437, an act relating to bail bond agents in 2008 requires that the department of licensing develop training topics, testing requirements, procedures for recovery agents to report forced entries, and other reporting procedures. The fiscal note for ESSB 6437 also includes a legislatively approved fee increase for bail bond agents and bail bond recovery agents to support the increased work activity cre-

ated by the new law changes. The stakeholders who participated in the development of the rules included licensees, law enforcement and other state agencies.

Reasons Supporting Proposal: The legislature had concerns for public safety in the regulating of the bail bond industry and those concerns are reflected in the revisions made to the law. The rules increase training and accountability, and are in the best interest of the safety of the licensees as well as consumers and citizens.

Statutory Authority for Adoption: Chapter 18.185 RCW.

Statute Being Implemented: Chapter 18.185 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: ESSB 6437 was agency proposed legislation and the rules were developed with a wide range of licensees, other state agencies and law enforcement officials. All stakeholders were provided opportunity to participate in the drafting of the rule and a general agreement on all requirements has been reached. The exception is the fee increase, but the agency has communicated with the stakeholders regarding the issues and basis for the increase.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Haglund, Olympia, (360) 664-6611.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW does not apply to department of licensing.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to department of licensing.

July 11, 2008  
Shelly L. Hagen  
Deputy Assistant Director

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-030 Definitions.** (1) Words and terms used in these rules shall have the same meaning as each has under chapter 18.185 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning. Also see RCW 18.185.010 for other definitions.

(2) "Principal partner" means the partner who is the qualified agent of a bail bond agency and who exercises operational control over the agency.

(3) "Bail bond" means the contract between the defendant, the surety and/or the court to insure the appearance of the accused before the court(s) at such time as the court may direct. These bonds may require annual renewal.

(4) "Property bond agent" means a surety that posts security in the form of personal or real estate for compensation to assure the appearance of a defendant.

(5) "Surety" as it relates to bail bonds, means the depositor/owner of cash if a cash bail bond, the property owner(s)

if a property bond, the insurance company if a corporate surety bond, that guarantees performance of the bail bond contract for compensation.

(6) "Principal/defendant" means the accused, for whom a bail bond may be obtained.

(7) "Exonerate" means the discharging of the bail bond by the court.

(8) "Indemnitor" means the person placing security with an agency/agent, to secure the agency against loss for the release of a defendant(s) on a bail bond.

(9) "Clients" means defendants and indemnitors.

(10) "Affidavit" means a written statement made under oath as provided in RCW 10.19.160.

(11) "Indemnity agreement" means the contract signed by the indemnitor that states the obligations the indemnitor(s) is/are assuming.

(12) "Collateral receipt" means an accurate description of the security given to an indemnitor by the receiving agency's agent, in its fiduciary capacity, listing all collateral given as security for a bail bond and held by the agency/agent until the bail bond is exonerated by the court or a forfeiture occurs. The receipt shall name the owner of the collateral, the defendant, and the bond number, and specify the terms for redemption of the collateral including any fees charged for storage.

(13) "Surrender form" means the form used to return to custody a defendant for violation of bond conditions, and the indemnitor's withdrawal from a bail bond with an affidavit in accordance with RCW 10.19.160, or a letter of forfeiture from a court in accordance to the bail contract.

(14) "Letter of forfeiture" means a notice in varied forms, sent to a bail bond agency/branch office, advising the agency/branch office that a defendant who has secured a bail bond with that agency has failed to appear on a given date in a given court in accordance with RCW 10.19.090. The court has made a demand for the surrender of the defendant, or payment of the face amount of the bond by a given date.

(15) "Letter of demand" means any form of notice to the indemnitor/defendant that the collateral placed in trust has come under jeopardy because of a failure to appear or violation of bail.

(16) "Corporate surety bail bonds" means a bail bond contract that is guaranteed by a domestic, foreign or alien insurance company which has been qualified to transact surety insurance business in Washington state by the insurance commissioner.

(17) "Build-up fund" (also known as "BUF fund" or "escrow fund" or "trust fund") means that percentage of money obtained from collected premiums paid by the agent to the corporate surety company for the purpose of indemnifying the corporate surety from loss caused by the agent.

(18) "Endorsement" means that a bail bond agent or bail bond qualified agent licensee has met all licensing requirements for a bail bond recovery agent license and is authorized to perform the duties of both a bail bond agent and a bail bond recovery agent. Such licenses shall be issued by the department and will clearly state the dual purpose of the license.

(19) "Forced entry" means physical entry into a dwelling without the occupant's knowledge or consent for the purpose of apprehending a defendant subject to a bond.

(20) "Credentialed trainer" means an individual who has been certified by a state or national association to provide training to industry members based upon formal training and industry knowledge.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-100 Applying for a bail bond agent license.** After the applicant meets the requirements of RCW 18.185.020 he/she shall:

- (1) Complete an application for a license on a form provided by the department of licensing.
- (2) Inform the department if he/she has an insurance surety license and with what company he/she is affiliated.
- (3) Pay a fee or fees as listed in WAC 308-19-130.
- (4) Pass a written exam administered by the department or submit proof of twelve hours of prelicense training as provided in Part D, WAC 308-19-300. The training must have occurred within the previous six months or less.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-101 Applying for a bail bond recovery agent license or endorsement to a bail bond agent license.** ~~((An applicant for a bail bond recovery agent license endorsement must first meet the requirements stated in the bail bond agents law.))~~ After the applicant meets the requirements of RCW 18.185.020 (1), (2) and (3), and ((be)) is in good standing with the department~~((The following materials must be submitted by all applicants for a bail bond recovery agent license or endorsement))~~ he or she shall:

- (1) ~~((A bail bond recovery agent license or endorsement application completed in full.))~~ Complete an application for a license or an endorsement on a form provided by the department.
- (2) ~~((Proof that the applicant directly submitted the))~~ Submit a completed fingerprint card ~~((and fees to the Washington state patrol))~~;
- (3) ~~((A copy of))~~ Attest on the application form to having earned a high school diploma or GED or submit proof of three years experience in the bail industry;
- (4) Submit a copy of a current and valid concealed pistol license.
- (5) If applicant is retired or separated from a local or state police department, or a branch of the armed forces trained to carry out the duties of a peace officer within the last six years, submit proof to the department describing length of service, duties and date of retirement or separation or; ~~((if applicant is not retired or separated from a local or state police department, or a branch of the armed forces trained to carry out the duties of a peace officer within the last six years, the applicant must))~~ submit a certificate or transcript showing the applicant has completed ~~((a course consisting of not less than four hours of study which includes the following:~~
  - (a) ~~Civil and criminal law;~~
  - (1) ~~State statutes relating to bail regulations;~~
  - (ii) ~~Constitutional law;~~
  - (iii) ~~Procedures for exoneration and surrendering defendants into custody;~~

~~(iv) Civil liability;~~

~~(v) Civil rights of persons who are detained in custody. The knowledge in law may be accomplished through self-study. Self-study applicants must submit a written statement attesting to their knowledge in the subjects as stated in this section.~~

~~(b) Procedures for field operations, including, but not limited to:~~

~~(i) Use of force and degrees of force;~~

~~(ii) Safety techniques;~~

~~(iii) Entering and searching buildings;~~

~~(iv) Custody and transportation of prisoners including persons who are mentally ill or under the influence of alcohol or drugs;~~

~~(v) Defensive tactics;~~

~~(vi) Power of arrest;~~

~~(vii) Contracts;~~

~~(viii) Powers of a bail bond recovery agent;~~

~~(e) The basic principles of identifying and locating defendants. Public records and confidentially; surveillance.~~

~~(5) Proof of firearm training shall be submitted by applicants who intend to carry a firearm while engaging in the business of a bail bond recovery agent, or while traveling to or from such business. Such proof may be established by submission of a firearm certification issued by the criminal justice training commission.~~

~~(6) Proof of training certification in the following tools: Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units.~~

~~(7) Return completed applications to:~~

~~Department of Licensing~~

~~Bail Bond Program~~

~~P.O. Box 9048~~

~~Olympia, WA 98507-9048~~

~~(8)) thirty-two hours of field operations classes as stated in WAC 308-19-305;~~

~~(6) Pay a fee or fees as listed in WAC 308-19-130((-~~

~~(9) After the department receives the completed application and fees, a notification regarding examination dates and times will be mailed to the address of the applicant by the department.))~~;

~~(7) Pass a written exam administered by the department.~~

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-102 Submitting fingerprint cards ~~((to the Washington state patrol))~~ for a criminal history background check.** Every applicant for a bail bond recovery agent license or endorsement shall have a fingerprint criminal history background check conducted.

~~((1) The department shall provide fingerprint cards to all applicants.~~

~~(2))~~ Applicants shall be fingerprinted by a law enforcement agency on a fingerprint card provided by the department and pay any fees required by the law enforcement agency providing the fingerprinting service.

~~((3) Applicants shall submit the completed fingerprint card to the Washington state patrol with the appropriate fees charged under WAC 446-20-600, Fees. Checks or money orders made payable to the Washington state patrol, identification and criminal history section, shall be mailed with the fingerprint card to P.O. Box 42633, Olympia, Washington 98504-2633.~~

~~(4) Results of the background checks will be sent directly to the department.~~

~~(5) If the fingerprint card is rejected by Washington state patrol or the Federal Bureau of Investigation, the applicant will be notified by the department that the applicant must be reprinted and resubmit the fingerprint card to the Washington state patrol with the rejected cards and the attached reject slip-))~~

AMENDATORY SECTION (Amending WSR 06-21-082, filed 10/17/06, effective 11/17/06)

**WAC 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees.** The following fees for a one-year period shall be charged by business and professions division of the department of licensing:

Title of Fee	Fee
Bail bond agency/branch office:	
Application	\$1,200.00
License renewal	<del>((1,000.00))</del> <u>1,150.00</u>
Late renewal with penalty	1,200.00
Bail bond agent:	
Original license	500.00
License renewal	<del>((500.00))</del> <u>575.00</u>
Late renewal with penalty	600.00
Change of qualified agent	250.00
Original endorsement to the bail bond agent license	100.00
Endorsement renewal	100.00
Endorsement renewal with penalty	150.00
Bail bond recovery agent license:	
Original license	<del>((400.00))</del> <u>450.00</u> <u>(includes background check fees)</u>
License renewal	<del>((400.00))</del> <u>475.00</u>
Late renewal with penalty	500.00
Examinations:	
Reexamination fee	25.00

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-140 Renewal and expiration of licenses and endorsements.** (1) Licenses and endorsements issued to bail bond agents, bail bond agencies, branch offices, or bail bond recovery agents expire one year from the date of issue.

(2) Licenses and endorsements must be renewed each year on or before the date of expiration and a renewal fee as prescribed by the director in WAC 308-19-130 must be paid.

(3) If the application for a license or endorsement renewal is not received by the director on or before the renewal date, a penalty fee as prescribed by the director in WAC 308-19-130 shall be paid. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

(4) A license or endorsement shall be canceled if an application for a renewal of that license or endorsement is not received by the director within one year from the date of expiration. A person may obtain a new license or endorsement by satisfying the procedures and qualifications for licensing, including the successful completion of any current examination and education requirements.

(5) No bail bond agent, or bail bond agency shall engage in the sale or issuance of bail bonds if their license has expired. No bail bond recovery agent shall perform the duties of a bail bond recovery agent if his/her license has expired.

(6) When the director receives verification that a bail bond ~~((agency))~~ agent or recovery agent license has expired or has been revoked or suspended, the director shall advise correction centers.

(7) By renewing the bail bond agent, bail bond recovery agent, or bail bond qualified agent license with the department, the licensee is making declaration that they have met the requirements for annual continued education.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-300 Prelicense training and examination requirements for bail bond agents, bail bond agency, and qualified bail bond agent license applicants.** (1) ~~((The training and examination requirements for bail bond agent license applicants under RCW 18.185.060, shall include, at a minimum:~~

- (a) Four hours of training in the following subjects:
  - (i) Bail bond licensing laws;
  - (ii) Court procedures relating to bail bonds;
  - (iii) Criminal procedure, Title 10 RCW;
  - (iv) Contracts and bail bond agreements;
  - (v) Preparation of promissory notes, mortgages, deeds of trust, assignments and other documents affecting property;
  - (vi) Care and storage of personal property;
  - (vii) Forfeiture of collateral, judgements and collection;
  - (viii) Washington Insurance Code, Title 48 RCW;
  - (ix) Laws relating to notary publics, chapter 42.44 RCW;
  - (x) Contact with clients, courts and law enforcement;
  - (xi) Sexual harassment.

~~(b) A licensed qualified agent shall certify on each bail bond agent's license application that the training required in this section has been completed.~~

(2)) Beginning November 1, 2008, all bail bond agents and qualified agent applicants must provide proof of twelve hours of training or take a written state exam and achieve a passing score of at least eighty-five percent.

(a) The prelicense training must consist of eight hours of instruction provided by a credentialed trainer or other department approved source in the topic requirements listed below in subsection (3) of this section:

(b) The prelicense training must also consist of four hours of self study or formal training in the laws and rules relating to bail bonds.

(2) Proof of the eight hours of prelicense instruction provided by a credentialed trainer or other department approved source must be submitted with the bail bond agent or qualified agent application form provided by the department.

(3) The prelicense bail bond agent training topic requirements include:

(a) The basics of bail bonds;

(b) Responsibilities of a bail bond agent;

(c) Understanding power of attorney;

(d) Court jurisdiction;

(e) Articulated offense;

(f) Understanding the liability in surety bonds;

(g) Role in criminal justice;

(h) The rights of the clients;

(i) Ethics pertaining to how to treat your clients;

(j) Sexual harassment between agents and clients;

(k) Transporting clients;

(l) Phone service in jails;

(m) How to be in compliance with jail requirements;

(n) Collect call companies;

(o) Harassment and no contact orders of the client;

(p) Collateral;

(q) General recordkeeping;

(r) Contracts;

(s) Basic requirements of bail bond recovery agents;

(t) Understanding of the privacy laws;

(u) The basics of notaries;

(v) Basic understanding of the trust account; and

(w) Application of the Consumer Protection Act.

(4) Approved sources for bail bond agent prelicense training include:

(a) National or local industry associations;

(b) Certified bail agent on-line education courses;

(c) Credentialed licensed bail bond agents; and

(d) Other sources determined by the department.

(5) The examination requirement for ~~((bail bond agency or))~~ qualified bail bond agent license applicants under RCW 18.185.030 (1)(a), shall also include, as a minimum:

(a) All of the subjects as listed in subsection ~~((1)(a))~~ (3) of this section; and

(b) At a minimum, the following subjects:

(i) Recordkeeping and filing;

(ii) Business licensing, taxation and related reporting and recordkeeping requirements.

(iii) Personnel management;

(iv) Laws relating to employment;

(v) The Americans with Disabilities Act;

~~((3)) The examination for bail bond agency or qualified bail bond agent license applicants shall consist of a minimum~~

of fifty questions covering the subjects listed above in subsection ~~(2)(a) and (b) of this section.~~) (6) A score of eighty-five percent must be achieved in order to pass the examination. Applicants who fail to achieve an eighty-five percent score will be required to wait a minimum of ~~((fourteen))~~ seven days before reexamination.

~~((4)) The director will certify training and examination programs for bail bond qualified agents and bail bond agents license applications.~~

(5) Every bail bond agent shall present to the director a letter stating training they have received while working as a trainee for an agency, including the name of the principal instructor before the director issues the person a bail bond license. This letter shall be signed by the qualified agent and shall also include a statement that the qualified agent is aware that they are taking responsibility for the agent.)

#### NEW SECTION

**WAC 308-19-302 Continuing education for bail bond agents.** (1) Beginning July 1, 2009, all bail bond agents and qualified agents must provide proof of eight hours of continued education before their license can be renewed. Proof must be submitted on a form provided by the department.

(2) Continued education must be in the following topic areas:

(a) How to work with the courts systems;

(b) Refresher course relating to relative laws;

(c) Ethics;

(d) Transporting defendants between other states; and

(e) Other topics applicable to the profession.

(3) Approved continued education providers include:

(a) National or local industry associations;

(b) Certified bail agent on-line education courses; and

(c) Other sources determined by the department.

(4) Continued education hours cannot be carried forward to the following year.

(a) A licensee may not repeat a course for credit during the same renewal period.

(b) Continued education courses must be taken within the same year of the renewal period.

(c) Licensees acting as a credentialed trainer of an approved continued education course will receive the same credit for the course they teach as the licensees attending receive.

(5) By renewing the bail bond agent or bail bond qualified agent license with the department, the licensee is making declaration that they have met the requirements for annual continued education.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-305 Minimum prelicense training requirements and exceptions for bail bond recovery agents.** (1) Applicants for a license or an endorsement as a bail bond recovery agent must complete not less than ~~((four))~~ thirty-two hours of ~~((a course of self study, training and/or certification))~~ prelicense training in field operations and self-

study in the following subjects, except as otherwise provided in this section.

(a) Prelicense training in civil or criminal law can be achieved through public or private instruction or self-study and must include the following training topics:

- (i) State statutes relating to bail regulations;
- (ii) Constitutional law;
- (iii) Procedures for surrendering defendants into custody;
- (iv) Procedures for exoneration;
- (v) Civil liability;
- (vi) Civil rights of persons who are detained in custody;
- (vii) Basic principles of identifying and locating defendants to include public records and confidentially, and surveillance;

(viii) Contracts;

(ix) Powers of a bail bond recovery agent;

(b) Prelicense training in procedures for field operations can be achieved through public or private instruction and must include the following training and certifications:

(i) Training in use of force and degrees of force, including verbal, Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units(-);

~~(ii) ((Certification in the following defensive tools, Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units within twelve months of applying for a license or endorsement;~~

~~((iii)) Safety techniques;~~

~~((iv)) (iii) Entering and searching buildings;~~

~~((v)) (iv) The custody and transportation of prisoners including persons who are violent, emotionally disturbed or under the influence of alcohol, or drugs;~~

~~((vi)) (v) Defensive tactics;~~

~~((vii)) (vi) Application of restraints/handcuffing procedures;~~

~~((viii)) (vii) All applicants shall obtain ((firearm)) gun safety training from an approved trainer, or applicants intending to carry a firearm as a bail bond recovery agent shall obtain and keep current firearm certification from the criminal justice training commission;~~

~~(viii) Certification in the following defensive tools: Taser X/M26, baton either expandable, straight stick, or side handle, and oleo capsicum resin sprays or foams rated at 100,000 to 2,000,000 Scoville Heat Units within twelve months of applying for a license or endorsement.~~

(2) In place of completing the prelicense training in procedures for field operations established in subsection (1) of this section required under RCW 18.185.260, an applicant may submit proof to the department that he/she has completed a course of training required by a municipal, state or federal law enforcement agency or a branch of the armed forces to carry out the duties of a peace officer within the past six years.

~~((3) Applicants may submit proof of previously meeting prelicense training requirements in procedures for field operations in subsection (1) of this section between May 1, 2005, and July 1, 2005. The purpose of this rule is to allow applicants advance notice whether or not the applicant will be~~

~~required to take additional training before the license requirements are in effect on January 1, 2006. The proof must be submitted in writing and include: The applicant's name, address and telephone number, the name, address, and telephone number of the training facility attended, a copy of the training curriculum which the applicant received training in, including the number of hours devoted to each topic, and documentation of certification of training accomplishments related to the training requirements set forth in subsection (1) of this section. The department will issue written notification to the applicant, stating acceptance of the prelicense training received, or a written notification and explanation for the department's denial of the prelicense training received.~~

~~(4) The training the applicant receives should prepare the applicant to achieve a passing score on the written examination administered under chapter 18.185 RCW.)~~

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-310 Prelicense examination requirements for bail bond recovery agents.** Each applicant for a bail bond recovery agent license or endorsement shall pass an examination demonstrating their knowledge and proficiency in all of the training requirements set forth in WAC 308-19-305. ~~((The examination shall consist of fifty questions. Applicants shall correctly answer thirty five examination questions to pass the examination.))~~ Applicants who fail to achieve a passing score of eighty-five percent will be required to wait a minimum of seven days before reexamination and pay the required reexamination fee.

NEW SECTION

**WAC 308-19-330 Continued education and recertification for bail recovery agents.** (1) Beginning July 1, 2009, bail recovery agents must attest to having participated in at least eight hours of annual training in applicable fields of study relating to the operations of bail recovery to be eligible for renewing their license. Bail recovery agents must keep a record of the annual training and make the record available to the department for three years.

(2) If a bail recovery agent carries a firearm, or other weapons, it is their obligation to be recertified annually. The hours for firearm, or other weapons, recertification cannot be counted towards annual training hours.

(3) By renewing the bail bond recovery agent license with the department, the licensee is making declaration that they have met the requirements for annual continued education.

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

**WAC 308-19-450 Planned forced entry and forced entry reporting—Procedure requirements.** When the apprehension of a fugitive defendant meets the definition of RCW 18.185.010(12) Planned forced entry, the bail bond recovery agent shall follow the procedure requirements in RCW 18.185.300.

(1) In addition to the minimum notification requirements of RCW 18.185.300, the notification to law enforcement must provide any prior known risk factors of which the bail bond recovery agent is aware including knowledge regarding any warrants.

(2)(a) Beginning November 1, 2008, bail recovery agents shall report to the department within ten business days after a forced entry on a form provided by the department the following information:

(i) Date and time of the forced entry;

(ii) Location;

(iii) Defendant name;

(iv) Bail bond agent named on the recovery contract;

(v) Bail recovery agent names who participated in the forced entry;

(vi) Was any person present during the forced entry injured?

(vii) Was property damaged?

(viii) Was the defendant present?

(ix) Was the defendant surrendered to jail?

(b) The Forced Entry Reporting Form can be submitted to the department by e-mail, fax or regular postage mail to the address information on the form.

#### WSR 08-15-086

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed July 16, 2008, 5:35 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 246-826 WAC amends health care assistant rules by expanding the scope of practice to include oral, topical or nasal administration of vaccines as authorized by chapter 58, Laws of 2008 (SHB 2475), to make housekeeping changes, and eliminate sections that are no longer needed.

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on September 11, 2008, at 10:00 a.m.

Date of Intended Adoption: October 3, 2008.

Submit Written Comments to: Betty Moe, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4909, by September 11, 2008.

Assistance for Persons with Disabilities: Contact Betty Moe by September 4, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 58, Laws of 2008, allows health care assistants to administer vaccines with proper delegation and supervision. This can be done orally, topically, or by nasal administration. The decertification or disciplinary action rule is repealed because it is included in the Uniform Disciplinary Act, chapter 18.130 RCW. The grandfather clause rule is repealed because it no longer applies and is outdated.

Reasons Supporting Proposal: To implement chapter 58, Laws of 2008 (SHB 2475), that allows health care assistants

to administer oral, topical or nasal vaccines. The exception process allows for housekeeping changes and repeal of outdated rules.

Statutory Authority for Adoption: RCW 18.135.030.

Statute Being Implemented: Chapter 18.135 RCW as amended by chapter 58, Laws of 2008.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Betty Moe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4912.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

July 16, 2008

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-826-030 Supervision of health care assistants.** A health care assistant may be supervised by either the (~~(practitioner who delegated the act)~~) delegator or by ((#)) another practitioner who (~~(could))~~ can order the act under his or her own license. The practitioner who is supervising the health care assistant must be physically present and immediately available in the facility during the administration of injections or vaccines. The supervising practitioner need not be present during procedures to withdraw blood.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

**WAC 246-826-070 Maintenance of listing of drugs and functions authorized.** Each delegator must maintain a list of the specific medications((#)), diagnostic agents, or vaccines and the route of administration of each that he or she has authorized (~~(for injection)~~). Both the delegator and the delegatee shall sign and date the ((above)) list(~~(, indicating the date of each signature)~~). The signed list shall be available for review by the secretary of the department of health or his/her designee.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

**WAC 246-826-080 Medication ((and)), diagnostic agent, and vaccine list.** The list of specific medications, diagnostic agents, and vaccines, and the route of administration of each that has been authorized (~~(for injection pursuant~~

to RCW 18.135.065)) shall be submitted to the secretary at the time of initial certification ((~~registration~~)) and again with every recertification ((~~registration~~)). If any changes occur which alter the list, a new list with the delegator and delegatee's signatures must be submitted to the department within thirty days of the change. All submitted lists will be maintained ((~~in~~)) by the department of health ((~~filed under the name of the certifying practitioner or facility and shall be available for review~~)).

AMENDATORY SECTION (Amending WSR 02-06-115, filed 3/6/02, effective 4/6/02)

**WAC 246-826-100 Health care assistant classification.** ((~~Effective December 2001, there are seven categories of health care assistants:~~)) There are seven categories of health care assistants. All categories may administer vaccines with appropriate delegation and supervision. This can be done by injection, orally, topically, or by nasal administration.

(1) Category A assistants may perform venous and capillary invasive procedures for blood withdrawal.

(2) Category B assistants may perform arterial invasive procedures for blood withdrawal.

(3) Category C assistants may perform intradermal, subcutaneous and intramuscular injections for diagnostic agents and administer skin tests.

(4) Category D assistants may perform intravenous injections for diagnostic agents.

(5) Category E assistants may perform intradermal, subcutaneous and intramuscular injections for therapeutic agents and administer skin tests.

(6) Category F assistants may perform intravenous injections for therapeutic agents.

(7) Category G assistants may perform hemodialysis.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-826-090	Decertification or disciplinary actions.
WAC 246-826-190	Grandfather clause.

#### **WSR 08-15-097**

#### **PROPOSED RULES**

#### **WASHINGTON STATE PATROL**

[Filed July 17, 2008, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-092.

Title of Rule and Other Identifying Information: Regulations for private carrier buses, chapter 204-32 WAC.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504, on August 26, 2008, at 1:00 p.m.

Date of Intended Adoption: August 27, 2008.

Submit Written Comments to: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail equipment@wsp.wa.gov, fax (360) 596-4015, by August 26, 2008.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 26, 2008, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To consolidate vehicle lighting standards partly under this chapter into chapter 204-21 WAC, and rewriting remaining rules in clearer language.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.290.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melissa Van Gorkom, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4017.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

July 10, 2008

John R. Batiste

Chief

AMENDATORY SECTION (Amending Order 7001, filed 6/10/70, effective 7/15/70)

**WAC 204-32-010 Definitions.** (1) "Chief" means the chief of the Washington state patrol or their designee.

(2) "Private carrier bus" means every motor vehicle designed for the purpose of carrying passengers (having a seating capacity for eleven or more persons) used regularly to transport persons in furtherance of any organized agricultural, religious or charitable purpose. Such term does not include buses operated by common carriers under a franchise granted by any city or town or the Washington public utilities commission.

((~~2~~)) (3) "Stop signal" means a sign bearing the word "STOP" which is actuated by the driver of the bus.

((~~3~~)) (4) "Signal lamps" means red lamps mounted on the vehicle to be used in conjunction with the "stop signal" when the bus is loading or unloading passengers under certain conditions.

((~~4~~)) (5) "Warning sign" means a sign to be attached to the rear of the bus to inform following motorists of their duty to stop when the "signal lamps" are activated.

AMENDATORY SECTION (Amending WSR 99-18-028, filed 8/24/99, effective 9/24/99)

**WAC 204-32-020 Standards for signal lamps.** The signal lamps required on private carrier buses ((~~shall~~)) must be constructed in conformance with the society of automotive engineers standard for "school bus red signal lamps," in effect at the time of manufacture of such lamps. All lamps used as signal lamps ((~~shall be of a type approved by the~~))

~~Washington state patrol~~) must meet the requirements set forth for lighting under chapter 204-21 WAC.

AMENDATORY SECTION (Amending Order 7001, filed 6/10/70, effective 7/15/70)

**WAC 204-32-030 Standards for stop signal.** The stop signal required on private carrier buses ~~((shall))~~ must:

(1) Be ~~((14))~~ fourteen inches vertically and ~~((18))~~ eighteen inches horizontally ~~((and shall)).~~

(2) Be treated with red reflective material.

(3) Have the word "STOP" ~~((shall be))~~ painted on the sign in white with letters which are a minimum of ~~((8))~~ eight inches in height and having a ~~((3/4))~~ three-quarter-inch stroke. ~~((Both sides of the sign shall be treated in the same manner and bear the same legend.))~~ (4) Meet the requirements outlined in above on both sides of the sign.

(5) Be mounted on the left side of the bus just below the window line and adjacent to the driver of the bus.

(6) Be hinged at the front edge of the sign.

(7) Be manually controlled by the driver of the bus.

(8) Be so constructed as to lock in an extended position perpendicular to the side of the bus and to also lock in the closed position parallel to the side of the bus.

(9) Only be actuated by the driver of a private carrier bus whenever such vehicle is stopped on the highway for the purpose of receiving or discharging passengers, except:

(a) When the passengers boarding or alighting do not have to cross a highway and the bus is stopped completely off the main traveled portion of the roadway; or

(b) When the bus is stopped at an intersection or place where traffic is controlled by a traffic officer or official control signal.

AMENDATORY SECTION (Amending Order 7001, filed 6/10/70, effective 7/15/70)

**WAC 204-32-050 Identification signs.** A sign must be affixed to every private carrier bus ~~((shall bear on the front and rear thereof))~~ that is plainly visible ~~((signs containing))~~ and contains the words "private carrier bus." ~~((in))~~ The sign must:

(1) Have letters not less than ~~((8))~~ eight inches in height. ~~((The lettering shall be))~~

(2) Have letters that are at least ~~((3/4))~~ three-quarter-inch stroke. ~~((These signs shall))~~

(3) Be located above the windshield on the front of the bus and above the rear windows on the rear of the bus.

AMENDATORY SECTION (Amending WSR 99-18-028, filed 8/24/99, effective 9/24/99)

**WAC 204-32-060 Warning sign.** A sign must be affixed to the rear of every private carrier bus ~~((shall be equipped with a sign on the rear of the bus which shall bear))~~ that is clearly visible and contains the words "unlawful to pass bus when red lights flash." The sign ~~((shall))~~ must:

(1) Be ~~((16))~~ sixteen inches vertically and ~~((32))~~ thirty-two inches horizontally. ~~((The sign shall have))~~

(2) Have a background of silver retrodirective-reflex reflective sheeting. ~~((The lettering shall all be))~~

(3) Have lettering that is size ~~((3))~~ three inch B. ~~((Line one shall))~~

(4) Have the letters "unlawful to" in black on line one. ~~((Line two shall))~~

(5) Have the letters "pass bus when" in black on line two. ~~((Line three shall))~~

(6) Have the letters "red lights flash" in red on line three.

EXCEPTION: Buses that do not stop upon the roadway to load or discharge passengers are exempt from the requirements of this section.

AMENDATORY SECTION (Amending Order 7001, filed 6/10/70, effective 7/15/70)

**WAC 204-32-090 Stops at railroad crossings.** (1) The driver of any private carrier bus, carrying any passenger, before crossing at grade any track or tracks of a railroad, ~~((shall))~~ must stop such vehicle within fifty feet but no less than fifteen feet from the nearest rail of such railroad and while so stopped ~~((shall))~~ must listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train and ~~((shall))~~ must not proceed until he can do so safely.

(2) After stopping as required and upon proceeding when it is safe to do so the driver of any private carrier bus ~~((shall))~~ must cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing and the driver ~~((shall))~~ must not shift gears while crossing the track or tracks.

(3) No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

AMENDATORY SECTION (Amending Order 7001, filed 6/10/70, effective 7/15/70)

**WAC 204-32-100 Inspection of buses.** The chief ~~((of the Washington state patrol))~~ may, from time to time, require that every private carrier bus be presented at some location which ~~((shall))~~ must be designated by him for the purpose of inspection of the vehicle to determine if the vehicle is equipped as required by law and the provisions of this regulation.

AMENDATORY SECTION (Amending Order 7001, filed 6/10/70, effective 7/15/70)

**WAC 204-32-110 Bus stops and routing.** The chief ~~((of the Washington state patrol))~~ may delegate officers of the Washington state patrol to work with private carrier bus operators and owners to establish routes and passenger loading and unloading locations which will provide the greatest safety for bus passengers and the motoring public. Bus stops and routes established by this means ~~((shall))~~ must be adhered to by private carrier bus drivers.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 204-32-040	Mounting and activation of warning devices.
WAC 204-32-070	Color of turn signal and stop lamps.
WAC 204-32-080	Use of warning devices.
WAC 204-32-120	Effective date.

**WSR 08-15-098****PROPOSED RULES****WASHINGTON STATE PATROL**

[Filed July 17, 2008, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-094.

Title of Rule and Other Identifying Information: Chapter 204-10 WAC, Equipment standards.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504, on August 26, 2008, at 1:30 p.m.

Date of Intended Adoption: August 27, 2008.

Submit Written Comments to: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail [equipment@wsp.wa.gov](mailto:equipment@wsp.wa.gov), fax (360) 596-4015, by August 26, 2008.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 26, 2008, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adoption of federal standards for vehicle equipment and consolidation of vehicle equipment standards formerly codified under chapters 204-26, 204-52, 204-82A, 204-90, 204-92, and 204-94 WAC, making the rules more accessible.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.320.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melissa Van Gorkom, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4017.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

July 10, 2008  
John R. Batiste  
Chief

AMENDATORY SECTION (Amending Order 81-08-02, filed 8/21/81)

**WAC 204-10-010 Promulgation.** By authority of RCW 46.37.005 (~~and~~), 46.37.320, ~~46.37.400, and 46.37.530~~ (1)(b) the (~~state commission on equipment~~) Washington state patrol hereby adopts the following rules setting forth standards for motor vehicle equipment for which approval is required in chapter 46.37 RCW.

NEW SECTION

**WAC 204-10-012 Purpose.** The purpose of this rule is to establish equipment requirements and provide limitations on the alteration of motor vehicle equipment in order to ensure that equipment used on motor vehicles complies with current safety standards.

NEW SECTION

**WAC 204-10-014 Definitions.** (1) "Eye glasses" mean any spectacles, sunglasses, or goggles having two separately mounted lenses, but shall exclude contact lenses.

(2) "Goggles" means an optical device worn before the eyes, the predominant function of which is to protect the eyes without obstructing peripheral vision. They provide protection from the front and sides and may or may not form a complete seal with the face.

(3) "Face shield" means an eye protector attached to a helmet or headband(s) and which covers the wearer's eyes and face at least to a point approximately to the tip of the nose and whose predominant function is protection of the eyes.

(4) "FMVSS" means Federal Motor Vehicle Safety Standard, chapter 49 Code of Federal Regulations (CFR) Part 571.

(5) "Frame" means those parts of eye glasses or goggles containing the lens housings. The frame may be associated with padding.

(6) "Headband" means that part of the device consisting of a supporting band or other structure that either encircles the head or protective helmet, or can be attached thereto.

(7) "Motor vehicle" means passenger vehicles, multipurpose passenger vehicles, motorcycles, trucks and buses which are intended for use on public highways, excluding commercial vehicles as defined under RCW 46.04.140.

(8) "Motor vehicle window glazing" means glass material that meets the appropriate FMVSS for use in motor vehicles.

(9) "Recognized manufacturer" means a person, firm, copartnership, association, or corporation who is or has engaged in the business of manufacturing motor vehicles intended for use on the public highways and offered for sale in interstate commerce.

(10) "Recreational products" means any toys, cartoon characters, stuffed animals, signs, and other vision-reducing articles and materials that may be applied to or suspended near motor vehicle windows for entertainment and/or amusement purposes.

(11) "Reflectorized warning device" means any device defined in RCW 46.37.450 or any device composed of a reflective sheeting material which consists of spherical lens

elements embedded with a transparent plastic having a smooth, flat outer surface. The sheeting shall be weather resistant and have a protected, low tac, precoated adhesive backing.

(12) "Reflex reflector" means a device that is used on vehicles to give an indication of presence to an approaching driver by reflecting light from the headlamps of the approaching vehicle.

(13) "SAE" means the Society of Automotive Engineers. Copies of the SAE Standards are available for review at the Washington State Patrol, 210 11th Avenue, Olympia, WA 98504, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15086-7511.

(14) "Sunscreening devices" are those products and/or materials applied or installed on motor vehicle windows for the purpose of reducing adverse effects of the sun. Such devices include, but are not limited to, semipermanently installed roll-up style shades and louver materials as well as temporarily applied articles such as towels, sheets, and blankets.

(15) "Wheelchair conveyance" means any vehicle specially manufactured or designed for transportation of a physically or medically impaired person who is either wheelchair-bound or otherwise walking impaired. The vehicle may be a separate vehicle used in lieu of a wheelchair or a vehicle used for transporting the impaired person who is simultaneously occupying a wheelchair.

#### NEW SECTION

**WAC 204-10-021 Adoption of federal standards.** The Washington state patrol adopts by reference Title 49 Code of Federal Regulations (CFR) Part 571 Federal Motor Vehicle Safety Standards (FMVSS) and any amendments thereto for vehicle equipment standards unless otherwise prescribed under state law. The FMVSS as outlined in Title 49 CFR 571 are as follows:

1. 101 - Controls and displays.
2. 102 - Transmission shift lever sequence, starter interlock, and transmission brake effect.
3. 103 - Windshield defrosting and defogging systems.
4. 104 - Windshield wiping and washing system.
5. 105 - Hydraulic and electric brake systems.
6. 106 - Brake hoses.
7. 108 - Lamps, reflective devices, and associated equipment.
8. 109 - New pneumatic tires.
9. 110 - Tire selection and rims for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.
10. 111 - Rearview mirrors.
11. 113 - Hood latch system.
12. 114 - Theft protection.
13. 116 - Motor vehicle brake fluids.
14. 117 - Retreaded pneumatic tires.
15. 118 - Power-operated window, partition, and roof panel systems.
16. 119 - New pneumatic tires for vehicles other than passenger cars.

17. 120 - Tire selection and rims for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).

18. 121 - Air brake systems.
  19. 122 - Motorcycle brake systems.
  20. 123 - Motorcycle controls and displays.
  21. 124 - Accelerator control systems.
  22. 125 - Warning devices.
  23. 129 - New nonpneumatic radial tires for light vehicles.
  24. 131 - School bus pedestrian safety devices.
  25. 135 - Light vehicle brake systems.
  26. 138 - Tire pressure monitoring systems.
  27. 139 - New pneumatic radial tires for light vehicles.
  28. 201 - Occupant protection in interior impact.
  29. 202 - Head restraints; mandatory applicability begins on September 1, 2008.
  30. 203 - Impact protection for the driver from the steering control system.
  31. 204 - Steering control rearward displacement.
  32. 205 - Glazing materials.
  33. 206 - Door locks and door retention components.
  34. 207 - Seating systems.
  35. 208 - Occupant crash protection.
  36. 209 - Seat belt assemblies.
  37. 210 - Seat belt assembly anchorages.
  38. 212 - Windshield mounting.
  39. 213 - Child restraint systems.
  40. 214 - Side impact protection.
  41. 216 - Roof crush resistance.
  42. 217 - Bus emergency exits and window retention and release.
  43. 218 - Motorcycle helmets.
  44. 219 - Windshield zone intrusion.
  45. 220 - School bus roll-over protection.
  46. 221 - School bus body joint strength.
  47. 222 - School bus passenger seating and crash protection.
  48. 223 - Rear impact guards.
  49. 224 - Rear impact protection.
  50. 225 - Child restraint anchorage systems.
  51. 301 - Fuel system integrity.
  52. 302 - Flammability of interior materials.
  53. 303 - Fuel system integrity of compressed natural gas vehicles.
  54. 304 - Compressed natural gas fuel container integrity.
  55. 305 - Electric-powered vehicles: Electrolyte pillage and electrical shock protection.
  56. 401 - Internal trunk release.
  57. 403 - Platform lift systems for motor vehicles.
  58. 404 - Platform lift installations in motor vehicles.
  59. 500 - Low speed vehicles.
- Links to 49 CFR 571 are available on the Washington state patrol web site at [www.wsp.wa.gov](http://www.wsp.wa.gov). Copies of the CFR may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.

NEW SECTION

**WAC 204-10-022 Body requirements.** (1) Defroster and defogging devices: Every enclosed motor vehicle must be equipped with a device capable of defogging and defrosting the windshield area. Vehicles or exact replicas of vehicles manufactured prior to January 1938 are exempt from this requirement.

(2) Door latches: Every enclosed motor vehicle equipped with side doors leading directly into a compartment that contains one or more seating accommodations must be equipped with door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened both from the inside and outside.

(3) Hoodlatches: A front opening hood must be equipped with a primary and a secondary latching system to hold the hood in a closed position.

Hoods are optional equipment on vehicles defined as street rods and kit vehicles by the Washington state patrol vehicle inspectors.

(4) Enclosed passenger compartment: A motor vehicle with an enclosed passenger compartment and powered by an internal combustion engine must be constructed to prevent the entry of exhaust fumes into the passenger compartment.

(5) Floor pan: A motor vehicle must be equipped with a floor pan under the entire passenger compartment capable of supporting the weight of the number of occupants that the vehicle is designed to carry.

(6) Bumpers: A motor vehicle must be equipped with a bumper on both the front and rear of the vehicle with the exception of motor vehicles where the original or predominant body configuration, provided by a recognized manufacturer, did not include such bumper or bumpers in the design of the vehicle. For the relevant model year, bumpers must accommodate recognized manufacturer impact absorption systems pursuant to applicable SAE Bumper Standards or equivalent standards.

Bumpers are optional equipment on vehicles defined as street rods and kit vehicles by the Washington state patrol vehicle inspectors.

Bumpers, unless specifically exempted above, must:

- (a) Be at least four and one-half inches in vertical height.
- (b) Be centered on the vehicle's centerline.
- (c) Extend no less than the width of the respective wheel track distances.
- (d) Be attached to the vehicle in a manner equivalent to the original manufacturer's installation.
- (e) Be horizontal load bearing and attach to the vehicle frame to effectively transfer energy when impacted.
- (f) Be mounted at a maximum height based on the original gross vehicle weight rating (GVWR) of the vehicle, measured from a level surface to the highest point on the bottom of the bumper. For vehicles exempted from the bumper requirement for the reasons stated above, a maximum frame elevation measurement must be made to the bottom of the frame rail. Maximum heights are as follows:

	Front	Back
Passenger Vehicles	22 Inches	22 Inches

	Front	Back
4,500 lbs. and under GVWR	24 Inches	26 Inches
4,501 lbs. to 7,500 lbs. GVWR	27 Inches	29 Inches
7,501 lbs. and over GVWR	28 Inches	30 Inches

A blocker beam or additional bumper may not be used to meet the above requirements.

(g) If an existing bumper from a recognized manufacturer is not used and a special bumper is fabricated, it must be certified as meeting the bumper standards set under 49 CFR 581.

(7) Fenders: All wheels of a motor vehicle must be equipped with fenders designed to cover the entire tire tread width that comes in contact with the road surface. Coverage of the tire tread circumference must be from at least fifteen degrees in front and to at least seventy-five degrees to the rear of the vertical centerline at each wheel measured from the center of the wheel rotation. At no time can the tire come in contact with the body, fender, chassis, or suspension of the vehicle. Street rods and kit vehicles which are more than forty years old and are owned and operated primarily as a collector's item need not be equipped with fenders when the vehicle is used and driven during fair weather on well-maintained, hard-surfaced roads.

(8) Frame: A motor vehicle must be equipped with a frame. If an existing frame from a recognized manufacturer is not used and a special frame is fabricated, it must be constructed of wall box or continuous section tubing, wall channel, or unitized construction capable of supporting the vehicle, its load, and the torque produced by the power source under all conditions of operation. All welding on the frame must be completed by a certified welder and the structural strength of the frame must be certified by an engineer as meeting the applicable standards set under 49 CFR 571 Parts 201, 214, 216, and 220 through 224, and the SAE Standards.

NEW SECTION

**WAC 204-10-024 Windows.** (1) Window glazing, manufactured and installed in accordance with 49 CFR 571.205 must not be etched or otherwise permanently altered if such glazing is installed in the windshield or any other window location of a motor vehicle passenger compartment. The only exception to this rule is the etching of the vehicle identification number permissible with the following provisions:

- (a) The maximum height of the letters or numbers must not exceed one-half inch.
- (b) The etched vehicle identification number must not be located in any position as to interfere with the vision of the occupant(s).

(2) The windshield must be framed and in such a position that it affords continuous horizontal frontal protection to the driver and front seat occupants. The minimum vertical height of the unobstructed windshield glass must be six inches, or as originally equipped by a recognized manufacturer.

(3) The vehicle must be provided with a windshield and side windows or openings which allow the driver a minimum outward horizontal vision capability, ninety degrees each side of a vertical plane passing through the fore and aft centerline of the vehicle. This range of vision:

(a) May be interrupted by window framing not exceeding four inches in width at each side location.

(b) Must have no obstruction forward of the windshield which extends more than two inches upward into the horizontally forward projected vision area of the windshield except windshield wiper components and hood ornaments identical to those originally installed by a recognized manufacturer. For the purposes of this section, the projected vision area of the windshield shall be defined as that area above a line from the top of the steering wheel to the top of the front fenders or hood, whichever is higher.

(4) Sunscreening devices and/or recreational products:

(a) Must not be applied to or suspended between the driver and the windshield or the windows to the immediate right and left of the driver.

(b) May be applied to other windows provided that such devices do not interfere, by their size or position, with the driver's ability to see other vehicles, persons, and objects and do not reduce the driver's area of vision uniformly and by no more than fifty percent, as measured on a horizontal plane.

(c) May be applied to the rear window, provided that the vehicle must be equipped with outside rear view mirrors on both the left and the right.

This rule does not permit or prohibit the use and placement of federal, state, or local certificates or decals on any window as are required or prohibited by applicable laws or regulations. Any such decal or certificate must, however, be of such size and placement so that the ability of the driver to safely operate the vehicle is not impaired.

(5) Due to the nature of use, function and operation of such vehicles, transit city buses are exempt from the provisions of subsection (4)(a) and (b) of this section. The following are exempted from the provisions of subsection (4)(b) of this section:

(a) Hearses.

(b) Ambulances.

(c) Limousines, passenger buses, and transit city buses used to transport persons for compensation.

Such vehicles must have mirrors on both the right and left to provide vision at least two hundred feet to the rear. This section does not limit liability of the operators and/or owners of such vehicles involved in accidents resulting from reduced visibility.

(6) If a windshield is not required under 49 CFR 571, the operator must wear eye protection as outlined in chapter 46.37 RCW and WAC 204-10-026.

#### NEW SECTION

**WAC 204-10-026 Eye protection.** If a vehicle does not have a windshield, and the driver is required to wear eye protection, chapter 46.37 RCW, the eye protection device (EPD) must:

(1) Be one of the following: Goggles, face shield, or eye glasses.

(a) Eye glasses must:

(i) Have a convex frontal surface on each lens, or be an ophthalmic corrective lens.

(ii) Have a minimum area of three square inches or 19.356 square centimeters for each lens. The horizontal diameter (or side-to-side measurement) must be no less than two inches or 50 millimeters. The vertical diameter (or top-to-bottom measurement) must be no less than one and one-half inches or 38 millimeters. A diameter must pass through a point on the lens that is intended to be directly in front of the pupil of the eye when the wearer is looking straight ahead.

(b) Optical correction of a person's vision, where required or desired, may be provided either:

(i) By an EPD that provides the proper optical correction; or

(ii) By personal corrective lenses worn under an EPD that does not disturb the adjustment of those lenses.

(2) Not have any sharp edges or projections that could cause harm or discomfort to the wearer.

(3) Be made of durable quality.

Example: Material characteristics must not undergo appreciable alterations under the influence of aging or of the circumstances of use to which the device is normally subjected (exposure to sun, rain, cold, dust, vibrations, contact of the skin, effects of sweat, or of products applied to the hair or skin).

(4) Have a headband capable of holding the EPD securely under normal operating conditions. It must be capable of easy adjustment and replacement.

(5) Not use material(s) commonly known to cause skin irritation or disease for those parts of the device which come into contact with the skin.

(6) Where plastic materials are used, use noncombustible or slow burning materials.

(7) Not use cellulose nitrate, or materials having flammability characteristics approximately those of cellulose nitrate.

(8) Be tested on a standard human head form in a position simulating its position in actual use.

Example: Helmet-mounted face shields must be tested while attached to an appropriate medium-size helmet supplied by the manufacturer of the face shield, which must be mounted on a standard head form.

The test must:

(a) Use a steel projectile three-eighths inches in diameter, weighing 1.56 ounces approximately two and one-half inches long with a conical point of ninety degrees included angle, the point having a spherical radius no greater than .020 inches and a hardness of 60(10) on the Rockwell "C" scale, which must be freely dropped from a height of fourteen feet above the EPD. The projectile may be guided, but not restricted in its vertical fall by dropping it through a tube extending to within approximately four inches of the impact area. The impact area must be on the forward optical surface and within one-inch diameter circle centered over the eye opening. The impact point shall be perpendicular to a plane tangent to the impact area.

(b) Not allow penetration of the projectile through the EPD. Cracking or piercing of the EPD is permissible provided that the projectile does not pass through or remain

lodged in the EPD lens, but is repulsed by the EPD, and that no particles of the EPD shall break loose from any eyeward surface of the EPD.

(c) Be performed at room temperature (sixty-five degrees to eighty-five degrees F) under normal humidity conditions.

(d) If plastic materials are used, expose the EPD to a test to determine the flame-propagation rate. The specimen must be ignited by holding one end of the specimen horizontally at the top of a luminous three quarter-inch Bunsen burner flame in a draft-free room. The rate of propagation of burning, after removing the flame from the specimen, determined by a stop watch, shall be one inch or less per twenty-four seconds. A faster rate of propagation shall be cause for rejection.

(9) Have lenses that comply with the following requirements:

(a) Lenses must be made of material suitable for ophthalmic use, and must be free from striae, waves, bubbles, or any other defects which may impair their optical quality.

(b) The prismatic effect of a noncorrective lens must not exceed 1/8 diopter at any point with the specified minimum field of vision. In the case of eye glasses, each noncorrective lens must comply with the limitation of prismatic effect.

(c) In any meridian, the refractive power of a noncorrective lens must not exceed plus or minus 1/8 diopter and the difference between the refractive powers in any two meridians must not exceed 1/8 diopter.

(d) The definition afforded by a noncorrective lens must be such that a line pattern with lines separated not more than twenty-four seconds of angle must be clearly distinguishable when viewed through the lens.

(e) The compliance of a lens with the prismatic effects, refractive power, and definition requirements of (a), (b), and (c) of this subsection must be determined in accordance with those test methods described in Sections 6.3.4.1.1, 6.3.4.1.2, and 6.3.4.1.3 of the American National Standards Institute Standard Z87.1-1968, September 18, 1968, "Eye and Face Protection" and explained in Section 10.1 of the National Bureau of Standards Circular 533, May 20, 1953, "Method for Determining the Resolving Power of Photographic Lenses." In order to maintain consistency in the results of tests conducted by various organizations, the following test requirements must be met:

(i) An 8-power telescope with focusing arrangement to accommodate the refractive effects of both positive (converging) and negative (diverging) lenses placed between the telescope and test chart shall be used. The illuminated target and test chart shall be a central dot and a concentric circle one-inch in diameter plus one of the high contrast ("black and white") NBS Resolution Test Charts, dated 1952, and printed on "Lens Resolution Chart to Accompany NBS Circular 533." The chart shall be perpendicularly aligned thirty-five feet from the objective lens of the telescope when the telescope is properly focused with no test, sample, or other lens between the objective lens and the chart. The center dot and the periphery of the concentric circle one-inch in diameter shall be used when testing for prismatic effect. The test pattern marked "20" shall be used when testing for refractive power and when testing for definition. Standard lenses of

plus or minus 1/8 diopter shall be used when testing for refractive power.

(ii) Other standard methods of test or examination that are equivalent or superior, as regards to accuracy, quality, and consistency of results to (e)(i) of this subsection specified in National Bureau of Standards methods, may be used to determine compliance only when such methods are approved by the state official to whom such approving authority has been assigned, or delegated, through due process of applicable state law.

(10) Not obstruct a horizontal field of vision to at least one hundred five degrees to the right side of the plane that passes through the pupil of the right eye looking straight ahead, and at least one hundred five degrees to the left side of the plane that passes through the pupil of the left eye looking straight ahead, and are parallel to the midsagittal plane, except as provided in (a) of this subsection.

(a) The specified minimum horizontal field of vision must be unobstructed except that the horizontal field provided by the spectacles or sunglasses may be obstructed by the frame in a sector no greater than seven and one-half degrees in horizontal angular width and located between fifty degrees and eighty degrees of the pertinent sagittal plane passing through the eye pupil when looking straight ahead.

(b) When ascertaining the horizontal field of vision afforded by eyeglasses, the pupil of the eye must be assumed to be located 17 mm behind the point on the rear surface of the lens where the horizontal and vertical diameters intersect. When ascertaining the horizontal field of vision of EPDs other than eye glasses, the assumed location of the pupil of the eye relative to the structures of the EPD shall be that location which is most likely to occur when the EPD is attached and worn in accordance with its manufacturer's instructions.

(c) No portion of the minimum horizontal field of vision shall be obstructed by a temple piece, headband, helmet, helmet attaching device, or any other supporting or attaching device.

(11) Be clear (transmitting not less than eighty-five percent of incident visible radiation) or may be tinted provided that the tint does not impair the wearer's ability to discern color. If the EPD is tinted it must not be used at any time from a half hour after sunset to a half hour before sunrise and at any other time when due to insufficient light or unfavorable atmosphere conditions, persons and vehicles on the highway are not clearly discernible at a distance of five hundred feet ahead. The luminous transmittance must be determined by one of the following means:

(a) Photometrically by an observer having normal color vision, as determined by recognized color vision chart tests such as those employing pseudoisochromatic plates.

(b) With a physical photometer consisting of a thermopile (or other radiometer) and luminosity solution having a special transmittance curve which coincides closely with the luminous efficiency curve of the average eye.

(c) By measuring the special transmittance and calculating the luminous transmittance through the use of published data on the spectral radiant energy of CIE Source A and the relative luminous efficiency of the average eye.

The standard source of radiant energy used in the measurement of luminous transmittance must be a projection type

lamp No. T-8 (or other high-powered, gas-filled tungsten filament incandescent lamp) operated at the color temperature (2854K) corresponding to CIE Source A.

(12) Be identified and labeled as follows:

(a) The EPD shall be permanently marked in a manner not to interfere with the vision of the wearer.

(b) The manufacturer's or distributor's trade name and model name or number, which shall correspond with the name and number under which the device has been approved or certified.

(c) That the device meets the standard VESC-8. Where space is limited, V-8 may be used in lieu of VESC-8.

(d) The information required under subsection (1) of this section plus the corporate or business name and address of either the actual manufacturer or the marketer assuming the responsibilities of the manufacturer shall be imprinted on the container in which the EPD is packed and on any instruction sheet(s) pertaining to the EPD.

(e) If the EPD is tinted, the following statement shall appear in a prominent location on the container or label: **This tinted eye protective device is for daytime use only.**

#### NEW SECTION

**WAC 204-10-028 Instrumentation and electrical system requirements.** (1) A motor vehicle must be equipped with an operating speedometer calibrated to indicate "miles per hour," and may also indicate "kilometers per hour."

(2) The headlamp circuit for a motor vehicle must be equipped with a driver-controlled high and low beam selector switch unless the vehicle is equipped with single beam headlamps.

(3) If a motor vehicle is manufactured after 1965, it must be equipped with a hazard warning switch causing all turn signal lamps to flash simultaneously.

(4) The headlamp switch for a motor vehicle must activate the headlamps, tail lamps, license plate lamp, and when required, marker lamps simultaneously.

(5) An indicator must be provided on a motor vehicle which indicates to the driver when the high beams of the headlamp system are energized. The indicator shall emit a light other than white plainly visible to the driver under normal driving conditions.

(6) A motor vehicle must be equipped with an operable horn capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. No horn or other warning device shall emit an unreasonably loud or harsh sound or whistle nor shall a bell or siren be used as a warning device. The device used to actuate the horn must be easily accessible to the driver when operating the vehicle.

(7) A motor vehicle, if equipped with an automatic transmission, must be equipped with a safety switch that prevents the starter motor from being actuated except when the gear selector is in the neutral or park position.

(8) If the front signal lamp(s) on a motor vehicle are not readily visible to the driver, there must be an illumination indicator to give the operator a clear, unmistakable indication that the turn signal system is on. The illumination indicator must consist of one or more bright lights flashing at the same

frequency as the signal lamps, and it must emit a light other than white.

AMENDATORY SECTION (Amending Order 81-08-02, filed 8/21/81)

**WAC 204-10-030 ((~~Brake fluid~~)) Mirrors and backup alert devices.** ((Federal Motor Vehicle Safety Standard 116 is hereby adopted by reference as the standard for ~~brake fluid~~)) A motor vehicle must be equipped with mirrors as outlined under 49 CFR 571 and RCW 46.37.400. The mirror mountings must provide for mirror adjustment by tilting both horizontally and vertically. The following definitions must be used for additional backup alert devices or mirrors:

(1) Backup alert devices means any type of motion detection device, laser device, camera, or television device mounted on a truck with a cube-style, walk-in cargo box up to eighteen feet long, which will warn the driver of the detection of a person or object at a minimum of six feet to the rear of the vehicle and also encompass the width of the rear of the vehicle.

(2) Rear crossview mirrors mean any type of mirrors which, when mounted, will allow the driver of a truck with a cube-style, walk-in cargo box up to eighteen feet long, to view a minimum distance of six feet to the rear and encompass the width of the rear of the vehicle in order to be able to detect an object or person. These crossview mirrors must be installed in a manner that will satisfy the above requirements.

#### NEW SECTION

**WAC 204-10-032 Brakes.** (1) A motor vehicle must be equipped with brakes acting on all wheels. The service brakes, upon application, must be capable of stopping the vehicle within a twelve-foot lane, and:

(a) Developing an average tire to road braking or retardation force of not less than 52.8% of the gross vehicle weight;

(b) Decelerating the vehicle at a rate of not less than seventeen feet per second; or

(c) Stopping the vehicle within a distance of twenty-five feet from a speed of 20 mph.

Tests must be made on a level, dry, concrete or asphalt surface free from loose material.

(2) A motor vehicle must be equipped with a parking brake operating on at least two wheels on the same axle which, when applied, must be capable of holding the vehicle on any grade on which the vehicle is operated. Parking brakes must be separately actuated so that failure of any part of the service brake actuation system would not diminish the vehicle's parking brake holding capability.

#### NEW SECTION

**WAC 204-10-034 Steering.** A motor vehicle must be equipped with a continuous rim steering wheel meeting the requirements set forth under RCW 46.37.375, and this chapter. The steering must:

(1) Include a steering wheel which must:

(a) Have an outside diameter of not less than twelve inches.

(b) Not move less than two turns nor more than six turns.

(c) Remain unobstructed when turning from stop-to-stop.

(d) Have a box mount securely welded or bolted to the vehicle frame or other suitable location as originally installed by a recognized manufacturer.

(e) Have a distinct tendency for the vehicle to increase its turning radius when the steering wheel is released while the vehicle is in a sharp turn at a speed of between 5 and 15 mph.

Note: Stability tests must be performed on a dry, level concrete or asphalt road having no loose surface contaminant, and the vehicle's tires must be inflated to the recommended pressure in accordance with the tire load pursuant to 49 CFR 571.109 (FMVSS 109). The vehicle must contain a front seat passenger or simulated equivalent one hundred fifty pounds weight secured to the seat in addition to the driver.

(2) Have steering capability for negotiating right and left turns of a thirty-two foot radius or less measured from the center of the turn circle to the outside front wheel track.

(3) Not have more free play or lash in the steering system than is allowed based on the table outlined in RCW 46.37-.375. The test for free play or lash must be conducted as follows: With the engine on and the wheels in the straight ahead position, turn the steering wheel in one direction until there is a perceptible movement of a front wheel. If a point on the steering wheel rim moves more than the value shown in the table before perceptible return movement of the wheel under observation, there is excessive lash or free play in the steering system.

#### NEW SECTION

**WAC 204-10-036 Suspension.** A motor vehicle must be capable of stable, controlled operation while traversing a slalom-type path passing alternately to the left and right of at least four cones or markers arranged in a straight line and spaced sixty feet apart at a minimum speed of 25 mph.

Body lifts are permitted provided that they are manufactured by an aftermarket manufacturer, designed for the make and model vehicle on which they are installed, and installed according to the manufacturer's recommendations. Body lifts may not use more than a three-inch spacer and may not raise the body more than four inches above the frame when all components are installed.

A motor vehicle must:

(1) Have a minimum ground clearance to allow the vehicle to be in motion on its four rims on a flat surface with no other parts of the vehicle touching that surface and a maximum ground clearance determined based on the table contained in WAC 204-10-022 (6)(f) bumpers.

(2) Have spring mounts and shackles properly aligned and of sufficient strength so as to support the gross weight of the vehicle and provide free travel in an up and down movement under all conditions of operation.

(3) Incorporate antisway devices to control lateral movement in rear coil spring suspension systems.

(4) Have a suspension system that allows movement between the unsprung axles and wheels and the chassis body.

(5) Be equipped with a damping device at each wheel location. The dampening device must stop vertical body motion within two cycles when any corner of the vehicle is depressed and released.

(6) Be capable of providing a minimum relative motion of plus and minus two inches.

(7) Not use heating or welding for coil springs, leaf springs, or torsion bars.

(8) Not be constructed or loaded so that the weight on the wheels of any axle is less than thirty percent of the gross weight of the vehicle.

(9) Not raise or lower the height of a motor vehicle while the motor vehicle is traveling more than 15 mph on a public roadway with a posted speed limit of 25 mph or less. Except when lawfully participating in a parade permitted by local jurisdiction.

(10) At no time have any portion of any tire of such motor vehicle leave the surface of the roadway.

(11) Not have any portion of the vehicle or component of the hydraulic system used to raise or lower the vehicle cause or emit sparks.

Nothing in this section shall prohibit a county or city from enacting stricter regulations for aftermarket vehicle hydraulics on a public roadway.

#### NEW SECTION

**WAC 204-10-038 Exhaust system.** A motor vehicle must be equipped with a leakproof exhaust system that includes the exhaust manifold(s), headers, the piping leading from the flange of the exhaust manifold(s), the muffler(s), and the tail piping.

Exhaust systems on property-carrying vehicles must:

(1) Discharge the exhaust fumes to the rear of that part of the vehicle designed and normally used for carrying the driver and passengers.

(2) Discharge the exhaust fumes at a location to the rear of the vehicle body or direct the exhaust fumes outward from the side of the vehicle body at a location rearward of any operable side windows.

(3) Not have any part of the exhaust system pass through any area of the vehicle that is used as a passenger compartment, nor in close proximity to the fuel system without being properly shielded.

AMENDATORY SECTION (Amending WSR 97-10-024, filed 4/29/97, effective 5/30/97)

**WAC 204-10-045 Hands-free wireless communications systems.** Hands-free ~~(wireless communication systems may also refer to the use of cellular phone systems. These hands-free listening))~~ cellular telephone devices may be used by motorists while driving motor vehicles as long as the use complies with RCW 46.61.667. Listening devices that include an earpiece ~~((shall))~~ must cover or be attached to only one ear.

AMENDATORY SECTION (Amending Order 81-08-02, filed 8/21/81)

**WAC 204-10-050 ~~((Seat belts))~~ ReflectORIZED warn- ing device.** ~~((1) Federal Motor Vehicle Safety Standard 209 is hereby adopted by reference as the standard for seat belt assemblies.~~

(2) Federal Motor Vehicle Safety Standard 210 is hereby adopted by reference as the standard for seat belt assembly anchorages.)) Reflectorized warning devices used by law enforcement must:

(1) Conform to those devices described in RCW 46.37.450 and requirements of the Washington state department of transportation standard specifications for road, bridge, and municipal construction, Section 9-28.6, "Enclosed lens reflective sheeting." These specifications are available through the Washington State Patrol, 210 11th Avenue, Olympia, Washington 98504, or the Washington State Department of Transportation, 310 Maple Park Avenue, Olympia, Washington 98504.

(2) Be placed on a vehicle whenever any such vehicle is disabled upon the traveled portion of any highway or shoulder thereof outside any municipality, at any time when lights are required by RCW 46.04.200, upon discovery of such disabled vehicle by law enforcement, a reflectorized device such as those defined in RCW 46.37.450 or this section.

AMENDATORY SECTION (Amending Order 81-08-02, filed 8/21/81)

**WAC 204-10-060 ((Glazing material.)) Reflectors.** ~~((Federal Motor Vehicle Safety Standard 205 is hereby adopted by reference as the standard for glazing materials.))~~  
(1) On motor vehicles, reflex reflectors must be securely mounted on a rigid part of the vehicle with the plane of the lens perpendicular to the roadway and parallel to the rear axle. Side reflex reflectors must be mounted with the lens face perpendicular to the roadway and parallel to the rear wheels.

(2) On bicycles and motorized foot scooters, the reflectors must be securely mounted and of a type conforming to 16 CFR Part 1512.

AMENDATORY SECTION (Amending WSR 98-04-053, filed 1/30/98, effective 3/2/98)

**WAC 204-10-070 Air conditioning units.** (1) Society of Automotive Engineers ~~((Recommended Practice))~~ (SAE) Standard J639 is ((hereby)) adopted by reference as the standard for automotive air conditioning units.

(2) ((Society of Automotive Engineers Standard)) SAE Standard J51 is ((hereby)) adopted by reference as the standard for automotive air conditioning hose.

AMENDATORY SECTION (Amending Order 82-07-03, filed 7/29/82)

**WAC 204-10-080 ((Emergency reflex reflectors.)) Wheelchair conveyance.** ~~((Federal Motor Vehicle Safety Standard 125, January 1, 1974, is hereby adopted by reference as the standard for emergency reflex reflector warning devices.))~~  
The wheelchair conveyance must be equipped with a propulsion device capable of propelling the vehicle at a minimum speed of 20 mph on level ground.

(1) Every wheelchair conveyance that is designed to travel on four wheels in contact with the ground must comply with the provisions of chapter 46.37 RCW as they pertain to motor vehicle equipment.

(2) Every wheelchair conveyance that is designed to travel on not more than three wheels in contact with the ground must comply with the equipment requirements for motorcycles, motor-driven cycles, and mopeds contained in chapters 46.37 and 46.61 RCW: Provided, That all wheelchair conveyances must be equipped with two rear view mirrors and turn signals as defined in RCW 46.37.400 and 46.37.200.

AMENDATORY SECTION (Amending WSR 98-04-053, filed 1/30/98, effective 3/2/98)

**WAC 204-10-090 ((Slow moving vehicle emblems.)) Equipment prohibited.** ~~((Society of Automotive Engineers Standard SAE J943 is hereby adopted by reference as the standard for slow moving vehicle identification emblems. Mounting of the emblem shall be as set forth in chapter 204-28 WAC.))~~  
If aftermarket equipment is installed on a vehicle, it must not impair the effectiveness of equipment required by 49 Code of Federal Regulations (CFR) Part 571, chapter 46.37 RCW or Title 204 WAC.

AMENDATORY SECTION (Amending WSR 93-11-018, filed 5/6/93, effective 6/6/93)

**WAC 204-10-120 Sirens.** Society of Automotive Engineers (SAE) Standard J1849 is ((hereby)) adopted by reference as the standard for emergency vehicle sirens.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 204-10-035	Antique motor-driven cycles.
WAC 204-10-055	Child restraint systems.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-46-010	Promulgation.
WAC 204-46-020	Backup alert devices.
WAC 204-46-030	Rear crossview mirrors.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-52-010	Promulgation.
WAC 204-52-020	Definitions.
WAC 204-52-030	Eye protective devices.
WAC 204-52-040	Materials.
WAC 204-52-050	Lens strength—Testing procedures.

WAC 204-52-060	Flammability test—Plastics only.
WAC 204-52-070	Optical properties of eye protective devices.
WAC 204-52-080	Light transmitting ability of eye protective devices.
WAC 204-52-090	Cleansing.
WAC 204-52-100	Identification and labeling.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-92-010	Promulgation.
WAC 204-92-020	Purpose.
WAC 204-92-030	Definition.
WAC 204-92-040	Minimum speed requirements.
WAC 204-92-050	Equipment requirements on wheelchair conveyances.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-82A-010	Authority.
WAC 204-82A-020	Purpose.
WAC 204-82A-030	Scope.
WAC 204-82A-040	Definitions.
WAC 204-82A-050	Maximum levels of sun-screening and other restrictions.
WAC 204-82A-060	Exceptions.
WAC 204-82A-070	Physical alteration of motor vehicle glazing material prohibited.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-94-010	Authority.
WAC 204-94-020	Purpose.
WAC 204-94-030	Definition.
WAC 204-94-040	Standards for reflectorized warning devices.
WAC 204-94-050	Placement of reflectorized warning devices.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-90-010	Purpose.
WAC 204-90-020	Scope.
WAC 204-90-030	Definitions.
WAC 204-90-040	Body requirements.
WAC 204-90-050	Glazing material/driver visibility.
WAC 204-90-060	Instrumentation.
WAC 204-90-070	Rear view mirror.
WAC 204-90-080	Accelerator control systems.
WAC 204-90-090	Brakes.
WAC 204-90-100	Fuel system.
WAC 204-90-110	Steering.
WAC 204-90-120	Suspension.
WAC 204-90-130	Exhaust system.
WAC 204-90-140	Electrical system requirements.

**WSR 08-15-099**

**PROPOSED RULES**

**WASHINGTON STATE PATROL**

[Filed July 17, 2008, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-093.

Title of Rule and Other Identifying Information: Chapter 204-21 WAC, Lighting requirements.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504, on August 26, 2008, at 2:30 p.m.

Date of Intended Adoption: August 27, 2008.

Submit Written Comments to: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail [equipment@wsp.wa.gov](mailto:equipment@wsp.wa.gov), fax (360) 596-4015, by August 26, 2008.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by August 26, 2008, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes are being proposed are to clean up existing WAC language and make the rules easier for users to find. This is a new WAC chapter that will consolidate existing rules written under chapter 204-28, 204-39, 204-40, 204-60, 204-62, 204-65, 204-72, 204-74A, 204-78, 204-80, and 204-88 WAC and WAC 204-10-020, 204-32-040, 204-32-070, and 204-32-080 under one. In addition to the consolidation the rule will adopt

new language to allow for an exemption for municipal transit vehicles for certain lighting requirements.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.320.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melissa Van Gorkom, General Administration Building, 210 11th Avenue S.W., Olympia, WA 98504-2600, (360) 596-4017.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

July 10, 2008  
John R. Batiste  
Chief

## Chapter 204-21 WAC

### LIGHTING REQUIREMENTS

#### NEW SECTION

**WAC 204-21-010 Purpose and authority.** The purpose of this chapter is to outline additional lighting requirements in an effort to reduce motor vehicle collisions caused by improper lighting.

By authority of RCW 46.37.005, 46.37.185, 46.37.190, 46.37.194, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.320, and chapter 119, Laws of 1984, the Washington state patrol adopts the following rules pertaining to the mounting, adjusting, and aiming of lamps used upon motor vehicles.

#### NEW SECTION

**WAC 204-21-020 Definitions.** (1) "Animal control vehicle" means any vehicle, either publicly or privately owned, which is used primarily for transportation of animals to or from animal shelters, humane society facilities, or veterinary medicine facilities.

(2) "Authorized emergency vehicle" means any vehicle of any fire department, police department, sheriff's office, coroner, prosecuting attorney, Washington state patrol, ambulance service, public or private, licensed by the department of social and health services or operated by any of the agencies named above, or any other vehicle authorized in writing by the state patrol.

(3) "CFR" means the Code of Federal Regulations.

(4) "Deceleration warning light," excluding stop lamps, means a device that indicates to a following driver the deceleration of the vehicle ahead.

(5) "Electronic light modulation" means the periodic change in intensity of light, controlled by an all electric modulating device in the electrical circuit of the lighting system.

(6) "Electronic modulation" means using one hundred percent electronic circuitry instead of mechanical metallic switches.

(7) "Emergency tow truck" means a motor vehicle that is especially designed and constructed principally for the purpose of recovery and/or towing of disabled, abandoned or damaged vehicles and not otherwise generally used in transporting goods or persons.

(8) "Flashing" means any lamp which emits a beam of light which is broken intermittently and regularly by use of an electronic or electric switch, a rotating reflector, a rotating lamp, or a strobe lamp; or a lamp which emits a steady beam of light which is intermittently and regularly directed away from any viewer by means of a rotating or oscillating reflector or lamp assembly. Flashing lamps are not to be confused with modulated lamps which intermittently and regularly decrease the power to the lamp filament so as to dim the light output but do not cause a total break in the light beam.

(9) "FMVSS" means the Federal Motor Vehicle Safety Standards 49 Code of Federal Regulations (CFR) Part 571.

(10) "Hazardous materials response team vehicle" means any vehicle either publicly or privately owned which is used for responding to hazardous materials incidents.

(11) "Headlamp flashing system" means an automatic method for controlling the high beams from the headlamps so that they can be alternately flashed in sequence on opposite sides of the front of the vehicle as a warning signal.

(12) "Law enforcement agency" means any municipal, port district or tribal police department, county police department or sheriff's office, the Washington state patrol, or any other state or federal agency which is publicly authorized to carry out law enforcement duties which include the authority to stop and detain motor vehicles on the public highways of this state.

(13) "Law enforcement vehicle" means a publicly owned or leased vehicle operated by a law enforcement agency and which is used for the law enforcement functions of the agency.

(14) "Other construction and maintenance vehicle" means any vehicle owned or operated by a private company which is in the process of providing highway construction or maintenance services or is working in conjunction with any public utility.

(15) "Oversize unit" means any vehicle towing a load that exceeds legal dimensions which may be equipped with flashing amber lights in addition to any other lights required by law.

(16) "Percent modulation" equals time-weighted power input with modulation to headlamp divided by time-weighted power input without modulation to headlamp times one hundred.

(17) "Pilot car" means any vehicle which is used to provide escort for overlegal size loads upon the roadways of this state.

(18) "Private carrier bus" means every motor vehicle designed for the purpose of carrying passengers (having a seating capacity for eleven or more persons) used regularly to transport persons in furtherance of any organized agricultural, religious or charitable purpose. Such term does not include buses operated by common carriers under a franchise granted by any city or town or the Washington public utilities commission.

(19) "Public utilities vehicle" means any vehicle used for construction, operations, and maintenance, and which is owned or operated by a public or private utility, including, but not limited to, companies providing water, electricity, natural gas, telephone, television cable services, and railroads.

(20) "Rural newspaper carrier vehicle" means any vehicle driven on rural roads by carriers delivering newspapers on their route.

(21) "SAE" means the Society of Automotive Engineers. Copies of SAE Standards are available for review at the Washington State Patrol, P.O. Box 42600, Olympia, WA 98504-2600, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15096-0001.

(22) "Search and rescue team vehicle" means any vehicle either publicly or privately owned which is used for responding to search and rescue situations.

(23) "Signal lamps" means red lamps mounted on the vehicle to be used in conjunction with the "stop signal" when the bus is loading or unloading passengers under certain conditions.

(24) "Tow truck" means any vehicle engaged in removing disabled or abandoned vehicles from the roadway and which is used primarily for that purpose.

#### NEW SECTION

##### **WAC 204-21-030 General lighting requirements.** (1)

All lighting equipment must be mounted:

(a) Securely on a rigid part of the vehicle to prevent noticeable vibration of the beam.

(b) At the height prescribed as measured from the center of the lamp or reflector to the level surface upon which the vehicle stands when it is without load.

(c) In accordance with orientation markings such as "top" if such markings exist.

(d) Installed with the lettering on the lens face right side up if the lamp has a sealed or semisealed optical unit.

(e) At the same angle as originally intended for the vehicle for which they were designed, unless the lamps are designed for a particular make of vehicle and installed on another vehicle, then the lamp does not need to be mounted at the same height or lateral spacing as the original vehicle so long as the height and lateral spacing comply with the requirements outlined in 49 CFR 571.108 (FMVSS 108), chapter 46.37 RCW, and this title.

(f) Maintained with the proper aim when the vehicle is stationary and in motion.

(2) All lighting equipment must be aimed so the center of the beam produced by the major filament is parallel to the road and projects directly to the front, side, or rear, depending on mounting location, unless otherwise outlined in 49 CFR 571.108 (FMVSS 108), chapter 46.37 RCW, or this title. The lamps must be aimed with only the driver in the vehicle, except that lamps on vehicles which normally carry a load should be aimed with the vehicle so loaded. Enforcement agencies that inspect vehicles may establish aiming tolerances to allow for variations in inspection procedures and in vehicle loading.

(a) If the road lighting device is visually aimed, it must be aimed as specified in the following sections of this rule on a vertical aiming screen at a distance of twenty-five feet from the front of the lens surface or with an optical aimer meeting SAE J600a (March 1965) with the aiming line on the screen adjusted to the level of the surface upon which the vehicle stands or with an optical aimer designed to aim headlamps complying with Canadian Standards Association Regulation D106.2.

(b) If the road lighting device is mechanically aimed, it must be set at 0-0 with a mechanical aimer meeting SAE J602c (December 1974).

#### NEW SECTION

**WAC 204-21-040 Headlamps.** Headlamps must be mounted as specified in FMVSS 108, chapter 46.37 RCW, and as follows:

(1) On motor vehicles:

(a) If installed after November 15, 1975, the headlamps must not be closer than twelve inches to the centerline of the vehicle. This distance must be measured from the center of the lens. Except motorcycles, motor-driven cycles, and motorized bicycles must have the headlamps spaced as far apart as practicable.

(b) Adjusting and aiming of headlamps:

(i) If the headlamp is a Type 1 sealed beam headlamp unit (including those with any suffix letters and numbers such as 1A and 1C1) the lamp must be aimed with the center of the high intensity zone on the vertical line straight ahead of the lamp center and at the level of the lamp center.

(ii) If the headlamp is a Type 2 sealed beam headlamp unit (including those with any suffix letters and numbers such as 2A1 and 2B) the lamp must be aimed with the left edge of the high intensity zone on the vertical line straight ahead of the lamp center and with the top edge of the high intensity zone at the level of the lamp center.

(iii) If the headlamp is quartz halogen nonsealed beam meeting the requirements of the Canadian Standards Association: The high beam lamp must be aimed as specified for Type 1 headlamps in (b)(i) of this subsection; the low beam lamps must be aimed so that the top edge of the low beam cutoff is three inches below the level of the lamp center, and the point which the cutoff rises to the right must be on the vertical line with the center of the lamp.

(c) In cases of customized headlamp installation, headlamps must not be mounted closer together than requirements outlined for the year or original manufacture of the vehicle body.

(2) On motorcycles or motor-driven cycles with multiple beam lamps, the lamps must be aimed on the upper beam as specified for Type 1 units in subsection (1)(b)(i) of this section. As an alternative, motorcycle headlamps or motor-driven cycles with multiple beam headlamps with a well-defined lower beam may be aimed on the lower beam as specified for Type 2 units in subsection (1)(b)(ii) of this section with the vehicle upright and the front wheel facing straight ahead.

(3) On motor-driven cycles with single beam headlamps, the lamps must be aimed with the center of the high intensity

zone on a vertical centerline straight ahead of the lamp center and with the top edge of the high intensity zone at the level of the lamp center.

(4) On motorcycles and motor-driven cycles with electronic headlamp modulators.

(a) The headlamp modular must:

(i) Be inserted in the high beam headlight circuit on motorcycles between the high beam hand switch and high beam filament in the lamp.

(ii) Be located on a frame bar or other substantial structure number, easily accessible to the operator for quick access to a bypass switch. The device should be air cooled, if necessary.

(iii) Be designed to continuously operate 60 watt headlamps.

(iv) Have an electrical bypass switch rated at 6 amps, 12.8 volts.

(v) Be made to change modulation amplitude:

(A) Daytime - modulation depth should be at least 50% but not more than 80%.

(B) Nighttime - not more than 20% modulation.

(C) At no time while the light modulator is being used should the percent modulation become 100%. This condition switches off the light intermittently and leads to premature filament failure.

(vi) Have No. 16 AWG stranded copper interconnecting wire.

(vii) Not make changes that would render ineffective any portion of 49 CFR 571.108 (FMVSS 108).

(b) The headlamp modular should:

(i) Not use potentially dangerous voltages, i.e., above 50 volts, in the light modulator.

(ii) Operate within a frequency band of one cycle every two seconds to not more than four times per second.

(iii) Be sealed to prevent water intrusion.

(iv) Be designed to withstand intense vibration at 130°F.

(v) Be capable of operating over a voltage range of from 8 to 14 volts with no discernible change in its operating characteristics other than in headlamp brightness.

(vi) Not alter the low beam headlight circuit so that it may be used as backup in case of modulator malfunction.

#### NEW SECTION

**WAC 204-21-050 Clearance lamps, side marker lamps and identification lamps.** Clearance lamps, side marker lamps, and identification lamps must be mounted as specified in 49 CFR 571.108 (FMVSS 108) unless other requirements are outlined in RCW 46.37.090 or this section.

(1) Clearance lamps on vehicles manufactured prior to May 1, 1980, do not need to be visible at the inboard angles and need not comply with the mounting height requirements of 49 CFR 571.108 (FMVSS 108).

(2) Specialized combination lamps designed to be mounted with the base at angles other than 0, 45, or 90 degrees from the longitudinal axis of the vehicle must be installed in accordance with the manufacturer's instructions.

#### NEW SECTION

**WAC 204-21-060 Turn signal lamps.** (1) Turn signal lamps visible to approaching or following drivers must:

(a) Flash at a rate of sixty to one hundred twenty flashes per minute.

(b) Flash in unison. Except that a turn signal consisting of two or more units mounted horizontally may flash in sequence from inboard to outboard. The lamps may either be extinguished simultaneously or lighted simultaneously.

(c) Be mounted and operated as follows:

(i) On motor vehicles, turn signal systems must:

(A) Have four separate lamps consisting of at least two single-faced or double-faced turn signal lamps on or near the front and at least two single-faced lamps on the rear. Except that a truck-tractor or a truck chassis without a body or load may be equipped with one double-faced turn signal lamp on each side in lieu of the four separate lamps otherwise required on motor vehicles. If double-faced turn lamps are used, they must be mounted ahead of the center of the steering wheel or the center of the outside rearview mirror, whichever is rear-most.

(B) Be spaced as far apart as practical.

(C) Have the optical center of the front turn signal at least four inches from the inside diameter of the retaining ring of the lower beam headlamp unit, fog lamp unit, or passing lamp unit. Except original equipment turn signals that emit two and one-half times the minimum candela requirements may be closer.

(ii) For motorcycles, the front and rear turn signal lamps must be at least nine inches apart, except that front turn signals on motorcycles manufactured after January 1, 1973, must be at least sixteen inches apart.

(iii) On the rearmost towed vehicle in combination of vehicles, turn signal systems must be equipped with at least two single-faced turn signal lamps on the rear. The signal system on a combination of vehicles towed by a motor vehicle equipped with double-faced front turn signal lamps may be connected so only the double-faced turn signal lamps on the towing vehicle and the signal lamps on the rear of the rearmost vehicle are operative.

(2) Side turn signal lamps must:

(a) Meet SAE Standard J914.

(b) Be mounted on the side not lower than twenty inches or higher than seventy-two inches.

(c) Flash with the front and rear turn signal lamps on their respective sides of the vehicle. On vehicles with sequential turn signal lamps, the side turn signal lamps must flash with the front turn signal lamps.

(d) Flash with the rear turn signal lamps, if the side lamps flash when the hazard warning switch is actuated.

#### NEW SECTION

**WAC 204-21-070 Supplemental high-mounted stop and rear turn signal lamps.** Supplemental high-mounted stop and rear turn signal lamps must meet requirements of SAE J1957 and J2068.

(1) Supplemental high-mounted stop and rear turn signal lamps must:

(a) Be single-faced.

(b) Be actuated in the same manner and at the same time as the required stop lamps or turn signal lamps.

(c) Be mounted not lower than thirty-five inches nor higher than fifty-five inches. Except that standard stop or turn signal lamps not combined with tail lamps or reflex reflectors may be used respectively as supplemental lamps in which case they must be mounted at any height not lower than fifteen inches or higher than seventy-two inches.

(d) Not be used in lieu of required stop and turn signal lamps.

(2) Supplemental turn signal lamps and combination stop-and-turn signal lamps must be mounted in pairs facing the rear with one lamp near each side of the vehicle, at the same height and equally spaced from the vehicle centerline.

(3) Supplemental stop lamps must be mounted in pairs as specified above or with not more than two lamps on or adjacent to the centerline of the vehicle.

#### NEW SECTION

**WAC 204-21-080 Fog lamps.** (1) Fog lamps must:

(a) Meet SAE Standard J583.

(b) Be white to amber in color.

(c) Be mounted in accordance with RCW 46.37.180 and so the inner edge of the lens retaining ring is no closer than four inches to the optical center of the front turn signal lamp to provide illumination in front of the vehicle under conditions of rain, snow, dust or fog.

(d) Not be used alone in lieu of headlamps, but may be used with lower head lamp beams as specified in RCW 46.37.220.

(2) Fog tail lamps must meet standards set by SAE J1319.

#### NEW SECTION

**WAC 204-21-090 Auxiliary driving lamps.** Auxiliary driving lamps must:

(1) Meet SAE Standard J581.

(2) Be white in color.

(3) Provide illumination forward the vehicle.

(4) Be wired so that the taillights are lighted whenever the driving lamps are lighted. If driving lamps are not wired to operate only with headlamp high beams, a separate switch and indicator lamp must be provided to operate the driving lamps.

(5) Be aimed with the center of the high intensity zone on a vertical line straight ahead of the lamp center and at the level of the lamp center.

(6) Not be used alone in lieu of headlamps, but may be used to supplement the upper beam of a standard headlight system as specified in RCW 46.37.220, and may only be used to supplement the upper beam of a standard headlamp system.

#### NEW SECTION

**WAC 204-21-100 Auxiliary passing lamps.** Auxiliary passing lamps must:

(1) Meet SAE Standard J582a.

(2) Be white to amber in color.

(3) Be mounted in accordance with RCW 46.37.180 and so the inner edge of the lens retaining ring is no closer than four inches to the optical center of the front turn signal lamp.

(4) Be aimed with the top edge of the high intensity zone one inch above the level of the lamp center and with the left edge of the high intensity zone five inches to the left of a vertical line straight ahead of the lamp center.

(5) Not be used alone in lieu of headlamps, but may be used at the driver's discretion with either low or high beam headlamps as specified in RCW 46.37.220.

#### NEW SECTION

**WAC 204-21-110 Spot lamps.** Spot lamps must meet SAE Standard J591.

#### NEW SECTION

**WAC 204-21-120 Cornering lamps.** Cornering lamps:

(1) Must meet SAE Standard J852a.

(2) Must be on the front of the vehicle near the side or the side near the front.

(3) Must be mounted no lower than twelve inches nor higher than thirty inches.

(4) Must, if they have means to adjust and aim the lamp, be mounted so the center of the high intensity portion of the beam is within forty to fifty degrees from the longitudinal axis of the vertical toward the front. The vertical aim must be within the center of the high intensity zone, ten to fourteen inches below the level of the lamp center.

(5) Must, if they don't have aiming mechanisms, be mounted in a fixed position on the vehicle in accordance with the manufacturer's instructions.

#### NEW SECTION

**WAC 204-21-130 Emergency lamps.** (1) All emergency lamps must meet the criteria established in RCW 46.37.320. In descending order of preference, these are:

(a) Conformance to Federal Motor Vehicle Safety Standards, or, if none,

(b) Conformance to current standards and specifications of the Society of Automotive Engineers, or, if none,

(c) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, the Society of Automotive Engineers, or the American Association of Motor Vehicle Administrators.

(2) Headlamp flashing systems may be used for authorized emergency vehicles owned and operated by law enforcement agencies, licensed ambulance companies, and fire departments. Headlamp flashing systems must:

(a) Have a circuit that alternately flashes only the high beams from the headlamps at a rate of sixty to one hundred twenty flashes per minute per side.

(b) Be so designated that any failure to flash the lamps will not result in failure of the headlamp system to operate normally.

(c) Incorporate an override feature which must stop the flashing and provide full illumination from both high beam

headlamps when the dimmer switch is in the high-beam mode.

(d) Have an indicator lamp included in the circuit to give a visible and unmistakable indication to the driver that the system is turned on.

(3) The following table outlines the color of emergency lamp to be used for each type of emergency vehicle.

Vehicle Type	Lighting Required	Other Lighting Allowed
Authorized Emergency	1 red lamp	Flashing amber or white lamps
Law Enforcement Vehicle	1 blue lamp	Flashing red, amber or white lamps
Volunteer Fire Fighter		If approved by the chief of their respective service, green lamps may be installed on the vehicle provided that the requirements outlined in subsection (4) of this section are met.
Public utilities vehicles, other construction and maintenance vehicles, pilot cars, tow trucks, animal control vehicles, hazardous materials response team vehicles, search and rescue team vehicles, and rural newspaper carrier vehicles, and vehicles towing a load that exceeds legal dimensions.		One or more flashing amber lamps provided that the requirements of subsection (5) of this section are met.

(4) Green lights for volunteer fire fighter vehicles must:

(a) Meet the requirements of SAE J595 except that the color of the lamp must be green as the color described in SAE J578.

(b) Be visible for a distance of two hundred feet under normal atmospheric conditions.

(c) Not have a maximum light projected in any one direction exceeding three hundred candle power.

(d) Be mounted no less than twenty-four inches above the level surface upon which the vehicle stands, or may be placed on the forward portion of the top above the windshield.

(e) Be mounted anywhere from the center of the vehicle to the left side thereof.

(f) Be used only for the purpose of identification and the operator of a vehicle so equipped must not be entitled to any of the privileges provided in RCW 46.61.035 for the operators of authorized emergency vehicles.

(5) Amber lamps must:

(a) Be mounted and be of sufficient intensity so as to be clearly visible to approaching traffic for at least five hundred feet in normal sunlight.

(b) Be mounted as outlined in WAC 204-21-020 and as follows:

(i) Must be mounted so that the entire projected area of the lens is visible from all eye heights of drivers of other vehicles at angles within forty-five degrees left to forty-five degrees right of the front of the vehicle. If the light within these required angles is blocked by the vehicle or any substantial object on it, an additional warning lamp must be displayed within the obstructed angle.

(ii) May be mounted at any height.

(c) Only be used on the vehicles described in subsection (3) of this section, when such vehicles are actually involved in construction, maintenance, or operations which require that warning be given to ensure the protection of the motoring public or the work crew. Warning lamps must not be illuminated while traveling to or from the site of operations. For the purposes of tow truck operations, the site of operations must be only that place where vehicles are attached to or detached from the tow truck. Lamps on pilot cars must be illuminated only while the vehicle is actually providing escort service. Lamps on rural newspaper delivery vehicles must only be illuminated when the vehicle is traveling on the delivery route. Lamps on oversize units may be illuminated when traveling on public roadways. The operator of these vehicles must not be entitled to any of the privileges provided in RCW 46.61.035 for the operators of authorized emergency vehicles.

(6) Three hundred sixty degree emergency warning lamps must meet SAE Standard J845.

(7) Nothing in this section relieves the operator of any vehicle from displaying any other light or warning device required by statute or regulation.

NEW SECTION

**WAC 204-21-140 Flashing warning lamps.** Flashing warning lamps may be mounted at any height and must:

(1) Meet the SAE Standards outlined for the type of vehicle as outlined in the table below.

Vehicle Type	Standard Adopted
Agricultural equipment	SAE J974
Authorized emergency maintenance, volunteer fire fighter, and service vehicles	SAE J595
Industrial equipment	SAE J96

(2) Be mounted so that the entire projected area of the lens is visible from all eye heights of drivers of other vehicles

at angles within forty-five degrees left to forty-five degrees right of the front of the vehicle. If the light within these required angles is blocked by the vehicle or any substantial object on it, an additional warning lamp must be displayed within the obstructed angle.

#### NEW SECTION

**WAC 204-21-150 Side cowl fender or running board courtesy lamps.** Side cowl, fender, or running board courtesy lamps must meet SAE Standard J575.

#### NEW SECTION

**WAC 204-21-160 Slow-moving vehicle emblems.** (1) Every farm tractor, every self-propelled unit of farm equipment, every implement of husbandry designed for operation at speeds not in excess of twenty-five miles per hour and every combination of farm tractor and towed farm equipment or towed implement of husbandry normally operated at speeds not in excess of twenty-five miles per hour shall at all times be equipped with a slow-moving vehicle emblem.

(2) Other classes of vehicles not covered by RCW 46.37.160 such as road construction vehicles and road maintenance vehicles which normally operate at a speed of twenty-five miles per hour or less may be equipped with slow-moving vehicle emblems meeting the requirements of this section.

(3) In order to comply with the provisions of RCW 46.37.160(6), slow-moving vehicle emblems:

(a) Must be constructed in conformance with SAE Standard J943.

(b) Must be mounted point up in plane perpendicular to the direction of travel of the vehicle so that the reflectorized side of the emblem is facing to the rear.

(c) Must be mounted, as nearly as is practicable, centrally at the rear of the vehicle in an unobscured location.

(d) Must be mounted not less than two feet nor more than six feet above the ground on which the vehicle stands measured from the lower edge of the emblem.

(e) May be permanently attached to the vehicle. Where portable brackets are used, they must be so constructed that they will hold the emblem securely and in a position meeting the requirements of all other mounting instructions under this section.

If the towed unit is sufficiently large to obscure the slow-moving vehicle emblem on the farm tractor, the towed unit must be equipped with a slow-moving vehicle emblem. In such cases, the towing vehicle need not display the emblem. Where the slow-moving vehicle emblem on the farm tractor unit is not obscured by the towed unit, then either or both may be equipped with the required emblem.

(f) Must not replace any of the required lamps or other devices required in chapter 46.37 RCW.

(g) Must not be used as a clearance marker for wide equipment.

#### NEW SECTION

**WAC 204-21-170 Additional lighting for snow removal, highway maintenance and refuse haulers.** (1)

Additional headlamps may be positioned sufficiently high enough to clear operating equipment provided they are aimed at an angle to avoid blinding oncoming traffic while on their routes, involved in construction, maintenance, and/or operations. Except, refuse haulers must:

(a) Use regular mounted headlamps when transporting refuse to the dump site. Auxiliary headlamps may be used if necessary.

(b) Use the alternate lights when the refuse haulers' collection container is in a position to obscure the headlamps, and will not exceed twenty miles per hour.

(2) Additional operating lamps may be located on the top of the cab or at other locations to illuminate plowing, abrasive spreading or other equipment.

(3) No flashing red warning signal except those required by RCW 46.37.150 shall be displayed or used on any highway equipment.

(4) Amber colored lamps must:

(a) Be mounted on the cab or other high point of the equipment so as to be visible at all times, at least from the front and rear of the vehicle, from a distance of five hundred feet in normal sunlight, unless otherwise prescribed below.

(b) Have a minimum light intensity of the lamp filament not be less than twenty-one candle power.

(c) Be used on the following vehicles:

(i) Power shovels or other similar highway maintenance equipment. The amber lamp and a red flag are to indicate an extension which designates the maximum danger limit created by the swing of the cab while operating along the traffic lane.

(ii) Other highway equipment which creates a potential hazard to traffic including those vehicles and trailers for construction, maintenance, and operations.

(iii) Knuckle of all man lift-type platform trucks with articulating boom, where the knuckle is capable of being rotated beyond the side of the truck.

(d) Only be illuminated:

(i) When the equipment is actually involved in construction, maintenance, collecting refuse, and/or operations.

(ii) When the equipment is traveling to or from the job site and is unable to maintain, either because of equipment limitations, or other reasons, at least one-half posted or prevailing speed.

#### NEW SECTION

**WAC 204-21-180 Deceleration alert lamp system.** (1) Deceleration warning lights must:

(a) Be installed as follows:

(i) Only one such system may be mounted on a motor vehicle, trailer, semitrailer, truck tractor, or pole trailer.

(ii) Provision must be made for rigid or shock-absorbing mounting.

(iii) The axis of the light beam must be parallel to the roadway and the longitudinal axis of the vehicle.

(iv) The lamp must be mounted on the centerline of the rear exterior of the vehicle or with the optical center of the lamp not more than fifteen inches from the centerline.

(v) The deceleration warning light system must be mounted as nearly as practicable at the same height as the existing stop lamps on the vehicle.

(vi) Visibility of the deceleration lamps to the rear must not be obstructed by any part of the vehicle or load thereon.

(b) Meet Type I or Type II requirements and test methods for a deceleration alert system.

(i) Type I - the system must:

(A) Be mounted on the rear of the vehicle as close as possible to the vertical centerline of the vehicle.

(B) Be mounted at a height of not more than seventy-two inches nor less than fifteen inches.

(C) Center-to-center (optical axis) distance between two adjacent compartments should not exceed six inches.

(D) Have three compartments. The center compartment emits a green light and is energized when the vehicle operator has the accelerator depressed. The two outer compartments emit an amber light and are energized when the operator releases the accelerator and prior to applying pressure to the foot brake pedal. When the amber lights are energized, the green light is deenergized. When pressure is applied to the foot brake pedal, the amber lights are deenergized and the vehicle's stop lamps operate in the normal manner. SAE Standard J578d is adopted for color chromaticity boundaries.

(E) Meet the requirements under the following sections of SAE J575g: Section B, samples for test; Section C, lamp bulbs; Section D, laboratory facilities; Section E, vibration test; Section F, moisture test; Section G, dust test; Section H, corrosion test; and Section J, photometry. If plastic material is used in optical parts it must comply with the requirements set forth in SAE J576c.

(F) Measure the beam candle power with the H-V axis taken as paralleled to the longitudinal axis of the vehicle. The candle power measurements for the center green compartment must be made with the incandescent filament of the lamp at least ten feet from the photometric screen.

Beam candle power measurements of the two amber compartments shall be made by either of the following methods:

(I) The two compartments may be photometered together provided that a line from the optical axis (filament centers) of each compartment to the center of the photometer sensing device does not make an angle of more than 0.6° with the photometer (H-V) axis.

(II) Each compartment may be photometered separately by aligning its axis with the photometer and adding the value at each test point.

Table 1 lists the design candle power requirements for the two outer amber lights, and Table 2 lists the design candle power requirements for the center green light.

Table 1			Table 2		
Minimum Design Candle power Requirements for Amber Light			Minimum Design Candle power Requirements for Green Light		
Test	Points	Candle power	Test	Points	Candle power
10 up	10L	25	10 up	10L	1
and	V	65	and	V	1.5
10 down	10R	25	10 down	10R	1
	20L	25		20L	1
	10L	65		10L	2

Table 1			Table 2		
Minimum Design Candle power Requirements for Amber Light			Minimum Design Candle power Requirements for Green Light		
Test	Points	Candle power	Test	Points	Candle power
5 up	5L	85	5 up	5L	4
and	V	125	and	V	4
5 down	5R	85	5 down	5R	4
	10R	65		10R	2
	20R	25		20R	1
	20L	25		20L	2
	10L	75		10L	3
	5L	125		5L	5
	H-V	175		H-V	5
	5R	125		5R	5
	10R	75		10R	3
	20R	25		20R	2
	Maximum	450		Maximum	45

(ii) Type II - the system must:

(A) Operate so as to indicate a component of deceleration of the vehicle on which it is installed by varying the flashing rate of a yellow lamp when the service brakes are applied.

(B) Incorporate an automatic means for reducing the intensity of the lamp during darkness. The system must cause the voltage to the deceleration lamps to decrease to 5.0 V ± 10% at 0 g deceleration during darkness. The specified voltage must be reached when the illumination on the sensor is not more than 5 lm/sq. ft., nor less than 0.5 lm/sq. ft.

(C) Have an output voltage, duty cycle, and flash rate of the control unit as a temperature of 24° ± 5.5°C (75° ± 10°F), when 12.8 V dc is applied to the input terminal, as shown in Table I when the control sensor is placed on a tilt table and slightly vibrated as the table is slowly rotated through the angles representing the specified vehicle deceleration rates.

TABLE I  
Test Requirements for Deceleration Lamps

Deceleration (g)	Output (V)	Peak Relative Brightness	Flash Rate (Hz)	On Time (%)
0.0	7.0	1.0	1.0	50
0.1	—	1.0	1.5	48
0.2	—	1.0	2.3	46
0.3	—	1.2	3.4	44
0.4	—	1.4	5.0	42
0.5	—	1.7	7.6	40

(D) Have a deceleration at which the unit switches from a lower to a higher flash rate that is within ± 0.05 g of the rate specified in Table I. If the unit operates at more steps than the required minimum, the additional values for each column shall lie on the smooth curve connecting the indicated values within the specified tolerances. The values specified in Table II apply to ramp-type inertial sensors for which the downward angles correspond to the deceleration and a tolerance of 3.0° applies to the tilt angle.

TABLE II

Test Requirements for Deceleration Sensors			
Deceleration (g)	DEGREES		
	Forward Tilt Angle	Dip Correction	Corrected Tilt Angle
0.0	0.0	0.0	0.0
0.1	5.7	0.8	6.5
0.2	11.3	1.6	12.9
0.3	16.7	2.4	19.1
0.4	21.8	3.2	25.0
0.5	26.6	4.0	30.6

(E) Have the rms of the output voltage during the on portion of the flash cycle at the 1 Hz flash rate within  $\pm 5\%$  of the specified value, measured at the lamp bulbs with daytime illumination on the automatic darkness sensor.

(F) Have a relative brightness of the lamp or bulbs at the decelerations within  $\pm 25\%$  of the specified values after the fifth flash with the brightness of the lamp or its bulbs taken as 1.0 when measured with the rms output voltage specified for 0 g deceleration.

(G) Have a flash rate within  $\pm 15\%$  of the specified value. The percent on time must be within  $\pm 10\%$  of the specified value.

(H) Have linear dip corrections varying from  $4^\circ$  at 0.5 g or more deceleration to  $0^\circ$  at 0 g on passenger vehicles and pickup trucks that have substantial front end dip upon braking.

(I) Comply with the following mechanical tests in SAE Standard J575g (tests for motor vehicle lighting devices and components): Corrosion, dust, moisture, vibration, and warpage (at a flashing rate of 1 Hz when a plastic lens or housing is used).

(J) Meet the following control system requirements at both 11 V and 15 V:

(I) Low temperature test. The control system must be placed in its normal operating position in a circulating air cabinet at  $-32^\circ \pm 3^\circ\text{C}$  ( $-25^\circ \pm 5^\circ\text{F}$ ) for 2 hours. At the end of that period and while still at that temperature, the unit must meet the requirements in Table I at 0 g and 0.3 g.

(II) High temperature test. The control system must be placed in its normal operating position in a circulating air cabinet at  $74^\circ 0'$ ,  $-2.8^\circ\text{C}$  ( $165^\circ 0'$ ,  $-5^\circ\text{F}$ ) for 2 hours. At the end of that period and while at that temperature, the unit must meet the requirements in Table I at 0 g and 0.3 g.

(K) Operate the control system continuously at a supply voltage of 12.8 V dc for 200 hours with no failure (except bulb replacement), after which it must meet the requirements in Table I at 0 g and 0.3 g.

(L) Meet the photometric requirements in Table III after the sample has been mechanically tested in the order shown in (b)(ii)(J) of this subsection for the luminous intensity of a deceleration lamp with the bulbs operated at mean spherical candela.

TABLE III

Photometric Requirements for Deceleration Signal Lamps					
Test Point Coordinates		Max Cd		Min Cd	
Vertical	Horizontal	Amber	Red	Amber	Red
10U	10L	70	35	25	12.5
	V	200	100	60	30
	10R	70	35	25	12.5
5U	20L	40	20	15	7.5
	10L	200	100	60	30
	5L	600	300	200	100
	V	800	400	350	175
	5R	600	300	200	100
	10R	200	100	60	30
	20R	40	20	15	7.5
	20L	40	20	15	7.5
	10L	200	100	60	30
	5L	800	400	350	175
H	V	1,300	650	600	300
	5R	800	400	350	175
	10R	200	100	60	30
	20R	40	20	15	7.5
	20L	40	20	15	7.5
5D	10L	200	200	60	30
	5L	600	300	200	100
	V	800	400	350	175
	5R	600	300	200	100
	10R	200	100	60	30
10D	20R	40	20	15	7.5
	10L	70	35	25	12.5
	V	200	100	60	30
	10R	70	35	25	12.5

**NEW SECTION**

**WAC 204-21-190 School bus warning lamps.** (1) If the bus is a privately owned school bus or private carrier bus, then it must not use the eight lamp warning system unless such use is in conformance with the rules and regulations set forth by the superintendent of public instruction in chapters 392-143 and 392-145 WAC. The requirements for private carrier buses may be found under chapter 204-32 WAC.

(2) If the bus is a school bus owned and operated by any public school district and all privately owned school buses operated under contract with a school district in the state and used for the transportation of public school children, then the warning lamp system must:

(a) Be operated in accordance with the regulations set forth in chapter 392-145 WAC.

(b) Consist of a total of eight lamps conforming to SAE Standard J887a, J1318, or the standard in effect for such lamp at the time it was manufactured. Two amber and two red on both the front and rear of the bus. The amber lamps must be mounted inboard of the red lamps.

(c) Be mounted as high as practicable on the bus body and as near the outside edges of the body as curvature permits.

(d) Have shielding to protect the lamps from the elements.

(e) Be mounted on a background that is painted black and extends a minimum of three inches outward from the lamps.

(f) Be mounted and aimed as specified in 49 CFR 571.108 (FMVSS 108) and SAE Standard J887a.

(g) Be clearly visible from a distance of at least five hundred feet in normal sunlight.

(h) Be activated only by means of a manually operated switch. Such activation will cause the right and left amber lamps to flash alternately until the stop signal arm is extended, or the bus entrance door is opened, at which time the amber lamps must be automatically deactivated and the right and left red lamps must be automatically activated. Whenever the warning lamp system has been activated, opening of the entrance door must automatically deactivate the amber lamps, cause the stop signal arm to extend, and activate the red lamps. Automatic extension of the stop signal arm does not apply to systems equipped with a manually operated stop signal arm.

(i) Have all lamps flashing at a rate from sixty to one hundred twenty times per minute and must reach full brilliance during each cycle.

(j) Have lamp controls which must consist of:

(i) The master or sequencing switch which must be in plain view and mounted within easy reach of the driver, and which must activate the system sequencing and deactivate the system at any time during the sequence.

(ii) An override switch which must automatically activate the red lamps whenever the stop signal arm is extended even though the master control switch is turned off, and which must automatically deactivate the amber lamps if previously activated regardless of the then present normal state of sequencing or entrance door position. Such override switch must be designed and installed so as to function with air, vacuum, electric, or manually operated stop signal arms. The stop signal arm must be capable of being extended at any time, regardless of the position of the entrance door. The opening of the entrance door must not cause extension of the stop signal arm, or the activation of the red lamps unless the master switch has been activated.

(iii) A minimum of two pilot lamps, one amber and one red, each of which must flash when the like colored warning lamps are in operation. Pilot lamps which show the operation of each individual lamp are permissible. All pilot indicators must be located so as to be clearly visible to the driver.

#### NEW SECTION

**WAC 204-21-200 Private carrier bus lamps.** (1) All signal lamps on private carrier buses must be constructed in conformance with the SAE Standard for "school bus red signal lamps," in effect at the time of manufacture of such lamps, and must:

(a) Be mounted on the front and rear of the bus, above the windows, as high and as widely spaced laterally as practicable but in no case shall the lateral spacing of these lamps be less than forty inches.

(b) Be mounted so that the vision of front signals to the front and rear signals to the rear are not unobstructed by any part of the vehicle from 5° above to 10° below the horizontal

and from 30° to the right to 30° to the left of the centerline of the bus.

(c) Have the switch which activates the signal lamps be actuated by movement of the stop signal to the extended position.

(d) Be no switch between the signal lamps and the switch which activates these lamps when the stop signal is extended.

(e) Be a flashing red indicator lamp on the instrument panel of the vehicle which will indicate to the driver that the signal lamps are operating.

(f) Operate through a flasher unit which will cause the front signal lamps to flash alternately and the rear signal lamps to flash alternately at a rate no slower than sixty nor faster than one hundred twenty times per minute. The "on" period of the flasher must be long enough to permit the bulb filament to come up to a full brightness.

(g) Signal lamps must be aimed two inches below level at twenty-five feet and straight ahead. An aiming tolerance of from three inches up to seven inches down and ten inches right or left will be allowed.

(h) Only be actuated by the driver of a private carrier bus whenever such vehicle is stopped on the highway for the purpose of receiving or discharging passengers, except:

(i) When the passengers boarding or alighting do not have to cross a highway and the bus is stopped completely off the main traveled portion of the roadway; or

(ii) When the bus is stopped at an intersection or place where traffic is controlled by a traffic officer or official control signal.

EXCEPTION: Buses that do not stop upon the roadway to load or discharge passengers are exempt from the requirements of this section.

(2) Rear turn signal lamp and stop lamp lenses must be amber in color to avoid confusion with signal lamps and the message on the warning sign.

#### NEW SECTION

##### **WAC 204-21-210 Bus hazard warning strobe lamp.**

All bus hazard warning strobe lamps must meet the Class I requirements of SAE Standard J1318, and may only be used as follows:

(1) School buses may be equipped with a single additional hazard strobe lamp in addition to the eight lamp warning system. Such lamps must:

(a) Not be mounted any closer than six feet from the rear of the bus measured from a vertical plane tangent to the rear-most point of the bus body. However:

(i) If the bus is equipped with a roof hatch falling within the above mentioned measurements, the strobe lamp may be located directly behind the roof hatch.

(ii) If the bus has a clear lens strobe lamp, less than eight inches in height, it may be mounted on the centerline of the roof in the rear one-half of the bus.

(b) Be activated by a switch independent of all other lamp switches. This switch must be plainly labeled and have a pilot lamp that must indicate when the lamp is in operation.

(c) Only be used when the bus is occupied with school children and one or more of the following conditions exists:

(i) The bus is in motion in inclement, sight obscuring conditions, including but not limited to rain, fog, snow, and smoke;

(ii) There is a need to improve the visibility of the bus when stopping, standing, or starting onto a highway;

(iii) There is limited visibility caused by geographic hazards such as winding roadways, hills, trees, buildings, etc.

The strobe lamp shall not be activated solely because of darkness.

(2) Municipal transit vehicles (as defined in RCW 46.04.355) may be equipped with a single additional hazard strobe lamp. Such lamps:

(a) May be mounted on the centerline of the roof in the rear one-half of the bus so long as the lamp is clear and less than eight inches in height.

(b) Be activated by a switch independent of all other lamp switches. The hazard strobe lamp switch must be plainly labeled and have a pilot lamp that must indicate when the lamp is in operation.

(c) Only be used when the bus is occupied with passengers and one or more of the following conditions exists:

(i) The bus is in motion in inclement, sight obscuring conditions, including but not limited to rain, fog, snow, and smoke;

(ii) There is a need to improve the visibility of the bus when stopping, standing, or starting onto a highway;

(iii) There is limited visibility caused by geographic hazards, such as winding roadways, hills, trees, etc.

The strobe lamp must not be activated solely because of darkness.

#### NEW SECTION

**WAC 204-21-220 Trailer tongue lamps.** A lamp must be used on the tongue of any trailer where the distance between the front of the trailer body and the rear of the body of the towing vehicle is fifteen feet or greater, and where the top of the tongue is less than twenty-four inches above the ground at any point between the front of the body of the trailer and the rear of the body of the towing vehicle. This lamp must:

(1) Be amber in color and be in operation whenever the combination of vehicles is in motion, and must be visible to each side of the combination.

(2) Have a minimum diameter of two and one-half inches.

(3) Have a steady burn or may be flashing provided that the flashing lamp only flashes by means of an electronic or electric flasher. Strobe lamps and rotating type lamps are not permitted.

(4) Be mounted as nearly as practicable in the center of the distance between the vehicle bodies. Lamps mounted on extendable tongues will necessarily vary in distance between the bodies in relation to the amount of extension used; however, in no case shall the lamp be over five feet from the center of the distance between vehicle bodies nor more than fifteen feet from either of the vehicle bodies.

(5) Be mounted at a minimum height of twenty-one inches above the roadway, and maximum height of forty-eight inches above the roadway.

#### NEW SECTION

##### **WAC 204-21-230 Lighting equipment prohibited.** (1)

The addition of a lamp, reflective device or other motor vehicle equipment must not impair the effectiveness of lighting equipment required by 49 CFR Part 571.108 or chapter 46.37 RCW.

(a) If a vehicle is in motion on a public roadway, the vehicle must not:

(i) Display aftermarket neon lighting devices.

(ii) Combine any type of letter, number, sign, symbol or combination thereof with an eye level brake light meeting the standards of 49 CFR 571.108 (FMVSS 108). No function other than red reflex reflectors shall be combined in eye level brake lights.

(iii) Have a lighted or electrically/mechanically powered sign or message board enabling change or movement of any displayed message to be displayed or affixed to the vehicle. Except:

(A) Vehicles that are used in conjunction with officially sanctioned or sponsored motor vehicle traffic control or movement may display lighted or electrically powered signs to assist in the efficient control of traffic movement on public roadways. The signs must be designed, worded, and located to limit misinterpretation and confusion by the motoring public.

(B) Electric signs may be unitized to identify taxicabs and the destinations of mass transportation vehicles. These signs must not contain any commercial or personal message and must be designed, worded, and located so that it is clearly differentiated from other required motor vehicle lights.

(b) If a vehicle is not in motion and parked on private property, the vehicle may use aftermarket lighting except as outlined under RCW 47.36.180.

(2) Pursuant to Title 49 CFR Part 571.108, the addition of an aftermarket style ornament or other feature such as tinted plastic glass covers, a grille or allotted covers must not be placed in front of the headlamp lens, or in front of any other lighting devices installed on motor vehicles which impair the effectiveness of lighting equipment required under 49 CFR Part 571.108 (FMVSS 108) or chapter 46.37 RCW. Except:

(a) Clear aftermarket headlamp covers.

(b) Headlamp wipers may be used in front of the lens provided that the headlamp system is designed to conform to all applicable photometric requirements in 49 CFR 571.108 (FMVSS 108) with the wiper stopped in any position in front of the lens.

(c) A bike rack may be installed on the front of a municipal transit vehicle (as defined under RCW 46.04.355) provided that even with the bike rack installed, loaded or unloaded with bicycles, the headlight system still conforms with all applicable photometric requirements in 49 CFR 571.108 (FMVSS 108).

(3) Red emergency lights are prohibited on any vehicle other than an authorized emergency vehicle, a law enforcement vehicle, an emergency tow truck as defined in WAC 204-88-030 (1), (2), and (5), school buses, and private carrier buses.

(4) Blue lights are prohibited on any vehicle other than a law enforcement vehicle as defined in WAC 204-21-010.

(5) Flashing white lights are prohibited on any vehicle other than authorized emergency vehicles, law enforcement vehicles, school buses, and emergency tow trucks as defined in WAC 204-88-030 (1), (2), and (5).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 204-10-020 Lighting devices.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-28-020 Standards for emblems.  
WAC 204-28-030 Mounting standards.  
WAC 204-28-040 Use of emblem on other classes of vehicles.  
WAC 204-28-050 Approval of emblems.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 204-32-040 Mounting and activation of warning devices.  
WAC 204-32-070 Color of turn signal and stop lamps.  
WAC 204-32-080 Use of warning devices.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-38-010 Promulgation.  
WAC 204-38-020 Purpose.  
WAC 204-38-030 Definitions.  
WAC 204-38-040 Mounting of lamps.  
WAC 204-38-050 Use of lamps.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-39-010 Promulgation.  
WAC 204-39-020 Purpose.  
WAC 204-39-030 Use of lamps required.  
WAC 204-39-040 Mounting of lamps.  
WAC 204-39-050 Effective date.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-40-010 Promulgation.  
WAC 204-40-020 Authorization.  
WAC 204-40-030 Standard.  
WAC 204-40-040 Limitations.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-60-010 Promulgation.  
WAC 204-60-020 Clearance lamps, side marker lamps and reflectors.  
WAC 204-60-030 Standards for lights.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-62-010 Promulgation.  
WAC 204-62-020 Definition.  
WAC 204-62-030 Installation requirements.  
WAC 204-62-040 Standards.  
WAC 204-62-050 Requirements and test methods for a deceleration alert system, Type I.  
WAC 204-62-060 Requirements and test methods for a deceleration alert system, Type II.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-65-010 Authority.  
WAC 204-65-020 Purpose.  
WAC 204-65-030 Electronic messages.  
WAC 204-65-040 Eye level brake light.  
WAC 204-65-050 Traffic control vehicles.  
WAC 204-65-060 Taxicabs and public transportation vehicles.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-72-010	Promulgation.
WAC 204-72-020	Purpose.
WAC 204-72-030	Mounting requirements, general.
WAC 204-72-040	Mounting requirements, specific.
WAC 204-72-050	Adjusting and aiming requirements, general.
WAC 204-72-060	Adjusting and aiming requirements, specific.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-74A-010	Authority.
WAC 204-74A-020	Purpose.
WAC 204-74A-030	Scope.
WAC 204-74A-040	Eight lamp warning system.
WAC 204-74A-050	Operation of lamps.
WAC 204-74A-060	Additional hazard strobe lamp.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-78-010	Promulgation.
WAC 204-78-020	Scope.
WAC 204-78-030	Definitions.
WAC 204-78-040	Location of light modulator.
WAC 204-78-050	Parameter specifications for light modulators.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-80-010	Promulgation.
WAC 204-80-020	Scope.
WAC 204-80-030	Definitions.
WAC 204-80-040	Operating unit.
WAC 204-80-050	Indicator lamp.
WAC 204-80-060	Approval.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 204-88-010	Promulgation.
WAC 204-88-020	Purpose.
WAC 204-88-030	Definitions.
WAC 204-88-040	Lighting for authorized emergency vehicles.
WAC 204-88-050	Lighting for law enforcement vehicles.
WAC 204-88-060	Lighting prohibited.
WAC 204-88-070	Approved lighting devices required.

**WSR 08-15-106****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

(Division of Alcohol and Substance Abuse)

[Filed July 18, 2008, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-24-004.

Title of Rule and Other Identifying Information: The department is amending certification requirements for chemical dependency service providers. See reviser's note below.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on September 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 16, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is:

- Amending the sections that refer to definitions, certified services, opiate treatment program certification, maintaining agency certification, agency clinical manual, outpatient services, opiate substitution medical management, and DUI assessment providers;

- Eliminating WAC 388-805-815 DUI assessment services requirements;
- Adding WAC 388-805-850 Screening and brief intervention services; and
- Adding new language as appropriate.

Reasons Supporting Proposal: See Reviser's note below.  
Statutory Authority for Adoption: RCW 70.96A.090 and 42 C.F.R. Part 8.

Statute Being Implemented: RCW 70.96A.090 and 42 C.F.R. Part 8.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Deb Cummins, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-3716, 1-877-301-4557 toll free; and Enforcement: Dennis Malmer, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-3747, 1-877-301-4557 toll free.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

See Reviser's note below.

A copy of the statement may be obtained by contacting Deb Cummins, Certification Policy Manager, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-3716, fax (360) 438-8057, e-mail cummida@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Deb Cummins, Certification Policy Manager, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-3716, fax (360) 438-8057, e-mail cummida@dshs.wa.gov.

July 15, 2008  
Stephanie E. Schiller  
Rules Coordinator

**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 08-17 issue of the Register.

**WSR 08-15-107**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 18, 2008, 10:53 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-027.

Title of Rule and Other Identifying Information: WAC 392-139-310 Finance—Maintenance and operations levies—Determination of excess levy base.

Hearing Location(s): Old Capitol Building, 600 South Washington, Olympia, WA 98504-7200, on September 3, 2008, at 9:00 a.m.

Date of Intended Adoption: September 4, 2008.

Submit Written Comments to: Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Penny.coker@k12.wa.us, fax (360) 753-4201, by September 2, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by September 2, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are updated to reflect changes in the state revenues in the levy base due to the legislative addition of new programs.

Reasons Supporting Proposal: Revisions are required to implement legislative changes in state revenues.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: None.

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Shish, Office of Superintendent of Public Instruction; Implementation: Calvin W. Brodie, Office of Superintendent of Public Instruction; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is not applicable to nongovernmental agencies.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not applicable to nongovernmental agencies.

July 18, 2008  
Dr. Terry Bergeson  
State Superintendent

AMENDATORY SECTION (Amending WSR 07-21-037, filed 10/10/07, effective 11/10/07)

**WAC 392-139-310 Determination of excess levy base.** The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

(a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;

(b) The state and federal categorical allocations for the following:

(i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:

- 4199 Transportation - operations;
- 4399 Transportation - operations;
- 4499 Transportation - depreciation;
- 6199 Transportation - operations;
- 6299 Transportation - operations; and
- 6399 Transportation - operations.

(ii) Special education. Allocations for special education include allocations for the following accounts:

- 4121 Special education;

4321 Special education;  
 6124 Special education supplemental;  
 6224 Special education supplemental; and  
 6324 Special education supplemental.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

3100 Barrier reduction;  
 4155 Learning assistance;  
 4165 Transitional bilingual;  
 4163 Promoting academic success;  
 4166 Student achievement;  
 4365 Transitional bilingual;  
 6151 Disadvantaged;  
 6153 Migrant;  
 6164 Limited English proficiency;  
 6251 Disadvantaged;  
 6253 Migrant;  
 6264 Limited English proficiency;  
 6267 Indian education - JOB;  
 6268 Indian education - ED;  
 6351 Disadvantaged;  
 6353 Migrant;  
 6364 Limited English proficiency;  
 6367 Indian education - JOM; and  
 6368 Indian education - ED.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

4198 School food services (state);  
 4398 School food services;  
 6198 School food services (federal);  
 6298 School food services;  
 6398 School food services; and  
 6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

310004 Full-day kindergarten;  
4134 Middle school vocational;  
4175 Professional development;  
 6176 Targeted assistance;  
 6276 Targeted assistance; and  
 6376 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

5200 General purpose direct federal grants - unassigned;  
 6100 Special purpose - OSPI - unassigned;  
 6121 Special education - Medicaid reimbursement;  
 6138 Secondary vocational education;  
 6146 Skills center;  
 6152 School improvement;  
 6154 Reading first;  
 6162 Math and science - professional development;  
 6200 Direct special purpose grants;

6221 Special education - Medicaid reimbursement;  
 6238 Secondary vocational education;  
 6246 Skills center;  
 6252 School improvement;  
 6254 Reading first;  
 6262 Math and science - professional development;  
 6300 Federal grants through other agencies - unassigned;  
 6310 Medicaid administrative match;  
 6321 Special education - Medicaid reimbursement;  
 6338 Secondary vocational education;  
 6346 Skills center;  
 6352 School improvement;  
 6354 Reading first; and  
 6362 Math and science - professional development.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

3100 Barrier reduction;  
310004 Full-day kindergarten;  
 4121 Special education;  
4134 Middle school vocational;  
 4155 Learning assistance;  
 4163 Promoting academic success;  
 4165 Transitional bilingual;  
 4166 Student achievement;  
 4174 Highly capable;  
4175 Professional development;  
 4198 School food services (state);  
 4199 Transportation - operations;  
 4499 Transportation - depreciation;  
 6121 Special education - Medicaid reimbursements;  
 6124 Special education - supplemental;  
 6138 Secondary vocational education;  
 6146 Skills center;  
 6151 Disadvantaged;  
 6152 School improvement;  
 6153 Migrant;  
 6154 Reading first;  
 6162 Math and science - professional development;  
 6164 Limited English proficiency;  
 6176 Targeted assistance;  
 6198 School food services (federal); and  
 6199 Transportation - operations.

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

4321 Special education;  
 4365 Transitional bilingual;  
 4398 School food services;  
 4399 Transportation - operations;  
 5200 General purpose direct federal grants - unassigned;  
 6100 Special purpose - OSPI - unassigned;  
 6200 Direct special purpose grants;  
 6221 Special education - Medicaid reimbursement;  
 6224 Special education supplemental;  
 6238 Secondary vocational education;  
 6246 Skills center;  
 6251 Disadvantaged;  
 6252 School improvement;  
 6253 Migrant;  
 6254 Reading first;  
 6262 Math and science - professional development;  
 6264 Limited English proficiency;  
 6267 Indian education - JOM;  
 6268 Indian education - ED;  
 6276 Targeted assistance;  
 6298 School food services;  
 6299 Transportation - operations;  
 6300 Federal grants through other agencies - unassigned;  
 6310 Medicaid administrative match;  
 6321 Special education - Medicaid reimbursement;  
 6324 Special education supplemental;  
 6338 Secondary vocational education;  
 6346 Skills center;  
 6351 Disadvantaged;  
 6352 School improvement;  
 6353 Migrant;  
 6354 Reading first;  
 6362 Math and science - professional development;  
 6364 Limited English proficiency;  
 6367 Indian education - JOM;  
 6368 Indian education - ED;  
 6376 Targeted assistance;  
 6398 School food services;  
 6399 Transportation - operations; and  
 6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public

instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

**WSR 08-15-108**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 18, 2008, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-011.

Title of Rule and Other Identifying Information: Chapter 392-344 WAC, Process change for value engineering, constructability and commissioning reports.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, on September 3, 2008, at 9:30 a.m.

Date of Intended Adoption: September 4, 2008.

Submit Written Comments to: Scott Black, Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, by September 2, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by September 2, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend chapter 392-344 WAC to change the requirements for school districts in submitting value engineering, constructability review and building commissioning reports. Clarifying language changes will also be made to make the WACs easier to understand.

Reasons Supporting Proposal: The changes will streamline and improve the school construction assistance program process, save school district and the office of superintendent of public instruction staff time and effort and archive cost savings.

Statutory Authority for Adoption: RCW 28A.525.020 Duties of the superintendent of public instruction.

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

Name of Proponent: [No further information supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6268; and Enforcement: Gordon Beck, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6261.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

July 18, 2008  
Terry Bergeson  
State Superintendent

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-085 Construction and other documents—Submittal.** (1) For the purpose of determining that the provisions set forth in chapters 392-341 through 392-344 WAC have been complied with prior to the opening of bids for any project to be financed with state moneys, the school district shall have on file with the superintendent of public instruction the following:

(a) One copy of the construction documents forwarded by others;

(b) Cost estimate of construction on a form approved by the superintendent of public instruction, completed and signed by the architect-engineer;

(c) Signed copy or photocopy of letters of approval by other governmental agencies in accordance with WAC 392-344-090;

(d) Area analysis on a form approved by the superintendent of public instruction in accordance with chapter 392-343 WAC;

(e) Complete listing of construction special inspections and/or testing to be performed by independent sources that are included in the project pursuant to WAC 392-343-100;

(f) ~~((One copy of the value engineering and constructability review reports as accepted by the school district board of directors.))~~ School district board acceptance of a value engineering report and its implementation.

The report(s) shall include the following:

(i) A brief description of the original design;

(ii) A brief description of the value engineering ~~((or constructability review))~~ methodology used;

(iii) The areas analyzed;

(iv) The design alternatives proposed;

(v) The cost changes proposed;

(vi) The alternates accepted; and

(vii) A brief statement explaining why each alternate not accepted was rejected;

(g) Certification by the school district that a constructability review report was completed.

The report shall include:

(i) A brief description of the constructability review methodology used;

(ii) The area analyzed;

(iii) The recommendations accepted; and

(iv) A brief statement explaining why each recommendation not accepted was rejected;

(h) Completed Building Condition Evaluation Forms (BCEF) as required by WAC 392-343-535 for every school facility in the district.

(2) If the above documents reflect an increase in square foot size from the application approved by the superintendent of public instruction as per WAC ~~((392-344-030))~~ 392-344-

025 which will result in an increase in state support, a new application must be submitted to the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-110 Bids—Data and document requirements.** School districts shall demonstrate that they have complied with RCW 28A.335.190 and 43.19.1906 and shall not enter into contract(s) for construction until the following certified copies have been submitted and approved by the superintendent of public instruction:

(1) Each advertisement for bid;

(2) Tabulated statement of all bids received;

(3) Recommendation of the board of directors for award of contract(s) on the basis of bids received, including all accepted alternates;

(4) Alternate bids;

(5) Names and addresses of all bidders;

(6) Certified statement of costs for special inspections and testing;

(7) Certified statement of amount of local and/or other disburseable funds available specifically for the project, exclusive of state funds, with the source of funds identified, including identity and amount of nonhigh school district funds when applicable;

(8) School district board acceptance of a constructability review and implementation.

If the recommended contractor is not the low bidder, the school district shall give reasons pursuant to statutory provisions set forth in RCW 43.19.1911.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-160 Acceptance of project by school district.** ~~((Based upon board acceptance of a building commissioning report when required and an inspection of the project and the certificate(s) of completion signed by the architect/engineer, the school district board of directors shall accept the project as complete or reject the project as incomplete. Until the superintendent of public instruction receives a school district board resolution officially accepting the project as complete and a copy of the commissioning report with board acceptance, no))~~ The board of directors for a school district shall accept a project as complete or reject a project as incomplete after a review of the building commissioning final report, an inspection of the project, and receipt of certificate(s) of completion signed by the architect/engineer. A school district board resolution accepting the projects as complete must be submitted to OSPI before release of retainage shall be made in accordance with WAC 392-344-165.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-165 Documents required for release of retainage by school district.** Release of retainage on con-

tracts shall be subject to receipt by the superintendent of public instruction of the following documents:

(1) These documents shall be required no later than thirty days after official acceptance:

(a) Properly executed state invoice voucher as per the requirements of WAC 392-344-145;

(b) Architect/engineer certificate(s) of completion;

(c) School district board of directors' resolution of final acceptance signed by the authorized agent of the school district;

(d) School district board of directors' resolution accepting the building commissioning report.

(2) These documents shall be required no later than sixty days after official acceptance:

(a) Certification by the authorized agent of the school district that the district has on file all affidavits of wages paid in compliance with RCW 39.12.040;

(b) After expiration of forty-five days following acceptance of the project by the school district, a signed statement by the authorized agent of the school district that no lien(s) is on file with the school district or a certified list of each lien is on file with the school district. A copy of each lien shall be forwarded to the superintendent of public instruction;

(c) Either a permanent or temporary occupancy permit by building official of the jurisdiction. Also required are release documents as defined in chapter 60.28 RCW, RCW 50.24.130, and 51.12.050.

### WSR 08-15-109

#### PROPOSED RULES

#### GAMBLING COMMISSION

[Filed July 18, 2008, 2:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-003.

Title of Rule and Other Identifying Information: WAC 230-15-035 Requirements for authorized card games and [no further information supplied by agency.]

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 858-111 [no further information supplied by agency], on September 12, 2008, at 9:30 a.m.

Date of Intended Adoption: September 12, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At their May 2008 meeting, the commission filed a petition for rule change submitted by the Recreational Gaming Association (RGA) requesting that card players be allowed to use:

1. Community cards in card games, which would allow Baccarat or Mini-Baccarat to be played in commercial card rooms. Currently, players must have their own hand of cards and all players must compete on an equal basis. Players can-

not bet on another player's hand or the house's hand. In games that use community cards, two shared hands are dealt to positions called the "bank" and the "player;" unlike other card games, players are not dealt their own individual hands. Players bet on one of the two shared hands dealt, rather than on their own hand.

Player positions for:

Baccarat - 14 seats plus 12.

Mini-Baccarat - 7 seats plus 7.

2. Nickels and dimes in any card game that charges a commission. Players must make wagers and pay fees to play card games with chips. However, nickels and dimes can be used by players in Pai Gow to pay commissions. Baccarat and Mini-Baccarat allow a commission to be charged.

At their August 2008 meeting, the commission filed an alternative to item one above. This rule change would specifically allow Mini-Baccarat if authorized by the director, and no other games that allow community cards.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Recreational Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 18, 2008

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

**WAC 230-15-035 Requirements for authorized card games.** (1) In order for a game to be authorized, the game must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than three separate games with a single hand of cards. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to

comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) Notwithstanding subsections (1), (2), and (3) of this section, Mini-Baccarat is authorized when approved under WAC 230-15-040.

(5) A player's win or loss must be determined during the course of play of a single card game.

**WSR 08-15-113**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
 [Filed July 18, 2008, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-060.

Title of Rule and Other Identifying Information: WAC 415-111-230 Self-directed investment program.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on August 26, 2008, at 1:00 p.m.

Date of Intended Adoption: August 27, 2008.

Submit Written Comments to: Sarah Monaly, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Sarah Monaly, rules coordinator, by August 19, 2008, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update rules regarding changes to the default investment options for members of Plan 3 who elect to self-direct their investments.

Reasons Supporting Proposal: The state investment board selected a new fund as the default investment option for members of Plan 3 who elect to self-direct their investments. The department of retirement systems (DRS) needs to update its rules to reflect these changes.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: Chapter 41.34 RCW.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Monaly, Sarah Monaly, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Michelle Hardesty, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7193.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

July 18, 2008

Sarah Monaly

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-03-098, filed 1/17/06, effective 2/17/06)

**WAC 415-111-230 Self-directed investment program allocation.** This section applies only to members who elect the self-directed investment program pursuant to WAC 415-111-210.

(1) **What is an allocation?** An allocation is a set of instructions identifying your choice of investment program funds and the percentage of your money you want to invest in each fund. The amount you allocate to each fund must be designated as a whole percentage, and the total must equal one-hundred percent.

Example: Martha has elected the self-directed investment program (~~as her investment manager~~) and is contributing \$150 per month. Martha decides to invest in three different funds with the following amounts: \$30 invested in fund #1, \$45 invested in fund #2 and \$75 invested in fund #3. To accomplish this she must establish the following allocation:

Allocation to fund #1	20%
Allocation to fund #2	30%
Allocation to fund #3	50%
Total Allocation	100%

(2) **How do I establish an allocation?** You must establish your allocation by contacting the department's designated recordkeeper. Once established, you may change your allocation according to the provisions in subsection (5) of this section.

(3) **What happens if I do not establish an allocation?** If you do not provide an allocation before the department's designated recordkeeper begins receiving your investment money, or if you provide an allocation but the sum of the allocated portions does not equal one-hundred percent, your investment money will be invested as follows:

(a) If the total of the percentages you have allocated is less than one-hundred percent, the department will determine

the percentage that is unallocated, and invest the unallocated percentage in the default fund.

Example: Ralph designates the following allocation: 33% fund #1, 33% fund #2, and 33% fund #3. Since the total allocation equals 99%, the unallocated 1% will be invested in the default fund.

(b) If the total of the percentages you have allocated is greater than one-hundred percent, all of your investment money will be invested in the default fund.

Example: Chris designates the following allocations: 38% into fund #1, 40% into fund #2, 10% into fund #3, and 15% into fund #4. Since the total allocation equals 103%, all of Chris' investment money will be invested in the default fund.

(c) If you do not provide an allocation, your money will be invested as follows:

(i) If you previously participated in the self-directed investment program, your most recent allocation will be used. However, if your allocation includes a fund or funds that are no longer available, the portion of your investment money allocated to the unavailable fund(s) will be invested in the default fund.

(ii) If you do not meet the conditions in (c)(i) of this subsection, all of your investment money will be invested in the default fund.

Example: Lew is a new member and elects the self-directed investment program, but does not establish an allocation. All of Lew's investment money will be invested in the default fund.

Example: Linda becomes reemployed in an eligible position and elects to participate in the self-directed investment program again, but does not provide an allocation.

Linda previously participated in the self-directed investment program and had the following allocation:

- 10% in Fund #1
- 10% in Fund #2
- 30% in Fund #3
- 25% in Fund #4
- 25% in Fund #5

Because she did not establish a new allocation, her previous allocation will be used. However, fund #2 is no longer available, so that portion of her money will be invested in the default fund. A new allocation will be established for Linda as follows:

- 10% in Fund #1
- 10% in Default Fund
- 30% in Fund #3
- 25% in Fund #4
- 25% in Fund #5

(4) **What is the default fund?** The default fund for the self-directed investment program is the ~~((Money Market Fund))~~ Target Date Fund that assumes your current age is 65.

(5) **May I change my allocation?** Once you have established an allocation or been directed into the default fund, you may change your allocation by contacting the department's designated recordkeeper. However, changes must be consistent with any restrictions on trading imposed by the funds involved, and, if necessary to protect the performance results of the investment program funds, the department may:

- (a) Limit the number of times you change allocations;
- (b) Limit the frequency of the changes;
- (c) Limit the manner of making changes; or
- (d) Impose other restrictions.

**WSR 08-15-117**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed July 21, 2008, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-082.

Title of Rule and Other Identifying Information: WAC 232-28-353 2008 Deer special permits and 232-28-354 2008 Elk special permits.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2515, on September 5-6, 2008, at 8:00 a.m.

Date of Intended Adoption: September 5-6, 2008.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by Wednesday, August 6, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by September 3, 2008, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-28-353, this makes prior emergency rule changes permanent. The purpose of this change is to close public hunts for 2008 on the Yakima Training Center. The anticipated effect is slightly less recreational deer hunting opportunity in Region 3. No anticipated changes to deer management objectives.

WAC 232-28-354, this makes prior emergency rule changes permanent. The purpose of this change is to close public hunts for 2008 on the Yakima Training Center. The anticipated effect is slightly less recreational elk hunting opportunity in Region 3. No anticipated changes to elk management objectives.

Reasons Supporting Proposal: WAC 232-28-353 and 232-28-354, the United States Army's training schedule on the Yakima Training Center has changed and will not allow public access. As a result, the department will not be able to conduct any public hunts on their facility for this year's hunting season.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210.

Statute Being Implemented: RCW 77.12.047, 77.12.-020, 77.12.570, 77.12.210.

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

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (306) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not hydraulics rules.

July 21, 2008  
 Loreva M. Preuss  
 Rules Coordinator

AMENDATORY SECTION (Amending Order 08-79, filed 4/18/08, effective 5/19/08)

**WAC 232-28-353 2008 Deer special permits.**

SPECIAL DEER PERMIT HUNTING SEASONS

**(Open to Permit Holders Only)**

Hunters must purchase a deer hunting license prior to purchase of a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice; however, Multiple Season Permit holders may apply for archery, muzzleloader, or modern firearm permit hunts. Hunters drawn for a special permit hunt must comply with weapon restrictions and dates listed for the hunt.

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
<b>Modern Firearm Deer Permit Hunts (Only modern firearm deer tag holders may apply.)</b>				
Sherman	Oct. 11-26	Whitetail, antlerless	GMU 101	50
Kelly Hill	Oct. 11-24 & Nov. 3-19	Whitetail, antlerless	GMU 105	50
Douglas	Oct. 11-24 & Nov. 3-19	Whitetail, antlerless	GMU 108	100
Aladdin	Nov. 26-30	Whitetail, any buck	GMU 111	50
49 Degrees North	Oct. 11-24 & Nov. 3-19	Whitetail, antlerless	GMU 117	175
Huckleberry A	Oct. 11-24 & Nov. 3-19	Whitetail, antlerless	GMU 121	300
Mt. Spokane A	Oct. 11-24 & Nov. 3-19	Whitetail, antlerless	GMU 124	350
Mica Peak A	Oct. 11-19	Whitetail, antlerless	GMU 127	150
Cheney A	Oct. 11-19	Antlerless	GMU 130	200
Roosevelt	Oct. 11-19	Antlerless	GMU 133	200
Harrington	Oct. 11-19	Antlerless	GMU 136	125
Steptoe	Oct. 11-19 & Nov. 3-19	Antlerless	GMU 139	300
Almota A	Oct. 11-19 & Nov. 3-19	Antlerless	GMU 142	100
Palouse	Nov. 3-19	Whitetail, 3 pt. min.	GMUs 127-142	625
Mayview A	Nov. 1-12	Antlerless	GMU 145	50
Prescott A	Nov. 1-12	Antlerless	GMU 149	50
Blue Creek	Nov. 3-16	Whitetail, antlerless	GMU 154	80
Dayton A	Nov. 3-16	Whitetail, antlerless	GMU 162	80
Dayton B	Nov. 3-16	Antlerless	Deer Area 1010	75
Marengo	Nov. 1-12	Whitetail, antlerless	GMU 163	50
Peola	Nov. 1-12	Whitetail, antlerless	GMU 178	50
Blue Mtns. Foothills A	Nov. 3-19	Whitetail, 3 pt. min. or antlerless	GMUs 149, 154, 162-166	100
Blue Mtns. Foothills B	Nov. 3-19	Whitetail, 3 pt. min. or antlerless	GMUs 145, 172-181	50
East Okanogan A	Nov. 1-18	Any whitetail	GMU 204	50
East Okanogan B	Oct. 11-26	Whitetail, antlerless	GMU 204	100
West Okanogan A	Nov. 1-18	Any whitetail	GMUs 218-242	100
West Okanogan B	Oct. 11-19	Whitetail, antlerless	GMUs 218-242	100
Sinlahekin A	Nov. 1-18	Any whitetail	GMU 215	50
Sinlahekin B	Oct. 11-19	Whitetail, antlerless	GMU 215	50
Chewuch A	Nov. 1-18	Any deer	GMU 218	15
Pearygin A	Nov. 1-18	Any deer	GMU 224	15
Gardner A	Nov. 1-18	Any deer	GMU 231	10
Pogue A	Nov. 1-18	Any deer	GMU 233	10
Chiliwist A	Nov. 1-18	Any deer	GMU 239	10
Alta A	Nov. 1-18	Any deer	GMU 242	10
Manson	Nov. 1-18	Any deer	GMU 243	5

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Chiwawa A	Nov. 1-18	Any deer	GMU 245	30
Slide Ridge A	Nov. 1-18	Any deer	GMU 246	16
Entiat A	Nov. 1-18	Any deer	GMU 247	52
Big Bend A	Nov. 1-18	Antlerless	GMU 248	150
Swakane A	Nov. 1-18	Any deer	GMU 250	32
Mission A	Nov. 1-18	Any deer	GMU 251	28
Mission B	Oct. 13-28	Antlerless	GMU 251	168
St. Andrews	Oct. 11-19	Antlerless	GMU 254	115
Foster Creek A	Oct. 11-19	Antlerless	GMU 260	75
Foster Creek B	Nov. 1-18	Antlerless	GMU 260	75
Withrow A	Oct. 11-19	Antlerless	GMU 262	50
Badger	Nov. 1-18	Antlerless	GMU 266	15
Ritzville A	Nov. 1-18	3 pt. min. or antlerless	GMU 284	5
Desert A	Nov. 1-12	Any deer	GMU 290	15
Desert B	Nov. 26-30	Antlerless	GMU 290	75
Naneum A	Nov. 10-16	Any buck	GMU 328	16
Quilomene A	Nov. 3-16	3 pt. min.	GMU 329	14
Teanaway A	Nov. 10-16	Any buck	GMU 335	16
L.T. Murray A	Nov. 10-16	Any buck	GMUs 336, 340	17
Bethel A	Nov. 3-16	Any buck	GMU 360	5
Cowiche A	Nov. 3-16	Any buck	GMU 368	10
<del>((Alkali A</del>	<del>Nov. 15-23</del>	<del>Any buck</del>	<del>GMU 371</del>	<del>53</del>
<del>Alkali B</del>	<del>Nov. 15-23</del>	<del>Antlerless</del>	<del>GMU 371</del>	<del>35))</del>
Kahlotus A	Dec. 9-15	Antlerless	GMU 381	50
East Klickitat A	Oct. 11-24	3 pt. min. or antlerless	GMU 382	30
Grayback A	Oct. 11-24	3 pt. min. or antlerless	GMU 388	25
Grayback B	Nov. 11-18	3 pt. min.	GMU 388	50
Sauk	Nov. 13-16	2 pt. min.	GMU 437	25
Stillaguamish	Nov. 13-16	Any buck	GMU 448	10
Snoqualmie	Nov. 13-16	Any buck	GMU 460	25
Green River A	Nov. 1-7	Any buck	GMU 485	10
Lincoln A	Oct. 11-31	Any deer	GMU 501	40
Stella A	Oct. 11-31	Any deer	GMU 504	35
Mossyrock A	Oct. 11-31	Any deer	GMU 505	85
Stormking A	Oct. 11-31	Any deer	GMU 510	30
South Rainier A	Oct. 11-31	Any deer	GMU 513	30
Packwood A	Oct. 11-31	Any deer	GMU 516	50
Winston A	Oct. 11-31	Any deer	GMU 520	50
Yale A	Oct. 11-31	Any deer	GMU 554	15
Coweeman A	Oct. 11-31	Any deer	GMU 550	20
Toutle A	Oct. 11-31	Any deer	GMU 556	25
Lewis River A	Oct. 11-31	Any deer	GMU 560	20
Washougal A	Oct. 11-31	Any deer	GMU 568	10
Siouxon A	Oct. 11-31	Any deer	GMU 572	20
Wind River A	Oct. 11-31	2 pt. min. or antlerless	GMU 574	10
Wind River B	Nov. 11-18	2 pt. min.	GMU 574	40
West Klickitat A	Oct. 11-31	2 pt. min. or antlerless	GMU 578	15
West Klickitat B	Nov. 11-18	2 pt. min.	GMU 578	40
Pysht	Oct. 11-31	Any deer	GMU 603	15
Olympic A	Oct. 11-31	Any deer	GMU 621	35
Kitsap	Oct. 11-31	Any deer	GMU 627	20
Skokomish A	Oct. 11-31	Any deer	GMU 636	20
Wynoochee A	Oct. 11-31	Any deer	GMU 648	110
Wynoochee B	Nov. 1-11	Any buck	GMU 648	10
Satsop A	Nov. 1-11	Any buck	GMU 651	10
Mashel A	Oct. 11-31	2 pt. min or antlerless	GMU 654	40

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
North River A	Oct. 11-31	Any deer	GMU 658	70
Minot Peak	Oct. 11-31	Any deer	GMU 660	20
Capitol Peak A	Oct. 11-31	Any deer	GMU 663	15
Capitol Peak B	Nov. 1-11	Any buck	GMU 663	10
Deschutes	Oct. 11-31	Any deer	GMU 666	80
Skookumchuck A	Oct. 11-31	Any deer	GMU 667	20
Skookumchuck B	Nov. 1-11	Any buck	GMU 667	10
<b>Muzzleloader Only Deer Permit Hunts (Only muzzleloader tag holders may apply.)</b>				
Green Bluff	Dec. 9-31	Whitetail, antlerless	That portion of GMU 124 east of Hwy 2	90
Mayview B	Oct. 4-10	Antlerless	GMU 145	25
Prescott B	Oct. 4-10	Antlerless	GMU 149	25
Blue Mtns. Foothills C	Nov. 20 - Dec. 8	Whitetail, 3 pt. min. or antlerless	GMUs 149, 154, 162, 166	60
Wannacut A	Oct. 4-10	Antlerless	GMU 209	25
Chiwawa B	Nov. 19-30	Any deer	GMU 245	3
Chiwawa C	Oct. 4-10	Antlerless	GMU 245	56
Swakane B	Oct. 4-10	Antlerless	GMU 250	28
Mission C	Oct. 4-10	Antlerless	GMU 251	36
Foster Creek C	Dec. 1-31	Antlerless	GMU 260	100
Moses Coulee A	Nov. 1-18	Any deer	GMU 269	20
Moses Coulee B	Dec. 1-31	Antlerless	GMU 269	100
Ritzville B	Nov. 19-30	Mule deer, 3 pt. min. or antlerless; any white-tailed deer	GMU 284	5
Benge A	Dec. 1-15	Antlerless	Deer Area 2010	20
Lakeview A	Nov. 1-18	Antlerless	Deer Area 2011	10
Desert C	Oct. 25-31	Any deer	GMU 290	2
Naneum B	Nov. 3-9	Any buck	GMU 328	2
Quilomene B	Oct. 4-10	3 pt. min.	GMU 329	2
Teaway C	Nov. 3-9	Any buck	GMU 335	2
L.T. Murray B	Nov. 3-9	Any buck	GMUs 336, 340	4
((Alkali C	Nov. 29 - Dec. 6	Any buck	GMU 371	8
Alkali D	Nov. 29 - Dec. 6	Antlerless	GMU 371	40))
Whitcomb A	Sept. 8-13	Antlerless	Deer Area 3071	7
Whitcomb B	Sept. 14-19	Antlerless	Deer Area 3071	7
Whitcomb C	Sept. 22 - Oct. 3	Any deer	Deer Area 3071	7
Paterson A	Sept. 8-13	Antlerless	Deer Area 3072	10
Paterson B	Sept. 14-19	Antlerless	Deer Area 3072	10
Paterson C	Sept. 22 - Oct. 3	Any deer	Deer Area 3072	10
Kahlotus B	Nov. 20 - Dec. 8	Any deer	GMU 381	50
East Klickitat B	Nov. 21-30	3 pt. min. or antlerless	GMU 382	15
Grayback C	Oct. 4-10	3 pt. min. or antlerless	GMU 388	5
West Klickitat C	Dec. 1-15	2 pt. min. or antlerless	GMU 578	15
Mossyrock B	Oct. 4-10	Any deer	GMU 505	10
Stormking B	Oct. 4-10	Any deer	GMU 510	5
South Rainier B	Oct. 4-10	Any deer	GMU 513	5
Packwood B	Oct. 4-10	Any deer	GMU 516	5
Winston B	Oct. 4-10	Any deer	GMU 520	5
Coweeman B	Oct. 4-10	Any deer	GMU 550	30
Yale B	Oct. 4-10	Any deer	GMU 554	2
Toutle B	Oct. 4-10	Any deer	GMU 556	3
Lewis River B	Oct. 4-10	Any deer	GMU 560	5
Washougal B	Oct. 4-10	Any deer	GMU 568	10
Siouxon B	Oct. 4-10	Any deer	GMU 572	5
Wind River C	Oct. 4-10	2 pt. min. or antlerless	GMU 574	1
Olympic B	Oct. 4-10	Any deer	GMU 621	20
North River B	Oct. 4-10	Any deer	GMU 658	5

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
<b>Archery Only Deer Permit Hunts (Only archery deer tag holders may apply.)</b>				
Chiwawa D	Dec. 1-12	Any deer	GMU 245	16
Entiat B	Nov. 20-29	Any deer	GMU 247	128
Entiat C	Nov. 30 - Dec. 8	Any deer	GMU 247	120
Big Bend B	Nov. 20 - Dec. 8	Any deer	GMU 248	10
Desert D	Nov. 13- 25	Any deer	GMU 290	16
Naneum C	Nov. 20 - Dec. 8	Any buck	GMU 328	8
Quilomene C	Nov. 20 - Dec. 8	3 pt. min.	GMU 329	11
Teanaway D	Nov. 20 - Dec. 8	Any buck	GMU 335	13
L.T. Murray C	Nov. 20 - Dec. 8	Any buck	GMUs 336, 340	7
((Alkali E	Dec. 7-25	Any deer	GMU 371	46))
<b>Special Modern Firearm Deer Permit Hunts for Hunters 65 or older</b>				
Ferry A	Oct. 11-19	Antlerless	GMU 101	20
Blue Mtns. Foothills D	Oct. 11-19	Antlerless	GMUs 145, 149	30
East Okanogan C	Oct. 11-19	Antlerless	GMU 204	10
Wannacut B	Oct. 11-19	Antlerless	GMU 209	10
Sinlahekin C	Oct. 11-19	Antlerless	GMU 215	10
Chewuch B	Oct. 11-19	Antlerless	GMU 218	15
Pearygin B	Oct. 11-19	Antlerless	GMU 224	20
Gardner B	Oct. 11-19	Antlerless	GMU 231	15
Pogue B	Oct. 11-19	Antlerless	GMU 233	10
Chiliwist B	Oct. 11-19	Antlerless	GMU 239	10
Alta B	Oct. 11-19	Antlerless	GMU 242	15
Chiwawa E	Oct. 13-28	Antlerless	GMU 245	12
Entiat E	Oct. 13-28	Antlerless	GMU 247	12
Swakane C	Oct. 13-28	Antlerless	GMU 250	12
Mission D	Oct. 13-28	Any deer	GMU 251	12
Bridgeport A	Oct. 13-21	Antlerless	GMUs 248, 260	20
Palisades A	Oct. 13-21	Antlerless	GMUs 266, 269	10
Sunnyside A	Oct. 13-21	Antlerless	GMU 372	15
Horse Heaven Hills A	Oct. 13-21	Antlerless	GMU 373	10
Kahlotus C	Oct. 13-21	Antlerless	GMU 381	10
East Klickitat C	Oct. 11-24	3 pt. min. or antlerless	GMU 382	15
Grayback D	Oct. 11-24	3 pt. min. or antlerless	GMU 388	5
Lincoln B	Oct. 11-31	Any deer	GMU 501	5
Stella B	Oct. 11-31	Any deer	GMU 504	5
Mossyrock C	Oct. 11-31	Any deer	GMU 505	15
Stormking C	Oct. 11-31	Any deer	GMU 510	5
South Rainier C	Oct. 11-31	Any deer	GMU 513	5
Packwood C	Oct. 11-31	Any deer	GMU 516	5
Winston C	Oct. 11-31	Any deer	GMU 520	5
Yale C	Oct. 11-31	Any deer	GMU 554	5
Toutle C	Oct. 11-31	Any deer	GMU 556	10
Lewis River C	Oct. 11-31	Any deer	GMU 560	5
Washougal C	Oct. 11-31	Any deer	GMU 568	10
Siouxon C	Oct. 11-31	Any deer	GMU 572	5
Wind River D	Oct. 11-31	2 pt. min. or antlerless	GMU 574	2
West Klickitat D	Oct. 11-31	2 pt. min. or antlerless	GMU 578	5
Copalis	Oct. 11-31	Any deer	GMU 642	20
North River C	Oct. 11-31	Any deer	GMU 658	10
Williams Creek	Oct. 11-31	Any deer	GMU 673	20
<b>Disabled Hunter Deer Permits (Hunters must use method/weapon listed on their tag. All weapon types may apply unless otherwise noted.)</b>				
Ferry B	Oct. 11-19	Antlerless	GMU 101	20
East Okanogan D	Restricted to general early season by tag choice	Antlerless	GMU 204	10
Wannacut C		Antlerless	GMU 209	10
Sinlahekin D		Antlerless	GMU 215	15

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits	
Chewuch C		Antlerless	GMU 218	20	
Pearrygin C		Antlerless	GMU 224	15	
Gardner C		Antlerless	GMU 231	10	
Pogue C		Antlerless	GMU 233	10	
Chiliwist C		Antlerless	GMU 239	15	
Alta C		Antlerless	GMU 242	10	
Chiwawa F		Oct. 13-28	Antlerless, modern firearm only	GMU 245	12
Entiat F	Oct. 13-28	Antlerless, modern firearm only	GMU 247	20	
Mission E	Oct. 13-28	Any deer, modern firearm only	GMU 251	20	
Bridge Port B	Restricted to general early season by tag choice	Any deer	GMUs 248, 260	15	
Palisades B		Any deer	GMUs 266, 269	5	
Sunnyside B	Restricted to general early season by tag choice	Antlerless	GMU 372	10	
Kahlotus D		Antlerless	GMU 381	10	
East Klickitat D		3 pt. min. or antlerless	GMU 382	15	
Grayback E		3 pt. min. or antlerless	GMU 388	5	
Green River B	Nov. 1-7	Antlerless, modern firearm only	GMU 485	5	
Lincoln C	Restricted to general early season by tag choice	Any deer	GMU 501	3	
Stella C		Any deer	GMU 504	3	
Mossyrock D		Any deer	GMU 505	5	
Stormking D		Any deer	GMU 510	3	
South Rainier D		Any deer	GMU 513	3	
Packwood D		Any deer	GMU 516	3	
Winston D		Any deer	GMU 520	3	
Yale D		Any deer	GMU 554	3	
Toutle D		Any deer	GMU 556	5	
Lewis River D		Any deer	GMU 560	2	
Washougal D		Any deer	GMU 568	10	
Siouxon D		Any deer	GMU 572	3	
Wind River E		2 pt. min. or antlerless	GMU 574	1	
West Klickitat E		2 pt. min. or antlerless	GMU 578	3	
Capitol Peak C		Any deer	GMU 663	30	
Skookumchuck C		Any deer	GMU 667	30	
North River D		Any deer	GMU 658	5	
<b>Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)</b>					
<b>Modern Firearm Only</b>					
Ferry C	Oct. 11-19	Antlerless	GMU 101	30	
Blue Mtns. Foothills E	Oct. 11-19	Antlerless	GMUs 149, 154, 163, Deer Area 1010	40	
Blue Mtns. Foothills F	Oct. 11-19	Antlerless	GMUs 145, 172-181	40	
East Okanogan E	Oct. 11-19	Antlerless	GMU 204	35	
Wannacut D	Oct. 11-19	Antlerless	GMU 209	20	
Sinlahekin E	Oct. 11-19	Antlerless	GMU 215	40	
Chewuch D	Oct. 11-19	Antlerless	GMU 218	65	
Pearrygin D	Oct. 11-19	Antlerless	GMU 224	70	
Gardner D	Oct. 11-19	Antlerless	GMU 231	25	
Pogue D	Oct. 11-19	Antlerless	GMU 233	20	
Chiliwist D	Oct. 11-19	Antlerless	GMU 239	40	
Alta D	Oct. 11-19	Antlerless	GMU 242	45	
Chiwawa G	Oct. 11-26	Antlerless	GMU 245	68	
Entiat G	Oct. 11-26	Antlerless	GMU 247	44	
Swakane D	Oct. 11-26	Antlerless	GMU 250	24	
Mission F	Oct. 11-26	Antlerless	GMU 251	168	
Bridge Port C	Oct. 11-19	Antlerless	GMUs 248, 260	175	
Palisades C	Oct. 11-19	Antlerless	GMUs 266, 269	50	

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits
Lakeview C	Oct. 11-19	Any deer	Deer Area 2011	10
Benge B	Oct. 23-31	Antlerless	Deer Area 2010	20
Desert E	Sept. 22-23	Any deer	GMU 290	2
Horse Heaven Hills B	Oct. 11-19	Antlerless	GMU 373	10
Kahlotus E	Oct. 11-19	Antlerless	GMU 381	15
Grayback F	Oct. 11-24	Any deer	GMU 388	15
East Klickitat E	Oct. 11-24	Any deer	GMU 382	25
Green River C	Nov. 1-7	Any deer	GMU 485	5
Lincoln D	Oct. 11-31	Any deer	GMU 501	10
Stella D	Oct. 11-31	Any deer	GMU 504	10
Mossyrock E	Oct. 11-31	Any deer	GMU 505	10
Stormking E	Oct. 11-31	Any deer	GMU 510	10
South Rainier E	Oct. 11-31	Any deer	GMU 513	10
Packwood E	Oct. 11-31	Any deer	GMU 516	10
Winston E	Oct. 11-31	Any deer	GMU 520	10
Yale E	Oct. 11-31	Any deer	GMU 554	10
Toutle E	Oct. 11-31	Any deer	GMU 556	60
Lewis River E	Oct. 11-31	Any deer	GMU 560	10
Washougal E	Oct. 11-31	Any deer	GMU 568	10
Siouxon E	Oct. 11-31	Any deer	GMU 572	10
Wind River F	Oct. 11-31	Any deer	GMU 574	10
West Klickitat F	Oct. 11-31	Any deer	GMU 578	10
Satsop B	Oct. 11-31	Any deer	GMU 651	10
Skookumchuck D	Oct. 4-31	Any deer	GMU 667	60
North River E	Oct. 11-31	Any deer	GMU 658	10
<b>Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)</b>				
<b>Muzzleloader Only</b>				
Ferry D	Oct. 4-10	Antlerless	GMU 101	10
East Okanogan F	Oct. 4-10	Antlerless	GMU 204	5
Wannacut E	Oct. 4-10	Antlerless	GMU 209	5
Pogue E	Oct. 4-10	Antlerless	GMU 233	5
Chiliwist E	Oct. 4-10	Antlerless	GMU 239	5
Alta E	Oct. 4-10	Antlerless	GMU 242	5
Mission G	Oct. 1-10	Any deer	GMU 251	16
Ritzville C	Oct. 4-10	Antlerless	GMU 284	50
Desert F	Sept. 8-9	Any deer	GMU 290	2
Whitcomb D	Aug. 30 - Sept. 5	Antlerless	Deer Area 3071	7
Paterson D	Aug. 30 - Sept. 5	Antlerless	Deer Area 3072	10
<b>Youth Special Deer Permit Hunts (Must be eligible for the youth hunting license and be accompanied by an adult during the hunt.)</b>				
<b>Archery Only</b>				
Desert G	Sept. 15-16	Any deer	GMU 290	2
<b>Special Deer Permits - Second Deer Tag</b>				
<b>These permits are only valid when a second license and tag is purchased. Hunters must use the method/weapon listed on their tag. The second deer license and tag type must be the same tag type as the first one. These 2nd deer special permit hunts will affect hunters' accumulated points. Hunters' points will be used if drawn for this special permit.</b>				
Hunt Name	Second Tag Season	Special Restrictions	Boundary Description	Permits
Huckleberry B	Restricted to general seasons by tag choice	Whitetail, antlerless	GMU 121	150
Mt. Spokane B	Restricted to general seasons by tag choice	Whitetail, antlerless	GMU 124	450
Almota B	Restricted to general seasons by tag choice	Antlerless	GMU 142	100
Mica Peak B	Modern firearm and archery general season only, depending on tag choice	Whitetail, antlerless	GMU 127	150
Northeast	Archery tag required. Any open archery hunt. Must use archery equipment.	Whitetail, antlerless	GMUs 105, 108, 121, 124	400

Hunt Name	Permit Season Dates	Special Restrictions	Boundary Description	Permits	
Clarkston	Dec. 9-31. Archery tag required. Must use archer equipment.	Antlerless	Deer Area 1021	30	
Benge C	Dec. 16-31	Antlerless	Deer Area 2010	20	
Lakeview C	Jan. 1-30	Antlerless	Deer Area 2011	20	
Methow	Sept. 4 - Oct. 12	Antlerless	Deer Area 2012	100	
High Prairie	Restricted to general early season by tag choice	Antlerless	Deer Area 3088	20	
Shaw	Restricted to general seasons by tag choice	Any deer	Deer Area 4004	20	
Lopez		Any deer	Deer Area 4005	50	
Orcas		Any deer	Deer Area 4006	50	
Decatur		Any deer	Deer Area 4007	50	
Blakely		Any deer	Deer Area 4008	50	
Cypress		Any deer	Deer Area 4009	50	
San Juan		Any deer	Deer Area 4010	50	
Camano		Antlerless	Deer Area 4011	50	
Whidbey		Antlerless	Deer Area 4012	125	
Vashon-Maury		Antlerless	Deer Area 4013	125	
Guemes		Antlerless	Deer Area 4926	50	
Anderson		Antlerless	Deer Area 6014	50	
<b>Master Hunter Special Deer Permit Hunts: Only master hunters may apply; antlerless only hunts will not affect accumulated points; any weapon may be used.</b>					
Lakeview D		Dec. 9-31	Antlerless	Deer Area 2011	20

<b>Hunter Education Instructor Incentive Permits</b>				
<ul style="list-style-type: none"> <li>Special deer permits will be allocated through a random drawing to those hunter education instructors that qualify.</li> <li>Permit hunters must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons.</li> <li>Qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing.</li> <li>Instructors who are drawn, accept a permit, and are able to participate in the hunt, will not be eligible for these incentive permits for a period of ten years thereafter.</li> <li>Permittees may purchase a second license for use with the permit hunt only.</li> </ul>				
Area	Dates	Restrictions	GMUs	Permits
Region 1	All general season and permit seasons established for GMUs included with the permit	Any white-tailed deer	Any 100 series GMU except GMU 157	2
Region 2		Any white-tailed deer	GMUs 204-215	2
Region 2		Any deer	GMUs 215-251	1
Region 2		Any deer	GMU 290	1
Region 3		Any deer	GMUs 335-368, 382, 388	1
Region 4		Any deer	Any 400 series GMU except GMUs 485 and 490	2
Region 5		Legal buck for 500 series GMU of choice or antlerless	Any 500 series GMU open for a general deer hunting season or a special deer permit hunting season	6
Region 6		Legal buck for GMU of choice	GMUs 654, 660, 672, 673, 681	1

AMENDATORY SECTION (Amending Order 08-79, filed 4/18/08, effective 5/19/08)

**WAC 232-28-354 2008 Elk special permits.**

**Special Elk Permit Hunting Seasons (Open to Permit Holders Only)**

Hunters must purchase an elk hunting license prior to purchase of a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice; however, Multiple Season Permit holders may apply for Eastern or Western Washington archery, muzzleloader, or modern firearm permit hunts. Applicants must have purchased the proper tag for these hunts. The elk tag prefixes required to apply for each hunt are shown in the following table. Hunters drawn for a special permit hunt must comply with weapon restrictions and dates listed for the hunt.

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
<b>Modern Firearm Bull Permit Hunts (Only modern firearm elk tag holders may apply.)</b>					
Prescott A	Oct. 20 - Nov. 2	Any bull	EF	GMU 149	3
Blue Creek A	Oct. 20 - Nov. 2	Any bull	EF	GMU 154	4
Watershed	Oct. 25 - Nov. 2	3 pt. min. or Antlerless	EA, EF, EM	GMU 157	45
Dayton A	Oct. 20 - Nov. 2	Any bull	EF	GMU 162	21
Tucannon A	Oct. 20 - Nov. 2	Any bull	EF	Elk Area 1014	6
Wenaha West A	Oct. 20 - Nov. 2	Any bull	EF	Elk Area 1008	15
Wenaha East A	Oct. 20 - Nov. 2	Any bull	EF	Elk Area 1009	15
Mountain View A	Oct. 20 - Nov. 2	Any bull	EF	GMU 172	16
Peola A	Oct. 20 - Nov. 2	Any bull	EF	GMU 178	1
Couse A	Oct. 20 - Nov. 2	Any bull	EF	GMU 181	1
Mission A	Oct. 20 - Nov. 2	Any bull	EF	GMU 251	2
Colockum A	Oct. 20 - Nov. 2	Any bull	EF	GMUs 328, 329	3
Teanaway A	Dec. 19-30	Any bull	EF	GMU 335	14
Teanaway B	Oct. 20 - Nov. 2	Any bull	EF	GMU 335	1
Peaches Ridge A	Oct. 20 - Nov. 2	Any bull	EF	GMUs 336, 346	140
Little Naches A	Oct. 1-10	Any bull	EF	GMU 346	15
Observatory A	Oct. 20 - Nov. 2	Any bull	EF	GMUs 340, 342	73
Goose Prairie A	Oct. 20 - Nov. 2	Any bull	EF	GMUs 352, 356	89
Bethel A	Oct. 20 - Nov. 2	Any bull	EF	GMU 360	48
Rimrock A	Oct. 20 - Nov. 2	Any bull	EF	GMU 364	120
Cowiche A	Oct. 20 - Nov. 2	Any bull	EF	GMU 368	18
Klickitat Meadows A	Oct. 20 - Nov. 2	Any bull	EF	Elk Area 3068	1
Nooksack A	Oct. 11 - Nov. 10	Any bull	WF	GMU 418	7
Green River	Nov. 1-7	Any bull	WF	GMU 485	3
Margaret A	Nov. 1-10	Any bull	WF	GMU 524	36
Toutle A	Nov. 1-10	Any bull	WF	GMU 556	131
Clearwater	Oct. 1-10	Any bull	WA, WF, WM	GMU 615	2
Matheny	Oct. 1-10	Any bull	WA, WF, WM	GMU 618	3
Olympic A	Nov. 1- 10	3 pt. min.	WF	GMU 621, EXCEPT for Elk Area 6071	16
Skokomish A	Nov. 1- 10	3 pt. min.	WF	GMU 636	10
Wynoochee	Oct. 1-10	Any bull	WA, WF, WM	GMU 648	1
White River A	Nov. 1-10	Any bull	WF	GMU 653	40
<b>Modern Firearm Elk Permit Hunts (Only modern firearm elk tag holders may apply.)</b>					
Aladdin A	Oct. 25 - Nov. 2	Any elk	EF	GMU 111	15
Selkirk A	Oct. 25 - Nov. 2	Any elk	EF	GMU 113	20
49 Degrees North A	Oct. 25 - Nov. 2 & Dec. 16-31	Antlerless	EF	GMU 117	45
Blue Creek B	Oct. 25 - Nov. 2	Antlerless	EF	GMUs 149, 154	75
Prescott B	Oct. 25 - Nov. 2	Antlerless	EF	GMU 149	75
Dayton B	Oct. 25 - Nov. 2	Antlerless	EF	GMU 163 and Elk Area 1011	100
Dayton C	Oct. 25 - Nov. 2	Antlerless	EF	GMU 149 and Elk Area 1012	100
Peola B	Oct. 25 - Nov. 2	Antlerless	EF	GMU 178	50
Couse B	Oct. 1-12	Antlerless	EF	GMU 181	30
Mountain View B	Oct. 25 - Nov. 2	Antlerless	EF	Elk Area 1013	10
Malaga A	Sept. 8-30	Any elk	EF	Elk Area 2032	3
Malaga B	Sept. 15-25	Antlerless	EF	Elk Area 2032	35
Malaga C	Nov. 6 - Dec. 31	Antlerless	EF	Elk Area 2032	50
Malaga D	Nov. 6 - Dec. 18	Any elk	EF	Elk Area 2032	5
Peshastin A	Sept. 15 - Oct. 5	Antlerless	EF	Elk Area 2033	20
Peshastin B	Oct. 13-31	Any elk	EF	Elk Area 2033	5
West Bar A	Oct. 25-29	Antlerless	EF	GMU 330	5
West Bar B	Oct. 30 - Nov. 2	Antlerless	EF	GMU 330	5
Teanaway C	Dec. 19 - Jan. 13, 2009	Antlerless	EF	GMU 335	100

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Taneum A	Oct. 29 - Nov. 2	Antlerless	EF	GMU 336	150
Manastash A	Oct. 29 - Nov. 2	Antlerless	EF	GMU 340	250
Umtanum A	Oct. 29 - Nov. 2	Antlerless	EF	GMU 342	200
Little Naches B	Oct. 29 - Nov. 2	Antlerless	EF	GMU 346	150
Nile A	Oct. 29 - Nov. 2	Antlerless	EF	GMU 352	50
Bumping A	Oct. 29 - Nov. 2	Antlerless	EF	GMU 356	100
Bethel B	Oct. 29 - Nov. 2	Antlerless	EF	GMU 360	100
Rimrock B	Oct. 29 - Nov. 2	Antlerless	EF	GMU 364	200
Cowiche B	Oct. 29 - Nov. 2	Antlerless	EF	GMU 368	200
Klickitat Meadows B	Oct. 29 - Nov. 2	Spike bull or antlerless	EF	Elk Area 3068	9
((Alkali A	Oct. 18 - Nov. 2	Any elk	EF	GMU 371	20))
Mossyrock A	Nov. 1-10	Antlerless	WF	GMU 505	50
Willapa Hills A	Nov. 1-10	Antlerless	WF	GMU 506	35
Winston A	Nov. 1-10	Antlerless	WF	GMU 520	100
Margaret B	Nov. 19-30	Antlerless	WF	GMU 524	60
Ryderwood A	Nov. 1-10	Antlerless	WF	GMU 530	35
Coweeman A	Nov. 1-10	Antlerless	WF	GMU 550	160
Coweeman B	Jan. 1-15, 2009	Antlerless	WF	GMU 550	35
Toutle B	Nov. 19-30	Antlerless	WF	GMU 556	150
Toledo A	Nov. 1-10	Antlerless	WF	Elk Area 5029	20
Green Mtn C	Nov. 1-10	Antlerless	WF	Elk Area 5051	10
Carlton	Sept. 22-30	Any bull	WF	Elk Area 5057	5
West Goat Rocks	Sept. 22-30	Any bull	WF	Elk Area 5058	5
Mt. Adams	Sept. 22-30	Any bull	WF	Elk Area 5059	5
Wildwood A	Jan. 16-30, 2009	Antlerless	WF	Elk Area 5061	20
Newaukum A	Nov. 1-10	Antlerless	WF	Elk Area 5050	5
Upper Smith Creek A	Oct. 27 - Nov. 2	Antlerless	WF	Elk Area 5064	6
Upper Smith Creek B	Oct. 27 - Nov. 2	Any elk	WF	Elk Area 5064	2
Mount Whittier A	Oct. 27 - Nov. 2	Antlerless	WF	Elk Area 5065	2
Mount Whittier B	Oct. 27 - Nov. 2	Any elk	WF	Elk Area 5065	1
Lewis River A	Nov. 1-10	Antlerless	WF	GMU 560	250
Siouxon A	Nov. 1-10	Antlerless	WF	GMU 572	100
Raymond A	Nov. 5-10	3 pt. min. or antlerless	WF	Elk Area 6010	20
Raymond B	Dec. 16-31	Antlerless	WF	Elk Area 6010	30
Raymond C	Jan. 1-30, 2009	Antlerless	WF	Elk Area 6010	15
Raymond D	Feb. 1-28, 2009	Antlerless	WF	Elk Area 6010	15
Chehalis Valley A	Oct. 1-31	Antlerless	WF	Elk Area 6066	5
Chehalis Valley B	Nov. 5-10	Antlerless	WF	Elk Area 6066	5
North Minot A	Oct. 20-31	Antlerless	WF	Elk Area 6067	20
Deschutes	Jan. 15-23, 2009	Antlerless	WF	GMU 666	10
North River	Nov. 8-13	Antlerless	WF	GMU 658	10
Williams Creek	Nov. 8-13	Antlerless	WF	GMU 673	50
Tri Valley A	Dec. 1 - Jan. 20, 2009	Antlerless	WF	Elk Area 6012	10
North Shore A	Nov. 4-8	Antlerless	WF	Elk Area 6068	5
<b>Muzzleloader Bull Permit Hunts (Only muzzleloader elk tag holders may apply.)</b>					
Note: Fire closures may limit access during early October seasons.					
Prescott C	Oct. 1-10	Any bull	EM	GMU 149	1
Blue Creek C	Oct. 1-10	Any bull	EM	GMU 154	2
Dayton D	Oct. 1-10	Any bull	EM	GMU 162	4
Tucannon B	Oct. 1-10	Any bull	EM	Elk Area 1014	1
Wenaha West B	Oct. 1-10	Any bull	EM	Elk Area 1008	3
Wenaha East B	Oct. 1-10	Any bull	EM	Elk Area 1009	3
Mountain View C	Oct. 1-10	Any bull	EM	GMU 172	4
Peola C	Oct. 1-10	Any bull	EM	GMU 178	1
Couse D	Oct. 1-10	Any bull	EM	GMU 181	1

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Mission B	Oct. 1-10	Any bull	EM	GMU 251	1
Colockum B	Oct. 1-10	Any bull	EM	GMUs 328, 329	1
Teanaway D	Dec. 9-18	Any elk	EM	GMU 335	6
Peaches Ridge B	Oct. 1-10	Any bull	EM	GMUs 336, 346	23
Observatory B	Oct. 1-10	Any bull	EM	GMUs 340, 342	24
Goose Prairie B	Oct. 1-10	Any bull	EM	GMUs 352, 356	15
Bethel C	Oct. 1-10	Any bull	EM	GMU 360	15
Rimrock C	Oct. 1-10	Any bull	EM	GMU 364	16
Cowiche C	Oct. 1-10	Any bull	EM	GMU 368	8
Klickitat Meadows C	Oct. 1-10	Any bull	EM	Elk Area 3068	1
Nooksack B	Sept. 29 - Oct. 10 and Nov. 11-30	Any bull	WM	GMU 418	3
Margaret D	Oct. 4-10	Any bull	WM	GMU 524	8
Toutle D	Oct. 4-10	Any bull	WM	GMU 556	29
Olympic B	Oct. 4-10	3 pt. min.	WM	GMU 621, EXCEPT for Elk Area 6071	3
Skokomish B	Oct. 4-10	3 pt. min.	WM	GMU 636	2
White River B	Oct. 1-10	Any bull	WM	GMU 653	3
<b>Muzzleloader Permit Hunts (Only muzzleloader elk tag holders may apply.)</b>					
Aladdin B	Oct. 4-10	Any elk	EM	GMU 111	10
Selkirk B	Oct. 4-10	Any elk	EM	GMU 113	10
49 Degrees North B	Oct. 4-10 & Dec. 16-31	Antlerless	EM	GMU 117	20
Blue Creek D	Dec. 9 - Jan. 30, 2009	Antlerless	EM	GMUs 149, 154	40
Mountain View D	Oct. 4-10	Antlerless	EM	Elk Area 1013	10
Couse E	Dec. 1-31	Antlerless	EM	GMU 181	30
Couse F	Jan. 1- 20, 2009	Antlerless	EM	GMU 181	30
Malaga E	Oct. 1-21	Antlerless	EM	Elk Area 2032	50
Malaga F	Oct. 1-21	Any elk	EM	Elk Area 2032	5
West Bar C	Oct. 4-10	Antlerless	EM	GMU 330	5
Taneum B	Oct. 4-10	Antlerless	EM	GMU 336	25
Manastash B	Oct. 4-10	Antlerless	EM	GMU 340	25
Umtanum B	Oct. 4-10	Antlerless	EM	GMU 342	200
Nile B	Oct. 4-10	Antlerless	EM	GMU 352	40
Bumping B	Oct. 4-10	Antlerless	EM	GMU 356	90
Bethel D	Oct. 4-10	Antlerless	EM	GMU 360	40
Cowiche D	Oct. 4-10	Antlerless	EM	GMU 368	250
Klickitat Meadows D	Oct. 4-10	Spike bull or antlerless	EM	Elk Area 3068	4
((Alkali B	Oct. 1-15	Any elk	EM	GMU 371	40))
Stella A	Nov. 19 - Dec. 15	Antlerless	WM	GMU 504	100
Stella B	Jan. 1-16, 2009	Antlerless	WM	GMU 504	100
Toledo B	Dec. 7-20	Antlerless	WM	Elk Area 5029	30
Mossyrock B	Jan. 1-16, 2009	Antlerless	WM	Elk Area 5052	30
Randle A	Jan. 1-16, 2009	Antlerless	WM	Elk Area 5053	15
Boistfort A	Jan. 1-16, 2009	Antlerless	WM	Elk Area 5054	40
Willapa Hills B	Nov. 19 - Dec. 15	Antlerless	WM	GMU 506	15
Green Mt. A	Jan. 1-16, 2009	Antlerless	WM	Elk Area 5051	30
Wildwood B	Jan. 1-15, 2009	Antlerless	WM	Elk Area 5061	20
Winston B	Oct. 4-10	Antlerless	WM	GMU 520	45
Margaret E	Oct. 4-10	Antlerless	WM	GMU 524	35
Ryderwood B	Oct. 4-10	Antlerless	WM	GMU 530	15
Coweeman C	Nov. 19 - Dec. 15	Antlerless	WM	GMU 550	45
Toutle E	Oct. 4-10	Antlerless	WM	GMU 556	50
Lewis River B	Oct. 4-10	Antlerless	WM	GMU 560	160
Siouxon B	Oct. 4-10	Antlerless	WM	GMU 572	50
Yale A	Oct. 4-10	Antlerless	WM	GMU 554	50
Yale B	Nov. 19 - Dec. 15	3 pt. min. or antlerless	WM	GMU 554	75

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Ethel A	Aug. 1-15	Antlerless	WM	Elk Area 5049	10
Ethel B	Aug. 16-31	Antlerless	WM	Elk Area 5049	10
Newaukum B	Jan. 1-31, 2009	Antlerless	WM	Elk Area 5050	10
Upper Smith Creek C	Oct. 18-26	Antlerless	WM	Elk Area 5064	6
Upper Smith Creek D	Oct. 18-26	Any elk	WM	Elk Area 5064	2
Mount Whittier C	Oct. 18-26	Antlerless	WM	Elk Area 5065	2
Mount Whittier D	Oct. 18-26	Any elk	WM	Elk Area 5065	1
Twin Satsop A	Jan. 5-15, 2009	Antlerless	WM	Elk Area 6061	10
Mashel A	Jan. 1-15, 2009	Antlerless	WM	Elk Area 6054	25
North River	Nov. 26 - Dec. 15	Antlerless	WM	GMU 658	20
North Minot B	Oct. 1-7	Antlerless	WM	Elk Area 6067	20
Raymond E	Oct. 1-31	Antlerless	WM	Elk Area 6010	30
Chehalis Valley C	Jan. 1- 20, 2009	Antlerless	WM	Elk Area 6066	5
Tri Valley B	Dec. 16 - Jan. 20, 2009	Antlerless	WM	Elk Area 6012	30
<b>Archery Permit Hunts (Only archery elk tag holders may apply.)</b>					
Note: Fire closures may limit access during September seasons.					
Prescott D	Sept. 8-21	Any bull	EA	GMU 149	2
Blue Creek E	Sept. 8-21	Any bull	EA	GMU 154	4
Dayton E	Sept. 8-21	Any bull	EA	GMU 162	8
Tucannon C	Sept. 8-21	Any bull	EA	Elk Area 1014	3
Wenaha West C	Sept. 8-21	Any bull	EA	Elk Area 1008	3
Wehaha East C	Sept. 8-21	Any bull	EA	Elk Area 1009	3
Mountain View E	Sept. 8-21	Any bull	EA	GMU 172	7
Peola D	Sept. 8-21	Any bull	EA	GMU 178	1
Couse G	Sept. 8-21	Any bull	EA	GMU 181	1
Colockum C	Sept. 8-21	Any bull	EA	GMUs 328, 329	2
Teanaway E	Nov. 20 - Dec. 8	Any bull	EA	GMU 335	18
Peaches Ridge C	Sept. 8-21	Any bull	EA	GMUs 336, 346	104
Observatory C	Sept. 8-21	Any elk	EA	GMUs 340, 342	94
Goose Prairie C	Sept. 8-21	Any bull	EA	GMUs 352, 356	127
Bethel E	Sept. 8-21	Any bull	EA	GMU 360	32
Rimrock D	Sept. 8-21	Any bull	EA	GMU 364	103
Cowiche E	Sept. 8-21	Any bull	EA	GMU 368	13
Klickitat Meadows E	Oct. 11-22	Any bull	EA	Elk Area 3068	1
Klickitat Meadows F	Oct. 11-22	Spike bull or antlerless	EA	Elk Area 3068	9
Malaga G	Sept. 1-7	Antlerless	EA	Elk Area 2032	25
Peshastin C	Sept. 1-14	Any elk	EA	Elk Area 2033	15
Nooksack C	Sept. 1-28 and Dec. 1-31	Any bull	WA	GMU 418	3
Margaret F	Sept. 15-30 and Dec. 1-15	Any bull	WA	GMU 524	13
Margaret G	Sept. 15-30 and Dec. 1-15	Antlerless	WA	GMU 524	35
Toutle F	Sept. 15-30 and Dec. 1-15	Any bull	WA	GMU 556	71
Toutle G	Sept. 15-30 and Dec. 1-15	Antlerless	WA	GMU 556	60
Ethel C	Jan 1-20, 2009	Antlerless	WA	Elk Area 5049	10
Newaukum C	Aug. 1-15	Antlerless	WA	Elk Area 5050	10
Newaukum D	Aug. 16-31	Antlerless	WA	Elk Area 5050	10
Upper Smith Creek E	Oct. 11-17	Antlerless	WA	Elk Area 5064	6
Upper Smith Creek F	Oct. 11-17	Any elk	WA	Elk Area 5064	2
Mount Whittier E	Oct. 11-17	Antlerless	WA	Elk Area 5065	2
Mount Whittier F	Oct. 11-17	Any elk	WA	Elk Area 5065	1
Lewis River C	Nov. 19-30	3 pt. min. or antlerless	WA	GMU 560	50
Siouxon C	Nov. 19-30	3 pt. min. or antlerless	WA	GMU 572	25
Olympic C	Sept. 8-21	3 pt. min.	WA	GMU 621, EXCEPT for Elk Area 6071	6
Skokomish C	Sept. 8-21	3 pt. min.	WA	GMU 636	5
White River C	Sept. 8-21	Any bull	WA	GMU 653	15

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
<b>Master Hunter Special Elk Permit Hunts: Only master hunters may apply; antlerless only hunts will not affect accumulated points; and any weapon may be used.</b>					
Mossyrock C	Jan. 17-30, 2009	Antlerless	Any elk tag	Elk Area 5052	20
Randle B	Jan. 17-30, 2009	Antlerless	Any elk tag	Elk Area 5053	15
Pumice Plains A	Oct. 25 - Nov. 2	Antlerless	Any elk tag	Elk Area 5063	10
Pumice Plains B	Oct. 18-24	Any elk	Any elk tag	Elk Area 5063	4
Quinalt Ridge	Oct. 1-10	3 pt. min. or antlerless	Any elk tag	GMU 638	5
Green Mt. B	Jan. 17-30, 2009	Antlerless	Any elk tag	Elk Area 5051	20
Merwin A	Nov. 21 - Dec. 15	Antlerless	Any elk tag	Elk Area 5060	10
Merwin B	Jan. 17-30, 2009	Antlerless	Any elk tag	Elk Area 5060	10
<b>Master Hunter, Second Elk Tag Hunts: Only master hunters may apply; these hunts will not affect accumulated points; a second tag may be purchased by successful applicants as needed; and any weapon may be used. The second elk license and tag type must be the same tag type as the first one.</b>					
Peola E	Oct. 1-10	Antlerless	EM	GMU 178	15
Malaga H	Aug. 1 - Mar. 31, 2009	Antlerless	Any elk tag	Elk Area 2032	100 <sup>HM</sup>
Malaga I	Aug. 1 - Feb. 28, 2009	Any elk	Any elk tag	Elk Area 2032	6 <sup>HM</sup>
Peshastin E	Aug. 1 - Mar. 31, 2009	Antlerless	Any elk tag	Elk Area 2033	100 <sup>HM</sup>
Peshastin F	Aug. 1 - Feb. 28, 2009	Any elk	Any elk tag	Elk Area 2033	6 <sup>HM</sup>
Fairview	Jan. 21 - Feb. 28, 2009	Antlerless	Any elk tag	Elk Area 3911	20 <sup>HM</sup>
Rattlesnake Hills	Aug. 1 - Feb. 28, 2009	Antlerless or spike bull	Any elk tag	Designated areas in GMU 372	20 <sup>HM</sup>
Toledo C	Dec. 21-31	Any elk	Any elk tag	Elk Area 5029	20
Toledo D	Aug. 1-7	Any elk	Any archery elk tag	Elk Area 5029	5
Toledo E	Aug. 8-14	Any elk	Any archery elk tag	Elk Area 5029	5
Toledo F	Aug. 15-21	Any elk	Any muzzle-loader elk tag	Elk Area 5029	5
Toledo G	Aug. 22-28	Any elk	Any muzzle-loader elk tag	Elk Area 5029	5
Boistfort B	Aug. 1-7	Any elk	Any archery elk tag	Elk Area 5054	5
Boistfort C	Aug. 8-14	Any elk	Any archery elk tag	Elk Area 5054	5
Boistfort D	Aug. 15-21	Any elk	Any muzzle-loader elk tag	Elk Area 5054	5
Boistfort E	Aug. 22-28	Any elk	Any muzzle-loader elk tag	Elk Area 5054	5
JBH *	Nov. 12 - Feb. 28, 2009	Antlerless	Any elk tag	Elk Area 5090	20 <sup>HM</sup>
Trout Lake A**	Dec. 15-31	Antlerless	Any elk tag	Elk Area 5062	3
Trout Lake B**	Jan. 1-14, 2009	Antlerless	Any elk tag	Elk Area 5062	3
Trout Lake C**	Jan. 15-30, 2009	Antlerless	Any elk tag	Elk Area 5062	3
North River B	Dec. 16 - Feb. 28, 2009	Antlerless	Any elk tag	Designated areas in GMU 658	10 <sup>HM</sup>
Chehalis Valley D	Aug. 1 - Feb. 28, 2009	Antlerless	Any elk tag	Designated areas in Elk Area 6066	10 <sup>HM</sup>
Raymond F	Dec. 1 - Mar. 31, 2009	Antlerless	Any elk tag	Elk Area 6010	10 <sup>HM</sup>
Hanaford C	Aug. 1 - Mar. 31, 2009	Antlerless	Any elk tag	Designated areas in Elk Area 6069	5 <sup>HM</sup>
Dungeness A	Sept. 1 - Feb. 28, 2009	3 pt. min.	Any elk tag	Elk Area 6071 north of Hwy 101 only	8 <sup>HM</sup>
Dungeness B	Oct. 1 - Dec. 31	Antlerless	Any elk tag	Elk Area 6071 north of Hwy 101 only	6 <sup>HM</sup>
<b>Youth - Special Elk Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)</b>					
Mudflow A	Oct. 20-26	Antlerless	Any elk tag	Elk Area 5099	4
Dungeness C	Sept. 1 - Feb. 28, 2009	Any elk	Any elk tag	Elk Area 6071 north of Hwy 101 only	4 <sup>HM</sup>
Sol Duc Valley	Aug. 1 - Jan. 22, 2009	Antlerless	Any elk tag	Elk Area 6072	2

Hunt Name	Permit Season Dates	Special Restrictions	Elk Tag Prefix	Boundary Description	Permits
Clearwater Valley	Aug. 1 - Mar. 31, 2009	Antlerless	Any elk tag	Elk Area 6073	1
<b>Persons of Disability Only - Special Elk Permit Hunts</b>					
Sol Duc Valley B	Aug. 1 - Jan. 22, 2009	Antlerless	Any elk tag	Elk Area 6072	2
Observatory D	Oct. 20 - Nov. 2	Any elk	EF or EM	GMUs 340, 342	7
Little Naches C	Oct. 1-10	Any elk	EF, EM, EA	GMU 346	5
Little Naches D	Oct. 29 - Nov. 2	Antlerless	EF, EM, EA	GMU 346	8
((Alkali C	Oct. 18 - Nov. 2	Any elk	EF	GMU 374	-5))
Corral Canyon	Sept. 28 - Oct. 5	Any elk	Any elk tag	Elk Area 3721	2
Mudflow B	Sept. 15-21	Any elk	Any elk tag	Elk Area 5099	4
Mudflow C	Sept. 29 - Oct. 5	Any elk	Any elk tag	Elk Area 5099	4
Mudflow D	Nov. 10-16	Antlerless	Any elk tag	Elk Area 5099	4
Ethel D	Nov. 1-10	Antlerless	Any elk tag	Elk Area 5049	5
Centralia Mine A	Oct. 25-26	Antlerless	Any elk tag	Elk Area 6011	2
Centralia Mine B	Nov. 1-2	Antlerless	Any elk tag	Elk Area 6011	2
North Shore B	Oct. 1-31	Antlerless	Any elk tag	Elk Area 6068	5
North Shore C	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6068	5
Chehalis Valley E	Dec. 16-31	Antlerless	Any elk tag	Elk Area 6066	10
<b>Hunters 65 or Older Only - Special Elk Permit Hunts</b>					
Hanaford	Jan. 16-30, 2009	Antlerless	Any elk tag	Elk Area 6069	5
Mudflow E	Nov. 24-30	Antlerless	Any elk tag	Elk Area 5099	4
Margaret H	Nov. 11-16	Antlerless	WF	GMU 524	10

\*Muzzleloaders only; scopes allowed in JBH hunt.

\*\*May only hunt on privately owned lands. Must use only archery or legal shotgun (10 or 12 gauge; slugs only).

<sup>HM</sup>This is a damage hunt administered by a WDFW designated hunt master. Successful applicants will be contacted on an as-needed basis to help with specific sites of elk damage on designated landowner's property. Not all successful applicants will be contacted in any given year depending on elk damage activity for that year.

<b>Hunter Education Instructor Incentive Permits</b>				
<ul style="list-style-type: none"> <li>- Special elk permits will be allocated through a random drawing to those hunter education instructors that qualify.</li> <li>- Permit hunters must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon during modern firearm seasons.</li> <li>- Qualifying hunter education instructors must be certified and have been in active status for a minimum of three consecutive years, inclusive of the year prior to the permit drawing.</li> <li>- Instructors who are drawn, accept a permit, and are able to participate in the hunt, will not be eligible for these incentive permits for a period of ten years thereafter.</li> <li>- Permittees may purchase a second license for use with the permit hunt only.</li> </ul>				
Area	Dates	Restrictions	GMUs	Permits
Region 3	All general season and permit seasons established for GMUs included with the permit	Any elk	GMUs 335-368	2
Region 5		Any elk	All 500 series GMUs except GMU 522	4
Region 6		Any elk	GMUs 654, 660, 672, 673, 681	1

**WSR 08-15-118**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
 [Filed July 21, 2008, 1:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-088.

Title of Rule and Other Identifying Information: WAC 308-96A-175 Ride-sharing vehicles.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on August 28, 2008, at 10:00 a.m.

Date of Intended Adoption: September 23, 2008.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822, by August 27, 2008.

Assistance for Persons with Disabilities: Contact Dale R. Brown by August 27, 2008, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to change the requirement of providing a list of those using the ride share program to using an affidavit that the vehicle is being used as a ride-sharing vehicle.

Reasons Supporting Proposal: To provide equal reporting for all ride share program participants.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Sadeeq Simmons, 1125 Washington Street S.E., Olympia, WA, (360) 902-3848; Implementation and Enforcement: Jennifer Dana, 1125 Washington Street S.E., Olympia, W [WA], (360) 902-4045.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required to pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

July 18, 2008  
Mykel D. Gable  
Assistant Director  
Vehicle Services

AMENDATORY SECTION (Amending WSR 04-18-023, filed 8/24/04, effective 9/24/04)

**WAC 308-96A-175 Ride-sharing vehicles. (1) When may the department issue a ride share special license plate?** Ride share special license plates may be issued when:

The ~~((owner of a))~~ passenger motor vehicle is primarily used as a commute ride-sharing motor vehicle defined in RCW 46.74.010(1). The vehicle owner may be issued special ride-share license plates by satisfying the provisions of RCW 46.16.023. Any person desiring the special ride-share license plates must make application on a form approved by the department and pay all fees required by chapter 46.12 RCW and the special ride-share license plate fee required by RCW 46.16.023. The owner must then provide:

(a) For privately owned vehicles, a ~~((list of the riders registered to use the ride-sharing vehicle, including the names, addresses and signatures of the riders and driver. For five and six passenger vehicles being used in a commute trip reduction program, the list must be a copy of the certification of registration in a commute trip reduction program either with a public transportation agency or a major employer))~~ statement that the vehicle is being used as a ride-sharing vehicle;  
or

(b) For motor vehicles operated by public transportation agencies or by major employers defined in RCW 70.94.524 in commute trip reduction programs, a written statement that the motor vehicle is used as a commuter ride-sharing motor vehicle.

(c) A written statement that the motor vehicle is used for commuter ride-sharing if the passenger motor vehicle is owned, rented or leased by a government agency.

**(2) Can the ride-share license plate be transferred to another motor vehicle?** To transfer license plates to another motor vehicle, the owner must:

(a) Make application to and receive approval by the department for the replacement passenger motor vehicle; and

(b) Pay applicable fees stated in RCW 46.16.316.

**(3) What happens when I remove or transfer special ride-share plates from my vehicle?** When you remove or transfer special ride-share license plates from one motor vehicle to another, you must:

(a) Purchase replacement license plates if the motor vehicle will be operated on public highways; and

(b) Pay applicable ~~((RTA-exercise))~~ tax for the remaining license registration period for the vehicle ~~((if the registered owner resides in the RTA taxing district)).~~

(c) If use/sales tax was exempted but the vehicle was used less than thirty-six consecutive months as a ride-share motor vehicle, use tax is due and payable to the department of revenue.

**(4) What happens when the ride-share motor vehicle is sold or transferred to another person?**

(a) When a ride-share motor vehicle is sold or transferred to another person who will continue to use the passenger motor vehicle as a commuter ride-share vehicle, the new owner must:

(i) Apply for a certificate of ownership under chapter 46.12 RCW;

(ii) Apply for commuter ride-share exemption; and

(iii) Pay all required fees and taxes including the special license plate fee.

(b) Upon application for registration renewal, the owners of nongovernment ride-share plated vehicles must:

(i) ~~((Recertify))~~ Provide a statement that the motor vehicle is used as a commuter ride-share motor vehicle to continue to be exempt from chapters 82.08, 82.12, and 82.44 RCW; and

(ii) Submit a completed ~~((recertification form,))~~ statement approved by the department ~~((including names, addresses, and signatures of current passengers and drivers))~~ that the motor vehicle qualifies as a commuter ride-sharing motor vehicle. If the registered owner fails to file a completed recertification form, the department will cancel the special ride-share license plates and the registered owner will need to purchase replacement plates and pay applicable fees and taxes to complete registration renewal.

**(5) Will I ever have to replace my ride-share vehicle license plate?** Yes, the ride-share vehicle license plates are subject to the seven-year vehicle license plate replacement schedule.

## WSR 08-15-123

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed July 22, 2008, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-087.

Title of Rule and Other Identifying Information: WAC 308-56A-530 Vehicles brands and comments and new WAC 308-93-076 Vessel brands and comments.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on August 27, 2008, at 11:00 a.m.

Date of Intended Adoption: September 23, 2008.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail [dbrown@dol.wa.gov](mailto:dbrown@dol.wa.gov), fax (360) 902-7821 or 902-7822, by August 26, 2008.

Assistance for Persons with Disabilities: Contact Dale R. Brown by August 26, 2008, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to implement SHB 2817. Relating to motor vehicles, vessels and mobile homes contaminated with methamphetamines.

Reasons Supporting Proposal: To provide information to potential purchasers of vehicles and vessels.

Statutory Authority for Adoption: RCW 46.01.110 and 88.02.070.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Karla Laughlin, 1125 Washington Street S.E., Olympia, WA, (360) 902-3673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

July 18, 2008  
Mykel D. Gable  
Assistant Director  
Vehicle Services

AMENDATORY SECTION (Amending WSR 05-07-152, filed 3/23/05, effective 5/15/05)

**WAC 308-56A-530 Vehicles brands and comments.**

(1) **What is a brand?** For the purposes of this section a brand is a notation on the certificate of ownership or vehicle registration certificate that records a special circumstance or condition involving a vehicle.

(2) **What brands are assigned to vehicles by the department?** Brands used by the department include, but are not limited to:

- (a) Former exempt, as defined in RCW 46.16.020;
- (b) Former for hire, as defined in RCW 46.72.010;
- (c) Former taxicab, as described in RCW 46.72.010;
- (d) Rebuilt as required in RCW 46.12.075, when a vehicle reported destroyed under RCW 46.12.070 or 46.80.090 and WAC 308-56A-460 meets the definition of salvage vehicle in RCW 46.12.005;
- (e) Street rod as defined in RCW 46.04.571;
- (f) Nonconformity uncorrected or safety defect uncorrected as defined in RCW 19.118.021 (13) and (18);
- (g) Nonconformity corrected or safety defect corrected as defined in RCW 19.118.021 (13) and (18);
- (h) Returned to manufacturer;

(i) Odometer - Not actual;

(j) Odometer - Exceeds mechanical limits;

(k) Repaired - Wrecker/insurance bill of sale;

(l) Contaminated - Vehicles described in chapter 64.44 RCW;

(m) Decontaminated - Vehicles described in chapter 64.44 RCW.

**(3) What brands are carried forward from the other states/jurisdictions by the department?**

(a) Brands for states/jurisdictions participating in the National Motor Vehicle Title Information System (NMVTIS) program (known as "Standard Brands,") are maintained in the brands list by NMVTIS and include, but are not limited to:

(i) Rebuilt;

(ii) Junk;

(iii) Destroyed;

(iv) Salvage - Damaged;

(v) Salvage - Retention;

(vi) Salvage - Stolen;

(vii) Salvage - Other;

(viii) Flood damage;

(ix) Hail damage;

(x) Saltwater damage;

(xi) Totaled.

(b) Brands from states/jurisdictions not participating in NMVTIS that do not appear on the brands list maintained by NMVTIS (known as "unique brands") will be carried forward on Washington certificates of ownership and registration certificates exactly (or abbreviated if too long) as they appear on the foreign title.

More than one brand may appear on the vehicle registration or certificate of ownership.

**(4) Will a brand be applied to destroyed vehicles that have been sold on an out-of-state wrecker or insurance bill of sale, then repaired, and inspected?** Yes. Vehicles not reported to DOL as destroyed and then sold using an insurance or wrecker bill of sale in lieu of a certificate of ownership/title, then brought into Washington from another jurisdiction that is not subject to reporting under RCW 46.12.070 repaired, and inspected will be branded. The brand will appear as "repaired-wrecker/insurance bill of sale."

The jurisdiction code will be identified as "WA."

**(5) Why is a brand used?** A brand is used in the circumstances above for consumer protection. The brand is used to inform any subsequent owners of the current or former condition or use of the vehicle.

**(6) Will the department remove a brand?** Brands stay on vehicle records indefinitely. The department will only remove a brand if the brand was applied to a Washington certificate of ownership in error; or

(a) If a former rental brand was applied prior to the effective date of this rule, it will remain on the certificate of ownership and/or vehicle registration unless applied in error.

(b) If a nonstandard brand was applied prior to the effective date of this rule, it will remain on the certificate of ownership and/or vehicle registration unless applied in error.

**(7) Where are brands located on the documents?** Brands are located in the brands section of the certificate of ownership and vehicle registration. Brands will display

beginning with Washington issued brands, followed by unique brands, then standard brands. If applicable, "WA REBUILT" will show as a banner across the certificate of ownership.

(8) **What is a comment?** For the purposes of this section a comment is an indication on the certificate of ownership, vehicle title/registration application or vehicle registration certificate that relates to tax liability, type of ownership, title transaction type.

(9) **What comments could the department print on certificates of ownership?**

(a) Comments relating to the ownership that include: Bonded, leased, JTWROS.

(b) Comments relating to tax liability that include: Use tax waived - gift, value code, value year.

(c) Comments relating to the type of title transaction, which include duplicate, and reprint.

(d) Miscellaneous comments that include: Not eligible for road use.

(10) **What comments could the department print on vehicle registration certificates?** Comments printed on vehicle registration certificates may include, but are not limited to:

(a) "CVSEF PAID" or "commercial vehicle safety enforcement fee paid";

(b) "Because scale weight exceeds gross weight, D.O.T. permit also required";

(c) "Commercial vehicle safety enforcement fee not paid";

(d) "Display tab on back license plate" only - front plate is still required;

(e) "\*\*Check vehicle data base record for actual expiration date";

(f) "Replica";

(g) "Proof of FHVUT verified";

(h) "No title issued" or "no title issued - ownership in doubt";

(i) "Excise exempt NRM";

(j) "Excise exempt native American";

(k) "Excise exempt van pool";

(l) "Excise exempt rideshare";

(m) "Registration only";

(n) "Prorated gross weight to be more than 16,000";

(o) "Additional owners on record";

(p) "Not eligible for road use";

(q) "Perm plt";

(r) "Use tax waived: Gift";

(s) "Permanent fleet vehicle";

(t) "\*\*Perm";

(u) "Color";

(v) Comments relating to the ownership; bonded, leased, JTWROS, registration only;

(w) Tax liability DAV, native American, NRM, value code/year, use tax option, rideshare, POW, tax code 95, double transfer;

(x) Title transaction type duplicate, reprint, NTI, dual registration, corrected title data, corrected registration;

(y) Miscellaneous gift, ride, previous plate VIN flag, farm vehicle restrictions, Federal Drug Program (Title 49

CFR Part 382) vehicle color, odometer code, RETURN TO MFG, not eligible for road use (NEFRU).

(11) **What comments would the department carry forward from other jurisdictions?** The department does not carry forward comments assigned by other jurisdictions.

(12) **Why are comments used?** Comments are used for consumer protection, to inform any subsequent owners and vehicle licensing personnel of the current tax liability, type of ownership, or title transaction type or other pertinent information.

(13) **Will the department remove a comment?** The department will remove a comment if:

(a) The comment was applied in error; or

(b) The comment no longer applies.

#### NEW SECTION

**WAC 308-93-076 Vessel brands and comments.** (1) **What is a brand?** For the purposes of this section, a brand is a notation on the certificate of ownership or vessel registration certificate that records a special circumstance or condition involving a vessel.

(2) **What brands are assigned to vessels by the department?** Brands used by the department include, but are not limited to:

(a) Contaminated described in chapter 64.44 RCW.

(b) Decontaminated described in chapter 64.44 RCW.

(3) **Why is a brand used?** A brand is used for consumer protection. The brand is used to inform any subsequent owners of the current or former condition or use of the vessel.

(4) **Will the department remove a brand?** Brands stay on vessel records indefinitely. The department will only remove a brand if the brand was applied to a Washington certificate of title in error.

(5) **What is a comment?** For the purposes of this section, a comment is a notation on the certificate of title, or vessel registration certificate that relates to tax liability, type of ownership, title transaction type.

(6) **What comments could the department print on certificates of title?**

(a) Comments relating to the ownership that include: Bonded, leased, JTWROS.

(b) Comments relating to tax liability that include: Use tax waived - gift, value code, value year.

(c) Comments relating to the type of title transaction, which include duplicate and reprint.

(d) Miscellaneous comments.

(7) **What comments could the department print on vessel registration certificates?** Comments printed on vessel registration certificates may include, but are not limited to:

(a) "Registration only";

(b) "Additional owners on record";

(c) "Use tax waived: Gift";

(d) Title transaction type duplicate, reprint, NTI, dual registration, corrected title data, corrected registration.

(8) **Why are comments used?** Comments are used for consumer protection to inform any subsequent owners and vessel licensing personnel of the current tax liability, type of

ownership, or title transaction type or other pertinent information.

(9) **Will the department remove a comment?** The department will remove a comment if:

- (a) The comment was applied in error; or
- (b) The comment no longer applies.

**WSR 08-15-128**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Health and Recovery Services Administration)  
 [Filed July 22, 2008, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-090.

Title of Rule and Other Identifying Information: The department is amending WAC 388-550-4670 Certified public expenditure (CPE) payment program—"Hold harmless" provision, 388-550-4690 Authorization requirements and utilization review for hospitals eligible for CPE payments, and 388-550-5410 Medicaid cost report schedules.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 27, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule proposal ensures consistent policies for calculating the interim and final hold harmless grant payment amounts to hospitals qualifying for certified public expenditure (CPE) payments; clarifies that WAC 388-550-4690 does not apply to psychiatric CPE inpatient hospital admissions; clarifies how the department performs utilization reviews for CPE inpatient hospital admissions prior to August 1, 2007, and on and after August 1, 2007; updates and clarifies requirements for completing the medicaid cost report schedules; lists the required documentation the hospitals must provide with the medicaid cost report schedules; and incorporates into rule that CPE hospitals are at risk for recoupment of the federal payments exceeding costs unless covered by the hold harmless provision.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Statute Being Implemented: RCW 74.08.090 and 74.09.500.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Lillian Erola, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-1877.

No small business economic impact statement has been prepared under chapter 19.85 RCW. HRSA has analyzed the proposed rule and concluded that no new costs will be imposed on small businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lillian Erola, 626 8th Avenue S.E., Olympia, WA 98504-5500, phone (360) 725-1877, fax (360) 753-9152, e-mail [erolal@dshs.wa.gov](mailto:erolal@dshs.wa.gov).

July 16, 2008

Stephanie E. Schiller  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

**WAC 388-550-4670 CPE payment program—"Hold harmless" provision.** To meet legislative requirements, the department includes a "hold harmless" provision for hospital providers eligible for the certified public expenditure (CPE) payment program. Under the ~~((hold harmless))~~ provision and subject to legislative directives and appropriations, hospitals eligible for payments under the CPE payment program will receive no less in combined state and federal payments than they would have received under the methodologies otherwise in effect as described in this section. All hospital submissions pertaining to the CPE payment program, including but not limited to cost report schedules, are subject to audit at any time by the department or its designee.

(1) The department:

(a) Uses historical cost and payment data trended forward to calculate prospective hold harmless grant payment amounts for the current state fiscal year (SFY); and

(b) Reconciles these hold harmless grant payment amounts when the actual claims data is available for the current fiscal year.

(2) For each state fiscal year, the department calculates what the hospital would have been paid under the methodologies otherwise in effect for the state fiscal year (SFY) as the sum of:

(a) The total payments for inpatient claims for patients admitted during the fiscal year, calculated by repricing the claims using:

(i) For SFYs 2006 and 2007, the inpatient payment method in effect during SFY 2005; or

(ii) For SFYs 2008 and beyond, the payment method that would otherwise be in effect during the CPE payment program year if the CPE payment program had not been enacted ~~((and))~~.

(b) The total net disproportionate share hospital and state grant payments paid for SFY 2005.

~~((2))~~ (3) For each SFY, the department determines total state and federal payments made under the program ~~((during the fiscal year))~~, including ~~((the allowable federal portion of inpatient claims and disproportionate share hospital (DSH) payments, and the state and federal shares of any supplemental upper payment limit payments))~~;

(a) Inpatient claim payments;

(b) Disproportionate share hospital (DSH) payments; and

(c) Supplemental upper payment limit payments made for SFY 2006 and 2007, as applicable.

~~((3))~~ (4) The amount determined in subsection ~~((2))~~ (3) of this section is subtracted from the amount calculated in subsection ~~((4))~~ (2) of this section to determine the gross state grant amount necessary to hold the hospital harmless. ~~((Prepaid hold harmless grants prepaid for the same SFY referred to in subsection (2) of this section are deducted from the gross hold harmless amount to determine the net amount due to or from the hospital))~~ If the resulting number is positive, the hospital is entitled to a grant in that amount, subject to legislative directives and appropriations.

(a) The department calculates an interim hold harmless grant amount approximately ten months after the SFY to include the paid claims for the same SFY admissions. Claims are subject to utilization review prior to the interim hold harmless calculation. Prospective grant payments made under subsection (1) of this section are deducted from the calculated interim hold harmless grant amount to determine the net grant payment amount due to or due from the hospital.

(b) The department calculates the final hold harmless grant amount at such time as the final allowable federal portions of program payments are determined. The procedure is the same as the interim grant calculation but it includes all additional claims that have been paid or adjusted since the interim hold harmless calculation. Claims are subject to utilization review and audit prior to the final calculation of the hold harmless amount. Interim grant payments determined under (a) of this subsection are deducted from this final calculation to determine the net final hold harmless amount due to or due from the hospital.

AMENDATORY SECTION (Amending WSR 06-11-100, filed 5/17/06, effective 6/17/06)

**WAC 388-550-4690 Authorization requirements and utilization review for hospitals eligible for CPE payments.** This section does not apply to psychiatric certified public expenditure (CPE) inpatient hospital admissions. See WAC 388-550-2600.

(1) ~~((Certified public expenditure (CPE)))~~ CPE inpatient hospital claims submitted to the department must meet all authorization and program requirements in WAC and current department-published issuances.

(2) The department performs utilization reviews of inpatient hospital:

(a) Admissions in accordance with the requirements of 42 CFR 456, subparts A through C; and

(b) Claims for compliance with medical necessity, appropriate level of care and the department's (or a department designee's) established length of stay (LOS) standards.

~~(3) ((CPE inpatient hospital claims that would have been paid by the diagnosis related group (DRG) payment method prior to July 1, 2005:~~

~~(a) Are not targeted for retrospective utilization review based on the department's professional activity study (PAS) length of stay (LOS) criteria;~~

~~(b) Are subject to the department's medical necessity retrospective utilization review process (see WAC 388-550-1700); and~~

~~(c) That involve a client's seven-day readmission (see WAC 388-550-1050) are subject to a department retrospective utilization review described in WAC 388-550-3000(5)(e).~~

~~(4) CPE inpatient hospital claims that would have been paid by the ratio of costs to charges (RCC) payment method prior to July 1, 2005 and exceed the professional activity study (PAS) average LOS, will continue to be targeted for retrospective utilization review based on the department's PAS LOS criteria. See WAC 388-550-4300(3).~~

~~(5))~~ For CPE inpatient admissions prior to August 1, 2007, the department performs utilization reviews:

(a) Using the professional activity study (PAS) length of stay (LOS) standard in WAC 388-550-4300 on claims that qualified for ratio of costs-to-charges (RCC) payment prior to July 1, 2005.

(b) On seven-day readmissions according to the diagnosis related group (DRG) payment method described in WAC 388-550-3000 (5)(f) for claims that qualified for DRG payment prior to July 1, 2005.

~~(4)~~ For claims identified in this subsection ~~((4) of this section))~~, the department may request a copy of the client's hospital medical records and itemized billing statements. The department sends written notification to the hospital detailing the department's findings. Any day of a client's hospital stay that exceeds the ~~((PAS))~~ LOS standard:

(a) Is paid under ~~((the RCC))~~ a nonDRG payment method if the department determines it to be medically necessary for the client at the acute level of care;

(b) Is paid as an administrative day (see WAC 388-550-1050 and 388-550-4500(8)) if the department determines it to be medically necessary for the client at the subacute level of care; and

(c) Is not eligible for payment if the department determines it was not medically necessary.

~~((6) Inpatient hospital claims that would not have been paid under a prior payment methodology are not eligible for payment under the CPE payment program))~~ (5) For CPE inpatient admissions on and after August 1, 2007, CPE hospital claims are subject to the same utilization review rules as nonCPE hospital claims.

(a) LOS reviews may be performed under WAC 388-550-4300.

(b) All claims are subject to the department's medical necessity review under WAC 388-550-1700(2).

(c) For inpatient hospital claims that involve a client's seven-day readmission, see WAC 388-550-3000 (5)(f).

**AMENDATORY SECTION** (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

**WAC 388-550-5410 CPE Medicaid cost report ((schedules)) and settlements.** (1) For patients discharged on or after July 1, 2005, a certified public expenditure (CPE) hospital must annually submit to the department federally required Medicaid cost report schedules, using schedules approved by the centers for Medicare and Medicaid services (CMS), that apportion inpatient and outpatient costs to Medicaid clients and uninsured patients for the service year, as follows:

(a) Title XIX fee-for-service claims;

(b) Medicaid managed care organization (MCO) plan claims;

(c) Uninsured patients (~~((individuals who are not covered under any health care insurance plan for the hospital service provided)))~~). The cost report schedules for uninsured patients must not include services that Medicaid would not have covered had the patients been Medicaid eligible (see WAC 388-550-1400 and 388-550-1500); and

(d) State-administered program patients. State-administered program patients are reported separately and are not to be included on the uninsured patient cost report schedule. The department will provide provider statistics and reimbursements (PS&R) reports for the state-administered program claims.

(2) ~~((The department requires each CPE hospital to submit Medicaid cost report schedules to the department for services provided to patients discharged on or after July 1, 2005.~~

~~(3))~~ A CPE hospital must:

(a) Use the information on individualized PS&R reports provided by the department when completing the Medicaid cost report schedules. The department provides the hospital with the PS&R reports at least thirty calendar days prior to the appropriate deadline.

(i) For state fiscal year (SFY) 2006, the deadline for all CPE hospitals to submit the federally required Medicaid cost report schedules is June 30, 2007.

(ii) For hospitals with a December 31 year end, partial year Medicaid cost report schedules for the period July 1, 2005 through December 31, 2005 must be submitted to the department by August 31, 2007.

(iii) For SFY 2007 and thereafter, each CPE hospital is required to submit the Medicaid cost report schedules to the department within thirty calendar days after the Medicare cost report is due to its Medicare fiscal intermediary or Medicare administrative contractor, whichever is applicable.

(b) Complete the cost report schedules for uninsured patients and Medicaid clients enrolled in an MCO plan (~~and the uninsured patients~~) using the hospital provider's records.

(c) Comply with the department's instructions regarding how to complete the required Medicaid cost report schedules.

(3) The Medicaid cost report schedules must be completed using the Medicare cost report for the same reporting year.

(a) The ratios of costs-to-charges and per diem costs from the "as filed" Medicare cost report are used to allocate the Medicaid and uninsured costs on the "as filed" Medicaid cost report schedules, unless expressly allowed for Medicaid.

(b) After the Medicare cost report is finalized by the Medicare fiscal intermediary or Medicare administrative contractor (whichever is applicable), final Medicaid cost report schedules must be submitted to the department incorporating the adjustments to the Medicare cost report, unless expressly allowed for Medicaid. CPE hospitals must submit finalized Medicare cost reports with the notice of amount of program reimbursement (NPR) within thirty calendar days of receipt. The department will then provide the hospitals with updated PS&R reports for Medicaid and state program claims processed by the department for the Medicaid cost report period. The hospitals will update the data for uninsured patients and Medicaid clients enrolled in an MCO plan.

(4) The Medicaid cost report schedules and supporting documentation are subject to audit by the department or its designee to verify that claimed costs qualify under federal and state rules governing the CPE payment program. The documentation required includes, but is not limited to:

(a) The revenue codes assigned to specific cost centers on the Medicaid cost report schedules.

(b) The inpatient charges by revenue codes for uninsured patients and Medicaid clients enrolled in an MCO plan.

(c) The outpatient charges by revenue codes for uninsured patients and Medicaid clients enrolled in an MCO plan.

(d) All payments received for the inpatient and outpatient charges in (b) and (c) of this subsection including, but not limited to, payments for third party liability, uninsured patients, and Medicaid clients enrolled in an MCO plan.

(5) The department:

(a) Performs cost settlements for both the "as filed" and "final" Medicaid cost report schedules for all CPE hospitals;

(b) Reports to CMS as an adjustment any difference between the payments of federal funds made to the CPE hospitals and the federal share of the certified public expenditures; and

(c) Recoups from the CPE hospitals the federal payments that exceed the hospitals' costs, unless the hold harmless provision in WAC 388-550-4670 is applicable.

## WSR 08-15-129

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed July 22, 2008, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-057.

Title of Rule and Other Identifying Information: The department is amending WAC 388-537-0100 School-based

healthcare services for children in special education—Purpose; and new sections WAC 388-537-0200 School-based healthcare services for children in special education—Definitions, 388-537-0300 School-based healthcare services for children in special education—Client eligibility, 388-537-0350 School-based healthcare services for children in special education—Provider qualifications, 388-537-0400 School-based healthcare services for children in special education—Covered services, 388-537-0500 School-based healthcare services for children in special education—Noncovered services, 388-537-0600 School-based healthcare services for children in special education—School district requirements for billing and payment, 388-537-0700 School-based healthcare services for children in special education, and 388-537-0800 School-based healthcare services for children in special education—Program monitoring/audits.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), or August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 27, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to an audit conducted by the Centers for Medicare and Medicaid Services, the amendment and new sections bring this chapter into compliance with federal medicaid regulations, and delineates essential requirements for the delivery of school-based healthcare services. The department is changing the name of this chapter to School-based healthcare services for children in special education, amending WAC 388-537-0100 and adding new sections to chapter 388-537 WAC. The new sections solidify requirements for: (1) Provider qualifications; (2) healthcare services covered under this program; (3) the appropriate documentation for program audits and monitoring; and (4) requirements for billing and payment. The changes make it easier for the school districts to comply with program rule, thus providing qualified service to the children in special education.

Reasons Supporting Proposal: To ensure continuing federal participation in the state's payments for school-based healthcare services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Statute Being Implemented: RCW 74.09.500, 42 C.F.R. 440.110.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jonell Blatt, HRSA, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1571; Implementation and Enforcement: Chris Bess, HRSA, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1668.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is not required to prepare a small business economic impact statement when it adopts rules that simply conform to and/or comply with a federal statute or regulation. Instead, according to RCW 19.85.061, the following statement applies:

- 42 C.F.R. 440.110 is the specific federal statute or regulation under which the rule is conforming; and according to RCW 74.04.015 programs administered by the department must conform to federal requirements with respect to eligibility for the receipt of federal grants or funds.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jonell Blatt, P.O. Box 45504, Olympia, WA 45504-5504 [98504-5504], phone (360) 866-3545, fax (360) 586-9727, e-mail [blattj@dshs.wa.gov](mailto:blattj@dshs.wa.gov).

July 16, 2008

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-02-076, filed 12/29/00, effective 1/29/01)

**WAC 388-537-0100 ((School medical services for students in special education programs)) School-based healthcare services for children in special education—**

**Purpose.** (1) ~~((The medical assistance administration (MAA) pays school districts or educational service districts (ESD) for qualifying medical services provided to an eligible student. To be covered under this section, the student must be eligible for Title XIX (i.e., either the categorically needy or medically needy programs):~~

~~(2) To qualify for payment under this section, the medical services must be provided:~~

~~(a) By the school district or the ESD; and~~

~~(b) To the eligible special education student as part of the student's individualized education program (IEP) or individualized family service plan (IFSP).~~

~~(3) To qualify for payment under this section, the medical services must be provided by one of the following service providers:~~

~~(a) A qualified Medicaid provider as described under WAC 388-502-0010;~~

~~(b) A psychologist, licensed by the state of Washington or granted an educational staff associate (ESA) certificate by the state board of education;~~

~~(c) A school guidance counselor, or a school social worker, who has been granted an ESA certificate by the state board of education; or~~

~~(d) A person trained and supervised by any of the following:~~

~~(i) A licensed registered nurse;~~

- (ii) A licensed physical therapist or physiatrist;
- (iii) A licensed occupational therapist; or
- (iv) A speech pathologist or audiologist who:

(A) Has been granted a certificate of clinical competence by the American speech, hearing, and language association;

(B) Is a person who completed the equivalent educational and work experience necessary for such a certificate; or

(C) Is a person who has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(4) Student service recommendations and referrals must be updated at least annually.

(5) The student does not need a provider prescription to receive services described under this section.

(6) MAA pays for school-based medical services according to the department established rate or the billed amount, whichever is lower.

(7) MAA does not pay individual school practitioners who provide school-based medical services.

(8) For medical services billed to Medicaid, school districts or ESD, must pursue third-party resources.) The department of social and health services (DSHS) pays school districts for school-based healthcare services provided to children in special education in accordance with the individuals with disabilities education act (IDEA). The services must:

(a) Address the physical and/or mental disabilities of a child;

(b) Be prescribed or recommended by a physician or other qualified healthcare provider within his or her scope of practice under state law; and

(c) Be included in the child's individualized education program (IEP).

#### NEW SECTION

**WAC 388-537-0200 School-based healthcare services for children in special education—Definitions.** The following definitions and those found in WAC 388-500-0005 apply to this chapter:

**"Assessment"** - For purposes of this chapter an assessment is made-up of tests given to an individual child by qualified professionals 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.

**"Child with a disability"** - For purposes of this chapter, a child with a disability means 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;
- Hearing impairment (including deafness);
- Mental retardation;
- Serious emotional disturbance (emotional behavioral disability);
- Speech or language impairment;
- Traumatic brain injury;
- Visual impairment (including blindness);
- Orthopedic impairment;
- Traumatic brain injury;

- Other health impairment (multiple disabilities); or
- A developmental delay for children ages three through eight, with an adverse educational impact, the results of which require special education and related direct services.

**"Direct healthcare services"** - Services provided directly to a child either one-on-one or in a group setting.

**"Educational staff associate (ESA)"** - A public school employee who is required to hold an ESA certificate.

**"Evaluation"** - Procedures used according to WAC 392-172A-03005 through 392-172A-03080 to determine whether a student has a disability, and the nature and extent of the special education and related services needed.

**"Individualized education program (IEP)"** - A written statement of an educational program for a student eligible for special education. (See WAC 388-172A-03090 through 388-172A-03135.)

**"Individualized education program team (IEPT)"** - A group of individuals responsible for developing, reviewing, or revising an IEP. (See WAC 392-172A-03095).

**"Qualified healthcare provider"** - See WAC 388-537-0350.

**"Re-evaluation"** - Procedures used to determine whether a student continues to be in need of special education and related services. (See WAC 392-172A-03015.)

**"Related services"** - Developmental, corrective, and other supportive services required to assist an eligible student to benefit from special education. For purposes of this program, related services include: physical therapy, occupational therapy, speech-language therapy, audiology services, psychological assessments, counseling, and nursing services.

#### NEW SECTION

**WAC 388-537-0300 School-based healthcare services for children in special education—Client eligibility.** Children in special education must be receiving Title XIX Medicaid under a categorically needy program (CNP) or medically needy program (MNP) to be eligible for school-based healthcare services. Eligible children enrolled in a managed care organization (MCO) receive school-based healthcare services on a fee-for-service basis.

#### NEW SECTION

**WAC 388-537-0350 School-based healthcare services for children in special education—Provider qualifications.** The department pays school districts to provide certain healthcare services (see WAC 388-537-0400) to eligible clients (see WAC 388-567-0300). These services must be provided by qualified healthcare providers who meet Washington state and federal requirements and operate within the scope of their practitioner's license:

- (1) Audiology services delivered by:
  - (a) A licensed audiologist; or
  - (b) A school-based audiologist who:
    - (i) Meets the education and work experience necessary for a state professional license;
    - (ii) Holds a valid school audiologist educational staff associate certificate; and
    - (iii) Limits their audiology services to the school setting.
- (2) Counseling services delivered by:

- (a) A licensed independent social worker;
- (b) A licensed advanced social worker;
- (c) A licensed mental health counselor; or
- (d) A school-based social worker or mental health counselor who:
  - (i) Meets the education and work experience necessary for a state professional license;
  - (ii) Holds a valid school social worker or school counselor educational staff associate certificate; and
  - (iii) Limits their counseling services to the school setting.
- (3) Nursing services delivered by:
  - (a) A licensed registered nurse;
  - (b) A licensed practical nurse; or
  - (c) A noncredentialed school employee who is delegated certain limited healthcare tasks by a registered nurse and, trained and supervised according to professional practice standards.
- (4) Occupational therapy services delivered by:
  - (a) A licensed occupational therapist; or
  - (b) A certified occupational therapy assistant supervised by a licensed occupational therapist in accordance with professional practice standards.
- (5) Physical therapy services delivered by:
  - (a) A licensed physical therapist; or
  - (b) A licensed physical therapist assistant.
- (6) Psychological services delivered by:
  - (a) A licensed psychologist; or
  - (b) A school-based psychologist who:
    - (i) Holds a masters degree in school psychology;
    - (ii) Holds a valid school psychologist educational staff associate certificate; and
    - (iii) Limits their psychological services to the school setting.
  - (c) A school-based psychologist who:
    - (i) Holds a doctoral degree in psychology;
    - (ii) Holds a valid school psychologist educational staff associate certificate; and
    - (iii) Limits their psychological services to the school setting.
- (7) Speech therapy services delivered by:
  - (a) A licensed speech-language pathologist;
  - (b) A speech-language pathology assistant, who has graduated from a speech-language pathology assistant program, and is supervised by a speech-language pathologist with a certificate of clinical competence (CCC) in accordance with professional practice standards; or
  - (c) A school-based speech-language pathologist who:
    - (i) Meets the education and work experience necessary for a state professional license;
    - (ii) Holds a valid school speech-language pathologist educational staff associate certificate; and
    - (iii) Limits their speech therapy services to the school setting.
- (8) For services provided under the supervision of a physical therapist, occupational therapist or speech-language pathologist the following requirements apply:
  - (a) The nature, frequency and length of the supervision must be provided in accordance with professional practice

standards and adequate to assure the child receives quality therapy services.

(b) At a minimum, supervision must be one-on-one communication between the supervisor and the supervised professional.

(c) Documentation of supervisory activities must be on record.

#### NEW SECTION

**WAC 388-537-0400 School-based healthcare services for children in special education—Covered services.** Covered services include:

(1) Evaluations, when the child is determined to be a child with a disability and in need of special education and related services;

(2) Direct healthcare services including:

- (a) Audiology;
- (b) Counseling;
- (c) Nursing;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) Psychological assessments;
- (g) Speech-language therapy.

(3) Re-evaluations, to determine whether the child continues to need special education and related services.

#### NEW SECTION

**WAC 388-537-0500 School-based healthcare services for children in special education—Noncovered services.** Noncovered services include, but are not limited to the following:

- (1) Attending meetings;
- (2) Charting;
- (3) Equipment preparation;
- (4) Instructional assistant contact;
- (5) Parent consultation;
- (6) Parent contact;
- (7) Planning;
- (8) Preparing and sending correspondence to parents or other professionals;
- (9) Professional consultation;
- (10) Report writing;
- (11) Review of records;
- (12) Set-up;
- (13) Teacher contact;
- (14) Test interpretation;
- (15) Travel; and
- (16) Observation.

#### NEW SECTION

**WAC 388-537-0600 School-based healthcare services for children in special education—School district requirements for billing and payment.** To receive payment from the department for school-based healthcare services, a school district must:

(1) Have a current, signed core provider agreement with the department;

(2) Meet the applicable requirements in chapter 388-502 WAC; and

(3) Bill according to the department's published school-based healthcare services billing instructions.

#### NEW SECTION

**WAC 388-537-0700 School-based healthcare services for children in special education—School district documentation requirements.** (1) The school districts must maintain sufficient documentation to support and justify the paid claims, to include, at a minimum:

- (a) Professional assessment reports;
- (b) Evaluation and re-evaluation reports;
- (c) Individualized education program (IEP); and
- (d) Treatment notes for each date of service the provider billed to the department.

(2) All provider licenses and other credentials must be current and on file with the school district and available for review upon request.

(3) All records must be easily and readily available to the department upon request.

#### NEW SECTION

**WAC 388-537-0800 School-based healthcare services for children in special education—Program monitoring/audits.** (1) School districts must participate in the monitoring process.

(2) The department monitors school-based healthcare services as established by the school-based healthcare services program manager and in compliance with the department's monitoring policy and plan.

(3) The department conducts audits of school-based healthcare services in accordance with chapter 388-502A WAC.

### **WSR 08-15-138**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

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

(Aging and Disability Services Administration)

[Filed July 22, 2008, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-072.

Title of Rule and Other Identifying Information: Amending WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on August 26, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 27, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 26, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by August 19, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johns14@dshs.wa.gov](mailto:johns14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-106-0130 to clarify that base hours are reduced for informal supports, or other paid services that meet some of an individual's need for personal care services, including adult day health.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Engels, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2353.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed these rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

July 16, 2008

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-03-111, filed 1/22/08, effective 2/22/08)

**WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care?** (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for ~~((your))~~ informal supports, as defined in WAC 388-106-0010, or other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

<b>Meds</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			
<b>Unscheduled ADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			
<b>Scheduled ADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
1/2 to 3/4 time	.35			
>3/4 time	.15			
<b>IADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Meal preparation, Ordinary housework, Essential shopping((*))	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
1/2 to 3/4 time	.1			
>3/4 time	.05			
<b>IADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			

Key:  
 > means greater than  
 < means less than  
 ((\*Results in 5% deduction for each IADL from the base hours. Remaining hours may be used for completion of household and personal care tasks.))

(b) To determine the amount of reduction for informal support, the value percentages are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of in-home hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours when:

(a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

- (i) Meal preparation;
- (ii) Housekeeping;
- (iii) Shopping; and
- (iv) Wood supply.

(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.

(4) In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department

will score the status for meal preparation as unmet when you adhere to at least one of the following special diets:

- (a) ADA (diabetes);
- (b) Autism diet;
- (c) Calorie reduction;
- (d) Low sodium;
- (e) Mechanically altered;
- (f) Planned weight change program;
- (g) Renal diet; or

(h) Needs to receive nutrition through tube feeding or receives greater than twenty-five percent of calories through tube or parenteral feeding.

(5) In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for housework as unmet when you are incontinent of bladder or bowel, documented as:

- (a) Incontinent all or most of the time;
- (b) Frequently incontinent; or
- (c) Occasionally incontinent.

(6) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	Unmet	N/A	8
	Partially met	<1/4 time between 1/4 to 1/2 time between 1/2 to 3/4 time >3/4 time	
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time	2		
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
>3/4 time	2		

(7) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC 388-106-1445.

(8) The result of actions under subsections (2), (3), (4), (5) and (6) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

(9) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

- (a) Personal care services from a home care agency provider and/or an individual provider.
- (b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).
- (c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).
- (d) A home health aide if you are eligible per WAC 388-106-0300 or 388-106-0500.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

### WSR 08-15-144

#### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed July 22, 2008, 2:00 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-035.

Title of Rule and Other Identifying Information: Chapter 16-731 WAC, Asparagus grower equipment lease program.

Hearing Location(s): Benton PUD, Auditorium, 2721 West 10th Avenue, Kennewick, WA 99336, on September 4, 2008, at 1:30 p.m.

Date of Intended Adoption: September 15, 2008.

Submit Written Comments to: Kelly Frost, Commodity Commission Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., September 5, 2008.

Assistance for Persons with Disabilities: Contact WSDA receptionist by August 15, 2008, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of proposed chapter 16-731 WAC, Asparagus grower equipment lease program, is to implement section 3217, chapter 520, Laws of 2007 (ESHB 1092), which appropriates funds to the Washington state department of agriculture to extend and expand the department's asparagus automation and mechanization program. These rules also provide the criteria and qualifications to apply for participation in this program.

The asparagus grower equipment lease program allows Washington state asparagus growers to lease with an opportunity to purchase labor saving equipment that will strengthen their production and harvesting efforts to efficiently produce fresh asparagus.

The rules also implement RCW 15.04.402 which authorizes the department to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber and maintain the economic well-being of the Washington state agricultural industry.

Statutory Authority for Adoption: RCW 15.04.402, chapter 520, Laws of 2007 (ESHB 1092), and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.04 RCW and chapter 520, Laws of 2007 (ESHB 1092).

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kelly Frost, Olympia, Washington, (360) 902-1802.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No costs are being imposed on growers. Rather, they can voluntarily apply for funding to help offset the cost of leasing/purchasing mechanical product or harvesting equipment. There will be a cost-share component but it is a voluntary program. For those who do opt to apply for the program, it will actually represent a cost savings to them in that the state will supply funding to partially cover the cost of the equipment. In addition, the mechanical production or harvesting equipment is designed to decrease reliance on manual labor which, if it has the intended effect, will decrease costs to the grower. Cost savings will be realized in not having to employ and pay as many laborers to produce or harvest the crop. Asparagus growers have also experienced losses in the past when not enough labor was available, resulting in crops being left in the fields. A mechanical harvester will ensure the grower has a reliable source of "labor" to harvest the crops as needed during the relatively short growing season.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

July 22, 2008  
Robert W. Gore  
Acting Director

### Chapter 16-731 WAC

#### ASPARAGUS GROWER EQUIPMENT LEASE PROGRAM

#### NEW SECTION

**WAC 16-731-010 What is the purpose of the asparagus grower equipment lease program?** (1) The Washington state department of agriculture is establishing the asparagus grower equipment lease program to implement section 3217, chapter 520, Laws of 2007 (ESHB 1092), which appropriates funds to the Washington state department of agriculture to extend and expand the department's asparagus automation and mechanization program. These rules also provide the criteria and qualifications to apply for participation in this program.

(2) The asparagus grower equipment lease program allows Washington state asparagus growers to lease with an opportunity to purchase labor saving equipment that will strengthen their production and harvesting efforts to efficiently produce fresh asparagus.

#### NEW SECTION

**WAC 16-731-020 How does the department ensure that program participants comply with the program's purpose?** To ensure that program participants are in compliance with the terms of the program and to ensure that the leased equipment is being used principally to produce or harvest fresh asparagus, the participating growers must, during

each year of their participation, provide the department or its agent a letter:

(1) Certifying that the leased equipment is being used for the program's intended purpose; and

(2) Summarizing the cost and labor savings for that year relative to asparagus production or harvesting.

#### NEW SECTION

**WAC 16-731-030 What definitions are important to this chapter? "Applicant"** means any person who applies to participate in the asparagus grower equipment leasing program and who produces in the state of Washington asparagus in commercial quantities (6,000 pounds or more in a calendar year) for fresh market, for processing, or for sale to processors and paid assessments to the Washington asparagus commission in the calendar year preceding the year in which they submit an application.

**"Automation"** means a labor-saving technique or equipment used to bring about automatic operation and control of a process.

**"Department"** means the Washington state department of agriculture.

**"Director"** means the director of the Washington state department of agriculture or the director's designee.

**"Equipment"** means labor-saving equipment used principally to aid in the production or harvesting of asparagus but excludes general farming equipment, such as tractors.

**"Grower"** means any person who produces in the state of Washington asparagus in commercial quantities for fresh market, for processing, or for sale to processors.

**"Labor saving"** means actions, activities or processes designed to decrease the amount of human labor needed to produce or harvest fresh asparagus.

**"Leasing"** means to obtain the use of asparagus production or harvesting equipment through the asparagus grower equipment leasing program.

**"Person"** means an individual, firm, partnership, corporation, or association engaged in growing fresh Washington state asparagus.

**"Program administrator"** means the director of the Washington state department of agriculture or the director's designee.

**"Review committee"** means a group of five to seven people that is made up of representatives from the department, the Washington asparagus commission staff and its members. In addition, one agricultural representative who is neither directly affiliated with the asparagus industry nor any of the equipment leasing program applicants shall be part of the committee. The purpose of the committee is to review equipment leasing program applications and make selection recommendations to the director.

#### NEW SECTION

**WAC 16-731-040 How will the asparagus grower equipment leasing program be administered?** The director or the director's designee will administer the asparagus equipment leasing program according to the rules of this chapter.

#### NEW SECTION

**WAC 16-731-050 Who is eligible to participate in the asparagus grower equipment leasing program?** To be eligible to participate in the asparagus grower equipment leasing program, a grower must:

(1)(a) Produce in the state of Washington asparagus in commercial quantities (6,000 pounds) in the calendar year preceding the year in which they apply; and

(b) Provide documentation verifying the 6,000 pounds. Verification can include proof of payment of asparagus commission assessments or other industry accepted documentation.

(2) Comply with all applicable federal, state, and local laws and rules related to doing business in Washington.

#### NEW SECTION

**WAC 16-731-060 How does an eligible asparagus grower apply to the equipment leasing program?** (1) Eligible growers can obtain an equipment leasing program application by contacting:

Asparagus Grower Leasing Program  
Washington State Department of Agriculture  
1111 Washington St. S.E., 2nd Floor  
P.O. Box 42560  
Olympia, WA 98504-2560

(2) Eligible applicants must complete the program application and provide the department with the following information:

(a) Verification consistent with normal and usual leasing agreements that their business is a going concern;

(b) Verification that they have the ability to adequately insure any equipment they may lease;

(c) A statement declaring their eligibility and intent to participate in the program;

(d) Documentation of their ability to provide the necessary upkeep and maintenance of any equipment they may lease;

(e) A description of the equipment to be leased and its cost, along with the percentage of equipment cost the applicant pledges to match (minimum of 25% required);

(f) A description of how the leased equipment will automate their production or harvesting operation;

(g) The estimated amount of labor savings in terms of wages and labor hours to be achieved through automation; and

(h) The number of pounds of asparagus produced as stated in a range for the period of years identified on the application. (The department will verify the pounds of production with the Washington asparagus commission.)

(3) The completed application and the related information (subsection (2) of this section) must be submitted to:

Asparagus Grower Leasing Program  
Washington State Department of Agriculture  
1111 Washington St. S.E., 2nd Floor  
P.O. Box 42560  
Olympia, WA 98504-2560

NEW SECTION

**WAC 16-731-070 How will applicants be selected to participate in the equipment leasing program?** (1) The department, in consultation with the Washington asparagus commission, and the industry at large, will establish application deadlines, application review dates and dates for notifying applicants if they have been selected to participate in the equipment lease program.

(2) The process for reviewing and approving applications is as follows:

(a) The review committee will review all applications, weigh the responses, rank the applications and make selection recommendations to the director based on the selection criteria which will include:

(i) The application is complete and includes all required information;

(ii) The percentage of equipment costs that the applicant is willing to match relative to the cost of the equipment;

(iii) The amount of labor savings to be achieved;

(iv) The type and reliability of the equipment requested; and

(v) The extent to which the equipment will be used in the production or harvesting of asparagus.

Additionally, the following balancing factors shall be used to determine the final ranking:

(A) Geographic location of applicant;

(B) Size of operation or business;

(C) Type of equipment requested, with preference given to requests for mechanical harvesting equipment.

(b) The director will review the committee's recommendations and ranking. The director reserves the right to modify the committee's recommendations and ranking. If the final ranking results in a tie, the director reserves the right to select the successful applicant(s) by lot.

(c) Once the director selects the successful applicants, applicants will be notified of the results within five working days of the director's decision.

(3) The department may implement additional application cycles if needed.

NEW SECTION

**WAC 16-731-080 If an application is not selected, can the applicant request a review of the director's decision?** (1) An applicant whose application is not selected by the director may request a review of the director's decision within ten calendar days after the decision has been mailed to the applicant. The request for review must:

(a) Specify the date of the decision or action being reviewed;

(b) Explain as precisely as possible the issue or error to be resolved by the review;

(c) Include the address of the applicant; and

(d) Be signed by the applicant.

(2) Reviews of unsuccessful applications will follow an informal process conducted by the director or director's designee based on the following criteria:

(a) Was there a factual or numerical error in scoring the application?

(b) Were the selection criteria as listed in WAC 16-731-070 (2)(a) erroneously applied?

(3) The review will be completed within fifteen days after receipt of the review request.

(4) Once the review is completed, the department has five working days to inform the applicant of the review decision.

(5) The rights of the department provided in this section are exclusive and are in addition to any other rights and remedies provided by law.

NEW SECTION

**WAC 16-731-090 If an applicant's initial application is not selected, can the applicant reapply to the equipment leasing program?** (1) If an applicant whose initial application was not selected has been notified that additional program funds are available, the applicant has ten days from the date they receive notification of the availability of additional funds to reapply.

(2) Applicants must reapply by following the procedures outlined in WAC 16-731-060.

(3) When reapplying, the applicant must present a different proposal from that contained in their original application. Differences may include a greater percentage of matching funds, a request for different equipment and/or a way to improve labor or cost savings.

NEW SECTION

**WAC 16-731-100 How will the program distribute equipment leasing funds?** The program's equipment leasing funds will be distributed indirectly for the benefit of selected applicants through an approved leasing company. The approved leasing company will purchase the production or harvesting equipment, request reimbursement from the department in the amount of the allocation for that applicant and subsequently lease the equipment to the selected applicant. Title to the equipment shall be held by the department. "Reimbursement" means that equipment has already been paid for or a bill for the equipment is due and payable within thirty days.

NEW SECTION

**WAC 16-731-110 How will the program's equipment leasing funds be allocated?** (1) The initial allocation of equipment leasing funds will be distributed based upon the availability of funds and the evaluation of the application using the criteria set forth in WAC 16-731-070 (2)(a).

(2) An applicant will receive no more than 75% of the value of the equipment to be purchased.

NEW SECTION

**WAC 16-731-120 For the leasing program, what are the maximum distribution amounts for each successful grower applicant?** (1) The final grower allocation will not exceed 75% of the value of the equipment to be purchased.

(2) Any future distributions will be determined by:

- (a) The amount of program funds available after all administrative and contract-leasing costs are subtracted from the total program allocation received from the legislature;
- (b) The number of participants in the program;
- (c) Whether any viable projects were eligible for funding but not previously selected; and
- (d) Department consultations with the Washington asparagus commission and the industry at large.

NEW SECTION

**WAC 16-731-130 What requirements apply to equipment leasing program lease agreements?** (1) The department will follow the department of general administration purchased service procurement guidelines when selecting a leasing company to act as its agent to purchase and manage all equipment leasing arrangements for all selected growers.

- (2) All selected growers must enter into a department-approved lease agreement with the department-approved leasing firm.
- (3) All equipment lease agreements:
  - (a) Must be exclusive to the selected grower for the term of the contract with the leasing company; and
  - (b) Are not transferable without the written approval of the department.
- (4) Lease agreements cannot be paid off before the leasing company's contract termination date.

NEW SECTION

**WAC 16-731-140 What happens if a selected asparagus grower defaults on a lease?** If a selected grower defaults on a lease agreement, the department retains ownership of the equipment and will make the equipment available to other asparagus growers. Availability will be determined by whether any other applicant that was not selected is interested in leasing the equipment or if none, if any other asparagus grower is interested in leasing the equipment.

NEW SECTION

**WAC 16-731-150 How long will the asparagus grower equipment leasing program be in operation?** (1) How long the equipment leasing program will be in operation will be determined by:

- (a) An office of financial management (OFM) approved depreciation schedule for each type of equipment that will be available for leasing; and
- (b) The period of time needed to:
  - (i) Surplus and dispose of or transfer the equipment; and
  - (ii) Complete program closeout activities.

(2) For any distributions following the initial one, the department may modify the program length, depreciation schedules, contract requirements or leasing agreements.

NEW SECTION

**WAC 16-731-160 Who develops the depreciation schedules for the program's leased equipment?** The department, with final approval from OFM, will develop

depreciation schedules for the program's leased equipment. These schedules will be based upon the characteristic economic useful lives of asparagus production or harvesting equipment used by the industry.

NEW SECTION

**WAC 16-731-170 Will the equipment used in the asparagus grower equipment leasing program be offered for sale to the grower who leased it?** (1) At the end of its depreciation period, the equipment leased to a grower will be declared "surplus" and offered for sale to the grower or their designee at a price to be determined at the end of the depreciation period.

(2) If a grower chooses not to purchase the leased equipment at the end of its depreciation period, the state will attempt to first sell the surplus equipment to another grower.

**WSR 08-15-146**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed July 22, 2008, 2:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-10-058.

Title of Rule and Other Identifying Information: WAC 220-20-019 Requirement to provide sales documents.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on September 5-6, 2008, at 8:30 a.m.

Date of Intended Adoption: October 3-4, 2008.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail [preuslmp@dfw.wa.gov](mailto:preuslmp@dfw.wa.gov), fax (360) 902-2155, by August 29, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager, by August 25, 2008, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Of the two sectors that handle commercial fish - wholesale fish dealers/buyers/DRE holders, and secondary receivers - RCW 77.15.568 adequately addresses the record-keeping requirements of the secondary receivers. This proposal will provide requirements for the wholesale fish dealers/buyers/DRE holders. It also will allow fish and wildlife officers to have continued access to wholesale dealers'/buyers'/DRE holders' catch-accounting reports.

Reasons Supporting Proposal: Wholesale fish dealers/buyers/DRE holders need clear record-keeping direction.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mike Cenci, 1111 Washington Street S.E., Olympia, (360) 902-2938; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This WAC was originally meant to ensure that documentation associated with commercial fisheries products be available for officer inspection at any business. This proposal clarifies that officers have access to records of wholesale fish dealers/buyers/DRE holders just as they do to records of secondary receivers. The department does not expect an economic impact to small businesses because this rule does not substantially change anything. This rule is housekeeping in nature.

A cost-benefit analysis is not required under RCW 34.05.328. These are not hydraulic rules.

July 22, 2008  
Loreva M. Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending Order 82-105, filed 8/13/82)

**WAC 220-20-019 Requirement to provide sales documents.** It is unlawful for any (~~individual, firm, or corporation~~) wholesale fish dealer, fish buyer, or holder of a direct retail endorsement to fail to (~~show on demand to any authorized employee or enforcement officer of the department of fisheries~~) submit for inspection any state of Washington fish receiving tickets or sales documents (~~pursuant to WAC 220-69-240~~) upon demand of a fish and wildlife officer. Violation of this section is a gross misdemeanor, punishable under RCW 77.15.640 (1)(d).

**WSR 08-15-158**  
**PROPOSED RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2008-08—Filed July 23, 2008, 6:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-097.

Title of Rule and Other Identifying Information: Review of individual health rate plans by the insurance commissioner.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Olympia, WA 98504-0255, on August 27, 2008, at 9:00 a.m.

Date of Intended Adoption: September 10, 2008.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by August 26, 2008.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by August 26, 2008, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules restore the procedures and processes used by commissioner to review individual rate filings prior to the legislative changes in 2000. Carriers will be required to submit documentation of actuarial formulas, statistics, and assumptions in support of their rates for actuarial review of the commissioner.

Reasons Supporting Proposal: These proposed rules implement recently enacted ESSB 5261, chapter 303, Laws of 2008, that allows the commissioner to review and disapprove rates for individual health insurance products.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200, and chapter 303, Laws of 2008.

Statute Being Implemented: RCW 48.18.110, 48.44.-020, 48.46.060, 48.20.025, 48.44.017, 48.46.062 and ESSB 5261, chapter 303, Laws of 2008.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules apply equally across the industry and represent standard industry practice for group health insurance rate filings. The addition of individual health insurance filings to these rules, as called for by law, does not represent an unequal burden for small health insurers versus larger ones; regardless of size, all carriers are required by the new legislation to make such filings to gain approval for individual health insurance rates. In addition, the nature of the health insurance market makes it unlikely that there are any qualifying insurers in this market who qualify as a small business under definition found in RCW 19.85.020(3). As a result, no small business economic impact statement will be needed for R 2008-08.

A cost-benefit analysis is not required under RCW 34.05.328. Because the proposed rules are only procedural in nature and any costs imposed are the result of law (and not these proposed rules) no cost-benefit analysis is needed.

July 23, 2008

Mike Kreidler

Insurance Commissioner

NEW SECTION

**WAC 284-43-901 Authority and purpose.** This subchapter is adopted under the general authority of RCW 48.02.060, 48.44.017, 48.44.020, 48.44.050, 48.46.060, 48.46.062, and 48.46.200. Its purpose is to provide guidelines for the implementation of RCW 48.44.017(2), 48.44.-020(3), 48.44.022, 48.44.023, 48.44.040, 48.46.060 (4) and (6), 48.46.062(2), 48.46.064, and 48.46.066 as to the filing of contract forms by health care service contractors and health

maintenance organizations and the calculations and evaluations of premium rates for these contracts.

**AMENDATORY SECTION** (Amending Matter No. R 2004-05, filed 3/3/05, effective 4/3/05)

**WAC 284-43-910 Definitions.** For the purpose of this subchapter:

(1) "Adjusted earned premium" means the amount of "earned premium" the "carrier" would have earned had the "carrier" charged current "premium rates" for all applicable "plans."

(2) "Annualized earned premium" means the "earned premium" that would be earned in a twelve-month period if earned at the same rate as during the applicable period.

(3) "Anticipated loss ratio" means the "projected incurred claims" divided by the "projected earned premium."

(4) "Base rate" means the "premium" for a specific "plan," expressed as a monthly amount per "covered person or subscriber," prior to any adjustments for geographic area, age, family size, wellness activities, tenure, or any other factors as may be allowed.

(5) "Capitation expenses" means the amount paid to a provider or facility on a per "covered person" basis, or as part of risk-sharing provisions, for the coverage of specified health care services.

(6) "Carrier" means a health care service contractor or health maintenance organization.

(7) "Certificate" means the statement of coverage document furnished "subscribers" covered under a "group contract."

(8) "Claim reserves" means the "claims" that have been reported but not paid plus the "claims" that have not been reported but may be reasonably expected.

(9) "Claims" means the cost to the "carrier" of health care services provided to a "covered person" or paid to or on behalf of the "covered person" in accordance with the terms of a "plan." This includes "capitation payments" or other similar payments made to providers or facilities for the purpose of paying for health care services for a "covered person."

(10) "Community rate" means the weighted average of all "premium rates" within a filing with the weights determined according to current enrollment.

(11) "Contract" means an agreement to provide health care services or pay health care costs for or on behalf of a "subscriber" or group of "subscribers" and such eligible dependents as may be included therein.

(12) "Contract form" means the prototype of a "contract" and any associated riders and endorsements filed with the commissioner by a health care service contractor or health maintenance organization.

(13) "Contribution to surplus, contingency charges, or risk charges" means the portion of the "projected earned premium" not associated directly with "claims" or "expenses."

(14) "Covered person" or "enrollee" has the same meaning as that contained in RCW 48.43.005.

(15) "Current community rate" means the weighted average of the "community rates" at the renewal or initial effective dates of each plan for the year immediately preceding the

renewal period, with weights determined according to current enrollment.

(16) "Current enrollment" means the monthly average number and demographic makeup of the "covered persons" for the applicable contracts during the most recent twelve months for which information is available to the carrier.

(17) "Earned premium" means the "premium" plus any rate credits or recoupments, applicable to an accounting period whether received before, during, or after such period.

(18) "Expenses" means costs that include but are not limited to the following:

(a) Claim adjudication costs;

(b) Utilization management costs if distinguishable from "claims";

(c) Home office and field overhead;

(d) Acquisition and selling costs;

(e) Taxes; and

(f) All other costs except "claims."

(19) "Experience period" means the most recent twelve-month period from which the carrier accumulates the data to support a filing.

(20) "Extraordinary expenses" means "expenses" resulting from occurrences atypical of the normal business activities of the "carrier" that are not expected to recur regularly in the near future.

(21) "Group contract" or "group plan" means an agreement issued to an employer, corporation, labor union, association, trust, or other organization to provide health care services to employees or members of such entities and the dependents of such employees or members.

(22) "Incurred claims" means "claims" paid during the applicable period plus the "claim reserves" as of the end of the applicable period minus the "claim reserves" as of the beginning of the applicable period. Alternatively, for the purpose of providing monthly data or trend analysis, "incurred claims" may be defined as the current best estimate of the "claims" for services provided during the applicable period.

(23) "Individual contract" means a "contract" issued to and covering an individual. An "individual contract" may include dependents.

(24) "Investment earnings" means the income, dividends, and realized capital gains earned on an asset.

(25) "Loss ratio" means "incurred claims" as a percentage of "earned premiums" before any deductions.

(26) "Medical care component of the consumer price index for all urban consumers" means the similarly named figure published monthly by the United States Bureau of Labor Statistics.

(27) "Net worth or reserves and unassigned funds" means the excess of assets over liabilities on a statutory basis.

(28) "Plan" means a "contract" that is a health benefit plan as defined in RCW 48.43.005 or a "contract" for limited health care services as defined in RCW 48.44.035.

(29) "Premium" has the same meaning as that contained in RCW 48.43.005.

(30) "Premium rate" means the "premium" per "subscriber" or "covered person" obtained by adjusting the "base rate" for geographic area, family size, age, wellness activities, or any other factors as may be allowed.

(31) "Projected earned premium" means the "earned premium" that would be derived from applying the proposed "premium rates" to the current enrollment.

(32) "Projected incurred claims" means the estimate of "incurred claims" for the rate renewal period based on the current enrollment.

(33) "Proposed community rate" means the weighted average of the "community rates" at the renewal dates of each plan for the renewal period, with weights determined according to current enrollment.

(34) "Provider" has the same meaning as that contained in RCW 48.43.005.

(35) "Rate renewal period" means the period for which the proposed "premium rates" are intended to remain in effect.

(36) "Rate schedule" means the schedule of all "base rates" for "plans" included in the filing.

(37) "Requested increase in the community rate" means the amount, expressed as a percentage, by which the "proposed community rate" exceeds the "current community rate."

(38) "Service type" means the category of service for which "claims" are paid, such as hospital, professional, dental, prescription drug, or other.

(39) "Small group contracts" or "small group plans" means the class of "group contracts" issued to "small employers," as that term is defined in RCW 48.43.005.

(40) "Staffing data" means statistics on the number of providers and associated compensation required to provide a fixed number of services or provide services to a fixed number of "covered persons."

(41) "Subscriber" means a person on whose behalf a "contract" or "certificate" is issued.

(42) "Unit cost data" means statistics on the cost per health care service provided to a "covered person."

(43) "Utilization data" means statistics on the number of services used by a fixed number of "covered persons" over a fixed length of time.

AMENDATORY SECTION (Amending Matter No. R 2004-05, filed 3/3/05, effective 4/3/05)

**WAC 284-43-925 General contents of all filings.** Each filing required by WAC 284-43-920 must be submitted with the filing transmittal form prescribed by and available from the commissioner. The form must include the name of the filing entity, its address, identification number, the type of filing being submitted, the form name or group name and number, and other relevant information. Filings also must include the information required on the filing summary set forth in WAC 284-43-945 for individual and small group plans and rate schedules or as set forth in WAC 284-43-950 for group plans and rate schedules other than those for small groups.

AMENDATORY SECTION (Amending Matter No. R 2004-05, filed 3/3/05, effective 4/3/05)

**WAC 284-43-930 Contents of individual and small group filings.** Under RCW 48.44.022 and 48.46.064 the experience of all individual plans must be pooled. Under RCW 48.44.023 and 48.46.066 the experience of all small

group plans must be pooled. Filings for individual plans must include each individual plan rate schedule. Filings for small group plans must include base rates and annual base rate changes in dollar and percentage amounts for each small group plan. Each individual and small group filing must include the following information and documents:

(1) An actuarially sound estimate of incurred claims. Experience data, assumptions, and justifications of the carrier's projected incurred claims must be provided in a manner consistent with the carrier's rate-making methodology and incorporate the following elements:

(a) A brief description of the carrier's rate-making methodology, including identification of the data used and the kinds of assumptions and projections made.

(b) The number of subscribers by family size, or covered persons for the plans included in the filing. These figures must be shown for each month or quarter of the experience period and the prior two periods if not included in previous filings. This data must be presented in aggregate for the plans included in the filing and in aggregate for all of the carrier's plans.

(c) Earned premium for each month or quarter of the experience period and the prior two periods if not included in previous filings, for the plans included in the filing.

(d) An estimate of the adjusted earned premium for each month or quarter of the experience period and prior two periods for the plans included in the filing.

(e) Claims data for each month or quarter of the experience period and the prior two periods. Examples of claims data are incurred claims, capitation payments, utilization data, unit cost data, and staffing data. The specific data elements included in the filing must be consistent with the carrier's rate-making methodology.

(f) Documentation and justification of any adjustments made to the experience data.

(g) Documentation and justification of the factors and methods used to forecast incurred claims.

(2) An actuarially sound estimate of prudently incurred expenses. Experience data, assumptions, and justifications must be provided by the carrier as follows:

(a) A breakdown of the carrier's expenses allocated or assigned to the plans included in the filing for the experience period or for the period corresponding to the most recent "annual statement";

(i) An expense breakdown at least as detailed as the annual statement schedule "Underwriting and Investment Exhibit, Part 3, Analysis of Expenses" as revised from time to time;

(ii) The allocation and assignment methodology used in (a)(i) of this subsection may be based on readily available data and easily applied calculations;

(b) Identification of any extraordinary experience period expenses; and

(c) Documentation and justification of the assignment or allocation of expenses to the plans included in the filing; and

(d) Documentation and justification of forecasted changes in expenses.

(3) An actuarially sound provision for contribution to surplus, contingency charges, or risk charges. Assumptions and justifications must be provided by the carrier as follows:

(a) The methodology, justification, and calculations used to determine the contribution to surplus, contingency charges, or risk charges included in the proposed base rates; and

(b) The carrier's net worth or reserves and unassigned surplus at the beginning and end of the experience period.

(4) An actuarially sound estimate of forecasted investment earnings on assets related to claim reserves or other similar liabilities. The carrier must include documentation and justification of forecasted investment earnings identified in dollars, and as a percentage of total premiums and the amount credited to the plans included in the filing.

(5) Adjustment of the base rate. Experience data, assumptions, justifications, and methodology descriptions must be provided and must include:

(a) Justifications for adjustments to the base rate, supported by data if appropriate, attributable to geographic region, age, family size, tenure discounts, and wellness activities;

(b) Justifications, supported by data if appropriate, of any other factors or circumstances used to adjust the base rates; and

(c) Description of the methodology used to adjust the base rate to obtain the premium rate for a specific individual or group, which is detailed enough to allow the commissioner to replicate the calculation of premium rates if given the necessary data.

(6) Actuarial certification. Certification by an actuary, as required by RCW 48.44.017(2), 48.44.023(3), 48.46.062(2) and 48.46.066(3).

(7) The requirements of subsections (1) through (6) of this section may be waived or modified upon the finding by the commissioner that a plan contains or involves unique provisions or circumstances and that the requirements represent an extraordinary administrative burden on the carrier.

**AMENDATORY SECTION** (Amending Matter No. R 2004-05, filed 3/3/05, effective 4/3/05)

**WAC 284-43-945 Summary for individual and small group contract filings.**

**INDIVIDUAL AND SMALL GROUP FILING SUMMARY**

Carrier Name _____
Address _____
_____
Carrier Identification Number _____

Rate Renewal Period: From _____ To _____
Date Submitted: _____

**Proposed Rate Summary**

Current community rate _____	per month
Proposed community rate _____	per month
Percentage change _____	%

Portion of carrier's total enrollment affected _____	%
Portion of carrier's total premium revenue affected _____	%

**Components of Proposed Community Rate**

	Dollars Per Month	% of Total
a) Claims		
b) Expenses		
c) Contribution to surplus, contingency charges, or risk charges		
d) Investment earnings		
e) Total (a + b + c - d)		

**Summary of Pooled Experience**

	Experience Period From To	First Prior Period From To	Second Prior Period From To
Member Months			
Earned Premium			
Paid Claims			
Beginning Claim Reserve			
Ending Claim Reserve			
Incurred Claims			
Expenses			
Gain/Loss			
Loss Ratio Percentage			

**General Information**

1. Trend Factor Summary

Type of Service	Annual Trend Assumed	Portion of Claim Dollars
Hospital	%	%
Professional	%	%
Prescription Drugs	%	%
Dental	%	%
Other	%	%

2. List the effective date and the rate of increase for all rate changes in the past three rate periods.

1) \_\_\_\_\_ 2) \_\_\_\_\_ 3) \_\_\_\_\_  
 Date % Date % Date %

3. Since the previous filing, have any changes been made to the factors or methodology for adjusting base rates?

Geographic Area	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Family Size	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Age	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Wellness Activities	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other (specify)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

4. Attach a table showing the base rate for each plan affected by this filing.

5. Attach comments or additional information.

6. Preparer's Information

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_

**WSR 08-15-159**  
**PROPOSED RULES**  
**EMPLOYMENT SECURITY DEPARTMENT**

[Filed July 23, 2008, 8:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-064.

**Title of Rule and Other Identifying Information:** This filing adopts new rules and amends existing rules in chapters 192-220 and 192-230 WAC. The rules pertain to the collection of overpaid unemployment benefits and list the criteria that will be used by the department to determine whether an overpayment should be waived in the interests of equity and good conscience, or the debt be settled for less than the full amount owed.

**Hearing Location(s):** Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on September 10, 2008, at 10:00 a.m.

**Date of Intended Adoption:** September 15, 2008.

**Submit Written Comments to:** Pamela Ames, ESD Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by September 9, 2008.

**Assistance for Persons with Disabilities:** Contact Beverly Peterson by September 9, 2008, TTY (360) 902-9569 or (360) 902-9234.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** This filing amends existing rules, and adopts new rules in chapter 192-220 WAC, Overpayment notice, assessment and fraud, and chapter 192-230 WAC, Recovery of benefit overpayments. The rules describe the process by which an individual can request that overpaid unemployment benefits be waived, or negotiate to settle the debt for less than the full amount. The rules define the term "equity and good conscience" and list the criteria the department will use to determine whether a waiver or settlement should be granted for reasons of equity and good conscience. Existing rules are revised to clarify provisions related to the recovery of unemployment benefit overpayments.

**Reasons Supporting Proposal:** The court of appeals issued a published opinion holding that the department's definition of the term "equity and good conscience" was narrower than intended by the statute. The court instructed the department to use the standard of "fairness" when deciding if an overpayment should be waived or a settlement accepted. The proposed rules are intended to comply with the court's ruling.

**Statutory Authority for Adoption:** RCW 50.12.010, 50.12.040, and 50.20.010.

**Statute Being Implemented:** RCW 50.20.190 and 50.24.020.

Rule is necessary because of state court decision, *Delagrave v. ESD*, 127 Wn. App. 596.

**Name of Proponent:** Employment security department, governmental.

**Name of Agency Personnel Responsible for Drafting:** Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; **Implementation and Enforcement:** Nan Thomas, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Any impact created by the rules affects all businesses, not just small businesses. If the overpayment is the result of a job separation that is not attributable to the employer, a tax-paying employer is not charged for benefits paid to the individual. These rules will not affect the employer's eligibility for relief of benefit charges. In addition, since the department receives approximately eighty to ninety requests for waiver each month, half of which are denied, the overall financial implications of these rules is expected to be minimal.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

Paul Trause  
Deputy Commissioner  
for Karen T. Lee  
Commissioner

**AMENDATORY SECTION** (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-220-010 (~~Overpayments—Notification to individual~~) Will I be notified about a potential overpayment?**

(1) If a potential overpayment exists, the department will provide you with a ~~(n)~~ written overpayment advice of rights ~~(, in writing,)~~ explaining the following:

- (a) The reasons you may have been overpaid;
  - (b) The amount of the possible overpayment as of the date the notice is mailed;
  - (c) The fact that the department will collect overpayments as provided in WAC 192-230-100;
  - (d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;
  - (e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, possible sale of real and personal properties, and garnishment of salaries ~~(, and possible sale of real and personal properties);~~
  - (f) An explanation that if you are not at fault, you may request a waiver of the overpayment ~~((Waiver means the overpayment does not have to be repaid));~~ and
  - (g) A statement that you have 10 days to submit information about the possible overpayment and whether you are at fault. ~~((Failure to do so means))~~ If you do not provide the information within 10 days, the department will make a decision based on available information about the overpayment and your eligibility for waiver.
- (2) Any amounts deducted from your benefit payments for federal income taxes or child support are considered paid to you and will be included in the overpayment.

**NEW SECTION**

**WAC 192-220-017 Am I required to repay the overpayment?** (1) You must repay the full amount of the over-

payment, even if you are not at fault, unless you are granted a waiver. (See also WAC 192-230-110.) A waiver means you do not have to repay the overpayment.

(2) Except as provided in subsection (3), you are potentially eligible for a waiver of an overpayment when it would be against equity and good conscience for the department to require you to repay the full amount.

(3) You are not eligible for a waiver when:

- (a) You are at fault for the overpayment;
- (b) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));
- (c) The overpayment is the result of a conditional payment of benefits;
- (d) The overpayment decision was issued by a state other than Washington; or
- (e) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-220-020 (~~Overpayments—Fault provisions~~) When does the department consider me at fault for an overpayment?**

(1) ~~((When an overpayment occurs, t))~~ The department will ~~((make a finding of))~~ decide if you are at fault ~~((or nonfault))~~ for an overpayment based on information provided by you and your employer and from information contained in the department's records. ~~((After reviewing all such information, y))~~ You will be considered ~~((to be))~~ at fault ~~((when the overpayment is))~~:

(a) When the overpayment is ~~((F))~~ the result of fraud, misrepresentation, or willful nondisclosure; or

(b) ~~((The result of a discharge for a felony or gross misdemeanor under RCW 50.20.065;~~

(c) ~~The result of a discharge for gross misconduct under RCW 50.04.294; or~~

(d) ~~((Based on the presence of))~~ When all of the following three elements are present:

(i) You were paid benefits in an amount greater than you were entitled to receive and you ~~((accepted and retained))~~ kept those benefits; and

(ii) ~~((The payment of these benefits was based on))~~ You provided incorrect information, ~~((or a failure to furnish))~~ did not disclose information which you should have provided, ~~((as outlined in the information for claimants booklet, claimant directives and other reasonable written communications issued by the department;))~~ or ~~((information which))~~ you caused another person to fail to disclose information; and

(iii) You had notice that the information should have been reported including, but not limited to, written communications from the department such as the unemployment claims kit and directives.

(2) You may be considered at fault, even though you provided the department with all relevant information before ~~((the benefit eligibility))~~ a decision was issued, ~~((if the overpayment is the result of payment that))~~ when you should reasonably have known the payment was improper. The following are some, but not all, examples where you should reasonably have known that a payment was improper ~~((and as a~~

~~result are at fault))~~. These are ~~((intended as))~~ examples only and do not mean that the department would rule in this manner in every such situation.

(a) You correctly reported earnings but the department paid benefits at the full amount or incorrectly deducted the earnings.

(b) You reported that you were unavailable for one or more customary work days, but the department paid at the full amount and the payment was not a conditional payment.

(c) You received a retroactive pension payment that you had applied for and were reasonably sure would be awarded.

(d) You did not inform the department that you were eligible for benefits on an unexpired claim against another state.

(e) A lower level decision was reversed by the office of administrative hearings, the commissioner, or a court because of new information that you did not disclose to the department.

(f) Other circumstances in which the department ~~((fact))~~ finds ~~((ing indicates that))~~ you knew the payment was improper.

(3) In deciding ~~((whether or not))~~ if you are at fault, the department will also consider your education, mental abilities, emotional state, ~~((your))~~ experience with claiming unemployment benefits, and other ~~((elements of your))~~ personal ~~((situation))~~ factors which affect your ~~((knowledge and))~~ ability to ~~((comply with))~~ report ~~((ing))~~ all relevant information to the department. This includes any written information ~~((contained in the information for claimants booklet, claimant directives and other reasonable written communications issued))~~ provided to you by the department.

(4) You ~~((will be considered to be without))~~ are not at fault when you provided the department with all relevant information before ~~((the benefit eligibility))~~ a decision ~~((is))~~ was issued and ~~((the overpayment is the result of payment that))~~ you would not reasonably have known the payment was improper. The following are some, but not all, examples of instances in which you may not reasonably have known that a payment was improper ~~((and as a result are not at fault))~~. These are ~~((intended as))~~ examples only and do not mean that the department would rule in this manner in every such situation.

(a) The department ~~((erroneously))~~ removed a payment stop in error, resulting in improper payment.

(b) You received a retroactive pension which was backdated by the pension source, not at your request.

(c) A combined wage or federal claim was filed against Washington that should have been filed against another state.

(d) Extended benefits were paid by the department when you would have been eligible for a new claim against Washington or another state.

(e) A lower level decision, in which you had provided all information, was reversed by the office of administrative hearings, the commissioner, or a court.

(f) Other circumstances in which the department ~~((fact))~~ finds ~~((ing indicates))~~ you did not know the payment was improper.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-220-030 (~~Overpayments—E~~) What does equity and good conscience mean? (~~provisions~~)** (1) ~~((The department will not consider or grant waiver of an overpayment and will not consider or accept an offer in compromise of an overpayment that is:~~

~~(a) Based on an overpayment decision written by a state other than Washington;~~

~~(b) The result of a conditional payment as provided in WAC 192-23-900; or~~

~~(c) For claims with an effective date of January 4, 2004, and later, the result of being discharged for misconduct or gross misconduct as provided in RCW 50.20.066(5).) "Equity and good conscience" means fairness as applied to a given set of circumstances.~~

~~(2) ((Except as provided in subsection (1), the department will grant waiver of an overpayment when it is found that you were without fault in the overpayment and when it is determined that to require repayment would be against equity and good conscience.) It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive you of income required ((for necessary living expenses)) to provide for basic necessities including food, shelter, medicine, utilities, and related expenses. ~~((~~⊕~~))~~Unless there are unusual circumstances which would argue against waiver((-), the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days.~~

~~(3) ((You will be required to provide financial information to the department to determine if the overpayment will be waived. Your failure to provide such information within 10 days from the request date will result in the department making a decision, based on available information, regarding your eligibility for waiver. The department may verify any financial information you provide. Any amount waived based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.~~

~~(4) The financial information requested includes:~~

~~(a) Your income and, to the extent available to you, other financially contributing members of the household for the previous month, the current month and the month following the date the financial information is requested.~~

~~(b) Your current and readily available liquid assets. Liquid assets may include, but are not limited to, checking and savings account balances, stocks, bonds and cash on hand.~~

~~(c) Your expenses for the previous month, the current month and the month following the date the financial information is requested.~~

~~(5) If your average monthly expenses equal or exceed your average monthly income and there are no substantial liquid assets available, waiver of the overpayment will be considered. The presence of unusual circumstances may justify waiver on other than a financial basis when not to waive would be unconscionable.~~

~~(6) When you have been denied waiver or waiver was not considered, you may enter into a payment agreement with the department.~~

~~(7) Except as provided in subsection (1), when you have been denied waiver or have been unable to reach a payment agreement with the department you may make an offer in compromise as provided in RCW 50.24.020. The basis for allowing or denying an offer in compromise will be the same criteria used by the department for allowing or denying waiver of an overpayment. Any overpayment amount compromised based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.) The department may also consider, but is not limited to, the following factors in determining whether waiver should be granted for reasons of equity and good conscience:~~

~~(a) Your general health, including disability, competency, and mental or physical impairment;~~

~~(b) Your education level, including literacy;~~

~~(c) Whether you are currently employed and your history of unemployment;~~

~~(d) Your future earnings potential based on your occupation, skills, and the local labor market;~~

~~(e) Your marital status and number of dependents, including whether other household members are employed;~~

~~(f) Whether an error by department staff contributed to the overpayment;~~

~~(g) Whether the employer contributed to the overpayment by providing inaccurate information or failing to respond to the department's request for information within a reasonable period of time;~~

~~(h) Whether you refused or were ineligible for other government benefits because you received unemployment benefits; and~~

~~(i) Other factors indicating that repayment of the full amount would cause you undue economic, physical, or mental hardship.~~

~~(4) The decision to grant or deny waiver will be based on the totality of circumstances rather than the presence of a single factor listed in subsection (3).~~

#### NEW SECTION

##### **WAC 192-220-080 How do I obtain a waiver? (1)**

When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the 10 day response deadline indicated in the notice. If you do not provide the information within 10 days, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-230-100** ~~((Recovery of benefit overpayment—By repayment or offset against past or future benefits.))~~ What amount will be offset from my benefits to repay the overpayment? (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC ~~((492-28-130))~~ 192-230-030, the principle amount will be deducted from benefits payable for any week(s) you claim. Interest, penalties, surcharges, and court costs will not be deducted from benefit payments; they must be repaid.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim cancelled, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. The department will ensure you are informed of the advantages and/or disadvantages of cancelling an existing claim to file a new claim.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed a portion of two or more payments as provided in WAC ~~((492-28-130))~~ 192-230-030. If you have missed a portion of two or more payments, the overpayment will be offset as described in (a) and (b) below:

(a) If the overpayment was caused by a denial for fraud, misrepresentation, or willful nondisclosure as provided in RCW 50.20.070, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim. Note that the fifty percent deduction is based on your total weekly benefit amount, before deductions for such items as pensions, child support, income taxes.

(4) If the overpayment has been assessed by another state, the amount deducted will be as follows:

(a) For overpayments caused by a denial for fraud, misrepresentation, or willful nondisclosure, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

~~((5) If you have been denied waiver, or if waiver was not considered, you will be notified in writing of your right to enter into a payment agreement with the department or to make an offer in compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.065 or 50.20.070 unless there are unusual circumstances which would justify a compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.066.))~~

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

#### NEW SECTION

**WAC 192-230-110** May I negotiate with the department to repay less than the full amount?—RCW 50.24-020. (1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) Except as provided in subsection (3), a negotiated settlement of the overpayment for less than the full amount owed will be considered under subsection (2)(a). Settlement offers may also be made by authorized department staff.

(a) The department will consider a settlement offer when it would be against equity and good conscience to require you to repay the full amount. The department may consider, but is not limited to, the following factors in making this decision:

- (i) Your general health, including disability, competency, and mental or physical impairment;
- (ii) Your education level, including literacy;
- (iii) Whether you are currently employed and your history of unemployment;
- (iv) Your future earnings potential based on your occupation, skills, and the local labor market;
- (v) Your marital status and number of dependents, including whether other household members are employed; and

(vi) Other factors indicating that collection of the full amount would cause you undue economic, physical, or mental hardship and you are unable to provide for basic necessities as described in WAC 192-220-030(2).

(b) In considering settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the overpayment. In doing so, the department may consider such factors as the age and amount of the over-

payment, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(c) If you previously applied for a waiver and were denied and your circumstances have significantly changed, such as catastrophic illness or loss of income, you may ask to negotiate a settlement for less than the full amount of the overpayment.

(3) A negotiated settlement for less than the full amount owed will not be considered when:

(a) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));

(b) The overpayment decision was issued by a state other than Washington; or

(c) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(4) The department's decision to accept or reject a settlement offer is final. However, if the settlement offer is rejected, you are permitted to make another offer at a later date if circumstances change.

#### NEW SECTION

**WAC 192-230-120 Will a settlement offer be accepted if my overpayment is the result of fraud, misrepresentation, or willful nondisclosure?** Except in unusual circumstances, a settlement offer will not be accepted when your overpayment is the result of fraud, misrepresentation, or willful nondisclosure. Unusual circumstances that may warrant a negotiated settlement of the overpayment and associated penalties include, but are not limited to, long-term or terminal illness, severe permanent disability, or other circumstances that seriously impair your long-term ability to generate income.

#### NEW SECTION

**WAC 192-230-130 How do I make a settlement offer?** You may contact the department's collection unit in writing or by telephone and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

**WSR 08-15-161**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed July 23, 2008, 9:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-067 on July 17, 2007.

**Title of Rule and Other Identifying Information:** This rule making is in response to chapter 27, Laws of 2007 (ESHB 2171) requiring the department of labor and industries to have rules relating to certification of crane inspectors and cranes. The legislature intends to promote the safe condition and operation of cranes used in construction work by establishing certification requirements for construction cranes. The legislature intends that standards for safety of construction cranes and for certification of personnel operating cranes in construction work be established.

#### **NEW SECTIONS:**

#### **WAC 296-155-529 Crane certifier accreditation and crane certification.**

- This section is only a title. No requirements are located in this section.

#### **WAC 296-155-52900 Scope.**

- Add language to this section relating to what this part covers. This section also includes specific exemptions to the proposed rule.

#### **WAC 296-155-52902 Definitions.**

- This section contains applicable definitions relating to cranes. They are: Accredited crane certifier, apprentice operator or trainee, articulating boom crane, audible signal, bogie, boom (equipment other than tower crane), boom (tower cranes), boom angle indicator, boom hoist limiting device, boom length indicator, boom stop, boom suspension systems, certified crane inspector, climbing, counterjib (counterweight jib), counterweight, crane, crane/derrick type, crane operator, crawler crane, critical lift, crossover points, dedicated pile-driver, derrick, directly under the load, dismantling, drum rotation indicator, electrical contact, equipment, equipment criteria, fall protection equipment, flange points, floating cranes/derricks, free rated load test, hoist, hoisting, jib, land crane/derrick, load, load moment (or rated capacity) indicator, load moment (or rated capacity) limiter, locomotive crane, load sustaining/bearing parts, luffing boom, luffing jib limiting device, mobile cranes, multiple lift rigging, nationally recognized accrediting agency, nonstandard tower crane base, occasional or routine maintenance and repair work, operational aid, operational controls, operator, overhead and gantry cranes, pendants, powerhouse, power lines, qualified crane operator, qualified person, rated capacity, rated capacity indicator, rated capacity limiter, RPE, RPSE, running wire rope, safety devices, safety or health standard, taglines, tower crane, travel bogie (tower cranes), two blocking.

#### **WAC 296-155-531 Crane certifier accreditation process.**

- This section is only a title. No requirements are located in this section.

#### **WAC 296-155-53100 Accreditation of certifiers of cranes and derricks—Requirements.**

- This section requires that any person engaging in the testing, examination or inspection for the certification of a crane, used in lifting at a construction site must

apply for and obtain a certificate of accreditation from the department.

- This section requires that any person authorized by the department to certify maritime cranes prior to the effective date of this rule may continue to perform services under this regulation until January 1, 2012.
- This section requires that crane certifiers accredited by any other state or governmental entity may be authorized to inspect cranes in Washington state provided the certifier submits an application and resume along with the certificate of accreditation from that state or governmental entity, and the types of cranes they are authorized to inspect.
- This section requires that no person that has modified, altered, or repaired a crane which affected a load sustaining member of the crane may conduct the certifying inspection and proof load testing of that particular crane within the same certification period.

**WAC 296-155-53102 Accreditation—Application form and applicant qualifications.**

- This section requires a person to submit an application to the department along with successfully completing a written examination in order to become accredited to certify cranes.
- This section requires that an applicant must meet specific criteria in order to be accredited.
- This section requires that all applicants must demonstrate at least five years of crane related experience, of which two years must be actual crane inspection activities.

**WAC 296-155-53104 Issuance of accreditation.**

- This section requires that the department may impose restrictions on the scope and use of the accreditation, such as limiting it to specific types of cranes based on the qualifications of the applicant.
- This section requires that the department must deny issuance of an accreditation if the applicant does not satisfy the requirements of this proposed rule.

**WAC 296-155-53106 Accreditation application—Processing time.**

- This section requires that within forty-five calendar days of receipt of a completed application for an accreditation the department must inform the applicant in writing that it is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application and will inform the applicant if the applicant is eligible to take the written examination.
- This section requires that within seventy-five calendar days from the date of completion of the written examinations the department must inform the applicant in writing of its decision regarding the issuance of the certificate of accreditation.

**WAC 296-155-53108 Duration and renewal of an accreditation.**

- This section requires that the accreditation will be valid for three years. Also, that crane certifiers must com-

plete forty hours of crane related training every three years.

- This section requires that the application for renewal must be filed with the department not less than sixty days prior to expiration of the accredited crane certifier's certification.
- This section requires that an applicant is considered active if he/she has certified at least twenty-one cranes during their accreditation period.
- This section requires that at a minimum, all applicants for renewal must successfully complete the written examinations every six years.

**WAC 296-155-53110 Revocation or suspension of an accreditation.**

- This section requires that the department may suspend or revoke a certificate of accreditation if criteria listed in this section have been identified.
- This section requires that before any certificate can be suspended or revoked, the certificate holder must be given written notice of the department's intention. The notice must specify the reasons for the department action and must give the certificate holder the opportunity to attend a hearing before the department.
- This section requires that a hearing will be held at the department's headquarters office or at such other location as may be designated by the assistant director and must be presided over an authorized representative of the assistant director.
- This section requires that a final suspension or revocation decision may be appealed to the superior court for the state of Washington in either the county in which the certificate holder resides or in Thurston County within thirty days after the suspension or revocation order is entered.
- This section requires that the filing of an appeal must not stay the suspension or revocation, and such action must remain in effect until such time as the applicant presents proof that the specified written conditions required by the department are met or until otherwise ordered after resolution of the appeal.

**WAC 296-155-53112 Monitoring of accredited crane certifiers.**

- This section requires that the department must monitor accredited crane certifiers to ensure that these certifiers certify cranes in accordance with all applicable Washington state laws and regulations.

**WAC 296-155-53114 Issuance of temporary and annual certificates of operation.**

- This section requires that accredited crane certifiers must issue a temporary certificate of operation if upon inspection and load proof testing no deficiencies were found that would affect the safe operation of the crane.
- This section requires that the accredited crane certifier must submit inspection worksheets and proof of load testing to the department within ten working days from the completion of the inspection and proof load test.
- This section requires that the accredited crane certifier must notify the department within five working days if

upon inspection the certifier identifies deficiencies that would affect the safe operation or load handling capabilities of the crane.

- This section requires that after the accredited crane certifier has verified that all deficiencies have been corrected and the crane has successfully passed a proof load test the accredited crane certifier will issue a temporary certificate of operation.
- This section requires that the accredited crane certifier must attach an identification sticker to each crane and crane component whether or not currently installed but that has been inspected and approved for use.
- This section requires that the accredited crane certifier must maintain complete and accurate records pertaining to each crane of all inspections, tests and other work performed as well as copies of all notices of crane safety deficiencies, verifications of correction of crane safety deficiencies, and crane certifications issued for the previous five years and provide these records to the department upon request.

**WAC 296-155-532 Crane certification requirements for cranes.**

- This section is only a title. No requirements are located in this section.

**WAC 296-155-53200 General inspection criteria, wire rope inspection and removal criteria, and pre-proof load test requirements for all cranes.**

- This section contains requirements relating to general inspection criteria, wire rope inspection and removal criteria, and pre-proof load testing for all cranes.

**WAC 296-155-53202 Additional inspection criteria and proof load testing—Mobile cranes.**

- This section contains additional requirements for inspection criteria and proof load testing for mobile cranes.

**WAC 296-155-53204 Additional inspection criteria and proof load testing—Articulating boom cranes.**

- This section contains additional requirements for inspection criteria and proof load testing for articulating cranes.

**WAC 296-155-53206 Additional inspection criteria and proof load testing—Tower cranes.**

- This section contains additional requirements for inspection criteria and proof load testing for tower cranes.

**WAC 296-155-53208 Additional inspection criteria and proof load testing—Self-erecting tower cranes.**

- This section contains additional requirements for inspection criteria and proof load testing for self-erecting tower cranes.

**WAC 296-155-53210 Additional inspection criteria and proof load testing—Overhead and bridge cranes.**

- This section contains additional requirements for inspection criteria and proof load testing for overhead and bridge cranes.

**WAC 296-155-53212 Additional inspection criteria and proof load testing—Derricks.**

- This section contains additional requirements for inspection criteria and proof load testing for derricks.

**WAC 296-155-53214 Crane decertification and reinstatement.**

- This section requires that if any of the following occurs the crane certification becomes invalid:
  - Contact with an energized power line.
  - Any overload, other than proof load testing, or one that has been approved in writing in advance by the crane manufacturer or registered professional engineer.
  - Any significant modification or significant repairs of a load sustaining/bearing part.
- This section requires that the owner or lessee must notify the crane certification section within twenty-four [hours] if any of the above occurs.
- This section requires that the certification can be reinstated only after affected components have been reinspected by an accredited crane certifier.

**WAC 296-155-533 Crane operator qualifications and certification.**

- This section is only a title. No requirements are located in this section.

**WAC 296-155-53300 Operator qualifications and certification.**

- This section contains requirements that the employer must ensure that prior to operating any crane covered under this chapter, the crane operator must meet the following criteria:
  - Have a valid crane operator certificate, for the type of crane to be operated, issued by a crane operator testing organization accredited by a nationally recognized accrediting agency.
  - Have crane hours of experience as indicated in this rule.
  - Has passed a substance abuse test conducted by a recognized laboratory.
- This section contains requirements relating to a prequalification/certification training period.
- This section requires that employer must obtain documentation showing hours of crane operator experience and crane related experience separated out by crane type and capacity.
- This section requires that the employer can accept a declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience. Hours documented prior to 2010 will count towards the hour requirements of actual crane operating experience and crane related experience.
- This section requires that beginning January 1, 2010, crane operator experience and crane related experience must be documented and separated out by crane type and capacity.

Hearing Location(s): At the Yakima Clarion Hotel, 1507 North First Street, Yakima, WA, on August 26, 2008, at

10:00 a.m.; at the Doubletree Hotel, 322 North Spokane Falls Court, Spokane, WA, on August 27, 2008, at 10:00 a.m.; at the Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA, on September 3, 2008, at 10:00 a.m.; at the Doubletree Hotel Seattle Airport, 18740 International Boulevard, Seattle, WA, on September 4, 2008, at 10:00 a.m.; and at the Tumwater Comfort Inn, 1620 74th Avenue S.W., Tumwater, WA, on September 5, 2008, at 10:00 a.m.

Date of Intended Adoption: November 4, 2008.

Submit Written Comments to: Cindy Ireland, Safety and Health Specialist, P.O. Box 44620, Olympia, WA 98504-4620, e-mail mooc235@lni.wa.gov, phone (360) 902-5522, fax (360) 902-5619, by 5:00 p.m., September 12, 2008.

In addition to written comments, the department will accept comments submitted to fax (360) 902-5619. Comments submitted by fax must be ten pages or less.

Assistance for Persons with Disabilities: Contact Beverly Clark by August 12, 2008, (360) 902-5516 or clah@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will require that all construction cranes in the state of Washington to be certified by an accredited crane certifier. The certifier will be required to apply for and obtain a certificate of accreditation from the department pursuant to this proposal. See Title of Rule above.

This proposal will require that crane operators must have up to two thousand hours of documented experience in order to operate a crane without the supervision of a qualified operator. See Title of Rule above.

Reasons Supporting Proposal: Construction cranes are not currently regulated in this state. In November 2006, a tower crane collapsed and killed an individual in Bellevue, Washington. Damage ranged in the hundreds of thousands of dollars. In the aftermath of this event, structural problems were found and corrected in other cranes. Cranes are hundreds of tons of equipment in the air under direct control of one person. If heavy equipment is appropriately put together, inspected, maintained, and used, it is safe. Construction is growing in this state and it is important for public health, safety and welfare that this proposal is adopted. See Title of Rule above.

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

Statute Being Implemented: Chapter 49.17 RCW, RCW 49.17.400, 49.17.410, 49.17.420, 49.17.430, and 49.17.440.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

### Small Business Economic Impact Statement

The small business economic impact statement (SBEIS) analysis evaluates the provisions of the proposed rule over which L&I had discretion, specifically operator certification hours, inspector certification, and annual crane certification. L&I has attempted to quantify the costs and benefits of the proposed rule changes based on anticipated compliance requirements of the proposed rule and without the proposed rule. The analysis uses existing rules and laws as the baseline for the analysis.

Ultimately, L&I assessed costs associated only with crane inspector certification requirements (requirement to have five years experience: Two years actual inspection experience and three years related experience; successfully passing a written examination; forty hours of continuing education every three years; maintaining active status by conducting twenty-one crane inspections every three years; reapplying every three years; retaking certification exams every six years) and crane recertification requirements following contact with an energized power line (requirement to have crane reinspected and recertified following contact with an energized power line). L&I did not analyze costs associated with crane operator hour requirements due to the fact that the legislation (RCW 49.17.430 (2)(b)) requires crane operators to have up to two thousand hours of experience. If L&I chose not to enact rules setting forth specific hour requirements for crane operators, crane operators could be required to obtain two thousand hours of experience.

Costs were estimated using a worst-case scenario:

Accreditation: The largest 10% of construction firms are very large, averaging over three thousand employees. They have costs of \$3 per employee for employment of their accredited crane certifiers. The small firms seem to specialize and have costs of over \$800 per employee for employment of their accredited crane certifiers.

Power Line Strike: In the unlikely event that a large company hits a power line once every ten years, the cost is only \$0.08 per employee where for a small firm it would be \$17 to \$26 per employee.

These costs were used to estimate the cost per employee. When you compare the cost per employee for small and large companies, it is clear that the cost per employee is two orders of magnitude higher for the small and, therefore, the proposed rule has a disproportionate impact on small business. The ratio of costs to employment for large and small firms indicates that the impact of both benefits and costs of the proposed rule is disproportionate. Therefore, cost minimizing features are required.

The law requires L&I to reduce the cost for small business if it is legal and feasible to do so. L&I has taken several actions to reduce the impact of the proposed rule on small businesses, as follows:

- Reduction in training hours required for operators from two thousand hours set forth in RCW 49.17.430 (2)(b) and allowable practices under the proposed rule, which reduces this requirement depending on the type of crane and the crane capacity.

- Reduction in proposed experience requirement for crane certifiers (WAC 296-155-53102(2), requiring five years experience) from initial proposals to require between five - ten years experience.
- Reduction in the number of examinations crane certifier applicants will need to take (WAC 296-155-53102(4), requiring a minimum of two exams and a maximum of six exams) from initial proposals to require applicants to take all six examinations.
- Lengthening the time between crane certifier reapplication periods (WAC 296-155-53108(3), requiring certifiers to reapply every three years) from initial proposals that certifiers reapply more frequently.
- Lengthening the time between which crane certifiers must retake certification examinations (WAC 296-155-53108(3), requiring certifiers retake exams every six years) from initial proposals that certifiers retake the exams more frequently.
- Reducing the amount of continuing education training crane certifiers must take during certification period (WAC 296-155-53108, requiring forty hours every three years) from higher amounts initially proposed.
- Reducing the number of inspections crane certifiers must conduct during certification period (WAC 296-155-53108(2), requiring twenty-one inspections every three years) from higher amounts initially proposed.
- Allowing additional time for compliance. L&I intends to adopt this rule before the legislatively required date of January 1, 2010. This will allow employers and others time to come into compliance with the requirements of the proposed rule.
- Providing a grace period for certified maritime crane inspectors and inspectors certified by other states to ensure an adequate number of crane certifiers are available to conduct crane inspections.
- Reduced fines for small businesses. RCW 49.17-180(7) requires L&I to give consideration to the size of an employer's business when calculating penalties associated with citations.
- Crane certification validity. Limiting the bases to invalidate the crane operating certificate and require reinspection of the crane (WAC 296-155-53214 (1)(a), requiring reinspection and recertification after contact with an energized power line).

L&I anticipates that the net benefit to all employers is approximately \$0.7 million per year.

The SBEIS analysis assumes a ten-year savings of about 20% of the \$.4 million in business costs due to lives saved, a nine-year cost of ten million for accreditation and recertifying cranes, and a ten-year savings of \$18 million for reduced training costs.

The SBEIS analysis yields an annual increase of eight jobs per year from this net savings.

**Small Business Involvement in Rule Making:** During the course of this rule making, L&I held two sets of statewide stakeholder meetings to obtain input and feedback from stakeholders, including small businesses and small business associations, on the content of the rule proposal. L&I also

created a specialized stakeholder group including small business representatives and associations (such as Association of Washington Businesses, Association of General Contractors, Independent Business Association, Roofing Contractors' Association). This stakeholder group was significantly involved in the development of the proposed rules. The proposed rule language is a result of consensus from this stakeholder group and input from stakeholders across the state. Small businesses were also included in the development of the economic analyses and will be included in the public hearings that will be held around the state in August and September, 2008.

A list of affected industries is included in Section 7 and Appendix 3 of the full SBEIS report.

A copy of the statement may be obtained by contacting Cindy Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail mooc235@lni.wa.gov. You can also view this report on the department of labor and industries' web site at <http://www.lni.wa.gov/safety/topics/atoz/cranes/default.asp>.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Cindy Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail mooc235@lni.wa.gov.

The cost-benefit analysis (CBA) evaluates the provisions of the proposed rule over which L&I had discretion, specifically operator certification hours, inspector certification, and annual crane certification. L&I has attempted to quantify the costs and benefits of the proposed rule changes based on anticipated compliance requirements of the proposed rule and without the proposed rule. The analysis uses existing rules and laws as the baseline for the analysis. L&I has determined on a preliminary basis that the benefits of the proposed rule are greater than the costs and that L&I is proposing the least burdensome alternative of the rule.

**Conclusion:** The proposed rule is expected to result in approximate net benefits of \$0.7 million per year. L&I estimates the approximate annual benefit is \$1.9 million per year. L&I estimates the annual cost of the proposed rule is approximately \$1.2 million. The net for each year is approximately \$0.7 million.

Ultimately, L&I assessed costs associated only with crane inspector certification requirements (requirement to have five years experience: Two years actual inspection experience and three years related experience; successfully passing a written examination; forty hours of continuing education every three years; maintaining active status by conducting twenty-one crane inspections every three years; reapplying every three years; retaking certification exams every six years) and crane recertification requirements (requirement to have crane reinspected and recertified following contact with an energized power line) following contact with an energized power line. L&I did not analyze costs associated with crane operator hour requirements due to the fact that the legislation (RCW 49.17.430 (2)(b)) requires crane operators to have up to two thousand hours of experience. If L&I chose not to enact rules setting forth specific hour requirements for crane operators, crane operators could be required to obtain two thousand hours of experience.

**Costs:** L&I estimates the annual cost of the proposed rule ranges from \$615,000 to \$623,000. The total estimated cost for a nine-year cycle of training is \$5.5 to \$5.6 million. These costs come from:

- Training – the training and accreditation costs are evaluated as a nine-year cycle since the requirements for renewal at three and six years differ. There are approximately 45,720 crane and tower crane operators nationwide and approximately nine hundred in Washington working in this job class. The average employment per firm of operators is 28.8. In addition, small companies on average hire .6 new inexperienced operators per year and large companies hire about twenty-five new inexperienced operators each year. The average across all firms is five new inexperienced operators each year per firm. Employees will need to be trained for certifying cranes. Survey results indicate that most small companies expect to use their own operators to certify their cranes. Most of the larger owners expect to hire outside certifiers. Further, the small companies appear to specialize and dominate the mobile crane industry. Finally, the small companies appear to pay their experienced employees more than the large companies.
- Cranes will need to be recertified after contact with energized power lines.
- Wages are a large factor in estimating the costs. Based on the reported wages in the survey, operator wages range from \$20 to \$31 per hour depending on experience. Inspector wages range from \$24.40 per hour for inexperienced inspectors to \$63 for experienced inspectors.

**Benefits:** The law created the potential for benefits from reduced accidents. In writing the proposed rule, L&I has attempted to reduce some of the possible training costs implied by the two thousand hour operator experience requirement without significantly reducing the increased safety benefits. L&I estimates the benefit of reduced training costs are approximately \$19 million and the benefit of reduced mortality is \$260,000.

L&I estimates the approximate annual benefit is \$1.9 million per year.

**Least Burdensome Alternative:** L&I believes the proposed rule is the least burdensome approach, given the following alternatives considered for proposal:

- Reduction in training hours required for operators from two thousand hours set forth in RCW 49.17.-430 (2)(b) and allowable practices under the proposed rule, which reduces this requirement depending on the type of crane and the crane capacity.
- Reduction in proposed experience requirement for crane certifiers (WAC 296-155-53102(2), requiring five years experience) from initial proposals to require between five - ten years experience.
- Reduction in the number of examinations crane certifier applicants will need to take (WAC 296-155-53102(4), requiring a minimum of two exams and a maximum of six exams) from initial proposals to require applicants to take all six examinations.

- Lengthening the time between crane certifier reapplication periods (WAC 296-155-53108(3), requiring certifiers to reapply every three years) from initial proposals that certifiers reapply more frequently.
- Lengthening the time between which crane certifiers must retake certification examinations (WAC 296-155-53108(3), requiring certifiers retake exams every six years) from initial proposals that certifiers retake the exams more frequently.
- Reducing the amount of continuing education training crane certifiers must take during certification period (WAC 296-155-53108, requiring forty hours every three years) from higher amounts initially proposed.
- Reducing the number of inspections crane certifiers must conduct during certification period (WAC 296-155-53108(2), requiring twenty-one inspections every three years) from higher amounts initially proposed.
- Allowing additional time for compliance. L&I intends to adopt this rule before the legislatively required date of January 1, 2010. This will allow employers and others time to come into compliance with the requirements of the proposed rule.
- Providing a grace period for certified maritime crane inspectors and inspectors certified by other states to ensure an adequate number of crane certifiers are available to conduct crane inspections.
- Reduced fines for small businesses. RCW 49.17.-180(7) requires L&I to give consideration to the size of an employer's business when calculating penalties associated with citations.
- Crane certification validity. Limiting the bases to invalidate the crane operating certificate and require reinspection of the crane (WAC 296-155-53214 (1)(a), requiring reinspection and recertification after contact with an energized power line).

July 23, 2008

Judy Schurke

Director

#### NEW SECTION

#### **WAC 296-155-529 Crane certifier accreditation and crane certification.**

#### NEW SECTION

**WAC 296-155-52900 Scope.** (1) Except as provided in subsection (2) of this section, this part applies to power-operated cranes and derricks used in construction that can hoist, lower and horizontally move a suspended load (with or without attachments). Such equipment includes, but is not limited to: Articulating boom cranes (such as knuckle-boom cranes); crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes (such as wheel-mounted, rough-terrain, all-terrain, commercial truck-mounted, and boom truck cranes); multipurpose machines when configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load; industrial cranes (such as carry-deck

cranes); dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes (such as fixed jib ("hammerhead boom"), luffing boom and self-erecting); pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

(2) Exemptions. WAC 296-155-529 through 296-155-53214 do not apply to the following:

(a) Equipment included in subsection (1) of this section while it has been converted or adapted for nonhoisting/lifting use. Such conversions/adaptations include, but are not limited to, power shovels, excavators and concrete pumps.

(b) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, track loaders. This machinery is also excluded when used with chains, slings or other rigging to lift suspended loads.

(c) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles.

(d) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries or handling associated materials to be installed or removed from utility poles.

(e) Equipment originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms.

(f) Hydraulic jacking systems, including telescopic/hydraulic gantries.

(g) Stacker cranes.

(h) Powered industrial trucks (forklifts).

(i) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair.

(j) Equipment that hoists by using a come-a-long or chainfall.

(k) Dedicated drilling rigs.

(l) Gin poles used for the erection of communication towers.

(m) Tree trimming and tree removal work.

(n) Anchor handling with a vessel or barge using an affixed A-frame.

(o) Roustabouts.

(p) Service cranes with booms that rotate manually.

(q) Machines equipped with a boom that is limited to up and down movement only and does not rotate.

(r) Cranes used on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work; and

(s) Crane operators operating cranes on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work.

(3) Where provisions of this standard direct an operator, crewmember, or other employee to take certain actions, the employer must establish, effectively communicate to the relevant persons, and enforce work rules, to ensure compliance with such provisions.

#### NEW SECTION

**WAC 296-155-52902 Definitions. Accredited crane certifier** means a crane inspector who has been accredited by the department.

**Apprentice operator or trainee** means a crane operator who has not met requirements established by the department under RCW 49.17.430.

**Articulating boom crane** means a crane whose boom consists of a series of folding, pin connected structural members, typically manipulated to extend or retract by power from hydraulic cylinders.

**Audible signal** means a signal made by a distinct sound or series of sounds. Examples include, but are not limited to, sounds made by a bell, horn, or whistle.

**Bogie.** See "travel bogie."

**Boom (equipment other than tower crane)** means an inclined spar, strut, or other long structural member which supports the upper hoisting tackle on a crane or derrick. Typically, the length and vertical angle of the boom can be varied to achieve increased height or height and reach when lifting loads. Booms can usually be grouped into general categories of hydraulically extendible, cantilevered type, latticed section, cable supported type or articulating type.

**Boom (tower cranes)** on tower cranes: If the "boom" (i.e., principal horizontal structure) is fixed, it is referred to as a jib; if it is moveable up and down, it is referred to as a boom.

**Boom angle indicator** means a device which measures the angle of the boom relative to horizontal.

**Boom hoist limiting device** includes boom hoist disengaging device, boom hoist shut-off, boom hoist disconnect, boom hoist hydraulic relief, boom hoist kick-outs, automatic boom stop device, or derricking limiter. This type of device disengages boom hoist power when the boom reaches a predetermined operating angle. It also sets brakes or closes valves to prevent the boom from lowering after power is disengaged.

**Boom length indicator** indicates the length of the permanent part of the boom (such as ruled markings on the boom) or, as in some computerized systems, the length of the boom with extensions/attachments.

**Boom stop** includes boom stops (belly straps with struts/standoff), telescoping boom stops, attachment boom stops, and backstops. These devices restrict the boom from moving above a certain maximum angle and toppling over backward.

**Boom suspension systems** means a system of pendants, running ropes, sheaves, and other hardware which supports the boom tip and controls the boom angle.

**Certified crane inspector** means a crane certifier accredited by the department.

**Climbing** means the process in which a tower crane is raised to a new working height, either by adding additional tower sections to the top of the crane (top climbing), or by a system in which the entire crane is raised inside the structure (inside climbing).

**Counterjib (counterweight jib)** means a horizontal member of the tower crane on which the counterweights and usually the hoisting machinery are mounted.

**Counterweight** means weight used to supplement the weight of equipment in providing stability for lifting loads by counterbalancing those loads.

**Crane** means power-operated equipment used in construction that can hoist, lower, and horizontally move a sus-

pended load. "Crane" includes, but is not limited to: Articulating boom cranes, such as knuckle-boom cranes; crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes, such as wheel-mounted, rough-terrain, all-terrain, commercial truck mounted, and boom truck cranes; multipurpose machines when configured to hoist and lower by means of a winch or hook and horizontally move a suspended load; industrial cranes, such as carry-deck cranes; dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes, such as fixed jib, hammerhead boom, luffing boom, and self-erecting; pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

**Crane/derrick type** means cranes or derricks as established by American Society of Mechanical Engineers (ASME). Crane operator means an individual engaged in the operation of a crane.

**Crawler crane** means equipment that has a type of base mounting which incorporates a continuous belt of sprocket driven track.

**Critical lift** means a lift that:

- Exceeds seventy-five percent of the crane or derrick rated load chart capacity; or
- Requires the use of more than one crane or derrick.

**Crossover points** means locations on a wire rope which is spooled on a drum where one layer of rope climbs up on and crosses over the previous layer. This takes place at each flange of the drum as the rope is spooled onto the drum, reaches the flange, and begins to wrap back in the opposite direction.

**Dedicated pile-driver** is a machine that is designed to function exclusively as a pile-driver. These machines typically have the ability to both hoist the material that will be pile-driven and to pile-drive that material.

**Derrick** is an apparatus consisting of a mast or equivalent member held at the end by guys or braces, with or without a boom, for use with a hoisting mechanism and operating ropes.

**Directly under the load** means a part or all of an employee is directly beneath the load.

**Dismantling** includes partial dismantling (such as dismantling to shorten a boom or substitute a different component).

**Drum rotation indicator** is a device on a crane or hoist which indicates in which direction and at what relative speed a particular hoist drum is turning.

**Electrical contact** means when a person, object, or equipment makes contact or comes close in proximity with an energized conductor or equipment that allows the passage of current.

**Equipment** means equipment covered by this part.

**Equipment criteria** means instructions, recommendations, limitations and specifications.

**Fall protection equipment** means guardrail systems, safety net systems, personal fall arrest systems, positioning device systems or fall restraint systems.

**Flange points** means a point of contact between rope and drum flange where the rope changes layers.

**Floating cranes/derricks** means equipment designed by the manufacturer (or employer) for marine use by permanent attachment to a barge, pontoons, vessel or other means of flotation.

**Free rated load test** means testing stability and operation of crane, carrier, wheels, tires, tracks, brakes, etc., under load, when lifting without outriggers and/or traveling with the load are permitted at the activity for the type of crane being tested.

**Hoist** means a mechanical device for lifting and lowering loads by winding rope onto or off a drum.

**Hoisting** means the act of raising, lowering or otherwise moving a load in the air with equipment covered by this standard. As used in this standard, "hoisting" can be done by means other than wire rope/hoist drum equipment.

**Jib** means an extension attached to the boom point to provide added boom length for lifting specified loads. The jib may be in line with the boom or offset to various angles in the vertical plane of the boom. For tower cranes, see boom (tower cranes).

**Land crane/derrick** means equipment not originally designed by the manufacturer for marine use by permanent attachment to barges, pontoons, vessels, or other means of flotation.

**Load** is the weight of the object being lifted or lowered, including the weight of the load-attaching equipment such as the load block, ropes, slings, shackles, and any other auxiliary attachment.

**Load moment (or rated capacity) indicator** means a system which aids the equipment operator by sensing the overturning moment on the equipment, i.e., load X radius. It compares this lifting condition to the equipment's rated capacity, and indicates to the operator the percentage of capacity at which the equipment is working. Lights, bells, or buzzers may be incorporated as a warning of an approaching overload condition.

**Load moment (or rated capacity) limiter** means a system which aids the equipment operator by sensing the overturning moment on the equipment, i.e., load X radius. It compares this lifting condition to the equipment's rated capacity, and when the rated capacity is reached, it shuts off power to those equipment functions which can increase the severity of loading on the equipment, e.g., hoisting, telescoping out, or luffing out. Typically, those functions which decrease the severity of loading on the equipment remain operational, e.g., lowering, telescoping in, or luffing in.

**Locomotive crane** means a crane mounted on a base or car equipped for travel on a railroad track.

**Load sustaining/bearing parts** means those parts of a crane that support the crane or load and upon failure could cause dropping, uncontrolled shifting, or uncontrolled movement of the crane or load.

**Luffing boom** is a member hinged to the rotating superstructure and used for supporting the hoisting tackle.

**Luffing jib limiting device** is similar to a boom hoist limiting device, except that it limits the movement of the luffing jib.

**Mobile cranes** means a lifting device incorporating a cable suspended latticed boom or hydraulic telescopic boom designed to be moved between operating locations by trans-

port over the road. These are referred to in Europe as a crane mounted on a truck carrier.

**Multiple lift rigging** means a rigging assembly manufactured by wire rope rigging suppliers that facilitates the attachment of up to five independent loads to the hoist rigging of a crane.

**Nationally recognized accrediting agency** is an organization that, due to its independence and expertise, is widely recognized as competent to accredit testing organizations.

**Nonstandard tower crane base** means any deviation from the structural support or base configuration recommended by the crane manufacturer.

**Occasional or routine maintenance and repair work** means regular, customary and foreseeable work necessary to keep equipment in good repair and/or condition. This also includes regular, customary and foreseeable work necessary to return equipment to sound condition after damage.

**Operational aid** means an accessory that provides information to facilitate operation of a crane or that takes control of particular functions without action of the operator when a limiting condition is sensed. Examples of such devices include, but are not limited to, the following: Anti-two-block device, rated capacity indicator, rated capacity (load) limiter, boom angle or radius indicator, lattice boom hoist disconnect device, boom length indicator, crane level indicator, drum rotation indicator, load indicator, and wind speed indicator.

**Operational controls** means levers, switches, pedals and other devices for controlling equipment operation.

**Operator** is a person who is operating the equipment.

**Overhead and gantry cranes** includes overhead/bridge cranes, semigantry, cantilever gantry, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment, irrespective of whether it travels on tracks, wheels, or other means.

**Pendants** includes both wire and bar types. Wire type: A fixed length of wire rope with mechanical fittings at both ends for pinning segments of wire rope together. Bar type: Instead of wire rope, a bar is used. Pendants are typically used in a latticed boom crane system to easily change the length of the boom suspension system without completely changing the rope on the drum when the boom length is increased or decreased.

**Powerhouse** means a plant wherein electric energy is produced by conversion from some other form of energy (e.g., chemical, nuclear, solar, mechanical, or hydraulic) by means of suitable apparatus. This includes all generating station auxiliaries and other associated equipment required for the operation of the plant. Not included are stations producing power exclusively for use with communication systems.

**Power lines** means electrical distribution and electrical transmission lines.

**Qualified crane operator** means a crane operator who meets the requirements established by the department under RCW 49.17.430.

**Qualified person** means a person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, successfully demonstrated the ability to solve/resolve problems relating to the subject matter, the work, or the project.

**Rated capacity** means the maximum working load permitted by the manufacturer under specified working conditions. Such working conditions typically include a specific combination of factors such as equipment configuration, radii, boom length, and other parameters of use.

**Rated capacity indicator**, see load moment indicator.

**Rated capacity limiter**, see load moment limiter.

**RPE** means a registered professional engineer licensed under RCW 18.43.040(1).

**RPSE** means a registered professional structural engineer licensed under RCW 18.43.040(1).

**Running wire rope** is a wire rope that moves over sheaves or drums.

**Safety devices**, examples of safety devices are, but are not limited to, the following: Crane level indicator, horn, boom/jib or trolley stops, hydraulic holding device/check valve, rail clamps, rail stops, brakes, deadman control or forced neutral return control, emergency stop switch, guards, handrails, audible and visual alarms, etc.

**Safety or health standard** means a standard adopted under this chapter.

**Taglines** means a rope (usually fiber) attached to a lifted load for purposes of controlling load spinning and pendular motions or used to stabilize a bucket or magnet during material handling operations.

**Tower crane** means a type of lifting structure which utilizes a vertical mast or tower to support a working boom (jib) suspended from the working boom. While the working boom may be fixed horizontally or have luffing capability, it can always rotate about the tower center to swing loads. The tower base may be fixed in one location or ballasted and moveable between locations.

**Travel bogie (tower cranes)** means an assembly of two or more axles arranged to permit vertical wheel displacement and equalize the loading on the wheels.

**Two blocking** means a condition in which a component that is uppermost on the hoist line such as the load block, hook block, overhaul ball, or similar component, comes in contact with the boom tip, fixed upper block or similar component. This binds the system and continued application of power can cause failure of the hoist rope or other component.

#### NEW SECTION

**WAC 296-155-531 Crane certifier accreditation process.**

#### NEW SECTION

**WAC 296-155-53100 Accreditation of crane certifiers of cranes and derricks—Requirements.** (1) Any person engaging in the testing, examination or inspection for the certification of a crane, used in lifting at a construction site, must apply for and obtain a certificate of accreditation from the department pursuant to this rule. For the purposes of this rule an "accredited crane certifier" refers to any individual holding a certificate of accreditation pursuant to this regulation.

(2) Any person authorized by the department to certify maritime cranes prior to the effective date of this rule may continue to perform services under this regulation until January 1, 2012. Any accredited crane certifier desiring to con-

tinue providing services pursuant to this rule must have applied for and obtained a certificate of accreditation under these rules from the department prior to January 1, 2012. Maritime certifiers wishing to perform construction crane certifications must notify the department that they will perform construction crane certifications. In addition, the maritime certifier must specify which cranes they are qualified to inspect under their maritime certificate. The department may issue these individuals a provisional accreditation specifying the crane types they are authorized to inspect which will be valid through December 31, 2011, or upon expiration of their maritime certification, whichever is earlier. Any provisionally accredited crane certifier desiring to continue providing services pursuant to this rule must have applied for and obtained a certificate of accreditation under these rules from the department prior to January 1, 2012.

(3) Crane certifiers accredited by any other state or governmental entity may be authorized to inspect cranes in Washington state provided the certifier submits an application and resume along with the certificate of accreditation from that state or governmental entity, and the types of cranes they are authorized to inspect. The department may issue these individuals a provisional accreditation specifying the crane types they are authorized to inspect which will be valid through December 31, 2011, or upon expiration of their out-of-state certification, whichever is earlier. Any provisionally accredited crane certifier desiring to continue providing services pursuant to this rule must have applied for and obtained a certificate of accreditation under these rules from the department prior to January 1, 2012.

(4) No person that has modified, altered, or repaired a crane which affected a load sustaining member of the crane may conduct the certifying inspection and proof load testing of that particular crane within the same certification period.

#### NEW SECTION

**WAC 296-155-53102 Accreditation—Application form and applicant qualifications.** (1) An accreditation to certify cranes pursuant to this rule may be obtained by submitting a completed application to the division of occupational safety and health (DOSH) and successfully completing written examinations developed and administered by the department or its authorized representative. Application forms may be obtained by calling the:

Crane certification section of DOSH 360-902-4943 or by written request to:

P.O. Box 44650, Olympia, WA 98504-4650

(2) An applicant seeking an accreditation must satisfy all of the following criteria:

(a) An application with an attached resume must be submitted to the department based on experience with the various crane types per the ASME B30 series. The application and resume must include knowledge, training and experience with verifiable references.

(b) All applicants must possess knowledge of chapter 296-155 WAC, Safety standards for construction work, as well as American Society of Mechanical Engineers (ASME) standards, relating to the design, testing, inspection and oper-

ation of cranes, including those specifically applicable to the types of cranes for which an accreditation will be issued.

(c) All applicants must demonstrate at least five years crane related experience, of which two years must be actual crane inspection activities. The other three years may include experience in duties such as a crane operator, crane mechanic, crane shop foreman, crane operations supervision, or rigging specialist. Related education may be substituted for related experience at a ratio of two years of education for one year of experience up to three years. Related education could include such courses in engineering, physics, applied mathematics, applied science courses in nondestructive testing, construction technology, technical courses in heavy equipment mechanic, welding technology, etc.

(3) Application form. Any application for accreditation will be accepted by the department upon the filing of a completed application. All information and attachments must be given under penalty of perjury. The application must include, but not be limited to, the following:

(a) A statement of the crane types per the ASME B30 series the applicant desires to certify pursuant to the accreditation.

(b) A statement of qualifications and experience, including their capacities, satisfying at a minimum the criteria set forth in this section as well as any and all other qualifications the applicant wishes the department to consider.

(c) Any other relevant information the applicant desires to be considered by the department.

(4) Written examinations. Applicants to be approved for accreditation must successfully complete the written examinations administered by the department or its authorized representative.

(a) Once the department receives the application and resume, the department will make the determination and notify the applicant if they meet the minimum qualifications to take the written examinations.

(b) The first written examination will include a general knowledge of operation, testing, inspection and maintenance requirements, and the duties and recordkeeping responsibilities required by this rule.

(c) The other written examinations will include safe operating and engineering principles and practices with respect to specific crane types subject to the accreditation, including inspection and proof loading requirements.

#### NEW SECTION

**WAC 296-155-53104 Issuance of accreditation.** (1) The department may impose restrictions on the scope and use of the accreditation, such as limiting it to specific types of cranes based upon the qualifications of the applicant. The accreditation issued by the department will identify any limitations imposed by the department and the types of cranes the certifier is authorized to certify.

(2) The department must deny issuance of an accreditation if the applicant does not satisfy the requirements of this rule.

NEW SECTION

**WAC 296-155-53106 Accreditation application— Processing time.** (1) Within forty-five calendar days of receipt of a completed application for an accreditation, the department must inform the applicant in writing that it is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application and will inform the applicant if the applicant is eligible to take the written examination. An application is considered complete if it is in compliance with the requirements of this rule.

(2) Within seventy-five calendar days from the date of completion of the written examinations, the department must inform the applicant in writing of its decision regarding the issuance of the certificate of accreditation.

NEW SECTION

**WAC 296-155-53108 Duration and renewal of an accreditation.** (1) The accreditation will be valid for three years. Crane certifiers must complete forty hours of crane related training every three years, in courses recognized by the department.

(2) Application for renewal must be filed with the department not less than sixty days prior to expiration of the accredited crane certifier's certification. A renewal may be obtained by filing a completed application for renewal meeting the requirements of WAC 296-155-53102 hereof providing the applicant has been actively inspecting cranes during their prior accreditation period. An applicant is considered active if he/she has certified at least twenty-one cranes during their accreditation period. If the applicant certified cranes in another state, then that applicant must provide documentation showing they were active during their accreditation period. An applicant who has not certified at least twenty-one cranes during the accreditation period may take the written exam to become recertified.

(3) At a minimum, all applicants for renewal must successfully complete the written examinations every six years.

NEW SECTION

**WAC 296-155-53110 Revocation or suspension of an accreditation.** (1) The department may suspend or revoke a certificate issued under the provisions of these rules upon the following grounds:

- (a) Permitting the duplication or use of one's own accreditation certificate by another;
- (b) Performing work for which accreditation has not been received;
- (c) Any person who obtains accreditation through fraudulent representation of accreditation requirements such as education, training, professional registration, or experience;
- (d) Any person who falsifies training documentation;
- (e) The holder of the certificate is found to be incompetent to carry out the work for which the certificate was issued;
- (f) Gross negligence, gross incompetence, a pattern of incompetence, or fraud in the certification of a crane;
- (g) Willful or deliberate disregard of any occupational safety standard while certifying a crane;

(h) Misrepresentation of a material fact in applying for, or obtaining, a license to certify under this chapter;

(i) Failure by an accredited crane certifier to maintain records;

(j) Failure by an accredited crane certifier to report crane safety deficiencies affecting the safe operation of a crane while in the process of conducting an annual certification inspection;

(k) Failure to meet or comply with the requirements of this rule or the limitations imposed on the accreditation; or

(l) Performance of work not in compliance with applicable laws and regulations.

(2) Before any certificate may be suspended or revoked, the certificate holder must be given written notice of the department's intention, mailed by certified mail, return receipt requested to the address as shown on the application form. The notice must specify the reasons for the department action and must give the certificate holder the opportunity to attend a hearing before the department. The department must also include within the notice of revocation or suspension specific conditions which must be met before the applicant will be entitled to apply for a new certification. At the suspension/revocation hearing the department must give the certificate holder the opportunity to produce witnesses and give testimony.

(3) The hearing will be held at the department's headquarters office or at such other location as may be designated by the assistant director and must be presided over by an authorized representative of the assistant director. Following the informal hearing the department will issue a final decision on suspension or revocation.

(4) A final suspension or revocation decision may be appealed to the superior court for the state of Washington in either the county in which the certificate holder resides or in Thurston County within thirty days after the suspension or revocation order is entered.

(5) The filing of an appeal must not stay the suspension or revocation, and such action must remain in effect until such time as the applicant presents proof that the specified written conditions required by the department are met or until otherwise ordered after resolution of the appeal.

NEW SECTION

**WAC 296-155-53112 Monitoring of accredited crane certifiers.** The division of occupational safety and health must monitor accredited crane certifiers to ensure that these certifiers certify cranes in accordance with all applicable Washington state laws and regulations. Monitoring activities will include, but not be limited to, audits of crane certifier's activities, complaint inspections, referrals, or accident investigations.

NEW SECTION

**WAC 296-155-53114 Issuance of temporary and annual certificates of operation.** (1) Accredited crane certifiers will issue a temporary certificate of operation if upon inspection and load proof testing no deficiencies were found that would affect the safe operation of the crane.

(2) The accredited crane certifier will submit inspection worksheets and proof of load testing to the department within ten working days from the completion of the inspection and load proof test for consideration of the department for the issuance of a permanent certificate of operation.

(3) If the accredited crane certifier upon inspection of a crane identifies deficiencies that would affect the safe operation or load handling capabilities of the crane, the accredited crane certifier must notify the department within five working days from completion of the on-site inspection by submitting the worksheet that identifies the deficiencies. If deficiencies are found that affect the safe operation or load handling capabilities of the crane, no temporary certificate of operation will be issued until all identified deficiencies have been corrected and verified by an on-site visit by an accredited crane certifier.

(4) After the accredited crane certifier has verified that all deficiencies have been corrected and the crane has successfully passed a load proof test, the accredited crane certifier will issue a temporary certificate of operation. The accredited crane certifier will submit inspection worksheets and proof of load testing to the owner or lessee and within ten days of completion of the inspection to the department for consideration of the department for the issuance of an annual certificate of operation.

(5) The accredited crane certifier must attach an identification sticker if not already attached and legible to each crane and crane component (component meaning: Luffing boom, swing-away jibs, fly sections, jibs at variable offsets and boom sections). The identification sticker number must be entered on the inspection worksheet submitted to the department. Identification stickers may only be removed by a department representative or an accredited crane certifier.

**Note:** Certified components may be installed without voiding the annual proof load test, providing the component was proof load tested within the prior four-year period.

(6) Certificates of operation issued by the department under the crane certification program established in this section are valid for one year from the effective date of the temporary operating certificate issued by the certified crane inspector.

(7) The temporary or annual certificate of operation must be posted in the operator's cab or with the operator's manual.

(8) Maintaining required records. Accredited crane certifiers are required to maintain complete and accurate records pertaining to each crane of all inspections, tests and other work performed as well as copies of all notices of crane safety deficiencies, verifications of correction of crane safety

deficiencies, and crane certifications issued for the previous five years and provide these records to the department upon request. Failure by an accredited crane certifier to maintain required records may result in accreditation suspension or revocation.

NEW SECTION

**WAC 296-155-532 Crane certification requirements for cranes.**

NEW SECTION

**WAC 296-155-53200 General inspection criteria, wire rope inspection and removal criteria, and preproof load test requirements for all cranes.** (1) The accredited crane certifier must review the following documents as part of the crane certification process:

(a) Crane maintenance records of critical components to ensure maintenance of these components has been performed in accordance with the manufacturer's recommendations.

(b) Crane periodic and frequent inspection documentation.

(2) Safety devices. Make sure all safety devices are installed on equipment in accordance with the requirements located in chapter 296-155 WAC, Part L.

(3) Operational aids. Operations must not begin unless operational aids are in proper working order, except where the owner or lessee meets the specified temporary alternative measures. See chapter 296-155 WAC, Part L for the list of operational aids.

**Note:** All accredited crane certifiers must meet and follow the requirements relating to fall protection, located in chapter 296-155 WAC, Part C-1, Fall restraint and fall arrest.

(4) General.

(a) The accredited crane certifier must determine that the configurations of the crane are in accordance with the manufacturer's equipment criteria.

(b) Where the manufacturer equipment criteria are unavailable, a registered professional engineer (RPE), familiar with the type of equipment involved, must ensure criteria are developed for the equipment configuration.

(5) Wire rope.

(a) Wire ropes must meet the crane or wire rope manufacturer's specifications for size, type and inspection requirements. In the absence of the manufacturer's specifications, follow the requirements for removal criteria located in this section, including Table 1.

**Table 1 - Wire Rope Inspection/Removal Criteria  
(See also Figure 1 - Wire Rope)**

Crane Type	Running Ropes*		Rotation Resistant*		Standing Ropes*	
	# of allowable broken wires in 1 rope lay	1 strand in 1 lay	# of allowable broken wires in 1 rope lay	1 strand in 1 lay	# of allowable broken wires in 1 lay beyond end connection	at end connection
Mobile	6	3	2 (in 6xd)	4 (in 30xd)	2	1
Articulating	6	3	Consult rope mfg.	Consult rope mfg.	2	1
Tower	12	4	4	2	—	—

**Table 1 - Wire Rope Inspection/Removal Criteria**  
(See also Figure 1 - Wire Rope)

Crane Type	Running Ropes*		Rotation Resistant*		Standing Ropes*	
	# of allowable broken wires in		# of allowable broken wires in		# of allowable broken wires	
	1 rope lay	1 strand in 1 lay	1 rope lay	1 strand in 1 lay	in 1 lay beyond end connection	at end connection
Self-Erector	12	4	4	2	—	—
Overhead & Bridge	12	4	2 (in 6xd)	4 (in 30xd)	—	—
Derricks	6	3	Consult rope mfg.	Consult rope mfg.	2	1

\* Also remove if you detect 1 wire broken at the contact point with the core or adjacent strand; so called valley breaks or evidence from any heat damage from any cause.

(b) The accredited crane certifier must perform a complete and thorough inspection covering the surface of the working range plus three additional wraps on the drum of the wire ropes.

(c) If a deficiency is identified, an immediate determination must be made by the accredited crane certifier as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, the crane must not be certified until:

(i) The wire rope is replaced and verified by the accredited crane certifier; or

(ii) If the deficiency is localized, the problem is corrected by severing the wire rope; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited.

(d) Remove wire rope from service if reductions from nominal diameter are greater than those shown below in Table 2.

**Table 2 - Maximum Allowable Reduction from Nominal Diameter**

Rope Diameter	Maximum Allowable Reduction from Nominal Diameter
Up to 5/16 inch (8 mm)	1/64 inch (0.4 mm)
3/8 inch (9.5 mm) to 1/2 inch (13 mm)	1/32 inch (0.8 mm)
9/15 inch (14.5 mm) to 3/4 inch (19 mm)	3/64 inch (1.2 mm)
7/8 inch (22 mm) to 1 1/8 inch (29 mm)	1/16 inch (1.6 mm)
Over 1 1/8 inch (32 mm) to 1 1/2 inch (38 mm)	3/32 inch (2.4 mm)

(e) Replacement rope must be of a compatible size and have a strength rating at least as great as the original rope furnished or recommended by the crane manufacturer.

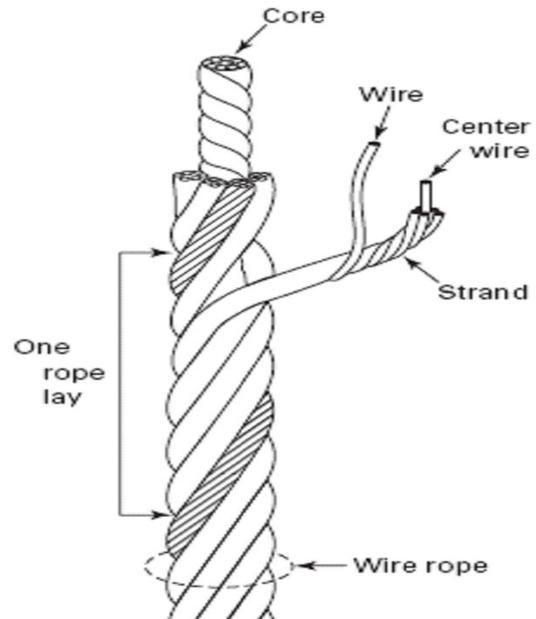


Figure 1 - Wire Rope

(6) Prior to performing a proof load test:

(a) A safe test area must be selected and all traffic and unauthorized personnel and equipment must be cleared from test area. This test area must be roped off or otherwise secured to prevent entry of unauthorized personnel and equipment;

(b) Rigging gear must be inspected by a qualified person prior to using for load test of crane;

(c) The employer must ensure all load test personnel understand the safety procedures of the test;

(d) Proof load tests, with the exception of tower cranes, are overload tests and extreme caution must be observed at all times. Personnel must remain clear of suspended loads and areas where they could be struck in the event of boom failure. The test load must be raised only to a height sufficient to perform the test;

(e) During tests, safe operating speeds must be employed. Rated speeds in accordance with manufacturer's specifications need not be attained. Emphasis must be placed on the ability to safely control loads through all motions at normal speeds;

(f) Proof load tests require the use of certified weights, or scaled weights using a certified scale with a current certificate of calibration;

(g) Proof load tests must not exceed the manufacturer's specifications. Where these specifications are unavailable, a registered professional engineer familiar with the type of equipment involved must develop written specifications.

#### NEW SECTION

**WAC 296-155-53202 Additional inspection criteria and proof load testing—Mobile cranes.** (1) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must conduct a visual inspection of the following components, if applicable, which can be visually inspected without disassembly (not including removal of inspection covers):

(a) All control and drive mechanisms for adjustments interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

(c) Hydraulic system for proper fluid level;

(d) Safety latches on hooks for damage;

(e) Hooks for deformation, cracks, excessive wear, or damage such as from chemicals or heat;

(f) A legible and applicable operator's manual and load chart is in the operator's cab or station;

(g) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;

(h) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(i) Wire rope reeving for compliance with the manufacturer's specifications;

(j) Wire rope, in accordance with WAC 296-155-53200(5);

(k) Electrical apparatus for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation;

(l) Tires (when in use) for proper inflation and condition;

(m) Ground conditions around the equipment for proper support, including ground settling under and around outriggers and supporting foundations, ground water accumulation, or similar conditions;

(n) The equipment for level position;

(o) Operator cab windows for significant cracks, breaks, or other deficiencies that would hamper the operator's view;

(p) Rails, rail stops, rail clamps and supporting surfaces when the equipment has rail traveling;

(q) Equipment structure (including the boom and, if equipped, the jib):

(i) Structural members: Deformed, cracked, or significantly corroded.

(ii) Bolts, rivets and other fasteners: Loose, failed or significantly corroded.

(iii) Welds for cracks.

(r) Sheaves and drums for cracks or significant wear;

(s) Parts such as pins, bearings, shafts, gears, rollers and locking devices for distortion, cracks or significant wear;

(t) Brake and clutch system parts, linings, pawls and ratchets for excessive wear;

(u) Safety devices and operational aids for proper operation (including significant inaccuracies);

(v) Gasoline, diesel, electric, or other power plants for safety-related problems (such as leaking exhaust and emergency shut-down feature), condition and operation;

(w) Chains and chain drive sprockets for excessive wear of sprockets and excessive chain stretch;

(x) Travel steering, brakes, and locking devices, for proper operation;

(y) Tires for damage or excessive wear;

(z) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing.

(aa) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(iii) Shaft seals and joints between pump sections for leaks.

(bb) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents.

(v) Rod eyes and connecting joints: Loose or deformed.

(cc) Outrigger pads/floats and slider pads for excessive wear or cracks; cribbing/dunnage for proper installation;

(dd) Electrical components and wiring for cracked or split insulation and loose or corroded terminations;

(ee) Legible warning labels and decals as required by the manufacturer;

(ff) Operator seat: Missing or unusable;

(gg) Equipped with original, or the equivalent, steps, ladders, handrails, guards;

(hh) Steps, ladders, handrails, guards: In unusable/unsafe condition;

(2) Crane deficiencies. If the accredited crane certifier determines other findings need to be monitored, the accredited crane certifier must provide written notification to the owner or lessee.

(3) Operational testing. An operational test must be made without a load applied to the hook of the following items if they are applicable to the crane to ensure they function correctly:

(a) Load lifting/hoisting and lowering mechanisms;

(b) Boom lifting/hoisting and lowering mechanisms;

(c) Boom extension and retraction mechanism;

(d) Swing mechanism;

(e) Travel mechanism;

(f) Brakes and clutches;

(g) Limit, locking, and safety devices;

(h) Suspension systems for cranes that work on rubber (tires); and

(i) During the operational testing, special attention must be paid to hydraulic and pneumatic valves: Spools (sticking, improper return to neutral, and leaks); leaks; valve housing cracks; relief valves.

(4) Annual and quadrennial proof load testing.

(a) Proof loads test must be completed on all hoist lines.

The test load must be at least one hundred percent but not to exceed one hundred and ten percent of rated capacity (i.e., for the crane's configuration of reeving, boom length, etc.). The rated capacity must be the capacity shown on the posted load chart or as limited by other factors such as hook block capacity or wire rope line pull if the crane is not fully reeved. The test load includes the weight of (or deduction values for) the hook, block, slings, and auxiliary lifting devices (and for some cranes hoist wire rope not accounted for in load charts), and the combined weight deduction values must be subtracted from the nominal test load in order to determine the amount of test weights to be used. Follow original equipment manufacturer (OEM) load chart instructions for weight deduction values. Check accuracy of load indicators where installed. Test procedures for these cranes must follow OEM procedures and recommendations.

(b) Annual proof load testing. After the crane has passed the visual and operational tests, a proof load test must be conducted in the as-configured condition and must be performed within the structural and stability section of the manufacturer's load chart, as applicable. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(c) Quadrennial proof load testing. No major component (luffing boom, swing-away jibs, fly sections, jibs at variable offsets and boom sections) may be used unless it has been

proof load tested within the prior four-year period. For jibs with variable offset angles, tests at the maximum offset used and maximum extension of all boom sections.

(i) This test must be performed in accordance with this section and documented on the form or in the format approved by the department.

(ii) A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the inspection.

(d) Free rated load test ("on rubber"). Check the stability and operation of crane, carrier, wheels, tires, tracks, brakes, etc., under load by performing the following tests, when lifting without outriggers and/or traveling with the load are permitted at the activity for the type of crane being tested.

**Note:** Ensure all free rated load tests "on rubber" lifting requirements established by the OEM are complied with. Attach taglines to the load to control oscillation. For cranes with outriggers, extend outriggers and maintain minimal clearance (three to four inches) above ground. Test personnel must stand clear of tires during load tests. This test is only required if the owner/lessee wants an "on rubber" certification. If the crane has "on rubber" capabilities and the owner does not desire this certification, the crane certifier must document it on the certification document.

(i) Maximum free rated load. Hoist maximum free rated test load at minimum possible radius over the rear (or over the front as required by the OEM). Slowly boom down to the maximum radius for the load. With boom and load hoist pawls (dogs) engaged where applicable, complete (d)(i)(A) and (B) of this subsection.

(A) Rotate through the appropriate working arc;

(B) Travel a minimum of fifty feet with test load over the rear (or front as required by the OEM) with the boom parallel to the longitudinal axis of the crane carrier.

(ii) Stability test. Repeat the step in (d)(i) of this subsection with a test load corresponding to the radii determined as follows: For telescoping boom cranes, test with the boom approximately halfway between fully retracted and fully extended but do not exceed OEM's boom length limitation for lifting on rubber. If no ratings are governed by stability, no stability test is required.

**Note:** When lifting test loads, always lift the load well within the maximum radius and slowly boom down to a premeasured radius. Lift the test load only high enough to perform the required tests.

## NEW SECTION

**WAC 296-155-53204 Additional inspection criteria and proof load testing—Articulating boom cranes.** (1) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect the following items, if applicable, on cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) All control and drive mechanisms for adjustments interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) Safety devices for malfunction;

(c) All hydraulic hoses, particularly those which flex in normal operation of crane functions;

(d) Hooks and latches for deformation, chemical damage, cracks, and wear;

(e) Rope reeving for compliance with crane manufacturer's specifications;

(f) Electrical apparatus for malfunctioning, signs of excessive deterioration, dirt, and moisture accumulation;

(g) Hydraulic system for proper oil level and leaks;

(h) Excessively worn or damaged tires. Recommended inflation pressure, cuts, and loose wheel nuts;

(i) Connecting pins and locking device for wear and damage;

(j) Deformed, cracked, or corroded members in the crane structure and carrier;

(k) Loose bolts, particularly mounting bolts;

(l) Cracked or worn sheaves and drums;

(m) Worn, cracked, or distorted parts such as pins, bearings, shafts, gears, rollers, and locking devices;

(n) Excessive wear on brake and clutch system parts and lining;

(o) Travel steering, braking, and locking devices, for malfunction;

(p) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing;

(q) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(iii) Shaft seals and joints between pump sections for leaks;

(r) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents;

(s) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(t) Legible warning labels and decals as required by the manufacturer;

(u) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;

(v) A legible and applicable operator's manual and load chart is in the operator's cab or station.

(2) Annual proof load testing of articulating boom cranes.

(a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed within the structural and stability section of the manufacturer's load chart, as applicable. This test must be documented on the form or in the format approved by the department.

A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) Test loads must not be less than one hundred percent or more than one hundred and ten percent of the rated load, unless otherwise recommended by the manufacturer.

(c) Hoist the tests load to assure that the load is supported by the crane and held by the hoist brake(s).

(d) Swing the crane, if applicable, the full range of its swing.

(e) Boom the crane up and down within allowable working radius for the test load.

(f) Lower the test load, stop and hold the load with the brake(s).

(3) Quadrennial proof load testing. If the articulating boom crane has a jib or boom extension, these components may not be used unless it has been proof load tested within the prior four-year period.

#### NEW SECTION

**WAC 296-155-53206 Additional inspection criteria and proof load testing—Tower cranes.** (1) Tower cranes and tower crane assembly parts must be inspected by a crane certifier both prior to assembly, following erection of the tower crane, after each climbing operation, or reconfiguring the boom, jib, or counterjib before placing the crane in service.

(2) The accredited crane certifier must verify a registered professional structural engineer, licensed under chapter 18.43 RCW, has certified that the crane foundations and underlying soil are adequate support for the tower crane with its maximum overturning movement.

(3) Prior to erecting a tower crane on a nonstandard tower crane base, the accredited crane certifier must verify that the engineering configuration of this base has been reviewed and acknowledged as acceptable by an independent registered professional structural engineer, licensed under chapter 18.43 RCW.

(4) The accredited crane certifier must review the following documents as part of the crane certification process for the current location and inspection period:

(a) Crane maintenance records of critical components to ensure maintenance of these components has been performed in accordance with the manufacturer's recommendations;

(b) Crane periodic and frequent inspection documentation.

(5) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect the following items, if applicable, on tower cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) All control and drive mechanisms for interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) Motion limiting devices for proper operation with the crane unloaded; each motion should be inched into its limiting device by carefully running at slow speed;

(c) Load limiting devices for proper operation and accuracy of settings;

(d) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

(e) Hydraulic system for proper fluid level;

(f) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing;

(g) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(iii) Shaft seals and joints between pump sections for leaks;

(h) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents;

(i) Electrical components for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation, wiring for cracked or split insulation, and loose or corroded terminations;

(j) Stationary cranes for manufacturer's recommended grounding of structure and power supply. Rail traveling cranes for grounding of each rail and the power supply per the manufacturer's recommendations;

(k) Runway rail and clamps. Inspect for loose, broken or missing clamps;

(l) Hooks and safety latches for deformation, cracks, excessive wear, or damage such as from chemicals or heat;

(m) Wedges and supports of climbing cranes for looseness or dislocation;

(n) Braces or guys supporting cranes' masts (towers) and anchor bolt base connections for looseness;

(o) Crane structure (including the boom, jib and counter jib):

(i) Structural members: Deformed, cracked, or significantly corroded.

(ii) Bolts, rivets and other fasteners: Loose, failed or significantly corroded.

(iii) Welds for cracks.

(p) Cracked or worn sheaves and drums;

(q) Worn, cracked, or distorted parts such as pins, bearings, shafts, gears, rollers, locking and clamping devices, sprockets, and drive chains or belts;

(r) Excessive wear on brake and clutch system parts, linings, pawls, and ratchets;

(s) Load, wind, and other indicators for inaccuracies outside the tolerances recommended by the manufacturer;

(t) Travel mechanisms for malfunction, excessive wear or damage;

(u) A legible and applicable operator's manual and load chart is in the operator's cab;

(v) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(w) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;

(x) When applicable, tower tie-in collars, struts, and connections to building structure are structurally sound, free of cracks, distortion, excessive wear or corrosion. Pins and structural bolts are tight and installed per the manufacturer's specification;

(y) Ballast blocks in place and secured per manufacturer's recommendations;

(z) For cranes that telescope, the raising mechanism operates within the manufacturer's specifications;

(aa) For cranes that top climb, the climbing frame operates within the manufacturer's specifications;

(bb) A means to prevent traveling tower cranes running into stops while under power;

(cc) A functional audible warning alarm that automatically sounds whenever the traveling tower crane travels;

(dd) Wire rope reeving for compliance with the manufacturer's specifications;

(ee) Wire rope, in accordance with WAC 296-155-53200(5);

(ff) Safety devices and operational aids for proper operation (including significant inaccuracies);

(gg) Legible warning labels and decals as required by the manufacturer;

(hh) Steps, ladders, handrails and guards are in safe and usable condition.

(6) Additional requirements for tower cranes prior to performing a proof load test.

**Note:** General requirements relating to preproof load tests for all cranes are located in WAC 296-155-53200.

(a) When tower cranes are erected, and before placing in service, all functional motions, motion limiting, load limiting devices, locking and safety devices, brakes and clutches must be tested for operation and be within the manufacturer's specification prior to placing the crane in operation.

(b) Proof load tests require the use of certified weights, or scaled weights using a certified scale with a current certificate of calibration.

(c) Functional motion test must be at crane manufacturer's rated load. Each test must include:

(i) Load hoisting and lowering;

(ii) Jib (boom) hoisting and lowering, or trolley travel;

(iii) Slewing motion;

(iv) Travel motion when rail mounted;

(v) Brakes and clutches; and

(vi) Limit, locking, and safety devices.

**Note:** Functional motion tests made after climbing or telescoping may be performed without a load.

(d) The functional motion test listed in (c) of this subsection must continue until all controls, drives, and braking systems have been engaged and have functioned per the crane manufacturer's specifications.

(e) Order in which tests of tower cranes are to be performed is as follows:

- (i) Functional motion test without rated load;
- (ii) Functional motion test at crane manufacturer's rated load. For other than traveling cranes, these tests may be combined with test of base structural support or foundation system given in (c) of this subsection;
- (iii) Test of base structural support or foundation under (f) of this subsection.

(f) During functional motion tests, the crane's base structural support or foundation system must be visually checked by the accredited crane certifier. If any part of the crane's base structural support or foundation system shows excessive visual displacement, visual distress, or audible distress, then the lifted load must be lowered at hoist creep speed and all crane operations are to cease. An evaluation must then be made by the accredited crane certifier.

(7) Proof load testing of tower cranes. Setting hoist load limits for tower cranes.

(a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed according to the manufacturer's recommendations. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) Tower crane hoist load limit switches must be set in accordance with the manufacturer's specifications using specified certified weights. Procedure is to be verified by the accredited crane certifier. In the absence of the manufacturer's specifications, hoist load limit switches must be verified by means of a static test using test loads of one hundred and two and one-half percent to one hundred and ten percent of the applicable ratings. Test loads are to be lifted at creep speed until just clear of the ground.

(c) Setting of hoist load limits must be documented on the form provided by the department. A copy of the completed form and inspection worksheets must be sent to the department within ten days upon completion of the examination.

(d) After erection of fixed freestanding tower cranes, the base structural support or foundation system on which the crane is supported must be tested before placing the crane in service. The test must be conducted with the crane manufacturer's rated load placed at maximum radius permitted by site conditions. When the base structural support or foundation is symmetrical, the crane's jib (boom) must be rotated through ninety degrees with ten minute stops at the starting position and at each forty-five degree position. When the support is asymmetrical, the crane's jib (boom) must be rotated through three hundred and sixty degrees with ten minute stops at the starting position and at each forty-five degree position.

(e) After erection of rail traveling tower cranes, the base structural support or foundation system to which the rail is attached must be tested before placing the crane in service. The test must be conducted with the crane manufacturer's rated load placed at maximum radius permitted by site conditions. The jib (boom) must be located over the bogie. The

crane must travel the entire length of runway, returning with the same load over the bogie on the opposite rail.

#### NEW SECTION

**WAC 296-155-53208 Additional inspection criteria and proof load testing—Self-erecting tower cranes.** (1) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect the following items, if applicable, on cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) For cranes that telescope the internal tower by a climbing frame, the climbing mechanism is structurally sound; is free of cracks, distortion, excessive wear or corrosion; operates within the manufacturer's specifications;

(b) Structural bolts are tightened;

(c) All control and drive mechanisms for interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(d) Motion limiting devices for proper operation with the crane unloaded; each motion should be inched into its limiting device by carefully running at slow speed;

(e) Load limiting devices for proper operation and accuracy of settings;

(f) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

(g) Hydraulic system for proper fluid level;

(h) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing;

(i) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(ii) Shaft seals and joints between pump sections for leaks;

(j) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents;

(k) Electrical components for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation, wiring for cracked or split insulation, and loose or corroded terminations;

(l) Ensure crane is grounded per manufacturer's specifications;

(m) Hooks and safety latches for deformation, cracks, excessive wear, or damage such as from chemicals or heat;

(n) Crane structure (including the boom, jib and counter jib):

(i) Structural members: Deformed, cracked, or significantly corroded.

(ii) Bolts, rivets and other fasteners: Loose, failed or significantly corroded.

(iii) Welds for cracks;

(o) Cracked or worn sheaves and drums;

(p) Worn, cracked, or distorted parts such as pins, bearings, shafts, gears, rollers, locking and clamping devices, sprockets, and drive chains or belts;

(q) Excessive wear on brake and clutch system parts, linings, pawls, and ratchets;

(r) Load, wind, and other indicators for inaccuracies outside the tolerances recommended by the manufacturer;

(s) A legible and applicable operator's manual and load chart is in the operator's station;

(t) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(u) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;

(v) Ballast blocks in place and secured per manufacturer's recommendations;

(w) Wire rope reeving for compliance with the manufacturer's specifications;

(x) Wire rope, in accordance with WAC 296-155-53200(5);

(y) Safety devices and operational aids for proper operation (including significant inaccuracies);

(z) Legible warning labels and decals as required by the manufacturer;

(aa) Steps, ladders, handrails and guards are in safe and usable condition.

(2) Additional requirements for self-erecting tower cranes prior to performing a proof load test.

**Note:** General requirements relating to preproof load tests for all cranes are located in WAC 296-155-53200.

(a) Functional motion test must be at crane manufacturer's rated load. Each test must include:

(i) Load hoisting and lowering;

(ii) Jib (boom) hoisting and lowering, or trolley travel;

(iii) Slewing motion;

(iv) Brakes and clutches;

(v) Limit, locking, and safety devices.

(b) The functional motion test listed in (a) of this subsection must continue until all controls, drives, and braking systems have been engaged and have functioned per the crane manufacturer's specifications.

(c) Order in which tests of self-erecting tower cranes are to be performed is as follows:

(i) Functional motion test without rated load;

(ii) Functional motion test at crane manufacturer's rated load. These tests may be combined with test of base structural support or foundation system given in (a) of this subsection.

(d) During functional motion tests, the crane's base structural support or foundation system must be visually checked by the accredited crane certifier. If any part of the crane's

base structural support or foundation system shows excessive visual displacement, visual distress, or audible distress, then the lifted load must be lowered at hoist creep speed and all crane operations are to cease. An evaluation must then be made by the accredited crane certifier.

(3) Annual proof load testing of self-erecting tower cranes.

(a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed according to the manufacturer's recommendations. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) The structural support or foundation examination during proof load test:

(i) This test must be conducted with the rated load placed at maximum radius permitted by site conditions. The superstructure must be rotated through three hundred sixty degrees with five-minute stops at each outrigger position. If any part of the support structure becomes displaced or distressed, all crane operations must stop until an evaluation is made by a qualified person.

(ii) For rail-mounted cranes, a load test must be conducted with the jib in the position causing maximum loading on one wheel or bogie. The test must comprise traveling the entire length of the runway, then returning with the same load on the other rail. If a sleeper or support becomes displaced or damaged, crane operations must stop until an evaluation is made by a qualified person or until track ballast has been reset, or repairs made and a satisfactory test performed.

(c) Self-erecting tower crane hoist load limit switches must be set in accordance with the manufacturer's specifications using specified certified weights. Procedure is to be verified by the accredited crane certifier.

(d) Setting of hoist load limits must be documented on the form provided by the department. A copy of the completed form and inspection worksheets must be sent to the department within ten days upon completion of the examination.

#### NEW SECTION

#### **WAC 296-155-53210 Additional inspection criteria and proof load testing—Overhead and bridge cranes. (1)**

After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect, without disassembly, and if applicable, the following items on overhead and bridge cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) Controllers. Control mechanisms for interfering with proper operation. Control and drive mechanisms for apparent excessive wear of components and contamination by lubricants, water or other foreign matter;

(b) Load hooks. Inspect for damage wear to hook nuts, mousing device and hook swivel. Check for deformation, cracks, excessive wear, or damage such as from chemicals or

heat. Inspect blocks for wear to sheaves, check plates, and pins. Check for loose pins, bolts and guards;

(c) Sheaves and bearings. Check all sheaves and bearings for lubrication and excessive wear. Ensure sheaves turn freely. Check sheave pin locking device;

(d) Structural supports. Inspect for damage or bent girders, girder seat top plate, diaphragms and structural column connections. Check for loose bolts or rivets, and cracks;

(e) Bridge inspection.

(i) Check complete structure for broken, cracked, damaged, missing, or corroded parts and members.

(ii) Handrails, walkways, and ladders. Inspect for loose, missing, bent, deteriorated or misaligned members, loose bolts, rivets, broken welds and hangers;

(f) Brackets. Check for cracked or corroded welds, missing or loose bolts, bent or cracked brackets;

(g) End stops. Inspect for damaged wheels, broken welds, loose or missing bolts, damaged bumpers, missing pins or damaged plates;

(h) Runway rail and clamps. Inspect for loose, broken or missing clamps. Check the condition of railhead and side wear, rail splice plates and/or welds, rail gaps and associated bolts, wedges, connectors and rail switches;

(i) Crane alignment. Inspect for proper bridge end float while crane travels in both directions on runway. Check all corner connections for rust, shear marks, loose or missing bolts, nuts and washers. Inspect square marks and legibility of dimension;

(j) Wheels and bearings. Inspect wheels for wear, flat spots, chips, flange wear, cracks, loose axle pins, or securing devices. Check bearing clearance, chatter, loose bearing caps and lubrication;

(k) Trolley. Check for loose, missing, broken or bent members. Inspect for loose, faulty or missing coupling guards. Check for broken, loose or missing axle pins. Inspect for axle pins displaying excessive wear;

(l) Trolley rail. Inspect for bent or damaged members, loose bolts, rivets, guards, trolley rail clamps, end stops and broken welds. Check condition of rail head and side wear, rail splice plates and/or welds and rail gaps;

(m) Trolley conductors. Inspect insulators and clamps, loose connectors, bent, pitted or damaged wires or collectors;

(n) Shafts, couplings, and bearings. Inspect shafts for vibration, cuts and nicks, loose or worn keyways and misalignment. Check coupling for wear, loose bolts or keys and misalignment. Inspect bearing for clearance, chatter, loose bearing caps and proper lubrication;

(o) Gearing. Inspect gears for worn teeth, cracked teeth, superficial root cracks, pitting, unusual indentation or wear marks, full contact or end loading, loose set screws and keys. Check guards and covers. Inspect gear cases for excessive noise and vibration, proper lubrication and leaking;

(p) Wire rope and drum. Inspect wire rope for damage. Check rope clip fittings and associated mounting hardware for wear and damage. Inspect drum grooves for excessive wear. Inspect drum pedestal and bearing condition. Check for cracks in drum;

(q) Electrical items. Check all contacts for proper alignment and evidence of excess heating or unusual arcing. Inspect all coils, contact leads, shunts and wires, fuses or

overload devices for loose connections and evidence of overheating. Inspect panel board and arc shields for cracks, loose bolts, dirt and moisture. Check panel marking for legibility. Inspect speed control resistors for damaged insulation, cracked or broken grids, loose connections, bolts and brackets;

(r) Motor. Inspect for damage, bearing noise, vibration and lubrication, spark and cleanliness of commutator and brush wear, loose hold down bolts and motor brackets. Inspect commutator or slip rings for evidence of overheating and brush sparking. Inspect motor leads and insulators, damaged or deteriorated insulation and loose connections. Inspect brush holder for proper clearance to commutator or slip rings, and freedom of brushes;

(s) Brakes. Inspect for wear in linkage, pins and cams, weakness of springs, wear and condition of lining, smoothness of the drum, heat check crack and clearance between drum or disk. Inspect for improper solenoid air gap; evidence of overheating; damaged brass, and loose core laminations; delay or restriction in opening of brakes;

(t) Hoist brakes. Inspect for wear in linkage, pins and cams, weakness of springs, wear and condition of lining, smoothness of drum, heat check cracks and clearance between drum or disk. Inspect for improper solenoid air gap; evidence of overheating; damaged brass, and loose core laminations; delay or restriction in opening of brakes;

(u) Limit switches. Remove covers and inspect all electrical and mechanical components for malfunction including contacts, springs, ratchets, pins, arm and insulators, rollers, cams and dogs. Inspect cover gaskets, counterweight guides. Check all securing bolts and guards. Check for weather or moisture damage. Check for proper operation;

(v) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(w) Operation of crane controls. Operate all crane controls and check for proper operation. Check for smooth and regular motions without abnormal sensations, hesitations, binding, vibrations, shimmy, or irregularity;

(x) Warning device/fire protection. Inspect for proper operation of sirens, horns, bells and lights. Check switches and inspect wiring and connections;

(y) A legible and applicable operator's manual and load chart is in the operator's cab or station;

(z) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing.

(2) Annual proof load testing of bridge/overhead cranes.

(a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed according to the manufacturer's recommendations or a registered professional structural engineer (RPSE). This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) The proof load test must be at least one hundred percent but not to exceed one hundred twenty-five percent of the rated capacity.

(c) This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(d) Hoist the test load a distance to assure that the load is supported by the crane and held by the hoist brake(s).

(e) Transport the test load by means of the trolley for the full length of the bridge, as practical.

(f) Transport the test load by means of the bridge for the full length of the runway in one direction with the trolley as close to the extreme right-hand end of the crane as practical, and in the other direction with the trolley as close to the left-hand end of the crane as practical.

(g) Lower the test load, and stop and hold the test load with the brake(s).

(h) Mechanical load brake tests. Hoist test load and hold for five minutes.

Release the holding brake, either mechanically or electrically to verify mechanical load brake function or hoist the rated load then lower, monitoring the hoist for any speed control issues.

**NEW SECTION**

**WAC 296-155-53212 Additional inspection criteria and proof load testing—Derricks.** (1) After it is determined that the derrick configurations meet the criteria in WAC 296-155-53200, the accredited derrick certifier must visually inspect the following items, if applicable, on derricks for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) All control and drive mechanisms for adjustments interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) All chords and lacing, tension in guys, plumb of the mast, external indication of deterioration or leakage in air or hydraulic systems;

(c) Derrick hooks for deformation or cracks, distortion causing an increase in throat opening of five percent not to exceed one-quarter inch or as recommended by the manufacturer. Any wear exceeding ten percent (or as recommended by the manufacturer) of the original section dimension of the hook;

(d) Rope reeving for noncompliance with derrick manufacturer's specifications;

(e) Hoist brakes, clutches, and operating levers;

(f) Electrical apparatus for malfunctioning, signs of excessive deterioration, dirt and moisture accumulation;

(g) Structural members for deformation, cracks, and corrosion;

(h) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(i) Bolts and rivets for tightness;

(j) Parts such as pins, bearings, shafts, gears, sheaves, drums, rollers, locking and clamping devices, for wear, cracks, and distortion;

(k) Gudgeon pin for cracks, wear and distortion;

(l) Foundation or supports for continued ability to sustain the imposed loads;

(m) A legible and applicable operator's manual and load chart is in the operator's cab or station;

(n) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing.

(2) Annual proof load testing of derricks.

(a) Annual proof load testing. After the derrick has passed the visual and operational tests, the accredited derrick certifier must ensure a proof load test is conducted and must be performed at the maximum and minimum boom angles or radii or as close to these as practical and at such intermediate radii as the derrick manufacturer or RPSE may deem necessary. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) Proof load tests and safe working load ratings must be based on the designed load ratings at the ranges of boom angle or operating radii. Proof loads must be as per the manufacturer's recommendations. When the manufacturer recommendations are not available follow the requirements in Table 3 below:

**Table 3 - Derrick Load Test**

Safe Working Load SWL	Proof Load
Up to 20 tons	25 percent in excess
20-50 tons	5 tons in excess
Over 50 tons	10 percent in excess

(c) Hoist the test load a few inches and hold to verify that the load is supported by the derrick and held by the hoist brake(s).

(d) Swing the derrick, if applicable, the full range of its swing, at the maximum allowable working radius for the test load.

(e) Boom the derrick up and down within the allowable working radius for the test load.

(f) Lower the test load, stop and hold the load with the brake(s).

(g) After satisfactory completion of a proof load test, the derrick and all component parts thereof shall be carefully examined in all applicable requirements in this section.

(h) This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

**NEW SECTION**

**WAC 296-155-53214 Crane decertification and reinstatement.** (1) If any of the following occur, the certification becomes invalid:

(a) Contact with an energized power line;

(b) Any overload, other than proof load testing, or one that has been approved in writing in advance by the crane manufacturer or a RPE;

(c) Any significant modifications or significant repairs of a load sustaining/bearing part.

**Note:** Replacement of hoisting rope does not constitute decertification.

(2) The owner or lessee must notify the crane certification section by phone within twenty-four hours if any of the above occurs.

(3) The certification may be reinstated only after affected components have been reinspected by an accredited crane certifier. If the accredited crane certifier identifies any deficiencies during the reinspection, the deficiencies must be corrected before the certification can be reinstated. If the accredited crane certifier believes proof load testing should be conducted prior to reinstatement of the certification, proof load testing shall be conducted. In the case of major modifications or repairs to important load sustaining/bearing parts, proof load testing shall be performed prior to reinstatement. The accredited crane certifier must notify the department that the certification has been reinstated.

**NEW SECTION**

**WAC 296-155-533 Crane operator qualifications and certification.**

**NEW SECTION**

**WAC 296-155-53300 Operator qualifications and certification.** (1) Prior to operating any crane covered under chapter 296-155 WAC, Part L, with the exception of the trainee/apprentice requirements outlined in subsection (2) of this section, the employer must ensure that the crane operator:

(a) Has a valid crane operator certificate, for the type of crane to be operated, issued by a crane operator testing organization accredited by a nationally recognized accrediting agency. The operator certification must include a successful passing of a written and practical examination.

- Notes:**
- An operator's certificate issued by the accredited testing agency is valid for a five-year period, and must be renewed to ensure operators maintain qualified operator status.
  - For self-erecting tower cranes, the department will accept a tower crane certification issued by a nationally accrediting testing agency.
  - For derricks, the department will accept, at a minimum, a lattice boom truck or crawler mobile crane operator's certificate.

(b) Has crane hours of experience as shown in Table 1; and

(c) Pass a substance abuse test conducted by a recognized laboratory.

**Exemption:** When it is necessary in the performance of their duties, manufacture representatives, factory representatives and maintenance personnel are not required to be certified crane operators.

**Crane Operator Experience  
Table 1**

Crane Type	Number of Hours of Actual Crane Operating Experience	Number of Hours of Crane Related Experience
<b>(1) Mobile Cranes</b>		
(a) Lattice Boom Crawler Cranes (LBC)	300 tons and above 1000 Hours	300 tons and above 1000 Hours
	300 tons and above 1000 Hours	Under 300 tons 500 Hours
(b) Lattice Boom Truck Cranes (LBT)	300 tons and above 1000 Hours	300 tons and above 1000 Hours
	Under 300 tons 500 Hours	Under 300 tons 500 Hours
(c) Large Telescopic Boom Cranes (Swing Cab) (TLL)	Over 130 tons 750 Hours	Over 130 tons 750 Hours
	Over 40 tons to 130 tons 250 Hours	Over 40 tons to 130 tons 250 Hours
	40 tons and under 40 Hours	40 tons and under 40 Hours
(d) Small Telescopic Boom Cranes (Fixed Cab) (TSS)	15 tons and above 40 Hours	15 tons and above 40 Hours
	Under 15 tons 20 Hours	Under 15 tons 20 Hours
(e) Articulating Boom Cranes	20 Hours	20 Hours
<b>(2) Tower Cranes</b>		
(a) Hammerhead	500 Hours	500 Hours
(b) Luffer	500 Hours	500 Hours

**Crane Operator Experience**

**Table 1**

<b>Crane Type</b>	<b>Number of Hours of Actual Crane Operating Experience</b>	<b>Number of Hours of Crane Related Experience</b>
(c) Self-Erecting	50 Hours	50 Hours
<b>(3) Overhead Cranes</b>		
(a) Cab Operated	40 Hours	40 Hours
(b) Pendant/Remote	40 Hours	40 Hours
<b>(4) Derricks</b>	20 Hours	500 Hours
<p><b>Hours of actual crane operating experience.</b> For all cranes: Time while the operator is at the controls of the crane; and/or has direct control of that crane; and/or a combination of operating hours within the same crane type. For mobile cranes: It also includes time while installing/removing boom sections, luffing boom, jib, extending and retracting outriggers/stabilizers, leveling crane, and replacing hoisting rope. For tower cranes: It includes time while jumping (increasing the height of the tower/mast).</p> <p><b>Note:</b> Additional actual crane operator experience may account for crane related experience.</p> <p><b>Hours of crane related experience:</b> Time as a signalman/bellman, oiler, crane mechanic, crane inspector, formal classroom training, crane simulator operation, and a combination of operating hours on other categories of cranes.</p>		

**Note:** Cranes and other lifting machines that are exempt can be found in WAC 296-155-52900(2).

(2) Prequalification/certification training period. An employee who is not a qualified crane operator as outlined in subsection (1) of this section is permitted to operate the crane as part of his/her training providing the following requirements are met:

(a) The employee ("trainee/apprentice") must be provided with sufficient training prior to operating the crane to enable the trainee to operate the crane safely under limitations established by this section (including continuous supervision) and any additional limitations established by the employer.

(b) The tasks performed by the trainee/apprentice while operating the crane must be within the trainee's ability, as determined by the supervising qualified crane operator.

(c) Qualified crane operator. While operating the equipment, the trainee/apprentice must be continuously supervised by a qualified crane operator who meets the following requirements:

(i) The qualified crane operator is an employee or agent of the trainee's/apprentice's employer.

(ii) The qualified crane operator under this section is familiar with the proper use of the equipment's controls.

(iii) While supervising the trainee/apprentice, the qualified crane operator performs no tasks that detract from the qualified crane operator's ability to supervise the trainee/apprentice.

(iv) For cranes other than tower cranes: The qualified crane operator and the trainee/apprentice must be in direct line of sight of each other. In addition, they must communicate verbally or by hand signal.

(v) For tower cranes: The qualified crane operator and the trainee/apprentice must be in direct communication with each other.

(d) The trainee/apprentice must not operate the crane in any of the following circumstances:

(i) If any part of the crane, load line or load (including rigging and lifting accessories), if operated up to the crane's maximum working radius in the work zone, could get within

twenty feet of a power line that is up to three hundred fifty kV, or within fifty feet of a power line that is over three hundred fifty kV;

(ii) If the crane is used to hoist personnel;

(iii) In a multiple-crane lift situation; or

(iv) Multiple-lift rigging, as defined in WAC 296-155-52902, can only be accomplished by the trainee/apprentice when the qualified crane operator determines that the trainee's/apprentice's skills are sufficient for this high-skill work.

(v) Critical lifts, excluding tower cranes, and as defined in WAC 296-155-52902, can only be accomplished by the trainee/apprentice when the qualified crane operator determines that the trainee's/apprentice's skills are sufficient for this high-skill work.

(3) The employer must obtain documentation showing hours of crane operator experience and crane related experience separated out by crane type and capacity.

(4) The department may recognize crane operator certification from another state or territory of the United States as equivalent to qualified crane operator requirements if the department determines that the other jurisdiction's credentialing standards are substantially similar to the qualified crane operator requirements.

(5) For experience obtained prior to January 1, 2010, the employer may accept a declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience separated out by crane type and capacity. Hours documented prior to 2010 will count towards the hour requirements of actual crane operating experience and crane related experience.

(6) Beginning January 1, 2010, crane operator experience and crane related experience must be documented and separated out by crane type and capacity. If the employer is documenting crane operating and/or related crane experience hours, the employer must provide a copy of the hours to the operator as soon as practical, if requested.

**WSR 08-15-167**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
 [Order 08-02—Filed July 23, 2008, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-145.

Title of Rule and Other Identifying Information: Chapter 173-527 WAC, Water resources management program for the Lewis Basin, WRIA 27.

Hearing Location(s): Educational Services District, Clark and Pacific Rooms, 2500 N.E. 65th Avenue, Vancouver, WA, on August 26, at 7:00 p.m.; at the Cowlitz Expo and Conference Center, 1900 7th Avenue, Longview, WA, on August 27, at 7:00 p.m.; and at the Stevenson Community Library, Library Gallery, 120 N.W. Vancouver Avenue, Stevenson, WA, on August 28, at 7:00 p.m.

Date of Intended Adoption: September 23, 2008.

Submit Written Comments to: Department of Ecology Water Resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/lewis\\_salmon\\_washougal.html](http://www.ecy.wa.gov/programs/wr/instream-flows/lewis_salmon_washougal.html), Travis Burns, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-7207, e-mail [tbur461@ecy.wa.gov](mailto:tbur461@ecy.wa.gov), fax (360) 407-6574, by September 10, 2008.

Assistance for Persons with Disabilities: Contact Judy Beitel by August 16, 2008, TTY (800) 833-6388 or (360) 407-6878.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In order to better manage water resources in WRIA 27, the local watershed planning unit recommended that ecology adopt, in rule, a water resource management strategy for the basin. Recommendations were approved by Clark, Cowlitz and Skamania county commissioners in July 2006. The new rule will cause portions of water reserved under chapter 173-592 WAC to be transferred to the management scheme in chapter 173-527 WAC. Under the proposal, chapter 173-592 WAC will be subsequently repealed in its entirety.

The key rule elements include:

- Setting instream flow levels in the watersheds to protect aquatic resources, including habitat for threatened and endangered salmonids;
- Closing subbasins to future withdrawals with the exception of seasonal water use from the region's larger streams;
- Designating "regional supply areas" for future water supply;
- Establishing limited reservations of water for future use; and
- Specifying conditions for accessing the water reserves to benefit instream resources and better manage limited supply.

Reasons Supporting Proposal: RCW 90.82.130(4) states when a watershed plan is approved by a watershed planning unit and the county legislative authority, ecology, as a participating member of the planning unit, is obligated to use the plan for making future water resource decisions for the water-

shed. The proposal also furthers ecology's water management goals and statutory obligations.

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

Statute Being Implemented: Chapters 90.03, 90.44, 90.54, and 90.82 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Travis Burns, Headquarters, Department of Ecology, (360) 407-7207; Implementation and Enforcement: Thomas Lorange, S.W. Regional Office, Department of Ecology, (360) 407-6058.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Introduction:** The Washington state department of ecology (ecology) is proposing chapters 173-527 and 173-528 WAC, Water resource programs for two lower Columbia River basins, water resources inventory areas (WRIA) 27 and 28.

The objective of this small business economic impact statement (SBEIS) is to identify and evaluate the various requirements and costs that the proposed rules might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rules impose a disproportionate impact on the state's small businesses. RCW 19.85.040 describes the specific purpose and required contents of an SBEIS.<sup>1</sup>

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rules are consistent with legislative policy.

**Rule Proposals:** The key elements of the proposed rules include:

- Setting instream flow levels in the watershed to protect aquatic resources, including habitat for threatened and endangered salmonids.
- Closing most subbasins to year-round future withdrawals.
- Defining where water remains available, including year-round access in "regional supply areas," and seasonal interruptible water supplies from larger streams (Kalama, East Fork Lewis, Lewis, and Washougal rivers).
- Creating water reservations to provide a reliable water supply for the twenty-year projected population growth in closed areas.
- Specifying conditions to accessing the reservations to benefit stream resources and better manage limited supply.

The proposed instream flows are designed to protect habitat. This makes less water available for future uses during low-flow portions of the year (May 15 through November 15). To provide a reliable, year-round supply of water for future uses, it is necessary to reserve water that would not be

available even when the instream flows are not met. To do this, RCW 90.54.020 (3)(a) requires that ecology determine that the reservations would serve the overriding considerations of the public interest (OCPI).

Water uses established after the instream flow rules are junior water rights and may be interrupted when instream flows are not met. Only interruptible water rights are typically available to group domestic and municipal water suppliers to meet future demands within their service areas.

The proposed reservations give exempt uses, group domestic, and municipal systems more access to reliable water supplies, consistent with RCW 90.54.020(8) and the Growth Management Act (GMA). The reservations ensure a year-round, reliable water supply to meet demands estimated to occur through 2028. Future users from the reservations could obtain their water from either ground water or surface water sources.

**Analysis of Compliance Costs for Washington Businesses:** We have assessed the impacts of the proposed rules by analyzing and comparing water right management under the proposed rules in contrast to current practices. The current framework or "baseline" includes the use of water by permit-exempt wells (RCW 90.44.050) and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Implementation of chapters 90.22, 90.54, and 90.82 RCW are also part of this legal baseline. The proposed reservations allot water for new water rights.

We provide a brief description of compliance requirements below. You can find further details of water management under existing practices and proposed rules in Appendices B and C.

**Water Rights Administration Under the Rules:** The proposed chapters 173-527 and 173-528 WAC will create "instream flows." Instream flows are water rights for instream resources and would be protected from impairment by "junior" water rights—those with a later priority date. This means junior water rights must stop use when stream flows do not meet the minimum levels set by the senior instream flows.

The proposed rules also reserve water for future out-of-stream uses, which will not be subject to the instream flows. The reservations were recommended by the WRIA 27 and 28 watershed planning unit, a group representing a broad range of local interests. When negotiating the size of the reservations (see Appendix B), the planning unit considered both the office of fiscal management's regional population growth projections and the projected impacts to surface water flows. The reservations are also based on overriding considerations of the public interest. Water in the reservations would provide new noninterruptible water rights for those that qualify.

The reservations allot water on a subbasin basis. Within each subbasin, a specific amount of surface water or ground water would be available to certain users, including:

- City/county systems.
- Public utility districts.
- Other public water systems.
- Permit-exempt well users.

As well as creating the instream flows and reservations for new uses, the proposed rules clarify other requirements

that might affect future uses. We describe the expected changes to water management below. For more detail on changes to water right administration, see the cost-benefit analysis.

**Surface Water:** The decision process for surface water rights will be similar after the proposed rules as before. Currently (baseline), ecology grants water rights subject to flow conditions or requires mitigation during low-flow periods in the areas proposed for closure. The most significant effect of the rules relates to the creation of reservations that allocate water for new uses. Through the reservations, new surface water uses may continue even during low stream flow conditions.

There may be minimal effects to water users not qualifying for the reservation. Certain nonpublic and larger scale water users (agriculture and industrial users) will not be able to qualify for direct access to the reservation. The proposed reservations do not provide for nonpublic uses of surface water. These businesses would not be able to withdraw water when water is not available (typically May 15 through November 15). During such periods, water users wanting a new water right would need to either:

- Purchase or lease, and transfer an existing water right.
- Suspend water use during periods of low flows.
- Develop storage mechanisms.
- Develop strategies, acceptable to ecology, to mitigate their impacts.

However, we do not expect the rules to have a large effect on those that cannot directly access the reservations. These users face similar obstacles to gaining new water rights under current practices. Absent rule making, all new users would need to mitigate or use stored water during periods of low flow. Under the proposed rules, many will have increased access to water through a public water system that has gained rights through the reservation. We expect that most needs from expected regional growth will be satisfied through public water systems and permit-exempt wells.

**Ground Water Permits:** As with surface water, ecology will also make decisions on ground water right applications similar to the baseline, except for uses from the proposed reservations. Applications for ground water in hydraulic continuity with rivers and streams in WRIs 27 and 28 would be subject to flow conditions under the baseline or to the instream flows under the proposed rules.

As with surface water, there may be minimal effects to those water users not qualifying for the reservation, but ecology does not expect such effects to change business practices. In particular, many small businesses may still be able to meet demands under the ground water permit exemption.<sup>2</sup> Ground water users under the proposed rules are also able to avoid interruption by showing that their use is not in hydraulic continuity with closed surface water bodies.

Overall, the change in ground water permitting does not significantly affect businesses. However, the proposed rules reduce the administrative costs of ground water permitting. The rules close certain ground water areas, making case-by-case hydraulic connection determinations unnecessary.

**Permit-Exempt Ground Water:** Under the proposed rules, permit-exempt well users would gain an uninterrupted

ible permit-exempt water use under the reservation. Permit-exempt users currently withdraw water as authorized by local law and RCW 90.44.050. Although exempt from permitting, exempt wells remain subject to all other state water laws. Permit-exempt well use can be shut off if it impairs senior water rights. This has not yet occurred in WRIAs 27 and 28. Nonetheless, they remain susceptible to future curtailment if withdrawals result in impairment of a senior water right.

The proposed rules reserve water for future exempt wells and are not subject to interruption to protect the created instream flows. The rules provide added assurances to small businesses that rely on year-round water from exempt wells. Small businesses that locate outside the service area of municipal water suppliers are most likely to use permit-exempt wells.

**Changes or Transfers of Water Rights:** Ecology will continue to process changes or transfers of existing water rights as permitted by chapters 90.03 and 90.44 RCW. The process is the same with the proposed rules as with the baseline.

**Reservation of Water:** The reservations of water, the use of water under the reservation, and the conditions of use are part of the proposed rules. The reservations will allow eligible water users the benefit of having a continuous, reliable source of water during low flow periods, with a few limits. These limits include the finite quantity of the reservations and the conditions to accessing reservation water.

The proposed rules do not require permit-exempt uses to meter and report water use to ecology. However, local public water purveyors, the county, or a municipal government may require metering and reporting through ordinances adopted to implement the watershed plan. Ecology also has authority to require metering and reporting under RCW 90.03.360 in the future.

**Impacts to Businesses in WRIA 27 and 28:** Of the proposed rules' elements, the created reservations will have the greatest impact on businesses. Businesses that need water only for potable use for employees and customers will receive benefits from the reservation. Businesses that also need water for commercial or industrial manufacturing processes and landscape or commercial irrigation will see both costs and benefits.

The proposed rules will not directly affect existing water right holders. In general, the economic costs and benefits to businesses are from the business impacts from having less water in a river, but more water available for out of stream use. Under the proposed rules, the reservations can provide water for public water systems and permit-exempt uses, even during low flow periods, for a projected twenty-year period. Having the reservation makes water predictably and reliably available for more out of stream uses than under the baseline. Therefore, it is likely the proposed rules will have a positive effect on most of the affected businesses. An exception to this would be businesses that utilize water in the river. The possible impacts are described below.

**Impacts to Businesses Dependant on Stream Flows:** As stated above, the proposed rules create a series of reservations. Accessing the reservations will allow entities to use water for various uses during low flow periods. This will slightly reduce the amount of water in the river and could

impact in-stream benefits such as ecosystem services, recreation, and so on. For businesses that provide guide services such as rafting, fishing, and bird watching; or those dependent on dilution for waste removal; there could be a very minor impact. However, discussions with local interests show that the proposed flow reductions will result in little, if any, impact.

**Impacts to Existing Permitted Water Rights:** Allowing access to water through the reservation could affect the value of existing permitted water rights held by some businesses. The exact effect will depend on the allowable use, volume, and point of diversion of the existing rights, the existing and desired uses, and the volumes needed.

**Costs to Firms and Required Professional Services:** As mentioned above, those business entities that depend on water in the river may experience costs from the proposed rules. Those businesses that would obtain water from the reservation are most likely to gain the benefits. The cost analyses required in chapter 19.85 RCW follow:

**Reporting and Recordkeeping:** Permit Exempt Well Users: The proposed rules add no reporting or record-keeping requirements for small businesses using permit-exempt wells.

**Additional Professional Services:** Ecology anticipates no added professional services. For water users qualifying for the reservations, the proposed rules reduce the need for small businesses to obtain consulting services. The proposed reservations make a reliable water supply available, without the expense and uncertainty of demonstrating water exists on a case-by-case basis.

**Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** We expect no additional equipment, supplies, labor, or administrative costs from the proposed rules.

**Other Compliance Requirements:** As mentioned above, firms that depend on instream activities and potentially those that hold existing permits could incur adverse impacts.

- The impacts to in-stream users would be specific to the firm, but is unlikely to be significant since few firms are dependent on instream flows.<sup>3</sup>
- Existing water right holders could be impacted if the proposed rules resulted in changes to the value of their water right. This would ultimately only affect those that want to sell or lease a right, and only for the period until the reservations are fully allocated to new uses. The exact cost is difficult to determine since it depends on many factors and very few if any transfers would happen in this fashion.

Creation of the reservation will be a net benefit for most businesses that need water. Water unavailable during low flow periods is damaging to any business that needs it for its own use or who are looking to develop residential or commercial properties.

For those that do not require water during low flow periods, an interruptible water right is an option under both the current practices and proposed rules.

In order to have water available during low flow periods under the baseline, water would have to be obtained through purchase, lease, transfers, or on-site storage. On-site storage

for a low flow period can cost approximately \$0.75 per gallon for small water systems.<sup>4</sup> This would be typical for a residence connected to a public water system; the proposed rules avoid this cost for those using the reservations. For other users, the cost of storage would likely preclude it as an option.

Currently, businesses needing water right permits in many areas must purchase or lease water. This can mean some cost for every low-flow season. This analysis assumes that water would be readily available for purchase or lease. If not the case, then prices would likely be very high.

**Quantification of Costs and Ratios:** It is the purpose of this section to evaluate whether:

- Compliance with the proposed rules will cause businesses to lose sales or revenue.
- The proposed rules will have a disproportionate impact on small businesses.

**Revenue Impacts:** As noted previously, the most likely significant impacts of the proposed rules would be from decreased flows in the river and the creation of the reservation.

- The reduction of flows in the river is unlikely to significantly affect any firms within the basins.
- Those firms that will now be able to access water from the reservation will experience a benefit from being able to more easily access reliable water supplies. We estimate that summer flows will not meet the proposed minimum instream flows in a majority of years. New permits issued with stream flow conditions would be interruptible under the baseline, as under the proposed rules. Storage would likely be required for all uses absent the rules. In that sense, the rules will represent a negative cost (net benefit) to firms.

The net benefit to firms is the value of avoiding expensive storage, or purchasing or leasing water rights, or other mitigation options to access water during periods of low flow. This will likely lower costs to some potential water users and to that extent, may increase revenues.

Existing water right holders might see some loss in the value of existing water rights and this could lower revenues. However, as mentioned above, this effect is likely to be relatively small and so we do not consider it further.

**Distribution of Compliance Costs:** No business is required to access water from the reservations or comply with the proposed rules.

It is possible that small businesses could have costs under the proposed rules if they pursue water rights outside the reservations and regional supply areas. Still, the cost should be similar or less to the expense now incurred, as ecology is likely to issue only interruptible rights if sufficient mitigation is not proposed. The rules, for the most part, only clarify the conditions for granting a new water right that exist in current practice. Ecology is unable to determine this cost as it would be very small and are unsure if future permitted water rights will be processed.

**Known Costs:** No businesses are required to comply with the rules. Businesses that choose to qualify for the ben-

efits of the reservations must meet the criteria for accessing the reservation.

Ecology was unable to determine any measurable costs to small businesses from the proposed rules. If there were known costs to those required to comply with the proposed rules, it may impose disproportionate costs to small businesses. However, there is clearly a very large net benefit to those who qualify for the reservations. Those who qualify for the reservations are identified in the rules and are not directly small businesses.

**Conclusions:** No businesses are required to access the reservations or are subject to conditions of the rules. Ecology was unable to determine any costs to small businesses from this proposed rule. Businesses of all sizes that qualify to use the reservation will experience net benefits from the rules. If there are known costs, the rules could have disproportional costs to small businesses. Ecology was unable to determine measurable costs.

**Actions Taken to Reduce the Impact on Small Business:** As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rule making versus the baseline. Therefore, the proposed rules take no specific measures to reduce or mitigate these rule impacts. In general, small business seeking reservation water through an exempt well may have hypothetical advantages over a larger business with needs too large to be satisfied through a permit-exempt well.

**Involvement of Small Businesses in the Development of the Proposed Rules:** The proposed rules have been developed as an outcome of the Lewis and Salmon-Washougal watershed planning process (WRIAs 27 and 28). This was an open process allowing for all entities to comment and take part as the project proceeded. Participants in the planning unit included small businesses and organizations representing small businesses. Public hearings will be held after the filing of the CR-102 to consider the rules and allow small businesses to provide further input.

**SIC Codes of Impacted Industries:** No industries are required to comply with the proposed rules unless they seek to obtain new water right permits or permit-exempt water rights in the covered area. The following list shows standard industrial codes (SIC) codes for existing developable properties in the Lewis and Salmon-Washougal Basins.<sup>5</sup> This serves as a representative sample of potential future businesses that may be affected.

**Table 1. Industries potentially affected by proposed rules (North American Industry Classification System<sup>6</sup>)**

Storage/packing agricultural produce	Code 1151
Deciduous tree fruits	Code 0175
Horticulture nurseries	Code 1114
Manufacturing	Code 33
Fresh fruits and vegetables	Code 5148
Commercial greenhouses	Code 1114
Hatcheries	Code 1129
Mining, mineral extraction	Code 21
Residential building construction	Code 2361
Nonresidential building construction	Code 2362
Produce market	Code 445230
Construction	Code 23
Fruit farming	Code 111339
Accommodation and food services	Code 722310
Golf facility	Code 713910
Stables	Code 713990
Animal production	Code 115210

**Expected Jobs Created or Lost:** Ecology expects the proposed reservations to serve 16,490 households over the twenty-year period. If water from the reservations is fully utilized annual labor income of approximately six hundred sixty million can be realized. This could create 12,010 new supporting jobs in the Lewis and Salmon-Washougal watershed basins.

Office of financial management's NAICS based input/output model<sup>7</sup> provides estimates of interdependence among industrial sectors in the state. Each sector not only produces and sells goods or services, but also purchases goods or services for use within its production process. Ecology expects jobs created through the proposed rules in these areas:

	<b>Employment</b>
Crop production	165
Animal production	62
Forestry and fishing	17
Logging	6
Mining	12
Electric utilities	56
Gas utilities	9
Other utilities	22
Construction	198
Food manufacturing	136
Textiles and apparel	23
Wood product manufacturing	17
Paper manufacturing	15
Printing	57
Petroleum and products	6
Chemical manufacturing	3

Nonmetallic mineral products manufacturing	15
Primary metals	1
Fabricated metals	13
Machinery manufacturing	5
Computer and electronic product	10
Electrical equipment	1
Aircraft and parts	0
Ship and boat building	4
Other transportation equipment	2
Furniture	22
Other manufacturing	32
Wholesale trade	271
Retail trade	2,666
Transportation and warehousing	255
Information	223
Finance and insurance	509
Real estate	552
Professional services and management	1,390
Educational services	236
Health services	2,348
Arts, recreation, and accommodation	390
Food services and drinking places	1,240
Other services	1,019
<b>Total Employment</b>	<b>12,010</b>

<sup>1</sup> Due to size limits for filing documents with the code reviser, the SBEIS does not contain the appendices that further explain ecology's analysis. Nor does it contain the raw data used in this analysis, or all of ecology's analysis of this data. However, the rule-making file contains this information and it is available upon request.

<sup>2</sup> In the state ground water code, the "ground water permit exemption" allows for certain uses of small quantities of ground water; including domestic, industrial, stockwatering, and noncommercial irrigation of less than one-half acre of land. RCW 90.44.040, *see also* Washington Attorney General Opinion (2005 Op. Atty Gen. Wash. No. 17).

<sup>3</sup> Talks with local interests show few commercial activities in the basin depend on instream flows.

<sup>4</sup> <http://www.doh.wa.gov/ehp/dw/Publications/331-134-4-30-08.pdf>.

<sup>5</sup> Data provided by the Clark, Cowlitz and Skamania County assessor and by the Washington state employment security department was the basis for this table.

<sup>6</sup> Ecology has used NAICS codes rather than standard industrial codes (SIC). It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

<sup>7</sup> <http://www.ofm.wa.gov/economy/io/default.asp>.

A copy of the statement may be obtained by contacting department of ecology water resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/lewis\\_salmon\\_washougal.html](http://www.ecy.wa.gov/programs/wr/instream-flows/lewis_salmon_washougal.html) or Lanessa Inman, Department of Ecology, 300 Desmond Driver S.E., Lacey, WA 98504, phone (360) 407-6862, fax (360) 407-7162, e-mail [Linm461@ecy.wa.gov](mailto:Linm461@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting department of ecology water resources web page at <http://www.ecy.wa.gov/programs/wr/>

instream-flows/lewis\_salmon\_washougal.html or Lanessa Inman, Department of Ecology, 300 Desmond Driver S.E., Lacey, WA 98504, phone (360) 407-6862, fax (360) 407-7162, e-mail Linm461@ecy.wa.gov.

July 22, 2008  
Polly Zehm  
Deputy Director

## Chapter 173-527 WAC

### WATER RESOURCES MANAGEMENT PROGRAM FOR THE LEWIS BASIN, WRIA 27

#### PART A GENERAL

#### NEW SECTION

**WAC 173-527-010 Authority and purpose.** (1) The department of ecology (ecology) adopts this chapter under the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water code (chapter 90.03 RCW), Regulation of public ground waters (chapter 90.44 RCW), RCW 43.21A.064(9), and 43.21A.080.

(2) This chapter shall not affect existing water rights, unless otherwise stated in the conditions of the water right in question. It shall also not affect federal Indian and non-Indian reserved rights.

(3) This chapter does not limit ecology's authority to establish flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

(4) The Salmon-Washougal and Lewis watershed management plan (plan) recommendations were approved in 2006 by the Salmon-Washougal and Lewis planning unit (planning unit) in accord with RCW 90.82.130. The planning unit is a group made up of Clark, Skamania, and Cowlitz county commissioners and a broad range of water use interests. Ecology shall use the plan as the framework for making future water resource decisions in the Salmon-Washougal watershed. Ecology shall rely upon the plan as a primary consideration in determining the public interest related to such decisions, including this rule adoption.

(5) Ecology shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. Ecology and the planning unit should periodically evaluate the effectiveness of this chapter.

#### NEW SECTION

**WAC 173-527-020 Definitions.** For purposes of this chapter, the following definitions shall be used:

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means a beneficial use of waters of the state, authorized by and consistent with all applicable laws and regulations.

"Consumptive use" means a use of water whereby there is diminishment of the amount or quality of the water source.

"Ecology" means the Washington state department of ecology.

"Environmental restoration project" or "ERP" means a project with a primary purpose of restoring salmonids, requiring a temporary use of water.

"Habitat-forming function" means a physical, chemical, or biological function that is necessary to create and maintain natural or desired habitat conditions that benefit fish and other aquatic life. Habitat forming functions include but are not limited to creating and maintaining the following: Channel migration, gravel and sediment transport, water quality, nutrients, large woody material recruitment, floodplain flows, and riparian habitat.

"Habitat-related action" means reestablishment of pre-disturbance or other desirable riparian, stream, wetland, or floodplain functions and related biological, chemical, and physical processes.

"Instream flow" means a level of stream flow, established under chapters 90.03, 90.22, 90.54 and 90.82 RCW, needed in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term instream flow is synonymous with "minimum flow" as used in chapters 90.03 and 90.22 RCW, "base flow" as used in chapter 90.54 RCW, and "minimum instream flow" as used in chapter 90.82 RCW.

"Interruptible use" means a type of water use that relies upon withdrawals on a periodic or seasonal basis that if interrupted would not cause substantial hardship or health or safety concerns, or that is highly unlikely to be interrupted during the expected period of use. For the purposes of this chapter, interruptible uses are subject to the instream flows set in WAC 173-527-060.

"Municipal water supplier" is defined in RCW 90.03-015.

"Net stream flow depletion" means the total depletion of water from a subbasin that may be available for future use under the reservation set in this chapter. The net stream flow depletion equals the flow depletion that remains after performance of offsetting actions, and is available for use only after applicable conditions in WAC 173-527-110 have been met.

"Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source or where there is no diminishment of the amount or quality of the water source.

"Permit-exempt withdrawal" or "permit exemption" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but otherwise subject to the surface and ground water statutes and other applicable laws. For the purpose of this chapter, stockwater use does not include feedlots or other activities not related to normal grazing land uses.

"Planning unit" means the Salmon-Washougal and Lewis watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Salmon-Washougal and Lewis watershed planning initiating governments.

"Public water system" means any system, excluding a system serving only one single-family residence and a system

with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pre-treatment storage facilities not under control of the purveyor but primarily used in connection with the system.

"Regional supply area" means a defined area where ecology finds water to be available for future ground water withdrawal. Regional supply areas are designated by WAC 173-528-070 or by public order of ecology.

"Reservation" means an allocation of water for future beneficial uses. For the purposes of this chapter, the reservation is not subject to instream flows set in WAC 173-527-060, nor to closures set in WAC 173-527-070. The reservation is senior to the instream flow water rights set in WAC 173-527-060.

"Water-related action" means an offsetting activity that provides a quantity of water during certain times and at certain places that essentially replaces water at or upstream of where a proposed water right would impact surface flow. Water-related actions include but are not limited to acquiring an active water right or donating a water right to the trust water right program under chapter 90.42 RCW.

"Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes or a permit-exempt ground water withdrawal.

"Watershed plan" means the Salmon-Washougal and Lewis watershed management plan, adopted on July 21, 2006, by the Clark, Cowlitz, and Skamania county commissioners.

"Withdrawal" means the extraction of ground water, or the diversion of surface water for a beneficial use.



NEW SECTION

**WAC 173-527-040 Compliance and enforcement.** (1)

Ecology shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

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

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

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

**PART B  
INSTREAM FLOWS AND CLOSURES**

NEW SECTION

**WAC 173-527-050 Stream management control points.** Ecology hereby establishes the following stream management control points shown in Table I. Management point locations are shown in WAC 173-527-030.

**Table I  
Stream Management Control Point Information**

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Kalama River	RM 2.8; 46°02'51"N, 122°50'10"W
Cedar Creek (near Lewis River Hatchery)	RM 0.02; 45°56'09"N, 122°37'09"W
North Fork Lewis River (at USGS gage #14220500)	RM 19.0; 45°57'07"N, 122°33'46"W
Canyon Creek (at NE Healy Road)	RM 2.9; 45°56'24"N, 122°18'58"W
Jenny Creek (at Pacific Highway/Clark Co. Road)	RM 0.3; 45°52'22"N, 122°41'53"W
McCormick Creek (at 11th Ave. crossing)	RM 2.0; 45°50'34"N, 122°40'51"W
Breeze Creek (at La Center, Co. Rd. 42 crossing)	RM 0.4; 45°51'45"N, 122°39'52"W
Lockwood Creek (at Co. Rd. 42)	RM 1.2; 45°51'17"N, 122°38'14"W
Mason Creek (at J.A. Moore Rd. crossing)	RM 1.2; 45°50'00"N, 122°37'30"W

**Table I  
Stream Management Control Point Information**

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
East Fork Lewis River (at Ecology gage 27D090)	RM 10.1; 45°48'51"N, 122°35'30"W
Rock Creek #2 (at 319th St. Bridge off Highway 503)	RM 1.8; 45°51'13"N, 122°31'14"W
Yacolt Creek (at confluence at Moulton Falls)	RM 0.02; 45°49'56"N, 122°23'13"W
Rock Creek #1 (south of Dole)	RM 1.8; 45°46'31"N, 122°20'16"W
Gee Creek (at Ridgefield, Highway 501 crossing)	RM 4.9; 45°48'55"N, 122°43'52"W

NEW SECTION

**WAC 173-527-060 Instream flows.** (1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the department of fish and wildlife, department of agriculture, and department of community, trade, and economic development; and public input received during the rule-making process. The planning unit recommended these instream flow levels by unanimous vote.

(2) Instream flows established in this chapter are water rights, which protect instream values from future consumptive appropriations. The priority date of the instream flows is the effective date of this chapter. In accordance with RCW 90.82.080, this priority date received unanimous approval from the planning unit.

(3) Instream flow rights shall be protected from impairment by any new water rights commenced after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to the instream flows:

(a) A water right commenced before the effective date of this chapter, unless otherwise stated in the conditions of the water right.

(b) Water rights appropriated from the reservation of water established in WAC 173-527-110.

(c) Future withdrawals for environmental restoration purposes under WAC 173-527-140 unless included as a permit condition.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the stream management control points in WAC 173-527-050. Instream flows apply to all stream reaches that contribute to flow at stream management control points, as shown in Table II of this section. For reaches that are downstream of all management points, the flows set for the nearest upstream management control point shall apply to those reaches. However, if more than one management point is immediately upstream, the combined flow of the points shall be used.

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

Month	Stream Management Control Point								
	Kalama River, RM 2.8	Cedar Creek, RM 0.02	Lower Lewis River, RM 19.0	Canyon Creek, RM 2.9	Jenny Creek, RM 0.3				
January	950	125	2000	66	19				
February	950	156	2000	66	36				
March	950	156	2000 for Mar. 1, 2200 from Mar. 2 to Mar. 15, 2500 from Mar. 16 to Mar. 30, 2700 for Mar. 31	208	36				
April	950	156	2700	208	36				
May	950	156	2700	208	36				
June	900	104	2700	139	24				
July	616	104	2300 from July 1 to July 10, 1900 from July 11 to July 20, 1500 from July 21 to July 30, 1200 for July 31	139	24				
August	434 from Aug. 1 to Aug. 15, 400 from Aug. 16 to Aug. 31	46	1200	66	8				
September	589	188	1200	66	8				
October	1050	188	1200 from Oct. 1 to Oct. 15, 2500 from Oct. 16 to Oct. 31	66	19				
November	1050	188	4200	66	19				
December	1050	125	4200 from Dec. 1 to Dec. 15, 2000 from Dec. 16 to Dec. 31	66	19				
Month	Stream Management Control Point								
	McCormick Creek, RM 2.0	Breeze Creek, RM 0.4	Lockwood Creek, RM 1.2	Mason Creek, RM 1.2	East Fork Lewis River, RM 10.1	Rock Creek #2, RM 1.8	Yacolt Creek, RM 0.02	Rock Creek #1, RM 1.8	Gee Creek, RM 4.9
January	15	31	30	23	500	23	59	75	23
February	28	39	54	42	500	43	97	121	42
March	28	39	54	42	460	43	97	121	42
April	28	39	54	42	460	43	97	121	42
May	28	39	54	42	460	43	97	121	42
June	28	39	36	28	420	29	66	80	28
July	28	39	36	28	233	29	66	80	28
August	6	8	13	9	122	10	26	34	9
September	6	8	13	9	175 from Sep. 1 to Sep. 15, 295 from Sep. 16 to Sep. 30	10	26	34	9
October	15	21	30	23	500	23	59	75	23
November	15	21	30	23	500	23	59	75	23
December	15	21	30	23	500	23	59	75	23

**NEW SECTION**

**WAC 173-527-070 Surface and ground water closed to further consumptive appropriations.** (1) Based on historical and current low flows and the water withdrawals by existing water right holders, ecology has determined that no waters are reliably available for new consumptive uses from certain surface water sources in the basin. Therefore, all surface waters listed in Table III are closed to any further consumptive appropriation, except as provided in WAC 173-527-080.

**Table III**  
**Surface Water Closures**

Subbasin Name*	Affected Reach
Kalama River	Kalama River from mouth to headwaters, including tributaries.
Middle Lewis River	Lewis River from Forest Road 90 bridge (46°1'13"N, 122°1'13"W) to headwaters, including tributaries.

**Table III  
Surface Water Closures**

Subbasin Name*	Affected Reach
Upper Lewis River	All surface waters in the subbasin.
Lower Lewis River	Lewis River from RM 7.1 (45°54'53"N, 122°44'12"W) to Merwin Dam outflow (45°33'21"N, 122°33'21"W), including tributaries.
East Fork Lewis River	East Fork Lewis River from Interstate Highway 5 bridge crossing (45°52'23"N, 122°42'42"W) to headwaters, including tributaries. Gee Creek from mouth at Columbia River to headwaters, including tributaries.

\*Subbasin boundaries are shown in WAC 173-527-030, and are consistent with the boundary descriptions used in the watershed plan.

(2) Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, there is a high likelihood that future ground water withdrawals would capture water that affects closed surface waters. Therefore, the basin is closed to new withdrawals of ground water (including any new permit-exempt withdrawals) that would affect closed surface waters, except as provided in WAC 173-527-080.

(3) Applications for a withdrawal that would not affect the closed reaches, listed in Table III, shall be evaluated on a case-by-case basis under applicable law.

**PART C  
FUTURE WATER RIGHTS**

NEW SECTION

**WAC 173-527-080 Future water rights—Generally.** A new surface or ground water appropriation (including any permit-exempt ground water withdrawal) may be commenced only if consistent with the surface and ground water statutes and other applicable requirements of law and if any one of the following seven conditions (subsections (1) through (7) of this section) apply:

- (1) The proposed water use is nonconsumptive.
- (2) The proposed surface water use would not affect any of the surface waters closed in WAC 173-527-070, Table III.
- (3) The proposed ground water withdrawal is located where it would not affect any of the surface waters closed in WAC 173-527-070, Table III by either meeting condition (a) or (b) of this subsection:

(a) The person or entity seeking to commence a proposed ground water use shows, through scientifically sound studies and technical analysis, that the ground water use would not affect any of the closed surface waters identified in WAC 173-527-070, Table III.

(b) The proposed ground water withdrawal occurs in a regional supply area designated in WAC 173-527-090 or by order of ecology.

(4) The person or entity seeking to commence the new appropriation submits a scientifically sound mitigation plan, and such plan is approved by ecology. A mitigation plan must offset water-for-water the impacts of a proposed withdrawal, and provide adequate assurances that the mitigation will in fact occur. Mitigation may be performed individually or as a group.

(5) The proposed water use qualifies as an interruptible use as defined in WAC 173-527-020, and meets the criteria in WAC 173-527-100.

(6) The proposed water use qualifies for the reservation established and as conditioned in WAC 173-527-110.

(7) The proposed use is for an environmental restoration project and meets the criteria in WAC 173-527-140.

NEW SECTION

**WAC 173-527-090 Regional supply areas for future ground water withdrawals.** (1) Ecology finds there to be certain locations where water is available on a year-round basis for future ground water withdrawals and withdrawals in these areas are unlikely to affect surface waters closed in WAC 173-527-070, Table III or instream flow values protected under RCW 90.54.020(3). Such regional supply areas are recognized in the watershed plan and supported by the public interest as preferred locations for developing future water supply. Ground water withdrawals (including permit-exempt withdrawals) may be commenced in the designated regional supply areas to the extent such withdrawals are consistent with chapters 90.03 and 90.44 RCW, and any other applicable requirements of law.

(2) Based on local hydrology, ecology finds that ground water withdrawals made in areas designated below meet the conditions for regional supply areas in subsection (1) of this section and are so designated:

(a) All lands west of Interstate Highway 5, north of the East Fork Lewis River, and east of the Lewis River mainstem;

(b) All lands west of Interstate Highway 5, north of Lewis River mainstem, and within the Lower Lewis subbasin.

(3) Ecology may by order designate other regional supply areas that meet the criteria in subsection (1) of this section.

(4) In order to protect instream values of surface waters in regional supply areas, ecology reserves the right to deny any withdrawals whereby drawdown effects from pumping would create a significant impact to local surface waters. For the purposes of this section, significant impact includes but is not limited to a noticeable reduction in lake level or flow in local creeks.

NEW SECTION

**WAC 173-527-100 Future appropriations for interruptible use.** (1) Ecology finds there may be water available above existing water rights and instream flows, which may be captured for interruptible use. This water is only available

from November 16 to May 14 and may only be withdrawn from the Kalama, North Fork Lewis (below Merwin Dam), and East Fork Lewis rivers.

(2) Prior to commencement, the person or entity seeking a new interruptible appropriation must demonstrate a seasonal need and provide assurances that any effects on surface water that may result from withdrawals will be limited to the above time period and locations.

(3) Ecology shall deny an appropriation for interruptible use if such use, or the cumulative effects of such uses, would compromise habitat-forming functions provided by high flows. In no case shall new individual or cumulative allocations exceed the values indicated in Table IV as specified for each river. However, these allocation limits may be lowered on a case-by-case basis whenever more protection of habitat-forming functions is needed.

(4) Interruptible uses are subject to existing water rights and instream flows set in WAC 173-527-060.

**Table IV**

**Limits on Future Allocation for Interruptible Uses**

River Name	Allocation Limit* (cubic feet per second)
Kalama River	150
Lewis River (from river mile 7.1 to Merwin Dam)	200
East Fork Lewis	90
*The allocation limits in this table are based upon an allowance for ten percent of the average historic flow. Due to case-by-case determinations of flow for habitat-forming function needs, the maximum allocation may be less.	

**NEW SECTION**

**WAC 173-527-110 Reservation of surface and ground water for future uses.** (1) Ecology has weighed the public interest that supports the reservation of a limited amount of water for future consumptive uses against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by a limited reservation clearly overrides the small potential for negative impacts on instream resources.

Based on this finding, ecology hereby allocates an amount and rate of use of water for specific water users and subbasins, as indicated under the subtitle "Net streamflow depletion" in Table V.

This reservation is available to a user only if the conditions set forth in subsection (2) or (6) of this section are met, as well as any applicable requirements of law, including but not limited to all water resource laws and regulations.

(2) Ecology may approve a water right application for water from the reservation if all of the following conditions in (a), (b), (c), and (d) of this subsection are met:

**Alternatives analysis**

(a) The applicant demonstrates that no practicable supply alternatives to the reservation are available. In order to satisfy this condition, an applicant must demonstrate consideration of other regional water sources to supply water for the same use now being proposed, including:

- (i) Municipal and public water system supply;
- (ii) Water from a ground or surface water source, which may be withdrawn without affecting any of the surface waters closed in WAC 173-527-070, such as water from a hydraulically disconnected deep aquifer source; and
- (iii) Supply options from surface and ground water storage.

**Water-related offset**

(b) The applicant demonstrates it will offset the overall streamflow depletion(s) through water-related actions to the maximum extent practicable. Applicants should offset at least one-half of the overall streamflow depletion(s) through water-related actions.

(i) In evaluating the adequacy of water-related actions to offset depletions, ecology will evaluate the action based on the degree of aquatic benefit it would provide. A water-related offset may have a greater or lesser benefit due to the seasonality, location, or quality of water provided. The level of benefit will be used to determine if any additional offsets will be required of the applicant.

(ii) Ecology will consider water-related offsets only to the extent that reasonable assurance exists that such offsets will be successfully delivered or donated to the trust water right program under chapter 90.42 RCW where delivery is legally guaranteed.

**Habitat-related offset**

(c) After satisfying the water-related offset requirement in (b) of this subsection, an applicant must offset any remaining streamflow depletion through habitat-related actions that create or enhance habitat. Habitat-related offsets must compensate for the habitat loss or degradation that will result from the net streamflow depletion.

An applicant must provide adequate assurances that a habitat-related action in fact occurs. Ecology, as appropriate, shall condition use of the reservation with performance standards and monitoring requirements, or require financial assurance mechanisms prior to reservation use.

**Impact analysis**

(d) The applicant must demonstrate that a proposed appropriation will not significantly impact tributaries to sub-basin mainstems. For the purposes of this section, significant impact means to noticeably affect instream values protected under RCW 90.54.020(3).

**Application review and permitting**

(3) In determining practicability in subsection (2) of this section, ecology will consider both economic and logistic considerations, as well as guidance from the watershed plan.

(4) Ecology, in consultation with the department of fish and wildlife, will evaluate the adequacy of proposed offsets and alternatives analysis in subsection (2) of this section. The evaluation shall be consistent with the watershed plan and guidance documents approved by ecology. Ecology will also consider recommendations and technical advice received from the planning unit or by an advisory committee, formally designated by the planning unit.

(5) Ecology will issue a permit for use of water equal to the amount it determines appropriate to allocate from the reservation, and such amount will be debited from the total reservation amount. The total quantity of water appropriated shall not exceed the amount and rate listed under the subtitle

"Net streamflow depletion" in Table V. However, ecology will issue a permit for a quantity beyond the amount debited from the reservation for the following:

(a) Water-related offsets to the extent such offsets are water-for-water, to the satisfaction of RCW 90.03.380 or 90.44.100, any other applicable laws, and terms of an approved mitigation plan; and

(b) Water use to the extent closed water sources are not affected and to the satisfaction of applicable requirements of law, including but not limited to all water resource laws and regulations.

**Permit-exempt ground water use**

(6) The requirements in subsection (2) of this section do not apply to permit-exempt ground water uses. However, permit-exempt ground water uses under RCW 90.44.050 are

subject to both of the following conditions in order to occur under the reservation:

(a) Future permit-exempt well use may not occur where connection to an existing municipal water supplier can be provided in a timely and reasonable manner. Determinations of timely and reasonable shall be consistent with public water system plans and local laws, including but not limited to Clark County Code 40.370.020.

(b) Water use from a permit-exempt ground water well must be consistent with the allocation limits of this reservation and the Clark, Cowlitz, and Skamania County code and other applicable laws, including the statute on permit exemptions, RCW 90.44.050. Single or group domestic uses under the permit exemption shall not exceed five thousand gallons per day. Irrigation of lawn and noncommercial garden under the permit exemption shall not exceed one-half acre.

**Table V  
Allocation of Reservation**

<b>Subbasin Name*</b>	<b>Water User**</b>	<b>Expected Streamflow Depletion without Offset (overall depletion) cubic feet per second (cfs)</b>	<b>Expected Water-related Offset Requirement (cfs)</b>	<b>Net Streamflow Depletion*** (cfs)</b>
Kalama River	City of Kalama	1.92	0.00	1.92
	Other public water systems	0.37	0.19	0.19
	Permit-exempt ground water wells	0.16	0.00	0.16
Middle Lewis River and Upper Lewis River	Public water systems in Cowlitz County	0.37	0.19	0.19
	Public water systems in Clark County	0.75	0.37	0.37
	Public water systems in Skamania County	0.40	0.00	0.40
	Permit-exempt ground water wells in Cowlitz County	0.07	0.00	0.07
	Permit-exempt ground water wells in Clark County	0.12	0.00	0.12
	Permit-exempt ground water wells in Skamania County	0.40	0.00	0.40
	Commercial use in Skamania County****	0.21	0.00	0.21
East Fork Lewis River Subbasin	Clark Public Utility, City of Battle Ground and Ridgefield	4.40	2.20	2.20
	Other public water systems in Clark County	0.37	0.19	0.19
	Permit-exempt ground water wells in Clark County	0.47	0.00	0.47

**Table V  
Allocation of Reservation**

Subbasin Name*	Water User**	Expected Streamflow Depletion without Offset (overall depletion) cubic feet per second (cfs)	Expected Water-related Offset Requirement (cfs)	Net Streamflow Depletion*** (cfs)
<p>*Subbasin boundaries are shown in WAC 173-527-030, and are consistent with the boundary descriptions used in the watershed plan.</p> <p>**In the watershed plan, the term "domestic wells" has the same meaning as "permit-exempt ground water wells" and the term "small community water systems" has the same meaning as "public water systems."</p> <p>*** If conditions in subsections (2) and (6) of this section are satisfied, the net depletion of a closed water source, set in WAC 173-527-070, shall not exceed the quantities listed for specific users.</p> <p>****Withdrawal impacts shall be limited to segments of the mainstem North Fork Lewis River that are located upstream of the Forest Road 90 bridge crossing (46°1'13"N, 122°1'13"W).</p>				

NEW SECTION

**WAC 173-527-120 Priority dates of reservation and repeal of chapter 173-592 WAC.**

(1) The reservation created in WAC 173-527-110 is not subject to the instream flows or closures set in this chapter, and the priority date of the reservation for all areas outside Clark County is the effective date of this chapter.

(2) Ecology hereby transfers unappropriated water from the existing reservation for Clark County in WAC 173-592-070 in such quantities and to the users and areas of use in Clark County as set forth in WAC 173-527-110, Table V and WAC 173-528-110, Table IV. Pursuant to this transfer, the priority date of withdrawals from all Clark County portions of the reservation in WAC 173-527-110 is August 13, 1986. However, the designation of specific municipal suppliers in this reservation does not create a right for these entities to use such water. Such a right will arise only if a permit is applied for by such municipal suppliers to use water under the reservation and approved by ecology after applying the legal tests for a new appropriation. With respect to any water for which a permit has not been granted, ecology reserves the right to modify in all respects or rescind the reservation by future rule making.

(3) Based on new information made available through the local watershed planning process and hydrologic conditions as of the time of this rule making, ecology has determined that the remaining water reserved under WAC 173-592-070, which was not transferred in subsection (2) of this section or previously appropriated is no longer supported by available information and science. Therefore, chapter 173-592 WAC is hereby repealed in its entirety and all water reserved under that rule that has not been transferred or appropriated is hereby returned to the state. This repeal is not intended to affect any existing water rights issued under the reservation.

NEW SECTION

**WAC 173-527-130 Accounting for use under the reservation.** (1) A record of all appropriations from the reservation shall be maintained by ecology.

(2) For an appropriation under a permit, ecology will account for water use under the reservation based on authorized quantities under water right permits or certificates, and according to WAC 173-527-110(5).

(3) For permit-exempt ground water appropriations, ecology will deduct a standard amount of two hundred forty gallons per day for each well. For a group domestic water system under the permit-exemption, the standard amount will be applied for each domestic or residential service connection. The standard amount will be adjusted periodically to reflect actual maximum daily use during low flow conditions. The standard amount assumes a rate of septic recharge from an on-site septic system. In the event that on-site septic recharge is known not to occur at a well site, ecology will deduct an additional five hundred and sixty gallons per day. Additionally, ecology reserves the right to account for water use based on the best available information contained in well logs, approvals issued by local jurisdictions, or other documents.

(4) If a water user under the reservation subsequently abandons or relinquishes the withdrawal, ecology will credit back to the reservation the actual amount of water used and/or debited from the reservation, upon demonstration to ecology that the well or surface water diversion has been decommissioned through written certification.

(5) Ecology shall notify either Clark, Skamania, or Cowlitz County and the planning unit; when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the reservation is appropriated for a subbasin.

NEW SECTION

**WAC 173-527-140 Future surface water withdrawals for environmental restoration.** In keeping with the findings of the watershed plan, ecology finds that the public inter-

est advanced by future withdrawals for ERPs, as defined and conditioned in this section, clearly overrides the minimal negative impacts on instream flows.

(1) A future withdrawal for an ERP may be approved only if it meets all the following:

(a) The proposed water use is for a bypass flow for salmonid restoration or riparian planting project, and the primary purpose of the project is restoration of salmonid.

(b) The proposed project will result in aquatic habitat benefits, and such benefits will exceed any detriment to aquatic habitat that may be caused by reductions in flow at specific locations and times of withdrawal.

(c) The proposed use qualifies for a temporary permit.

(2) Ecology, in consultation with the department of fish and wildlife, will evaluate proposed ERPs. ERPs approved by ecology are not subject to closures or instream flows set in this chapter, unless otherwise conditioned by the permit.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 173-592-010	Purpose.
WAC 173-592-020	Authority.
WAC 173-592-030	General.
WAC 173-592-040	Reservation source of supply area defined.
WAC 173-592-050	Definitions.
WAC 173-592-060	Petition received—Notice.
WAC 173-592-070	Reservation.
WAC 173-592-080	Monitoring program.
WAC 173-592-090	Water quality.
WAC 173-592-100	Exemptions.
WAC 173-592-110	Regulation review.
WAC 173-592-115	Appeals.
WAC 173-592-120	Reservation source of supply area map.

**WSR 08-15-168**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 08-03—Filed July 23, 2008, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-146.

Title of Rule and Other Identifying Information: Chapter 173-528 WAC, Water resources management program for the Salmon-Washougal Basin, WRIA 28.

Hearing Location(s): Educational Services District, Clark and Pacific Rooms, 2500 N.E. 65th Avenue, Vancou-

ver, WA, on August 26, at 7:00 p.m.; at the Cowlitz Expo and Conference Center, 1900 7th Avenue, Longview, WA, on August 27, at 7:00 p.m.; and at the Stevenson Community Library, Library Gallery, 120 N.W. Vancouver Avenue, Stevenson, WA, on August 28, at 7:00 p.m.

Date of Intended Adoption: September 23, 2008.

Submit Written Comments to: Department of ecology water resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/lewis\\_salmon\\_washougal.html](http://www.ecy.wa.gov/programs/wr/instream-flows/lewis_salmon_washougal.html), Travis Burns, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-7207, e-mail [tbur461@ecy.wa.gov](mailto:tbur461@ecy.wa.gov), fax (360) 407-6574, by September 10, 2008.

Assistance for Persons with Disabilities: Contact Judy Beitel by August 16, 2008, TTY (800) 833-6388 or (360) 407-6878.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In order to better manage water resources in WRIA 28, the local watershed planning unit recommended that ecology adopt, in rule, a water resource management strategy for the basin. Recommendations were approved by Clark, Cowlitz and Skamania county commissioners in July 2006. The new rule will cause portions of water reserved under chapter 173-592 WAC to be transferred to the management scheme in chapter 173-528 WAC. Under the proposal, chapter 173-592 WAC will be subsequently repealed in its entirety.

The key rule elements include:

- Setting instream flow levels in the watersheds to protect aquatic resources, including habitat for threatened and endangered salmonids;
- Closing subbasins to future withdrawals with the exception of seasonal water use from the region's larger streams;
- Designating "regional supply areas" for future water supply;
- Establishing limited reservations of water for future use; and
- Specifying conditions for accessing the water reserves to benefit instream resources and better manage limited supply.

Reasons Supporting Proposal: RCW 90.82.130(4) states when a watershed plan is approved by a watershed planning unit and the county legislative authority, ecology, as a participating member of the planning unit, is obligated to use the plan for making future water resource decisions for the watershed. The proposal also furthers ecology's water management goals and statutory obligations.

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

Statute Being Implemented: Chapters 90.03, 90.44, 90.54, 90.22 and 90.82 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Travis Burns, Headquarters, Department of Ecology, (360) 407-7207; Implementation and Enforcement: Thomas Lor-

anger, S.W. Regional Office, Department of Ecology, (360) 407-6058.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Introduction:** The Washington state department of ecology (ecology) is proposing chapters 173-527 and 173-528 WAC, Water resource programs for two lower Columbia River basins, water resources inventory areas (WRIA) 27 and 28.

The objective of this small business economic impact statement (SBEIS) is to identify and evaluate the various requirements and costs that the proposed rules might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rules impose a disproportionate impact on the state's small businesses. RCW 19.85.040 describes the specific purpose and required contents of an SBEIS.<sup>1</sup>

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rules are consistent with legislative policy.

**Rule Proposals:** The key elements of the proposed rules include:

- Setting instream flow levels in the watershed to protect aquatic resources, including habitat for threatened and endangered salmonids.
- Closing most subbasins to year-round future withdrawals.
- Defining where water remains available, including year-round access in "regional supply areas," and seasonal interruptible water supplies from larger streams (Kalama, East Fork Lewis, Lewis, and Washougal rivers).
- Creating water reservations to provide a reliable water supply for the twenty-year projected population growth in closed areas.
- Specifying conditions to accessing the reservations to benefit stream resources and better manage limited supply.

The proposed instream flows are designed to protect habitat. This makes less water available for future uses during low-flow portions of the year (May 15 through November 15). To provide a reliable, year-round supply of water for future uses, it is necessary to reserve water that would not be available even when the instream flows are not met. To do this, RCW 90.54.020 (3)(a) requires that ecology determine that the reservations would serve the overriding considerations of the public interest (OCPI).

Water uses established after the instream flow rules are junior water rights and may be interrupted when instream flows are not met. Only interruptible water rights are typically available to group domestic and municipal water suppliers to meet future demands within their service areas.

The proposed reservations give exempt uses, group domestic, and municipal systems more access to reliable water supplies, consistent with RCW 90.54.020(8) and the Growth Management Act (GMA). The reservations ensure a

year-round, reliable water supply to meet demands estimated to occur through 2028. Future users from the reservations could obtain their water from either ground water or surface water sources.

**Analysis of Compliance Costs for Washington Businesses:** We have assessed the impacts of the proposed rules by analyzing and comparing water right management under the proposed rules in contrast to current practices. The current framework or "baseline" includes the use of water by permit-exempt wells (RCW 90.44.050) and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Implementation of chapters 90.22, 90.54, and 90.82 RCW are also part of this legal baseline. The proposed reservations allot water for new water rights.

We provide a brief description of compliance requirements below. You can find further details of water management under existing practices and proposed rules in Appendices B and C.

**Water Rights Administration Under the Rules:** The proposed chapters 173-527 and 173-528 WAC will create "instream flows." Instream flows are water rights for instream resources and would be protected from impairment by "junior" water rights—those with a later priority date. This means junior water rights must stop use when stream flows do not meet the minimum levels set by the senior instream flows.

The proposed rules also reserve water for future out-of-stream uses, which will not be subject to the instream flows. The reservations were recommended by the WRIA 27 and 28 watershed planning unit, a group representing a broad range of local interests. When negotiating the size of the reservations (see Appendix B), the planning unit considered both the office of fiscal management's regional population growth projections and the projected impacts to surface water flows. The reservations are also based on overriding considerations of the public interest. Water in the reservations would provide new noninterruptible water rights for those that qualify.

The reservations allot water on a subbasin basis. Within each subbasin, a specific amount of surface water or ground water would be available to certain users, including:

- City/county systems.
- Public utility districts.
- Other public water systems.
- Permit-exempt well users.

As well as creating the instream flows and reservations for new uses, the proposed rules clarify other requirements that might affect future uses. We describe the expected changes to water management below. For more detail on changes to water right administration, see the cost-benefit analysis.

**Surface Water:** The decision process for surface water rights will be similar after the proposed rules as before. Currently (baseline), ecology grants water rights subject to flow conditions or requires mitigation during low-flow periods in the areas proposed for closure. The most significant effect of the rules relates to the creation of reservations that allocate water for new uses. Through the reservations, new surface water uses may continue even during low stream flow conditions.

There may be minimal effects to water users not qualifying for the reservation. Certain nonpublic and larger scale water users (agriculture and industrial users) will not be able to qualify for direct access to the reservation. The proposed reservations do not provide for nonpublic uses of surface water. These businesses would not be able to withdraw water when water is not available (typically May 15 through November 15). During such periods, water users wanting a new water right would need to either:

- Purchase or lease, and transfer an existing water right.
- Suspend water use during periods of low flows.
- Develop storage mechanisms.
- Develop strategies, acceptable to ecology, to mitigate their impacts.

However, we do not expect the rules to have a large effect on those that cannot directly access the reservations. These users face similar obstacles to gaining new water rights under current practices. Absent rule making, all new users would need to mitigate or use stored water during periods of low flow. Under the proposed rules, many will have increased access to water through a public water system that has gained rights through the reservation. We expect that most needs from expected regional growth will be satisfied through public water systems and permit-exempt wells.

**Ground Water Permits:** As with surface water, ecology will also make decisions on ground water right applications similar to the baseline, except for uses from the proposed reservations. Applications for ground water in hydraulic continuity with rivers and streams in WRIAs 27 and 28 would be subject to flow conditions under the baseline or to the instream flows under the proposed rules.

As with surface water, there may be minimal effects to those water users not qualifying for the reservation, but ecology does not expect such effects to change business practices. In particular, many small businesses may still be able to meet demands under the ground water permit exemption.<sup>2</sup> Ground water users under the proposed rules are also able to avoid interruption by showing that their use is not in hydraulic continuity with closed surface water bodies.

Overall, the change in ground water permitting does not significantly affect businesses. However, the proposed rules reduce the administrative costs of ground water permitting. The rules close certain ground water areas, making case-by-case hydraulic connection determinations unnecessary.

**Permit-Exempt Ground Water:** Under the proposed rules, permit-exempt well users would gain an uninterrupted permit-exempt water use under the reservation. Permit-exempt users currently withdraw water as authorized by local law and RCW 90.44.050. Although exempt from permitting, exempt wells remain subject to all other state water laws. Permit-exempt well use can be shut off if it impairs senior water rights. This has not yet occurred in WRIAs 27 and 28. Nonetheless, they remain susceptible to future curtailment if withdrawals result in impairment of a senior water right.

The proposed rules reserve water for future exempt wells and are not subject to interruption to protect the created instream flows. The rules provide added assurances to small businesses that rely on year-round water from exempt wells. Small businesses that locate outside the service area of

municipal water suppliers are most likely to use permit-exempt wells.

**Changes or Transfers of Water Rights:** Ecology will continue to process changes or transfers of existing water rights as permitted by chapters 90.03 and 90.44 RCW. The process is the same with the proposed rules as with the baseline.

**Reservation of Water:** The reservations of water, the use of water under the reservation, and the conditions of use are part of the proposed rules. The reservations will allow eligible water users the benefit of having a continuous, reliable source of water during low flow periods, with a few limits. These limits include the finite quantity of the reservations and the conditions to accessing reservation water.

The proposed rules do not require permit-exempt uses to meter and report water use to ecology. However, local public water purveyors, the county, or a municipal government may require metering and reporting through ordinances adopted to implement the watershed plan. Ecology also has authority to require metering and reporting under RCW 90.03.360 in the future.

**Impacts to Businesses in WRIA 27 and 28:** Of the proposed rules' elements, the created reservations will have the greatest impact on businesses. Businesses that need water only for potable use for employees and customers will receive benefits from the reservation. Businesses that also need water for commercial or industrial manufacturing processes and landscape or commercial irrigation will see both costs and benefits.

The proposed rules will not directly affect existing water right holders. In general, the economic costs and benefits to businesses are from the business impacts from having less water in a river, but more water available for out of stream use. Under the proposed rules, the reservations can provide water for public water systems and permit-exempt uses, even during low flow periods, for a projected twenty-year period. Having the reservation makes water predictably and reliably available for more out of stream uses than under the baseline. Therefore, it is likely the proposed rules will have a positive effect on most of the affected businesses. An exception to this would be businesses that utilize water in the river. The possible impacts are described below.

**Impacts to Businesses Dependant on Stream Flows:** As stated above, the proposed rules create a series of reservations. Accessing the reservations will allow entities to use water for various uses during low flow periods. This will slightly reduce the amount of water in the river and could impact in-stream benefits such as ecosystem services, recreation, and so on. For businesses that provide guide services such as rafting, fishing, and bird watching; or those dependent on dilution for waste removal; there could be a very minor impact. However, discussions with local interests show that the proposed flow reductions will result in little, if any, impact.

**Impacts to Existing Permitted Water Rights:** Allow-ing access to water through the reservation could affect the value of existing permitted water rights held by some businesses. The exact effect will depend on the allowable use, volume, and point of diversion of the existing rights, the existing and desired uses, and the volumes needed.

**Costs to Firms and Required Professional Services:**

As mentioned above, those business entities that depend on water in the river may experience costs from the proposed rules. Those businesses that would obtain water from the reservation are most likely to gain the benefits. The cost analyses required in chapter 19.85 RCW follow:

**Reporting and Recordkeeping:** Permit Exempt Well Users: The proposed rules add no reporting or record-keeping requirements for small businesses using permit-exempt wells.

**Additional Professional Services:** Ecology anticipates no added professional services. For water users qualifying for the reservations, the proposed rules reduce the need for small businesses to obtain consulting services. The proposed reservations make a reliable water supply available, without the expense and uncertainty of demonstrating water exists on a case-by-case basis.

**Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** We expect no additional equipment, supplies, labor, or administrative costs from the proposed rules.

**Other Compliance Requirements:** As mentioned above, firms that depend on instream activities and potentially those that hold existing permits could incur adverse impacts.

- The impacts to in-stream users would be specific to the firm, but is unlikely to be significant since few firms are dependent on instream flows.<sup>3</sup>
- Existing water right holders could be impacted if the proposed rules resulted in changes to the value of their water right. This would ultimately only affect those that want to sell or lease a right, and only for the period until the reservations are fully allocated to new uses. The exact cost is difficult to determine since it depends on many factors and very few if any transfers would happen in this fashion.

Creation of the reservation will be a net benefit for most businesses that need water. Water unavailable during low flow periods is damaging to any business that needs it for its own use or who are looking to develop residential or commercial properties.

For those that do not require water during low flow periods, an interruptible water right is an option under both the current practices and proposed rules.

In order to have water available during low flow periods under the baseline, water would have to be obtained through purchase, lease, transfers, or on-site storage. On-site storage for a low flow period can cost approximately \$0.75 per gallon for small water systems.<sup>4</sup> This would be typical for a residence connected to a public water system; the proposed rules avoid this cost for those using the reservations. For other users, the cost of storage would likely preclude it as an option.

Currently, businesses needing water right permits in many areas must purchase or lease water. This can mean some cost for every low-flow season. This analysis assumes that water would be readily available for purchase or lease. If not the case, then prices would likely be very high.

**Quantification of Costs and Ratios:** It is the purpose of this section to evaluate whether:

- Compliance with the proposed rules will cause businesses to lose sales or revenue.
- The proposed rules will have a disproportionate impact on small businesses.

**Revenue Impacts:** As noted previously, the most likely significant impacts of the proposed rules would be from decreased flows in the river and the creation of the reservation.

- The reduction of flows in the river is unlikely to significantly affect any firms within the basins.
- Those firms that will now be able to access water from the reservation will experience a benefit from being able to more easily access reliable water supplies. We estimate that summer flows will not meet the proposed minimum instream flows in a majority of years. New permits issued with stream flow conditions would be interruptible under the baseline, as under the proposed rules. Storage would likely be required for all uses absent the rules. In that sense, the rules will represent a negative cost (net benefit) to firms.

The net benefit to firms is the value of avoiding expensive storage, or purchasing or leasing water rights, or other mitigation options to access water during periods of low flow. This will likely lower costs to some potential water users and to that extent, may increase revenues.

Existing water right holders might see some loss in the value of existing water rights and this could lower revenues. However, as mentioned above, this effect is likely to be relatively small and so we do not consider it further.

**Distribution of Compliance Costs:** No business is required to access water from the reservations or comply with the proposed rules.

It is possible that small businesses could have costs under the proposed rules if they pursue water rights outside the reservations and regional supply areas. Still, the cost should be similar or less to the expense now incurred, as ecology is likely to issue only interruptible rights if sufficient mitigation is not proposed. The rules, for the most part, only clarify the conditions for granting a new water right that exist in current practice. Ecology is unable to determine this cost as it would be very small and are unsure if future permitted water rights will be processed.

**Known Costs:** No businesses are required to comply with the rules. Businesses that choose to qualify for the benefits of the reservations must meet the criteria for accessing the reservation.

Ecology was unable to determine any measurable costs to small businesses from the proposed rules. If there were known costs to those required to comply with the proposed rules, it may impose disproportionate costs to small businesses. However, there is clearly a very large net benefit to those who qualify for the reservations. Those who qualify for the reservations are identified in the rules and are not directly small businesses.

**Conclusions:** No businesses are required to access the reservations or are subject to conditions of the rules. Ecology was unable to determine any costs to small businesses from this proposed rule. Businesses of all sizes that qualify to use the reservation will experience net benefits from the rules. If

there are known costs, the rules could have disproportional costs to small businesses. Ecology was unable to determine measurable costs.

**Actions Taken to Reduce the Impact on Small Business:** As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rule making versus the baseline. Therefore, the proposed rules take no specific measures to reduce or mitigate these rule impacts. In general, small business seeking reservation water through an exempt well may have hypothetical advantages over a larger business with needs too large to be satisfied through a permit-exempt well.

**Involvement of Small Businesses in the Development of the Proposed Rules:** The proposed rules have been developed as an outcome of the Lewis and Salmon-Washougal watershed planning process (WRIAs 27 and 28). This was an open process allowing for all entities to comment and take part as the project proceeded. Participants in the planning unit included small businesses and organizations representing small businesses. Public hearings will be held after the filing of the CR-102 to consider the rules and allow small businesses to provide further input.

**SIC Codes of Impacted Industries:** No industries are required to comply with the proposed rules unless they seek to obtain new water right permits or permit-exempt water rights in the covered area. The following list shows standard industrial codes (SIC) codes for existing developable properties in the Lewis and Salmon-Washougal Basins.<sup>5</sup> This serves as a representative sample of potential future businesses that may be affected.

**Table 1. Industries potentially affected by proposed rules (North American Industry Classification System<sup>6</sup>)**

Storage/packing agricultural produce	Code 1151
Deciduous tree fruits	Code 0175
Horticulture nurseries	Code 1114
Manufacturing	Code 33
Fresh fruits and vegetables	Code 5148
Commercial greenhouses	Code 1114
Hatcheries	Code 1129
Mining, mineral extraction	Code 21
Residential building construction	Code 2361
Nonresidential building construction	Code 2362
Produce market	Code 445230
Construction	Code 23
Fruit farming	Code 111339
Accommodation and food services	Code 722310
Golf facility	Code 713910
Stables	Code 713990
Animal production	Code 115210

**Expected Jobs Created or Lost:** Ecology expects the proposed reservations to serve 16,490 households over the twenty-year period. If water from the reservations is fully utilized annual labor income of approximately six hundred sixty million can be realized. This could create 12,010 new supporting jobs in the Lewis and Salmon-Washougal watershed basins.

Office of financial management's NAICS based input/output model<sup>7</sup> provides estimates of interdependence among industrial sectors in the state. Each sector not only produces and sells goods or services, but also purchases goods or services for use within its production process. Ecology expects jobs created through the proposed rules in these areas:

	Employment
Crop production	165
Animal production	62
Forestry and fishing	17
Logging	6
Mining	12
Electric utilities	56
Gas utilities	9
Other utilities	22
Construction	198
Food manufacturing	136
Textiles and apparel	23
Wood product manufacturing	17
Paper manufacturing	15
Printing	57
Petroleum and products	6
Chemical manufacturing	3
Nonmetallic mineral products manufacturing	15
Primary metals	1
Fabricated metals	13
Machinery manufacturing	5
Computer and electronic product	10
Electrical equipment	1
Aircraft and parts	0
Ship and boat building	4
Other transportation equipment	2
Furniture	22
Other manufacturing	32
Wholesale trade	271
Retail trade	2,666
Transportation and warehousing	255
Information	223
Finance and insurance	509
Real estate	552
Professional services and management	1,390
Educational services	236

	<b>Employment</b>
Health services	2,348
Arts, recreation, and accommodation	390
Food services and drinking places	1,240
Other services	1,019
<b>Total Employment</b>	<b>12,010</b>

<sup>1</sup> Due to size limits for filing documents with the code reviser, the SBEIS does not contain the appendices that further explain ecology's analysis. Nor does it contain the raw data used in this analysis, or all of ecology's analysis of this data. However, the rule-making file contains this information and it is available upon request.

<sup>2</sup> In the state ground water code, the "ground water permit exemption" allows for certain uses of small quantities of ground water; including domestic, industrial, stockwatering, and noncommercial irrigation of less than one-half acre of land. RCW 90.44.040, *see also* Washington Attorney General Opinion (2005 Op. Atty Gen. Wash. No. 17).

<sup>3</sup> Talks with local interests show few commercial activities in the basin depend on instream flows.

<sup>4</sup> <http://www.doh.wa.gov/ehp/dw/Publications/331-134-4-30-08.pdf>.

<sup>5</sup> Data provided by the Clark, Cowlitz and Skamania County assessor and by the Washington state employment security department was the basis for this table.

<sup>6</sup> Ecology has used NAICS codes rather than standard industrial codes (SIC). It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

<sup>7</sup> <http://www.ofm.wa.gov/economy/io/default.asp>.

A copy of the statement may be obtained by contacting department of ecology water resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/lewis\\_salmon\\_washougal.html](http://www.ecy.wa.gov/programs/wr/instream-flows/lewis_salmon_washougal.html) or Lanessa Inman, Department of Ecology, 300 Desmond Driver S.E., Lacey, WA 98504, phone (360) 407-6862, fax (360) 407-7162, e-mail [Linm461@ecy.wa.gov](mailto:Linm461@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting department of ecology water resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/lewis\\_salmon\\_washougal.html](http://www.ecy.wa.gov/programs/wr/instream-flows/lewis_salmon_washougal.html) or Lanessa Inman, Department of Ecology, 300 Desmond Driver S.E., Lacey, WA 98504, phone (360) 407-6862, fax (360) 407-7162, e-mail [Linm461@ecy.wa.gov](mailto:Linm461@ecy.wa.gov).

July 22, 2008  
Polly Zehm  
Deputy Director

**Chapter 173-528 WAC**

**WATER RESOURCES MANAGEMENT PROGRAM  
FOR THE SALMON-WASHOUGAL BASIN, WRIA 28**

**PART A  
GENERAL**

**NEW SECTION**

**WAC 173-528-010 Authority and purpose.** (1) The department of ecology (ecology) adopts this chapter under the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water

code (chapter 90.03 RCW), Regulation of public ground waters (chapter 90.44 RCW), RCW 43.21A.064(9), and 43.21A.080.

(2) This chapter shall not affect existing water rights, unless otherwise stated in the conditions of the water right in question. It shall also not affect federal Indian and non-Indian reserved rights.

(3) This chapter does not limit ecology's authority to establish flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

(4) The Salmon-Washougal and Lewis watershed management plan (plan) recommendations were approved in 2006 by the Salmon-Washougal and Lewis planning unit (planning unit) in accord with RCW 90.82.130. The planning unit is a group made up of Clark, Skamania, and Cowlitz county commissioners and a broad range of water use interests. Ecology shall use the plan as the framework for making future water resource decisions in the Salmon-Washougal watershed. Ecology shall rely upon the plan as a primary consideration in determining the public interest related to such decisions, including this rule adoption.

(5) Ecology shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. Ecology and the planning unit should periodically evaluate the effectiveness of this chapter.

**NEW SECTION**

**WAC 173-528-020 Definitions.** For purposes of this chapter, the following definitions shall be used:

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means a beneficial use of waters of the state, authorized by and consistent with all applicable laws and regulations.

"Consumptive use" means a use of water whereby there is diminishment of the amount or quality of the water source.

"Ecology" means the Washington state department of ecology.

"Environmental restoration project" or "ERP" means a project with a primary purpose of restoring salmonids, requiring a temporary use of water.

"Habitat-forming function" means a physical, chemical, or biological function that is necessary to create and maintain natural or desired habitat conditions that benefit fish and other aquatic life. Habitat forming functions include but are not limited to creating and maintaining the following: Channel migration, gravel and sediment transport, water quality, nutrients, large woody material recruitment, floodplain flows, and riparian habitat.

"Habitat-related action" means enhancing desirable riparian, stream, wetland, or floodplain functions and related biological, chemical, and physical processes.

"Instream flow" means a level of stream flow, established under chapters 90.03, 90.22, 90.54 and 90.82 RCW, necessary in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term instream flow is synonymous with "minimum flow" as used in chapters 90.03 and 90.22 RCW, "base flow"

as used in chapter 90.54 RCW, and "minimum instream flow" as used in chapter 90.82 RCW.

"Interruptible use" means a type of water use that relies upon withdrawals on a periodic or seasonal basis that if interrupted would not cause substantial hardship or health or safety concerns, or that is highly unlikely to be interrupted during the expected period of use. For the purposes of this chapter, interruptible uses are subject to the instream flows set in WAC 173-528-060.

"Municipal water supplier" is defined in RCW 90.03.-015.

"Net stream flow depletion" means the total depletion of water from a subbasin that may be available for future use under the reservation set in this chapter. The net stream flow depletion equals the flow depletion that remains after performance of offsetting actions, and is available for use only after applicable conditions in WAC 173-528-110 have been met.

"Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source or where there is no diminishment of the amount or quality of the water source.

"Permit-exempt withdrawal" or "permit exemption" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but otherwise subject to surface and ground water statutes and other applicable laws. For the purpose of this chapter, stockwater use does not include feedlots or other activities not related to normal grazing land uses.

"Planning unit" means the Salmon-Washougal and Lewis watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Salmon-Washougal and Lewis watershed planning initiating governments.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pre-treatment storage facilities not under control of the purveyor but primarily used in connection with the system.

"Regional supply area" means a defined area where ecology finds water to be available for future ground water withdrawal. Regional supply areas are designated by WAC 173-528-090 or by order of ecology.

"Reservation" means an allocation of water for future beneficial uses. For the purposes of this chapter, the reservation is not subject to instream flows set in WAC 173-528-060, nor to closures set in WAC 173-528-070. The reservation is senior to the instream flow water rights set in WAC 173-528-060.

"Water-related action" means an offsetting activity that provides a quantity of water during certain times and at certain places that essentially replaces water at or upstream of where a proposed water right would impact surface flow. Water-related actions include but are not limited to acquiring an active water right or donation of a water right to the trust water right program under chapter 90.42 WAC.

"Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes or a permit-exempt ground water withdrawal.

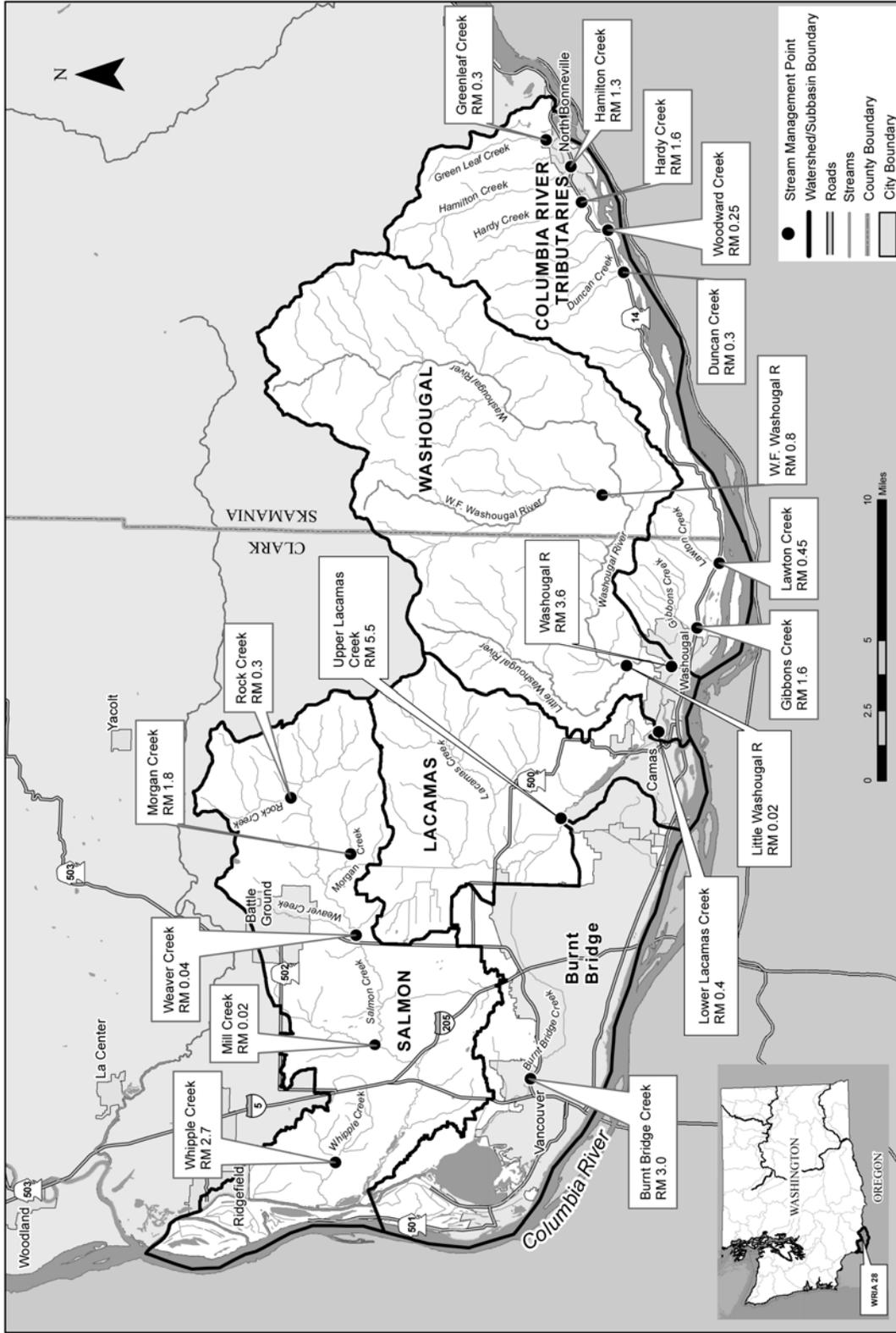
"Watershed plan" means the Salmon-Washougal and Lewis watershed management plan, adopted on July 21, 2006, by the Clark, Cowlitz, and Skamania county commissioners.

"Withdrawal" means the extraction of ground water, or the diversion of surface water for a beneficial use.

NEW SECTION

WAC 173-528-030 Map.

WRIA 28 Stream Management Subbasins and Control Points



WRIA 28 Sub-Basin delineation from Sanborn Mapping Solutions Western Washington Land Cover Change Analysis  
<http://www.ecy.wa.gov/services/gis/data/impervious/basins.htm>

WATER RESOURCES DIVISION  
 WASHINGTON STATE DEPARTMENT OF ECOLOGY  
 Water Resources GIS 5/29/2008

NEW SECTION**WAC 173-528-040 Compliance and enforcement.** (1)

Ecology shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

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

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

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

**PART B****INSTREAM FLOWS AND CLOSURES**NEW SECTION

**WAC 173-528-050 Stream management control points.** Ecology hereby establishes the following stream management control points shown in Table I. Management point locations are shown in WAC 173-528-030.

**Table I****Stream Management Control Point Information**

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Whipple Creek (at 179th St. crossing)	RM 2.7; 45°45'00"N, 122°42'52"W
Mill Creek (at North Salmon Creek Rd.)	RM 0.02; 45°43'50"N, 122°37'39"W
Weaver Creek (at 199th Rd. crossing)	RM 0.04; 45°44'33"N, 122°32'48"W
Morgan Creek (at 182nd St. crossing)	RM 1.8; 45°44'47"N, 122°29'13"W
Rock Creek (near 213th Rd.)	RM 0.3; 45°46'40"N, 122°26'47"W
Little Washougal River (at Highway 140 crossing)	RM 0.02; 45°36'26"N, 122°20'37"W
Washougal River (at Hathaway Park, Ecology gage 28B090)	RM 3.6; 45°35'02"N, 122°20'36"W
West Fork Washougal River (at Skamania Hatchery)	RM 0.8; 45°37'18"N, 122°13'07"W

**Table I****Stream Management Control Point Information**

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Gibbons Creek (at Frontage Rd. crossing)	RM 1.6; 45°34'31"N, 122°18'53"W
Lawton Creek (at Highway 14 crossing)	RM 0.45; 45°33'39"N, 122°16'00"W
Duncan Creek (at Highway 14 crossing)	RM 0.3; 45°36'47"N, 122°03'16"W
Woodward Creek (at Beacon Rock State Park Rd. crossing)	RM 0.25; 45°37'17"N, 122°01'25"W
Hardy Creek (at Highway 14 crossing)	RM 1.6; 45°38'07"N, 122°00'13"W
Hamilton Creek (near North Bonneville)	RM 1.3; 45°38'28"N, 121°58'39"W
Greenleaf Creek (at Cascade Drive crossing)	RM 0.3; 45°39'15"N, 121°57'29"W
Upper Lacamas Creek (at NE Goodwin Rd. crossing)	RM 5.5; 45°38'20"N, 122°27'25"W
Lower Lacamas Creek (NE 3rd Ave. crossing)	RM 0.4; 45°35'26"N, 122°23'28"W
Burnt Bridge Creek (at Arnold Park)	RM 3.0; 45°39'05"N, 122°38'57"W

NEW SECTION**WAC 173-528-060 Establishment of instream flows.**

(1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the department of fish and wildlife, department of agriculture, and department of community, trade, and economic development; and public input received during the rule-making process. The planning unit recommended these instream flow levels by unanimous vote.

(2) Instream flows established in this chapter are water rights, which protect instream values from future consumptive appropriations. The priority date of the instream flows is the effective date of this chapter. In accordance with RCW 90.82.080, this priority date received unanimous approval from the planning unit.

(3) Instream flow rights shall be protected from impairment by any new water rights commenced after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to the instream flows:

(a) A water right commenced before the effective date of this chapter, unless stated in the conditions of the water right.

(b) Water rights appropriated from the reservation of water established in WAC 173-528-110.

(c) Water rights for environmental restoration purposes under WAC 173-528-140, unless included as a permit condition.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the stream management control points in WAC 173-528-050. Instream flows apply to all stream reaches that contribute to flow at stream management control

points, as shown in Table II of this section. For reaches that are downstream of all management points, the flows established for the nearest upstream management control point shall apply to those reaches. However, if more than one management point is immediately upstream, the combined flow of the points shall be used.

**Table II**  
**Instream Flows in the Salmon/Washougal Basin (cubic feet per second)**

Month	Stream Management Control Point						
	Washougal River, RM 3.6	Weaver Creek, RM 0.04	Gibbons Creek, RM 1.6	Whipple Creek, RM 2.7	Mill Creek, RM 0.02	Morgan Creek, RM 1.8	Rock Creek, RM 0.3
January	425	12	27	28	27	17	36
February	425	23	49	51	50	33	63
March	375	23	49	51	50	33	63
April	375	23	49	51	50	33	63
May	375	23	49	51	50	33	63
June	525	15	33	34	33	22	42
July	240	15	33	34	33	22	42
August	168	4	11	12	11	7	15
September	264/425*	4	11	12	11	7	15
October	425	12	27	28	27	17	36
November	425	12	27	28	27	17	36
December	425	12	27	28	27	17	36

\*The Washougal River, RM 3.6, instream flow right is for 264 cubic feet per second from September 1 to September 15, and 425 cubic feet per second from September 16 to September 30.

Month	Stream Management Control Point						
	Little Washougal River, RM 0.02	W.F. Washougal River, RM 0.8	Lawton Creek, RM 0.45	Duncan Creek, RM 0.3	Woodward Creek, RM 0.25	Hardy Creek, RM 1.6	Hamilton Creek, RM 1.3
January	193	205	24	21	42	40	72
February	193	205	44	39	72	69	117
March	160	169	44	39	72	69	117
April	160	169	44	39	72	69	117
May	160	169	44	39	72	69	117
June	107	112	29	26	48	46	78
July	107	112	29	26	48	46	78
August	48	51	10	8	18	17	33
September	193	205	10	8	18	17	33
October	193	205	24	21	42	40	72
November	193	205	24	21	42	40	72
December	193	205	24	21	42	40	72

Month	Stream Management Control Point			
	Greenleaf Creek, RM 0.3	Upper Lacamas Creek, RM 5.5	Lower Lacamas Creek, RM 0.4	Burnt Bridge Creek, RM 3.0
January	31	39	112	20
February	55	39	112	38

Month	Stream Management Control Point			
	Greenleaf Creek, RM 0.3	Upper Lacamas Creek, RM 5.5	Lower Lacamas Creek, RM 0.4	Burnt Bridge Creek, RM 3.0
March	55	39	96	38
April	55	39	96	38
May	55	39	96	38
June	37	39	64	25
July	37	39	64	25
August	13	39	27	8
September	13	39	112	8
October	31	39	112	20
November	31	39	112	20
December	31	39	112	20

NEW SECTION

**WAC 173-528-070 Surface and ground water closed to further consumptive appropriations.** (1) Based on historical and current low flows and the water withdrawals by existing water right holders, ecology has determined that no waters are reliably available for new consumptive uses from certain surface water sources in the basin. Therefore, all surface waters listed in Table III are closed to any further consumptive appropriation, except as provided in WAC 173-528-080.

**Table III  
Surface Water Closures**

Subbasin Name*	Affected Reach
Salmon Creek	Salmon Creek from confluence with Lake River (45°43'32"N, 122°44'07"W) to headwaters, including tributaries. Whipple Creek from confluence with Lake River (45°45'30"N, 122°44'57"W) to headwaters, including tributaries.
Burnt Bridge Creek	Burnt Bridge Creek from mouth at Vancouver Lake to headwaters, including tributaries.
Lacamas Creek	Lacamas Creek from confluence with Washougal River (45°35'13"N, 122°23'40"W) to headwaters, including tributaries.
Washougal River	Washougal River from mouth at Columbia River to headwaters, including tributaries.

**Table III  
Surface Water Closures**

Subbasin Name*	Affected Reach
Columbia River Tributaries	All surface waters in the Columbia River tributaries subbasin from mouth at Columbia River to headwaters, including tributaries.
*Subbasin boundaries are shown in WAC 173-528-030, and are consistent with the boundary descriptions used in the watershed plan.	

(2) Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, there is a high likelihood that future ground water withdrawals would capture water that affects closed surface waters. Therefore, the basin is closed to new withdrawals of ground water (including any new permit-exempt withdrawals) that would affect closed surface waters, except as provided in WAC 173-528-080.

(3) Applications for a withdrawal that would not affect the closed reaches, listed in Table III, shall be evaluated on a case-by-case basis under applicable law.

**PART C  
FUTURE WATER RIGHTS**

NEW SECTION

**WAC 173-528-080 Future water rights, generally.** A new surface or ground water appropriation (including any permit-exempt ground water withdrawal) may be commenced only if consistent with the surface and ground water statutes and other applicable requirements of law and if any one of the following seven conditions (subsections (1) through (7) of this section) apply:

(1) The proposed water use is nonconsumptive.

(2) The proposed surface water use would not affect any of the surface waters closed in WAC 173-528-070, Table III.

(3) The proposed ground water withdrawal is located where it would not affect any of the surface waters closed in WAC 173-528-070, Table III by either meeting condition (a) or (b) of this subsection:

(a) The person or entity seeking to commence a proposed ground water use shows, through scientifically sound studies and technical analysis, that the ground water use would not affect any of the closed surface waters identified in WAC 173-528-070, Table III.

(b) The proposed ground water withdrawal occurs in a regional supply area designated in WAC 173-528-090 or by order of ecology.

(4) The person or entity seeking to commence the new appropriation submits a scientifically sound mitigation plan, and such plan is approved by ecology. A mitigation plan must offset water-for-water the impacts of a proposed withdrawal, and provide adequate assurances that the mitigation will in fact occur. Mitigation may be performed individually or as a group.

(5) The proposed water use qualifies as an interruptible use as defined in WAC 173-528-020, and meets the criteria in WAC 173-528-100.

(6) The proposed water use qualifies for the reservation established and as conditioned in WAC 173-528-110.

(7) The proposed use is for an environmental restoration project and meets the criteria in WAC 173-528-140.

#### NEW SECTION

**WAC 173-528-090 Regional supply areas for future ground water withdrawals.** (1) Ecology finds there to be certain locations where water is available on a year-round basis for future ground water withdrawals and withdrawals in these areas are unlikely to affect surface waters closed in WAC 173-528-070, Table III or instream flow values protected under RCW 90.54.020(3). Such regional supply areas are recognized in the watershed plan and supported by the public interest as preferred locations for developing future water supply. Ground water withdrawals (including permit-exempt withdrawals) may be commenced in the designated regional supply areas to the extent such withdrawals are consistent with chapters 90.03 and 90.44 RCW, and any other applicable requirements of law.

(2) Based on local hydrology, ecology finds that ground water withdrawals made in areas designated below meet the conditions for regional supply areas in subsection (1) of this section and are so designated:

(a) The Vancouver Lake Lowlands Area, defined as all lands located west of the Burlington Northern Santa Fe Railroad right of way that are within Water Resource Inventory Area 28; and

(b) The Steigerwald Wildlife Refuge Area, defined as all lands located east of 15th Street in the city of Washougal, south of Washington State Highway 14, and west of Lawton Creek.

(3) Ecology may by order designate other regional supply areas that meet the criteria in subsection (1) of this section.

(4) In order to protect instream values of surface waters in regional supply areas, ecology reserves the right to deny

any withdrawals whereby drawdown effects from pumping would create a significant impact to local surface waters. For the purposes of this section, significant impact includes but is not limited to a noticeable reduction in lake level or flow in local creeks.

#### NEW SECTION

**WAC 173-528-100 Future appropriations for interruptible use from the Washougal River.** (1) Ecology finds there may be water available in the Washougal River, above existing water rights and instream flows, which could be captured for interruptible use. This water is only available from November 16 to May 14.

(2) Prior to commencement, the person or entity seeking a new interruptible appropriation must demonstrate a seasonal need and provide assurances that any effects on surface waters that may result from withdrawals will be limited from November 16 to May 14 and only from the Washougal River.

(3) Ecology shall deny an appropriation for interruptible use if such use, or the cumulative effects of such uses, would compromise habitat-forming functions provided by high flows. In no case shall new individual or cumulative allocations exceed one hundred cubic feet per second. This allocation limit is based upon an allowance for ten percent of the average historic flow. The allocation limit may be lowered on a case-by-case basis whenever more protection of habitat-forming functions is needed.

(4) Interruptible uses are subject to existing water rights and instream flows set in WAC 173-528-060.

#### NEW SECTION

**WAC 173-528-110 Reservation of surface and ground water for future uses.** (1) Ecology has weighed the public interest that supports the reservation of a limited amount of water for future consumptive uses against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by a limited reservation clearly overrides the small potential for negative impacts on instream resources.

Based on this finding, ecology hereby allocates an amount and rate of use of water for specific water users and subbasins, as indicated under the subtitle "Net streamflow depletion" in Table IV.

This reservation is available to a user only if the conditions set forth in subsection (2) or (6) of this section are met, as well as any applicable requirements of law, including but not limited to all water resource laws and regulations.

(2) Ecology may approve a water right application for water from the reservation if all of the following conditions in (a), (b), (c), and (d) of this subsection are met:

#### **Alternatives analysis**

(a) The applicant demonstrates that no practicable supply alternatives to the reservation are available. In order to satisfy this condition, an applicant must demonstrate consideration of other regional water sources to supply water for the same use now being proposed, including:

(i) Municipal and public water system supply;

(ii) Water from a ground or surface water source, which may be withdrawn without affecting any of the surface waters

closed in WAC 173-528-070, such as water from a hydraulically disconnected deep aquifer source or regional supply area; and

(iii) Supply options from surface and ground water storage.

**Water-related offset**

(b) The applicant demonstrates it will offset the overall streamflow depletion(s) through water-related actions to the maximum extent practicable. Applicants should offset at least one-half of the overall streamflow depletion(s) through water-related actions.

(i) In evaluating the adequacy of water-related actions to offset depletions, ecology will evaluate the action based on the degree of aquatic benefit it would provide. A water-related offset may have a greater or lesser benefit due to the seasonality, location, or quality of water provided. The level of benefit will be used to determine if any additional offsets will be required of the applicant.

(ii) Ecology will consider water-related offsets only to the extent that reasonable assurance exists that such offsets will be successfully delivered or donated to the trust water right program under chapter 90.42 RCW where delivery is legally guaranteed.

**Habitat-related offset**

(c) After satisfying the water-related offset requirement in (b) of this subsection, an applicant must offset any remaining streamflow depletion through habitat-related actions that create or enhance habitat. Habitat-related offsets must compensate for the habitat loss or degradation that will result from the net streamflow depletion.

An applicant must provide adequate assurances that a habitat-related action in fact occurs. Ecology, as appropriate, shall condition use of the reservation with performance standards and monitoring requirements, or require financial assurance mechanisms prior to reservation use.

**Impact analysis**

(d) The applicant must demonstrate that a proposed appropriation will not significantly impact tributaries to sub-basin mainstems. For the purposes of this section, significant impact means to noticeably affect instream values protected under RCW 90.54.020(3).

**Application review and permitting**

(3) In determining practicability in subsection (2) of this section, ecology will consider both economic and logistic considerations, as well as guidance from the watershed plan.

(4) Ecology, in consultation with the department of fish and wildlife, will evaluate the adequacy of proposed offsets and alternatives analysis in subsection (2) of this section. The evaluation shall be consistent with the watershed plan and guidance documents approved by ecology. Ecology will also consider recommendations and technical advice received from the planning unit or by an advisory committee, formally designated by the planning unit.

(5) Ecology will issue a permit for use of water equal to the amount it determines appropriate to allocate from the reservation, and such amount will be debited from the total reservation amount. The total quantity of water appropriated shall not exceed the amount and rate listed under the subtitle "Net streamflow depletion" in Table IV. However, ecology will issue a permit for a quantity beyond the amount debited from the reservation for the following:

(a) Water-related offsets to the extent such offsets are water-for-water, to the satisfaction of RCW 90.03.380 or 90.44.100, any other applicable laws, and terms of an approved mitigation plan; and

(b) Water use to the extent closed water sources are not affected and to the satisfaction of applicable requirements of law, including but not limited to all water resource laws and regulations.

**Permit-exempt ground water use**

(6) The requirements in subsection (2) of this section do not apply to permit-exempt ground water uses. However, permit-exempt ground water uses under RCW 90.44.050 are subject to both of the following conditions in order to occur under the reservation:

(a) Future permit-exempt well use may not occur where connection to an existing municipal water supplier can be provided in a timely and reasonable manner. Determinations of timely and reasonable shall be consistent with public water system plans and local laws, including but not limited to Clark County Code 40.370.020.

(b) Water use from a permit-exempt ground water well must be consistent with the allocation limits of this reservation and the Clark and Skamania County code and other applicable laws, including the statute on permit exemptions, RCW 90.44.050. Single or group domestic uses under the permit exemption shall not exceed five thousand gallons per day. Irrigation of lawn and noncommercial garden under the permit exemption shall not exceed one-half acre.

**Table IV  
Allocation of Reservation**

Subbasin Name*	Water User**	Expected Streamflow Depletion without Offset (overall depletion) cubic feet per second (cfs)	Expected Water-related Offset Requirement (cfs)	Net Streamflow Depletion*** (cfs)
Salmon Creek	Clark Public Utility, Battle Ground and Ridgefield	0.25	0.13	0.13
	Permit-exempt ground water wells	0.12	0.00	0.12

**Table IV  
Allocation of Reservation**

<b>Subbasin Name*</b>	<b>Water User**</b>	<b>Expected Streamflow Depletion without Offset (overall depletion) cubic feet per second (cfs)</b>	<b>Expected Water-related Offset Requirement (cfs)</b>	<b>Net Streamflow Depletion*** (cfs)</b>
Burnt Bridge	City of Vancouver	0.04	0.02	0.02
Lacamas Creek	City of Camas	1.00	0.50	0.50****
	Clark Public Utility	0.60	0.30	0.30
	Other public water systems	0.37	0.19	0.19
	Permit-exempt ground water wells	0.17	0.00	0.017
Washougal River	City of Camas	1.00	0.50	0.50****
	Other public water systems in Clark County	0.37	0.19	0.19
	Permit-exempt ground water wells in Clark County	0.17	0.00	0.17
	Other public water systems in Skamania County	0.20	0.10	0.10
	Permit-exempt ground water wells in Skamania County	0.64	0.00	0.64
Columbia River Tributaries	Public water systems in Clark County	0.21	0.10	0.10
	Permit-exempt ground water wells in Clark County	0.12	0.00	0.12
	Public water systems in Skamania County	0.21	0.10	0.10
	Permit-exempt ground water wells in Skamania County	0.12	0.00	0.12

\*Subbasin boundaries are shown in WAC 173-528-030, and are consistent with the boundary descriptions used in the watershed plan.

\*\* In the Salmon-Washougal and Lewis watershed management plan, the term "domestic wells" has the same meaning as "permit-exempt ground water wells" and the term "small community water systems" has the same meaning as "public water systems."

\*\*\* If conditions in subsections (2) and (6) of this section are satisfied, the net depletion of a closed water source, set in WAC 173-528-070, shall not exceed the quantities listed for specific users.

\*\*\*\*The total net stream flow depletion for the city of Camas from both Lacamas and Washougal river subbasins shall not exceed 0.50 cfs.

**NEW SECTION**

**WAC 173-528-120 Priority dates of reservation and repeal of chapter 173-592 WAC.** (1) The reservation created in WAC 173-528-110 is not subject to the instream flows or closures set in this chapter, and the priority date of

the reservation for all areas outside Clark County is the effective date of this chapter.

(2) Ecology hereby transfers unappropriated water from the existing reservation for Clark County in WAC 173-592-070 in such quantities and to the users and areas of use in

Clark County as set forth in WAC 173-528-110, Table IV and WAC 173-527-110, Table V. Pursuant to this transfer, the priority date of withdrawals from all Clark County portions of the reservation in WAC 173-528-110 is August 13, 1986. However, the designation of specific municipal suppliers in this reservation does not create a right for these entities to use such water. Such a right will arise only if a permit is applied for by such municipal suppliers to use water under the reservation and approved by ecology after applying the legal tests for a new appropriation. With respect to any water for which a permit has not been granted, ecology reserves the right to modify in all respects or rescind the reservation by future rule making.

(3) Based on new information made available through the local watershed planning process and hydrologic conditions as of the time of this rule making, ecology has determined that the remaining water reserved under WAC 173-592-070, which was not transferred in subsection (2) of this section or previously appropriated is no longer supported by available information and science. Therefore, chapter 173-592 WAC is hereby repealed in its entirety and all water reserved under that rule that has not been transferred or appropriated is hereby returned to the state. This repeal is not intended to affect any existing water rights issued under the reservation.

#### NEW SECTION

**WAC 173-528-130 Accounting for use under the reservation.** (1) A record of all appropriations from the reservation shall be maintained by ecology.

(2) For an appropriation under a permit, ecology will account for water use under the reservation based on authorized quantities under water right permits or certificates, and according to WAC 173-528-110(5).

(3) For permit-exempt ground water appropriations, ecology will deduct a standard amount of two hundred forty gallons per day for each well. For a group domestic water system under the permit-exemption, the standard amount will be applied for each domestic or residential service connection. The standard amount will be adjusted periodically to reflect actual maximum daily use during low flow conditions. The standard amount assumes a rate of septic recharge from an on-site septic system. In the event that on-site septic recharge is known not to occur at a well site, ecology will deduct an additional five hundred sixty gallons per day. Additionally, ecology reserves the right to account for water use based on the best available information contained in well logs, approvals issued by local jurisdictions, or other documents.

(4) If a water user under the reservation subsequently abandons or relinquishes the withdrawal, ecology will credit back to the reservation the actual amount of water used and/or debited from the reservation, upon demonstration to ecology that the well or surface water diversion has been decommissioned through written certification.

(5) Ecology shall notify either Clark or Skamania County and the planning unit, when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the reservation is appropriated for a subbasin.

#### NEW SECTION

**WAC 173-528-140 Future surface water withdrawals for environmental restoration.** In keeping with the findings of the watershed plan, ecology finds that the public interest advanced by future withdrawals for ERPs, as defined and conditioned in this section, clearly overrides the minimal negative impacts on instream flows.

(1) A future withdrawal for an ERP may be approved only if it meets all the following:

(a) The proposed water use is for a bypass flow for salmonid restoration or riparian planting project, and the primary purpose of the project is restoration of salmonids.

(b) The proposed project will result in aquatic habitat benefits, and such benefits will exceed any detriment to aquatic habitat that may be caused by reductions in flow at specific locations and times of withdrawal.

(c) The proposed use qualifies for a temporary permit.

(2) Ecology, in consultation with the department of fish and wildlife, will evaluate proposed ERPs. ERPs approved by ecology are not subject to closures or instream flows set in this chapter, unless otherwise conditioned by the permit.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-592-010	Purpose.
WAC 173-592-020	Authority.
WAC 173-592-030	General.
WAC 173-592-040	Reservation source of supply area defined.
WAC 173-592-050	Definitions.
WAC 173-592-060	Petition received—Notice.
WAC 173-592-070	Reservation.
WAC 173-592-080	Monitoring program.
WAC 173-592-090	Water quality.
WAC 173-592-100	Exemptions.
WAC 173-592-110	Regulation review.
WAC 173-592-115	Appeals.
WAC 173-592-120	Reservation source of supply area map.

#### **WSR 08-15-173**

#### **PROPOSED RULES**

#### **DEPARTMENT OF REVENUE**

[Filed July 23, 2008, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-07-105.

Title of Rule and Other Identifying Information: WAC 458-20-15501 Computer hardware, computer software, information service, and computer services.

Hearing Location(s): Criminal Justice Training Commission, Cascade Building, Room C-151, 19010 1st Avenue South, Burien, WA, on August 27, 2008, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/>.

Date of Intended Adoption: September 8, 2008.

Submit Written Comments to: Dylan Waits, P.O. Box 47453, Olympia, WA 98504-7453, e-mail [Dylan@dor.wa.gov](mailto:Dylan@dor.wa.gov), fax (360) 586-0127, by August 27, 2008.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is considering a new rule to update and further explain beyond WAC 458-20-155 the application of the business and occupation (B&O), retail sales, and use taxes as they apply to persons providing information or computer services, and persons who manufacture, develop, process, or sell information, software, or computer programs. This rule will also recognize that RCW 82.12.020 (1)(b) now excludes software provided free of charge from the use tax.

Reasons Supporting Proposal: To provide needed guidance regarding the tax reporting responsibilities of persons providing information or computer services, and persons who manufacture, develop, process, or sell information, software, or computer programs.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.215, 82.04.-29001, 82.04.120, 82.04.2907, 82.08.705, 82.12.705, 82.32.-730, and other statutes in chapters 82.04, 82.08, and 82.12 RCW that apply to the activities addressed in this rule.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6134; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose new performance requirements or administrative burdens on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule does not constitute a significant legislative rule.

July 23, 2008  
Alan R. Lynn  
Rules Coordinator

## NEW SECTION

**WAC 458-20-15501 Computer hardware, computer software, information service, and computer services. (1) Introduction.** This section explains the business and occupation (B&O), retail sales, and use tax treatment of activities related to computer hardware, computer software, information service, and computer services. Such activities include, but are not limited to, selling, leasing, manufacturing, installing, repairing, and maintaining computer hardware and software, as well as developing, duplicating, configuring, licensing, downloading, and accessing computer software.

This section contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances.

The information provided in this section is divided into five parts:

(a) Part I provides information on taxation of computer system.

(b) Part II provides information on taxation of computer hardware.

(c) Part III provides information on taxation of computer software.

(d) Part IV provides information on taxation of information services and computer services.

(e) Part V provides reference to WAC 458-20-155 on the distinction between sales of products and sales of services.

### **PART I - TAXATION OF COMPUTER SYSTEM**

#### **(101) Taxation of computer system.**

(a) **What is a computer?** A "computer" is an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. RCW 82.04.215. Examples of a computer include, but are not limited to, mainframe computer, laptop, workstation, and desktop computer. "Computer" also includes automatic data processing equipment, which is a computer used for data processing purposes. "Computer" does not include any computer software or peripheral devices.

(b) **What is a computer system?** A "computer system" is a functional unit, consisting of one computer and associated computer software, whereas a computer network is two or more computers and associated computer software that uses common storage. A computer system may or may not include peripheral devices.

(c) **Wholesale sale of computer system.** Gross proceeds of sales of computer systems to persons other than consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification. To verify the wholesale nature of the sale, the seller should obtain a resale certificate from the buyer as provided by WAC 458-20-102 (Resale certificates).

(d) **Retail sale of computer system.** Gross proceeds of sales of computer systems to consumers are subject to B&O tax under the retailing classification. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law. If the seller did not collect Washington sales tax, the buyer is responsible for remitting

retail sales tax (commonly referred to as deferred sales tax), unless the sale is specifically exempt by law. Separately stated charges for custom software involved with the associated computer software are subject to service B&O tax.

(e) **Manufacturing of computer system.** Persons manufacturing computer systems are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of computer systems who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

(i) Separately stated charges for custom programming involved with the associated computer software are not subject to manufacturing B&O tax.

(ii) Separately stated charges for computer software sold and installed after the sale of a computer system are not subject to manufacturing B&O tax.

(iii) The combining of a computer system with certain peripheral devices is considered a packaging activity not subject to manufacturing B&O tax, when the following occurs:

(A) The peripheral devices remain in the original packaging;

(B) The person does not attach its own label to the peripheral devices;

(C) The person maintains a separate inventory of the peripheral devices for sale apart from the sale of the computer system; and

(D) The charge for the sale of peripheral devices is separately stated from the charge for the sale of computer system.

#### (102) Examples.

(a) ABC Computers, Inc., an in-state manufacturer, manufactures and sells at retail computer systems. ABC sells a computer system to Customer X for one flat charge. The computer system includes a disk drive, memory, CPU, keyboard, mouse, monitor, and bundled prewritten computer software. ABC is subject to retailing B&O tax and must collect retail sales tax on the sale to X. In addition, ABC is subject to manufacturing B&O tax on value of the product sold (which is generally the sales price). ABC is entitled to claim a multiple activities tax credit.

(b) ADE Computers, Inc., manufactures and sells computer systems at retail to customers. ADE sells to Customer Y a computer system with certain peripheral devices at separate charges. The computer system without the peripheral devices consists of a disk drive, memory, CPU, and bundled prewritten computer software. The peripheral devices include a keyboard, mouse, and monitor. All peripheral devices remain in the original packaging of the manufacturers. ADE does not attach its own label to the peripheral devices. Finally, ADE maintains a separate inventory of the peripheral devices for sale apart from the sale of ADE's computer systems. ADE is subject to retailing B&O tax and must collect retail sales tax from Y on the sales of the computer system including the peripheral devices. ADE is subject to

manufacturing B&O tax on the value of the computer system excluding the peripheral devices. ADE is entitled to claim a multiple activities tax credit. ADE is not subject to manufacturing B&O tax on the value of the peripheral devices, because the combining of a computer system with the peripheral devices in this case constitutes packaging activities.

(c) AFG Computers, Inc., an in-state company, manufactures and sells at retail computer systems. AFG sells a computer system to Customer Z. Z purchases from AFG, as part of the sales package, prewritten computer software developed by a third-party software developer. AFG installs the prewritten computer software to Z's computer. AFG is subject to retailing B&O tax and must collect retail sales tax from Z on the sale of the computer system, including the bundled prewritten computer software. Also, AFG is subject to manufacturing B&O tax on the value of the computer system, including the value of the prewritten computer software. AFG is entitled to claim a multiple activities tax credit.

(d) Same facts as (c) of this subsection, except that AFG sells and installs prewritten computer software to Z under a separate and optional sales package. The prewritten computer software is developed by a third-party software developer. AFG installs the prewritten computer software to Z's computer at the same time AFG manufactures the computer system for Z, so the installation is part of the sale. AFG is subject to retailing B&O tax and must collect retail sales tax from Z on the sale of the computer system, including the prewritten computer software. Also, AFG is subject to manufacturing B&O tax on the value of the computer system, including the price of the installed prewritten computer software. AFG is entitled to claim a multiple activities tax credit.

(e) Same facts as (d) of this subsection, except that AFG sells and installs the prewritten computer software after Z purchases the computer system. AFG is subject to retailing B&O tax and must collect retail sales tax from Z on the sale of the computer system and the prewritten computer software. Also, AFG is subject to manufacturing B&O tax on the value of the computer system. AFG is entitled to claim a multiple activities tax credit. AFG is not subject to manufacturing B&O tax on the value of the prewritten computer software, because the installation of the software by AFG is not a part of AFG's manufacturing activity.

## PART II - TAXATION OF COMPUTER HARDWARE

### (201) Taxation of computer hardware, both internal and external peripheral devices.

(a) **What is computer hardware?** For purposes of this section, "computer hardware" includes, but is not limited to, the mechanical, magnetic, electronic, or electrical components of a computer system such as towers, motherboards, central processing units (CPU), hard disk drives, memory, as well as internal and external peripheral devices such as compact disk read-only memory (CD-ROM) drives, compact disk rewriteable (CD-RW) drives, zip drives, internal and external modems, wireless fidelity (Wi-Fi) devices, floppy disks, compact disks (CDs), digital versatile disks (DVDs), cables, mice, keyboards, printers, monitors, scanners, web cameras, speakers, and microphones.

(b) **Wholesale sale of computer hardware.** Gross proceeds of sales of computer hardware to persons other than

consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification. To verify the wholesale nature of the sale, the seller should obtain a resale certificate from the buyer as provided by WAC 458-20-102 (Resale certificates).

(c) **Retail sale of computer hardware.** Gross proceeds of sales of computer hardware to consumers are subject to B&O tax under the retailing classification. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

(d) **Manufacturing of computer hardware.** Persons manufacturing computer hardware are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of computer hardware who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

**(202) Examples.**

(a) ALM Computers, Inc., purchases used computers. ALM replaces a built-in CD-ROM drive with a CD-RW drive and adds a zip drive, additional memory, and an upgraded CPU. ALM is engaged in manufacturing activity subject to manufacturing B&O tax with respect to that computer.

(b) AJK Computers, Inc., acquires damaged computers for refurbishment and sale. AJK removes damaged hardware components and replaces them with new components without upgrading these components. Refurbishing computers in this manner is not a manufacturing activity. Retail sales of such refurbished computers are subject to retailing B&O tax and retail sales tax.

(c) APQ Computers, Inc., purchases computers for refurbishment and sale. APQ replaces the failed zip drive on one of the computers with an upgraded zip drive because the upgrade is the nearest version of the failed component that is available. The manufacturer has discontinued manufacturing the original version of the zip drive because of a flaw in the design. APQ is not engaged in manufacturing activity with respect to that computer. Retail sale of that refurbished computer is subject to retailing B&O tax and retail sales tax.

(d) ATV Computers, Inc., is hired by a call center company to repair damaged computers. ATV removes damaged hardware components and replaces them with new components without upgrading these components. Refurbishing computers in this manner is not a manufacturing activity; however, it is a retail service. Refurbishing computers in this manner is subject to retailing B&O tax and retail sales tax must be collected. See WAC 458-20-173 (services on tangible personal property) for more information on repairs and maintenance.

**(203) Taxation of other activities associated with computer hardware.**

(a) **Installing computer hardware.** Gross proceeds of sales for installing computer hardware are subject to wholesaling or retailing B&O tax, as the case may be. Installation of computer hardware for consumers is subject to retail sales tax. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of computer services. See WAC 458-20-173 (services on tangible personal property) for more information on installations.

(b) **Repairing or maintaining computer hardware.** Gross proceeds of sales for repair or maintenance of computer hardware are subject to wholesaling or retailing B&O tax. Repair of computer hardware for consumers is subject to retail sales tax. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales. See WAC 458-20-173 (services on tangible personal property) for more information on repairs and maintenance. Also, see WAC 458-20-257 (Warranties and maintenance agreements) for information about repair performed as part of a warranty or maintenance agreement.

**PART III - TAXATION OF COMPUTER SOFTWARE**

(301) **What is computer software?** RCW 82.04.215 provides that "computer software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. "Computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software. Computer software does not include data.

(a) **How is computer software delivered?** Computer software may be delivered either by intangible means such as electronically or by tangible means such as tangible storage media.

(b) **What is automatic data processing equipment?** "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment.

(c) **What are retained rights?** "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor. RCW 82.04.215.

(d) **What are master copies of software?** "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. RCW 82.04.215.

(i) **Development of a master copy of software.** Development of a master copy of software by a software developer, or a third party hired by the software developer, that is used to produce copies of software for sale or commercial or industrial use, is not a manufacturing activity. A third-party charge for development of a master copy of software is a charge for custom software development and is subject to service and other activities B&O tax.

(ii) **Use of prewritten computer software by software developer.** Use of prewritten computer software by a software developer is not subject to use tax because the software developer is not an end user. For example, VV Software, Inc., an in-state software developer, creates accounting software generally used by small businesses. VV plans to sell its newly created software to other companies. VV also plans to make a copy of this software and use it for its accounting operation. The copy of software used by VV for its accounting operation is not subject to use tax.

(302) **What is custom software?** "Custom software" is software created for a single person. RCW 82.04.215. The use of library files in software development does not preclude such software from being characterized as custom software, as long as the software is created for a single person. The nature of custom software does not change when ownership is transferred to a person with no rights retained by the transferor.

For purposes of this section, "library files" are a collection of precompiled and frequently used routines that a software developer can use in developing the software.

(a) **Creation of custom software.** Gross income received for creating custom software is subject to service and other activities B&O tax.

(b) **Duplication of custom software.** Duplication of custom software for the same person, or by the same person for the person's own use, does not change the character of the custom software. RCW 82.04.29001. Duplication of custom software for the same person, or by the same person for its own use, is not subject to manufacturing B&O tax.

If a person duplicates custom software for sale to or use by another person other than the original purchaser, the software becomes prewritten computer software as defined in subsection (303) of this section and is subject to manufacturing B&O tax if the prewritten computer software is delivered by tangible storage media.

(c) **Sale of custom software.** If custom software is sold to another person other than the original purchaser, the software loses its character as custom software and becomes prewritten computer software as defined in subsection (303) of this section.

(d) **Use of custom software.** Use of custom software is not subject to use tax.

(e) **Example.** PFC, Inc., offers data base management software on-line to its client through remote access for a monthly fee. PFC developed its software for the specific client and stored the software on its server. PFC is not subject to manufacturing B&O tax or use tax because the data base management software is custom software. PFC's income from the sale of the custom software to the one specific client is subject to service and other activities B&O tax. Additionally, income received for customer access and use of the software is subject to service and other activities B&O tax. PFC is hosting its own software for customer access and use. See subsection (401)(g) of this section for treatment of ASP.

(303) **What is prewritten computer software?** RCW 82.04.215 provides that "prewritten computer software" is computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser.

The combining of two or more prewritten computer software programs or prewritten portions thereof does not result in custom software. Configuration of prewritten computer software to work with other computer software does constitute customization of prewritten computer software.

Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser.

Where a person, who is not the author or creator, modifies or enhances prewritten computer software, that person is deemed to be the author or creator only of the modifications or enhancements made. Prewritten computer software, or a portion thereof, that is modified or enhanced to any degree, remains prewritten computer software, even though the modification or enhancement is designed and developed to the specifications of a specific purchaser. Where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement will not be considered prewritten computer software.

(a) **Wholesale sales of prewritten computer software.** Gross proceeds from sales of prewritten computer software to persons other than consumers (e.g., sales for resale without intervening use) are subject to B&O tax under the wholesaling classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the wholesale nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place. To verify the wholesale nature of the sale, the seller obtains a resale certificate from the buyer as provided by WAC 458-20-102 (Resale certificates).

(i) **Distinction between wholesale sales of prewritten computer software and royalties received for the licensing of prewritten computer software.** Sales of prewritten computer software constitute wholesale sales if the reseller, who has no right to reproduce the software for further sales, sells the same software to its customers. The true object of the sale to the reseller is the sale of the software. On the other hand, income received for granting an intangible right to reproduce and distribute copies of prewritten computer software for sale constitutes royalties. The true object of the transaction that generates royalty income is the right to reproduce and relicense the software. See subsection (308) of this section for more information on royalties.

(ii) **Examples.**

(A) UM Computers, Inc., is a software developer that develops engineering software. UM sells the prewritten computer software at wholesale to OX Computers, Inc., in shrink-wrapped packages. UM delivers the software to OX. OX then resells the software to customers in the same shrink-wrapped packages. Sales of prewritten computer software by UM are subject to wholesaling B&O tax.

(B) GB Computers, Inc., is a software developer that develops engineering software. GB grants an intangible right

to SE Computers, Inc., for reproducing and distributing copies of the prewritten computer software for sale. GB retains all of its ownership rights to the software and delivers one copy of the software to SE to reproduce. Royalties received from granting an intangible right to reproduce and distribute prewritten computer software to SE are subject to royalties B&O tax.

(C) DH Computers, Inc., is a software developer that develops engineering software. DH sells the prewritten computer software at wholesale to WK Computers, Inc. DH does not allow WK to reproduce copies of the prewritten computer software for sale to end users. DH delivers the software electronically to WK. WK then resells the same software to its customers, who download the software from WK. Sales of prewritten computer software by DH are subject to wholesaling B&O tax.

(b) **Retail sales of prewritten computer software.** Gross proceeds of sales of prewritten computer software to consumers are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the retail nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

(c) **Use of prewritten computer software.** Prewritten computer software, regardless of the method of delivery, is generally subject to use tax upon use in this state if Washington retail sales tax was not previously paid. However, use of prewritten computer software is not taxable, if it is provided free of charge, or if it is provided for temporary use in viewing information, or both. RCW 82.12.020. This exception from use tax is limited to prewritten computer software provided free of charge or for temporary use in viewing information, such as free promotional software, donated software, free download of software, and software provided in beta testing to a third party free of charge.

For purposes of this use tax exception, "beta testing" means the last stage of testing for prewritten computer software prior to its commercial release including the release to manufacturing (RTM). Beta testing may involve sending the software to a third party for the use of the third party. Beta testing is often preceded by a round of testing called alpha testing.

(i) **Example.** DS Computers, Inc., is a software developer. In order to perform beta testing of its new accounting software prior to commercial release, DS sends a copy of the software free of charge to KG Technologies, Inc. DS is not subject to use tax for the release of the beta software to KG. KG is not subject to use tax for the use of beta software free of charge.

(ii) **Example.** DH, Inc., provides free card games on-line to its customers. The customers, however, must download DH's free software in order to be able to play card games

on-line at DH's web site. Customer W downloads the software free of charge. W is not subject to use tax for the use of the software.

(iii) **Example.** DW, Inc., provides free software to the public for anyone to watch videos on-line. Customer R downloads the software free of charge. R is not subject to use tax for the use of the software.

(d) **Manufacturing of prewritten computer software.** Persons engaged in manufacturing prewritten computer software are subject to manufacturing B&O tax upon the value of the products. See WAC 458-20-112 (Value of products) and WAC 458-20-136 (Manufacturing, processing for hire, fabricating). Manufacturers of prewritten computer software who sell their products at retail or wholesale are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) B&O tax classifications and may claim a multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC.

(e) **Duplication of prewritten computer software.** Duplication of prewritten computer software for sales to or use by more than one person is subject to manufacturing B&O tax upon the value of products. Duplication of prewritten computer software outside this state is not subject to manufacturing B&O tax regardless of where software development takes place.

Duplication of prewritten computer software is a manufacturing activity only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. RCW 82.04.120.

When a software developer contracts with a third party to duplicate prewritten computer software, the parties must take into account the value of all tangible and intangible materials or ingredients, including the software code, when determining the relative value of all materials or ingredients furnished by each party. If the third party furnishes less than twenty percent of the total value of all materials or ingredients that become a part of the produced product, then the third party is presumed to be a processor for hire and the software developer is presumed to be a manufacturer. See WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information.

(304) **Site license of prewritten computer software.** A site license provides a consumer acquiring prewritten computer software with the right to duplicate prewritten computer software for use on its own computers, based on the number of computers, the number of workers using the computers, or some other criteria. A site license agreement may cover one site or multiple sites of a purchaser.

(a) **Retail sales of a site license.** Gross proceeds of sales of a site license to a consumer are subject to B&O tax under the retailing classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. Delivery occurs when any copy of prewritten computer software to be used by the buyer created under the site license is received by the consumer, whether it is through tangible storage media or any electronic

means, regardless of the method of delivery. See WAC 458-20-145 (sourcing) for more information on sourcing prewritten computer software. See also WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for details regarding reporting procedures and revenue recognition of retail sales of a site license. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place. Persons making retail sales are responsible for collecting retail sales tax at the time of sale and remitting the tax to the department, unless the sale is specifically exempt by law.

If the prewritten software is hosted by the licensor for remote access by the licensee (e.g., an Application Service Provider (ASP)), then see Part IV, subsection (401)(g) of this section.

**(b) Duplication of prewritten computer software by a person under a site license.** Seller of a site license is subject to manufacturing B&O tax for its own duplication of prewritten computer software. Duplication of prewritten computer software is subject to manufacturing B&O tax only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. RCW 82.04.120. Purchaser of a site license is not subject to manufacturing B&O tax for the duplication of prewritten computer software for its own use, pursuant to a site license agreement with the seller.

**(c) Use of a site license partly in this state and partly outside this state.** Where the use of a site license is partly in this state and partly outside this state, the part of the site license used by the person in this state is subject to use tax, provided Washington state sales tax was not previously paid. For example, a person purchases a site license in California. Pursuant to the multiple site license agreement, this person is licensed to use one thousand copies of prewritten computer software, of which four hundred copies will be used in Washington. Use tax is due on the four hundred copies of prewritten computer software used in this state. If the original prewritten computer software for which the site license was purchased and delivered in Washington, then the entire charge of the site license is subject to retail sales tax.

**(d) Sales and use of additional copies of prewritten computer software under the same site license.** In some cases, the buyer of a site license may subsequently purchase additional copies of prewritten computer software under the same site license agreement. The seller may or may not deliver any additional copy of the software to the buyer, because the original copy of the software has already been delivered.

**(i) Retail sales of additional copies of prewritten computer software under the same site license.** Retail sales of the additional copies of software occurs when and where the seller delivers any additional copy of prewritten computer software to the buyer, whether it is through tangible storage media or any electronic means, regardless of the method of delivery. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of prewritten computer software. If the seller does not deliver any additional copy of the software to the buyer, then the sales occur when the sales

agreements are made to purchase the additional copies and where the original copy or copies of prewritten computer software was delivered. If the original sale of the site license was subject to manufacturing B&O tax, then the sale of additional licenses are also subject to manufacturing B&O tax.

Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

**(ii) Use of additional copies of prewritten computer software under the same site license.** Where the use of the additional copies of software is partly in this state and partly outside this state and was not previously subject to Washington sales tax, the part of the additional copies of software used by the person in this state is subject to use tax.

**(e) Examples.**

**(i) DEF Computers, Inc.,** sells in this state at retail a multiple site license of its prewritten computer software to P's Design, Inc. A copy of the prewritten computer software is electronically delivered to P's Design in Washington. P's Design then electronically duplicates the software and distributes the software in Washington and several other states for its use. Neither DEF nor P's Design is subject to manufacturing B&O tax. DEF, however, is subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the entire sale of the software.

**(ii) Same facts as (e)(i) of this subsection,** except that in addition, DEF delivers a backup copy of the software to P's Design outside Washington. The backup copy of the software is for disaster recovery purposes and is not downloaded to any of P's Design's computers for use. There is no separate charge for the delivery of the backup software. The software manuals are mailed to P's Design in Washington. DEF is still subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the entire sale of the software. Delivery of the software manuals and the backup copy of the software are not relevant in determining when and where the sale takes place. This transaction is not subject to manufacturing B&O tax.

**(iii) Same facts as (e)(i) of this subsection,** except that in addition, P's Design subsequently purchases 50 additional copies of the software from DEF under the same site license agreement. P's Design merges with another company, and the additional copies are needed for the use of its new employees. No additional copy of the software is delivered to P's Design in fulfilling this new agreement. Neither DEF nor P's Design is subject to manufacturing B&O tax. DEF, however, is subject to retailing B&O tax, and it must collect retail sales tax from P's Design for the subsequent sale of the 50 additional copies of software because the original copy of the software was delivered in Washington. However, if the original sale of the license had included delivery of the prewritten software by a tangible storage device (and was therefore subject to manufacturing B&O tax), then the licensor is also subject to manufacturing B&O tax based on the value of the additional licenses.

**(iv) GH Computers, Inc.,** sells at retail a multiple site license of its prewritten computer software to Quick, Inc. GH is located outside Washington, while Quick is located in Washington and in other states and outside the U.S. The

desktop software is licensed on an unlimited basis, which means that there are no restrictions of its use by Quick. The software is delivered to Quick outside Washington. Quick then electronically duplicates the software and distributes the software to all of its 500 employees, of which 100 employees are located in Washington. The software is electronically downloaded into the desktop computers of all employees and is immediately put into use. Use tax is due on the value of the 100 copies of prewritten computer software used in Washington.

(v) Same facts as (e)(iv) of this subsection, except that under the original site license agreement, Quick is entitled to reproduce, distribute, and use up to 500 copies of the desktop software. Then Quick merges with another company, and additional copies are needed for the use of its new employees. Quick, therefore, subsequently purchases 100 additional copies of the software from GH under the same site license agreement. No additional copy of the software is delivered to Quick in fulfilling this new agreement. Quick distributes the additional copies of the software to its 100 new employees, of which 50 employees are located in Washington. Use tax is due on the value of the 50 additional copies of prewritten computer software used in Washington.

(vi) JJ Computers, Inc., sells at retail a multiple site license of its prewritten computer (server) software to Rest, Inc. JJ is located outside Washington, but Rest is located in Washington and in other states. The server software is delivered to Rest outside Washington. Rest then electronically duplicates the software and distributes the software to its three servers for immediate use. One of the servers is located in Washington, and the other two servers are located outside Washington. Use tax is due on the value of the copy of the prewritten computer (server) software on the server in Washington.

**(305) Key to activate computer software.** A key, or an enabling or activating code, may be required in some instances to activate computer software and put the software into use, and the key may be delivered to a purchaser after the software is already delivered and in possession of the same purchaser. In such instances, the entire sale of computer software occurs when both the key and the software are delivered to the purchaser. The sale takes place where the software is received by the purchaser in accordance with RCW 82.32.-730. However, if the receiving location for the software is unavailable to the vendor because the software was delivered by a third party, then the sale takes place where the key is received in accordance with RCW 82.32.730. There is no separate sale of the key from the software, regardless of how such sale may be characterized by the vendor or by the purchaser.

See subsection (304) of this section for more information if a site license of prewritten computer software is involved. If the sale of the prewritten software is also subject to manufacturing B&O tax, then the sale of the key required by that prewritten software is also subject to manufacturing B&O tax. The income from the sale of a key is part of a sale of prewritten computer software, whether the sales transactions are together or separate.

(a) **Example.** JKL Computers, Inc., an in-state business, sells at retail prewritten computer software to Customer R.

JKL delivers the software to R in this state. The prewritten computer software, however, cannot be activated without a key. JKL subsequently delivers the key in this state to R for a separate price. JKL is subject to retailing B&O tax, and it must collect retail sales tax from R on the entire sale of the software including the separate charge for the key. The entire sale takes place in this state (where the software is delivered) when both the software and the key are delivered to R. There is no separate sale of the key, regardless of the fact that JKL delivers the key to R for a separate charge.

(b) **Example.** Same facts as (a) of this subsection, except that JKL subsequently delivers the key outside this state to R for a separate price. JKL is subject to retailing B&O tax, and it must collect retail sales tax from R on the entire sale of the software including the separate charge for the key. The entire sale takes place in this state (where the software is delivered) when both the software and the key are delivered to R. There is no separate sale of the key, regardless of the fact that JKL delivers the key to R for a separate charge.

(c) **Example.** MNO Computers, Inc., is an in-state software developer. TKO Computers, Inc., an out-of-state original equipment manufacturer (OEM), agrees in contract with MNO to distribute MNO's prewritten computer software. TKO delivers MNO's inoperable software to Customer S as part of the sale of the computer system. S, however, must purchase a key directly from MNO in order to activate and use the software. MNO has no knowledge of where the software was initially delivered to S, but MNO knows that the key is delivered to S in this state. MNO is subject to retailing B&O tax, and it must collect retail sales tax from S on the entire sale of the key and the inoperable software. The entire sale takes place in this state because the key is delivered in this state and MNO has no knowledge of where the inoperable software was initially delivered by TKO. Assuming TKO delivers MNO's software to Customer S electronically, then duplication of the key would not be subject to manufacturing B&O tax. If TKO delivers the software on tangible storage media, then the key would be subject to manufacturing B&O tax.

**(306) Client access license and server license for the server software.** A server license, paid for at the time the server software is purchased, grants the buyer the right to install the server software on the buyer's server. A client access license (CAL) grants the buyer the right to access the server software. The CAL is not computer software and is not downloaded into the buyer's computer.

Charges for server licenses and CAL are a part of the sale of the server software, even if the charges are separately stated. The sales take place where the server software is delivered to the buyer.

In cases where server software is delivered to the buyer and used in multiple locations, see subsection (304) of this section on site licenses for more information.

(a) **Example.** ZZ Computers, Inc., an in-state business, sells at retail server software to Customer Q. ZZ delivers the server software to Q in Washington. ZZ also provides Q with client access licenses allowing Q the right to access the server software from its personal computers. The sale of server

software to Q is subject to retailing B&O tax, and ZZ must collect retail sales tax from Q for the same sale.

(b) **Example.** Same facts as (a) of this subsection, except that ZZ sells at retail two types of prewritten computer software to Customer Q. One is server software, and the other is client software (which is different from client access licenses). ZZ delivers the server software to Q in Washington where Q's server is located. ZZ delivers the client software to Q outside Washington where all of Q's personal computers are located. Only the sale of server software to Q is subject to retailing B&O tax, and ZZ must collect retail sales tax from Q for the same sale.

**(307) Other activities associated with computer software.**

(a) **Customizing prewritten computer software.** Gross income received for customizing prewritten computer software is subject to service and other activities B&O tax. RCW 82.04.29001.

(i) **What is customizing prewritten computer software?** RCW 82.04.215 provides that "customization of prewritten computer software" is any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person.

"Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(ii) **Combined charge for prewritten computer software, customization, and routine installation.** If a lump-sum charge is made for a sale of prewritten computer software, customization of prewritten computer software, and routine installation, the entire charge is considered to be a sale of prewritten computer software. See (a)(iv) of this subsection for more information on routine installation.

(iii) **Separately stated charge for customization of prewritten computer software.** Where there is a reasonable separately stated charge on an invoice or other statement of the price given to the purchaser for customization of prewritten computer software (including installation that is not routine, see (a)(i) of this subsection), such customization is subject to service and other activities B&O tax. If a charge for customization of prewritten computer software is not separately stated from a sale of prewritten computer software, the entire charge is considered a sale of prewritten computer software.

(iv) **Customization of prewritten computer software versus routine installation.** Customization of prewritten computer software does not include routine installation. "Routine installation" means the process of loading program files and installation files onto a computer. Routine installation does not include installation of the customized elements of prewritten computer software.

(v) **Separately stated charge for routine installation from customization of prewritten computer software.** Where there is a separately stated charge on an invoice or other statement of the price given to the purchaser for routine installation from customization of prewritten computer software, routine installation is subject to retailing B&O tax and

retail sales tax. If a charge for routine installation is not separately stated from customization of prewritten computer software, the predominant nature of the transaction determines taxability.

**(vi) Examples.**

(A) Tee, Inc., is in need of financial modeling software that can tie into most of its existing computer systems. Because of its unique business, however, Tee needs the industry-wide computer software offered by PQR Computers, Inc., that is modified to meet the needs of Tee. Both Tee and PQR are in-state corporations, and the software is delivered in this state. PQR provides a separately stated charge to Tee for customization of prewritten computer software performed in this state. PQR is subject to retailing B&O tax, and it must collect retail sales tax from Tee for the sale of prewritten computer software in Washington. PQR, in addition, is subject to service and other activities B&O tax for the customization of prewritten computer software in Washington.

(B) Same facts as (a)(vi)(A) of this subsection, except that, in addition, PQR provides a separately stated charge to Tee for routine installation of prewritten computer software in this state. This charge represents installation of only the prewritten portion of the software. In addition to the tax treatments in (a)(vi)(A) of this subsection, PQR is subject to retailing B&O tax and it must collect retail sales tax from Tee for the routine installation in Washington.

**(b) Installing or uninstalling computer software.**

(i) Gross income received from installing or uninstalling custom software is subject to service and other activities B&O tax.

(ii) Gross proceeds of sales for routine installation of prewritten computer software are subject to retailing B&O tax and retail sales tax. See (a)(iv) of this subsection for more information on routine installation. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of prewritten software and routine installation. Routine installation of prewritten computer software includes charges for labor and services in respect to the installation, such as travel costs for the routine installation of the software. As of July 1, 2008, if the routine installation occurs through remote access by someone outside the state of Washington, then the installation is sourced to where first use occurs. For example, XYZ Computers, Inc., is hired by Customer D for routine installation of prewritten software onto D's computers. XYZ's out-of-state employee remotely accesses D's computers in Washington to install the prewritten software on its computers. If XYZ has nexus with Washington, then it must collect and remit the sales tax. If XYZ does not have nexus, then Customer D must pay use tax.

Gross proceeds of sales of uninstalling prewritten computer software are subject to retailing B&O tax and retail sales tax.

For example, XYZ Computers, Inc., is hired by Customer D to remove spy ware from its computers. Spy ware is prewritten computer software. Removal of spy ware requires uninstalling the spy ware from the computer. XYZ sends an employee to D's location to remove spy ware from its computers. Charges for removal of spy ware are subject to retailing B&O tax and retail sales tax.

(c) **Repairing, altering, or modifying computer software.** Repair of prewritten computer software for more than one person may be distributed as a fix or patch by tangible storage media or electronically in the nature of software upgrades and updates. The sale of prewritten computer software upgrades and updates is a sale of prewritten computer software subject to retailing B&O tax and retail sales tax. See WAC 458-20-145 (sourcing) for more information on sourcing retail sales of computer services.

Alteration or modification of prewritten computer software performed for a specific person is subject to the service and other activities B&O tax. Such alteration or modification of prewritten computer software for a specific person constitutes customization of prewritten computer software. See RCW 82.04.215.

Alteration or modification of custom software is subject to service and other activities B&O tax.

(i) **Example.** STU Computers, Inc., a Washington company, is hired by Customer B to perform repairs via remote access on its prewritten computer software in Washington. STU is performing alteration or modification of prewritten computer software for a specific person and is subject to service and other activities B&O tax.

(ii) **Example.** VW Computers, Inc., an out-of-state service provider, is hired by Customer C to perform alterations or modifications via remote access on its prewritten computer software located in this state. VW's facility is located outside this state. VW may be subject to service and other activities B&O tax if it has nexus with Washington. See WAC 458-20-194 (Apportionment).

(d) **Maintaining computer software.** Computer software maintenance agreements typically include, but are not limited to, support activities such as telephone consulting, help desk services, remote diagnostic services, and software upgrades and updates.

(i) **Tax treatment of computer software maintenance agreements in general.** Sales of stand-alone computer software maintenance agreements that include telephone consulting, help desk services, remote diagnostic services, and other professional services are taxable under the service and other activities B&O tax. However, if the services are part of a sale of an extended warranty on or after July 1, 2005, then the sale is subject to retailing B&O tax and retail sales tax. See WAC 458-20-257 (Warranties and maintenance agreements) for information about extended warranties.

Stand-alone sales of updates or upgrades to prewritten computer software are retail sales of tangible personal property subject to retailing B&O tax and retail sales tax.

(ii) **Prewritten computer software maintenance agreement with mixed elements.** The sale of a prewritten computer software maintenance agreement that includes professional service components such as telephone consulting and retail components such as upgrades and updates of prewritten computer software is a retail sale subject to retailing B&O tax and retail sales tax.

In cases where the charges for the professional service component(s) and the retail component(s) are separately stated within a prewritten computer software maintenance agreement and invoice, then each activity is taxed according to the nature of the activity.

(ii) **Duplication of prewritten computer software upgrades and updates.** Duplication of prewritten computer software upgrades and updates is subject to manufacturing B&O tax upon the value of products, if the software upgrades and updates are delivered by means of tangible storage media which is retained by the purchaser. This is the case regardless of any maintenance agreement with mixed elements involved. The measure of tax is presumed to be the contract price of the maintenance agreement, unless the person can prove otherwise. See WAC 458-20-112 (Value of products) for more information.

If the software upgrades and updates are delivered from the seller by means other than tangible storage media which is retained by the purchaser, then the software upgrades and updates are not subject to manufacturing B&O tax.

(iv) **Maintenance agreement on custom software and customized elements of prewritten computer software.** Sales of maintenance or support services relating to custom software or the customized elements of prewritten computer software are subject to the service and other activities B&O tax. Such services, including upgrades and updates, are rendered in respect to the custom or customized software and take on the underlying character and taxability of the custom or customized software.

(v) **Examples.**

(A) On December 15, 2005, CBA Computers, Inc., sells at retail a prewritten computer software maintenance agreement to Customer F for its software. The software maintenance agreement includes an extended warranty for the software, software upgrades and updates, and telephone consulting services. CBA delivers the software upgrades and updates electronically, as well as provides the maintenance services to F at one charge. CBA is subject to retailing B&O tax, and it must collect retail sales tax from F for the sale of the mixed agreement.

(B) Same facts as (d)(v)(A) of this subsection, except that CBA delivers the software upgrades and updates on compact disks. CBA is subject to retailing B&O tax, and it must collect retail sales tax from F for the sale of the mixed agreement. In addition, CBA is subject to manufacturing B&O tax on duplication of software upgrades and updates. The measure of tax is presumed to be the contract price of the maintenance agreement, unless CBA can prove otherwise.

(C) Same facts as (d)(v)(A) of this subsection, except that CBA provides a separately stated charge for each component of the maintenance agreement. CBA is subject to retailing B&O tax, and it must collect retail sales tax from F for the charges on software upgrades and updates and on the extended warranty purchased after July 1, 2005. CBA is subject to service and other activities B&O tax for the charge on telephone consulting services.

(D) FED Computers, Inc., sells at retail a computer software maintenance agreement to Customer G for its software. The maintenance agreement covers only software upgrades and updates. G's software is prewritten computer software with customized elements. FED provides the maintenance services to G at one charge. FED is subject to retailing B&O tax, and it must collect retail sales tax from G for the sale of the entire maintenance agreement of the prewritten computer software.

(E) Same facts as (d)(v)(D) of this subsection, except that FED provides a separately stated charge for maintaining the customized elements. FED is subject to service and other activities B&O tax for the charge on maintaining the customized elements. FED is subject to retailing B&O tax, and it must collect retail sales tax from G for the charge on maintaining prewritten computer software.

(e) **Computer software training.** Gross income received for training on the use of custom software is subject to service and other activities B&O tax. Gross income received for training on the use of prewritten computer software is subject to service and other activities B&O tax, if the charge for such training is separately stated from the sale of prewritten computer software. If the charge for software training is not separately stated from the sale of prewritten computer software, the entire charge is considered to be a sale of prewritten computer software subject to retailing B&O tax and retail sales tax.

(308) **Licensing computer software - royalties.** Income received from charges in the nature of royalties for the licensing of computer software is taxable under the royalties B&O tax classification.

(a) **What are royalties?** RCW 82.04.2907 provides that "royalties" is compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. The true object of a transaction involving royalties is to grant an intangible right to reproduce and distribute copies of computer software for sale. It does not, however, include compensation for the licensing of prewritten computer software to the end user. The manner in which computer software is sold (e.g., volume of transactions, subscription license, term license, or perpetual license) or the manner in which payment amount is determined (e.g., fixed fee per copy, percentage of receipts, lump sum, etc.) does not alter the royalty nature of the transaction.

(b) **Royalties versus site license.** Regarding royalties, the true object of the transaction is to grant an intangible right to reproduce and distribute copies of computer software for sale. In contrast, the true object of a site license is the sale to an end user of prewritten computer software for use on its computers. See subsection (304) of this section for more information on site licenses.

(c) **Royalties versus wholesale sales of prewritten computer software.** See subsection (303)(a) of this section for more information.

(d) **Examples.**

(i) HG Computers, Inc., an original equipment manufacturer (OEM), acquires prewritten computer software from LL Software, Inc., under a license to reproduce and distribute the prewritten computer software as part of a bundled computer hardware and software package HG sells to end users. LL retains all of its ownership rights to the software. The gross income received by LL from granting intangible rights to reproduce and distribute prewritten computer software to HG is subject to royalties B&O tax.

(ii) Same facts as (d)(i) of this subsection, except that, in addition, HG acquires a site license from LL for the purposes of using the prewritten computer software as an end user. LL delivers the software to HG. Amounts received by LL for the

sale of a site license are subject to retailing B&O tax and retail sales tax.

(309) Special use tax exemption for computer hardware and computer software donated to certain schools or colleges. Use tax does not apply to the use of computer hardware and computer software irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW. RCW 82.12.0284.

#### PART IV - TAXATION OF INFORMATION SERVICES AND COMPUTER SERVICES

(401) **Activities associated with information services and computer services.** For services described below that are subject to service and other activities B&O tax, see WAC 458-20-194 (Doing business inside and outside the state) for more information on the apportionment of service and other activities B&O tax for taxpayers who maintain places of business both within and without the state that contribute to the rendition of the services.

(a) **Sales of information services.** Gross income received for information services is subject to service and other activities B&O tax.

(i) **What are information services?** "Information services" means every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium. "Information services" does not include transfers of tangible personal property such as computer hardware or standard prewritten software programs. Neither does "information services" include telecommunication services defined under RCW 82.04.065.

Effective August 1, 2007, and in accordance with RCW 82.08.705 and 82.12.705, a sales and use tax exemption is provided for sales of electronically delivered standard financial information, if the sale is to an investment management company or a financial institution. Standard financial information is defined as "any collection of financial data or facts, not compiled for a specific consumer, including financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports." See RCW 82.08.705.

(ii) **Examples.**

(A) XX Statistical Data, Inc., sells statistical data at the specific request of each customer. XX does not compile such statistical information to be available for all customers. Instead, each customer submits its own request of the statistical information based on its needs. XX compiles, analyzes, and summarizes the statistical information it gathers and sends the information to customers in a tangible medium. XX is subject to service and other activities B&O tax for the sales of statistical information, because XX is providing an information service at the specific request of each customer.

(B) ZZ Statistical Data, Inc., allows its customers to perform on-line research of statistical information through its data base. ZZ bills its customers a monthly fee for having on-line access to the data base for research. Its customers do not download any information onto their computers. ZZ is subject to service and other activities B&O tax for providing information services to its customers.

(C) WW Travel, Inc., bills its customers a monthly fee for having on-line access to a travel reservation system that includes a charge for dedicated telephone lines. WW is subject to service and other activities B&O tax for providing information services, rather than a telecommunications service. The provider of dedicated telephone lines to WW must collect retail sales tax from WW on the sale of telecommunications service. WW is the consumer of telecommunications service.

(D) VV Telephone, Inc., provides a satellite-based tracking and communications system that includes instant messaging between vehicles in transit and dispatch centers. Both the vehicles and the dispatch centers are operated by its customers, and information is both generated and received by the customers. This is not a sale of information service. The true object of the transaction is the transmission of data between the vehicles and the dispatch centers through VV's communications system. VV is providing telecommunications services subject to retailing B&O tax, and it must collect retail sales tax on the sale of telecommunications services. See RCW 82.32.520 for sourcing of telecommunications services.

(E) AA Data, Inc., provides a daily report of bond ratings for electronic download by its investment management company consumers. Each investment management company downloads the same report. As of August 1, 2007, AA provides standard financial information that falls within the exemption found in RCW 82.08.705 and 82.12.705. Therefore, AA does not collect or remit retail sales tax.

(b) **Sales of data processing services.** Gross income received for data processing services is subject to service and other activities B&O tax.

"Data processing services" includes, but is not limited to, word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service.

(i) **Example.** JK Processing, Inc., provides payroll processing services to other businesses. JK is subject to service and other activities B&O tax for providing data processing services.

(ii) **Example.** KL Processing, Inc., processes payroll data related to its employees. KL is not subject to manufacturing B&O tax or use tax for the electronic processing of its own data.

(c) **Sales of internet services.** Gross income received for internet services are subject to service and other activities B&O tax.

(i) **What is the internet?** "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web. RCW 82.04.297.

(ii) **What are internet services?** "Internet service" is a service furnished by an internet service provider (ISP) that allows users access to the internet. The ISP must provide the

service through use of computer processing applications that either provide the user with additional or restructured information or permit the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes the following services furnished by the ISP:

- Provision of internet electronic mail;
- Access to the internet for information retrieval; and
- Hosting of information for retrieval over the internet.

"Internet service" does not include telecommunications service as defined in RCW 82.04.065.

(iii) **What is a proprietary subscriber network?** "Proprietary subscriber network" means proprietarily or privately owned network in which its services are available to the public for fees. Proprietary subscriber network does not include intranets.

(iv) **Examples.**

(A) ISP, Inc., is an internet service provider that provides customers with access to the internet. ISP does not furnish any telephone lines to its customers in providing this access. ISP maintains its operation in Washington. Customer Q is charged a monthly internet access fee from ISP for access to the internet in Washington. ISP is subject to service and other activities B&O tax for the monthly internet access fee charged to Q.

(B) Same facts as (c)(iv)(A) of this subsection, except that ISP provides customers with access to the internet along with telephone lines used to provide that access. Customer Q is charged a combined monthly fee for access to the internet in Washington using the telephone lines. ISP is subject to service and other activities B&O tax for the combined fee, because the true object of the transaction is to provide access to the internet, rather than to provide telecommunications service.

(C) Telecomm Co. provides customers with telephone lines for telecommunications, including long distance service, and for access to the internet (internet services). Customer Z is charged a combined monthly fee for access to the internet and for communication services in Washington using the telephone lines. Telecomm Co. is subject to retailing B&O tax for the combined fee because the primary purpose of the transaction is to provide telecommunications service, rather than to provide access to the internet. However, if Telecomm Co. separately states or can reasonably identify from its books and records the fees for telecommunications service and internet access, then Telecomm Co. will be subject to retail and service classifications respectively.

(D) DD Computers, Inc., provides access to information through its web site for which it charges its users a fee. DD charges Customer Z, an out-of-state customer, a transaction fee to use DD's web site to search and retrieve real estate appraisal information. DD is not providing internet service because DD is not an ISP and does not provide customers with access to the internet. DD, however, is providing Z access to its web site for informational search and retrieval which is subject to service and other activities B&O tax.

(d) **Sales of intranet services.** Gross proceeds of sales of intranet services are sales of telecommunications service defined under RCW 82.04.065 subject to retailing B&O tax and retail sales tax.

"Intranet service" means the service of providing a private or intracompany network used by a person to facilitate the sharing or accessing of internal information by the person's employees or other authorized parties.

(e) **Sales of Voice over Internet Protocol (VoIP) services.** "VoIP service" is a service that enables subscribers to use the internet as the transmission medium for telephone calls by sending voice data in packets in internet protocol. Gross proceeds of sales of VoIP services are sales of telecommunications service defined under RCW 82.04.065 subject to retailing B&O tax and retail sales tax.

(f) **Sales of network system support services.** Gross income received for network system support services is subject to service and other activities B&O tax. "Network system support" activities includes analyzing and interpreting problems using diagnostic software, monitoring network to ensure network availability to users, and performing network system configurations. Network system support activities may be performed through remote telephone support or on-site consulting.

(g) **Sales of remote access to applications provided by application service providers (ASPs).** Gross income received for providing remote access to applications on the ASP's servers are subject to service and other activities B&O tax, when the service is performed in Washington. Sellers of remote access to applications (e.g., ASPs) may be able to apportion income if they perform activities in multiple states (i.e., servers used in multiple states to host the software). See WAC 458-20-194 (apportionment).

"ASP" means a provider that generally offers customers with electronic access to applications on the ASP's server. ASP generally does not provide computer software for customers to download. ASP, however, may provide downloadable codes in order for customers to access its applications on its server that are only incidental to the services provided to customers.

(i) **Example.** BE Software, Inc., offers a variety of pre-written software products on-line, but not for download, to its customers for a monthly subscription fee. BE Software is subject to service and other activities B&O tax for its subscription fees received.

(ii) **Example.** Same facts as (g)(i) of this subsection, except that, in addition, BE provides computer software for customers to download before the on-line software can be used. The downloaded software does not provide any function other than confirm registration and provide access codes necessary for a customer to be able to use the on-line software. The downloaded software is provided as part of the monthly subscription fee. Once the subscription ends, the access software the customers downloaded will not perform any function. BE Software is subject to service and other activities B&O tax for its subscription fees received, because the true object of the transaction is to provide on-line software to its customers.

(iii) **Example.** Same facts as (g)(i) of this subsection, except that, in addition, BE offers an option to allow its customers to download a limited number of software applications for an additional fee. Customer K purchases and downloads a number of additional prewritten software packages from BE in this state. BE is subject to retailing B&O tax, and

BE must collect retail sales tax from K on the additional fee for the sale of downloaded software.

(h) **Sales of web site development or hosting services.** Gross income received for web site development or hosting services are subject to service and other activities B&O tax.

"Web site development service" means the design and development of a web site provided by a web site developer to a customer. "Web site hosting service" means providing server space to host a customer's web site.

(i) **Sales of on-line advertising services.** Gross income received for on-line advertising services are subject to service and other activities B&O tax.

For example, BB.com sells souvenir items through the internet. BB.com provides on-line advertising services for third parties. Income received for on-line advertising services is subject to service and other activities B&O tax.

(j) **Sales of data warehousing services.** Gross income received for data warehousing services is subject to service and other activities B&O tax. "Data warehousing service" means the service of a provider offering server space for a customer to store its data and to access, retrieve, or use the data as needed.

(i) **Example.** HH Recovery, Inc., provides substitute computer systems so that its customers may access its computer facilities for disaster recovery purposes, if such customers experience unplanned computer system failures. Customer K pays a monthly subscription fee for this service. HH is subject to service and other activities B&O tax for the sale of data warehousing services to K.

(ii) **Example.** Same facts as (j)(i) of this subsection, except that, in addition, HH performs "live" backup for disaster recovery purposes. HH purchases prewritten computer software to perform "live" backup of data. HH is subject to use tax for the use of prewritten computer software to perform "live" backup of data.

## PART V - DISTINCTION BETWEEN SALES AND SERVICES

(501) **Current WAC 458-20-155 makes a distinction between sales and services.** Liability for sales or use tax depends upon whether the subject of the sale is a product or a service. Professional and personal services rendered to a client are not generally subject to retail sales or use tax. If the consumer's true object of the transaction is obtaining professional or personal services, similar to those performed by a public accountant, architect, lawyer, etc., then the retail sales or use tax is not applicable. The retail sales and use tax is not applicable because these services are performed to meet a consumer's specific needs and any property transferred in the transaction is considered the medium in or on which those services are rendered and is merely the tangible evidence of a professional service rendered.

If the true object of the transaction is a product made available to any consumer and not created to meet the particular needs of a specific consumer, regardless of the method of delivery, then the transaction is taxable under the retailing B&O tax classification and taxable as a retail sale. The term "product" includes tangible personal property, such as prewritten software. This is no different from a usual inventory of tangible personal property held for sale or lease, and the

sale or lease of such products is a sale at retail subject to retail sales tax or use tax.

Please see WAC 458-20-155 for more information.

**WSR 08-15-174**  
**PROPOSED RULES**  
**STATE BOARD OF HEALTH**

[Filed July 23, 2008, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-20-050.

Title of Rule and Other Identifying Information: Chapter 246-366A WAC, Primary and secondary schools, this chapter provides minimum health and safety rules for all schools in Washington state.

Hearing Location(s): Red Lion Hotel at the Park, 303 West North River Drive, Spokane, WA, on August 27, 2008, at 1:00 p.m.; and at the Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA, on September 10, 2008, at 1:00 p.m.

Date of Intended Adoption: September 10, 2008.

Submit Written Comments to: Ned Therien, 101 Israel Road S.E., P.O. Box 47990, Olympia, WA 98504, school.rule@doh.wa.gov, web site <http://www3.doh.wa.gov/policy/review/>, fax (360) 236-4100 by September 10, 2008.

Assistance for Persons with Disabilities: Contact Vicki Bouvier by August 20, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update the current chapter 246-366 WAC to include provisions for water quality sampling, indoor air quality, and safety in areas such as playgrounds, labs, and shops. The proposal repeals the former chapter 246-366 WAC and recodifies it into a new chapter 246-366A WAC. The entire new chapter is organized to provide clarity for those provisions that are construction related and those provisions that are operation and maintenance related.

Reasons Supporting Proposal: Students, parents, and teachers requested the state board of health update and strengthen the primary and secondary school rules to better protect children's health and safety. The last major update of the chapter was in 1971 and standards for health and safety have changed considerably since that time. Further, the rule needed to be rewritten to provide clarity.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 43.20.050.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Ned Therien, Tumwater, Washington, (360) 236-4103; Implementation and Enforcement: Nancy Bernard, Tumwater, Washington, (360) 236-3072.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

### Small Business Economic Impact Statement

Brief Description of the Rule: Approximately one million children attend schools in Washington state. The state board of health (the board) is required to establish rules for environmental health and safety in all schools and has done so since the 1960s. The current framework in chapter 246-366 WAC, Primary and secondary schools, has been in place since 1971. These rules apply to two hundred ninety-five public school districts with approximately 2,300 school facilities as well as approximately four hundred fifty private schools. These rules are administered by local health jurisdictions.

In 2004, the board directed the department of health (the department) to begin a rule-making process in response to growing concerns that the rules were generally outdated and no longer adequate for indoor air quality, drinking water, and safety in areas such as laboratories and playgrounds. As a result, this proposal will repeal the current chapter 246-366 WAC and replace it with chapter 246-366A WAC that has been reorganized and rewritten to clarify those requirements that are construction related and those that are a part of ongoing operation and maintenance of facilities. Many parts of the current chapter have been reorganized and rewritten for clarity, but have not changed significantly.

The current rules, chapter 246-366 WAC, establishes minimum environmental health and safety standards for schools in Washington state. The specific objectives of the proposed revisions are to protect students and users of school facilities from environmental hazards by:

- Delineating responsibilities of the school boards and officials, the local board of health and health officer, and the department;
- Improving indoor air quality;
- Improving playground safety;
- Improving water quality monitoring;
- Improving mold prevention and remediation; and
- Improving overall school safety.

Small Business Economic Impact Statement Requirement: The department has reviewed this proposal and has determined that a small business economic impact statement is required because these rules affect privately owned schools, which, for the purposes of this analysis, are considered businesses. Small public schools are not included in this analysis as they are not considered a business under the Regulatory Fairness Act, chapter 19.85 RCW.

Industries Affected by the Rule: The industry affected by these rules is privately owned schools.

Costs of Complying with the Rule: The tables below reflect the incremental construction costs and operation and maintenance (O&M) costs for these rules. These costs are expressed as costs per school and cost per student. These costs are identified and explained in the preliminary significant analysis for these rules.

The department assumes, with few exceptions such as playground equipment standards and HVAC costs, these costs apply to a representative school regardless of ownership type, i.e., public or private.

School Type	Size of Representative School (sq/ft)	Incremental Construction Costs per School	Incremental Construction Costs per Square Foot
Elementary	65,000	\$317,850	\$4.89
Middle/Jr. High	95,000	\$519,650	\$5.47
High School	225,000	\$960,750	\$4.27

School Type	Size of School (sq/ft)	Students per School	Start-up* O&M Costs per School	Start-up O&M Costs per Student	Annual On-going O&M Costs per School	Annual On-going O&M Costs per Student
Elementary	65,000	489	\$23,774	\$48.62	\$9,042	\$18.49
Middle/Jr. High	95,000	688	\$22,224	\$32.30	\$7,239	\$10.52
High School	225,000	1,442	\$23,900	\$16.57	\$8,481	\$5.88

\*Start-up costs reflect the one-time costs for water quality, HVAC retrofit, and policy development although actual implementation dates for these requirements will vary depending on the requirement and school type.

**Disproportionate Impact on Small Businesses:** The department has determined that these rules may impose a disproportionate impact on small businesses. The department assumes that private schools are generally located in smaller sized facilities with fewer students per school. Based on information from the office of superintendent of public instruction web site, the approximate five hundred private schools serve on average one hundred fifty-four students each. Based on this fact and coupled with the reality of economies of scale, these privately owned schools will incur a higher average cost per square foot and per student to comply with these rules than larger public schools. Thus, using any of the methods provided for in statute to gauge impact (cost per employee (teachers and other school staff), cost per hour of labor (custodial staff), or cost per hundred dollars of sales (tuition)), these rules will have a disproportionate impact on privately owned schools.

**Mitigation Measures:** The following describes mitigation measures considered during the development of these rules.

**Reduce, modify, or eliminate substantive regulatory requirements:** These rules do not propose to reduce, modify, or eliminate substantive regulatory requirements for small businesses to do so would create dual standards that, in effect, would provide different health and safety protection for students based on school size or school ownership type.

**Simplify, reduce, or eliminate record-keeping and reporting requirements:** These rules identify minimum record-keeping and reporting requirements necessary to achieve the intent of these rules.

**Reduce the frequency of inspections:** These rules establish consistent inspection frequency for all schools regardless of size or ownership type. However, the proposal grants local health jurisdictions the discretion to allow schools to self-inspect two out of every three years as a way to reduce costs.

**Delay compliance timetables:** Operation and Maintenance—Two components of these rules have delayed implementation dates. The change from annual to periodic inspections is delayed one year from the effective date of these rules. Water quality monitoring for lead and copper have

staggered effective dates starting with elementary schools in the first two years, junior high schools the third year, and senior high schools the fourth year.

**Construction—**There are conditions that modify the applicability of certain construction requirements of this chapter. The first in WAC 246-366A-005 provides for application of the existing construction requirements of chapter 246-366 WAC if the local permitting jurisdiction received a complete building permit application for school construction prior to September 1, 2010. The site review requirements of WAC 246-366A-030 allow for the same deviation from construction-related requirements if construction plan notification to the local health officer is made prior to September 1, 2010. WAC 246-366A-090 provides deviation from the new heating and ventilation construction requirements related to ducted air returns and upgraded duct lining if the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

**Reduce or modify fine schedules for noncompliance:** This mitigation measure is not possible to apply to this rule making as there are no fine schedules established in these rules.

**Other mitigation techniques:** The department will provide privately owned schools with all model policies (e.g., approved use and management of hazardous materials, use of upholstered furniture, animals in schools, safety standards, etc.) to help schools comply with these rules with the lowest possible cost.

These rules allow for variance requests to the local health officer so that schools can meet the intent of these rules in alternative, less costly ways.

**Small Business Involvement in Rule Development:** The department invited private school representatives to serve on the original school rule development committee as well as the costing workshop and the later rule revision team. Proposals from the representatives of private schools were considered as part of the process of rule development, but did not include proposed rule changes to specifically accommodate the special needs of private schools.

**Jobs Created or Lost as a Result of the Rule:** The department assumes that private schools will meet the intent of these rules in the least costly manner, which could include approved variances through the local health officer. The department assumes that any additional costs incurred by private schools will be passed on to parents via increased tuition

rates. Therefore, the department and the board conclude that these rules will not result in any jobs created or lost.

A copy of the statement may be obtained by contacting Vicki Bouvier, P.O. Box 47820, Olympia, WA 98504-7820, phone (360) 236-3011, fax (360) 236-2250, e-mail vicki.bouvier@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Bouvier, P.O. Box 47820, Olympia, WA 98504-7820, phone (360) 236-3011, fax (360) 236-2250, e-mail vicki.bouvier@doh.wa.gov.

July 23, 2008  
Craig McLaughlin  
Executive Director

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 246-366-001 Introduction.
- WAC 246-366-010 Definitions.
- WAC 246-366-020 Substitutions.
- WAC 246-366-030 Site approval.
- WAC 246-366-040 Plan review and inspection of schools.
- WAC 246-366-050 Buildings.
- WAC 246-366-060 Plumbing, water supply and fixtures.
- WAC 246-366-070 Sewage disposal.
- WAC 246-366-080 Ventilation.
- WAC 246-366-090 Heating.
- WAC 246-366-100 Temperature control.
- WAC 246-366-110 Sound control.
- WAC 246-366-120 Lighting.
- WAC 246-366-130 Food handling.
- WAC 246-366-140 Safety.
- WAC 246-366-150 Exemption.

**Chapter 246-366A WAC**

**PRIMARY AND SECONDARY SCHOOLS**

**NEW SECTION**

**WAC 246-366A-001 Introduction and purpose.** These rules establish minimum environmental health and safety standards for school facilities and are intended to promote a healthy and safe school environment.

**NEW SECTION**

**WAC 246-366A-005 Applicability.** (1) These rules apply to all school facilities operated for the primary purpose of providing education at the kindergarten through twelfth grade (K-12) levels, and preschools that are part of such facilities except:

- (a) Private residences used for home-based instruction as defined by RCW 28A.225.010(4);
- (b) Facilities hosting educational programs where educational instruction is not a primary purpose, including, but not limited to, detention centers, jails, hospitals, mental health units, or long-term care facilities;
- (c) Private facilities where tutoring is the primary purpose; and
- (d) Public or private postsecondary education facilities providing instruction to students primarily enrolled in secondary school.

(2) These rules are in addition to all other requirements that apply to schools and do not affect the applicability of those requirements.

(3) Additional state board of health environmental health and safety rules that apply to school facilities include, but are not limited to:

- (a) Chapter 246-215 WAC Food services;
- (b) Chapter 246-217 WAC Food worker cards;
- (c) Chapter 246-260 WAC Water recreation facilities;
- (d) Chapter 246-262 WAC Recreational water contact facilities;
- (e) Chapter 246-272A WAC On-site sewage systems;
- (f) Chapter 246-272B WAC Large on-site sewage system regulations;
- (g) Chapter 246-290 WAC Public water supplies; and
- (h) Chapter 246-291 WAC Group B public water systems.

(4) These rules are not intended to replace or supersede the department of labor and industries' authority and jurisdiction over employee safety and health.

(5) For a school undergoing an alteration or addition, WAC 246-366A-040, 246-366A-060, 246-366A-090, 246-366A-100, 246-366A-110, 246-366A-120, 246-366A-150, and 246-366A-160 apply only to:

- (a) Areas that are part of the addition;
- (b) Areas undergoing alteration; and
- (c) Changes to existing building systems, such as heating and ventilation systems, when those changes are included in construction documents or a building permit application describing the alteration or addition.

(6) If the local permitting jurisdiction received a complete building permit application for school construction prior to September 1, 2010, the construction-related requirements of chapter 246-366 WAC in effect at the time of application apply.

**NEW SECTION**

**WAC 246-366A-010 Definitions.** The following definitions apply to these rules:

(1) "Addition" means an extension or increase in floor area or height of a building or structure.

(2) "Air contaminants of public health importance" means pollutants in the indoor air that could, depending on dose and circumstances, have health impacts, including but not limited to:

(a) Volatile organic compounds, for example, formaldehyde and benzene;

(b) Combustion by-products, for example, carbon monoxide and nitrogen oxides;

(c) Vapors and gases, for example, chlorine, mercury, and ozone;

(d) Heavy metal dusts and fumes, for example, chromium and lead; and

(e) Particulates, for example, wood and ceramic dust.

(3) "Alteration" means any construction or renovation to an existing structure other than repair or addition.

(4) "Construction" or "construction project" means any activity subject to state or local building codes.

(5) "Construction documents" means written, graphic, and pictorial documents prepared or assembled for describing the design, location, and physical characteristics of the elements of a project necessary for obtaining a building permit.

(6) "Contaminant" means any hazardous material that occurs at greater than natural background levels.

(7) "Decibel (dB)" means a standard unit of measurement of sound pressure.

(8) "Decibel, A-weighted (dBA)" means a decibel measure that has been weighted in accordance with the A-weighting scale. The A-weighting adjusts sound level as a function of frequency to correspond approximately to the sensitivity of human hearing.

(9) "Department" means the Washington state department of health.

(10) "Drinking fountain" means the type of plumbing fixture that delivers a stream of water for drinking without actively cooling the water.

(11) "Emergency eye wash" means a hands-free device that:

(a) Irrigates and flushes both eyes simultaneously with tepid potable water;

(b) Activates an on-off valve in one second or less and remains on without user assistance until intentionally turned off; and

(c) Delivers at least 0.4 gallons (1.5 liters) of water per minute for at least fifteen minutes.

(12) "Emergency shower" means a hand-activated shower that delivers tepid potable water to cascade over the user's entire body at a minimum rate of 20 gallons (75 liters) per minute for at least fifteen minutes.

(13) "Equivalent sound level ( $L_{eq}$ )" means the level of a constant sound that, over a given time period, contains the same amount of sound energy as the measured fluctuating sound.

(14) "Faucet" means the type of plumbing fixture that is a valved outlet device attached to a pipe that normally serves a sink or tub and can discharge both hot and cold water.

(15) "First draw sample" means a water sample collected immediately upon opening a plumbing fixture that has not been used for at least eight hours prior to collection.

(16) "Flush sample" means a water sample collected after allowing cold water to run for at least thirty seconds

from a plumbing fixture that has not been used for at least eight hours prior to collection.

(17) "Foot-candle" means a unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot.

(18) "Hazardous materials" means toxic, corrosive, flammable, explosive, persistent, or chemically reactive substances that, depending on dose and circumstances, pose a threat to human health.

(19) "Imminent health hazard" means a significant threat or significant danger to health or safety that requires immediate action to prevent serious illness, injury, or death.

(20) "Laboratory" means instructional areas of the school facility where students might be exposed to greater potential health and safety hazards than typically exist in general academic classrooms. Laboratories include, but are not limited to, science laboratories (for example: Chemistry, physics, material science, and biology) and art laboratories (for example: Print-making, photography, and ceramics).

(21) "Local board of health" means the county or district board of health as defined in RCW 70.05.010(3).

(22) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department as defined in RCW 70.05.010, or his or her authorized representative, including, but not limited to, the environmental health director.

(23) "Mechanical exhaust ventilation" means the removal of indoor air to the outside of the building by mechanical means.

(24) "Noise criterion (NC)" means a system for rating the noise level in an occupied area by comparing actual or calculated sound level spectra with a series of established octave band spectra.

(25) "Noise criterion 35 (NC35)" means the curve for specifying the maximum permissible sound pressure level for each frequency band.

(26) "Preschool" means an instructional curriculum and portion of a school facility designed to instruct children not old enough to attend kindergarten.

(27) "Portable" means any relocatable structure that is transported to a school site and is placed or assembled there for use by students as part of a school facility.

(28) "Repair" means the reconstruction or renewal of any part of an existing school facility for the purpose of its maintenance.

(29) "School" means any public, religious-affiliated, or private institution for instructing students in any grade from kindergarten through twelfth grade.

(30) "School board" means an appointed or elected board whose primary responsibility is to operate schools or to contract for school services and includes the governing body or owner of a private school.

(31) "School facility" means school-owned or leased buildings and grounds intended for student use including, but not limited to, portables, playgrounds and sports fields.

(32) "School officials" means those persons designated by the school board as responsible for planning, policy development, budgeting, management, or other administrative functions.

(33) "Shop" means instructional areas of the school facility where students are exposed to greater health and safety hazards than typically exist in general academic classrooms. Shops include, but are not limited to, industrial and agricultural shops, including career and technical education (for example: Metal-working, wood-working, construction, automotive, and horticulture).

(34) "Site" means any real property used or proposed to be used as a location for a school.

(35) "Source capture system" means a mechanical exhaust system designed and constructed to capture air contaminants at their source and release air contaminants to the outdoor atmosphere.

(36) "Tempered water" means water having a temperature range between eighty-five degrees Fahrenheit and one hundred ten degrees Fahrenheit.

(37) "Tepid water" means water having a temperature range between sixty degrees Fahrenheit and ninety-five degrees Fahrenheit.

(38) "Toxic" means having the properties to cause or significantly contribute to death, injury, or illness.

(39) "Variance" means an alternative to a specific requirement in these rules, approved by the local health officer, that provides a comparable level of protection.

(40) "Very low lead plumbing fixture" means plumbing fittings or fixtures used in the installation or repair of any plumbing providing water for human consumption that contain less than 0.3% lead by weight.

(41) "Water cooler" means the type of plumbing fixture that is a mechanical device affixed to drinking water supply plumbing that actively cools the water.

#### NEW SECTION

**WAC 246-366A-015 Guidance for rule implementation and compliance.** (1) The department, in cooperation with the office of superintendent of public instruction, shall:

(a) Update the *Health and Safety Guide for K-12 Schools in Washington* (the guide) at least every four years; and

(b) Make the guide available on the department's web site.

(2) The guide is the primary source of guidance for local health officers and school officials implementing these rules.

#### NEW SECTION

**WAC 246-366A-020 Responsibilities—General.** (1) Responsibilities of school officials. School officials shall:

(a) Maintain conditions within the school environment that will not endanger health and safety.

(b) Identify, assess, and mitigate or correct environmental health and safety hazards in their school facilities, establish necessary protective procedures, use appropriate controls, and take action to protect or separate those at risk from identified hazards, consistent with the level of risk presented by the specific hazard, until mitigation or correction is complete.

(c) When conditions are identified that pose an imminent health hazard:

(i) Take immediate action to mitigate hazards and prevent exposure;

(ii) Promptly notify the local health officer; and

(iii) Promptly inform school facility staff, students, and parents about the conditions and actions taken in response.

(d) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(i) Health and safety inspections of the school facilities, including the final report findings, correction schedules established in consultation with the local health officer, and recommended actions;

(ii) Imminent health hazards identified under this section and WAC 246-366A-190, and actions taken in response;

(iii) Site assessment, review, and approval as required under WAC 246-366A-030;

(iv) Construction project plan review and approval as required under WAC 246-366A-040; and

(v) Playground plan review and approval as required under WAC 246-366A-150.

(e) Have the records described in this subsection available for the public, except where otherwise provided by applicable public disclosure law.

(f) Prepare a report to the public and the school board at least annually about environmental health and safety conditions in the schools. The report must include an explanation of:

(i) Variances obtained from the local health officer regarding requirements of these rules;

(ii) Dates of environmental health and safety inspections conducted under requirements of these rules and any deficiencies not corrected within the time frame established by the local health officer in accordance with subsection (2) of this section;

(iii) Any imminent health hazards identified; and

(iv) A method for school officials to receive public comment about the report.

(2) Responsibilities of the local health officer.

(a) Except as provided in (b) of this subsection, the local health officer shall:

(i) Periodically conduct an environmental health and safety inspection of each school facility within his or her jurisdiction. Beginning September 1, 2011, those inspections must be conducted at least once each year.

(ii) Notify school officials at the time of discovery or immediately following the inspection if conditions that pose an imminent health hazard are identified, and recommend actions to mitigate the hazards and prevent exposure.

(iii) Consult with school officials upon completion of the inspection about findings and recommended follow-up actions. Approaches and timelines used to address noncompliant conditions will depend on the level of risk to health and safety presented by the condition, and may include a correction schedule developed in consultation with school officials.

(iv) Develop draft and final inspection reports, in consultation with school officials, within sixty days after conducting an inspection. The report must include inspection findings related to this rule and any required correction schedule.

(v) Confirm, as needed, that corrections are accomplished.

(vi) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(A) Health and safety inspections of the school facilities performed by the local health officer, including, but not limited to, the final inspection report and correction schedules; and

(B) Imminent health hazards identified under this section and WAC 246-366A-190, and local health officer actions taken in response.

(vii) Have the records described in this subsection available for the public, except where otherwise provided by applicable public disclosure law.

(b) The local health officer may allow a school official or qualified designee to conduct a required inspection under a program approved by the local health officer not more than two out of every three years. The program must include provisions for:

(i) Assuring that the school official or designee conducting the inspection has attended training in the standards, techniques, and methods used to conduct an environmental health and safety inspection;

(ii) Completing a standardized checklist at each inspection;

(iii) Providing a written report to the local health officer about the findings of the inspection;

(iv) Notifying the local health officer regarding any identified imminent health hazards and coordinating with the health officer to mitigate hazards and prevent exposure; and

(v) Consulting with the local health officer on follow-up and corrective actions needed to address noncompliant conditions that do not pose an imminent health hazard.

(3) Responsibilities of the department.

(a) The department shall:

(i) Report to the state board of health once every three years. The report must include a summary of:

(A) Variances granted by local health officers; and

(B) Rule implementation status.

(ii) Make technical assistance and training available to local health jurisdictions, educational service districts, school districts, and school personnel for implementation of these rules, including:

(A) Inspection techniques and procedures;

(B) Inspection materials and checklists;

(C) Variance request evaluations; and

(D) Model environmental health and safety programs for schools and local health jurisdictions.

(b) The department, at the request of the local health officer, may assist in investigating environmental health and safety incidents at schools.

(c) Establish a school rule technical advisory committee to help promote consistent statewide interpretation and implementation of these rules.

#### NEW SECTION

**WAC 246-366A-030 Site assessment, review, and approval.** (1) A full site assessment and local health officer review and approval to determine environmental health and safety risk, is required for:

(a) Constructing a new school facility on a site that was previously undeveloped or developed for other purposes; or

(b) Converting an existing structure for primary use as a school facility.

(2) The local health officer shall determine, in consultation with school officials, the need for and scope of the site assessment, review, and approval process for:

(a) Constructing a new school facility on an existing school site;

(b) Constructing an addition to an existing school facility; and

(c) Converting part of an existing structure primarily used for other purposes into a school facility.

(3) A full site assessment must include:

(a) A Phase 1 Environmental Site Assessment (ESA) that meets the requirements of the *American Society for Testing and Materials (ASTM) Standard #1527-05* (published November 2005);

(b) Sampling and analysis of potential contaminants if the Phase 1 ESA indicates that hazardous materials may be present. Sampling and analysis must comply with applicable rules of the Washington state department of ecology;

(c) A noise assessment. Noise from any source must not exceed an hourly average of 55 dBA (the mean sound energy level for a specified time ( $Leq_{60\text{ minutes}}$ )) and must not exceed an hourly maximum (the maximum sound level recorded during a specified time period ( $L_{max}$ )) of 75 dBA during the time of day the school is in session. Sites exceeding these sound levels are acceptable if a plan for noise reduction is included in the new construction proposal and the plan for noise reduction is approved by the local health officer.

(4) School officials shall:

(a) Notify the local health officer within ninety days of starting preliminary planning for school construction that may require a site assessment with local health officer review and approval.

(b) Consult with the local health officer throughout the plan development phase regarding the scope of the site assessment and the timeline for completion of the site assessment.

(c) Have a site assessment completed when required under this section.

(d) Submit a written report to the local health officer assessing the potential impact of health and safety risks presented by the proposed site, including, but not limited to the following:

(i) The findings and results obtained under subsection (3) of this section;

(ii) Analysis of the findings;

(iii) Description of any mitigation proposed to address identified health and safety risks present at the site; and

(iv) Any site assessment-related information requested by the local health officer to complete the site assessment review and approval process.

(e) Obtain site review and written site approval from the local health officer when required under subsection (1) or (2) of this section.

(5) The local health officer shall:

(a) Conduct an inspection of the proposed site;

(b) Review the site assessment for environmental health and safety risk;

(c) For site assessments according to subsection (1) of this section, provide written approval, describe site deficiencies needing mitigation to obtain approval, or deny use of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline; and

(d) For site assessments according to subsection (2) of this section, provide written approval or describe site deficiencies needing mitigation to obtain approval of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline.

(6) If school officials notified the local health officer prior to September 1, 2010, that construction is planned for a particular site, the site review requirements in effect at the time of notification apply, provided that school officials comply with all agreed on timelines for completion.

#### NEW SECTION

##### **WAC 246-366A-040 Construction project review.** (1)

The following school facility construction projects are subject to review by the local health officer:

- (a) Construction of a new school facility;
  - (b) Schools established in all or part of any existing structures previously used for other purposes;
  - (c) Addition to or alteration of an existing school facility consisting of more than five thousand square feet of floor area or having a value of more than ten percent of the total replacement value of the school facility;
  - (d) Any construction of a shop or laboratory for use by students; and
  - (e) Installation of a portable.
- (2) Review and approval requirements for installation of a playground are established in WAC 246-366A-150.
- (3) School officials shall:
- (a) Consult with the local health officer during preliminary planning for school construction projects that are subject to the requirements of this section;
  - (b) Invite the local health officer to a predevelopment conference with school officials and project design professionals to participate in the discussion about the preliminary design to highlight health and safety matters and requirements of these rules;

(c) Obtain construction project review and written approval from the local health officer regarding environmental health and safety requirements in these rules before starting construction;

(d) Provide construction documents to the local health officer at the same time as the local building official to facilitate a concurrent and timely review; and

(e) Provide additional documents requested by the local health officer, which may include, but are not limited to, written statements signed by the project's licensed professional engineer verifying that design elements comply with requirements specified by these rules.

(4) The local health officer shall:

(a) Consult with school officials and determine what is required for plan review and approval;

(b) Review construction documents to confirm that the health and safety requirements of these rules are met;

(c) Identify and request any additional documents required to determine compliance with requirements specified by these rules; and

(d) Provide written approval, or describe plan deficiencies needing change to obtain approval, of the construction project within sixty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline.

#### NEW SECTION

##### **WAC 246-366A-050 Preoccupancy inspection of construction projects.** (1) School officials shall:

(a) Obtain a preoccupancy inspection by the local health officer of construction projects subject to WAC 246-366A-040(1) before allowing school facilities to be occupied; and

(b) Notify the local health officer at least five business days before a desired preoccupancy inspection.

(2) The local health officer:

(a) Shall coordinate all construction-related inspections with the on-site project manager or other appropriate person identified by school officials.

(b) May inspect for compliance with these rules during the construction phase.

(c) Shall conduct a preoccupancy inspection for construction projects subject to WAC 246-366A-040(1) to verify compliance with these rules before the building is occupied and not more than five business days after the date requested by school officials.

(i) If an imminent health hazard is identified, a solution must be identified and agreed to by school officials, the local health officer, and the local building official and implemented by school officials before the affected portion of the building is occupied.

(ii) If other conditions of noncompliance with these rules are identified, school officials shall be provided with a written list of items and consulted in developing a correction schedule, based on the level of risk to health and safety.

(d) May reinspect to confirm satisfactory correction of the items identified under (c) of this subsection.

#### NEW SECTION

##### **WAC 246-366A-060 General construction requirements.** School officials shall:

(1) Design school facilities to minimize conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the installation of window screens nor does it prohibit the installation of retention ponds or rain gardens.

(2) Design school facilities with windows in sufficient number, size, and location to enable students to see outside at least fifty percent of the school day. Windows are optional in special purpose instructional areas including, but not limited to, theaters, music areas, multipurpose areas, gymnasiums, auditoriums, shops, laboratories, libraries, and seminar areas.

(3) Provide sun control to exclude direct sunlight from window areas and skylights of instructional areas, assembly

rooms and meeting rooms during at least eighty percent of the normal school hours. Each area must be considered as an individual case. Sun control is not required for sun angles less than forty-two degrees up from the horizontal. Sun control is not required if air conditioning is provided or special glass is installed having a total solar energy transmission factor less than sixty percent.

(4) Provide surfaces on steps that reduce the risk of injury caused by slipping.

(5) Provide floors throughout the school facility that are appropriate for the intended use, easily cleanable and can be dried effectively to inhibit mold growth. These floor materials include, but are not limited to, wood, vinyl, linoleum, and tightly woven carpets with water impervious backing.

(6) Provide reasonably sufficient space for the storage of play equipment, instructional equipment, and outdoor clothing. The space must be reasonably accessible, lighted, and ventilated.

(7) Provide measures to reduce potential injury from fall hazards, including but not limited to, retaining walls; performance arts stages and orchestra pits; balconies; mezzanines; and other similar areas of drop-off to a lower floor.

(8) Prohibit the use of chromated copper arsenate or creosote treated wood where it is accessible to students.

(9) Provide the following items for health rooms, if health rooms are provided:

- (a) The means to visually supervise and provide privacy of room occupants;
- (b) Surfaces that can be easily cleaned and sanitized;
- (c) A handwashing sink in the room;
- (d) An adjoining restroom; and
- (e) Mechanical exhaust ventilation so that air does not flow from the health room to other parts of the school facility.

#### NEW SECTION

**WAC 246-366A-065 General operation and maintenance requirements.** School officials shall:

- (1) Keep school facilities clean and in good condition.
- (2) Mitigate any environmental health and safety hazards.
- (3) Control conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the routine installation of window screens nor does it prohibit the proper operation of retention ponds or rain gardens.
- (4) Label, use, store and dispose of hazardous materials to:
  - (a) Prevent health and safety hazards;
  - (b) Keep incompatible substances apart from each other;
  - (c) Prevent unauthorized access and use; and
  - (d) Follow procedures according to material safety data sheet instructions.
- (5) Select supplies and methods of use that reduce exposure to hazardous materials.
- (6) Allow only those hazardous materials in schools that school officials have approved for use. Types of commercial products that may contain hazardous materials include, but

are not limited to, cleaners, sanitizers, maintenance supplies, pesticides, herbicides, and instruction-related supplies.

(7) Safely store play equipment, instructional equipment, and outdoor clothing where reasonably accessible.

(8) Use products that comply with American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 (2007) to coat, line, seal, or patch drinking water contact surfaces, if the interior of water piping or plumbing fixtures is coated or lined.

(9) Immediately clean and sanitize the contaminated area and prevent human exposure when sewage backups occur.

(10) Notify the local health officer when sewage backups:

- (a) Result from failure of an on-site sewage system serving the school facility;
- (b) Impact student use areas outside restrooms; or
- (c) Occur in a food preparation, food storage, or food service area.

(11) Allow upholstered furniture, such as couches and overstuffed chairs, in school facilities only if the furniture has been purchased or approved by school officials.

#### NEW SECTION

**WAC 246-366A-070 Moisture control, mold prevention, and remediation.** School officials shall:

- (1) Visually monitor the school facility for water intrusion and moisture accumulation that may lead to mold growth, especially after severe weather events.
- (2) Begin corrective action within twenty-four hours of discovering water intrusion or moisture accumulation to inhibit and limit mold growth by:
  - (a) Identifying and eliminating the cause of the water intrusion or moisture accumulation; and
  - (b) Drying the affected portions of the school facility.
- (3) When mold growth is observed or suspected, use recognized remediation procedures such as those provided by the Environmental Protection Agency (Mold Remediation in Schools and Commercial Buildings, EPA 402-K-01-001, March 2001). Begin recognized procedures within twenty-four hours to:
  - (a) Identify and eliminate the cause of the moisture or water contributing to the mold growth;
  - (b) Dry the affected portions of the school facility;
  - (c) Investigate the extent of the mold growth, including evaluation of potentially affected materials and surfaces inside walls and under floor coverings, when moisture or water has entered those spaces;
  - (d) Minimize exposure to indoor mold spores and fragments until mold remediation is complete using methods including, but not limited to, containment and negative air pressure; and
  - (e) Remediate surfaces and materials contaminated with mold.
- (4) When remediation is required under subsection (3) of this section and there is significant risk of exposure, including when the total area affected is greater than ten square feet, promptly inform school facility staff, students, and parents of the conditions and the plans and time frame for the remediation. The extent of this communication will depend on the

likelihood of individual exposure, the scope of the remediation project, and the time required to complete it.

#### NEW SECTION

**WAC 246-366A-080 Safety—Animals in school facilities.** (1) School officials shall allow in school facilities only those animals, other than service animals, approved under written policies or procedures.

(2) School officials shall develop written policies or procedures for any animals allowed in school facilities to prevent:

- (a) Injuries caused by wild, dangerous, or aggressive animals;
- (b) Spread of diseases from animals known to commonly carry those diseases including, but not limited to, rabies, psittacosis, and salmonellosis;
- (c) Allergic reactions;
- (d) Exposure to animal wastes; and
- (e) Handling animals or their bedding without proper handwashing afterward.

(3) Written policies or procedures required under subsection (2) of this section shall address service animals in the school facility that are not well behaved or present a risk to health and safety.

#### NEW SECTION

**WAC 246-366A-090 Heating and ventilation—Construction requirements.** School officials shall:

(1) Provide mechanical exhaust ventilation that meets or exceeds the requirements in chapter 51-52 WAC at locations intended for equipment or activities that produce air contaminants of public health importance.

(2) Situate fresh air intakes away from building exhaust vents and other sources of air contaminants of public health importance in a manner that meets or exceeds the requirements in chapter 51-52 WAC. Sources of air contaminants include bus and vehicle loading zones, and might include, but are not limited to, parking areas and areas where pesticides or herbicides are commonly applied.

(3) Use materials that will not deteriorate and contribute particulates to the air stream if insulating the interior of air handling ducts. Insulation materials must be designed to accommodate duct cleaning and exposure to air flow without deteriorating. This subsection does not apply if the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

(4) Use ducted air returns and not open plenum air returns consisting of the open space above suspended ceilings. This subsection does not apply to:

- (a) Alterations to school facilities;
- (b) Additions to school facilities that tie into existing ventilation systems that use open plenum air returns; and
- (c) Facilities for which the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

#### NEW SECTION

**WAC 246-366A-095 Heating and ventilation—Operation and maintenance requirements.** School officials shall:

(1) Heat occupied areas of school buildings during school hours and school-sponsored events to maintain a minimum temperature of sixty-five degrees Fahrenheit except for gymnasiums and hallways, which must be maintained at a minimum temperature of sixty degrees Fahrenheit.

(2) Ventilate occupied areas of school buildings during school hours and school-sponsored events. During periods of ventilation:

(a) For school facilities constructed under a building permit for which the local permitting jurisdiction received a completed building permit application on or after September 1, 2010, provide outdoor air according to chapter 51-52 WAC.

(b) For school facilities constructed under a building permit for which the local permitting jurisdiction received a completed building permit application before September 1, 2010, strive to provide outdoor air consistent with chapter 51-52 WAC. Except where indoor air quality problems have been identified, this requirement may be met through standard operation and maintenance best practices including, but not limited to, making timely repairs, removing obstructions, and replacing filters and fan drive belts.

(3) Use and maintain mechanical exhaust ventilation installed for equipment or activities that produce air contaminants of public health importance or moisture.

(4) Restrict the use of laminators to locations with mechanical exhaust ventilation or source capture systems.

(5) Limit student exposure to air contaminants of public health importance produced by laser printers, photocopiers, and other office equipment by locating, operating, and maintaining equipment as recommended by the manufacturer.

(6) Take preventive or corrective action when pesticides, herbicides, or air contaminants of public health importance are likely to be drawn or are drawn into the building or ventilation system.

#### NEW SECTION

**WAC 246-366A-100 Noise control—Construction requirements.** (1) School officials shall design ventilation equipment and other mechanical noise sources in classrooms to provide background sound which conforms to a noise criterion curve or equivalent not to exceed NC-35. School officials shall certify, or hire the appropriate person to certify, that ventilation equipment and other mechanical noise sources that have been installed meet the NC-35 noise criterion design standard.

(2) Portable classrooms constructed before January 1, 1990, moved from one site to another on the same school property or within the same school district, are exempt from the requirements of this section if the portable classrooms meet all of the following:

- (a) Noise abating or noise generating features are not altered in a manner that may increase noise levels;
- (b) The portable classrooms were previously in use for instruction;

(c) Ownership of the portable classrooms remains the same; and

(d) The new site meets the noise standard in WAC 246-366A-030 (3)(c).

NEW SECTION

**WAC 246-366A-105 Noise control—Operation and maintenance requirements.** School officials shall:

(1) Maintain the background noise at any student location within classrooms constructed after January 1, 1990, at or below 45 dBA (Leq<sub>x</sub>) where <sub>x</sub> is 30 seconds or more. Background noise levels must be determined when the ventilation system and the ventilation system's noise generating components, such as the condenser and heat pump, are operating and the room is unoccupied by students.

(2) Maintain the background noise level at any student location in laboratories and shops with local exhaust ventilation systems constructed after January 1, 1990, at or below 65 dBA (Leq<sub>x</sub>) where <sub>x</sub> is 30 seconds or more. Background noise levels must be determined when all ventilation equipment is operating and the room is unoccupied by students.

(3) Maintain noise exposure for students below the maximum levels in Table 1.

**Table 1  
Maximum Noise Exposures Permissible**

Duration per day (hours)	Sound level (dBA)
8	85
6	87
4	90
3	92
2	95
1-1/2	97
1	100
1/2	105
1/4	110

(4) Not allow student exposure to sound levels equal to or greater than 115 dBA.

(5) Provide and require students to use personal protective equipment, for example ear plugs and muffs, where noise levels exceed those specified in Table 1. Personal protective equipment must reduce student noise exposure to comply with the levels specified in Table 1.

NEW SECTION

**WAC 246-366A-110 Lighting—Construction requirements.** School officials shall equip school facilities with lighting systems designed to meet the requirements of WAC 246-366A-115. General, task or natural lighting may be used to achieve the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 of WAC 246-366A-115(1) may be used.

NEW SECTION

**WAC 246-366A-115 Lighting—Operation and maintenance requirements.** School officials shall:

(1) Provide light intensities that meet or exceed those specified in Table 2. General, task and/or natural lighting may be used to maintain the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 may be used.

**Table 2  
Lighting Intensities**

Measured 30 inches above the floor or on working or teaching surfaces. Some lighting fixtures may require a start-up period before reaching maximum light output.	Minimum foot-candle intensity
General instructional areas, for example, study halls, lecture rooms, and libraries.	30
Special instructional areas where safety is of prime consideration or fine detail work is done, for example, family and consumer science laboratories, science laboratories (including chemical storage areas), shops, drafting rooms, and art and craft rooms.	50
Noninstructional areas, for example, auditoriums, lunch rooms, assembly rooms, corridors, stairs, storerooms, and restrooms.	10
Gymnasiums: Main and auxiliary spaces, shower rooms, and locker rooms.	20

(2) Control excessive brightness and glare in all instructional areas. Surface contrasts and direct or indirect glare must not cause excessive eye accommodation or eye strain problems.

(3) Provide lighting in a manner that minimizes shadows and other lighting deficiencies on work and teaching surfaces.

NEW SECTION

**WAC 246-366A-120 Restrooms and showers—Construction requirements.** School officials shall:

(1) Provide shower facilities at grades nine and above for classes in physical education and for team sports. Showers must supply hot water between one hundred and one hundred twenty degrees Fahrenheit.

(2) Provide floor surfaces in shower areas that are water impervious, slip-resistant, and sloped to floor drains. Walls must be water impervious up to showerhead height. Upper walls and ceilings must have an easily cleanable surface.

(3) Locate drying areas, if provided, adjacent to showers and locker or dressing rooms. Walls and ceilings must have

an easily cleanable surface and floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

(4) Provide locker or dressing rooms adjacent to showers or drying rooms. Walls and ceilings must have an easily cleanable surface. When drying areas are provided, floor surfaces in locker or dressing rooms must be appropriate for the intended use, easily cleanable and dryable to effectively inhibit mold growth. When drying areas are not provided, locker or dressing room floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

#### NEW SECTION

**WAC 246-366A-125 Restrooms and showers—Operation and maintenance requirements.** School officials shall:

- (1) Provide in each restroom:
  - (a) Toilet paper in each toilet stall;
  - (b) Single service handwashing soap at each handwashing sink; and
  - (c) Single-service towels or an adequate number of warm-air dryers. Common use towels are not allowed.
- (2) Provide hot water to all handwashing plumbing fixtures at a maximum temperature of one hundred twenty degrees Fahrenheit.
- (3) Provide tempered water for those handwashing plumbing fixtures that do not allow the user to select water temperature.
- (4) Provide any hand operated, self-closing handwashing plumbing fixtures with the capability of providing at least ten seconds of running water.
- (5) Provide access to restrooms when:
  - (a) School buildings are in use; and
  - (b) Outdoor facilities or athletic fields are in use for school-sponsored events. School officials are not required to provide access to restrooms when outdoor facilities and athletic fields are in use after school hours or on weekends unless it is a school-sponsored event.
- (6) Provide access to shower facilities with hot water between one hundred and one hundred twenty degrees Fahrenheit for classes in physical education and school-sponsored sports teams at grades nine and above.
- (7) When cloth towels are supplied by the school, provide them for individual use and launder them after each use.

#### NEW SECTION

**WAC 246-366A-130 Water quality monitoring—Lead.** (1) School officials shall:

- (a) Sample plumbing fixtures that are regularly used for drinking or cooking.
- (b) Use a laboratory to analyze all required water samples that is accredited by the department of ecology, or other appropriate agency if outside Washington state, according to EPA drinking water laboratory certification criteria.
- (2) Water sampling protocols. School officials shall:
  - (a) Collect representative samples, according to the percentages required by subsections (3) and (4) of this section, from each type and age of plumbing fixture regularly used for drinking or cooking.

(i) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(ii) For age of fixture, use at least two groupings: Those manufactured prior to 1999, and those manufactured since January 1, 1999.

(b) Sample as follows:

(i) Make sure cold water is the last to run through the fixture to be tested.

(ii) Allow water to sit in the plumbing system at least eight hours. No water may pass through the fixture during that time.

(iii) Place the 250 ml sample bottle under the faucet and open the cold water tap. Fill the bottle to the shoulder or the line marked "250 ml," turn off the water and cap the bottle tightly.

(3) Initial monitoring schedule for lead.

(a) School officials shall accomplish initial monitoring by sampling fifty percent of the plumbing fixtures regularly used for drinking or cooking in elementary schools or used by preschool children in K-12 schools by September 1, 2011. This may be either from fifty percent of the fixtures in each school or from all of the fixtures in fifty percent of the schools within a district. School districts shall sample the remaining fifty percent of the fixtures by September 1, 2012.

(b) School officials shall accomplish initial monitoring by sampling at least twenty-five percent of each type and age of plumbing fixture, as specified under subsection (2)(a) of this section, regularly used by students for drinking or cooking in:

(i) Middle and junior high schools by September 1, 2013; and

(ii) High schools by September 1, 2014.

(c) School officials may apply samples collected after September 1, 2003, toward meeting the initial monitoring requirement if all plumbing fixtures with lead results above 0.020 milligrams per liter or 20.0 parts per billion have been removed from service, or have been or are being addressed according to subsection (5) of this section, and samples were:

(i) From plumbing fixtures regularly used for drinking or cooking; and

(ii) Collected consistent with subsection (2) of this section.

(4) Ongoing monitoring for lead.

(a) School officials shall repeat lead monitoring every five years, beginning by:

(i) September 1, 2017, for elementary schools;

(ii) September 1, 2018, for middle and junior high schools; and

(iii) September 1, 2019, for high schools.

(b) School officials shall use sampling protocols in subsection (2) of this section to collect samples in all schools from:

(i) No less than twenty-five percent of each type and age of plumbing fixture which is not a "very low lead" plumbing fixture; and

(ii) No less than ten percent of each type of plumbing fixture which is a "very low lead" plumbing fixture.

(c) Schools that are Group A public water systems are not required to do ongoing lead monitoring required by (a) of

this subsection if the schools meet the lead monitoring requirements in chapter 246-290 WAC.

(5) Corrective actions. School officials shall:

(a) For all plumbing fixtures with sample results of lead above 0.020 milligrams per liter or 20.0 parts per billion, immediately shut off these fixtures or make them inoperable.

(b) For all plumbing fixtures of the same type and age as any fixture with results above 0.020 milligrams per liter or 20.0 parts per billion:

(i) Take immediate corrective action according to (a) of this subsection; or

(ii) Collect first draw samples within ten business days. Upon receipt of sample results, immediately shut off or make inoperable all plumbing fixtures with results of lead above 0.020 milligrams per liter or 20.0 parts per billion.

(c) To provide drinking water at the location of these fixtures, take one or more of the following remedies:

(i) Bottled water. If bottled water is used, provide bottled water that is produced by a Washington state department of agriculture-approved bottling operation or out-of-state or international bottler whose product meets federal Food and Drug Administration regulations.

(ii) Manual flushing program. Manual flushing may be used only as a temporary remedy. If manual flushing is used:

(A) Take flush samples from twenty-five percent of each type and age of the fixtures planned to be included in the flushing program to determine the flushing time necessary to reduce lead to below 0.020 milligrams per liter or 20.0 parts per billion. Start by following the sample collection protocol of first-draw samples described in subsection (2)(b) of this section with the addition of letting the water run for thirty seconds before filling the bottle.

(B) Open the tap of every fixture included in the flushing program every morning before the facility opens and let the water run for the length of time established in (c)(ii)(A) of this subsection.

(iii) Automated flushing. If automated flushing is used, take samples from twenty-five percent of each type and age of the fixtures included in the flushing program to demonstrate that the automated system reduces lead to below 0.020 milligrams per liter or 20.0 parts per billion.

(iv) Fixture replacement. If individual plumbing fixtures are replaced:

(A) Precondition the plumbing fixtures by running water through the fixture continuously for twenty-four hours; and

(B) Collect first draw samples after preconditioning and verify sample results of lead below 0.020 milligrams per liter or 20.0 parts per billion. If the preconditioned plumbing fixture does not yield a sample result below this level, (a) of this subsection applies.

(v) Treatment. Before treatment is used, submit an engineering project report to the department, per WAC 246-290-110. Installation of treatment devices will result in the school's designation as a public water supply. School officials shall then ensure they comply with the Group A public water system rules and regulations, chapter 246-290 WAC and water works operator certification rules and regulations, chapter 246-292 WAC.

(6) Notification requirements. School officials shall:

(a) Notify school facility staff, students and parents, and the local health officer within five business days of the school officials receiving lead sampling results above 0.020 milligrams per liter or 20.0 parts per billion.

(b) Make all results available for review upon request.

#### NEW SECTION

**WAC 246-366A-135 Water quality monitoring—Copper.** (1) School officials shall collect water samples and have them tested for copper following the requirements of WAC 246-366A-130 (1) and (2)(b). The same water samples used for lead testing may be used for copper testing.

(2) School officials shall test water samples for copper from no less than twenty-five percent of each type and age of plumbing fixture regularly used for drinking or cooking.

(a) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(b) For age of fixture, use at least two groupings: Those manufactured prior to 1999 and those manufactured since January 1, 1999.

(3) School officials shall complete water sampling of plumbing fixtures for copper in:

(a) Elementary schools by September 1, 2012;

(b) Middle and junior high schools by September 1, 2013; and

(c) High schools by September 1, 2014.

(4) If school officials include lead samples collected after September 1, 2003, toward meeting the initial monitoring requirement for lead, as specified in WAC 246-366A-130, they may wait to monitor those plumbing fixtures for copper until they conduct the next ongoing lead monitoring per WAC 246-366A-130(4).

(5) School officials may include samples collected after September 1, 2003, toward meeting monitoring requirements if all plumbing fixtures with copper results above 1.30 milligrams per liter or 1300 parts per billion have been or are being addressed according to subsection (6) of this section, and the samples were:

(a) From plumbing fixtures regularly used for drinking and cooking; and

(b) Collected using the sampling protocol specified in WAC 246-366A-130 (2)(b).

(6) Corrective actions. For all plumbing fixtures with first draw sample results of copper above 1.30 milligrams per liter or 1300 parts per billion, school officials shall:

(a) Within five business days of getting sample results, consult with the department to develop a corrective action plan; and

(b) Implement the corrective action plan.

(7) Notification requirements. School officials shall:

(a) Notify staff, students and parents, and the local health officer within five business days of the school officials receiving copper sampling results above 1.30 milligrams per liter or 1300 parts per billion; and

(b) Make all results available for review upon request.

NEW SECTION

**WAC 246-366A-140 Water quality monitoring—Other drinking water contaminants.** The local health officer may require:

- (1) Sampling of drinking water when public health concerns exist about drinking water contaminants other than lead or copper;
- (2) Corrective actions in response to sampling results for other contaminants; and
- (3) School officials to notify school facility staff, students and parents, and the local health officer about test results.

NEW SECTION

**WAC 246-366A-150 Playgrounds—Construction and installation requirements.** (1) School officials shall:

(a) Consult with the local health officer regarding playground review and approval requirements consistent with the scope of the project when proposing to:

- (i) Install new playground equipment or fall protection surfaces;
- (ii) Add new playground features or equipment to an existing playground; or
- (iii) Modify, other than repair and maintain, existing playground equipment, features, or fall protection surfaces.

(b) If required by the local health officer after consultation:

- (i) Provide playground plans and equipment specifications and any additional information the local health officer requests; and
- (ii) Obtain plan review and written approval from the local health officer before installing, adding, or modifying playground equipment or fall protection surfaces.

(c) Install playground equipment, including used equipment, and fall protection surfaces:

- (i) That meet the ASTM F 1487-01: Standard Consumer Safety Performance Specification for Playground Equipment for Public Use; and
- (ii) In a manner that is consistent with the manufacturer's instructions and *Consumer Product Safety Commission Handbook for Public Playground Safety*, 2008.

(d) Prohibit the use of chromated copper arsenate or creosote treated wood to construct or install playground equipment or landscape and other structures on which students may play.

(2) The local health officer shall:

- (a) Consult with school officials to determine what is required for playground plan review and approval consistent with the scope of the project.
- (b) If playground review and approval is required:
  - (i) Review playground plans and equipment specifications to confirm that the requirements of these rules are addressed;
  - (ii) Identify and request any additional documents required to complete the review;
  - (iii) Provide written approval or denial of the playground plans and equipment specifications within thirty days of receiving all documents needed to complete the review,

unless the school officials and the local health officer agree to a different timeline; and

- (iv) Verify that playground installation complies with requirements of this section.
- (c) Coordinate all playground-related inspections with school officials.

NEW SECTION

**WAC 246-366A-155 Playgrounds—Operation and maintenance requirements.** School officials shall:

(1) Monitor and operate playgrounds so that protective surfacing and use zones are maintained, and equipment is properly anchored and free of puncture, pinching, crushing, shearing, entanglement, and entrapment hazards.

(2) Prohibit the use of chromated copper arsenate or creosote treated wood to repair or maintain playground equipment or landscape and other structures on which students may play.

NEW SECTION

**WAC 246-366A-160 Laboratories and shops—Construction requirements.** School officials shall:

(1) Provide an emergency eyewash fountain for each laboratory and shop where hazardous materials are used or eye irritants are produced.

(2) Provide an emergency shower for each laboratory where hazardous materials are used and the potential for chemical spills exists.

(3) Assure that all emergency eyewash fountains and showers have unobstructed access and are reachable within ten seconds.

(4) Provide handwashing and appropriate drying facilities in an easily accessible location in each laboratory and shop.

(5) Provide emergency shut-offs for gas and for electricity connected to stationary machinery in laboratories and shops. Emergency shut-offs must:

- (a) Be located in close proximity to the room exit door;
- (b) Have unobstructed access; and
- (c) Have signage readable from across the room for immediate identification during an emergency.

(6) Provide all stationary machinery in laboratories and shops with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the emergency shut-off.

(7) Provide mechanical exhaust ventilation in hazardous material storerooms, and in laboratories and shops where equipment or activities may produce air contaminants of public health importance.

(8) When activities or equipment in laboratories or shops produce air contaminants of public health importance, provide an appropriate source capture system to prevent those contaminants from entering the student's breathing zone. These activities and equipment include, but are not limited to, spray painting, welding, pottery kilns, chemistry experiments, and wood-working.

(9) Design ventilation systems to operate so that air is not recirculated and does not flow from the laboratory or shop to other parts of the school facility. Open plenum air

returns consisting of the space above suspended ceilings in laboratories and shops must not be used to recirculate air to other parts of the school facility.

#### NEW SECTION

**WAC 246-366A-165 Laboratories and shops—Operation and maintenance requirements.** In laboratories and shops, school officials shall:

(1) Select, label, use, store and dispose of hazardous materials in accordance with WAC 246-366A-065.

(2) Prohibit use and storage of compounds that are:

(a) Considered shock-sensitive explosives, for example, picric acid, dinitro-organics, isopropyl ether, ethyl ether, tetrahydrofuran, dioxane; or

(b) Lethal at low concentrations when inhaled or in contact with skin, for example, pure cyanides, hydrofluoric acid, toxic compressed gases, mercury liquid and mercury compounds, and chemicals identified as the P-list under WAC 173-303-9903.

(3) Adopt safety procedures and processes for instructing students regarding the proper use of hazardous materials and equipment.

(4) Provide and require use of appropriate personal protective equipment when exposure to potential hazards might occur. Potential hazards include, but are not limited to hazardous material exposures, burns, cuts, and punctures.

(5) Provide situation-specific emergency and protective equipment during demonstrations with hazardous materials and with hazardous procedures. Examples of protective equipment include, but are not limited to, safety shields for eyes, protective gloves that are fire retardant and chemical resistant, respiratory protection, and fire extinguishers.

(6) Properly maintain laboratory and shop equipment and mechanical exhaust ventilation.

(7) Provide single-use soap and single-use towels or warm-air dryers at handwashing sinks.

#### NEW SECTION

**WAC 246-366A-170 Variances.** (1) School officials:

(a) May request a variance from requirements in these rules from the local health officer if they wish to use an alternative to meet the intent of these rules.

(i) The request for a variance must be in writing and describe:

(A) The specific requirement the variance is requested to meet;

(B) The alternative proposed to meet the specific requirement; and

(C) How the proposed alternative will provide at least a comparable level of protection as that provided by the specific requirement.

(ii) The request for a variance must include information as needed to support and clarify the request, such as material descriptions and specifications, engineering reports, photos, drawings, or sketches.

(b) May implement a variance only after obtaining approval from the local health officer.

(2) The local health officer shall:

(a) Initially review documents submitted with the request for a variance and inform school officials if additional information is required.

(b) Compare the health and safety aspects of the specific requirement being addressed and the variance proposal to determine if the proposal provides at least a comparable level of protection as that provided by the specific requirement.

(c) Provide written approval or denial of a request for a variance within sixty days of receiving a complete written request, unless school officials and the local health officer agree to a different timeline.

(d) Submit an annual written report to the department regarding all variance requests. The report must be submitted by March 1st of each year, beginning in 2013, and cover the calendar period January through December of the previous year.

#### NEW SECTION

**WAC 246-366A-175 Temporary emergency waivers for disaster situations.** The local health officer may grant to school officials an emergency waiver from some or all of the requirements in these rules for the temporary use of a facility or site as a school when the facility normally used by the school is not safe to be occupied due to a natural or man-made disaster.

#### NEW SECTION

**WAC 246-366A-180 Appeals.** Decisions or actions of the local health officer may be appealed to the local board of health in a manner consistent with their established procedure.

#### NEW SECTION

**WAC 246-366A-190 Complaints.** (1) School officials shall establish a written complaint process, if such a written process does not already exist. The complaint process must clearly describe the means for a person to file a written complaint concerning failure of compliance with a provision of these rules that jeopardizes the health and safety of students. At a minimum, the process shall provide for:

(a) Promptly investigating all complaints;

(b) Promptly correcting conditions not in compliance with these rules;

(c) Providing notification for imminent health hazards in accordance with WAC 246-366A-020;

(d) Promptly communicating with the complainant regarding the outcome of the investigation, and the actions and time frame proposed to address any verified conditions not in compliance with these rules; and

(e) Communicating with the local health officer about the outcome of complaint investigations referred to school officials by the local health officer.

(2) The local health officer who has received a complaint concerning failure of compliance with a provision of these rules that jeopardizes the health and safety of students shall:

(a) Promptly inform school officials that a complaint has been filed with the local health officer and conduct a prelim-

inary inquiry to determine if an imminent health hazard exists;

(b) Investigate the complaint in consultation with school officials if an imminent health hazard exists;

(c) Either refer the complaint to school officials or investigate the complaint in consultation with school officials if an imminent health hazard does not appear to exist; and

(d) Communicate with the complainant about the outcome of the complaint investigation.

**WSR 08-15-178**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed July 23, 2008, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-10-074.

Title of Rule and Other Identifying Information: Chapter 296-128 WAC, Minimum wages.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., S117, Tumwater, WA, on August 29, 2008, at 9:00 a.m.

Date of Intended Adoption: October 1, 2008.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by August 29, 2008.

Assistance for Persons with Disabilities: Contact Sally Elliott by August 1, 2008, (360) 902-6411 or [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule making is in response to *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007). In that case, the court concluded that RCW 49.46.130 (2)(f) requires overtime compensation for hours worked over forty per week for interstate driving, including hours spent working out of state. Current rules require overtime pay for truck drivers only for their hours worked within Washington. These rules are not consistent with the decision under *Bostain* and need to be amended.

The court's ruling directly affects two regulations with corresponding policies and enforcement practices. The court's decision has invalidated portions of WAC 296-128-011 and 296-128-012 where the rules define hours for purposes of overtime provisions as hours worked only within Washington state.

Employers may have relied on the two regulations before *Bostain*. Employers who paid workers on a basis other than an hourly basis with time and a half for overtime hours will have the opportunity to get formal review of their compensation systems.

WAC 296-128-011 and 296-128-012 are being updated to reflect the March 2007 Supreme Court's decision in *Bostain*, by deleting "within the state" throughout the rules and adding language that allows employers to submit their

compensation systems to the department for review and approval.

Employers are already able to submit their compensation systems to the department. However, the added language will expressly require the department to review compensation systems for time periods before March 1, 2007 (the date of the *Bostain* decision) of employers who relied on the department's regulations. The added language requires the department to review compensation systems submitted by employers, and approve such compensation systems for the time period for which the employers seek approval if the department's review finds that they complied with RCW 49.46.130 (2)(f) for hours worked both in and out of the state of Washington. The added language does not change the employer's obligation to pay overtime for hours worked within and outside Washington under *Bostain* and RCW 49.46.130 (2)(f). The department will not approve a compensation system for any time period unless the compensation system is reasonably equivalent to RCW 49.46.130 for hours worked both in and out of the state of Washington.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 43.22.270 and 49.46.130.

Statute Being Implemented: RCW 43.22.270 and 49.46.130.

Rule is necessary because of state court decision, *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007).

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Rich Ervin, Tumwater, Washington, (360) 902-5310; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department did not conduct a small business economic impact statement, since the proposed [changes] does [do] not impose any costs on businesses in an industry (per RCW 19.85.030(1)).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov).

July 23, 2008

Judy Schurke

Director

**AMENDATORY SECTION** (Amending WSR 89-22-120, filed 11/1/89, effective 12/2/89)

**WAC 296-128-011 Special recordkeeping requirements.** (1) In addition to the records required by WAC 296-128-010, employers who employ individuals as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act shall maintain records indicating the base rate of pay, the overtime rate of pay, the hours worked by each employee for each type of work, and the formulas and projected work hours used to substantiate any deviation from payment on an hourly basis pursuant to WAC 296-128-012. The records

shall indicate the period of time for which the base rate of pay and the overtime rate of pay are in effect.

For the purposes of this section and WAC 296-128-012, "base rate of pay" means the amount of compensation paid per hour or per unit of work in a workweek of forty hours or less. A base rate of pay shall be established in advance of the work performed and may be based on hours or work units such as mileage, performance of specified duties, or a specified percentage of the gross proceeds charged for specified work. A base rate of pay shall not be established that will result in compensation at less than the minimum wage prescribed in RCW 49.46.020. "Overtime rate of pay" means the amount of compensation paid for hours worked (~~within the state of Washington~~) in excess of forty hours per week and shall be at least one and one-half times the base rate of pay.

(2) The records required by this section shall be made available by the employer at the request of the department. Any current or past employee may obtain copies of the formula, the base rate of pay, the overtime rate of pay, and that employee's records. Job applicants seeking employment by the employer as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act, may obtain copies of the formula, the base rate of pay, and the overtime rate of pay.

AMENDATORY SECTION (Amending WSR 89-22-120, filed 11/1/89, effective 12/2/89)

**WAC 296-128-012 Overtime for truck and bus drivers.** (1)(a) The compensation system under which a truck or bus driver subject to the provisions of the Federal Motor Carrier Act is paid shall include overtime pay at least reasonably equivalent to that required by RCW 49.46.130 for working (~~within the state of Washington~~) in excess of forty hours a week. To meet this requirement, an employer may, with notice to a truck or bus driver subject to the provisions of the Federal Motor Carrier Act, establish a rate of pay that is not on an hourly basis and that includes in the rate of pay compensation for overtime. An employer shall substantiate any deviation from payment on an hourly basis to the satisfaction of the department by using the following formula or an alternative formula that, at a minimum, compensates hours worked (~~within the state of Washington~~) in excess of forty hours per week at an overtime rate of pay and distributes the projected overtime pay over the average number of hours projected to be worked. The following formula is recommended for establishing a uniform rate of pay to compensate work that is not paid on an hourly basis and for which compensation for overtime is included:

1. Define work unit first. E.g., miles, loading, unloading, other.
2. Average number of work units Average number of work units accomplished per week  


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per hour = Average number of hours projected to be worked per week
3. Weekly Base Rate = Number of units per hour x 40 hours x base rate of pay

4. Weekly Overtime rate = Number of units per hour x number of hours over 40 x overtime rate of pay
5. Total weekly pay = Weekly base rate plus weekly overtime rate
6. Uniform rate of pay = 
$$\frac{\text{Total weekly pay}}{\text{Total work units}}$$

**Example:** A truck driver is paid on a mileage basis for a two hundred thirty mile trip performed about ten times a week. The base rate of pay is twenty cents a mile. The overtime rate of pay is thirty cents a mile. The average length of the trip is four and one-half hours.

1. 
$$\frac{2300 \text{ mi.}}{\text{per week}} \div \frac{45 \text{ hours}}{\text{per week}} = \frac{51.1 \text{ miles}}{\text{per hour}}$$
2. (a) 51.1 miles/hour times 40 hours times .20/mile = \$408.80  
 (b) 51.1 miles/hour times 5 hours = 255.5 miles  
 (c) 255.5 miles times .30/mile = \$76.65  
 (d) \$408.80 plus \$76.65 = \$485.45 divided by 2300 miles = 21.1 cents mile

(b) In using a formula to determine a rate of pay, the average number of hours projected to be worked and the average number of work units accomplished per week shall reflect the actual number of hours worked and work units projected to be accomplished by persons performing the same type of work over a representative time period within the past two years consisting of at least twenty-six consecutive weeks.

(c) The department may evaluate alternative rates of pay and formulas used by employers in order to determine whether the rates of pay established under this section result in the driver receiving compensation reasonably equivalent to one and one-half times the base rate of pay for actual hours worked (~~within the state of Washington~~) in excess of forty hours per week.

(2) Where an employee receives a different base rate of pay depending on the type of work performed, the rate that is paid or used for hours worked (~~within the state of Washington~~) in excess of forty hours per week shall be at least the overtime rate of pay for the type of work in which most hours were worked.

(3) Compensation plans before March 1, 2007. An employer who relied on WAC 296-128-011(1) before March 1, 2007, may, within ninety days of the adoption of this subsection, submit a proposal consistent with subsection (1) of this section to the department for approval of a reasonably equivalent compensation system. The employer shall submit information to substantiate its proposal consisting of at least twenty-six consecutive weeks over a representative time period between July 1, 2005, and March 1, 2007. The department shall then determine if the compensation system includes overtime that was at least reasonably equivalent to that required by RCW 49.46.130 (1)(f). Approval of a reasonably equivalent compensation system under this subsection shall constitute continuing approval for the period the employer uses the compensation system.

Note 1: On March 1, 2007, the Washington state supreme court ruled that overtime rate of pay includes hours worked within and outside the state of Washington for Washington-based employees. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007).

Note 2: The adoption date of this subsection is October 21, 2008.

**WSR 08-15-179**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed July 23, 2008, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-034.

Title of Rule and Other Identifying Information: WAC 220-77-090 Ballast water management and control—Reporting and sampling requirements, and 220-77-095 Interim ballast water standard approval process.

Hearing Location(s): Icicle Village Resort, 505 Highway 2, Leavenworth, WA 98826, on November 7-8, 2008, at 8:45 a.m.

Date of Intended Adoption: December 12-13, 2008.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, phone (360) 902-2930, fax (360) 902-2155, by October 31, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by October 31, 2008, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to implement E2SSB 5923 (chapter 350, Laws of 2007), "aquatic invasive species," which revised and added new ballast water management statutes under chapter 77.120 RCW.

Specific impacts on WAC 220-77-090 include: Subsection (1), clarify which vessels are affected and who they must submit reports to; subsection (2), implement the department form letter for waiver that must be signed; subsection (4), delete expired requirement to file interim report for exchange management; replace with new subsection on how/when to claim safety exemption; subsection (5), add a new subsection on department review of safety exemption claims, including determining if a compliance plan or alternative strategy are required, and imposing a minimum \$500 administrative filing fee; and subsection (6), add a new subsection providing the process for assessing civil penalties up to a new maximum of \$27,500.

Specific impacts on WAC 220-77-095 include: Subsection (2), add language to clarify intent; subsection (3), add a new subsection by splitting former subsection (2) to delete the treatment technology evaluation process; replace requirements for approval; subsection (3)(b), add a new paragraph identifying the department of ecology's role in approvals; subsection (3)(e), revise the language to simplify determination options; and subsection (3)(i)(iv) [(3)(g)(iv)], add a new paragraph for a savings clause.

Statutory Authority for Adoption: RCW 77.120.030, 77.120.040, 77.120.070, 77.12.047.

Statute Being Implemented: RCW 77.120.030, 77.120-040, 77.120.070, 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Allen Pleus, 1111 Washington Street, Olympia, (360) 902-2724; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: **No new reporting or record keeping is required.** One previously required report deleted (previous WAC 220-77-090(4) Interim report for implementing 2007 ballast water exchange program). Ballast water reporting form (BWRf), request for BWRf waiver, and interim treatment technology approval process are carry-overs from previous requirement.

**New compliance plan and alternative strategy documents MAY be required at department discretion for minor number of vessels claiming safety exemptions.** Out of an average four thousand vessel visits per year, only three per year claiming a safety exemption and only two of those are due to vessel design limitations or equipment failure that would/may require the vessel operator submit a compliance plan or alternative strategy document.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: **Compliance plans MAY benefit from contracting with a marine engineer to rectify equipment limitation or failure issues in those circumstances.**

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: **New fees for filing safety exemption.** The department must assess a minimum \$500 fee on vessels claiming a safety exemption as with expected frequency as noted in #1 above, and as required by RCW 77.120.030 (4)(a).

**No new costs for equipment, supplies, or labor expected.**

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? **No new impacts to sales or revenue expected.** Current statute laws require that vessels arriving from out of state exchange ballast water at least fifty nautical miles from nearest shore. This may increase voyage time affecting fuel costs and overall schedules.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- a. Cost per employee: **None.**
- b. Cost per hour of labor: **None.**
- c. Cost per one hundred dollars of sales: **None.**

**\$500 fee for safety exemptions is small cost based on frequency of anticipated application and as compared to overall shipping business expenses.**

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The department developed proposed rules in consultation with its ballast water work group consisting of state and federal agencies, tribal governments, affected industries, environmental organizations, academia, and technical interests.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department will continue to consult with the ballast water work group to minimize small business impacts.

8. A List of Industries That Will Be Required to Comply with the Rule: Shipping industry - vessels equal to or over three hundred gross tons.

A copy of the statement may be obtained by contacting Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

July 23, 2008  
Loreva M. Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending Order 06-35, filed 3/2/06, effective 4/2/06)

**WAC 220-77-090 Ballast water management and control—Reporting and sampling requirements.** (1) Vessels ~~((which)) that~~ are subject to chapter 77.120 RCW ~~((and which intend to discharge ballast water into Washington state waters))~~ must report ballast water management information to the department at least twenty-four hours prior to entering Washington waters, by filing a ballast water ~~((report)) reporting form~~ pursuant to Title 33 C.F.R. Part 151.2045 ~~((with the department's designated agents as follows:~~

(a) Vessels bound for Puget Sound or coastal ports must file their ballast water reporting form with the Marine Exchange of Puget Sound in Seattle. Forms must be submitted by fax or in electronic format.

(b) Vessels bound for Washington ports on the Columbia River must file their ballast water reporting form with the Merchants Exchange of Portland. Forms must be submitted by fax or in electronic format). Forms must be submitted to the department in electronic format (preferred) to ballastwater@dfw.wa.gov, or by fax to 360-902-2845.

Vessel owners and operators who rely on a third party to collect and forward ballast water reporting forms are responsible for ensuring that the department receives the ballast water management information as required in this subsection.

(2) Vessels not intending to discharge ballast water into Washington state waters shall notify the department in one of the following ways:

(a) ~~((Vessel operators))~~ Owners or operators of one or more vessels who do not wish to file a ballast water reporting form may send a signed form letter, as provided by the department and at least thirty days prior to entering Washing-

ton waters, to the department by e-mail at ballastwater@dfw.wa.gov; by fax at 360-902-2845; or by U.S. mail to the state ANS coordinator((:)) at Department of Fish and Wildlife, 600 Capitol Way No., Olympia, WA 98501-1091((,-which)). The signed letter must include((s)) the following information:

(i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or U.S. Coast Guard registry number), owner, agent, and vessel type(s); and

(ii) A statement that the vessel will not discharge ballast water into Washington state waters; and

(iii) The signature of the owner, operator, or other authorized representative.

(b) Vessels that would normally discharge ballast water, but will not discharge on ~~((any given)) a particular trip((,-may continue to file the))~~ and are not covered under the requirements of (a) of this subsection, must file a ballast water reporting form((,-with "not discharging" written in the ballast water history)) as described in subsection (1) of this section.

(3) The department, or designated representatives, may at reasonable times and in a reasonable manner((:)) during a vessel's scheduled stay in port, take samples of ballast water and sediment, ~~((may))~~ examine ballast water management records, and ~~((may))~~ make other appropriate inquiries to assess the compliance of vessels with ballast water reporting and control requirements.

~~((4)) Interim report for implementing 2007 ballast water exchange program:~~

~~(a) All vessels subject to chapter 77.120 RCW that enter Washington waters after July 1, 2007, will be prohibited from discharging ballast water under the safety exemptions to the ballast water exchange program. In order to implement the 2007 program, vessel information is required to be on file with the department prior to July 1, 2006.~~

~~(b) All vessels subject to chapter 77.120 RCW that enter Washington waters after July 1, 2006, are required, prior to July 1, 2006, to file a Washington State Interim Ballast Water Management Report Form on the report form provided in (d) of this subsection.~~

~~(c) A vessel subject to chapter 77.120 RCW that enters Washington waters after July 1, 2006, and for which the vessel owner has not submitted a Washington State Interim Ballast Water Management Report Form is subject to a five hundred dollar reporting penalty.~~

~~(d) Washington State Interim Ballast Water Management Report Form and Instructions:~~

**~~Completion Instructions For:  
Washington State Interim Ballast Water Management Report Form~~**

**~~(Please type in English)~~**

**~~SECTION 1. OWNER/OPERATOR~~**

**~~Vessel(s) Owner Information:~~** Write in the name of the registered owner(s) of the vessel. If under charter, enter Operator name. Also provide mailing address.

**~~Responsible Party Information:~~** Print the person's name, company and contact information (current phone number and e-mail) of the person responsible for administering the management plan described below.

**SECTION 2. FLEET INFORMATION**

**Vessel Name:** Print the name of each vessel covered by this management report. A separate report is required for vessels that will use different methods of ballast management. For example: Five vessels may be listed in one report that are going to use the same type of ballast treatment system. A separate report would be required for another five vessels that intend to use ballast exchange and retaining ballast onboard as a management option.

**Existing Vessel or New Build:** Fill in "Existing Vessel" if this is an existing vessel currently in operation. Fill in "New Build 1," "New Build 2" etc., for vessels that are in a design or new construction phase, but not yet in operation.

**IMO Number:** Fill in identification number of the vessel used by the International Maritime Organization.

**Type:** List specific vessel type. Use the following abbreviations: Bulk (bc), ro-ro (rr), container (cs), tanker (ts), passenger (pa), oil/bulk ore (ob), general cargo (gc), reefer (rf). Write out any additional vessel types.

**GT:** What is the Gross Tonnage of the vessel?

**Ballast Capacity:** What is the maximum volume of ballast water used when no cargo is on board? *Please include volume units in m<sup>3</sup>.*

**SECTION 3. BALLAST MANAGEMENT COMPLIANCE PLAN (2007)**

**a. Retaining ballast:** Check yes or no to indicate if the vessel's ballast management plan considers retaining some or all ballast on board when in Washington state waters.

**b. Local waters:** Check yes or no to indicate if the vessel's ballast management plan includes the discharge of water that originated solely within local waters.

**c. Ballast exchange:** Check yes or no to indicate whether the vessel's ballast management plan will include ballast exchange.

**d. If unable to exchange:** Safety exemptions will no longer be an acceptable management option in Washington state waters after July 1, 2007. Vessel operators that are using ballast exchange should describe how they will manage ballast discharges into Washington state waters if unable to conduct a safe exchange at sea.

**e. Ballast Treatment System:** Vessel operators that intend to use a ballast treatment system as a ballast management option should complete subsections f. through i.

**Note:** Dates supplied within subsections h. through k. can be estimated. **Additional Comments** under subsection l. are optional.

**FOOTER. SIGNATURE AND DATE**

**Signature of Responsible Party:** Forms submitted by fax or mail require the signature of the responsible party. Forms submitted by e-mail do not require a signature; however, the responsible party sending the form by e-mail is certifying that all information contained is complete and accurate. If you choose to send the PDF version of the form by e-mail, a message will inform you that "you are sending a data file only, not the form;" This is the correct submittal process.

**Date of Submission:** Provide date on which form was submitted.

<b>1. Owner/Operator</b>	Vessel(s) Owner Information:	Responsible Party Information:
	Name _____	Name _____
	Address _____	Address _____
	City, State/Province Zip _____	City, State/Province Zip _____
	Country _____	Country _____
	Telephone Number _____	Telephone Number _____
	E-mail _____	E-mail _____

<b>2. Fleet Information</b>						
	Vessel Name	Existing Vessel, or New Build	IMO#	Type	GT	Ballast Capacity
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						

**Notes:**  
 1. If you need to list additional vessels, make sure cursor is in last row of table, select "Table" on the menu bar, choose "Insert," then select "Rows Below."  
 2. Use one reporting form for each ballast water management plan.

3. See attached instruction form.	
<b>3. Ballast Management Compliance Plan (2007)</b>	
a. Does this management plan include <b>retaining ballast</b> on board?	<b>Yes</b> <b>No</b>
b. Does this management plan include the discharge of water that originated solely within <b>"local waters"</b> ?	<b>Yes</b> <b>No</b>
c. Does this management plan include <b>ballast exchange</b> ?	<b>Yes</b> <b>No</b>
d. If considering ballast exchange: How will you handle ballast <b>if unable to exchange</b> at sea?	
e. Does this management plan include a <b>ballast treatment system</b> ? If yes, complete f. through l.	<b>Yes</b> <b>No</b>
f. Vendor Company	
g. Vendor Contact	
h. Final System Selection Date	j. System Purchase Date
i. System Installation Date	k. System Operational Date
l. Additional Comments	
<b>Responsible Party Signature:</b> _____ <b>Date:</b> _____ <i>By submitting this form by e-mail, the responsible party is certifying that all information provided is complete and accurate.)</i>	

(4) Vessel operators claiming a safety exemption under RCW 77.120.030(4) must notify the department of their intent to do so on the ballast water reporting form as required in subsection (1) of this section. Notification requires writing the words "SAFETY EXEMPTION" on the form where it asks "If no ballast treatment conducted, state reason why not:" and stating the cause as either "ADVERSE WEATHER," "VESSEL DESIGN LIMITATION," "EQUIPMENT FAILURE," or "EXTRAORDINARY CONDITION."

(a) No safety exemption request is required if the vessel does not intend to discharge unexchanged or untreated ballast water and follows the requirements under subsection (2) of this section.

(b) Vessel operators may rescind a safety exemption claim by filing an amended ballast water reporting form and notifying the department as required in subsection (1) of this section.

(5) The department will review safety exemption claims as noted in subsections (3) and (4) of this section.

(a) The department will determine whether a compliance plan and alternative strategy are required. Compliance plans and alternative interim strategies will be established to minimize discharge of future unexchanged ballast water until compliance with this section can be met.

(b) The department will assess a safety exemption fee using the following as guidance:

(i) Minimum five hundred dollar fee for administrative costs to assess compliance; and

(ii) Larger fees may be assessed by the department based on vessel history, risk, and degree of failure in implementing prior compliance plans and alternative strategies.

(6) The department may impose civil penalties ranging from a warning letter up to twenty-seven thousand five hundred dollars for violation of the requirements of this section pursuant to RCW 77.120.070. Each day of a continuing violation constitutes a separate violation. The department will

assess civil penalties based on elements that include, but are not limited to:

(a) Degree and nature of failure in meeting reporting requirements;

(b) Degree and nature of failure in allowing reasonable department inspection of a vessel's ballast water management records or allowing samples to be taken from ballast tanks;

(c) Degree and nature of failure in preventing or stopping discharge upon request by department;

(d) Volume and risk of introducing invasive species based on the source of unexchanged or untreated discharge;

(e) Discharge of treated water using a technology that has not been approved for use in waters of the state; and

(f) Vessel and operator violation history.

AMENDATORY SECTION (Amending Order 02-185, filed 8/9/02, effective 9/9/02)

**WAC 220-77-095 Interim ballast water discharge standard approval process.** (1) The Washington state interim ballast water discharge standard is inactivation or removal of ninety-five percent of zooplankton organisms and ninety-nine percent of phytoplankton and bacteria organisms.

(2) Vessels subject to chapter 77.120 RCW that have not adequately exchanged their ballast water must treat their ballast to meet or exceed the state's discharge standards prior to ((discharge)) discharging ballast water into Washington waters((, after July 1, 2004)).

(3) An interim approval process shall be used to ((evaluate ballast water treatment technologies and)) provide approval for ((certain)) ballast water treatment technologies that are determined to meet, or have the potential to meet, the Washington state interim ballast water discharge standard. Only ballast water treatment technologies that are approved through this process may be used on specified vessels to discharge treated ballast water into Washington waters ((following the guidelines identified within the approval process. Bal-

last water treatment technology vendors or vessel owners may submit ballast treatment technology for evaluation through the following process:

(a) Applications for approval will be accepted by the director or the director's designee).

(a) Approval for use of a technology in waters of the state must meet one or more of the following criteria:

(i) The technology was previously approved by the department for use in waters of the state for the term as specified in their approval letter;

(ii) The technology is approved by the U.S. Coast Guard for use in national waters;

(iii) The vessel is enrolled in the U.S. Coast Guard STEP program;

(iv) The technology is approved by the state of California for use in their state waters;

(v) The technology is approved by the International Maritime Organization (IMO) and authorized by the U.S. State Department and U.S. Coast Guard for use in national waters;  
or

(vi) The vessel is enrolled in the IMO approval process and authorized by the U.S. State Department and U.S. Coast Guard for use in national waters.

(b) Technologies using chemicals or that produce chemical by-products upon discharge will be evaluated by the department of ecology for meeting state water quality standards before acceptance.

(c) Technologies may be approved for use on specific vessels in state waters for up to five years.

(d) The director or the director's designee will accept applications for approval at any time. The applicant is to be notified of the department's receipt of the application package within ten working days. If the application package is incomplete, the application will be returned to the applicant with an explanation of the deficiencies or, if the deficiencies are minimal, held for thirty days to allow the applicant to correct the deficiencies. Formal reviews of supporting records and water quality data ((and proposed study plans)) will be completed within forty-five days of receipt of the complete application package.

~~((b) Formal reviews will be conducted by a science advisory panel and a maritime advisory panel. Panel members will be appointed by the director or the director's designee. The science advisory panel will provide recommendations to the director or the director's designee regarding the ability of each technology to meet the Washington state interim ballast water discharge standard, the adequacy of the proposed study plan, and determine if such technology should be evaluated as a promising technology that could be considered as a "best available technology." The maritime advisory panel will provide recommendations to the director or the director's designee regarding the ability of each technology to meet the practical needs of the maritime industry, including safety, practicality and cost effectiveness, and determine if such technology should be evaluated as a promising technology that could be considered as a "best available technology."~~

~~((e))~~ (e) The director, or the director's designee, shall ((take into consideration the findings of the scientific advisory panel, and the maritime advisory panel and)) make one of the following determinations:

~~((That))~~ Approval - The ballast water treatment technology ((has been approved by the United States Coast Guard or a state agency and is an)) is approved ((system)) for use in Washington state; or

~~((To grant general approval to a technology meeting the Washington state interim ballast water discharge standard for a period of five years with stipulations for scientific evaluation. Approval may be revoked if new information shows the technology to be grossly inadequate and incapable of being retrofitted to correct the inadequacy;~~

~~((ii) To grant conditional approval for use on a specific number of vessels for further full-scale testing; or~~

~~((iv))~~ Deny approval - The ballast water treatment technology is not approved for use in Washington state.

~~((d))~~ (f) Criteria for review. Applications for interim approval of a ballast water treatment system shall be evaluated on the completeness of the following:

~~((A letter of commitment from the technology vendor, the vessel owner installing the technology, and the principal investigators conducting the tests, stating their intents to carry out all components of the study plan for which they are responsible. Principal investigators must be qualified independent researchers. Applications for a treatment system to be used within a specified port must include a letter from the port authority in which the system is to be operated, granting authority for testing or use within the port.))~~ Documentation verifying that the technology and vessel(s) meet one of the criteria noted in (a) of this subsection:

(ii) Documentation ((stating)) verifying that the residual concentrations of any primary treatment chemicals or chemicals that occur as by-products of the treatment meet all applicable regulatory requirements((-)); and

(iii) ((All available)) Documentation describing the technical, operational, and installation characteristics of the system.

~~((iv) Documentation from preliminary experiments that demonstrate the potential of the system to meet the Washington state interim ballast water discharge standard. Indicator species may be used to evaluate the technologies' effectiveness. Technologies may be approved that do not currently meet this criteria, but show promise for improvement or are considered to be a "best available technology." The technology should include easily verifiable indicators to ensure the system is operational and effectively treating ballast at the time of treatment.~~

~~((v) The discharge from a technology must be environmentally sound and in compliance with existing water quality discharge laws.~~

(e) Each proposed technology must include a detailed study plan that:

(i) Is organized according to a department approved standardized format.

(ii) Evaluates the effectiveness of the treatment system over a range of operational conditions during operations, including the cumulative hours of operation, volumes treated, times since the tanks were last cleaned of sediment, abundance of organisms, organic and inorganic load, temperature and salinity of water.

~~(iii) Identifies limiting conditions such as water quality attributes that may affect the performance of the equipment, length of time for adequate treatment, or other factors that may render the technology as inadequate to meet the interim ballast water discharge standard.~~

~~(iv) Assures that samples are representative of the flow or volume from which they are taken.~~

~~(v) Contains a detailed quality assurance and/or quality control plan.~~

~~(3)) (g) Conditions of approval((-);~~

~~((a)) (i) Approval of a technology shall be withdrawn ((after one year if the system is not installed or the testing begun as proposed.~~

~~(b) Systems approved under the interim approval process shall be considered to meet all ballast water treatment requirements promulgated by the department for a period of five years. In the event subsequent work reveals adverse effects on ecology or human health, approval of the system will be withdrawn unless the treatment system can be repaired to address the system's inadequacies.~~

~~(e)) if the technology or vessel is no longer enrolled in the U.S. Coast Guard STEP or IMO approval process, is no longer approved for use in California waters, or has not been approved for use by the U.S. Coast Guard in national waters or by the IMO in international waters;~~

~~(ii) Systems approved under the interim process will be subject to all subsequent standards and regulations upon the expiration of the interim approval period((-);~~

~~((d) Interim approval is contingent on adherence to the detailed study plan described in the application and agreed upon by the applicant and the department.~~

~~(e) The principal scientist and engineers responsible for conducting and analyzing the tests shall submit a report documenting the performance of the equipment and results of the testing to the department within twelve months after installation. Further testing may or may not be required based upon the test results.~~

~~(f)) (iii) Vessels or technologies receiving interim approval shall be subject to inspections by the department or the department's designated representative to verify adherence with the terms of this interim approval agreement and the operation of the treatment systems; and~~

~~(iv) Nothing in these rules, ballast water legislation, or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other state, federal, and international laws governing business, marine applications, or other elements.~~

### WSR 08-15-180

#### PROPOSED RULES

#### DEPARTMENT OF FISH AND WILDLIFE

[Filed July 23, 2008, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-023 and 08-10-057.

Title of Rule and Other Identifying Information: WAC 220-69-26401 Distribution of copies of shellfish receiving ticket, and 220-69-300 Commercial food fish and shellfish transportation ticket.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on September 5-6, 2008, at 8:30 a.m.

Date of Intended Adoption: October 3-4, 2008.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155 by August 29, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by August 25, 2008, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 220-69-26401 Distribution of copies of shellfish receiving ticket, this proposal contains no substantive change to the rule; it is merely housekeeping to correct an error. The Washington department of fish and wildlife requires a definitive time period for shellfish receivers to submit their shellfish receiving tickets. These tickets are used to track catch data for conservation and allocation management purposes. This rule proposal corrects a previous amendment to the rule that inadvertently extended the required reporting period for the geoduck fishery and no others. This change will bring the reporting requirements for geoduck in line with all other receiving ticket reporting timelines.

WAC 220-69-300 Commercial food fish and shellfish transportation ticket, this proposal contains no substantive change to the rule; it is merely housekeeping. Many commercial vessels are loaded onto trailers after leaving the fishery, with the product still onboard. The department seeks to clarify that in such instances, a transportation ticket is required. The department also expands the transportation ticket requirement to persons beyond commercial fishers, because sometimes transport is done by other than the commercial fishers. The tickets will allow officers to identify harvesters and the legality of harvests.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Bob Sizemore and Mike Cenci, 1111 Washington Street S.E., Olympia, (360) 902-2827 and 902-2938; Implementation: Lew Atkins and Mike Cenci, 1111 Washington Street S.E., Olympia, (360) 902-2651 and 902-2938; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW for WAC 220-69-26401.

#### Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: Requires the receiver to provide the department's copy of the

shellfish geoduck ticket in such a manner that the department receives its copy within six working days of the day the original receiver completes the ticket.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None. Reestablishes a previous rule.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: No costs anticipated.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales.

There are no additional costs of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: There are no costs incurred, so no steps have been taken.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department will present and review this proposal under the auspices of the fish and wildlife commission's public rule-making process.

8. A List of Industries That Will Be Required to Comply with the Rule: All shellfish receivers of geoduck.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

No small business economic impact statement has been prepared under chapter 19.85 RCW for WAC 220-69-300. There should be no impact to businesses, since this house-keeping proposal eliminates the need for the document to be filed with people who "store or hold" fish. This proposal expands the permit requirement to "all persons transporting" versus only "commercial fishermen" (dealers and buyers exempt).

A cost-benefit analysis is not required under RCW 34.05.328. These are not hydraulic rules.

July 23, 2008

Loreva M. Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-16, filed 2/10/05, effective 3/13/05)

**WAC 220-69-26401 Distribution of copies of shellfish receiving ticket.** State of Washington shellfish receiving tickets ~~((shall))~~ must be made out in quintuplicate (five copies) at the time of delivery. Upon ~~((completion of the shellfish receiving))~~ completing these tickets, ~~((it is unlawful for))~~ the ~~((person completing the fish receiving ticket to fail to))~~ fish receiver must distribute the copies as follows:

(1) The dealer copies (white and yellow) ~~((shall be retained by))~~ stay with the receiver for ~~((their use))~~ his or her records.

(2)(a) For shellfish other than geoduck clams from department of natural resources geoduck tracts, the state copies (green and pink) ~~((shall))~~ must be mailed to the department of fish and wildlife. ~~((It is required that the state copies be received by))~~ The department must receive these state copies no later than the sixth working day after the day the original receiver completed the ticket ~~((was completed by the original receiver)).~~

(b) For geoduck clams from department of natural resources geoduck tracts, ~~((the green))~~ one state copy ~~((shall))~~ (green) must be mailed to the department of fish and wildlife. The department must receive its copy no later than the sixth working day after the day the original receiver completed the ticket ~~((was completed by the original receiver)).~~ The ~~((pink))~~ other state copy ~~((shall be mailed))~~ (pink) must be given to the department of natural resources ~~((no later than the sixth working day after the ticket was completed by the original receiver, or delivered earlier to the department of natural resources as))~~ at the time of weigh-out, unless otherwise directed by ~~((that))~~ the department of natural resources.

(3) The fisherman's copy (gold) ~~((shall))~~ must be retained by the deliverer for ~~((their))~~ his or her use.

(4) It is unlawful for a fish receiver to fail to distribute fish receiving tickets as directed above. Violation of this section is a gross misdemeanor, punishable under RCW 77.15-640.

AMENDATORY SECTION (Amending Order 04-210, filed 8/17/04, effective 9/17/04)

**WAC 220-69-300 Commercial food fish and shellfish transportation ticket.** (1) Except as provided in subsection (6) of this section, it is unlawful for commercial fishers or their designees, who are neither wholesale dealers nor holders of a direct retail endorsement ~~((must)),~~ to fail to complete a commercial food fish and shellfish transportation ticket ~~((when))~~ as required by this section. These tickets must be completed prior to transporting ~~((commercial))~~ fish or shellfish ~~((away from the catching vessel or.))~~ harvested for commercial purposes or in commercial quantities. For a fishery that does not require a vessel, ~~((the catch site, and it is unlawful to fail to complete the transportation ticket with all the information in subsection (2) of this section))~~ a transportation ticket must be completed prior to leaving the catch site. The purpose of this rule is to ensure catch accountability when fish or shellfish are transported by the fisherman or his or her designee from the catching vessel to an original receiver. Fish receiving ticket requirements under this chapter are still in effect. A violation of this subsection or subsection (2) of this section is punishable as a gross misdemeanor under RCW 77.15.290.

(2) ~~((The))~~ A transportation ticket ~~((shall))~~ must contain all of the following information and space for that information:

- (a) The name of the fisherman who caught the fish((-);
- (b) The fisherman's vessel registration number((-);

(c) The signature of the fisherman or additional operator(-);

(d) The name of the transporter(-);

(e) The signature of the transporter(-);

(f) The catch area where the food fish or shellfish were caught(-);

(g) The species of food fish or shellfish being transported(-); and

(h) The number or approximate pounds of food fish or shellfish being transported.

~~(3) ((The information in subsection (2)(a) through (h) of this section are required entries on all completed transportation tickets.~~

~~(4))~~ It is unlawful for an original receiver or someone acting in the capacity of an original receiver to fail to mail the transportation ticket, together with the state copy of the fish receiving ticket as ((provided for)) required in WAC 220-69-260, 220-69-264, and 220-69-26401, ((if)) when the ((commercial fisher)) person delivering the fish or shellfish does not sign the fish receiving ticket(-) as ((provided)) required in WAC 220-69-274. If the commercial fisher signs the fish receiving ticket, only the fish receiving ticket must be mailed in, and the transportation ticket is not required to be submitted with ((the fish receiving ticket)) it. Violation of this section is a gross misdemeanor, punishable under RCW 77.15.-640.

~~((5))~~ (4) It is unlawful to fail to keep the transportation ticket ((is to remain)) with the fish or shellfish until a fish receiving ticket is completed((- and must be presented for inspection by)). Violation of this subsection is a gross misdemeanor under RCW 77.15.290.

(5) It is unlawful for any person((s)) transporting((-holding, or storing)) commercially taken fish or shellfish ((when requested to do so by a fish and wildlife officer, and it is unlawful)) or commercial quantities of fish or shellfish to fail to ((present the)) provide a transportation ticket ((on)) for inspection upon demand by a fish and wildlife officer. Violation of this subsection is a gross misdemeanor ~~((punishable))~~ under RCW ~~((77.15.360))~~ 77.15.290.

(6) The provisions of this section do not apply to:

(a) Food fish and shellfish purchased at retail, provided the purchaser has, in his or her possession, a sales receipt documenting the purchase(-);

(b) Food fish or shellfish for which a fish receiving ticket has been completed(-) and a copy of the fish receiving ticket is in the possession of the person transporting;

(c) Food fish or shellfish being transported by the department(-);

(d) Hatchery carcass sales(-);

(e) Private sector cultured aquatic products in transport(-);

(f) Food fish or shellfish being transported on ~~((an))~~ a completed Oregon transportation ticket(-), provided that the fish or shellfish were caught in the concurrent waters of the Columbia River and were landed on Washington's shore; and

(g) ~~((Food fish))~~ Fish or shellfish being transported in the catching vessel ~~((prior to delivery)), provided that the vessel is not being transported or towed over land.~~