

# Washington State Register

February 21, 2001

OLYMPIA, WASHINGTON

ISSUE 01-04



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filed not later than February 7, 2001

## CITATION

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

## PUBLIC INSPECTION OF DOCUMENTS

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

## REPUBLICATION OF OFFICIAL DOCUMENTS

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

## CERTIFICATE

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

DENNIS W. COOPER  
Code Reviser

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## STATE MAXIMUM INTEREST RATE

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

The maximum allowable interest rate applicable for the month of February 2001 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

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

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# WASHINGTON STATE REGISTER

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

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*Subscription Clerk*

# STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

## 1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following eight sections:

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

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

## 2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

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

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

## 3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

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

## 4. EFFECTIVE DATE OF RULES

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

## 5. EDITORIAL CORRECTIONS

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

2000 - 2001

**DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION**

Issue Number	Closing Dates <sup>1</sup>			Distribution Date	First Agency Hearing Date <sup>3</sup>	Expedited Adoption <sup>4</sup>
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS <sup>2</sup> or 10 p. max. Non-OTS	Count 20 days from -	For hearing on or after	First Agency Adoption Date
For Inclusion in -	File no later than 12:00 noon -					
00 - 13	May 24, 00	Jun 7, 00	Jun 21, 00	Jul 5, 00	Jul 25, 00	Aug 22, 00
00 - 14	Jun 7, 00	Jun 21, 00	Jul 5, 00	Jul 19, 00	Aug 8, 00	Sep 5, 00
00 - 15	Jun 21, 00	Jul 5, 00	Jul 19, 00	Aug 2, 00	Aug 22, 00	Sep 19, 00
00 - 16	Jul 5, 00	Jul 19, 00	Aug 2, 00	Aug 16, 00	Sep 5, 00	Oct 3, 00
00 - 17	Jul 26, 00	Aug 9, 00	Aug 23, 00	Sep 6, 00	Sep 26, 00	Oct 24, 00
00 - 18	Aug 9, 00	Aug 23, 00	Sep 6, 00	Sep 20, 00	Oct 10, 00	Nov 7, 00
00 - 19	Aug 23, 00	Sep 6, 00	Sep 20, 00	Oct 4, 00	Oct 24, 00	Nov 21, 00
00 - 20	Sep 6, 00	Sep 20, 00	Oct 4, 00	Oct 18, 00	Nov 7, 00	Dec 5, 00
00 - 21	Sep 20, 00	Oct 4, 00	Oct 18, 00	Nov 1, 00	Nov 21, 00	Dec 19, 00
00 - 22	Oct 4, 00	Oct 18, 00	Nov 1, 00	Nov 15, 00	Dec 5, 00	N/A
00 - 23	Oct 25, 00	Nov 8, 00	Nov 22, 00	Dec 6, 00	Dec 26, 00	N/A
00 - 24	Nov 8, 00	Nov 22, 00	Dec 6, 00	Dec 20, 00	Jan 9, 01	N/A
01 - 01	Nov 22, 00	Dec 6, 00	Dec 20, 00	Jan 3, 01	Jan 23, 01	N/A
01 - 02	Dec 6, 00	Dec 20, 00	Jan 3, 01	Jan 17, 01	Feb 6, 01	N/A
01 - 03	Dec 27, 00	Jan 10, 01	Jan 24, 01	Feb 7, 01	Feb 27, 01	N/A
01 - 04	Jan 10, 01	Jan 24, 01	Feb 7, 01	Feb 21, 01	Mar 13, 01	N/A
01 - 05	Jan 24, 01	Feb 7, 01	Feb 21, 01	Mar 7, 01	Mar 27, 01	N/A
01 - 06	Feb 7, 01	Feb 21, 01	Mar 7, 01	Mar 21, 01	Apr 10, 01	N/A
01 - 07	Feb 21, 01	Mar 7, 01	Mar 21, 01	Apr 4, 01	Apr 24, 01	N/A
01 - 08	Mar 7, 01	Mar 21, 01	Apr 4, 01	Apr 18, 01	May 8, 01	N/A
01 - 09	Mar 21, 01	Apr 4, 01	Apr 18, 01	May 2, 01	May 22, 01	N/A
01 - 10	Apr 4, 01	Apr 18, 01	May 2, 01	May 16, 01	Jun 5, 01	N/A
01 - 11	Apr 25, 01	May 9, 01	May 23, 01	Jun 6, 01	Jun 26, 01	N/A
01 - 12	May 9, 01	May 23, 01	Jun 6, 01	Jun 20, 01	Jul 10, 01	N/A
01 - 13	May 23, 01	Jun 6, 01	Jun 20, 01	Jul 5, 01	Jul 25, 01	N/A
01 - 14	Jun 7, 01	Jun 21, 01	Jul 5, 01	Jul 19, 01	Aug 8, 01	N/A
01 - 15	Jun 20, 01	Jul 5, 01	Jul 18, 01	Aug 1, 01	Aug 21, 01	N/A
01 - 16	Jul 5, 01	Jul 18, 01	Aug 1, 01	Aug 15, 01	Sep 4, 01	N/A
01 - 17	Jul 25, 01	Aug 8, 01	Aug 22, 01	Sep 5, 01	Sep 25, 01	N/A
01 - 18	Aug 8, 01	Aug 22, 01	Sep 5, 01	Sep 19, 01	Oct 9, 01	N/A
01 - 19	Aug 22, 01	Sep 5, 01	Sep 19, 01	Oct 3, 01	Oct 23, 01	N/A
01 - 20	Sep 5, 01	Sep 19, 01	Oct 3, 01	Oct 17, 01	Nov 6, 01	N/A
01 - 21	Sep 26, 01	Oct 10, 01	Oct 24, 01	Nov 7, 01	Nov 27, 01	N/A
01 - 22	Oct 10, 01	Oct 24, 01	Nov 7, 01	Nov 21, 01	Dec 11, 01	N/A
01 - 23	Oct 24, 01	Nov 7, 01	Nov 21, 01	Dec 5, 01	Dec 25, 01	N/A
01 - 24	Nov 7, 01	Nov 21, 01	Dec 5, 01	Dec 19, 01	Jan 8, 02	N/A

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

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

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

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

## **REGULATORY FAIRNESS ACT**

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

### **Small Business Economic Impact Statements (SBEIS)**

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

### **Mitigation**

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

### **When is an SBEIS Required?**

When:

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

### **When is an SBEIS Not Required?**

When:

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

There is less than minor economic impact on business;

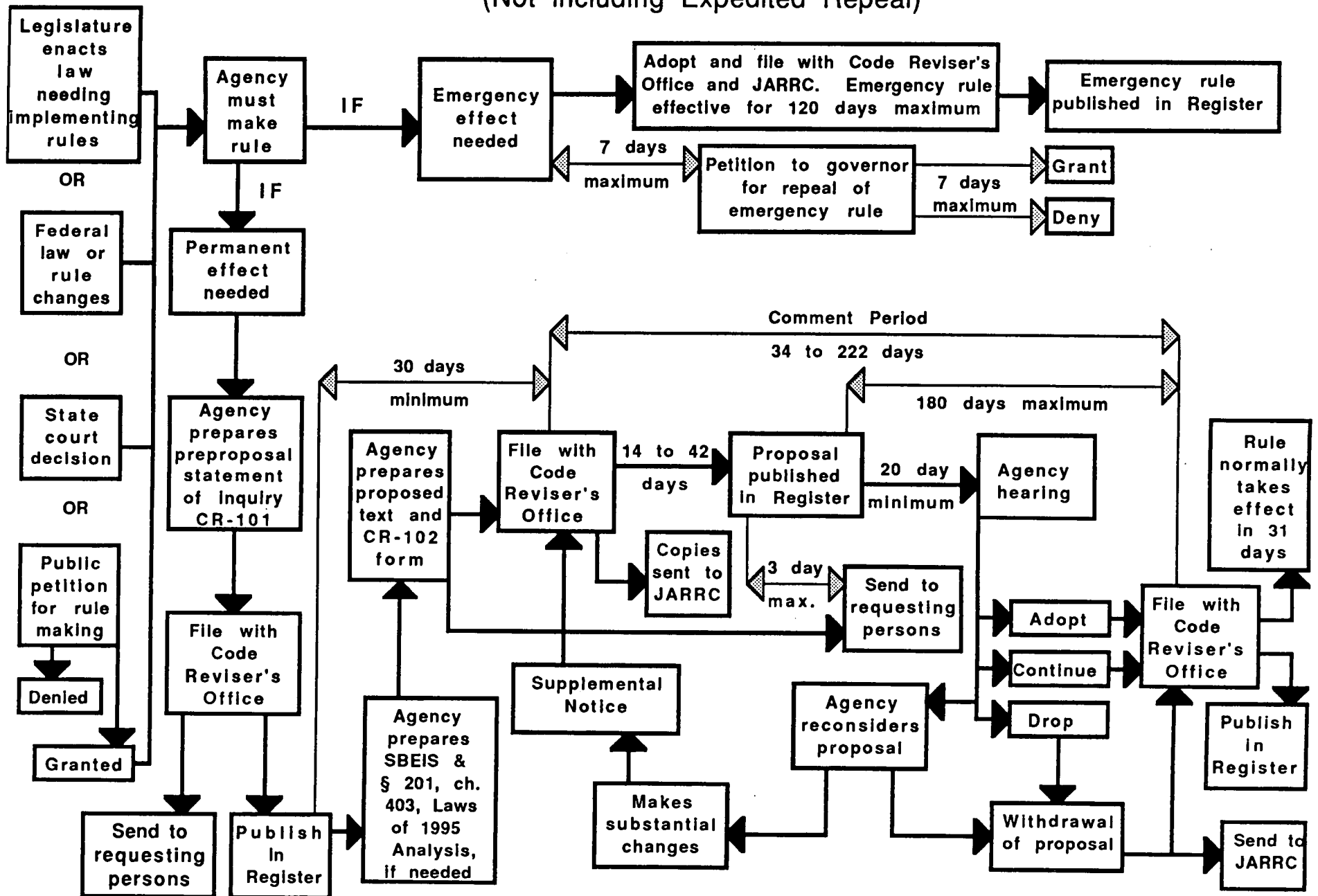
The rule REDUCES costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

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

The rule is pure restatement of state statute.

# RULE-MAKING PROCESS

(Not including Expedited Repeal)



**WSR 01-04-005****PREPROPOSAL STATEMENT OF INQUIRY  
GAMBLING COMMISSION**

[Filed January 25, 2001, 12:46 p.m.]

Subject of Possible Rule Making: Licensing fees.  
Statutes Authorizing the Agency to Adopt Rules on this  
Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and  
What They Might Accomplish: Currently, yearly gambling  
licensing fees in excess of \$1200 can be paid in two install-  
ments, rather than all at once. This change would lower the  
amount.

Other Federal and State Agencies that Regulate this Sub-  
ject and the Process Coordinating the Rule with These Agen-  
cies: None.

Process for Developing New Rule: Negotiated rule  
making.

Interested parties can participate in the decision to adopt  
the new rule and formulation of the proposed rule before pub-  
lication by contacting Ben Bishop, Deputy Director, P.O.  
Box 42400, Olympia, WA 98504-2400, (360) 438-7640; Ed  
Fleisher, Deputy Director, P.O. Box 42400, Olympia, WA  
98504-2400, (360) 438-7654 ext. 307; or Susan Arland,  
Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-  
2400, (360) 438-7654 ext. 374.

Meetings at the Double Tree Hotel - Pasco, 2525 North  
20th Avenue, Pasco, WA 99301, (509) 547-0701, on March  
8 and 9, 2001; at The Heathman Lodge, 7801 N.E. Green-  
wood Drive, Vancouver, WA 98662, (360) 254-3100, on  
April 12 and 13, 2001; and at The Inn at Gig Harbor, 3211  
56th Street N.W., Gig Harbor, WA 98335, (253) 858-1111,  
on May 10 and 11, 2001.

January 26, 2001  
Susan Arland  
Rules Coordinator

**WSR 01-04-008****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF AGRICULTURE**

[Filed January 25, 2001, 1:53 p.m.]

Subject of Possible Rule Making: Amending existing  
rules regarding apiaries (chapter 16-602 WAC).

Statutes Authorizing the Agency to Adopt Rules on this  
Subject: Chapter 15.60 RCW.

Reasons Why Rules on this Subject may be Needed and  
What They Might Accomplish: The authorizing statute for  
these rules, chapter 15.60 RCW, was extensively amended by  
EHB 2995 in the 2000 regular session. It is necessary to  
amend the existing rules to comply with the statutory amend-  
ments, which will be effective June 30, 2001.

Other Federal and State Agencies that Regulate this Sub-  
ject and the Process Coordinating the Rule with These Agen-  
cies: None.

Process for Developing New Rule: Washington State  
Department of Agriculture representatives discuss proposed  
rule changes with the Apiary Advisory Committee member-

ship and with interested stakeholders and then publish the  
proposal.

Interested parties can participate in the decision to adopt  
the new rule and formulation of the proposed rule before pub-  
lication by contacting Clinton Campbell, PhD, Pest Program  
Manager, Washington State Department of Agriculture, Lab-  
oratory Services Division, P.O. Box 42560, Olympia, WA  
98504-2560, phone (360) 902-2071, fax (360) 902-2094, e-  
mail CCampbell@agr.wa.gov.

January 25, 2001  
Mary A. Martin Toohey  
Assistant Director

**WSR 01-04-018****PREPROPOSAL STATEMENT OF INQUIRY  
STATE BOARD OF EDUCATION**

[Filed January 29, 2001, 11:27 a.m.]

Subject of Possible Rule Making: Chapter 180-79A  
WAC, Standards for teacher, administrator, and educational  
staff associate certification.

Statutes Authorizing the Agency to Adopt Rules on this  
Subject: RCW 28A.410.010.

Reasons Why Rules on this Subject may be Needed and  
What They Might Accomplish: To amend WAC 180-79A-  
131 to reflect recent changes in statute.

Process for Developing New Rule: Early solicitation of  
public comments and recommendations respecting new,  
amended or repealed rules, and consideration of the com-  
ments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt  
the new rule and formulation of the proposed rule before pub-  
lication by sending written comments to Rules Coordinator,  
State Board of Education, P.O. Box 47206, Olympia, WA  
98504-7206, fax (360) 586-2357, TDD (360) 664-3631. For  
telephone assistance contact Larry Davis at (360) 753-6715.

January 24, 2001  
Larry Davis  
Executive Director

**WSR 01-04-027****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed January 30, 2001, 4:47 p.m.]

Subject of Possible Rule Making: The Department of  
Retirement Systems will be amending and adding rules to  
implement ESSB 6530 (2000), "An Act Relating to Plans 2  
and 3 of the State Retirement System."

Statutes Authorizing the Agency to Adopt Rules on this  
Subject: RCW 41.40.020, 41.50.050(5); statutes amended or  
added by ESSB 6530 (2000), "An Act Relating to Plans 2  
and 3 of the State Retirement System."

Reasons Why Rules on this Subject may be Needed and  
What They Might Accomplish: The 2000 legislature enacted

ESSB 6530, adding Plan 3 to the Washington Public Employees' Retirement System (PERS). PERS Plan 3 is a split plan with a defined benefit portion and a defined contribution portion. PERS Plan 3 will be implemented in two phases. Phase 1 affects PERS Plan 2 members working for state agency and higher education employers, and begins March 1, 2002. Phase 2 affects PERS 2 members working for local government employers, excluding school districts and Educational Service Districts (ESD) and begins September 1, 2002. These members will have the opportunity to either remain in PERS Plan 2 or transfer into PERS Plan 3 and receive a transfer payment equal to 110% of their accumulated contributions. New employees must make an irrevocable decision to join either PERS Plan 2 or PERS Plan 3. New employees who do not choose will be transferred to Plan 3.

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

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

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

January 26, 2001  
Merry A. Kogut  
Rules Coordinator

**WSR 01-04-028**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
[Filed January 30, 2001, 4:48 p.m.]

Subject of Possible Rule Making: The department proposes amending the dependent care assistance salary reduction plan rules (WAC 415-610-010 through 415-695-040) to put them all into one chapter, and make some minor house-keeping changes such as changing the names of headings to make it easier to find information. In addition, the department proposes amending WAC 415-630-030 to become consistent with a change to the Internal Revenue Service amended Income Tax Regulations (26 C.F.R. Part 1) under section 125 of the Internal Revenue Code. These changes became effective on January 10, 2001.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.40.020, 41.50.050(5), 41.04.600 - 41.04.645, 26 U.S.C. 125, 26 C.F.R. Part 1 (Tax Treatment of Cafeteria Plans).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Excellent customer service dictates that the department's members and staff find information easily, and that the information be clear and comprehensive. Currently, the dependent care WACs are spread through ten WAC chapters and include heading names that do not relate to dependent care. The department believes that the proposed changes help the department's customers and staff by eliminating long searches through many pages of rules for the information they seek. The change to WAC 415-630-030 is needed because the Internal Revenue Service amended Income Tax Regulations (26 C.F.R. Part 1) effective January 10, 2001, and the department seeks to bring the state rule into compliance with the federal change.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Internal Revenue Service regulates this subject. We will work with an IRS consultant on the proposed rule changes.

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

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The Department of Retirement Systems encourages your active participation in the rule-making process. Anyone interested in participating should contact the rules coordinator below. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making, and send a copy to everyone currently on the mailing list and anyone else who requests a copy. For more information on how to participate, please contact Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, Mailstop 48380, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, e-mail merryk@drs.wa.gov, fax (360) 664-3618.

January 26, 2001  
Merry A. Kogut  
Rules Coordinator

**WSR 01-04-040**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**LOTTERY COMMISSION**  
[Filed January 31, 2001, 2:10 p.m.]

Subject of Possible Rule Making: Publishing the probability of purchasing a winning lottery ticket.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.70.040(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The lottery is considering amending WAC 315-06-040 to clarify the publishing of the



probability of purchasing a winning lottery ticket on lottery advertising and other materials.

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

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary Jane Ferguson, Rules Coordinator, at (360) 664-4833, fax (360) 586-6586, P.O. Box 43025, Olympia, WA 98504-3025, with any comments or questions regarding this statement of intent.

January 31, 2001  
Mary Jane Ferguson  
Rules Coordinator

### WSR 01-04-053

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF HEALTH

[Filed February 5, 2001, 10:03 a.m.]

Subject of Possible Rule Making: The department is considering raising the impaired dentist surcharge fee.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.32.0365 and 18.32.534.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: A rule change is needed to allow for an increase to the impaired dentist surcharge fee - a result of 1999 legislation, chapter 179, Laws of 1999. 1999 legislation allowed for an impaired dentist surcharge to be assessed up to \$25. This fee increase will allow the Dental Quality Assurance Commission to contract with a new impaired dentist treatment provider.

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

Process for Developing New Rule: Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by writing (or faxing) comments to Lisa R. Anderson, Program Manager, Dental Quality Assurance Commission, P.O. Box 47867, 1112 S.E. Quince Street, Olympia, WA 98504-7867, phone (360) 236-4863, fax (360) 664-9077.

M. C. Selecky

### WSR 01-04-069

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed February 5, 2001, 4:57 p.m.]

Subject of Possible Rule Making: Chapter 388-448 WAC, Incapacity, consideration is being given to the addi-

tion of work requirements, and making changes in treatment and referral requirements and related rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: These changes are being made to improve program integrity. The addition of work requirements will emphasize employment as an outcome of the program.

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

Process for Developing New Rule: All interested parties are invited to review and provide input on proposed draft language. Obtain draft material by contacting the identified representative.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Carla Gira, Program Manager, Division of Assistance Programs, P.O. Box 45470, Olympia, WA 98504-5470, phone (360) 413-3264, fax (360) 413-3493, e-mail giracg@dshs.wa.gov, Street Address: 1009 College S.E., Lacey, WA 98503.

January 31, 2001  
Bonita H. Jacques, Chief  
Office of Legal Affairs

### WSR 01-04-073

#### PREPROPOSAL STATEMENT OF INQUIRY PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Filed February 6, 2001, 3:32 p.m.]

Subject of Possible Rule Making: Proposed changes to chapters 391-25 and 391-35 WAC concerning petitions for investigation of question concerning representation, and petitions for clarification of bargaining unit.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.58.050, 41.59.110, 41.56.090, 28B.52.-080.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Pursuant to EO 97-02, proposed changes will streamline procedures and codify well-established case precedents concerning confidential employees, supervisors, one-employee units, regular part-time employees, unit determination elections, and interim certifications.

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

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mark S. Downing, Rules Coordinator, P.O. Box 40919, Olympia, WA 98504-0919, phone (360) 753-2955, fax (360) 586-7091, e-mail MDowning@perc.wa.gov. Rules Workshop, Annual Collective Bargaining Con-

ference, on March 7, 2001, at 10:00 a.m., at the Seattle Center, Northwest Rooms, Seattle, Washington.

February 6, 2001  
Marvin L. Schurke  
Executive Director

98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

February 6, 2001  
Paul Trause  
Acting Commissioner

**WSR 01-04-083**

**PREPROPOSAL STATEMENT OF INQUIRY  
EMPLOYMENT SECURITY DEPARTMENT**

[Filed February 7, 2001, 10:32 a.m.]

Subject of Possible Rule Making: Adopting new rules clarifying the availability and job search requirements of individuals who are members of referral unions (those unions that act as referral agents for their members) and receiving unemployment benefits.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 50.12.010 Commissioner's duties and powers, 50.12.040 Rules and regulations, and 50.20.010 Benefit eligibility conditions.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: RCW 50.20.010(3) requires individuals receiving unemployment benefits to seek work "pursuant to customary trade practices" and to be available for work. The department has implemented a series of guidelines regarding requirements for individuals who are members of referral unions, which has resulted in some confusion regarding the eligibility for benefits of union members. To improve predictability and stability in program administration, the department intends to establish regulations in place of the guidelines to clarify when a member of a referral union will be determined to meet the availability and job search requirements, and the conditions under which a cause for doubting an individual's availability for work may be established.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The United States Department of Labor reviews the state's administration of the unemployment insurance program to ensure conformity to federal statutes and regulations. The state has broad flexibility in the implementation of unemployment insurance laws as long as conformity is maintained. The proposed regulations will be shared with USDOL prior to adoption.

Process for Developing New Rule: The department will conduct informal public meetings with interested individuals and stakeholders to gather their input and comments during the development of these regulations.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Persons interested in attending meetings to discuss the proposed regulations should contact Juanita Myers, Rules Coordinator, Unemployment Insurance Division, Employment Security Department, P.O. Box 9046, Olympia, WA

**WSR 01-04-089**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed February 7, 2001, 11:28 a.m.]

Subject of Possible Rule Making: Chapter 296-62 WAC, General occupational health standards.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, [49.17].040, and [49.17].050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: On January 18, 2001, OSHA made changes to its 29 C.F.R. 1910.1030, Bloodborne [Bloodborne] Pathogens Standards. WISHA plans to adopt changes identical to those OSHA recently made.

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

Process for Developing New Rule: The department must adopt rules identical to or at least as effective as OSHA rules as required by the OSHA/WISHA state plant agreement. Parties interested in the formulation of these rules for proposal may contact the individuals listed below. The public may also participate by commenting after amendments are proposed by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jennie Hays, Project Manager, Department of Labor and Industries, WISHA Services Division, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5523, e-mail raws235@lni.wa.gov, fax (360) 920-5529.

February 6, 2001  
Gary Moore  
Director

**WSR 01-04-092**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF AGRICULTURE**

[Filed February 7, 2001, 11:37 a.m.]

Subject of Possible Rule Making: Reinstate grain inspection program rules and fees for inspection services. Adjust the grain inspection program schedule of fees to reflect allowable growth rates for FY 2001 and FY 2002 for selected hourly fees, hourly based unit fees, submitted sample fees and to incorporate a variable export tonnage rate scale at export locations.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 22.09.790.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Due to a clerical error, the fees for the grain inspection program were repealed. RCW 22.09.790 requires the department to recover costs for inspection, weighing and grading of grain. Fees cannot be changed or deleted without federal approval. The fee increase is necessary to offset increases in employer portions of the health benefit package and to address anticipated salary increases in FY 2002 and FY 2003.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The United States Department of Agriculture must approve the fee schedule.

Process for Developing New Rule: Public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Randall R. Deike, Grain Inspection Program Manager, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-1921, fax (360) 902-2085, TDD (360) 902-1996.

February 7, 2001  
Robert W. Gore  
Assistant Director

Process for Developing New Rule: This is at the request of the Washington State Horticulture Associations Grade and Pack Committee. The department will be working with the association, other stakeholders and interested parties in the development of these rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Any comments relating to the development of these rules must be received no later than March 9, 2001. Please direct all comments to: Jim Quigley, Program Manager, Washington State Department of Agriculture, Fruit and Vegetable Inspection Program, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1833, fax (360) 902-2085.

January 22, 2001  
Robert W. Gore  
Assistant Director

### WSR 01-04-093

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed February 7, 2001, 11:37 a.m.]

Subject of Possible Rule Making: Require each apple container to be marked with the harvest year under the following guidelines: The harvest year marking would begin on October 1 of each calendar year, and be applied only to those containers of apples harvested in the previous year. The harvest year marking would be applied prior to or at time of shipment; that the marking will be at least on half inch in height and be displayed on the principal display panel of each container. Establish annual release dates for: Golden Delicious, September 20 of each calendar year; Granny Smith, October 10 of each calendar year.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 15.17 RCW, Standards of grades and packs.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Amendments to existing rules (chapter 16-403 WAC, Standards for apples marketed within the state of Washington, will assist retailers and consumers in identifying previous years apple crop with new crop apples. Establishment of annual release dates for Golden Delicious and Granny Smith apple varieties will eliminate the floating release dates, which was previously established by the Apple Maturity Committee.

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



**NO EXPEDITED REPEALS FILED IN THIS ISSUE**

**EXPEDITED REPEAL**



**WSR 01-04-004****PROPOSED RULES****WENATCHEE VALLEY COLLEGE**

[Filed January 25, 2001, 11:30 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 00-24-025 to 00-24-030.

Title of Rule: Repeal obsolete or outdated rules.

Purpose: Wenatchee Valley College has not maintained its rules for the last several years. We begin the rules process again by repealing those rules that have become obsolete and outdated by time and changes in college policy.

Other Identifying Information: WSR 00-24-025 relates to bylaws of the board of trustees, WSR 00-24-026 relates to practice and procedure, WSR 00-24-027 relates to parking regulations, WSR 00-24-028 relates to general conduct, WSR 00-24-029 relates to environmental protection, and WSR 00-24-030 relates to public records.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Summary: The rules being repealed have not been maintained by the college for several years. References to law and regulations are obsolete in many. While college operational policies have changed, the WACs of the old policies are still in effect. The college will follow repeal with new rule making to replace them where needed.

Reasons Supporting Proposal: The rules need to be kept current with law and college policy.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: William Martin, 1300 5th Street, Wenatchee, WA 98801, (509) 664-2554.

Name of Proponent: Wenatchee Valley College, public.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The repeal of these rules opens the process for codification of accurate rules that reflect current law and practice.

Proposal Changes the Following Existing Rules: Current chapters 132W-104, 132W-108, 132W-116, 132W-120, 132W-135, and 132W-276 WAC will be repealed.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These are internal operational rules for Wenatchee Valley College.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Does not pertain.

Hearing Location: Wenatchee Valley College, Well's Hall 1028, 1300 5th, Wenatchee, WA 98801, on March 13, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Carla Boyd by March 12, 2001, TDD (509) 662-1651, or (509) 664-2549.

Submit Written Comments to: William Martin, Wenatchee Valley College, 1300 5th, Wenatchee, WA 98801, fax (509) 664-2576, by March 9, 2001.

Date of Intended Adoption: March 14, 2001.

February 19, 2001

William M. Martin

Dean of Administrative Service

**WSR 01-04-017****PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed January 29, 2001, 8:34 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 00-07-108.

Title of Rule: Chapter 308-96A WAC, Vehicle licenses, WAC 308-96A-065, 308-96A-066, 308-96A-067, 308-96A-068, 308-96A-070, 308-96A-071, 308-96A-072, 308-96A-073, 308-96A-074, 308-96A-175, 308-96A-176, 308-96A-550, and 308-96A-560.

Purpose: 1. Identify who may apply for specialized plates and what is required to do so.

2. To meet the criteria set forth in Governor Locke's Executive Order 97-02.

Statutory Authority for Adoption: RCW 46.01.110, 46.16.335, 46.16.276.

Summary: WAC 308-96A-065 Personalized license plates (amend), 308-96A-066 Denial or cancellation of personalized license plates—Clarification (repeal), 308-96A-067 Reissuance or reinstatement of personalized license plates—Clarification (repeal), 308-96A-068 Issuance of personalized license plates—Clarification (repeal), 308-96A-070 Amateur radio operator special license plates (amend), 308-96A-071 Military affiliate radio system special license plates (amend), 308-96A-072 Square dancer license plates (amend), 308-96A-073 Vehicles over forty years old—Horseless carriage plates (amend), 308-96A-074 Vehicles over thirty years old—Collector vehicle license plate (amend), 308-96A-175 Ride-sharing vehicles (amend), 308-96A-176 Transportation needs ride-sharing vehicles (amend), 308-96A-177 Replacement of license plates (new), 308-96A-550 Vehicle special collegiate license plates (amend), and 308-96A-560 Special vehicle license plates—Criteria for continued issuance (amend).

Reasons Supporting Proposal: Meet criteria supporting Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: Katherine Iyall Vasquez, 1125 Washington Street S.E., Olympia, (360) 902-3718; Implementation: Deborah McCurley, 1125 Washington Street S.E., Olympia, (360) 902-3754; and Enforcement: Eric Anderson, 1125 Washington Street S.E., Olympia, (360) 902-4045.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The WAC will provide a better understanding of what is needed to qualify and purchase special license plates.

Proposal Changes the Following Existing Rules: Clarify sections needed and repeal those no longer required.

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 an industry.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The content of the proposed rules are explicitly and specifically dictated by statute.

PROPOSED

Hearing Location: Highways-Licenses Building, Conference Room 107, 1125 Washington Street, Olympia, WA 98507, on March 14, 2001, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact Katherine Vasquez by March 13, 2001, TTY (360) 664-8885, or (360) 902-3718.

Submit Written Comments to: Katherine I. Vasquez, Rules Manager, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by March 13, 2001.

Date of Intended Adoption: April 30, 2001.

January 25, 2001

Deborah McCurley, Administrator  
Title and Registration Services

AMENDATORY SECTION (Amending WSR 98-09-024, filed 4/8/98, effective 5/9/98)

**WAC 308-96A-065** (~~(Disposition of)~~) **Personalized license plates.** (~~((1) If the owner(s) of a vehicle displaying personalized license plates sells the vehicle to a wrecker or accepts a total loss claim from his or her insurance company and chooses not to retain the salvage, the owner must either transfer the plates to another vehicle within thirty days or turn the plates in to the department with a notarized release of interest from the owner(s) relinquishing the right to that personalized license plate configuration.~~

~~(2) If the owner(s) of a vehicle with personalized license plates sells, trades or otherwise transfers ownership of the vehicle, he or she may transfer the plates to another vehicle within thirty days; or turn the plates in to the department with a notarized release of interest from the owner(s) relinquishing the right to that personalized license plate configuration; or transfer the plates to a new owner. If the plates are transferred to a new owner, the current owner must provide the new owner with a notarized/certified release of interest for the plates. The new owner must make application to the department within twenty-five days, including payment of the original personalized license plate fee.))~~ **(1) What is a personalized license plate?** Personalized license plates are plates reflecting the registered owner's chosen format or designation and are limited to those described in RCW 46.16.560, 46.16.570 and 46.16.580.

**(2) Are there any restrictions on the use of letters and numbers on personalized license plates?** Personalized license plates may be issued with one to seven characters. Motorcycles and motorcycle trailers can have up to six characters. The letters "I" and "O" and the numbers "1" (one) and "0" (zero) may not be issued as single-digit plates.

**(3) When may the department deny an application for or cancel personalized plates?**

(a) The department may deny an application for personalized license plates or cancel personalized license plates previously issued if it determines the plate configuration to be:

- (i) Offensive to good taste and decency;
- (ii) Potentially misleading;
- (iii) Vulgar, profane or sexually suggestive in nature;
- (iv) A racial, ethnic, lifestyle or gender slur;

(v) Related to alcohol or to illegal activities or substances;

(vi) Blasphemous;

(vii) Derogatory;

(viii) Slanderous;

(ix) A duplication of license plate or decal numbers provided in chapter 46.09, 46.10 or 46.16 RCW; or

(x) Contrary to the department's mission to promote highway safety.

(b) If the personalized license plates are canceled due to one or more reasons specified in subsection (3) of this section, the vehicle owner may:

(i) Apply for a refund for the fee paid under RCW 46.16.585 and 46.16.606 for such license plates; or

(ii) Instead of a refund, apply for and upon approval be issued personalized license plates with a different configuration without payment of additional personalized license plate fees.

(c) The department may cancel personalized license plates if they are:

(i) Not renewed by the owner within forty-five days of the vehicle expiration; or

(ii) Removed from a vehicle and not transferred to a replacement vehicle within thirty days; or

(iii) Transferred to a new owner who does not make proper application for the plates within twenty-five days.

**(4) If my registration for personalized license plates has lapsed, how do I get them reinstated or reissued?**

(a) If you are an owner of a personalized license plate and do not renew it within forty-five days, you must reapply and pay the original personalized license plate fee in order to reinstate the plate.

(b) If you purchase a vehicle with a personalized plate and do not transfer the ownership of the personalized plate within twenty-five days, you forfeit ownership of the plate. The department will make that personalized plate available to the first applicant for that plate configuration.

(c) If you are the owner of a personalized license plate who does not transfer the plate as described in subsection (4)(b) of this section, you must reapply and pay the original personalized license plate fee in order to reinstate the plate.

**(5) Can I transfer my personalized license plate?** Yes, if you are the owner(s) of a vehicle with personalized license plates and sell, trade or otherwise transfer ownership of the vehicle, you may transfer the plates to another vehicle within thirty days; (the personalized license plates may be transferred at any vehicle licensing office or through a vehicle dealer if the owner wishes to transfer a plate to a dealer-purchased vehicle) or transfer the plates to a new owner. If the plates are transferred to a new owner, the current owner must provide the new owner with a notarized/certified release of interest for the plates. The new owner must make application to the department within twenty-five days, including payment of the original personalized license plate fee.

**(6) How do I dispose of my personalized vehicle license plates?**

(a) You may turn the plates in to the department with a notarized release of interest from the owner(s) relinquishing the right to that personalized license plate configuration; or

PROPOSED



(b) If your vehicle has personalized license plates and is sold to a wrecker or you accept a total loss claim from your insurance company and you choose not to retain the salvage, you must either transfer the plates to another vehicle within thirty days or turn the plates in to the department with a notarized release of interest from all registered owner(s) relinquishing the right to that personalized license plate.

(7) Will I ever have to replace my personalized vehicle license plate? Yes, the personalized license plates are subject to the seven-year vehicle license plate replacement schedule.

AMENDATORY SECTION (Amending WSR 98-09-024, filed 4/8/98, effective 5/9/98)

**WAC 308-96A-070 Amateur radio operator special license plates.** ~~((1) Any person having a valid amateur radio operator's license may apply to the department for license plates bearing the official amateur radio call letters assigned by the Federal Communications Commission (F.C.C.). These plates are in lieu of regular issue license plates. The department may issue only one set of these plates at any one time carrying these call letters.~~

~~(2) The amateur radio operator shall attach a copy of his or her current F.C.C. license to the application for these plates. The operator must notify the department when the F.C.C. license is cancelled or expires and whether or not the operator has renewed the license. If the license has been renewed, the operator shall send a copy of the new F.C.C. license to the department. If the F.C.C. license has not been renewed the department may cancel the amateur radio operator license plates.~~

~~(3) The amateur radio operator license plates shall be displayed on a motor vehicle owned by the amateur radio operator unless the plates were issued and assigned to a vehicle prior to January 1, 1991.~~

~~(4) In addition to all other license fees required by law, each applicant for amateur radio operator license plates shall pay an additional license plate fee of five dollars for the plate and an additional five dollars any time the plates are transferred to another vehicle.~~

~~(5) The effective date of the plate cancellation is the date the F.C.C. license becomes invalid. Reinstatement of the plates requires the amateur radio operator to reapply for the plates, providing a copy of the valid F.C.C. license and paying the five dollar fee for a new plate.)~~ **(1) Who may apply for Amateur radio operator vehicle special license plate(s)?** Any person having a valid amateur radio operator's license may apply to the department for license plates bearing the official amateur radio call letters assigned by the Federal Communications Commission (FCC). These plates are in lieu of regular issue license plates. The department will issue only one set of plates at any one time carrying these call letters.

**(2) What documents are required to receive an amateur radio operator vehicle special license plate?** In addition to all other license fees required by law, the amateur radio operator must attach a copy of the current FCC license to the application. The operator must notify the department

when the FCC license is canceled or expires and whether or not the operator has renewed the license. If the license has been renewed, the operator must send a copy of the new FCC license to the department.

**(3) How will the amateur radio operator license plates be displayed?** The amateur radio operator license plates must be displayed on a motor vehicle owned by the amateur radio operator unless the plates were issued and assigned to a vehicle prior to January 1, 1991. Prior to the January 1, 1991, date, the amateur radio operator license plates are allowed to be installed on any motor vehicle qualified under RCW 46.16.305.

**(4) Are there any special fees required to obtain the amateur radio operator license plates?** In addition to all other license fees required by law, each applicant for amateur radio operator license plates must pay an additional license plate fee of five dollars for the plate and an additional five dollars any time the plates are transferred to another vehicle.

**(5) When are the amateur radio operator special license plates canceled?** The effective date of the plate cancellation is the date the FCC license becomes invalid. Reinstatement of the plates requires the amateur radio operator to reapply for the plates, providing a copy of the valid FCC license and paying the five-dollar fee for a new plate.

**(6) Will I ever have to exchange my amateur radio operator special license plates?** Yes, the department has determined that all license plates be replaced on a seven-year vehicle license rotation schedule; however, your amateur radio operator special license plates will be issued with your official call letters and numbers assigned to you by the F.C.C.

AMENDATORY SECTION (Amending WSR 98-09-024, filed 4/8/98, effective 5/9/98)

**WAC 308-96A-071 Military affiliate radio system special license plates.** ~~((1) Any person having a valid Military Affiliate Radio System station license (MARS) may apply to the department for license plates bearing the official MARS call letters assigned by the Department of Defense. These plates are in lieu of regular issue license plates. The department may issue only one set of these plates at any one time carrying these call letters.~~

~~(2) An applicant for MARS license plates shall attach a copy of his or her current official MARS station license authorized by the Department of Defense and issued by the United States Army, Air Force, or Navy/Marine Corps. The recipient of these plates must notify the department when the MARS station license has been cancelled or expires, and whether or not he or she has renewed the license. If the license has been renewed, the MARS station license holder shall send a copy of the new MARS license to the department. If the MARS station license has not been renewed the department may cancel the MARS license plates.~~

~~(3) The MARS license plates shall be displayed on a motor vehicle owned by the MARS station license holder.~~

~~(4) In addition to all other license fees required by law, each applicant for MARS license plates shall pay an additional license plate fee of five dollars for the plate and an~~

additional five dollars any time the plates are transferred to another vehicle.

(5) The effective date of a plate cancellation is the date the MARS station license becomes invalid. Reinstatement of the plates requires the MARS station license holder to reapply for the plates, providing a copy of the valid MARS license and paying the five-dollar fee for a new plate.)) (1) **Who may apply for the military affiliate radio system station special license plates?** Any person having a valid military affiliate radio system (MARS) station license may apply to the department for license plates bearing the official MARS call letters assigned by the Department of Defense. These plates are in lieu of regular issue license plates. The department will issue only one set of plates at any one time carrying these call letters and can only be displayed on a motor vehicle registered to the MARS station license holder.

(2) **Can a MARS special license plate be issued for my motorcycle?** No. Motorcycle license plates accommodate a maximum of six characters. MARS call letters consist of seven characters.

(3) **What documents are required to receive MARS special license plates?** In addition to all other license fees required by law, an applicant for MARS license plates must attach a copy of the current official MARS station license authorized by the Department of Defense and issued by the United States Army, Air Force, or Navy/Marine Corps. The recipient of these plates must notify the department when the MARS station license has been canceled.

(4) **Are there any special fees required to obtain the MARS license plates?** In addition to all other license fees required by law, each applicant for MARS license plates must pay an additional license plate fee of five dollars for the plate and an additional five dollars any time the plates are transferred to another vehicle.

(5) **When are the MARS license plates canceled?** The effective date of a plate cancellation is the date the MARS station license becomes invalid. Reinstatement of the plates requires the MARS station license holder to reapply for the plates, providing a copy of the valid MARS license and paying the five-dollar fee for a new plate.

(6) **Will I ever have to exchange my MARS license plates?** Yes, the department has determined that all license plates be replaced on a seven-year vehicle license rotation schedule; however, your MARS license plates will be issued with your official call letters and numbers assigned to you by the F.C.C.

**AMENDATORY SECTION** (Amending WSR 98-01-151, filed 12/22/97, effective 1/22/98)

**WAC 308-96A-072 Square dancer license plates.** ((1) The registered owner or lessee of a vehicle may apply to the department and receive, in lieu of regular vehicle license plates, special square dancer license plates bearing a symbol of a dancer.

(2) Square dancer license plates may be issued pursuant to RCW 46.16.233 for vehicles required to display two license plates. Vehicles licensed under the provisions of

chapter 46.87 RCW are not eligible for square dancer license plates.

(3) A special license plate fee of thirty-five dollars, in addition to all other appropriate fees and taxes, is collected for each set of square dancer license plates issued through December 31, 1997. The special license plate fee is forty dollars effective with square dancer license plates issued January 1, 1998, and thereafter.)) (1) **Who may apply for square dancer license plates?** The registered owner of a vehicle may apply to the department and receive, in lieu of regular vehicle license plates, special square dancer license plates bearing a symbol of square dancers.

(2) **What vehicles may display square dancer license plates?** Square dancer license plates may be issued for vehicles required to display two license plates under RCW 46.16.233. Vehicles licensed under the provisions of chapter 46.87 RCW are not eligible for square dancer license plates.

(3) **Are special license fees required for square dancer license plates?** A special license plate fee of forty dollars, in addition to all other appropriate fees and taxes, is collected for each set of square dancer license plates issued.

(4) **Will I ever have to exchange my square dancer license plates?** Yes, the department has determined that all license plates be replaced on a seven-year rotation schedule.

**AMENDATORY SECTION** (Amending WSR 98-09-024, filed 4/8/98, effective 5/9/98)

**WAC 308-96A-073 ((Vehicles over forty years old) Antique vehicle—Horseless carriage license plate(s)).**

((1) The owners of any motor vehicle which is:

- (a) At least forty years old; and
- (b) Capable of being operated upon the highway; and
- (c) Currently registered in Washington; and
- (d) Operated primarily as a collector vehicle may apply

to the department for a special horseless carriage license plate to be used in lieu of regular issue license plates. The department, upon approval of application, shall issue a horseless carriage plate for this vehicle.

(2) The horseless carriage license plate must be displayed on the vehicle for which it was issued and must stay with that vehicle upon transfer of ownership of the vehicle. The owner shall display the single plate on the rear of the vehicle.

(3) In addition to all other license fees required by law, the applicant shall pay an additional license fee of thirty-five dollars for this horseless carriage license plate.)) (1) **Who may apply for a horseless carriage license plate?**

(a) The owner(s) of any motor vehicle which is:

- (i) At least forty years old; and
- (ii) Capable of being operated upon the highway; and
- (iii) Currently registered in Washington; and
- (iv) Operated primarily as a collector vehicle may apply

to the department for a special horseless carriage license plate to be used in lieu of regular issue license plates.

(2) **How is a horseless carriage license plate displayed?** The horseless carriage license plate must be displayed on the rear of the vehicle for which it was issued. The

horseless carriage license plate is not transferable to any other motor vehicle, but may stay with that vehicle upon transfer of ownership.

(3) What additional fees are required to obtain a horseless carriage license plate? In addition to all other license fees required by law, the applicant must pay an additional license fee of thirty-five dollars for this horseless carriage license plate.

(4) Will I ever have to replace my horseless carriage license plates? No, the horseless carriage license plates are exempt from the seven-year vehicle license plate replacement schedule.

**AMENDATORY SECTION** (Amending WSR 98-09-024, filed 4/8/98, effective 5/9/98)

**WAC 308-96A-074** (~~Vehicles over thirty years old~~)  
**Antique vehicle—Collector vehicle license plates.** ((+))  
The owners of any motor vehicle which is:

(a) At least thirty years old; and  
(b) Capable of being operated upon the highway; and  
(c) Currently registered in Washington; and  
(d) Operated primarily as a collector vehicle may apply to the department for a special collector vehicle license plate. The department, if satisfied the application is in order, shall issue a collector vehicle license plate for this vehicle.

(2) The collector vehicle license plate must be displayed on the vehicle for which it was issued and must stay with that vehicle upon transfer of ownership of the vehicle. The owner shall display the single plate on the rear of the vehicle.

(3) Instead of a collector vehicle license plate, the owner may be authorized to display a Washington state issued vehicle license plate designated for use in the year of the vehicle's manufacture. This plate must be displayed on the vehicle for which it was issued but may be retained by the owner if the vehicle ownership changes. The owner shall display the single plate on the rear of the vehicle.

(4) In addition to all other license fees required by law, the applicant shall pay an additional license fee of thirty-five dollars for this collector vehicle license plate described in subsections (2) and (3) of this section: (1) What is a collector vehicle license plate? For the purposes of this section a collector vehicle license plate is a special license plate. The plate has Washington printed at the top and the words "Collector Vehicle" to the right of the numbers. The smaller size collector vehicle license plate is available for motorcycles and the owner must conform to the rules under RCW 46.16.307.

(2) What vehicles qualify for a collector vehicle license plate? Any motor vehicle which is:

(a) At least thirty years old; and  
(b) Capable of being operated upon the highway; and  
(c) Currently registered in Washington; and  
(d) Operated primarily as a collector vehicle may be issued a collector vehicle license plate.

(3) How is a collector vehicle license plate to be displayed? The collector vehicle license plate must be displayed on the rear of the vehicle for which it was issued. The collector vehicle license plate is not transferable to any other

motor vehicle, but may stay with that vehicle upon transfer of ownership.

(4) What additional fees are required to obtain a collector vehicle license plate? In addition to all other license fees required by law, the applicant must pay an additional license fee of thirty-five dollars for this collector vehicle license plate.

(5) What is a "restored license plate"? A restored license plate is a Washington state issued license plate designated for use in the year of the vehicle's manufacture. The restored license plate may be used instead of a collector vehicle license plate or horseless carriage license plate. The license plate must be restored to such a condition that it may be identified with its year of issue.

This plate must be displayed on the vehicle for which it was issued and may be retained by the owner if the vehicle ownership changes. The owner must display the single plate on the rear of the vehicle. If the vehicle owner has two identical license plates, the second license plate may be displayed on the front of the vehicle.

(6) What additional fees are required to have a restored license plate assigned to my vehicle? In addition to all other license fees required by law, you must pay an additional license fee of thirty-five dollars for the restored plate to be assigned to your vehicle. At the time a restored plate is assigned to a vehicle, the department may require the certificate of ownership be submitted if that vehicle is not already assigned a title purpose only number.

(7) Will I ever have to replace my collector vehicle license plate? No, the collector vehicle license plates are exempt from the seven-year vehicle license plate replacement schedule.

**AMENDATORY SECTION** (Amending WSR 98-09-024, filed 4/8/98, effective 5/9/98)

**WAC 308-96A-175 Ride-sharing vehicles.** ((+)) The owner of a passenger motor vehicle primarily used as a commute ride-sharing vehicle defined in RCW 46.74.010(1) 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 shall make application on a form approved by the department and pay all fees required pursuant to chapter 46.12 RCW and the special ride-share license plate fee required by RCW 46.16.023. The owner shall 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 shall be a copy of the certification of registration in a commute trip reduction program either with a public transportation agency or a major employer; or

(b) For 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 vehicle is used as a commuter ride-sharing vehicle.

(2) A passenger motor vehicle owned, rented or leased by a government agency may be issued special ride-share

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~~license plates for the vehicle described on the approved ride-sharing application:~~

~~(3) In order to transfer license plates to another vehicle, the owner shall make:~~

~~(a) Application to and receive approval by the department for the replacement passenger motor vehicle; and~~

~~(b) Payment of a five dollar license plate transfer fee and appropriate licensing fees.~~

~~(4) When special ride share license plates are removed from or transferred to another vehicle, the owner shall:~~

~~(a) Purchase replacement license plates; and~~

~~(b) Pay vehicle excise tax for the remaining license registration period for the vehicle.~~

~~(5) When a ride-sharing vehicle is sold or transferred to another person who will continue to use the passenger motor vehicle as a commuter ride-sharing vehicle, the new owner shall:~~

~~(a) Apply for a certificate of ownership under chapter 46.12 RCW;~~

~~(b) Apply for commuter ride-sharing exemption; and~~

~~(c) Pay all required fees and taxes including the special license plate fee.~~

~~(6) Upon application for registration renewal, the owners of nongovernment ride-share plated vehicles shall:~~

~~(a) Recertify that the vehicle is used as a commuter ride-sharing vehicle to continue to be exempt from chapters 82.08, 82.12, and 82.44 RCW; and~~

~~(b) Submit a completed recertification form, approved by the department, including names, addresses, and signatures of current passengers and drivers. 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.)~~

~~(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 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; or~~

~~(b) For 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 vehicle is used as a commuter ride-sharing vehicle.~~

~~(c) A passenger motor vehicle owned, rented or leased by a government agency may be issued special ride-share~~

license plates for the vehicle described on the approved ride-sharing application.

(2) **Can the ride-share license plate be transferred to another vehicle?** To transfer license plates to another vehicle, the owner must make:

(a) Application to and receive approval by the department for the replacement passenger motor vehicle; and

(b) Pay a five dollar license plate transfer fee and any other appropriate licensing fees.

(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 vehicle to another, you must:

(a) Purchase replacement license plates if the vehicle will be operated on public highways; and

(b) Pay applicable RTA excise tax for the remaining license registration period for the vehicle, if the registered owner resides in the RTA taxing district.

(4) **What happens when the ride-share vehicle is sold or transferred to another person?**

(a) When a ride-share 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 that the vehicle is used as a commuter ride-share vehicle to continue to be exempt from chapters 82.08, 82.12, and 82.44 RCW; and

(ii) Submit a completed recertification form, approved by the department, including names, addresses, and signatures of current passengers and drivers. 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.

AMENDATORY SECTION (Amending WSR 98-09-024, filed 4/8/98, effective 5/9/98)

WAC 308-96A-176 **Special transportation needs ((ride-sharing)) for ride-share vehicles.** ((1) Private, non-profit transportation providers furnishing ride-sharing for persons with special transportation needs under chapter 81-66 RCW, may be issued special ride-share license plates under RCW 46.16.023 for passenger motor vehicles. The transportation provider shall make application for special ride-share license plates on a form approved by the department. The application shall include:

~~(a) A copy of the utilities and transportation commission's operating certificate authorizing the organization to operate in this state;~~

~~(b) Payment of all fees required under chapter 46.12 RCW; and~~

~~(c) Payment for the special ride-share license plate fee as provided in RCW 46.16.023.~~

~~(2) For purposes of this section, a passenger motor vehicle is defined as:~~

~~(a) A motor vehicle titled with a use class of PAS, but does not include a motorhome;~~

~~(b) A bus with a seating capacity of fifteen or less including the driver;~~

~~(c) A cutaway, defined as a van or light truck cut off behind the cab, a bus-type body permanently affixed to the frame behind the cab, and a seating capacity of fifteen or less including the driver. A cutaway does not include a motorhome; and~~

~~(d) A modified van, not more than twenty-eight feet in overall length, and a seating capacity of fifteen or less including the driver. A modified van does not include a motorhome.~~

~~(3) When the transportation provider removes the special ride-share license plates or transfers the plates to another vehicle owned by the transportation provider, replacement license plates fee and vehicle excise tax abated for the remaining license registration period for the vehicle, from which exemption is being removed, shall be collected. If the exemption is being removed within thirty-six consecutive months from obtaining the exemption, the full use or sales tax amount originally exempted shall be due and payable to the department of revenue. An application for exemption for the vehicle on which the special license plates are to be transferred must be filed pursuant to subsection (1) of this section with payment of the license plate transfer fee provided in RCW 46.16.023(2).~~

~~(4) Upon application for registration renewal, the transportation provider must recertify that the vehicle is still being used to provide transportation for persons with special transportation needs to continue to be exempt from chapters 82.08 and 82.44 RCW. The department will provide recertification forms to ride-sharing vehicle registered owners for filing with registration renewal applications.))~~ **(1) Who may request application for special transportation needs for ride-share vehicles?** Private, nonprofit transportation providers furnishing ride share for persons with special transportation needs under chapter 81.66 RCW may be issued special ride-share license plates under RCW 46.16.023 for passenger motor vehicles. **The transportation provider must make application for special ride-share license plates on a form approved by the department. The application must include:**

**(a) A copy of the utilities and transportation commission's operating certificate authorizing the organization to operate in this state;**

**(b) Payment of all fees required under chapter 46.12 RCW; and**

**(c) Payment for the special ride-share license plate fee as provided in RCW 46.16.023.**

**(2) What is a passenger motor vehicle?** For purposes of this section, a passenger motor vehicle is defined as:

**(a) A motor vehicle titled with a use class of PAS, but does not include a motor home;**

**(b) A bus with a seating capacity of fifteen or less including the driver;**

**(c) A cutaway, defined as a van or light truck cut off behind the cab, a bus-type body permanently affixed to the frame behind the cab, and a seating capacity of fifteen or less including the driver. A cutaway does not include a motor home; and**

**(d) A modified van, not more than twenty-eight feet in overall length, and a seating capacity of fifteen or less including the driver. A modified van does not include a motor home.**

**(3) What happens when a transportation provider removes the special ride-share license plate or transfers the plate to another vehicle?**

**(a) When the transportation provider removes the special ride-share license plates or transfers the plates to another vehicle owned by the transportation provider, replacement license plate fee, vehicle registration fee and abated RTA vehicle excise tax if necessary must be collected if the vehicle will continue to be operated on public highways. If the exemption is being removed within thirty-six consecutive months from obtaining the exemption, the full use or sales tax amount originally exempted will be due and payable to the department of revenue.**

**(b) If the special license plates are to be transferred to another vehicle, a new application for exemption must be filed as required under subsection (1) of this section with payment of the license plate transfer fee provided in RCW 46.16.023(2).**

**(4) What is required to retain my ride-share exemption when I renew my registration?** When applying for registration renewal, the transportation provider must recertify that the vehicle is being used to provide transportation for persons with special transportation needs to be exempt from chapters 82.08 and 82.44 RCW. The department will provide recertification forms to registered owners of ride-share vehicles for filing with registration renewal applications.

#### NEW SECTION

#### WAC 308-96A-177 Replacement of license plates.

**(1) What license plates are required to be replaced?** Vehicles that have license plates seven years or older that include:

(a) Standard issue;

(b) Collegiate;

(c) HAM/MARS(the department will replace the plates with the same configuration);

(d) Personalized(the department will replace the plates with the same configuration);

(e) Ride share;

(f) Disabled persons;

(g) Disabled veterans;

(h) Pearl Harbor survivors;

(i) Purple heart;

(j) Stadium;

(k) Square dancer;

(l) Consular;

(m) Commercial plates issued to vehicles with a declared gross weight 26,000 pounds and under;

(n) Prisoner of war.

(2) **What license plates are exempt from the replacement requirement?**

(a) Prorated vehicles over 16,000 pounds;

(b) Commercial vehicles with declared gross weight over 26,000 pounds;

(c) Collector vehicle, horseless carriage vehicle and restored plates;

(d) Exempt plates issued to government agencies; and

(e) Medal of honor.

(3) **When are license plates required to be replaced?**

License plates are required to be replaced every seven years. Notification will be included on the renewal notice when it is necessary to replace the license plates for a vehicle.

**AMENDATORY SECTION** (Amending WSR 98-01-151, filed 12/22/97, effective 1/22/98)

**WAC 308-96A-550 Vehicle special collegiate license plates.** ((1) The department shall approve an application for special collegiate license plate series pursuant to RCW 46.16.301 (1)(d), as it existed before amendment by section 5, chapter 291, Laws of 1997, from an institution of higher education after determining the following criteria is satisfied:

(a) The special collegiate license plate lettering and color scheme is compatible with the basic license plate design. The plates shall consist of numbers, letters, or figures or any combination thereof not exceeding seven positions that do not conflict with existing license plates. The plate design must provide at least four positions to accommodate serial numbering. A license plate shall not be approved that may carry connotations offensive to good taste or decency, which may be misleading, vulgar in nature, a racial, ethnic lifestyle or gender slur, related to illegal activities or substances, blasphemous, contrary to the department's mission to promote highway safety, or a duplication of other license plates provided in chapter 46.16 RCW.

(b) The special collegiate license plate is designed so that it can be readily recognized by law enforcement personnel as an official Washington state issued license plate. A collegiate license plate design may not be issued in combination with any other license plate configuration or in lieu of any other special, personalized or exempt license plate.

(c) The special collegiate license plate may be issued to all applicants regardless of the applicant's age, gender, religion, race, color, creed, marital status, national origin, disability, or affiliation with an institution of higher education.

(2) The institution shall provide a design including color and dimension specifications of the requested special collegiate license plate series requested with their application. The department shall approve or disapprove the design based on compatibility with the basic license plate's design. A collegiate license plate series shall not be approved that may carry connotations offensive to good taste or decency or which may be misleading.

(3) When ownership of a vehicle, issued collegiate license plates, is sold, traded, or otherwise transferred, the

owner may relinquish the plates to the new vehicle owner or remove the plates from the vehicle for transfer to a replacement vehicle. If the plates are removed from the vehicle a transfer fee to another vehicle shall be charged as provided in RCW 46.16.316(1). If the registration expiration date for the new vehicle exceeds the old vehicle registration expiration date, an abated fee for the collegiate plate shall be charged at the rate of one twelfth of the annual collegiate plate fee for each exceeding month and partial month. If the new registration expiration date is sooner than the old expiration date, a refund shall not be made for the unexpired registration period.

(4) Upon the loss, defacement, or destruction of one or both collegiate license plates the owner shall make application for new collegiate or other license plate and pay the fees pursuant to RCW 46.16.270. New collegiate license plates shall be issued bearing the next available license plate number.) (1) **What are the criteria for establishing collegiate license plates?** The department must approve an application for special collegiate license plate series from an institution of higher education according to RCW 46.16.324. The following criteria must be satisfied:

(a) The special collegiate license plate lettering and color scheme is compatible with the basic license plate design.

(b) The plates will consist of numbers, letters, or figures or any combination thereof not exceeding seven positions.

(c) The plate series will not conflict with existing license plates.

(d) The plate design must provide at least four positions to accommodate serial numbering.

(e) The plate must not carry connotations offensive to good taste or decency, which may be misleading, vulgar in nature, a racial, ethnic, lifestyle or gender slur, related to illegal activities or substances, blasphemous, contrary to the department's mission to promote highway safety, or a duplication of other license plates provided in chapter 46.16 RCW.

(f) The plate must be designed so that it can be easily recognized by law enforcement personnel as an official Washington state issued license plate. A collegiate license plate design may not be issued in combination with any other license plate configuration including special, personalized or exempt license plate(s).

(2) **How is the design for a collegiate plate determined?** The institution of higher education must provide a design including color and dimension specifications of the logo requested on the special collegiate license plate series with their application. The design must be approved by the department based on compatibility with the basic license plate design.

(3) **Who may apply for the special collegiate license plate?** Upon receipt of all applicable fees, the special collegiate license plate will be issued to the registered owner of the vehicle regardless of the applicant's age, gender, religion, race, color, creed, marital status, national origin, disability, or affiliation with an institution of higher education.

(4) **When ownership of a vehicle issued collegiate license plates is sold, traded, or otherwise transferred, what happens to the plates?** The owner may relinquish the plates to the new vehicle owner or remove the plates from the

vehicle for transfer to a replacement vehicle. If the plates are removed from the vehicle, a transfer fee to another vehicle shall be charged as provided in RCW 46.16.316(1).

**(5) Will any new fees be charged when the collegiate license plates are sold, traded, or otherwise transferred? If the registration expiration date for the new vehicle exceeds the old vehicle registration expiration date, an abated fee for the collegiate plate will be charged at the rate of one-twelfth of the annual collegiate plate fee for each exceeding month and partial month. If the new registration expiration date is sooner than the old expiration date, a refund will not be made for the remaining registration period.**

**(6) Will I be able to obtain the same license plate number if my plate is lost, defaced, or destroyed? Upon the loss, defacement, or destruction of one or both collegiate license plates, the owner will make application for new collegiate or other license plates and pay the fees described in RCW 46.16.270. New collegiate license plates will be issued bearing the next available license plate number.**

**(7) Will I ever have to replace my collegiate license plate? Yes, the collegiate license plates are subject to the seven-year vehicle license plate replacement schedule.**

**AMENDATORY SECTION** (Amending WSR 98-01-151, filed 12/22/97, effective 1/22/98)

**WAC 308-96A-560 Special vehicle license plates—Criteria for continued issuance. What criteria are used to discontinue issuing special vehicle license plates?** Except those license plates issued under RCW 46.16.301, 46.16.305 and 46.16.324 the department may discontinue issuing special vehicle license plates after determining that less than five hundred special license plates in the approved configuration are purchased annually and no less than one thousand five hundred special license plates are purchased in any continuous three-year period.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 308-96A-066 Denial or cancellation of personalized license plates.
- WAC 308-96A-067 Reissuance or reinstatement of personalized license plates.
- WAC 308-96A-068 Issuance of personalized license plates.

**WSR 01-04-019  
PROPOSED RULES  
STATE BOARD OF EDUCATION**

[Filed January 29, 2001, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-15-102 and 00-15-100.

Title of Rule: WAC 180-78A-535 Approval standard—Program design, 180-79A-145 Levels of certificates, initial/residency and continuing/professional, 180-79A-250 Initial/residency and continuing/professional certificates, renewal, reinstatement and continuing education requirements, and 180-85-075 Continuing education requirement.

Purpose: These amendments would allow for the possession of a valid certificate issued by the National Board for Professional Teaching Standards (NBPTS) to qualify an individual for maintaining or renewing the continuing/professional teacher's certificate.

Statutory Authority for Adoption: RCW 28A.410.010.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: North Thurston School District, Boardroom, 305 College Street N.E., Lacey, WA 98516-5390, on March 28, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Laura Moore by March 14, 2001, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by March 14, 2001.

Date of Intended Adoption: March 30, 2001.

January 26, 2001

Larry Davis  
Executive Director

**AMENDATORY SECTION** (Amending WSR 00-18-062, filed 9/1/00, effective 10/2/00)

**WAC 180-78A-535 Approval standard—Program design.** The following requirements shall govern the design of the professional certificate program:

(1) To be eligible to apply for admission to a professional certificate program, a candidate shall hold a contract as a teacher in a public or a state board of education approved private school and shall have completed provisional status with a school district under RCW 28A.405.220 or the equivalent with an approved private school: Provided, That a candidate for the professional teacher's certificate may enroll in and complete the preassessment seminar described in subsec-

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tion (4)(a) of this section prior to admission to a professional certificate program.

(2) The professional certificate program must be available to all qualified candidates.

(3) Using the set of common performance indicators as approved by the state board of education and published by the office of the superintendent of public instruction, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(4) Each program shall consist of:

(a) A preassessment seminar which considers input from the candidate's "professional growth team" (WAC 180-78A-505), the candidate's past experience, the context in which he/she teaches, information from past annual evaluations if the individual chooses, the candidate's personal and professional goals, his/her self-evaluation, and evidences of the candidate's impact on student learning.

The seminar will culminate in preparation and approval of the candidate's individual professional growth plan designed to provide the candidate with the knowledge and skills needed to demonstrate successfully the standards and criteria required by WAC 180-78A-540.

A representative of the college/university and the candidate shall develop the professional growth plan to be reviewed and agreed upon after input from and consultation and "collaboration" (WAC 180-78A-010(9)) with his/her "professional growth team" (WAC 180-78A-010(10)).

The individual professional growth plan shall be based on:

(i) An analysis of the instructional context and teaching assignment(s) to determine strategies which the teacher should use to achieve a positive impact on student learning.

(ii) An assessment of the candidate's ability to demonstrate successfully the professional certificate standards and criteria.

(iii) Specifications of assistance and instructional components needed and any required course work.

(b) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required state-wide as essential to "effective teaching" as defined in WAC 180-78A-540(1).

(c) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required state-wide as essential to "professional development" as defined in WAC 180-78A-540(2).

(d) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required state-wide as essential to "leadership" as defined in WAC 180-78A-540(3).

(e) A culminating seminar in which the candidate presents his/her final documentation and evidence of profes-

sional certificate level knowledge, skill and performance; positive impact on student learning; identification of future goals and professional/career interests; and specification of areas for continuing education and development. The candidate must provide multiple forms of evidence which shall include, but are not limited to, the set of common performance indicators as approved by the state board of education and published by the office of the superintendent of public instruction.

(5) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for appropriate assistance and instruction.

(6) No limits shall be placed on the number of times a candidate with a valid residency certificate may participate in the culminating seminar.

**AMENDATORY SECTION** (Amending WSR 00-03-048, filed 1/14/00, effective 2/14/00)

**WAC 180-79A-145 Levels of certificates, initial/residency and continuing/professional.** Two levels of certification may be issued.

(1) Through August 31, 2000, for teachers, and through August 31, 2004, for administrators and educational staff associates, the following levels of certificates will be issued: Provided, That after August 31, 2000, initial and continuing teachers' certificates will be issued only to previous Washington certificate holders, pursuant to WAC 180-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 180-79A-250 and 180-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 180-79A-250(3).

(2) The following levels of certificates will be issued to teachers, administrators, and educational staff associates commencing with the dates indicated below:

(a) Residency certificate. The residency certificate will be issued beginning September 1, 2000, to teachers and beginning no later than September 1, 2004, to administrators and educational staff associates. The residency certificate is valid for five years and shall be subject to renewal pursuant to WAC 180-79A-250.

(b) Professional certificate. The professional certificate will be issued beginning September 1, 2001, to teachers and beginning no later than September 1, 2004, to administrators and educational staff associates. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 180-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 180-79A-257 (3)(b) or 180-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.



(3) Notwithstanding anything in subsections (1) and (2) of this section to the contrary, a professional teachers' certificate may be issued prior to August 31, 2000, pursuant to WAC 180-78A-555.

**AMENDATORY SECTION** (Amending WSR 00-03-048, filed 1/14/00, effective 2/14/00)

**WAC 180-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements.** The following shall apply to initial/residency and continuing/professional certificates issued pursuant to this chapter:

(1) Initial certificate.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 180-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 180-79A-123 will apply.

(2) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Individuals who hold, or have held, a residency certificate and ~~((are enrolled in a professional certificate program))~~ who qualify for admission to a professional certificate program pursuant to WAC 180-78A-535(1) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in and is making satisfactory progress in a state approved professional certificate program.

(b) Individuals who hold, or have held, residency certificates who ~~((have not completed provisional status with a school district or equivalent service with an approved private school in Washington))~~ do not qualify for admission to a professional certificate program pursuant to WAC 180-78A-535(1) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(c) All other individuals who hold, or have held, residency certificates may have their certificates renewed only by appeal to the state board of education, or its designated appeals committee. The following conditions apply to such appeals:

(i) Teachers who appeal shall present a rationale and evidence to support their request to have their residency certificates renewed.

(ii) The state board of education, or its designated appeals committee, in making its decision shall determine the length of the renewal and may establish specific conditions (such as course work requirements) as prerequisites for the reissuance of the residency certificate.

(3) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 180-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement specified in chapter 180-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 180-85 WAC and must meet the conditions stated in WAC 180-79A-253.

(4) Professional certificate. A professional certificate may be renewed for additional five year periods ~~((pursuant to meeting continuing education requirements outlined in chapter 180-85 WAC))~~ by the completion of one hundred fifty continuing education credit hours as defined in chapter 180-85 WAC since the certificate was issued. All continuing education credit hours shall relate to either (a) or (b) of this subsection: Provided, That both categories (a) and (b) must be represented in the one hundred fifty continuing education credit hours required for renewal:

(a) One or more of the following three standards outlined in WAC 180-78A-540:

(i) Effective instruction.

(ii) Leadership.

(iii) Professional development.

(b) One of the salary criteria specified in RCW 28A.415.023.

(i) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;

(ii) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(iii) Is necessary to obtain an endorsement as prescribed by the state board of education;

(iv) Is specifically required to obtain advanced levels of certification; or

(v) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(5) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

AMENDATORY SECTION (Amending WSR 99-14-010, filed 6/24/99, effective 7/25/99)

**WAC 180-85-075 Continuing education requirement.** Continuing education requirements are as follows:

(1) Each holder of a continuing or a standard certificate affected by this chapter shall be required to complete during a five-year period one hundred fifty continuing education credit hours, as defined in WAC 180-85-030, prior to his or her first lapse date and during each five-year period between subsequent lapse dates as calculated in WAC 180-85-100.

(2) ~~(Each holder of a valid professional certificate shall be required to complete one hundred fifty continuing education credit hours, as defined in WAC 180-85-030, since the certificate was issued in order to renew. All continuing education credit hours shall relate to either (a) or (b) of this subsection. Provided, That both categories (a) and (b) must be represented in the one hundred fifty continuing education credit hours required for renewal:~~

~~(a) One or more of the following three standards outlined in WAC 180-78A-540:~~

~~(i) Effective instruction.~~

~~(ii) Leadership.~~

~~(iii) Professional development.~~

~~(b) One of the salary criteria specified in RCW 28A.415.023.~~

~~(i) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;~~

~~(ii) Pertains to the individual's current assignment or expected assignment for the subsequent school year;~~

~~(iii) Is necessary to obtain an endorsement as prescribed by the state board of education;~~

~~(iv) Is specifically required to obtain advanced levels of certification; or~~

~~(v) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.)~~ Provided, That each holder of a continuing or a standard certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching standards in lieu of the completion of the continuing education credit hours required by subsection (1) of this section.

## WSR 01-04-022

### PROPOSED RULES

#### STATE BOARD OF EDUCATION

[Filed January 29, 2001, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-24-120.

Title of Rule: WAC 180-79A-155 Good moral character and personal fitness—Necessary supporting evidence by applicants.

Purpose: The proposed amendment would state that the Superintendent of Public Instruction will determine the status of certificates held by applicants from other states, but does not specify the exact method of this determination.

Statutory Authority for Adoption: RCW 28A.410.010.

Summary: See above.

Reasons Supporting Proposal: The method currently specified in the WAC is outdated.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, (360) 753-6715.

Name of Proponent: State Board of Education, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

RCW 34.05.328 does not apply to this rule adoption. Not applicable.

Hearing Location: North Thurston School District, Boardroom, 305 College Street N.E., Lacey, WA 98516-5309, on March 28, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Laura Moore by March 14, 2001, TDD (360) 664-3631, or (360) 753-6715.

Submit Written Comments to: Rules Coordinator, State Board of Education, P.O. Box 47206, Olympia, WA 98504-7206, fax (360) 586-2357, by March 14, 2001.

Date of Intended Adoption: March 30, 2001.

January 26, 2001

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 99-23-023, filed 11/9/99, effective 12/10/99)

**WAC 180-79A-155 Good moral character and personal fitness—Necessary supporting evidence by applicants.** All applicants for certification shall submit the following:

(1) An affidavit from the applicant indicating that he or she has not been convicted of any crime or a complete disclosure of all arrests and subsequent dispositions of such arrests. In the event of a conviction for any arrest, the applicant shall state reasons why such conviction does not reflect adversely on the requirement to possess good moral character and be personally fit.

(2) An affidavit from the applicant that he or she has no history of serious behavioral problems or a complete disclosure of the nature and status of all such problems, including the names and addresses of health practitioners who have treated the applicant within the past ten years and an executed consent form permitting the superintendent of public instruction to contact and consult with such health practitioners and

for such health practitioners to fully disclose medical information related to such behavioral problems.

(3) An affidavit from the dean of the college or school of education or one or more officials designated by such dean, or, if none, by the college or university president, where the applicant completed his or her approved preparation program, that indicates that a designated college or university official has contacted several faculty members who personally know or knew the applicant and has no knowledge of any relevant information related to the applicant's character or fitness that would adversely affect the applicant's ability to serve in a certificated role or a statement from such affiant of the reasons why it is not possible to make such an affidavit.

(4) If the affidavit described in subsection (3) of this section is impossible or impractical to obtain, the applicant shall submit to the superintendent of public instruction the following:

(a) A statement as to why it is impossible or impractical to secure the affidavit required by subsection (3) of this section;

(b) A complete employment history, including the names, addresses, and phone numbers of the immediate supervisor of such applicant when an employee; and

(c) The names, addresses, and phone numbers of three character references who are not related to the applicant.

(5) If the applicant holds or has held a certificate in any other state, such applicant shall prepare one of the following affidavits for each such state:

(a) An affidavit that such certificate has not been suspended, surrendered, or revoked. ~~((Such affidavit shall be forwarded to the licensing agency in such state with a request that such affidavit be verified and forwarded directly to the superintendent of public instruction.))~~ The superintendent of public instruction shall determine the status of certificates held by applicants in any other state to find if such certificates have been suspended, surrendered or revoked.

(b) An affidavit which shall fully disclose the reasons for the suspension, surrender, or revocation of the certificate. Such affidavit shall be submitted directly to the superintendent of public instruction.

#### WSR 01-04-024

##### WITHDRAWAL OF PROPOSED RULES STATE BOARD OF EDUCATION

[Filed January 30, 2001, 11:53 a.m.]

WAC 180-57-005, 180-57-010, 180-57-020, 180-57-030, 180-57-040, 180-57-050, 180-57-055 and 180-57-080, proposed by the State Board of Education in WSR 00-15-094 appearing in issue 00-15 of the State Register, which was distributed on August 2, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 01-04-025

##### WITHDRAWAL OF PROPOSED RULES STATE BOARD OF EDUCATION

[Filed January 30, 2001, 11:54 a.m.]

WAC 180-51-075, proposed by the State Board of Education in WSR 00-15-095 appearing in issue 00-15 of the State Register, which was distributed on August 2, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 01-04-033

##### PROPOSED RULES WASHINGTON CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

[Filed January 31, 2001, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-20-074.

Title of Rule: Draft Title 183 WAC, public records and public hearing procedures.

Purpose: Implement the Public Disclosure Act and the Open Public Meetings Act by (1) advising the public about how to obtain public records from the Washington Citizens' Commission on Salaries for Elected Officials, and (2) providing the public with basic information about how the Washington Citizens' Commission on Salaries for Elected Officials will conduct public hearings.

Statutory Authority for Adoption: Chapter 34.05 RCW (including RCW 34.05.010(16) and 34.05.220), chapter 42.17 RCW (including RCW 42.17.250(1), 42.17.260, 42.17.290, 42.17.300, 42.17.320), chapter 42.30 RCW.

Statute Being Implemented: Same as Statutory Authority for Adoption.

Summary: The proposed public records rules state the rules' purpose (WAC 183-04-010); provide definitions (WAC 183-04-020); describe the salary commission's organization, operations and procedures (WAC 183-04-030); describe where and when public records may be obtained (WAC 183-04-040); identify the rules that are available (WAC 183-04-050); identify the public records officer (WAC 183-04-060); identify how records are to be requested (WAC 183-04-070); discuss copying and fees (WAC 183-04-080); discuss disclosure procedures (WAC 183-04-090); discuss review of denials of requests (WAC 183-04-100); and describe the records index (WAC 183-04-110). The proposed hearings rules provide definitions (WAC 183-06-010); discuss the nature of the salary commission's meetings (WAC 183-06-020); and provide information on how the salary commission conducts meetings (WAC 183-06-030).

Reasons Supporting Proposal: Draft rules are being submitted for public review in accordance with commission action on January 24, 2001, to provide useful information to

PROPOSED

the public about how to obtain records and how the salary commission will conduct public hearings.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carol Sayer, Salary Commission, (360) 407-0785.

Name of Proponent: Washington Citizens' Commission on Salaries for Elected Officials, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Implement the Public Disclosure Act and the Open Public Meetings Act.

Provide useful information to the public about how to obtain records and how the salary commission will conduct public hearings.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Red Lion Hotel, 221 North Lincoln Street, Port Angeles, WA, on April 10, 2001, at 7:00 p.m.

Assistance for Persons with Disabilities: Contact Carol Sayer by April 2, 2001, (360) 407-0785.

Submit Written Comments to: Carol Sayer, Executive Director, fax (360) 407-0787, by March 30, 2001.

Date of Intended Adoption: April 10, 2001.

January 31, 2001

Carol Sayer

Executive Director

## Title 183 WAC

### WASHINGTON CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

#### Chapter 183-04 WAC

#### PUBLIC RECORDS

#### NEW SECTION

**WAC 183-04-010 Purpose.** The purpose of this chapter is to implement the public records provisions of chapter 42.17 RCW.

#### NEW SECTION

**WAC 183-04-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Commission" means the Washington citizens' commission on salaries for elected officials. Where appropriate, the term "commission" also refers to the staff and employees of the commission.

(2) "Executive director" means the executive director of the commission.

(3) As used in this chapter:

(a) Citations to state statutes and regulations include such laws as now or hereafter amended.

(b) The singular shall take the plural and either gender, the other, as the context requires.

#### NEW SECTION

**WAC 183-04-030 Description of organization, operations, and procedures.** A description of the commission's organization and the general course and method by which the commission's operations are channeled and determined, along with the nature and requirements of all formal and informal procedures are summarized as follows:

(1) The commission is a state agency authorized by Article 28, section 1 of the state Constitution and created in chapter 43.03 RCW. The commission studies and establishes salaries for the:

(a) Governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and insurance commissioner;

(b) Members of the legislature; and

(c) Justices of the supreme court, and judges of the courts of appeals, superior courts, and district courts.

(2) The commission's authority and duties are described in Article 28, section 1 of the state Constitution and in chapter 43.03 RCW.

(3) Membership on the commission is described in RCW 43.03.305. The commission may delegate certain duties to subordinates but remains responsible for the official acts of staff and employees.

(4) The commission's office is located at: 5707 Lacey Blvd. S.E., Suite 106; Lacey, Washington. The commission's telephone number is (360) 407-0785. The commission's FAX number is (360) 407-0787. The commission's website is at [www.salaries.wa.gov](http://www.salaries.wa.gov) and e-mails may be sent to the commission by accessing that site. The commission shall accept public records requests only at the locations and through the means described in WAC 183-04-040.

(5) The commission has an executive director who, as the chief executive officer of the commission, is delegated authority over matters affecting the operation of the commission.

(6) As needed, the commission may also have additional staff and employees.

(7) The commission conducts its meetings in compliance with the Open Public Meetings Act, chapter 42.30 RCW and chapter 183-06 WAC.

(8) The commission's generally applicable statements of procedure are adopted as authorized by law and contained in Title 183 WAC.

#### NEW SECTION

**WAC 183-04-040 Where and when public records may be obtained.** (1) The commission's office is not open on a full-time year-round basis. The public can find out the commission's hours of operation by contacting the commission's general mailing address, telephone number, or website address identified in WAC 183-04-030.

(2) The public may nevertheless obtain public records year-round, as follows:

(a) Mail. The public may mail public records requests to the commission at any time, regardless of whether the office is open or not. When the office is closed, the commission makes arrangements for such requests to be handled. Requests by mail shall be addressed to the commission's mailing address: The Washington Citizens' Commission on Salaries for Elected Officials, c/o Public Records Officer, P.O. Box 43120; Olympia, WA 98504-3120. The front of the envelope shall conspicuously state: "Public Records Request."

(b) E-mail. When the commission's office is open, the commission will accept public disclosure requests by e-mail. E-mail requests shall be sent to the commission by accessing the commission's website at [www.salaries.wa.gov](http://www.salaries.wa.gov) and following the instructions for e-mail. E-mail requests shall contain the subject line "Public Records Request."

(c) FAX. When the commission's office is open, the commission will accept public disclosure requests by FAX. FAX requests shall be addressed to "The Washington Citizens' Commission on Salaries for Elected Officials, c/o Public Records Officer" with the subject line "Public Records Request" and sent to (360) 407-0787.

(d) In person. In person requests shall be made during the hours identified in WAC 183-04-050. When the commission's office is open, requests may be made in person at the commission's office. When the commission's office is closed, requests may be made in person at the Office of Financial Management, 6639 Capitol Blvd., Tumwater, Washington. FAX requests shall be addressed to "The Washington Citizens' Commission on Salaries for Elected Officials, c/o Public Records Officer" with the subject line "Public Records Request" and sent to the office of financial management (360) 664-3423.

(e) Telephone. Requests may not be made by telephone.

#### NEW SECTION

**WAC 183-04-050 Public records available.** (1) The public may obtain public records of the commission under these rules, in accordance with chapter 42.17 RCW, and except as otherwise provided by law.

(2) Public records are available for public inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m. Monday through Friday, excluding legal holidays (unless the requesting party and the commission agree on a different time) as described in WAC 183-04-040.

#### NEW SECTION

**WAC 183-04-060 Public records officer.** The commission shall designate a public records officer to have charge of its public records. The public records officer shall be responsible for implementing the commission's public disclosure rules and for coordinating staff and employees in this regard. The public records officer may choose such designees as may be appropriate.

#### NEW SECTION

**WAC 183-04-070 Requests for public records.** Chapter 42.17 RCW requires the commission to prevent invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions and unreasonable disruptions of operations. Accordingly, the public may inspect, copy, or obtain copies of public records upon compliance with the following procedures:

(1) A member of the public who seeks a public record shall make a written request. No particular form of writing is required so long as the request complies with WAC 183-04-040 and contains the following additional information:

(a) The name, mailing address, and telephone number of the person requesting the record.

(b) The calendar date on which the request is made.

(c) Identification of the record requested with sufficient particularity that the commission can identify the requested record and make it available. Such identifying information might include the title, subject matter, and date of the record.

(d) A signed statement that the records will not be used for commercial purposes if a list of individuals is being requested, or for any other use prohibited by law.

(2) To facilitate processing the request, the person requesting the record may also include:

(a) Either a FAX number or an e-mail address, or both.

(b) A reference to the record as it is described in the current public record index maintained by the commission.

(3) The public may make written public records requests to the commission, by mail, by FAX, or by e-mail in accordance with WAC 183-04-040. Members of the public making public records requests in person who have not reduced their request to writing shall be asked to complete a short form with the needed information. The purpose of requiring written requests is to assist the commission in tracking, managing, and responding to requests in a timely and orderly fashion.

(4) The commission shall assist persons making public records requests to appropriately identify the public records being sought. The commission may ask the requesting party to clarify what information is being sought.

#### NEW SECTION

**WAC 183-04-080 Copying and fees.** (1) Copying.

(a) The commission shall make copies on the commission's copy equipment when doing so will not unreasonably disrupt the operations of the commission or cause excessive interference with other essential functions.

(b) Persons requesting public records may use their own copying equipment and paper without charge when the use of such equipment does not cause damage or disorganization to the public records, unreasonably impede the operations of the commission or cause excessive interference with other essential functions. The commission may supervise such copying at all times.

(2) Fees.

PROPOSED

## Chapter 183-06 WAC

## PUBLIC HEARING PROCEDURES

(a) The commission shall not charge a fee for locating documents, for making them available, or for inspection of public records by the public.

(b) The commission may impose a reasonable fee for providing copies of public records, for use of the commission's equipment, and for mailing costs, postage, delivery costs, and other costs directly incident to copying the records. The commission shall not charge fees that exceed the amount necessary to reimburse the commission for its actual costs.

(c) The commission shall not provide copies to requesting parties unless associated fees have been paid in full by cash, check, or money order. To ensure that copies requested and made are actually paid for, the commission may require payment prior to making the copies.

(d) The commission may agree to provide copies without fee to federal, state, local, or tribal governments, or to others, when doing so is in the best interest of the commission.

NEW SECTION

**WAC 183-04-090 Disclosure procedure.** (1) The commission shall review the requested public records prior to disclosure.

(2) If the records do not contain materials exempt from public disclosure, the commission shall disclose the records.

(3) If the records contain materials exempt from public disclosure, the commission shall deny disclosure of the exempt materials and disclose any remaining, nonexempt materials. At the time of the denial, the commission shall clearly specify in writing the reasons for the denial, including a statement of the specific exemptions or reason for denial of disclosure.

NEW SECTION

**WAC 183-04-100 Review of denials of requests for public records.** For the purpose of judicial review, final agency action is deemed to have occurred at the end of the second business day after the requesting party receives notification of a denial of inspection.

NEW SECTION

**WAC 183-04-110 Records index.** (1) Availability. The commission shall maintain and make available for public inspection and copying an index that provides identifying information for public records falling within the requirements of RCW 42.17.260.

(2) Form and content. The index shall be maintained in electronic form with copies available on paper. The index shall contain topic and subtopic headings.

(3) Location and availability. The index shall be available to the public under the same rules and on the same conditions as are applied to other public records.

(4) Schedule for revisions and updates. The commission will revise and update the index biennially.

NEW SECTION

**WAC 183-06-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Chair" means the chair of the commission.

(2) "Commission" means the Washington citizens' commission on salaries for elected officials. Where appropriate, the term "commission" also refers to the staff and employees of the commission.

(3) "Executive director" means the executive director of the commission.

(4) As used in this chapter:

(a) Citations to state statutes and regulations include such laws as now or hereafter amended.

(b) The singular shall take the plural and either gender, the other, as the context requires.

NEW SECTION

**WAC 183-06-020 Meetings.** (1) Other than executive sessions, the commission's regular meetings, special meetings, and emergency meetings are open to the general public.

(2) Regular meetings. In conformance with the requirement of RCW 43.03.310 that the commission schedule at least four public hearings to take public testimony on its proposed salary schedule, the commission shall schedule such hearings by majority vote. The public hearings so scheduled shall be "regular meetings" as defined by RCW 42.30.075. The commission shall fix the time and place of these public hearings and publish a schedule in the *Washington State Register*, in accordance with chapter 42.30 RCW, the Open Public Meetings Act.

(3) Special meetings. The chair or a majority of commission members may call a special meeting at any time in accordance with RCW 42.30.080. In addition, the time and place of special meetings scheduled at the same time that the regular meetings described in subsection (1) of this section are scheduled will also be published in the *Washington State Register*.

(4) Executive sessions. The chair or a majority of commission members may call an executive session at any time in accordance with RCW 42.30.110.

(5) The presence of any eight members of the commission shall constitute a quorum.

(6) The commission shall maintain records of proceedings as minutes of the meetings, duly recorded, and maintained at the commission's office.

NEW SECTION

**WAC 183-06-030 Conduct of meetings and order of business.** (1) All commission meeting business shall be transacted by motion. Motions may be made by any commission member and shall require a second.

**WSR 01-04-048**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed February 1, 2001, 4:19 p.m.]

(2) Voting on all motions shall be by voice vote unless a division is called for in which case the executive director shall call the role in alphabetical order and record the vote of each member present, "yea" or "nay."

(3) The order of commission meeting business shall be conducted as prescribed by the agenda.

(4) The executive director shall prepare each meeting's agenda in consultation with the chair.

(5) The commission shall approve the minutes of the preceding meeting as the first act of each meeting.

(6) The chair or any commission member may modify a meeting's agenda by motion.

(7) Public hearings. The commission seeks to foster public comment on proposed salary schedules through its public hearing process. The commission will, whenever possible, allow any person an opportunity to present written or oral testimony at its public hearings, upon compliance with reasonable procedures. Such procedures include, but may not be limited to, the following:

(a) Those wishing to present oral testimony shall sign the public testimony roster. The commission will call for public comments in the order appearing on the roster. Elected officials and expert witnesses may be scheduled first because their testimony may help answer pending questions from the public.

(b) To ensure that everyone attending the hearing can hear all oral testimony and questions, commenters shall speak using the microphone provided for the public, after being recognized by the presiding member of the commission. The presiding member of the commission is generally the chair.

(c) Oral testimony and questions should be addressed to the presiding member of the commission.

(d) Because the commission wants to hear from as many people as possible, the commission may place reasonable limits on the time allowed for oral testimony. Time for testimony is generally limited to five minutes per person. Answers to questions from the commission is generally limited to three minutes.

(e) Persons testifying, whether orally or in writing, shall state their name and identify whether they represent an organization. If they represent an organization, they shall identify the organization. At their option, they may also state their address.

(f) Commenters should focus their testimony on the relationship between elected officials' salaries and the duties of their position (RCW 43.03.300 and 43.03.310(1)). Testimony should not focus on elected officials' job performance. Consideration of job performance is allocated to the voters, not the commission.

(g) Commenters shall briefly describe the identity and nature of any documents referenced in their comments, and indicating where the document can be reviewed or obtained.

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-01-111.

Title of Rule: WAC 458-20-247 Trade-ins, selling price, sellers' tax measures.

Purpose: This rule explains how the trade-in exclusions in RCW 82.08.010(1) and 82.12.010(1) apply to transactions where the buyer trades in property of a like-kind to the seller. The rule provides definitions, examples of what qualifies as property of a like-kind, and the record-keeping requirements of sellers accepting trade-in property.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: RCW 82.08.010(1) and 82.12.010(1), to the extent they apply to transactions where the buyer delivers property to the seller as consideration.

Summary: This rule explains how and when the retail sales or use tax exclusions apply and the record-keeping requirements needed to document the transactions. The rule also provides examples of transactions that qualify for the trade-in exemption and examples of what is considered "property of a like-kind."

Reasons Supporting Proposal: To update and reorganize the rule to make it more user-friendly, and to clarify that the trade-in exclusion is available for transactions where the seller is not the owner of the tangible personal property (e.g., consignment sales transactions).

Name of Agency Personnel Responsible for Drafting: Cindy Evans, 1025 East Union Avenue, Suite #400, Olympia, WA, (360) 570-6134; Implementation: Claire Hesselholt, 1025 East Union Avenue, Suite #400, Olympia, WA, (360) 570-6124; and Enforcement: Russell Brubaker, 1025 East Union Avenue, Suite #400, Olympia, WA, (360) 570-6131.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The value of "trade-in property of like kind" is excluded from the definitions of "selling price" in RCW 82.08.010 and the definition of "value of the article used" in RCW 82.12.010. The buyer of tangible personal property is entitled to a reduced measure of tax if the buyer delivers property of a like-kind to the seller as consideration for a purchase of tangible personal property. The trade-in exclusion is limited to retail sales and use taxes.

This rule explains how and when the retail sales or use tax exclusions apply and the record-keeping requirements needed to document the transactions. The rule also provides examples of transactions that qualify for the trade-in exclusion and examples of what is considered "property of a like-kind."

Proposal Changes the Following Existing Rules: This is a proposal to revise an existing rule, WAC 458-20-247 Trade-ins, selling price, seller's tax measures.

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The department is updating the information and the organization of the existing rule. A number of the resulting changes, while substantial, are nonsubstantive. The department is also providing guidance regarding transactions in which the seller may not be the owner of the property being sold (e.g., consignment sales), and incorporating additional examples. The rule draft being proposed reflects an entire strikeout of the existing language, and an underlining of all language incorporated in the proposed rule. This approach has been used to make it easier for the reader to identify and understand the language that is actually being proposed.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule and the proposed amendments do not impose any requirements or burdens upon small businesses that are not already specifically required by statute.

RCW 34.05.328 does not apply to this rule adoption. This is an interpretive rule as defined in RCW 34.05.328.

Hearing Location: Capital Plaza Building, 4th Floor, Large Conference Room, 1025 East Union Avenue, Olympia, WA, on March 13, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Barb Vane no later than ten days before the hearing date, TDD 1-800-451-7985, or (360) 570-6182.

Submit Written Comments to: Cindy Evans, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail cindyev@dor.wa.gov, by March 13, 2001.

Date of Intended Adoption: March 20, 2001.

February 1, 2001

Claire Hesselholt, Rules Manager  
Legislation and Policy Division

AMENDATORY SECTION (Amending Order 86-2, filed 1/28/86)

**WAC 458-20-247 Trade-ins, selling price, sellers' tax measures.** ((Initiative Measure No. 464, approved November 6, 1984 amended RCW 82.08.010(1), the statutory definition of "selling price," by excluding from that term the value of "trade in property of like kind." The effective date of this exclusion is December 6, 1984. As a result, the retail sales tax measure on trade in sales is reduced by the value of the property traded in. Thus, on and after the effective date, the value of "trade in property" may be excluded from the measure of retail sales tax to be collected and reported by the seller who accepts the trade in property as payment for new or used property sold. Actual **delivery** of the property to the buyer determines when the sale is made (see WAC 458-20-103). The initiative applies only to sales where the property is delivered to the purchaser on or after December 6, 1984.

Under RCW 82.08.010, as amended by the initiative, "the term 'selling price' means the consideration, whether money, credits, rights, or other property **except trade in property of like kind**, expressed in terms of money, paid or delivered by a buyer to a seller, all without any deduction, on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discounts, delivery costs,

~~taxes other than taxes imposed under this chapter if the seller advertises the price as including the tax or that the seller is paying the tax, or any other expense whatsoever paid or accrued and without any deduction on account of losses."~~  
(Amendatory language underlined.)

**Definitions**

~~Unless otherwise stated, the terms "tax," "taxable," and "nontaxable," as used in this rule, refer to retail sales tax only.~~

~~The terms "trade in," "traded in," and "property traded in" have their ordinary and common meaning. They mean property of like kind to that acquired in a retail sale which is applied, in whole or in part, toward the selling price.~~

~~The term "property of like kind" means articles of tangible property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category in the classification. Thus, as examples, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, audio/video equipment for audio/video equipment, and the like. These general classifications are determined by the nature of the property and its function or use. It may be that some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of this rule, a motor home may be taken as a trade in on a travel trailer, truck, camper, or a truck with camper attached, and vice versa. Similarly, a travel trailer may be taken as trade in on a motor home even though a travel trailer is not a motor vehicle; both are licensed recreational land vehicles. Conversely, a utility trailer may not be taken as trade in on a travel trailer, for purposes of this rule, because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Similarly, a car may not be taken as trade in on a camper and vice versa.~~

~~Under these definitions it is not required that a car be traded in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded in as part payment for a truck, motorcycle, motor home, or any other qualifying motor vehicle. Similarly, a sofa for a recliner chair, a pistol for a rifle, a sailboat for a motorboat, or a gold chain for a wrist watch are the kinds of generic trade-in transfers which would qualify. However, the exclusion of the value of property traded in does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, or farm machinery (including tractors and self propelled combines) for a car.~~

**Value of property traded in** — The seller and buyer establish the value of property traded in. However, the parties may not overstate the value of the property traded in in order to artificially lower the amount of sales of use tax due. Absent proof of a higher value, the property traded in must be determined by the fair market value of similar property of like quality, quantity, and age, sold or traded under comparable conditions. It is the substance of the actual sale and trade-in transaction which will control the retail sales tax measure;



regardless of any subsequent accounting adjustments to the seller's inventory records or books of account.

**Record keeping**—RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which true tax liability can be determined. Before any exclusion from the selling price for the value of property traded in will be allowed, the property traded in must be specifically identified and clearly indicated as "trade in," by model, serial number and year of manufacture where applicable, and the full trade-in value must be shown on the sales agreement or invoice given to the purchaser, with a copy retained in the seller's permanent sales records:

For example:

Less "trade in"—1983 G.E. Refrigerator/Freezer  
Model No. GE RF0001, Serial No. 0001, \$300.

**Encumbered property traded in**—Sellers are allowed to consider as nontaxable the value of property traded in even though ownership of the property may be encumbered by a conditional sale, retail installment contract, or security interest; provided that, the property traded in must be actually transferred to the seller of the new or used property for which it is traded in.

**Casual or isolated sales**—The retail sales tax applies to all casual or isolated retail sales made by any person who is engaged in business activity, that is, a person required to be registered and reporting tax to the state. Persons who are not engaged in business activity, i.e., private persons, are not required to be registered and are not required to collect sales tax on their casual or isolated sales (see WAC 458-20-106). Registered persons who make casual or isolated sales (e.g., a law firm which sells its law books) may reduce the taxable selling price by the value of the property traded in. The same record keeping requirements apply as explained earlier in this rule.

**Retail services**—The exclusion of the value of property traded in from the selling price tax measure applies only to sales involving tangible property traded in for tangible property sold. It does not apply to any transactions involving services which have been statutorily included as "sales at retail" (see RCW 82.04.050). Thus, for example, a construction contractor may not accept part payment in tangible property to thereby reduce the sales tax measure of the construction contract selling price. Similarly, a seller of tangible personal property may not accept retail services as part payment to thereby reduce the selling price tax measure. Such transfers neither qualify as trade-in transfers of tangible property nor "in-kind" transfers.

**Trade in for rental property**—Under RCW 82.04.050, rentals or leases of tangible personal property are "retail sales." The term "selling price" as amended by Initiative 464 is also the tax measure for such rentals and leases. Thus, where tangible property is traded in as part payment for the rental or lease of property of like kind (e.g., a used computer against the rental of a new one) the sales tax will apply to all payments after the value of the property traded in has been depleted or consumed and the lessor of the property

actually begins making charges for the lease or rental of tangible property.

When tangible personal property is rented or leased, the "selling price" includes all charges to the renter or lessee for the use of the property rented or leased, including charges designated as insurance, interest and other costs recovered stated separately from the regular rental fee. When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" must be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. In cases of doubt, all of the pertinent facts should be submitted to the department of revenue for an advisory determination.

**Real property transfers**—The trade in exclusion does not apply to sales of real property. It also does not apply where real property is traded in for tangible personal property.

### Business and Occupation Tax

The trade-in exclusion affects only the measure of retail sales tax to be collected and paid. There is no trade-in exclusion for business and occupation tax. Thus, the gross receipts to be reported under the retailing classification of business and occupation tax continues to be the total value proceeding or accruing from the sale, including the value of property traded in.

RCW 82.04.070 provides, "The term 'gross proceeds of sales' means the value proceeding or accruing from the sale of tangible personal property . . . without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes or any other expense whatsoever paid or accrued and without any deduction on account of losses."

Also, the terms "selling price" and "gross proceeds of sales" include items of cost which are the direct obligation of the seller but which the seller may invoice separately to the purchaser. Examples of such costs are the cost of the contractor's performance bond, the cost of city or state business and occupation taxes or public utility taxes, the cost of insurance protecting the seller and the cost of freight in. The selling price can be payable in money or otherwise. If it is payable in whole or in part in property, each party is a seller of the property being transferred.

### Use Tax

RCW 82.12.010 defines the measure of the use tax as the "value of the article used." Under certain circumstances that value is determined by the "selling price" of the article or property used. Also, this use tax statute provides that the meaning of words in chapter 82.08 RCW (retail sales tax) shall have full force as well with respect to the use tax chapter. Thus, the Initiative 464 amendment of the definition of "selling price" will apply equally for use tax purposes. Therefore, the measure of the use tax for tangible property upon which no retail sales tax has been paid (e.g., if it were pur-

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chased in another state with no sales tax) is the same "selling price" as defined for retail sales tax purposes. In such cases the value of the property traded in will be excluded from the use tax measure.

The consumer user, or any out-of-state seller who is registered in this state and collects this state's use tax, must retain the sales records reflecting property "traded in," as explained earlier in this rule.

### Preparing Tax Returns

The gross amounts reported under column 2 on the combined excise tax return should be the same amounts under the retailing business and occupation tax (line 18) and the retail sales tax (line 19). The reduction of the "selling price" tax measure for property traded in should be reflected as a deduction only under the retail sales tax (column 3, line 19). Until return forms are amended, this sales tax deduction should be shown on the back side of the form (line 19) under "other deductions" and explained as "traded in sales.") (1) **Introduction.** The value of "trade-in property of like kind" is excluded from the definitions of "selling price" in RCW 82.08.010 and the definition of "value of the article used" in RCW 82.12.010. This rule explains how and when the retail sales or use tax exclusions apply and the recordkeeping requirements needed to document the transactions. The retail sales and use tax exemptions provided for core deposits and credits by RCW 82.08.036 and 82.12.038 are discussed in WAC 458-20-250.

Unless otherwise stated, "tax," "taxable," and "nontaxable," as used in this rule, refer to retail sales or use tax only. The terms "trade-in," "traded in," and "property traded in" have their ordinary and common meaning. The terms refer to property applied, in whole or in part, toward the selling price of property of like kind. Readers are advised that the fact that sales and purchase transactions might be characterized as a "like kind" under Section 1031 of the Internal Revenue Code does not control for the purpose of the trade-in exclusion in RCW 82.08.010 and 82.12.010.

(2) **General nature of the trade-in exclusion.** RCW 82.08.010 and 82.12.010 define the terms "selling price" and "value of the article used," in pertinent part, to mean the consideration, whether money, credits, rights, or other property except trade-in property of like kind, expressed in terms of money paid or delivered by a buyer to a seller. As a result, the buyer of tangible personal property is entitled to reduce the measure of retail sales or use tax if (a) the buyer delivers the trade-in property to the seller, (b) the trade-in property is delivered as consideration for the purchase, and (c) the property traded in is "property of a like kind."

The trade-in exclusion is limited to retail sales and use taxes. There is no comparable exclusion for business and occupation (B&O) tax. (See definition of "gross proceeds of sales" in RCW 82.04.070 and of "value proceeding or accruing" in RCW 82.04.090.) Sales tax need not have been paid on the item being traded in to be eligible for the trade-in exclusion.

(3) **Buyer to deliver trade-in property to seller.** The buyer must deliver trade-in property to the "seller."

(a) RCW 82.08.010 defines "seller" as "every person... making sales at retail or retail sales to a buyer or consumer, whether as agent, broker, or principal." There is no requirement that the seller be the owner of the property being sold to the buyer. RCW 82.08.010 anticipates and includes situations where a "seller" is selling property that he or she does not actually own, such as in consignment sales transactions.

For example, Broker enters into a consignment sale contract with Susan Smith to sell her Boat A. John Doe contacts Broker expressing interest in purchasing Boat A, provided his Boat B is accepted as a trade-in on the purchase. John Doe executes a purchase agreement with Broker which specifically identifies both Boat A being purchased and the trade-in. Broker accepts delivery and ownership of Boat B and places Boat B into Broker's own inventory. In turn Broker arranges delivery of the craft purchased to John. The buyer (John) has delivered the trade-in property (Boat B) to the seller (Broker). There is no requirement that Broker purchase Boat A from Susan (thereby becoming the owner) prior to selling Boat A to John and accepting Boat B as trade-in property because, as a broker, Broker is a seller under RCW 82.08.010.

(b) The trade-in exclusion does not apply to transactions where a seller transfers tangible personal property in or out of its own inventory in exchange for other property it also owns.

(4) **Trade-in as consideration.** Property traded in must be consideration delivered by the buyer to the seller. The sales documents must identify the tangible personal property being purchased and the trade-in property being delivered to the seller. This does not require simultaneous transfers of the property being traded in and the property being purchased, but it does require that the delivery of the trade-in and the purchase be components of a single transaction. Sales documents, executed not later than the date the trade-in property is delivered to the seller, must identify the property purchased and the trade-in property as more fully explained in subsection (7) below.

The following examples identify a number of facts and then state conclusions with respect to the trade-in exclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(a) Jane Doe offers to purchase Sailboat A from Dealer, if Dealer accepts her Sailboat B as a trade-in on the purchase. Dealer declines to accept ownership of Jane's Sailboat B, but instead offers to sell Sailboat B on a consignment basis with the net proceeds to be applied toward the purchase if Sailboat B is sold within three months. Jane accepts and Sailboat B is sold within the three-month period, and the net proceeds are applied to Jane's purchase of Sailboat A.

Jane is not entitled to the trade-in exclusion. An agreement to sell property on consignment does not constitute consideration "paid or delivered by a buyer to a seller," even if the subsequent proceeds are applied to the purchase price.

(b) Sally Jones decides to upgrade from her existing motor home to a new, larger motor home. The salesperson at a local RV dealership explains that while the dealership does not currently have on hand a motor home meeting Sally's needs, it can order one for her from the manufacturer. The salesperson also explains that if Sally trades in her motor

home at the time she enters into the purchase contract, the dealership will accept the motor home as a down payment toward the purchase of the new motor home. Sally signs the purchase contract, the dealership orders the new motor home, and Sally delivers her motor home to the RV dealers (who accept ownership thereof). Sally's new motor home is delivered to her eight months later.

Sally is entitled to the trade-in exclusion because the motor home was delivered to the RV dealership as consideration paid toward her purchase of the new motor home.

(c) Mr. B and Coastal Brokers enter into a consignment sales agreement. Under the terms of this agreement, Coastal Brokers will sell Mr. B's sailboat on a consignment basis and at the time of sale place the proceeds due Mr. B into a trust account for use toward a possible purchase of a yacht by Mr. B. Mr. B's sailboat is sold and the proceeds due to Mr. B placed in the trust account. Mr. B subsequently purchases a yacht from Coastal Brokers, and the trust account proceeds are applied to the purchase price of the yacht.

Mr. B is not entitled to the trade-in exclusion. The delivery of Mr. B's sailboat to Coastal Brokers and Mr. B's purchase of the yacht are not components of a single transaction. In addition, Mr. B's delivery of his sailboat for consignment sale by Coastal Brokers does not constitute consideration "paid or delivered by a buyer to a seller," even if proceeds from the sale are applied to the purchase of the yacht.

(d) John Smith agrees to purchase Travel Trailer A from Dealer if Dealer accepts John's Travel Trailer B as a trade-in on the purchase. Dealer accepts ownership of Travel Trailer B at an agreed-upon value, on the condition that John pay Dealer a monthly fee to reimburse Dealer for financing costs associated with Travel Trailer B. This fee is to be paid for a period of four months or until Dealer sells Travel Trailer B, whichever is shorter. John has no further responsibility with respect to Travel Trailer B after this period.

John is entitled to the trade-in exclusion because he delivered Travel Trailer B to Dealer as consideration paid toward Travel Trailer A. The fees John paid to reimburse Dealer for financing costs associated with the trade-in property do not change the nature of the transaction, though for the purposes of the trade-in exclusion they do reduce the originally agreed-upon value of the trade-in property.

(5) **Property of like kind.** The term "property of like kind" means articles of tangible property of the same generic classification. It refers to the class and kind of property, not to its grade or quality. The term includes all property within a general classification rather than within a specific category in the classification. Thus, as examples, it means furniture for furniture, motor vehicles for motor vehicles, licensed recreational land vehicles for licensed recreational land vehicles, appliances for appliances, auto parts for auto parts, and audio/video equipment for audio/video equipment. These general classifications are determined by the nature of the property and its function or use. It may be that some kinds of property fit within more than one general classification. For example, a motor home is both a motor vehicle and a licensed recreational land vehicle. Thus, for purposes of the trade-in exclusion, a motor home may be taken as a trade-in on a travel trailer, truck, camper, or a truck with camper attached,

and vice versa. Similarly, a travel trailer may be taken as trade-in on a motor home even though a travel trailer is not a motor vehicle; both are licensed recreational land vehicles. Conversely, a utility trailer may not be taken as trade-in on a travel trailer because a utility trailer is neither a motor vehicle nor a licensed recreational land vehicle. Likewise a car may not be taken as trade-in on a camper and vice versa.

It is not required that a car be traded in exclusively on another car in order to get the trade-in reduction of the tax measure. It could, as well, be traded in as part payment for a truck, motorcycle, motor home, or any other qualifying motor vehicle. Similarly, a sofa for a recliner chair, a pistol for a rifle, a sailboat for a motorboat, or a gold chain for a wrist watch are the kinds of generic trade-in transfers which would qualify. The exclusion of the value of property traded in, however, does not include such things as a motorcycle for a boat, a diamond ring for a television set, a battery for lumber, computer hardware for computer software, or farm machinery (including tractors and self-propelled combines) for a car.

(6) **Value of property traded in.** The seller and buyer establish the value of property traded in. The parties may not overstate the value of the trade-in property in order to artificially lower the amount of retail sales or use tax due. Absent proof of a higher value, the property traded in must be determined by the fair market value of similar property of like quality, quantity, and age, sold or traded under comparable conditions.

(7) **Trade-in value exceeds selling price.** If the trade-in value exceeds the selling price of the item sold, the selling price of the item being purchased should be used as the trade-in value. For example, a Washington resident purchases a car with a value of \$5,000 and trades in a car with a fair market value of \$7,000. The net due to the purchaser is \$2,000. When the seller completes the excise tax return, he or she should report a trade-in value of \$5,000 and not \$7,000 because the trade-in value is capped at selling price of the item being purchased.

(8) **Recordkeeping.** RCW 82.32.070 requires every person liable for any tax to keep and preserve records from which tax liability can be determined. To substantiate a claim for the trade-in exclusion, the sales agreement and/or invoice must identify both the property being purchased and the trade-in property. Such identification includes the model number, serial number, year of manufacture, and other information as appropriate. The sales agreement and/or invoice must also specify the selling price and the value of the trade-in property.

A copy of the sales agreement or invoice must be retained as a part of the seller's sales records. The following is an example of an invoice providing the necessary information regarding a sales transaction with trade-in:

<u>Sold: 2000 Mountain Home 8.5 ft. Camper</u>	
<u>Model MH-20DT, Serial No. 200010</u>	<u>\$9,075</u>
<u>Less "trade-in" - 1983 Meadowlark 8 ft. Camper</u>	
<u>Model No. ML883, Serial No. 0001</u>	<u>\$2,000</u>

(9) **Encumbered property traded in.** A buyer is entitled to full value for trade-in property, which is otherwise

encumbered by a security interest or the subject of a conditional sale, or retail installment sales contract.

(10) Casual or isolated sales. The retail sales tax applies to all casual or isolated retail sales made by any person who is required to be registered and reporting tax to the state. The trade-in exclusion applies in the case of a casual or isolated sale, provided the statutory requirements are satisfied. The recordkeeping requirements explained in subsection (7) apply to casual or isolated sales.

Persons who are not engaged in business activity, e.g., private persons, are not required to be registered and are not required to collect sales tax on their casual or isolated sales. RCW 82.08.0251 and WAC 458-20-106 (Casual or isolated sales—Business reorganizations). The use of property acquired through casual sales is subject to use tax. See RCW 82.12.0251 and WAC 458-20-178.

(11) Trade-ins as sales. RCW 82.04.040 defines the term "sale" in pertinent part to mean "any transfer of the ownership of, title to, or possession of property for a valuable consideration." When property is traded in, ownership in that property is transferred. As a result, under the law a buyer delivering trade-in property to a seller is making a sale of the trade-in property.

(a) If the buyer is not in the business of selling the type of property being traded in the buyer incurs no B&O tax liability. (See WAC 458-20-106 on casual or isolated sales.)

(b) On occasions where the buyer is in the business of selling the type of property being traded in, the buyer incurs a B&O tax liability.

For example, Leasing purchases a new car from Dealer. This car will be part of Leasing's inventory of cars that it rents to customers. Leasing delivers a used car out of its inventory to Dealer as a part of the consideration paid for the new car. The trade-in of the used car by Leasing is considered a wholesale sale to Dealer. This is not a casual or isolated sale because Leasing is in the business of selling cars in the form of rentals.

(c) In most cases, a buyer delivers trade-in property to a seller who is in the business of reselling trade-in property (e.g., a buyer trading in an automobile to a new car dealer). The buyer in these cases has no responsibility to collect retail sales tax.

(12) Retail services. The exclusion of the value of property traded in from the selling price tax measure applies only to sales involving tangible personal property traded in for tangible property sold. It does not apply to any transactions involving services that have been statutorily included as "sales at retail" (see RCW 82.04.050). For example, a construction contractor may not accept part payment in tangible property to thereby reduce the sales tax measure of the construction contract selling price. Similarly, a seller of tangible personal property may not accept retail services as part payment to thereby reduce the selling price tax measure. Such transfers neither qualify as trade-in transfers of tangible property nor "in-kind" transfers.

(13) Trade-in for rental property. Under RCW 82.04.050, rentals or leases of tangible personal property are "retail sales." The "selling price" is also the measure of tax for such rentals and leases. Where tangible property is traded

in as part payment for the rental or lease of property of like kind (e.g., a used computer against the rental of a new one), the sales tax will apply to all payments after the value of the property traded in has been depleted or consumed and the lessor of the property actually begins making charges for the lease or rental of tangible property. Refer to WAC 458-20-211 (Leases or rentals of tangible personal property, bailments) for more information regarding the tax-reporting responsibilities with respect to lease or rental transactions.

A lessee must first purchase leased property before trading it in toward the purchase/lease of other property to be entitled to the trade-in exclusion. A buyer cannot satisfy the statutory requirement that the trade-in property be delivered to the seller as a part of the consideration for the purchased property if the buyer does not have ownership of and the right to sell the property being traded in. For example, Jane Doe leases Auto A from Leasing Company. Jane decides to lease a newer Auto B from Leasing Company. Jane exercises her option to purchase Auto A, and then delivers Auto A as a trade-in towards the lease of Auto B. Jane is entitled to the trade-in exclusion. By delivering her ownership of Auto A to Leasing Company, Jane has satisfied the statutory requirement that she as the buyer deliver trade-in property to the seller as a part of the consideration paid for Auto B.

(14) Real property transfers. Because the trade-in exclusion is limited to tangible personal property, the trade-in exclusion does not apply to sales of real property or transactions where real property is traded in for tangible personal property.

(15) Use tax. RCW 82.12.010 defines the measure of the use tax as the "value of the article used." As explained in subsection (2) of this rule, the statutory definition excludes "trade-in property of like-kind." Therefore, the measure of the use tax for tangible property upon which no retail sales tax has been paid (e.g., if it were purchased in another state) is the same as the measure of the retail sales tax. In such cases the value of the property traded in should be excluded from the use tax measure.

The consumer-user, or any seller who has a duty to collect this state's use tax, must retain the sales records reflecting property "traded in," as explained in subsection (7) of this rule.

## WSR 01-04-050

### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed February 2, 2001, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-07-136.

Title of Rule: Signature, this rule provides information about handwritten signature and digital signature.

Purpose: To define that signature means both handwritten identification and digital identification. The rule goes on to describe handwritten identification and digital identification.

Other Identifying Information: In reviewing our rules under the requirements of Executive Order 97-02, we found that a clear definition of signature was needed. Additionally, "digital identification" needed to be defined and authorized for use because of the great increase in using electronics for doing engineering design and land surveying maps and then electronically transmitting that data.

Statutory Authority for Adoption: RCW 18.43.035.

Summary: This rule is being proposed to define the term "signature" as it is used in Title 196 WAC. Under this definition, signature means both a handwritten identification and a digital identification. The rule clarifies what a handwritten identification is and what a digital identification is. By defining digital identification as a signature, engineers and land surveyors will be able to use electronic identification on their documents as provided for in chapter 19.34 RCW.

Reasons Supporting Proposal: The proposed rule clarifies the meaning of handwritten identification and includes digital identification in the meaning of signature. Including digital identification in the definition will authorize engineers and land surveyors to use digital identification on their electronic documents. Electronic identification is not currently authorized for engineering/surveying documents.

Name of Agency Personnel Responsible for Drafting: Rick Notestine, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1578; Implementation and Enforcement: George A. Twiss, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1565.

Name of Proponent: Board of Registration for Professional Engineers and Land Surveyors, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rule defines written identification and defines and authorizes use of digital identification.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Various rules in Title 196 WAC refer to signature, or signed by, but the term signature is not defined. This rule defines "signature" to be a handwritten identification or a digital identification. The rule gives a specific explanation as to what a handwritten identification is and what a digital identification is.

There have been questions in the past to the board about what "signature" means. The purpose of the rule is to provide a clear definition of "signature" in its normal sense as a handwritten identification, and to expand the definition to include digital identification. It is important to define digital identification (also called digital signature), and provide for its use in engineering and land surveying, to accommodate the increasing use of computers in engineering and land surveying to generate designs, maps, plans and documents and then transmit that information electronically.

We anticipate less confusion and questions about a written signature because the rule clearly states that the signature must be original and handwritten; the signature cannot be a computerized or digitized facsimile of a person's signature to then be affixed to a document. We also anticipate that there will be more use of digital identification to ensure that engineering and land surveying data and information that is trans-

mitted electronically can be authenticated by the receiver. There is, however, a concern that the transmitted data and information can be altered. Some digital identification softwares do not allow transmitted data and information to be altered which should also increase its use.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not place a burden on small business. It puts into writing a definition for written signature as the board has always interpreted and enforced that term as it is used in accordance with Title 196 WAC. The rule also defines "digital identification" as a form of signature. If a company or individual practitioner chooses to use a digital form of signature, they would have to purchase the software that would allow them to do that. However, the rule does not mandate that digital identification be used.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Neither the Department of Licensing or the Board of Registration for Professional Engineers and Land Surveyors are one [of] the agencies named in this statute.

Hearing Location: Department of Licensing, Business and Professions Division, Conference Room No. 1, First Floor, 405 Black Lake Boulevard, Olympia, WA, on March 16, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Kim Chipman by March 12, 2001, TDD (360) 586-2788, or (360) 664-1564.

Submit Written Comments to: Rick Notestine, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9649, Olympia, WA 98507-9649, fax (360) 664-2551, by March 19, 2001.

Date of Intended Adoption: March 22, 2001.

January 29, 211 [2001]

George A. Twiss  
Executive Director

## NEW SECTION

**WAC 196-23-070 Signature.** The terms "signature or signed", as used in chapter 18.43 RCW and/or Title 196 WAC, shall mean the following:

(1) A handwritten identification that represents the act of putting one's name on a document to attest to its validity. The handwritten identification must be:

- (a) Original and written by hand;
- (b) Permanently affixed to the document(s) being certified;

(c) Applied to the document by the identified registrant.

(2) A digital identification that is an electronic authentication process attached to or logically associated with an electronic document. The digital identification must be:

- (a) Unique to the registrant using it;
- (b) Capable of independent verification;
- (c) Under the exclusive control of the registrant using it;
- (d) Linked to a document in such a manner that the digital identification is invalidated if any data in the document is changed;

(e) In conformance with the definition of "digital signature" as it appears in chapter 19.34 RCW, Washington Electronic Authentication Act.

**WSR 01-04-061**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**

[Order 705—Filed February 5, 2001, 10:38 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: Defines the supervisor and the organization structure of the Department of Natural Resources. WAC 332-10-020 Definitions and 332-10-040 Operations and procedures of the Department of Natural Resources.

Purpose: To define that "supervisor" means one or more supervisors of natural resources to reflect the current organizational structure of the Department of Natural Resources (DNR).

Statutory Authority for Adoption: RCW 43.30.020, 43.30.170, 42.17.250, 34.05.220.

Statute Being Implemented: RCW 43.30.020, 43.30.170, 42.17.250, 34.05.220.

Summary: Interprets current law to define supervisor of the Department of Natural Resources to reside in one or more supervisors.

Reasons Supporting Proposal: Provides for an efficient organizational structure.

Name of Agency Personnel Responsible for Drafting: Dave Dietzman, 1111 Washington Street S.E., 1st Floor, EQCD, (360) 902-1633; Implementation: Doug Sutherland, 1111 Washington Street S.E., 4th Floor, Executive Management, (360) 902-1004; and Enforcement: Nonregulatory.

Name of Proponent: Department of Natural Resources, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DNR is also seeking a legislative change to RCW 43.30.20 [43.30.020](4) Definitions, to provide further clarification regarding the "supervisor."

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 332-10-020 Definitions, clarifies that the supervisor of the Department of Natural Resources can be one or more supervisors of natural resources. This will reflect the department's current organizational structure providing for an efficient administration of DNR programs by the Commissioner of Public Lands.

WAC 332-10-040 Operations and procedures of the Department of Natural Resources, provides for consistency with the proposed definition in WAC 332-10-020 and updates language to reflect current organization for implementation of policy and administration of programs and procedures through seven regions and removes a layer of deputy supervisors in the department.

Proposal Changes the Following Existing Rules: See Explanation of Rule above. Also reflects current organizational structure for the implementation of program, policy and procedure from one or more supervisors of natural resources purely through several divisions and seven regions by deleting the exception for the administration of programs and procedures for the Real Estate Division, which no longer exists, and the Aquatic Lands Division which is now the Aquatic Resources Division.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The amendments are procedural regarding internal operations of the department and place no burdens on businesses of the state.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The proposed amendments to WAC 332-10-020 and 332-10-040 have been determined to meet the definition of a procedural and/or interpretive rule in Title 34 RCW, Administrative law, under RCW 34.05.328 (5)(b)(ii) and (c), and not the definition of a significant rule under RCW 34.05.328 (5)(c)(iii).

The requirements for significant rule making do not apply to... "rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party." Nor do they apply to a procedural rule such as "any policy statement pertaining to the consistent internal operations of an agency" or interpretive rule "...that sets forth the agency's interpretation of statutory provisions it administers."

Hearing Location: Natural Resources Building, Room 461, 1111 Washington Street S.E., Olympia, WA 98504, on March 13, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Lou Ann Dunlap-Gordon, 902-1061, by March 1, 2001, TDD 902-1156.

Submit Written Comments to: Dave Dietzman, DNR Rules Coordinator, P.O. Box 47015, Olympia, WA 98504-7015, fax (360) 902-1759, by March 13, 2001.

Date of Intended Adoption: March 13, 2001.

February 2, 2001

Doug Sutherland

Commissioner of Public Lands

**AMENDATORY SECTION** (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

**WAC 332-10-020 Definition.** The following definitions shall apply in this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by the department regardless of physical form or characteristics. See RCW 42.17.020(26).

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched

cards, discs, drums and other documents. See RCW 42.17.020(28).

(3) "Board" means the board of natural resources, a policy setting board whose six members serve in an ex officio capacity. The duties of the board are described in RCW 43.30.150.

(4) "Department" means the department of natural resources which is:

(a) A regulatory agency with regard to geology activities on state and privately owned land, and outdoor burning on state and privately owned forest land,

(b) A proprietary land management agency for state owned land under the jurisdiction of the department,

(c) A service and information repository agency regarding surveys and maps of the state, farm forestry advice and general geology information,

(d) An agency that administers and enforces state forest protection laws and the forest practices regulations of the forest practices board and the department of ecology on state and privately owned forest land.

(5) "Commissioner" means the commissioner of public lands who is an elected official and serves as the administrator of the department. The commissioner, in accordance with RCW 43.30.170, has delegated to the supervisor of the department the direct supervision of the department activities.

(6) "Supervisor" means one or more supervisor(s) of natural resources.

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

**WAC 332-10-040 Operations and procedures of the Department of Natural Resources.** (1) The legal authority for the department's activities is provided principally by:

(a) The State Enabling Act, Section Nos. 10 through 19;

(b) The state Constitution, Article Nos. III, XV, XVI, XVII and Amendment No. 15;

(c) The Revised Code of Washington, Title Nos. 43, 46, 58, 70, 76, 78, 79 and 84;

(d) The Washington Administrative Code, Title Nos. 222 and 332.

(2) The commissioner and the board acting under their respective legal authorities determine policy for the department. The supervisor of the department:

(a) Provides direct supervision over the department's activities.

(b) Implements department policy through a line-functional staff comprised of ~~((four deputy supervisors,))~~ several divisions~~((;))~~ and seven regional offices. The divisions develop operational programs and procedures within their respective specialties of resource management. These programs and procedures are carried out through the seven regional offices ~~((with the exception of the real estate and aquatic lands divisions)).~~ ~~((These two divisions have a dual function in developing and carrying out their respective programs state-wide.))~~

## WSR 01-04-062

### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed February 5, 2001, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-01-071.

Title of Rule: Chapter 308-96A WAC, Vehicle licenses.

Purpose: 1. To meet the criteria set forth in Governor Locke's Executive Order 97-02.

2. To clarify rules and help make them more comprehensible.

Statutory Authority for Adoption: RCW 46.01.110, 46.16.135, 46.16.225, 46.16.490, 46.16.276.

Summary: Amending WAC 308-96A-295 Display of tabs.

Reasons Supporting Proposal: Meet criteria supporting Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: Katherine Iyall Vasquez, 1125 Washington Street S.E., Olympia, (360) 902-3718; Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, (360) 902-4045.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The anticipated effects will be a clarification of the above mentioned requirements.

Proposal Changes the Following Existing Rules: Clarify sections needed and repeal those no longer required.

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 an industry.

RCW 34.05.328 does not apply to this rule adoption. The contents of the proposed rules are explicitly and specifically dictated by statute.

Hearing Location: Highways-Licenses Building, Conference Room 107, 1125 Washington Street S.E., Olympia, WA 98507, on March 16, 2001, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact Katherine Iyall Vasquez by March 15, 2001, TTY (360) 664-8885, or (360) 902-3718.

Submit Written Comments to: Katherine Iyall Vasquez, Rules Manager, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by March 15, 2001.

Date of Intended Adoption: April 16, 2001.

February 5, 2001

Deborah McCurley, Administrator  
Title and Registration Services

AMENDATORY SECTION (Amending WSR 98-19-075, filed 9/21/98, effective 10/22/98)

**WAC 308-96A-295 Display of tabs. (1) What ~~((is a))~~ are tabs?**

PROPOSED

~~((A tab is a decal that is))~~  Tabs are decals affixed to the rear license plate ~~((s and identifies))~~  to identify the registration expiration ~~((date))~~  month or year for a specific vehicle.

**(2) Which tabs are valid to be displayed on the vehicle license plate?** ~~((Only the))~~  Tabs depicting the current registration ~~((may))~~  expiration month and year must be displayed on the rear vehicle license plate((s)).  Depending upon which license plate design you may have the tabs depicting the current registration expiration month and year must be displayed in the designated area on the top portion of the license plate.  Expired month and year tabs may be displayed on the front vehicle license plate.

**(3) Does this rule apply to all vehicles?**  No, vehicles registered under the provisions of the International Registration Plan must display tabs depicting current registration expiration month and year on both the front and rear vehicle license plates of the power unit.

**(4) When is the requirement for rear license plate tabs effective?**  The requirement for rear license plate tabs is effective for vehicle registration expiration periods after January 1, 2002.

**WSR 01-04-068**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed February 5, 2001, 4:57 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: WAC 388-478-0055 SSI standards.

Purpose: Update supplemental security income (SSI) standards for January 1, 2001. These standards were updated January 1, 2001, by emergency rule. This rule making is necessary to permanently adopt these rules. This rule will repeal WAC 388-478-0056, as the state supplement standards that were effective January 1, 2001, have been incorporated into this permanent rule filing.

Statutory Authority for Adoption: RCW 74.04.057, 74.08.090.

Statute Being Implemented: Chapters 74.04, 74.08 RCW.

Summary: WAC 388-478-0055 SSI standards, is being amended to pass along the federal 3.5% cost-of-living adjustment (COLA) for the SSI program. Slight changes have been made in the text of this rule in order to meet clear rule-writing standards.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carla Gira, Program Manager, Lacey Government Center, 1009 College Street S.E., Lacey, WA 98503, (360) 413-3264.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is necessary because of federal law, 42 U.S.C. 1382(f), 1382(g).

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will update the supplemental security income (SSI) standards for January 1, 2001. These standards were updated January 1, 2001, by emergency rule. This rule-making is necessary to permanently adopt these rules.

Proposal Changes the Following Existing Rules: This rule will repeal WAC 388-478-0056 SSI state supplement standards. That rule is no longer necessary, as the state supplement standards have been incorporated into the permanent rule filing of WAC 388-478-0055.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small business.

RCW 34.05.328 applies to this rule adoption. The rule meets the definition of a "significant legislative rule" but DSHS is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on March 13, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by March 6, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coo-peKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by March 13, 2001.

Date of Intended Adoption: No sooner than March 14, 2001.

February 1, 2001

Bonita H. Jacques, Chief  
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 00-20-054, filed 9/29/00, effective 11/1/00)

**WAC 388-478-0055 SSI payment standards for eligible recipients.** (1) Supplemental Security Income (SSI) is a cash assistance program for needy individuals and couples who meet federal disability guidelines as aged, blind or disabled. Since the SSI program began in January 1974, the state of Washington has ~~((supplemented))~~  added to the federal benefit level with state funds, known as the SSI state supplement. ~~((Persons))~~  If you are found eligible for SSI, you will receive cash assistance based on the combined federal and state supplement benefit levels, minus countable income. An essential person is someone who lives with you and provides care and personal services that enable you to live in either your own home or the home of the essential person.

(2) Effective ~~((,))~~  January 1, 2001, the federal, state and combined benefit levels for an eligible individual and couple are:

(a)  If you are living alone in area 1: King, Pierce, Snohomish, Thurston, and Kitsap Counties.



LIVING ALONE - In own household or alternate care, except nursing homes or medical institutions

	Federal Benefit Level	State Supplement Benefit Level	Combined Federal/State Benefit Level
Individual	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((22.90))</del> <u>25.90</u>	\$ <del>((534.90))</del> <u>555.90</u>
Individual with: One essential person	\$ <del>((769.00))</del> <u>796.00</u>	\$ <del>((21.00))</del> <u>19.90</u>	\$ <del>((790.00))</del> <u>815.90</u>
Individual with: Multiple essential persons	\$ <del>((512))</del> <u>530</u> for the eligible individual plus \$257 for each essential person (no state supplement)		
Individual with an ineligible spouse	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((167.20))</del> <u>166.10</u>	\$ <del>((679.20))</del> <u>696.10</u>
Couple	\$ <del>((769.00))</del> <u>796.00</u>	\$ <del>((21.00))</del> <u>19.90</u>	\$ <del>((790.00))</del> <u>815.90</u>
Couple with one or more essential persons	\$ <del>((769))</del> <u>796</u> for eligible couple plus \$257 for each essential person (no state supplement)		

(b) If you are living alone in area 2: All other counties.

LIVING ALONE - In own household or alternate care, except nursing homes or medical institutions

	Federal Benefit Level	State Supplement Benefit Level	Combined Federal/State Benefit Level
Individual	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((2.45))</del> <u>5.45</u>	\$ <del>((514.45))</del> <u>535.45</u>
Individual with: One essential person	\$ <del>((769.00))</del> <u>796.00</u>	\$ 0.00	\$ <del>((769.00))</del> <u>796.00</u>
Individual with: Multiple essential persons	\$ <del>((512))</del> <u>530</u> for the eligible individual plus \$257 for each essential person (no state supplement)		
Individual with an ineligible spouse	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((137.25))</del> <u>136.15</u>	\$ <del>((649.25))</del> <u>666.15</u>
Couple	\$ <del>((769.00))</del> <u>796.00</u>	\$ 0.00	\$ <del>((769.00))</del> <u>796.00</u>
Couple with one or more essential persons	\$ <del>((769))</del> <u>796</u> for eligible couple plus \$257 for each essential person (no state supplement)		

(c) If you are in shared living (~~for both~~) in either Area 1 (~~and~~) or 2.

	Federal Benefit Level	State Supplement Benefit Level	Combined Federal/State Benefit Level
SHARED LIVING - <u>In the home of another person</u>			
Individual	\$ <del>((341.34))</del> <u>353.34</u>	\$ <del>((4.84))</del> <u>3.71</u>	\$ <del>((346.15))</del> <u>357.05</u>
Individual with: One essential person	\$ <del>((512.00))</del> <u>530.00</u>	\$ <del>((5.30))</del> <u>4.20</u>	\$ <del>((517.30))</del> <u>534.20</u>
Individual with: Multiple essential persons	\$ <del>((341.34))</del> <u>353.34</u> for the eligible individual plus \$ <del>((170.67))</del> <u>170.66</u> for each essential person (no state supplement)		
Individual with an ineligible spouse	\$ <del>((341.34))</del> <u>353.24</u>	\$ <del>((102.76))</del> <u>101.66</u>	\$ <del>((444.10))</del> <u>455.00</u>
Couple	\$ <del>((512.67))</del> <u>530.67</u>	\$ <del>((5.30))</del> <u>4.20</u>	\$ <del>((517.97))</del> <u>534.87</u>
Couple with one or more essential persons	\$ <del>((512.67))</del> <u>530.67</u> for eligible couple plus \$ <del>((170.67))</del> <u>170.66</u> for each essential person (no state supplement)		

PROPOSED

(d) If you are residing in a medical institution: Area 1 and 2.

MEDICAL INSTITUTION	Federal Benefit Level	State Supplement Benefit Level	Combined Benefit Level
Individual	\$ 30.00	\$ 11.62	\$ 41.62

(e) Mandatory income level (MIL) for grandfathered claimant. (~~("Grandfathered" refers to a person who)~~) You are "grandfathered" if you qualified for assistance from the state as aged, blind, or disabled, (~~(was)~~) were converted from the state to federal disability assistance under SSI in January 1974, and (~~(has)~~) have remained continuously eligible for SSI since that date.

(~~The~~) If you are a MIL client, your combined federal/state SSI benefit level (~~(for MIL clients)~~) is the higher of the following:

(i) The state assistance standard (~~(they)~~) you received in December 1973, except (~~(for those converted in a "D" living arrangement (residing))~~) if you resided in a medical institution at the time of conversion(~~(s)~~), plus the federal cost-of-living adjustments (COLA) since then; or

(ii) The current standard.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-478-0056 SSI state supplement standards.

**WSR 01-04-070  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)  
[Filed February 5, 2001, 4:57 p.m.]**

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-09-034.

Title of Rule: Chapter 388-31 WAC, Washington telephone assistance program.

Purpose: This revision is being done to meet the requirements of the WAC migration of Title 388 WAC. Chapter 388-31 WAC will be repealed. The chapter was rewritten to meet the standards of Executive Order No. 97-02, and is now being incorporated into chapter 388-273 WAC.

Statutory Authority for Adoption: RCW 80.36.440, 74.08.090.

Statute Being Implemented: Chapters 74.08 and 80.36 RCW.

Summary: The rules were rewritten to meet the WAC migration and clear writing mandates.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carla Gira, Program Manager, Lacey Government Center, 1009 College Street S.E., Lacey, WA 98503, (360) 413-3264.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains what the Washington telephone assistance program is, who is eligible, and what the benefits are.

Proposal Changes the Following Existing Rules: Chapter 388-31 WAC is being repealed. The rule has been rewritten and moved to chapter 388-273 WAC.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small business.

RCW 34.05.328 applies to this rule adoption. The rule meets the definition of a "significant legislative rule" but DSHS is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on March 13, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by March 6, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coo-pkD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by March 13, 2001.

Date of Intended Adoption: No sooner than March 14, 2001.

February 1, 2001

Bonita H. Jacques, Chief  
Office of Legal Affairs

**Chapter 388-273 WAC**

**WASHINGTON TELEPHONE ASSISTANCE PROGRAM**

NEW SECTION

**WAC 388-273-0010 Purpose of the Washington telephone assistance program.** The Washington telephone assistance program (WTAP) is designed to help low-income households afford access to local telephone service. For the purposes of this chapter, "we" and "us" mean the department of social and health services (DSHS). "You" means the person who is applying and eligible for WTAP.

**PROPOSED**

NEW SECTION

**WAC 388-273-0020 Who may receive WTAP.** To receive WTAP benefits, you must:

- (1) Be receiving from us:
  - (a) Temporary assistance for needy families (TANF);
  - (b) State family assistance (SFA);
  - (c) General assistance;
  - (d) Refugee assistance;
  - (e) Food assistance;
  - (f) Supplemental Security Income (SSI);
  - (g) Medical assistance, including Medicare cost sharing programs;

(h) Community options program entry system (COPES);  
or

- (i) Chore services.
- (2) Be age eighteen or older or, if under eighteen, be the responsible head of household;

(3) Apply to the local exchange company that provides your local flat rate telephone service. In exchange areas where wireline service is not available without service extension, you may apply to an eligible wireless carrier;

(a) "**Local exchange company**" means an eligible telecommunication carrier providing local service, i.e., the telephone company.

(b) "**Flat rate service**" is telephone service with a single monthly payment that allows unlimited local calling for a specified length of time. The local exchange flat rate includes any federal end user access charges and other charges necessary to obtain the service.

- (4) Have the lowest available flat rate service; and
- (5) Have the local telephone service billed in your name.

NEW SECTION

**WAC 388-273-0025 Benefits you receive as a WTAP participant.** (1) WTAP participants receive a:

- (a) Discount on local telephone flat rate services, when the flat rate is more than the WTAP assistance rate;
- (b) Waiver of deposit requirements on local telephone service; and
- (c) Fifty percent discount on service connection fees. Any connection fee discounts available from other programs are added to the WTAP discount, to pay part or all of the remaining fifty percent.

(2) WTAP benefits are limited to one residential line per household.

(3) The deposit waiver and the discount on connection fees are available once per service year. "**Service year**" means the period beginning July 1 and ending June 30 of the following calendar year.

(4) Your benefits begin the date you are approved for WTAP assistance and continue through the next June 30.

NEW SECTION

**WAC 388-273-0030 How you can apply for WTAP.**

- (1) You can apply for WTAP by contacting the local telephone company.

(2) The telephone company contacts us to verify that you are eligible for benefits under WAC 388-273-0020 before they add WTAP to your telephone account.

(3) You will know you are receiving WTAP benefits when you have a WTAP credit on your telephone bill.

NEW SECTION

**WAC 388-273-0035 What we reimburse the local telephone company.** (1) Within available funding limits, we reimburse local telephone companies for fully documented administrative and program expenses associated with WTAP. The reimbursable expenses are limited to:

- (a) Program services provided after eligibility for WTAP is verified;
- (b) Correct, verifiable billing items;
- (c) Invoices submitted within ninety days following the month the expense occurred;
- (d) Items charged in error that have been corrected within sixty days from the date we return the report of invoicing error to the local phone company;
- (e) Salaries and benefits for time required to implement and maintain WTAP, with the exception that time required for the correction of case number and client identification errors is not an allowable expense;
- (f) Travel expenses for attending hearings, meetings, or training pertaining to WTAP;
- (g) Expenses for supplies and materials for implementing and maintaining WTAP;
- (h) Postage and handling for delivery of WTAP material;
- (i) Administrative charge for change of service orders specified by tariffs; and
- (j) Documented indirect costs associated with implementing and maintaining WTAP.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-31-010	Purpose of program.
WAC 388-31-015	Definitions.
WAC 388-31-020	Conditions of eligibility.
WAC 388-31-025	WTAP benefits.
WAC 388-31-030	Notification and eligibility periods.
WAC 388-31-035	WTAP fund.

**WSR 01-04-072**

**PROPOSED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 99-06—Filed February 6, 2001, 2:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-09-093 and 00-23-054.

PROPOSED

Proposal is exempt under RCW 34.05.310(4).

Title of Rule: Chapter 173-400 WAC, General regulations for air pollution sources and chapter 173-401 WAC, Operating permit regulation.

Purpose: Update the rules for consistency with federal requirements to reduce confusion experienced by all users of the rule; clarify and streamline agency procedures.

Statutory Authority for Adoption: RCW 70.94.141, [70.94.]152, [70.94.]331, and [70.94.]510.

Statute Being Implemented: Chapter 70.94 RCW.

Summary: The main focus is to update major new source review, a preconstruction permitting program for new and modified major stationary sources, for consistency with federal rules. Programs amended include: Prevention of significant deterioration (PSD), visibility protection, best available retrofit technology, and emission reduction credits. This proposal also includes new federal rules and amends chapter 173-400 WAC for clarity and usability. Applicability of certain sources to the operating permit regulation is also specified.

Reasons Supporting Proposal: Updating the rule will make it a more effective mechanism for minimizing air pollution. Additionally, consistency with federal requirements is necessary for ecology to receive and maintain full approval from EPA of various federal programs.

Name of Agency Personnel Responsible for Drafting: Elena Guilfoil, Lacey, (360) 407-6855; Implementation: Alan Newman, Lacey, (360) 407-6810; and Enforcement: Air Quality Program, Statewide, (360) 407-6800.

Name of Proponent: Department of Ecology, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The process to consolidate new source review into one chapter (August 16, 1999, in WSR 99-17-080) will resume at the completion of this rule making. Contact Steve Cross at (360) 407-6875 or stcr461@ecy.wa.gov for more information.

Rule is necessary because of federal law, 40 C.F.R. 51.165 and 51.166; 40 C.F.R. Part 51, Subpart P; portions of 40 C.F.R. Parts 60, 61, 62, 63, 64 and 65; 40 C.F.R. Part 60, Subpart AAAA and emission guidelines, adopted December 6, 2000; 40 C.F.R. Part 60, Subpart CCCC and emission guidelines, adopted December 1, 2000; 40 C.F.R. Part 63, Subpart S, amended December 22, 2000; 40 C.F.R. Part 63, Subpart T, amended September 8, 2000; 40 C.F.R. Part 63, Subpart Y, in effect on July 1, 2000; 40 C.F.R. Part 63, Subpart DD, amended January 8, 2001; 40 C.F.R. Part 63, Subpart GG, amended December 8, 2000; 40 C.F.R. Part 63, Subpart MM, adopted January 12, 2001; 40 C.F.R. Part 63, Subpart EEE, amended July 10, 2000; 40 C.F.R. Part 63, Subpart GGG, amended August 29, 2000; 40 C.F.R. Part 63, Subpart JJJ, amended August 29, 2000; 40 C.F.R. Part 60, 61, and 63, amended October 17, 2000; 40 C.F.R. Part 62, adopted November 8, 2000; 40 C.F.R. Part 64, adopted on October 22, 2000; and 40 C.F.R. Parts 60, 61, 63, and 65, adopted on December 14, 2000.

Explanation of Rule, its Purpose, and Anticipated Effects: Chapter 173-400 WAC, General regulations for air pollution sources, contains the permitting requirements for

minimizing emissions from sources of air pollution. Chapter 173-401 WAC, the air operating permit regulation, contains the program elements for the air operating permit program. This rule-making effort focuses on amending requirements for consistency with federal rules to ensure that the rule remains useful and current.

Proposal Changes the Following Existing Rules: This action amends WAC 173-400-030, 173-400-040, 173-400-050, 173-400-060, 173-400-070, 173-400-075, 173-400-100, 173-400-102, 173-400-105, 173-400-110, 173-400-112, 173-400-113, 173-400-114, 173-400-115, 173-400-116, 173-400-131, 173-400-136, 173-400-141, 173-400-151, and 173-400-171. Three new sections are added: WAC 173-400-035, 173-400-117, and 173-400-118.

- New source review requirements for major stationary sources are amended to comply with federal requirements. The prevention of significant deterioration program includes missing components of the federal program and adjusts inadequate components of the rule. The applicability criteria for the best available retrofit technology or BART program is amended to more closely mirror the federal criteria and the program is adjusted for federal consistency. Visibility protection requirements and the procedures for designating an area as Class I, II or III are spelled-out instead of being included by adoption by reference.
- Definitions are updated for consistency with the federal rules or amended for clarity. Words with a section specific definition have been placed in the section where the definition applies. Words that are defined in the rule are highlighted in bold. A usage section has been added for improved clarity.
- Portions of the rule were amended for improved clarity and usability, or technical references were corrected.
- Five existing NESHAPs were amended in adopting a consolidated rule option.
- New MACT standards have been added regulating marine tank vessel loading operations and kraft, soda, sulfite and stand-alone semi-chemical pulp mills; and nine existing MACT rules are amended, including the test methods.
- A minor change was made to specify which equipment to apply certain requirements for a refrigerated condenser on a dry cleaner machine.
- Report dates and the applicability to the air operating permit program are specified for municipal solid waste landfills.
- New NSPS rules for small municipal waste combustion units and commercial and industrial solid waste incinerators have been added and five other existing NSPS are amended, including test methods. Requirements for existing small municipal waste combustion units and existing commercial and industrial solid waste incinerators are proposed.

Proposed revisions to chapter 173-401 WAC: Chapter 173-401 WAS is amended to indicate the applicability date for three existing source categories (municipal solid waste landfills, small municipal waste combustion units, and commercial and industrial solid waste incinerators), to defer program applicability for three years for secondary aluminum

production facilities, and to adopt by reference federal requirements for compliance assurance monitoring.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes to chapters 173-400 and 173-401 WAC are exempt from the requirement to prepare a small business economic impact statement because they are adopting federal requirements without material change, correcting typographical errors, or clarifying the language without changing its effect. See RCW 19.85.025(3) and 34.05.310 (4)(c) and (d).

RCW 34.05.328 does not apply to this rule adoption. The proposed changes to chapters 173-400 and 173-401 WAC are exempt from the requirements of RCW 34.05.328 because they are adopting federal requirements without material change, correcting typographical errors, or clarifying the language without changing its effect. See RCW 34.05.328 (5)(b)(iii) and (iv).

Hearing Location: On March 13, 2001, at 7:00 p.m., at the Spokane County Public Health Center, Room 140, West 1101 College Avenue, Spokane, WA 99201; on March 14, at 7:00 p.m., at the Northwest Air Pollution Authority Conference Room, 1600 South Second Street, Mt. Vernon, WA 98273; and on March 15, at 7:00 p.m., at the Department of Ecology Auditorium, 300 Desmond Drive, Olympia, WA 98503.

Assistance for Persons with Disabilities: Contact Judy Beitel at (360) 407-6878, by March 1, 2001, TDD (360) 407-6006.

Submit Written Comments to: Elena Guilfoil, Air Quality Program, Department of Ecology, P.O. Box 476000 [47600], Olympia, WA 98504-7600, or [egui461@ecy.wa.gov](mailto:egui461@ecy.wa.gov), fax (360) 407-6802, by midnight, March 26, 2001.

Date of Intended Adoption: June 1, 2001.

February 5, 2001

J. R. Williams

Acting Deputy Director

**AMENDATORY SECTION** (Amending Order 91-68, filed 10/4/93, effective 11/4/93)

**WAC 173-401-300 Applicability.** (1) Chapter 401 sources. The provisions of this chapter apply in all areas of the state of Washington to the following sources:

(a) Any source required by the FCAA to have an operating permit. These include the following sources:

(i) Any major source as defined in WAC 173-401-200(18).

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 (Standards of Performance for New Stationary Sources) of the FCAA.

A small municipal waste combustion unit constructed on or before August 30, 1999, and regulated under WAC 173-400-050(5) becomes subject to this chapter on July 1, 2002.

(iii) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements

under section 112(r) (Prevention of Accidental Releases) of the FCAA.

(iv) Any solid waste incineration units required to obtain permits under section 129 of the FCAA.

A commercial and industrial solid waste incineration unit constructed on or before November 30, 1999, and regulated under WAC 173-400-050(4) becomes subject to this chapter on July 1, 2002.

(v) Any "affected source" regulated under Title IV (Acid Deposition Control) of the FCAA.

(vi) Any source in a source category designated by the EPA pursuant to 40 CFR Part 70, as amended through April 7, 1993.

(b) Any source that the permitting authority determines may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare under RCW 70.94.161(4) using the procedures in subsection (5) of this section.

(c) Any other source which chooses to apply for a permit.

(d) Deferral. A source subject to the secondary aluminum production requirements in 40 CFR Part 63, Subpart RRR (in effect on July 1, 2000) that is not a major source and is not located at a major source as defined under 40 CFR 63.2 and is not otherwise required to obtain a chapter 401 permit is deferred from chapter 173-401 WAC until December 4, 2004. This category includes sweat furnaces, aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, group 2 furnaces (processing clean charge only and no reactive fluxing), dross-only furnaces, and rotary dross coolers.

(e) A municipal solid waste landfill constructed, reconstructed or modified before May 30, 1991, and regulated under WAC 173-400-070(9) becomes subject to this chapter on the effective date of WAC 173-400-070(9).

Note: Under 40 CFR 62.14352(e) (in effect on July 1, 2000), an affected landfill must have submitted its chapter 401 application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no affected source may operate after the time it is required to submit a timely and complete application.

(2) Source category exemptions.

(a) All sources listed in subsection (1)(a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA, are exempted from the obligation to obtain a chapter 401 permit until such time that:

(i) Ecology completes a rulemaking to determine whether nonmajor sources should be required to obtain permits. During this rulemaking, ecology will consider the compliance information contained in individual permit applications when evaluating the regulatory effectiveness and administrative feasibility of issuing operating permits to nonmajor sources relative to other regulatory options. This rulemaking must be completed no later than three years after the effective date of the permit program; or

(ii) The administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and determines that such sources must obtain operat-

ing permits and ecology completes a rule making to adopt EPS's revised applicability criteria.

(b) Subsection (2)(a) of this section shall not apply to nonmajor sources subject to a standard or other requirement established under either section 111 or section 112 of the FCAA after July 21, 1992, if, during those rulemakings, the administrator determines that such sources must obtain a permit at an earlier date and, subsequently, ecology completes a rule making to adopt EPS's applicability criteria.

(c) Any source listed in (a) of this subsection exempt from the requirement to obtain a permit under this section may opt to apply for a permit under this chapter.

(d) The following source categories are exempt from the obligation to obtain permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation.

(3) Emissions units and chapter 401 sources.

The permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the source.

(4) Fugitive emissions. Fugitive emissions from a chapter 401 source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(5) Process for determining threat to public health or welfare. The following criteria shall be used to identify sources that are covered pursuant to subsection (1)(b) of this section:

(a) The source may cause or to contribute air pollution in such quantity as to create a violation of any ambient air quality standard as demonstrated by a dispersion modeling analysis performed in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods; or

(b) The source may cause or contribute to air pollution in such quantity as to create a significant ambient level of any class A or class B toxic air pollutant contained in chapter 173-460 WAC as demonstrated by a dispersion modeling analysis done in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods.

(c) Small business stationary sources otherwise covered under (a) and (b) of this subsection are exempt except when all of the following requirements are satisfied:

(i) The source is in an area that currently exceeds or has been projected by ecology to exceed within five years any federal or state air quality standard. Prior to determining that any area threatens to exceed a standard, ecology shall hold a public hearing or hearings within the threatened area.

(ii) Ecology provides justification that requiring a source to have a permit is necessary to meet or to prevent exceeding a federal or state air quality standard.

(6) Permitting authorities shall develop and maintain a list of names of chapter 401 sources within their jurisdictions.

This list shall be made available to the public. A chapter 401 source inadvertently omitted from this list is not exempted from the requirement to obtain a permit under this chapter.

(7) Federally enforceable limits. Any source which is defined as a chapter 401 source solely because its potential to emit exceeds the annual tonnage thresholds defined in WAC 173-401-200(18) shall be exempt from the requirement to obtain an operating permit when federally enforceable conditions which limit that source's potential to emit to levels below the relevant tonnage thresholds have been established for that source.

(a) In applying for an exemption under this subsection, the owner or operator of the source shall demonstrate to the permitting authority that the source's potential to emit, taking into account any federally enforceable restrictions assumed by the source, does not exceed the tonnage thresholds defined in WAC 173-401-200(18). Such demonstrations shall be in accordance with WAC 173-401-520 and shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to support the source's emission calculations.

(b) Permitting authorities may use the following approaches to establish federally enforceable limitations:

(i) Regulatory orders. The permitting authority may establish source-specific conditions in a regulatory order issued pursuant to WAC 173-400-090.

(ii) Notice of construction approvals. The permitting authority may establish source-specific conditions in a notice of construction approval issued pursuant to state or local regulations contained in an EPA-approved state implementation plan; or

(iii) General permits. The permitting authority may establish source-category requirements which limit a source's potential to emit through a general permit issued pursuant to RCW 70.94.161(11). Following EPA approval of the general permit, limitations on potential to emit become federally enforceable against a particular source after that source applies for, and receives coverage under the general permit.

(c) A source receiving a federally enforceable limit on its potential to emit shall annually certify that its potential to emit is less than that which would require the source to obtain an operating permit. Such certifications shall contain the information specified in (a) of this subsection.

(d) Notice of issuance of any order or permit which limits a source's potential to emit shall be published in the permit register pursuant to WAC 173-401-805 (2)(e).

AMENDATORY SECTION (Amending Order 91-68, filed 10/4/93, effective 11/4/93)

**WAC 173-401-615 Monitoring and related record-keeping and reporting requirements.** (1) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

(a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114 (a)(3) of the FCAA;

(b) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitor-

ing (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection (3) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph; and

(c) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(2) Recordkeeping. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(a) Records of required monitoring information that include the following:

- (i) The date, place as defined in the permit, and time of sampling or measurements;
- (ii) The date(s) analyses were performed;
- (iii) The company or entity that performed the analyses;
- (iv) The analytical techniques or methods used;
- (v) The results of such analyses; and
- (vi) The operating conditions existing at the time of sampling or measurement;

(b) A record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(c) Retention of records of all required monitoring data and support information for a period of five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(3) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(a) Submittal of reports of any required monitoring at least once every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with WAC 173-401-520.

(b) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The permitting authority shall define "prompt" in each individual permit in relation to the degree and type of deviation likely to occur and the applicable requirement. For deviations which represent a potential threat to human health or safety, "prompt" means as soon as possible, but in no case later than twelve hours after the deviation is discovered. The source shall maintain a contemporaneous record of all deviations. Other deviations shall be reported no later than thirty days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports.

(4) Compliance assurance monitoring. 40 CFR Part 64, in effect on July 1, 2000, is adopted by reference.

AMENDATORY SECTION (Amending Order 96-01, filed 12/23/97, effective 1/23/98)

**WAC 173-400-030 Definitions.** Except as provided elsewhere in this chapter, the following definitions apply throughout the chapter:

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

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

(b) **Ecology** or an **authority** may presume that **source-specific allowable emissions** for the unit are equivalent to the **actual emissions** of the **emissions unit**.

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

(2) "**Adverse impact on visibility**" (~~means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with (a) times of visitor use of the Federal Class I area, and (b) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas~~) is defined in WAC 173-400-117.

(3) "**Air contaminant**" means dust, fumes, mist, smoke, other **particulate matter**, vapor, gas, odorous substance, or any combination thereof. "**Air pollutant**" means the same as "**air contaminant**."

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

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

(a) The applicable standards as ~~((set forth))~~ in 40 CFR Part 60 or 61 ~~(in effect on February 7, 2001);~~

(b) Any applicable **state implementation plan emissions limitation** including those with a future compliance date; or

(c) The **emissions** rate specified as a federally enforceable permit condition, including those with a future compliance date.

(6) "**Ambient air**" means the surrounding outside air.

(7) "**Ambient air quality standard**" means an established concentration, exposure time, and frequency of occurrence of air **contaminant(s)** in the ambient air which shall not be exceeded.

(8) "**Approval order**" is defined in "**order of approval**."

(9) "**Attainment area**" means a geographic area designated by EPA at 40 CFR Part 81 (in effect on July 1, 2000) as having attained the **National Ambient Air Quality Standard** for a given **criteria pollutant**. An area is in attainment for only the pollutants for which the area meets the **NAAQS**.

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

~~((9))~~ (11) "**Begin actual construction**" means, in general, initiation of physical on-site construction activities on an **emission unit** which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

~~((10))~~ (12) "**Best available control technology (BACT)**" means an **emission limitation** based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified **stationary source**, which the permitting **authority**, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such **source** or **modification** through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in **emissions** of any pollutants which will exceed the **emissions** allowed by any applicable standard under 40 CFR Part 60 and Part 61, as they exist on ~~((March 1, 1996, or their later enactments as adopted by reference by the director by rule))~~ February 7, 2001. **Emissions** from any **source** utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of **BACT** in the **Federal Clean Air Act** as it existed prior to enactment of the Clean Air Act Amendments of 1990.

~~((11))~~ (13) "**Best available retrofit technology (BART)**" means an **emission limitation** based on the degree

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

~~((12))~~ (14) "**Bubble**" means a set of **emission** limits which allows an increase in **emissions** from a given **emissions unit**~~((s))~~ in exchange for a decrease in **emissions** from another **emissions unit**~~((s))~~, pursuant to RCW 70.94.155 and WAC 173-400-120.

~~((13))~~ (15) "**Capacity factor**" means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

~~((14))~~ (16) "**Class I area**" means any area designated ~~((pursuant to §§))~~ under section 162 or 164 of the **Federal Clean Air Act** as a Class I area. The following areas are the Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

~~((15))~~ (17) "**Combustion and incineration sources**" means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes **open burning**.

~~((16))~~ (18)(a) "**Commenced** ~~((construction))~~" as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

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

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

~~((17))~~ (b) For the purposes of this definition, "**necessary preconstruction approvals**" means those permits or **order of approvals** required under federal air quality control laws and regulations, including the **SIP**.

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



~~((18))~~ (20) "**Criteria pollutant**" means a pollutant for which there is established a **National Ambient Air Quality Standard** at 40 CFR Part 50 (in effect on July 1, 2000). The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

(21) "**Director**" means director of the Washington state department of **ecology** or duly authorized representative.

~~((19))~~ (22) "**Dispersion technique**" means a method which attempts to affect the concentration of a pollutant in the **ambient air** other than by the use of pollution abatement equipment or integral process pollution controls.

~~((20))~~ (23) "**Ecology**" means the Washington state department of ecology.

~~((21))~~ (24) "**Emission**" means a release of **air contaminants** into the **ambient air**.

~~((22))~~ (25) "**Emission reduction credit (ERC)**" means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in **emissions**.

~~((23))~~ (26) "**Emission standard**" and "**emission limitation**" means a requirement established under the ~~((FCAA))~~ **Federal Clean Air Act** or chapter 70.94 RCW which limits the quantity, rate, or concentration of **emissions of air contaminants** on a continuous basis, including any requirement relating to the operation or maintenance of a **source** to assure continuous **emission** reduction and any design, equipment work practice, or operational standard ~~((promulgated))~~ adopted under the ~~((FCAA))~~ **Federal Clean Air Act** or chapter 70.94 RCW.

~~((24))~~ (27) "**Emissions unit**" means any part of a **stationary source** or **source** which emits or would have the **potential to emit** any pollutant subject to regulation under the ~~((FCAA))~~ **Federal Clean Air Act**, chapter 70.94 or 70.98 RCW.

~~((25))~~ (28) "**Excess emissions**" means **emissions** of an **air pollutant** in excess of any applicable **emission standard**.

~~((26))~~ (29) "**Excess stack height**" means that portion of a **stack** which exceeds the greater of sixty-five meters or the calculated **stack height** described in WAC 173-400-200(2).

~~((27))~~ "**Existing stationary facility**" means a stationary source of air pollutants which has the potential to emit two hundred fifty tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement.

~~((28))~~ (30) "**Federal Clean Air Act (FCAA)**" means the Federal Clean Air Act, also known as Public Law 88-206,

77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

~~((29))~~ (31) "**Federal Class I area**" means any federal land that is classified or reclassified **Class I**. The following areas are federal **Class I** areas in Washington state:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness.

~~((30))~~ (32) "**Federal land manager**" means ~~((with respect to any lands in the United States, the Secretary of the department with authority over such lands))~~ the National Park Service and/or the U.S. Forest Service.

~~((31))~~ (33) "**Fossil fuel-fired steam generator**" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

~~((32))~~ (34) "**Fugitive dust**" means a particulate **emission** made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of **fugitive emission**.

~~((33))~~ (35) "**Fugitive emissions**" means **emissions** which do not pass and which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~((34))~~ (36) "**General process unit**" means an **emissions unit** using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

~~((35))~~ (37) "**Good engineering practice (GEP)**" refers to a calculated **stack height** based on the equation specified in WAC 173-400-200 (2)(a)(ii).

~~((36))~~ (38) "**Incinerator**" means a furnace used primarily for the thermal destruction of waste.

~~((37))~~ (39) "**In operation**" means engaged in activity related to the primary design function of the **source**.

~~((38))~~ "**Integral vista**" means a view perceived from within a mandatory **Class I** federal area of a specific landmark or panorama located outside the boundary of the mandatory **Class I** federal area.

~~((39))~~ (40) "**Lowest achievable emission rate (LAER)**" means for any **source** that rate of **emissions** which reflects the more stringent of:

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

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

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable New Source Performance Standards.

~~((39))~~ (41) "Mandatory Class I federal area" means any area defined in Section 162(a) of the ((FCAA)) **Federal Clean Air Act**. The following areas are the mandatory Class I federal areas in Washington state ((are as follows)):

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

~~((40))~~ (42)(a) "Major modification," ((means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA. Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

- (a) Routine maintenance, repair, and replacement;
  - (b) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Supply Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
  - (c) Use of an alternative fuel by reason of an order or rule under section 125 of the FCAA, 42 U.S.C. 7425;
  - (d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
  - (e) Use of an alternative fuel or raw material by a stationary source which:
    - (i) The stationary source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, in a prevention of significant deterioration permit or notice of construction approval; or
    - (ii) The stationary source is approved to use under any federally enforceable notice of construction approval or a PSD permit issued by the environmental protection agency;
  - (f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, in a prevention of significant deterioration permit or a notice of construction approval;
  - (g) Any change in ownership at a stationary source.
- (41) "Major stationary source" means:
- (a) Any stationary source which:
    - (i) Emits or has the potential to emit one hundred tons per year or more of any air contaminant regulated by the state or Federal Clean Air Acts; or

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

- (b) Any stationary source (or group of stationary sources) which:

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

- (ii) Is located in a "serious" particulate matter (PM<sub>10</sub>) nonattainment area and which emits or has the potential to emit seventy tons per year or more of PM<sub>10</sub> emissions.

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

- (d) A major stationary source that is major for VOCs or NOx shall be considered major for ozone;

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

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

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

~~(42)) as it applies to sources subject to Requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.~~

~~(b) "Major modification," as it applies to sources subject to Requirements for attainment or unclassified areas, is defined in WAC 173-400-113.~~

~~(43)(a) "Major stationary source," as it applies to sources subject to Requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.~~

~~(b) "Major stationary source," as it applies to sources subject to Requirements for sources in attainment or unclassified areas, is defined in WAC 173-400-113.~~

~~(44) "Masking" means the mixing of a chemically non-reactive control agent with a malodorous gaseous effluent to change the perceived odor.~~

~~((43)) (45) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.~~

~~((44)) (46) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.~~

~~((45)) (47) "National Ambient Air Quality Standard (NAAQS)" means an ambient air quality standard set by EPA at 40 CFR Part 50 (in effect on July 1, 2000) and includes standards for carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).~~

~~(48) "National Emission Standards for Hazardous Air Pollutants (NESHAPS)" means the federal ((regulations set forth)) rules in 40 CFR Part((s)) 61 ((and 63)) (in effect on December 14, 2000).~~

~~((46)) (49) "National Emission Standards for Hazardous Air Pollutants for Source Categories" means the federal rules in 40 CFR Part 63 (in effect on February 20, 2001) and/or adopted by reference in WAC 173-400-075.~~

~~(50) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.~~

~~((47)) (51)(a) "Net emissions increase," ((means:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(48)) as it applies to sources subject to Requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.~~

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(b) "Net emissions increase," as it applies to sources subject to Requirements for new sources in attainment or unclassified areas, is defined in WAC 173-400-113.

(52) "New source" means:

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

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

((49)) (53) "New Source Performance Standards (NSPS)" means the federal ((regulations set forth)) rules in 40 CFR Part 60 (in effect on February 20, 2001) and/or adopted by reference in WAC 173-400-115.

((50)) (54) "Nonattainment area" means a ((clearly delineated)) geographic area ((which has been)) designated by EPA ((promulgation)) at 40 CFR Part 81 (in effect on July 1, 2000) as exceeding a **National Ambient Air Quality Standard** ((or standards)) (**NAAQS**) for ((one or more of the)) a given criteria pollutant(s). An area is nonattainment for only the pollutants that exceed the NAAQS.

((51)) (55) "Notice of construction application" means a written application to permit construction of a **new source, modification** of an existing **stationary source** or replacement or substantial alteration of control technology at an existing **stationary source**.

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

((53)) (57) "Open burning" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the **emissions** from the combustion. Wood waste disposal in wig-wam burners is not considered open burning.

((54)) (58) "Order" means any order issued by **ecology** or a local air **authority** pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms **order**, corrective action order, **order of approval**, and **regulatory order**.

((55)) (59) "Order of approval" or "approval order" means a **regulatory order** issued by **ecology** or the **authority** to approve the **notice of construction application** for a proposed **new source** or **modification**, or the replacement or substantial alteration of control technology at an existing **stationary source**.

((56)) (60) "Ozone depleting substance" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82 (in effect on July 1, 2000).

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

((57)) (62) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the **ambient air** as measured by applicable reference methods, or an equivalent or alternative method

specified in 40 CFR Part 60 (in effect on February 20, 2001) or by a test method specified in the ((Washington state implementation plan)) **SIP**.

((58)) (63) "Parts per million (ppm)" means parts of a contaminant per million parts of gas, by volume, exclusive of water or **particulates**.

((59)) (64) "Permitting agency" means **ecology** or the local air pollution control **authority** with jurisdiction over the **source**.

(65) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

((60)) (66) "PM-10" means **particulate matter** with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J (in effect on July 1, 2000) and designated in accordance with 40 CFR Part 53 (in effect on July 1, 2000) or by an equivalent method designated in accordance with 40 CFR Part 53.

((61)) (67) "PM-10 emissions" means finely divided solid or liquid material, including condensible **particulate matter**, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the **ambient air** as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 (in effect on July 1, 2000) or by a test method specified in the ((Washington state implementation plan)) **SIP**.

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

((63)) (69) "Prevention of significant deterioration (PSD)" means the program ((set forth)) in WAC 173-400-141.

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

((65)) (71) "Reasonably attributable" means attributable by visual observation or any other technique the state deems appropriate.

((66)) (72) "Reasonably available control technology (RACT)" means the lowest **emission** limit that a particular **source** or **source** category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual **source** or **source** category taking into account the impact of the **source** upon air quality, the availability of additional controls, the **emission** reduction to be achieved by additional

controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any **source** or **source** category shall be adopted only after notice and opportunity for comment are afforded.

((67)) (73) "**Regulatory order**" means an **order** issued by **ecology** or an **authority** to an **air contaminant source** which applies to that **source**, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or, for **sources** regulated by a local air **authority**, the regulations of that **authority**.

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

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

((69)) as it applies to sources subject to Requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.

(b) "**Significant**," as it applies to sources subject to Requirements for new sources in attainment or unclassified areas, is defined in WAC 173-400-113.

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

((70)) (76) "**Source**" means all of the **emissions unit(s)** including quantifiable **fugitive emissions**, that are located on one or more contiguous or adjacent properties, and

are under the control of the same **person** or **persons** under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended ((by the 1977 Supplement)).

((71)) (77) "**Source category**" means all **sources** of the same type or classification.

((72)) (78) "**Stack**" means any point in a **source** designed to emit solids, liquids, or gases into the air, including a pipe or duct.

((73)) (79) "**Stack height**" means the height of an **emission** point measured from the ground-level elevation at the base of the **stack**.

((74)) (80) "**Standard conditions**" means a temperature of 20° (68° F) and a pressure of 760 mm (29.92 inches) of mercury.

((75)) (81) "**State implementation plan (SIP)**" or "**Washington SIP**" means the Washington SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the **National Ambient Air Quality Standards**.

(82) "**Stationary source**" means any building, structure, facility, or installation which emits or may emit any contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the ((FCAA)) **Federal Clean Air Act**.

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

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

((78)) (85) "**Total reduced sulfur (TRS)**" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 in Appendix A to 40 CFR Part 60 (in effect on February 7, 2001) or an approved equivalent method and expressed as hydrogen sulfide.

((79)) (86) "**Total suspended particulate**" means **particulate matter** as measured by the method described in 40 CFR Part 50 Appendix B ((as in effect on October 17, 1996)) (in effect on July 1, 2000).

((80)) (87) "**Toxic air pollutant (TAP)**" or "**toxic air contaminant**" means any Class A or B toxic air pollutant listed in WAC 173-460-150 and 173-460-160. The term toxic air pollutant may include **particulate matter** and **volatile**

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**organic compounds** if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or 173-460-160. The term toxic air pollutant does not include **particulate matter** and **volatile organic compounds** as generic classes of compounds.

~~((81))~~ (88) "**Unclassifiable area**" means an area that cannot be designated **attainment** or **nonattainment** on the basis of available information as meeting or not meeting the **National Ambient Air Quality Standard** for the **criteria pollutant** and that is listed by **EPA** at 40 CFR Part 81 (in effect on July 1, 2000).

(89) "**United States Environmental Protection Agency (USEPA)**" shall be referred to as **EPA**.

~~((82))~~ (90) "**Visibility impairment**" means any **humanly** perceptible ~~((degradation))~~ **change** in visibility (**light extinction**, visual range, contrast, **and** coloration) ~~((not caused by))~~ from that which would have existed under natural conditions.

~~((83))~~ "**Visibility impairment of Class I areas**" means **visibility impairment within the area and visibility impairment of any formally designated integral vista associated with the area.**

~~((84))~~ (91) "**Volatile organic compound (VOC)**" means any **carbon** compound ~~((of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which))~~ that participates in atmospheric photochemical reactions. ~~((This includes:))~~

(a) ~~((Any such organic compound other than the following, which has been determined to have negligible photochemical reactivity:))~~ **Exceptions.** The following compounds are not a VOC: **Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; ~~((acetones))~~ perchloroethylene (tetrachloroethylene); **3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluo-****

**romethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl chloride and perfluorocarbon compounds which fall into these classes:**

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

(ii) Cyclic, branched, or linear completely fluorinated ethers with no saturations; ~~((and))~~

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

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

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A, in effect on **February 20, 2001**. Where ~~((such a))~~ **the** method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of ~~((such))~~ **the** compounds is accurately quantified, and ~~((such))~~ **the** exclusion is approved by **ecology** ~~((or))~~, **the authority, or EPA.**

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

## NEW SECTION

**WAC 173-400-035 Usage.** For the purposes of this chapter, the following apply:

(1) Unless the context clearly requires otherwise, the use of the singular includes the plural and conversely.

(2) Words in **bold** highlighting assist the reader in identifying terms defined in this chapter or in identifying subsection headings. Nothing in bold changes the meaning of a word, nor are captions or headings any part of the rule.

(3) "**Adopted by reference**" means a separate writing or other material is incorporated into a rule by identification rather than by reproduction. The instant the rule is adopted, the separate material is adopted by reference as if it were reproduced in full.

(4) "**Shall**," "**must**," "**may not**" or "**will**" means the provision is mandatory.

(5) "**Under**" means subject to, required by, pursuant to, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction.

AMENDATORY SECTION (Amending Order 98-27, filed 11/22/00, effective 12/23/00)

**WAC 173-400-040 General standards for maximum emissions.** All **sources** and **emissions units** are required to meet the **emission standards** of this chapter. Where an **emission standard** listed in another chapter is applicable to a specific **emissions unit**, such standard will take precedent over a general **emission standard** listed in this chapter. When two or more **emissions units** are connected to a common **stack** and the operator elects not to provide the means or facilities to sample **emissions** from the individual **emissions units**, and the relative contributions of the individual **emissions units** to the common discharge are not readily distinguishable, then the **emissions** of the common **stack** must meet the most restrictive standard of any of the connected **emissions units**. Further, all **emissions units** are required to use **reasonably available control technology (RACT)** which may be determined for some **sources** or **source categories** to be more stringent than the applicable **emission limitations** of any chapter of Title 173 WAC. Where current controls are determined to be less than **RACT**, **ecology** or the **authority** shall, as provided in RCW 70.194.154, define **RACT** for each **source** or **source category** and issue a rule or **regulatory order** requiring the installation of **RACT**.

(1) **Visible emissions.** No **person** shall cause or permit the **emission** for more than three minutes, in any one hour, of an **air contaminant** from any **emissions unit** which at the **emission point**, or within a reasonable distance of the **emission point**, exceeds twenty percent **opacity** except:

(a) When the **emissions** occur due to soot blowing/grate cleaning and the operator can demonstrate that the **emissions** will not exceed twenty percent **opacity** for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and **ecology** or the **authority** be advised of the schedule.

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

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

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

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

(3) **Fugitive emissions.** The owner or operator of any **emissions unit** engaging in materials handling, construction,

demolition or any other operation which is a **source** of fugitive emission:

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

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

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

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

(6) **Sulfur dioxide.**

No **person** shall cause or permit the **emission** of a gas containing sulfur dioxide from any **emissions unit** in excess of one thousand **ppm** of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion **sources**, and based on the average of any period of sixty consecutive minutes, except:

When the owner or operator of an **emissions unit** supplies **emission data** and can demonstrate to **ecology** or the **authority** that there is no feasible method of reducing the concentration to less than one thousand **ppm** (on a dry basis, corrected to seven percent oxygen for **combustion sources**) and that the state and federal **ambient air quality standards** for sulfur dioxide will not be exceeded. In such cases, **ecology** or the **authority** may require specific **ambient air** monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to **ecology** or the **authority**.

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

(8) **Fugitive dust sources.**

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

(b) The owner((+)) or operator((+)) of any existing source((+)) of **fugitive dust** that has been identified as a **significant contributor** to a **PM-10 nonattainment area** shall

be required to use **reasonably available control technology** to control **emissions**. Significance will be determined by the criteria found in WAC 173-400-113((3)) (2)(c).

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-050 Emission standards for combustion and incineration units.** (1) Combustion and incineration **emissions units** must meet all requirements of WAC 173-400-040 and, in addition, no **person** shall cause or permit **emissions of particulate matter** in excess of 0.23 gram per dry cubic meter at **standard conditions** (0.1 grain/dscf), except, for an **emissions unit** combusting wood derived fuels for the production of steam. No **person** shall allow or permit the **emission of particulate matter** in excess of 0.46 gram per dry cubic meter at **standard conditions** (0.2 grain/dscf), as measured by **EPA method 5** in **Appendix A** to **40 CFR Part 60**, (in effect on February 20, 2001) or approved procedures contained in "**Source Test Manual - Procedures For Compliance Testing**," state of Washington, department of **ecology**, as of July 12, 1990, on file at ecology.

(2) For any **incinerator**, no **person** shall cause or permit **emissions** in excess of one hundred **ppm** of total carbonyls as measured by applicable **EPA methods** or acceptable procedures contained in "**Source Test Manual - Procedures for Compliance Testing**," state of Washington, department of **ecology**, on file at **ecology**. **Incinerators** shall be operated only during daylight hours unless written permission to operate at other times is received from **ecology** or the **authority**.

(3) Measured concentrations for **combustion and incineration sources** shall be adjusted for volumes corrected to seven percent oxygen, except when **ecology** or the **authority** determines that an alternate oxygen correction factor is more representative of normal operations.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. (See WAC 173-400-115(2) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.)

(a) **Definition.** A "commercial and industrial solid waste incineration (CISWI) unit" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility. This includes, but is not limited to, wigwam burners and silo burners.

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

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

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

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

(c) The following types of incineration units are exempt from this section:

(i) **Pathological waste incineration units.** Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on January 30, 2001) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

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

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

(ii) **Agricultural waste incineration units.** Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (in effect on January 30, 2001) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

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

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

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

(A) Are regulated under 40 CFR Part 60, subpart Ea or subpart Eb (in effect on July 1, 2000); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 CFR Part 60, subpart AAAA (adopted on December 6, 2000 and in effect on June 1, 2001); or WAC 173-400-050(5).

(B) Burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, subparts Ea (in effect on July 1, 2000), Eb (in effect on July 1, 2000), and AAAA (adopted on December 6, 2000 and in effect on June 1, 2001), and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

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

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

(iv) **Medical waste incineration units.** Incineration units regulated under 40 CFR Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996);



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

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

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

(C) You notify the **permitting agency** that the unit meets all of these criteria.

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

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

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

(C) You notify the administrator that the unit meets all of these criteria.

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

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

(B) Units regulated under subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, 2000).

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

(ix) Air curtain incinerators. Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on January 30, 2001).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

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

(x) Cyclonic barrel burners. (See 40 CFR 60.2265 (in effect on January 30, 2001).

(xi) Rack, part, and drum reclamation units. (See 40 CFR 60.2265 (in effect on January 30, 2001).

(xii) Cement kilns. Kilns regulated under subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, 2000).

(xiii) Sewage sludge incinerators. Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, 2000).

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

through (H) of this subsection are considered chemical recovery units.

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

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

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

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) Laboratory analysis units. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on January 30, 2001).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on January 30, 2001) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115(2), which adopts 40 CFR Part 60, subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on January 30, 2001, which is adopted by reference. The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;

- Waste management plan requirements in 60.2620 through 60.2630;

- Operator training and qualification requirements in 60.2635 through 60.2665;

- Emission limitations and operating limits in 60.2670 through 60.2685;

- Performance testing requirements in 60.2690 through 60.2725;

- Initial compliance requirements in 60.2700 through 60.2725;

- Continuous compliance requirements in 60.2710 through 60.2725;

- Monitoring requirements in 60.2730 through 60.2735;

- Recordkeeping and reporting requirements in 60.2740 through 60.2800;

- Title V operating permits requirements in 60.2805;

- Air curtain incinerator requirements in 60.2810 through 60.2870; and

- Definitions in 60.2875.

PROPOSED

• Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the **permitting agency**.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. (See WAC 173-400-115(2) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.)

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in (d)(viii) and (ix) of this subsection.

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in (d)(x) of this subsection.

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

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

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on February 5, 2001).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on February 5, 2001), mean the unit is considered a new unit and subject to WAC 173-400-115(2), which adopts 40 CFR Part 60, subpart AAAA (in effect on June 6, 2001).

(d) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) Small municipal waste combustion units that combust less than 11 tons per day. Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the **permitting agency** that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable permit to the **permitting agency**.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) Small power production units. Units are exempt from this section if four requirements are met:

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

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the **permitting agency** that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the **permitting agency** that the unit qualifies for the exemption.

(iii) Cogeneration units. Units are exempt from this section if four requirements are met:

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

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the **permitting agency** that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the **permitting agency** that the unit qualifies for the exemption.

(iv) Municipal waste combustion units that combust only tires. Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the **permitting agency** that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the **permitting agency** that the unit qualifies for the exemption.

(v) Hazardous waste combustion units. Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) Materials recovery units. Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) Cofired units. Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable permit limiting municipal solid waste combustion to 30 percent of total fuel input by weight.

(B) The owner or operator notifies the **permitting agency** that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable permit to the **permitting agency**.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) Plastics/rubber recycling units. Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on February 5, 2001).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) Units that combust fuels made from products of plastics/rubber recycling plants. Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) Cement kilns. Cement kilns that combust municipal solid waste are exempt.

(xi) Air curtain incinerators. If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on February 5, 2001) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on February 5, 2001).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on February 5, 2001) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on February 5, 2001) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on February 5, 2001).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on February 5, 2001) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on February 5, 2001) to calculate the combustion capacity of a municipal waste combustion unit.

PROPOSED

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on February 5, 2001), which is adopted by reference.

(i) The rule contains these major components:

- (A) Increments of progress towards compliance in 60.1585 through 60.1640;
- (B) Good combustion practices - operator training in 60.1645 through 60.1670;
- (C) Good combustion practices - operator certification in 60.1675 through 60.1685;
- (D) Good combustion practices - operating requirements in 60.1690 through 60.1695;
- (E) Emission limits in 60.1700 through 60.1710;
- (F) Continuous emission monitoring in 60.1715 through 60.1770;
- (G) Stack testing in 60.1775 through 60.1800;
- (H) Other monitoring requirements in 60.1805 through 60.1825;
- (I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting agency.

(D) Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule.

(E) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must comply with Table 1.

Table 1 Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin on-site construction)	Increment 4 (Complete on-site construction)	Increment 5 (Final compliance)
All Class I units	August 6, 2003	April 6, 2004	October 6, 2005	October 6, 2005	November 6, 2005
All Class II units	September 6, 2003	Not applicable	Not applicable	Not applicable	May 6, 2005

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (in effect on February 5, 2001).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, subpart BBBB (in effect on February 5, 2001) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction permit or operation permit) if a permit modification is required.

(i) Air operating permit. Applicability to chapter 173-400 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

**AMENDATORY SECTION** (Amending Order 98-27, filed 11/22/00, effective 12/23/00)

**WAC 173-400-060 Emission standards for general process units.** **General process units** are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or permit the **emission** of **particulate** material from any general process operation in excess of 0.23 grams per dry cubic meter at **standard conditions**.(0.1 grain/dscf)

of exhaust gas. EPA test methods (in effect on February 20, 2001) from 40 CFR Parts 51, 60, 61, and 63 and any other approved test procedures which are contained in **ecology's "Source Test Manual - Procedures For Compliance Testing"** as of July 12, 1990, will be used to determine compliance.

**AMENDATORY SECTION** (Amending Order 98-27, filed 11/22/00, effective 12/23/00)

**WAC 173-400-070 Emission standards for certain source categories.** **Ecology** finds that the reasonable regulation of **sources** within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for **emissions units** within the categories listed. Except as specifically provided in this section, such **emissions units** shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam burners.**

(a) All wigwam burners shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7).

(b) All wigwam burners shall use **RACT**. All **emissions units** shall be operated and maintained to minimize **emissions**. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by **ecology** or the **authority**.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new **sources** including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) **Ecology** may establish additional requirements for wigwam burners located in sensitive areas as defined by chapter 173-440 WAC. These requirements may include but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(1). An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply **BACT**.

(iii) A requirement to reduce or eliminate **emissions** if **ecology** establishes that such **emissions** unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of **ambient air standards**.

**(2) Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that **emissions** may exceed twenty percent **opacity** for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and **ecology** or the **authority** shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize **RACT** and shall be operated and maintained to minimize **emissions**.

**(3) Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible **emission** exceeding twenty percent **opacity**, except during the first thirty minutes after such device or material is ignited.

**(4) Grain elevators.**

Any grain elevator which is primarily classified as a **materials handling** operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

**(5) Catalytic cracking units.**

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:

(i) No **person** shall cause or permit the **emission** for more than three minutes, in any one hour, of an **air contaminant** from any catalytic cracking unit which at the **emission** point, or within a reasonable distance of the **emission** point, exceeds forty percent **opacity**.

(ii) No **person** shall cause or permit the **emission** of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

**(6) Other wood waste burners.**

(a) Wood waste burners not specifically provided for in this section shall meet all provisions of WAC 173-400-040.

(b) Such wood waste burners shall utilize **RACT** and shall be operated and maintained to minimize **emissions**.

**(7) Sulfuric acid plants.**

No **person** shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H<sub>2</sub>SO<sub>4</sub>, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H<sub>2</sub>SO<sub>4</sub>.

(8) **Sewage sludge incinerators.** Standards for the incineration of sewage sludge found in 40 CFR Part 503 subparts A (General Provisions) and E (Incineration) in effect on July 1, 1997, are adopted by reference.

(9) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Resource Conservation and Recovery Act including the following: Commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

(a) Applicability. These rules apply to each ((existing)) MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115(2) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this section have the meaning given them in 40 CFR 60.751 (in effect on July 1, 2000), except that every use of the word "administrator" in the federal rules referred to in this section includes the "permitting agency."

(b) Exceptions. Any physical or operational change to an ((existing)) MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) (in effect on July 1, 2000) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) (in effect on July 1, 2000) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. ((All-existing)) A MSW landfill((s)) must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submission of an initial design capacity report) (in effect on July 1, 2000) and 40 CFR 60.758 (recordkeeping requirements)(in effect on July 1,

2000), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before the effective date of this rule.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before the effective date of this rule. ((Exceptions to these requirements are located in 40 CFR 60.24.

~~(d))~~ (e) Test methods and procedures.

(i) ~~((All existing))~~ A MSW landfill(s) having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill non-methane organic compound ((NMOC)) emission rates following the procedures listed in 40 CFR 60.754 (in effect on July 1, 2000), as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii) (in effect on July 1, 2000) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753 (in effect on July 1, 2000).

(B) The systems must follow the compliance provisions in 40 CFR 60.755 (a)(1) through (a)(6) (in effect on July 1, 2000) to determine whether the system is in compliance with 40 CFR 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 CFR 60.756 (in effect on July 1, 2000).

~~((e))~~ (f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

~~((f))~~ (g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

~~((g))~~ (h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii) (in effect on July 1, 2000).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to ~~((ecology))~~ the permitting agency within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 CFR 60.18 (in effect on July 1, 2000);

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353 (in effect on July 1, 2000); or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752(b)(2)(v) (in effect on July 1, 2000).

**AMENDATORY SECTION** (Amending Order 98-27, filed 11/22/00, effective 12/23/00)

**WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants.** (1) **National emission standards for hazardous air pollutants (NESHAPs).** 40 CFR Part 61 and Appendices in effect on ~~((July 1, 2000))~~ February 20, 2001, is adopted by reference. The term "administrator" in 40 CFR Part 61 includes the ~~((director of ecology))~~ permitting agency.

(2) ~~((Ecology or the authority))~~ The permitting agency may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40

CFR Parts 61 (~~and~~), 63 and 65 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) **Source** testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 CFR Parts 61 (~~and~~), 63 and 65.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) **Maximum achievable control technology (MACT) standards.** MACT standards are officially known as **National Emission Standards for Hazardous Air Pollutants for Source Categories.**

(a) Adopt by reference.

(i) 40 CFR Part 63 and Appendices in effect on (~~July 1, 2000~~) February 20, 2001, is adopted by reference (~~except as specified below~~). Exceptions are listed in (5)(c) of this section.

Subpart A	General Provisions
Subpart B	Requirements for Control Technology Determinations for Major Sources According to Section 112(g) and 112(j) of the federal Clean Air Act
Subpart D	Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants
Subpart F	NESHAPs for the Synthetic Organic Chemical Manufacturing Industry (a/k/a HON)
Subpart G	NESHAPs for the Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater ( <u>Amended 12/14/00</u> )
Subpart H	NESHAPs for the Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks ( <u>Amended 12/14/00</u> )
Subpart I	NESHAPs for Processes Subject to the Negotiated Regulation for Equipment Leaks
Subpart L	NESHAPs for Coke Oven Batteries: Charging, topside and door leaks
<u>Subpart M</u>	<u>NESHAP for PCE Dry-Cleaners - as it applies to major sources</u>
Subpart N	NESHAPs for Chromium Electroplating and Anodizing
Subpart O	NESHAPs for Commercial Ethylene Oxide Sterilizers
Subpart Q	NESHAPs for Industrial Process Cooling Towers
Subpart R	NESHAPs for Gasoline Distribution/Marketing (stage 1)

Subpart S	NESHAP for the Pulp and Paper Industry ( <u>Amended 12/22/00, effective 2/20/01</u> )
Subpart T	NESHAPs for Halogenated Solvent Cleaning Machines ( <u>Amended 9/08/00</u> )
Subpart U	NESHAPs for Group I Polymers and Resins
Subpart W	NESHAPs for Epoxy Resins Production and Non-Nylon Polyamides Production
Subpart X	NESHAPs for the Secondary Lead Smelters
<u>Subpart Y</u>	<u>NESHAP for Marine Tank Vessel Loading Operations</u>
Subpart AA	NESHAP for Phosphoric Acid Manufacturing Plants
Subpart BB	NESHAP for Phosphate Fertilizers Production Plants
Subpart CC	NESHAPs for the Petroleum Refinery Industry
Subpart DD	NESHAPs from Off-site Waste and Recovery Treatment Operation ( <u>Amended 1/08/01</u> )
Subpart EE	NESHAPs for Magnetic Tape Manufacturing Operations
Subpart GG	NESHAPs for the Aerospace Manufacturing and Rework Facilities ( <u>Amended 12/08/00</u> )
Subpart HH	NESHAP for Oil and Natural Gas Production Facilities
Subpart II	NESHAPs for Shipbuilding and Repair (surface coating)
Subpart JJ	NESHAPs for Wood Furniture Manufacturing Operations
Subpart KK	NESHAPs for Printing and Publishing Industry
Subpart LL	NESHAP for Primary Aluminum Reduction Plants
<u>Subpart MM</u>	<u>NESHAP for Kraft, Soda, Sulfitite, and Stand-Alone Semi-chemical Pulp Mills (Adopted January 12, 2001, effective March 13, 2001)</u>
Subpart OO	NESHAPs for Tanks - Level 1
Subpart PP	NESHAPs for Containers
Subpart QQ	NESHAPs for Surface Impoundments
Subpart RR	NESHAPs for Individual Drain Systems

Subpart SS NESHAP for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process

Subpart TT NESHAP for Equipment Leaks - Control Level 1

Subpart UU NESHAP for Equipment Leaks - Control Level 2 Standards

Subpart VV NESHAPs for Oil-Water Separators and Organic Water Separators

Subpart WW NESHAP for Storage Vessels (Tanks) - Control Level 2

Subpart YY NESHAP for Source Categories: Generic MACT

Subpart CCC NESHAP for Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants

Subpart DDD NESHAP for Mineral Wool Production

Subpart EEE NESHAP for Hazardous Waste Combustors (Amended 7/10/00 and 9/20/00)

Subpart GGG NESHAP for Pharmaceuticals Production (Amended 8/29/00)

Subpart HHH NESHAP from Natural Gas Transmission and Storage Facilities

Subpart III NESHAP for Flexible Polyurethane Foam Production

Subpart JJJ NESHAP for Group IV Polymers and Resins (Amended 8/29/00)

Subpart LLL NESHAP from the Portland Cement Manufacturing Industry

Subpart MMM NESHAP for Pesticide Active Ingredient Production

Subpart NNN NESHAP for Wool Fiberglass Manufacturing

Subpart PPP NESHAP from Polyether Polyols Production

Subpart RRR NESHAP for Secondary Aluminum Production

Subpart TTT NESHAP for Primary Smelting

Subpart XXX NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese

Appendix A Test Methods (Amended 10/17/00)

Appendix B Sources Defined for Early Reduction Provisions

Appendix C Determination of the Fraction Biodegraded in a Biological Treatment Unit

Appendix D Alternative Validation procedure for EPA Waste and Wastewater Methods(7)

Appendix E Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (Adopted 12/22/00, effective 2/20/01)

~~((except as specified below.))~~ (ii) 40 CFR Part 63, subpart MM (kraft, soda, sulfite, and stand-alone semi-chemical pulp mills), adopted on January 12, 2001, in the Federal Register (Vol. 66, No. 9, beginning on page 3180), expected to become effective as federal rules on March 13, 2001, is adopted by reference.

(b) Exceptions to adopting 40 CFR Part 63.

~~((i))~~ (i) The term "administrator" in 40 CFR Part 63 includes the ~~((director of ecology))~~ permitting agency.

~~((e))~~ ~~Exceptions.~~ (ii) The following subparts of 40 CFR Part 63 are not adopted by reference:

~~((+))~~ (A) Subpart C: List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, source Category List.

~~((#))~~ (B) Subpart E: Approval of State Programs and Delegation of Federal Authorities.

~~((##))~~ (C) Subpart M: National Perchloroethylene Emission Standards for Dry Cleaning Facilities as it applies to nonmajor sources.

~~((iv))~~ ~~Subpart Y: National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations.~~

(6) Consolidated requirements for the synthetic organic chemical manufacturing industry. 40 CFR Part 65, in effect on December 14, 2000, is adopted by reference.

(7) Emission Standards for Perchloroethylene Dry Cleaners.

(a) Applicability.

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Table 1 divides dry cleaning facilities into 3 regulatory source categories by the type of equipment they use and the volume of PCE purchased. Each dry cleaning system must follow the applicable requirements in Table 1:

TABLE 1. PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(1) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr

PROPOSED



Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(2) Only Transfer Machines (3) Both Dry-to-Dry and Transfer Machines	200 gallons PCE/yr 140 gallons PCE/yr	200-1,800 gallons PCE/yr 140-1,800 gallons PCE/yr	1,800 gallons PCE/yr 1,800 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, 2000).

**(b) Operations and maintenance record.**

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.

(B) Repair: The date, time, and result of each repair of the dry cleaning system.

(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:

(I) The air temperature at the inlet of the refrigerated condenser;

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

(II) The date the concentration was measured.

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

**(c) General operations and maintenance requirements.**

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all ((perchloroethylene)) PCE, and wastes containing ((perchloroethylene)) PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.

**(d) Inspection.**

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source
Once every 2 weeks.	Once every week.	Once every week.

(ii) An inspection must include an examination of these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

(iii) The dry cleaning system must be inspected while it is operating.

(iv) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

**(e) Repair.**

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

PROPOSED

(f) **Requirements for systems with refrigerated condensers.** A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2 °F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) ~~((Difference between inlet and outlet air temperature.))~~ For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn

into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(g) **Requirements for systems with carbon adsorbers.** A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be written in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

**AMENDATORY SECTION** (Amending Order 93-40, filed 3/22/95, effective 4/22/95)

**WAC 173-400-100 Source classifications.** (1) **Source classification list.** In counties without an active local **air pollution control authority**, the owner or operator of each **stationary source** within the following **source categories** shall register the **source** with **ecology**:

(a) Agricultural chemical facilities engaging in the manufacturing of liquid or dry fertilizers or pesticides;

(b) Agricultural drying and dehydrating operations;

(c) Any category of **stationary sources** to which a federal standard of performance (**NSPS**) under 40 CFR Part 60 that is adopted by reference in WAC 173-400-115, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters) applies;

(d) Any **source** category subject to a **National Emission Standard for Hazardous Air Pollutants (NESHAP)** under

40 CFR Part 61 (in effect on February 7, 2001), other than Subpart M (National Emission Standard for Asbestos) or a **National Emission Standard for Hazardous Air Pollutants for Source Categories** (Maximum Achievable Control Technology (MACT) standard) established under (~~Section 112 of the Federal Clean Air Act~~) 40 CFR Part 63 that is adopted by reference in WAC 173-400-075;

(e) Any **source, stationary source or emission unit** with (~~a significant~~) an emission (as) rate defined as "significant" by WAC 173-400-030((67));

(f) Asphalt and asphalt products production facilities;

(g) Brick and clay manufacturing plants, including tiles and ceramics;

(h) Casting facilities and foundries, ferrous and nonferrous;

(i) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle **in operation** between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

(j) Chemical manufacturing plants;

(k) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

(l) Concrete product manufacturers and ready mix and premix concrete plants;

(m) Crematoria or animal carcass **incinerators**;

(n) Dry cleaning plants;

(o) **Materials handling** and transfer facilities that generate fine particulate, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

(p) Flexible vinyl and urethane coating and printing operations;

(q) Grain, seed, animal feed, legume, and flour processing operations, and handling facilities;

(r) Hay cubers and pelletizers;

(s) Hazardous waste treatment and disposal facilities;

(t) Ink manufacturers;

(u) Insulation fiber manufacturers;

(v) Landfills, active and inactive, including covers, gas collections systems or flares;

(w) Metal plating and anodizing operations;

(x) Metallic and nonmetallic mineral processing plants, including rock crushing plants;

(y) Mills such as lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

(z) Mineralogical processing plants;

(aa) Other metallurgical processing plants;

(bb) Paper manufacturers;

(cc) Petroleum refineries;

(dd) Plastics and fiberglass product fabrication facilities;

(ee) Rendering plants;

(ff) Soil and groundwater remediation projects;

(gg) Surface coating manufacturers;

(hh) Surface coating operations including: Automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;

(ii) Synthetic fiber production facilities;

(jj) Synthetic organic chemical manufacturing industries;

(kk) Tire recapping facilities;

(ll) Wastewater treatment plants;

(mm) Any **source** that has elected to opt-out of the operating permit program by limiting its potential-to-emit (**synthetic minor**) or is required to report periodically to demonstrate nonapplicability to EPA requirements under Sections 111 or 112 of (~~FCAA~~) Federal Clean Air Act.

(2) **Equipment classification list.** In counties without an active local air pollution control **authority**, the owner or operator of the following equipment shall register the **source** with **ecology**:

(a) Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;

(b) Boilers, all gas fired boilers above 10 million British thermal units per hour input;

(c) Chemical concentration evaporators;

(d) Degreasers of the cold or vapor type in which more than five percent of the solvent is comprised of halogens or such aromatic hydrocarbons as benzene, ethylbenzene, toluene or xylene;

(e) Ethylene oxide (ETO) sterilizers;

(f) Flares utilized to combust any gaseous material;

(g) Fuel burning equipment with a heat input of more than 1 million Btu per hour; except heating, air conditioning systems, or ventilating systems not designed to remove contaminants generated by or released from equipment;

(h) **Incinerators** designed for a capacity of one hundred pounds per hour or more;

(i) Ovens, burn-out and heat-treat;

(j) Stationary internal combustion engines and turbines rated at five hundred horsepower or more;

(k) Storage tanks for organic liquids associated with commercial or industrial facilities with capacities equal to or greater than 40,000 gallons;

(l) Vapor collection systems within commercial or industrial facilities;

(m) Waste oil burners above 0.5 mm Btu heat output;

(n) Woodwaste **incinerators**;

(o) Commercial and industrial solid waste incineration units subject to WAC 173-400-050(4);

(p) Small municipal waste combustion units subject to WAC 173-400-050(5).

AMENDATORY SECTION (Amending Order 93-40, filed 3/22/95, effective 4/22/95)

**WAC 173-400-102 Scope of registration and reporting requirements.** (1) **Administrative options.** A **source** in a listed **source** category that is located in a county without an active local air **authority** will be addressed in one of several ways:

(a) The **source** will be required to register and report once each year. The criteria for identifying these **sources** are listed in subsection (2) of this section.

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(b) The **source** will be required to register and report once every three years. The criteria for identifying these **sources** are listed in subsection (3) of this section.

(c) The **source** will be exempted from registration program requirements. The criteria for identifying these **sources** are listed in subsection (4) of this section.

(2) **Sources requiring annual registration and inspections.** An owner or operator of a **source** in a listed **source** category that meets the following criteria shall register and report once each year:

(a) The **source** emits one or more pollutants at rates greater than the **emission** rates listed in the definition of "significant" in WAC 173-400-030((67));

(b) Annual registration and reporting is necessary to comply with federal reporting requirements and **emission** standards; or

(c) Annual registration and reporting is required in a **reasonably available control technology** determination for the **source** category.

(d) The **director of ecology** determines that the **source** poses a threat to human health and the environment.

(3) **Sources requiring periodic registration and inspections.** An owner or operator of a **source** in a listed **source** category that meets the following criteria shall register and report once every three years:

(a) The **source** emits one or more pollutants at rates greater than the **emission** rates listed in subsection (5) of this section and less than the **emission** rates listed in the definition of "significant" in WAC 173-400-030((67)); or

(b) The **source** emits measurable amounts of one or more Class A or Class B **toxic air pollutants** listed in WAC 173-460-150 and 173-460-160.

(4) **Sources exempt from registration program requirements.** Any **source** included in a listed **source** category that is located in a county without an active local **authority** shall not be required to register if **ecology** determines the following:

(a) The **source** emits pollutants below **emission** rates specified in subsection (5) of this section; and

(b) The **source** or **emission unit** does not emit measurable amounts of Class A or Class B toxic air pollutants specified in WAC 173-460-150 and 173-460-160.

(5) **Criteria for defining exempt sources.** The following emission rates will be used to identify listed **sources** that are exempt from registration program requirements:

Pollutant	Tons/Year
Carbon Monoxide . . . . .	5.0
Nitrogen oxides . . . . .	2.0
Sulfur dioxide . . . . .	2.0
<b>Particulate Matter (PM)</b> . . . . .	1.25
Fine Particulate ( <b>PM10</b> ) . . . . .	0.75
<b>Volatile organic compounds (VOC)</b> . . . . .	2.0
Lead . . . . .	0.005

AMENDATORY SECTION (Amending Order 98-04, filed 7/21/98, effective 8/21/98)

**WAC 173-400-105 Records, monitoring, and reporting.** The owner or operator of a **source** shall upon notification by the **director of ecology**, maintain records on the type and quantity of **emissions** from the **source** and other information deemed necessary to determine whether the **source** is in compliance with applicable **emission limitations** and control measures.

(1) **Emission inventory.** The owner(s) or operator(s) of any **air contaminant source** shall submit an inventory of **emissions** from the **source** each year. The inventory may include **stack** and fugitive **emissions** of **particulate matter**, (~~(PM<sub>10</sub>)~~) **PM-10**, sulfur dioxide, carbon monoxide, **total reduced sulfur** compounds (**TRS**), fluorides, lead, **VOCs**, and other contaminants, and shall be submitted (when required) no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported **emissions**, consistent with the averaging times for the applicable standards.

(2) **Monitoring. Ecology** shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of **air contaminants**. As a part of this program, the **director of ecology** or an authorized representative may require any **source** under the jurisdiction of **ecology** to conduct **stack** and/or **ambient air** monitoring and to report the results to **ecology**.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of **air contaminants** into the atmosphere, **personnel** from **ecology** or an **authority** shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, **ecology** or the **authority** may conduct or require that a test be conducted of the **source** using approved **EPA** methods from 40 CFR parts 51, 60, 61 and 63 (in effect on February 20, 2001), or approved procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of **ecology**, as of July 12, 1990, on file at **ecology**. The operator of a **source** may be required to provide the necessary platform and sampling ports for **ecology** personnel or others to perform a test of an **emissions unit**. **Ecology** shall be allowed to obtain a sample from any **emissions** unit. The operator of the **source** shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of **sources** shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those **emissions** specified.

(a) Fossil fuel-fired steam generators.

(i) **Opacity**, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

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(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous **emission** monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average **capacity factor** of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to **ecology** or the **authority** by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing **emissions** to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. **Opacity** where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) **Opacity**, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by **ecology**.

(e) Owners and operators of those **sources** required to install continuous monitoring equipment under this chapter shall demonstrate to **ecology** or the **authority**, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (~~(, promulgated October 6, 1975, and amended November 7, 1986, which is adopted by reference)~~) (in effect on October 17, 2000).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, **ecology** determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of **stack** tests conducted at a frequency sufficient to establish the **emission** levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any **source** which is:

(i) Subject to a **new source performance standard**. These **sources** will be governed by WAC 173-400-115.

(ii) Not subject to an applicable **emission** standard.

(h) Monitoring system malfunctions. A **source** may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the **source** owner(s) or operator(s) shows to the satisfaction of **ecology** or the **authority** that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Change in raw materials or fuels for **sources** not subject to requirements of the operating permit program. Any change or series of changes in raw material or fuel which will result in a cumulative increase in **emissions** of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by subsection (1) of this section shall require the submittal of sufficient information to **ecology** or the **authority** to determine the effect of the increase upon ambient concentrations of sulfur dioxide. **Ecology** or the **authority** may issue **regulatory orders** requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

(7) No **person** shall make any false materials statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or **order** in force pursuant thereto.

(8) No **person** shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or **order** in force pursuant thereto.

(9) Compliance assurance monitoring. 40 CFR Part 64, in effect on July 1, 2000, is adopted by reference.

AMENDATORY SECTION (Amending Order 98-04, filed 7/21/98, effective 8/21/98)

**WAC 173-400-110 New source review (NSR).** (1) **Applicability.** This section, WAC 173-400-112 and 173-400-113 apply statewide except where an **authority** has adopted (~~(and is implementing)~~) its own **new source** review (~~(regulation and those regulations are incorporated into the state implementation plan)~~) **rule**.

(2) **Projects subject to NSR - notice of construction application.**

(a) A **notice of construction application** must be filed by the owner or operator and an **order of approval** issued by (~~(ecology or an authority)~~) the **permitting agency** prior to the establishment of any **new source**, except for those sources exempt under subsection (4) or (5) of this section. For purposes of this section "establishment" shall mean to begin actual construction, as that term is defined in WAC 173-400-030(~~((9))~~), and "**new source**" shall include any **modification** to an existing **stationary source**, as defined in WAC 173-400-030(~~((44))~~). (~~(Notwithstanding)~~)

(b) Regardless of any other subsection of this section, a **notice of construction application** must be filed and an order of approval issued by (~~(ecology or an authority)~~) the **permitting agency** prior to establishment of any of the following **new sources**:

(~~((a))~~) (i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (**New Source Performance Standards**), (~~((c))~~) except Part AAA, Wood stoves(~~((7))~~) (in

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effect on February 20, 2001 and/or adopted by reference in WAC 173-400-115);

~~((b))~~ (ii) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (**National Emission Standards for Hazardous Air Pollutants**) (in effect on February 20, 2001), except for asbestos demolition and renovation projects subject to 40 CFR 61.145((j));

~~((e))~~ (iii) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (**National Emission Standards for Hazardous Air Pollutants for Source Categories**) (in effect on February 20, 2001 and/or adopted by reference in WAC 173-400-075);

~~((d))~~ (iv) Any project that qualifies as a new major stationary source, ((as defined in WAC 173-400-030(41)),) or a major modification((, as defined in WAC 173-400-030(40)));

~~((e))~~ (v) Any ((project)) **modification to a source** that requires an increase either in a plant-wide cap or in a unit specific emission limit.

(c) An applicant filing a **notice of construction application** for a project described in WAC 173-400-117(2), **Special protection requirements for Class I areas**, must send a copy of the application to the responsible **federal land manager**.

(3) **Modifications**. New source review of a **modification** shall be limited to the **emission unit** or **units** proposed to be added to an existing **source** or modified and the **air contaminants** whose **emissions** would increase as a result of the **modification**.

(4) **Emission unit and activity exemptions**.

Except as provided in subsection (2) of this section, establishment of a new **emission unit** that falls within one of the categories listed below is exempt from **new source** review. **Modification** of any **emission unit** listed below is exempt from **new source** review, provided that the modified unit continues to fall within one of the listed categories. The installation or **modification** of a unit exempt under this subsection does not require the filing of a **notice of construction application**.

(a) Maintenance/construction:

- (i) Cleaning and sweeping of streets and paved surfaces;
- (ii) Concrete application, and installation;
- (iii) Dredging wet spoils handling and placement;
- (iv) Paving application and maintenance, excluding asphalt plants;
- (v) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house keeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application;

(viii) Insulation application and maintenance, excluding products for resale;

(ix) Janitorial services and consumer use of janitorial products.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. **Ecology** strongly recommends that an owner or operator contact **ecology** or the **authority** to determine the exemption status of storage tanks prior to their installation.

(i) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);

(vi) Operation, loading and unloading of storage tanks, ≤ 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @21°C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) A project with combined aggregate heat inputs of combustion units, ≤ all of the following:

(i) ≤ 500,000 Btu/hr using coal with ≤ 0.5% sulfur or other fuels with ≤ 0.5% sulfur;

(ii) ≤ 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

(iii) ≤ 400,000 Btu/hr wood waste or paper;

(iv) < 1,000,000 Btu/hr using kerosene, #1, or #2 fuel oil and with ≤0.05% sulfur;

(v) ≤ 4,000,000 Btu/hr using natural gas, propane, or LPG.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is ≤ 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm Hg @21°C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers not using **toxic air pollutant** gases, as regulated under chapter 173-460 WAC;

(ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(iii) Installation or **modification** of a single laboratory fume hood;

(iv) Laboratory calibration and maintenance equipment.

(g) Monitoring/quality assurance/testing:

(i) Equipment and instrumentation used for quality control/assurance or inspection purpose;

(ii) Hydraulic and hydrostatic testing equipment;

(iii) Sample gathering, preparation and management;

(iv) Vents from continuous **emission** monitors and other analyzers.

(h) Miscellaneous:

(i) Single-family residences and duplexes;

(ii) Plastic pipe welding;

(iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

(iv) Comfort air conditioning;

(v) Flares used to indicate danger to the public;

(vi) Natural and forced air vents and **stacks** for bathroom/toilet activities;

(vii) Personal care activities;

(viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

(ix) Tobacco smoking rooms and areas;

(x) Noncommercial smokehouses;

(xi) Blacksmith forges for single forges;

(xii) Vehicle maintenance activities, not including vehicle surface coating;

(xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);

(xiv) Wax application;

(xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

(xvi) Ozone generators and ozonation equipment;

(xvii) Solar simulators;

(xviii) Ultraviolet curing processes, to the extent that **toxic air pollutant** gases as defined in chapter 173-460 WAC are not emitted;

(xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;

(xx) Pulse capacitors;

(xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;

(xxii) Fire suppression equipment;

(xxiii) Recovery boiler blow-down tank;

(xxiv) Screw press vents;

(xxv) Drop hammers or hydraulic presses for forging or metal working;

(xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;

(xxvii) Kraft lime mud storage tanks and process vessels;

(xxviii) Lime grits washers, filters and handling;

(xxix) Lime mud filtrate tanks;

(xxx) Lime mud water;

(xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;

(xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(xxxiii) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C;

(xxxiv) Surface coating, aqueous solution or suspension containing  $\leq 1\%$  (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having  $\leq 1\%$  VOCs (by weight); on metallic substances, acid solutions are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.

**(5) Exemptions based on emissions thresholds.**

(a) Except as provided in subsection (2) of this section and in this subsection:

(i) A new **emissions unit** that has a **potential to emit** below each of the threshold levels listed in the table contained in (d) of this subsection is exempt from **new source** review provided that the conditions of (b) of this subsection are met.

(ii) A **modification** to an existing **emissions unit** that increases the unit's **actual emissions** by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from **new source** review provided that the conditions of (b) of this subsection are met.

(b) The owner or operator seeking to exempt a project from **new source** review under this section shall notify, and upon request, file a brief project summary with **ecology** or the **authority** prior to **beginning actual construction** on the project. If ((~~ecology or the authority~~)) the permitting agency determines that the project will have more than a de Minimus impact on air quality, ((~~ecology or the authority~~)) the permitting agency may require the filing of a **notice of construction application**. ((~~Ecology or the authority~~)) The permitting agency may require the owner or operator to demonstrate that the **emissions** increase from the new **emissions unit** is smaller than all of the thresholds listed below.

(c) The owner/operator may **begin actual construction** on the project thirty-one days after ((~~ecology or the author~~

ity)) the permitting agency receives the summary, unless ((ecology or the authority)) the permitting agency notifies the owner/operator within thirty days that the proposed **new source** requires a **notice of construction application**.

(d) Exemption threshold table:

POLLUTANT	THRESHOLD LEVEL (TONS PER YEAR)
(a) Total Suspended Particulates	1.25
(b) PM-10	0.75
(c) Sulfur Oxides	2.0
(d) Nitrogen Oxides	2.0
(e) Volatile Organic Compounds, total	2.0
(f) Carbon Monoxide	5.0
(g) Lead	0.005
(h) Ozone Depleting Substances ((in ((Aggregate (the sum of Class I and/or Class II substances as defined in FCAA Title VI and 40 CFR Part 82))) total	1.0
(i) Toxic Air Pollutants	As specified in chapter 173-460 WAC.

(6) **Completeness determination.**

(a) Within thirty days of receipt of a **notice of construction application** ((ecology or the authority)) or **PSD permit application**, the permitting agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary, based upon review of information already supplied, to complete the application.

(b) For a project subject to **PSD** review under WAC 173-400-141, a completeness determination includes a determination that the application provides all information required to conduct **PSD** review.

(c) For a project subject to the Special protection requirements for **federal Class I areas** in WAC 173-400-117(2), the following apply:

(i) A completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3); and

(ii) The permitting agency must send a copy of the completeness determination by certified mail to the appropriate federal land manager within three days of issuing a completeness determination.

(7) **Final determination.**

(a) Within sixty days of receipt of a complete **notice of construction** or **PSD permit application**, ((ecology or the authority)) the permitting agency shall either issue a final decision on the application or, for those projects subject to public notice, initiate notice and comment procedures under

WAC 173-400-171 on a proposed decision, followed as promptly as possible by a final decision.

(b) A **person** seeking approval to construct or **modify a source** that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the **notice of construction application** required by this section. A **notice of construction application** designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. A PSD permit application under WAC 173-400-141 and a notice of construction application in a nonattainment area for a major stationary source or for a major modification are ineligible for integrated review.

(c) Every final determination on a notice of construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of ((ecology or the authority)) the permitting agency.

(d) If the **new source** is a **major stationary source** or the change is a **major modification**, ((ecology or the authority)) the permitting agency shall submit any control technology determination included in a final **order of approval or PSD permit** to the **RACT/BACT/LAER** clearinghouse maintained by EPA.

(8) **Appeals.** An **order of approval** a **PSD permit**, any conditions contained in an **order of approval** or **PSD permit**, or the denial of a **notice of construction application** or **PSD permit** may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. ((Ecology or the authority)) The permitting agency shall promptly mail copies of each **order** approving or denying a **notice of construction application** or **PSD permit** to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board ((and, where applicable, to the EPA Environmental Appeals Board)).

(9) **Portable sources.** For portable sources which locate temporarily at particular sites, the owner((s)) or operator((s)) shall be allowed to operate at the temporary location without filing a **notice of construction application**, providing that the owner((s)) or operator((s)) notifies ((ecology or the authority)) the permitting agency of intent to operate at the new location at least thirty days prior to starting the operation, and supplies sufficient information to enable ((ecology or the authority)) the permitting agency to determine that the operation will comply with the **emission standards** for a **new source**, and will not cause a violation of applicable **ambient air quality standards** and, if in a **nonattainment area**, will not interfere with scheduled attainment of ambient standards. The permission to operate shall be for a limited period of time (one year or less) and ((ecology or the authority)) the permitting agency may set specific conditions for operation during that period. A temporary source shall be required to comply with all applicable **emission standards**. A portable source that is considered a major

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stationary source within the meaning of WAC 173-400-113(1) must also comply with the requirements in WAC 173-400-141. This includes, but is not limited to, a rock crusher or an asphalt batch plant.

(10) **Construction time limitations.** Approval to construct or modify a **stationary source** (~~shall~~) becomes invalid if construction is not **commenced** within eighteen months after receipt of (~~such~~) the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. (~~Ecology or the authority~~) The permitting agency may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must **commence** construction within eighteen months of the projected and approved commencement date.

(11) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in conditions of an **approval order** or **PSD permit** and (~~ecology or the authority~~) the permitting agency may approve (~~such a~~) the request provided (~~ecology or the authority~~) the permitting agency finds that:

(i) The change in conditions will not cause the (~~air contaminant~~) source to exceed an **emissions standard**;

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

(iii) The change will not adversely impact the ability of **ecology** or the **authority** to determine compliance with an **emissions standard**; and

(iv) The revised **order** will continue to require **BACT**, as defined at the time of the original approval, for each **new source** approved by the **order** except where the **Federal Clean Air Act** requires **LAER**.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171.

(c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a **notice of construction application**, that application (~~shall~~) must be acted upon using the timelines found in subsections (6) and (7) of this section. The fee schedule found in WAC 173-400-116 shall also apply to requests filed as **notice of construction applications**.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-112 Requirements for new sources in nonattainment areas.** (~~Ecology or an authority reviewing an application to establish a new source or modification in a nonattainment area, shall issue an order of approval, which order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter, if they determine that the proposed project satisfies each of the following requirements:)~~ (1) **Definitions.** The following definitions apply to this section:

(a) **"Major modification,"** for the purposes of WAC 173-400-112, means any physical change in or change in the method of operation of a **major stationary source** that would result in a **significant net emissions increase** of any pollutant subject to regulation under the **Federal Clean Air Act**.

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

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

(A) Routine maintenance, repair and replacement;

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

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

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste; (E) Use of an alternative fuel or raw material by a **stationary source** which:

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

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

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

(iv) Any change in ownership at a **stationary source**.

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

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

(B) The reviewing authority determines that the increase will cause or contribute to a violation of any **National Ambient Air Quality Standard** or **PSD** increment, or visibility limitation.

(vi) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The **SIP**; and

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(B) Other requirements necessary to attain and maintain the **National Ambient Air Quality Standard** during the project and after it is terminated.

(b) "**Major stationary source**," for the purposes of WAC 173-400-112, means:

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

(A) 70 tons per year of **PM-10** in any "serious" **nonattainment area** for PM-10.

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

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

(iii) A major **stationary source** that is major for **volatile organic compounds** or NO<sub>x</sub> shall be considered major for ozone.

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

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

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

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

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

(c) "**Net emissions increase**," for the purposes of WAC 173-400-112, means:

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

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

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

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

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

(A) It occurred no more than one year prior to the date of submittal of a complete **notice of construction application** for the particular change, or it has been documented by an **emission reduction credit (ERC)**. Any **emissions** increases occurring between the date of issuance of the **ERC** and the date when a particular change becomes operational shall be counted against the **ERC**.

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

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

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

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

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

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

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

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

(d) "**Significant**," for purposes of WAC 173-400-112, means, in reference to a **net emissions increase** or the potential of a **source** to emit any of the following pollutants, a rate of **emissions** that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
<b>Volatile organic compounds:</b>	40 tpy
Lead:	0.6 tpy
<b>PM-10:</b>	15 tpy

(2) The **permitting agency** that is reviewing an application to establish a **new source** or **modification** in a **nonattainment area** shall issue the **order of approval** if it determines that the proposed project satisfies each of the following requirements:

(a) The proposed **new source** or **modification** will comply with all applicable **new source performance standards**, **national emission standards for hazardous air pollutants**, **national emission standards for hazardous air pollutants for source categories**, **emission standards** adopted under chapter 70.94 RCW and, for **sources** regulated by an **authority**, the applicable **emission standards** of that **authority**.

((2)) (b) The proposed **new source** will employ **BACT** for all **air contaminants**, except that if the **new source** is a **major stationary source** or the proposed **modification** is a **major modification** it will achieve **LAER** for the **air contaminants** for which the area has been designated **nonattainment** and for which the proposed **new source** or **modification** is **major**.

((3)) (c) The proposed **new source** will not cause any **National Ambient Air Quality Standard** to be exceeded, will not violate the requirements for reasonable further progress established by the ((state implementation plan)) **SIP** and will comply with WAC 173-400-113((3)) (2)(c) for all **air contaminants** for which the area has not been designated **nonattainment**.

((4)) (d) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major**

**modification**, ((ecology or the authority)) the **permitting agency** has determined, based on review of an analysis performed by the **source** of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or **modification**.

((5)) (e) If the proposed **new source** or the proposed **modification** is **major** for the **air contaminant** for which the area is designated **nonattainment**, **allowable emissions** from the proposed **new source** or **modification** of that **air contaminant** are offset by reductions in **actual emissions** from existing **sources** in the **nonattainment area**. **Emission** offsets must be sufficient to ensure that total **allowable emissions** from existing **major stationary sources** in the **nonattainment area**, **new** or **modified sources** which are not **major stationary sources**, and the proposed **new** or **modified source** will be less than total **actual emissions** from existing **sources** ((prior to submittal of)) **before submitting** the application) so as to represent (when considered together with the nonattainment provisions of section 172 of the ((FCAA)) **Federal Clean Air Act**) reasonable further progress. All offsetting **emission** reductions must satisfy the following requirements:

((6)) (i) The proposed new level of **allowable emissions** of the source or **emission unit**((6)) providing the reduction must be less than the current level of **actual emissions** of that **source** or **emissions unit**((6)). No emission reduction can be credited for **actual emissions** which exceed the current allowable **emissions** of the **source** or **emissions unit**((6)) providing the reduction. **Emission** reductions ((imposed by local, state, or federal regulations, regulatory orders, or permits)) **required by the Federal Clean Air Act, including the SIP**, cannot be credited.

((7)) (ii) The **emission** reductions must provide for a net air quality benefit. For marginal ozone **nonattainment areas**, the total **emissions** of **volatile organic compounds** or total **emissions** of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the **new source** is located. For any other **nonattainment area**, the **emissions** offsets must provide a positive net air quality benefit in the **nonattainment area**. Determinations on whether **emissions** offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S (in effect on July 1, 2000).

((8)) (iii) If the offsets are provided by another **source**, the reductions in **emissions** from that **source** must be federally enforceable by the time the **new** or **modified source** commences operation. The **new source** may not commence operation before the date ((such)) **these** reductions are actually achieved. An **emission reduction credit** issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

((9)) (f) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major modification**, the owner or operator has demonstrated that all

**major stationary sources** owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to **emission limitations** and are in compliance, or on a schedule for compliance, with all applicable **emission limitations and standards** under the **Federal Clean Air Act**, including all rules ((contained in an **EPA**-approved state implementation plan)) **the SIP**.

((7)) (g) If the proposed **new source** is a **major stationary source** within the meaning of WAC 173-400-113(1), or the proposed **modification** is a **major modification** ((for the purposes of the PSD program described in WAC 173-400-141)) within the meaning of WAC 173-400-113(1), it meets the requirements of ((that)) **the PSD program** in WAC 173-400-141 for all **air contaminants** for which the area has not been designated **nonattainment**.

((8)) (h) If the proposed **new source** or **modification** will emit any **toxic air pollutants** regulated under chapter 173-460 WAC, the **source** meets all applicable requirements of that chapter.

((9) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major modification**, ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.28(e) through (e) except for (e)(4)(i), (g), and (h), as in effect on March 3, 1993, and determined that the project meets the criteria set forth in 40 CFR 52.28(g). For purposes of this subsection, definitions referenced in 40 CFR 52.28(b) are incorporated by reference, except that the term "visibility protection area" means any Class I area, and terms defined in WAC 173-400-030 shall have the meanings defined in that section. References in 40 CFR 52.28 to "the Administrator" shall mean the agency (either ecology or the authority) processing the notice of construction application.) (i) If the proposed **new source** is a **major stationary source** within the meaning of WAC 173-400-113(1), or the proposed **modification** is a **major modification** within the meaning of WAC 173-400-113(1), the project meets the Special protection requirements for **federal Class I areas** in WAC 173-400-117.

**AMENDATORY SECTION** (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas.** ((Ecology or an authority reviewing an application to establish a new source or modification in an area that is in attainment or unclassifiable for any air contaminant the new source would emit and that is in attainment or unclassifiable for ozone if the proposed new or modified source would emit VOCs or NO<sub>x</sub>, shall issue an order of approval, which order shall contain such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter, if they determine that the proposed project satisfies all of the following requirements:))

(1) **Definitions.** The following definitions apply to this section:

(a) **"Major modification"** for purposes of WAC 173-400-113, means any physical change in or change in the method of operation of a **major stationary source** that would result in a **significant net emissions increase** of any pollutant subject to regulation under the **Federal Clean Air Act**.

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

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

(A) Routine maintenance, repair and replacement;

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

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

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

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

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

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

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

(G) Any change in ownership at a **stationary source**.

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

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

(II) The reviewing **authority** determines that the increase will cause or contribute to a violation of any **National Ambient Air Quality Standard** or **PSD** increment, or visibility limitation.

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the **SIP**, and other

requirements necessary to attain and maintain the **National Ambient Air Quality Standard** during the project and after it is terminated.

(b) "**Major stationary source**," for purposes of WAC 173-400-113, means:

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

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

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

(C) Kraft pulp mills;

(D) Portland cement plants;

(E) Primary zinc smelters;

(F) Iron and steel mill plants;

(G) Primary aluminum ore reduction plants;

(H) Primary copper smelters;

(I) Municipal **incinerators** capable of charging more than 250 tons of refuse per day;

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

(K) Petroleum refineries;

(L) Lime plants;

(M) Phosphate rock processing plants;

(N) Coke oven batteries;

(O) Sulfur recovery plants;

(P) Carbon black plants (furnace process);

(Q) Primary lead smelters;

(R) Fuel conversion plants;

(S) Sintering plants;

(T) Secondary metal production plants;

(U) Chemical process plants;

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

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

(X) Taconite ore processing plants;

(Y) Glass fiber processing plants; and

(Z) Charcoal production plants.

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

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

(iv) A major **source** that is major for **volatile organic compounds** or NOx shall be considered major for ozone.

(v) The **fugitive emissions** of a **stationary source** shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of **stationary sources**:

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

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal **incinerators** capable of charging more than 250 tons of refuse per day;

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

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

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

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

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

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

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

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

(c) "**Net emissions increase**" for purposes of WAC 173-400-113, means:

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

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

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

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

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

(iv) An increase or decrease in **actual emissions** of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to **particulate matter**, only **PM-10 emissions** can be used to evaluate the net emissions increase for **PM-10**.

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

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

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

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

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

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

(d) "**Significant**," for purposes of WAC 173-400-113, means:

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

<i>Pollutant and Emissions Rate</i>	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
<b>Particulate matter (PM):</b>	25 tpy of <b>PM emissions</b>
	15 tpy of <b>PM-10 emissions</b>
<b>Volatile organic compounds:</b>	40 tpy
Fluorides:	3 tpy
Lead:	0.6 tpy
Sulfuric acid mist:	7 tpy
Hydrogen sulfide (H <sub>2</sub> S):	10 tpy
Total reduced sulfur (including H <sub>2</sub> S):	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S):	10 tpy

Municipal waste combustor organics: (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) 3.2 grams per year (0.112 oz. per year or 49 grains per year)

Municipal waste combustor metals: (measured as particulate matter) 14 megagrams per year (15 tpy)

Municipal waste combustor acid gases: (measured as sulfur dioxide and hydrogen chloride) 36 megagrams per year (40 tpy)

Municipal solid waste landfill emissions: (measured as non-methane organic compounds) 45 megagrams per year (50 tpy)

**Ozone-depleting substances:** 100 tpy

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

(iii) Regardless of the definition in (d)(i) of this subsection, significant means any **emissions** rate or any **net emissions increase** associated with a **major stationary source** or **major modification** which would construct within 10 kilometers of a **Class I area**, and have an impact on such area equal to or greater than 1 microgram per cubic meter (twenty-four-hour average).

(2) The **permitting agency** that is reviewing an application to establish a **new source** or **modification in an attainment or unclassifiable area** shall issue an **order of approval** if it determines that the proposed project satisfies each of the following requirements:

(a) The proposed **new source** or **modification** will comply with all applicable **new source performance standards**, **national emission standards for hazardous air pollutants**, **national emission standards for hazardous air pollutants for source categories**, **emission standards** adopted under chapter 70.94 RCW and, for sources regulated by an **authority**, the applicable **emission standards** of that **authority**.

((2)) (b) The proposed **new source** or **modification** will employ **BACT** for all pollutants not previously emitted or whose **emissions** would increase as a result of the **new source** or **modification**.

((3)) (c) **Allowable emissions** from the proposed **new source** or **modification** will not delay the **attainment** date for an area not in **attainment** nor cause or contribute to a violation of any **ambient air quality standard**. This requirement will be considered to be met if the projected impact of the **allowable emissions** from the proposed **new source** or

the projected impact of the increase in **allowable emissions** from the proposed **modification** at any location within a **nonattainment area** does not exceed the following levels for the pollutant(s) for which the area has been designated **nonattainment**:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	<del>((0.5-))</del> 0.5 mg/m <sup>3</sup>	0.5 mg/m <sup>3</sup>	-	2 mg/m <sup>3</sup>
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	25 µg/m <sup>3</sup>	30 µg/m <sup>3</sup>
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	-	-
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

~~((4))~~ (d) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major modification** (~~for purposes of the PSD program described in WAC 173-400-141~~), it meets all applicable requirements of ~~(that chapter)~~ WAC 173-400-141.

~~((5))~~ (e) If the proposed **new source** or the proposed **modification** will emit any **toxic air pollutants** regulated under chapter 173-460 WAC, the source meets all applicable requirements of that program.

~~((6) If, within the meaning of the PSD program described in WAC 173-400-141, the proposed new source is a major stationary source or the proposed modification is a major modification, ecology or the authority has complied with the visibility protection review requirements of 40 CFR 52.27(d) through (f), as in effect on March 3, 1993, and has determined that the source would not cause an adverse impact upon visibility. References in 40 CFR 52.27 to "the Administrator" shall mean the agency (either ecology or the authority) processing the notice of construction application.))~~

(f) If the proposed **new source** is a **major stationary source** or the proposed **modification** is a **major modification**, the project meets the Special protection requirements for **federal Class I areas** of WAC 173-400-117.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.** (1) Any person proposing to replace or substantially alter the **emission control technology** installed on an existing **stationary source** or **emission unit** shall file a **notice of construction application** with the appropriate **authority**, or with **ecology** in areas or for **sources** over which **ecology** has jurisdiction. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

(2) For projects not otherwise reviewable under WAC 173-400-110, **ecology** or the **authority** may:

(a) Require that the owner or operator employ **RACT** for the affected **emission unit**;

(b) Prescribe reasonable operation and maintenance conditions for the control equipment; and

(c) Prescribe other requirements as authorized by chapter 70.94 RCW.

(3) Within thirty days of receipt of a **notice of construction application** under this section **ecology** or the **authority** shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete **notice of construction application** under this section **ecology** or the **authority** shall either issue an **order of approval** or a proposed **RACT** determination for the proposed project.

(4) Construction shall not "**commence**," as defined in WAC 173-400-030(~~(15))~~), on a project subject to review under this section until **ecology** or the **authority** issues a final **order of approval**. However, any **notice of construction application** filed under this section shall be deemed to be approved without conditions if **ecology** or the **authority** takes no action within thirty days of receipt of a complete **notice of construction application**.

(5) Approval to replace or substantially alter **emission control technology** shall become invalid if construction is not **commenced** within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. **Ecology** or the **authority** may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

AMENDATORY SECTION (Amending Order 98-27, filed 11/22/00, effective 12/23/00)

**WAC 173-400-115 Standards of performance for new sources.** ~~((1))~~ **NSPS.** Standards of performance for new sources are called **New Source Performance Standards**, or **NSPS**.

~~((2))~~ (1) **Adoption by reference.**

~~((a))~~ 40 CFR Part 60 and Appendices in effect on ~~((July 1, 2000))~~ February 20, 2001, is adopted by reference ~~((, except as specified below))~~. Exceptions are listed in subsection (1)(d) of this section.

~~((a))~~ The term "administrator" in 40 CFR Part 60 includes the **director of ecology**.

~~((b))~~ The following sections and subparts of 40 CFR Part 60 are not adopted by reference:

(i) 40 CFR 60.5 (determination of construction or modification);

(ii) 40 CFR 60.6 (review of plans);

(iii) 40 CFR Part 60, subparts C, Cb, Cc, Cd, and Ce (emission guidelines); and

(iv) 40 CFR Part 60, subpart OOO (nonmetallic mineral processing plants); (b) 40 CFR Part 60, subpart CCCC (commercial and industrial solid waster incineration units)

adopted on December 1, 2000, in the Federal Register (Vol. 65, No. 232, beginning on page 75350) and expected to become effective as federal rules on June 1, 2001, is adopted by reference.

(c) 40 CFR Part 60, subpart AAAA (new small municipal waste combustion units) adopted on December 6, 2000, in the Federal Register (Vol. 65, No. 235, beginning on page 76350) and expected to become effective as federal rules on March 13, 2001, is adopted by reference.

((+)) Subpart A General Provisions, except 40 CFR 60.5 and 60.6 (Amended 12/14/00; and 12/06/00 to be effective 06/01/01)

Subpart D Fossil fuel fired steam generators for which construction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts

Subpart Da Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts

Subpart Db Industrial-commercial-institutional steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts

Subpart Dc Small industrial-commercial-institutional steam generating units

Subpart E Incinerators

Subpart Ea Municipal waste combustors

Subpart Eb Large municipal waste combustors constructed after September 20, 1964, or modified or reconstructed after June 19, 1964

Subpart Ec Hospital/Medical/Infectious Waste Incinerators Constructed after June 20, 1996

Subpart F Portland cement plants

Subpart G Nitric acid plants

Subpart H Sulfuric acid plants

Subpart I Asphalt concrete plants

Subpart J Petroleum refineries which produce less than 25,000 barrels per day of refined products

Subpart K Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons

Subpart Ka Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons (Amended 12/14/00)

Subpart Kb Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984 (Amended 12/14/00)

Subpart L Secondary lead smelters

Subpart M Brass and bronze ingot production plants

Subpart N Iron and steel plants

Subpart Na Secondary emissions from basic oxygen process steel making facilities

Subpart O Sewage treatment plants

Subpart P Primary copper smelters

Subpart Q Primary zinc smelters

Subpart R Primary lead smelters

Subpart S Primary aluminum reduction plants

Subpart T Phosphate fertilizer industry: Wet process phosphoric acid plants

Subpart U Phosphate fertilizer industry: Superphosphoric acid plants

Subpart V Phosphate fertilizer industry: Diammonium phosphate plants

Subpart W Phosphate fertilizer industry: Triple superphosphate plants

Subpart X Phosphate fertilizer industry: Granular triple superphosphate storage facilities

Subpart Y Coal preparation plants

Subpart Z Ferroalloy production facilities

Subpart AA Steel plants: Electric arc furnaces

Subpart AAa Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels

Subpart BB Kraft pulp mills

Subpart CC Glass manufacturing plants

Subpart DD Grain elevators

Subpart EE Industrial surface coating: Metal furniture

Subpart GG Stationary gas turbines

Subpart HH Lime manufacturing plants

Subpart KK Lead-acid battery plants

Subpart LL Metallic mineral processing plants

Subpart MM Automobile and light duty truck surface coating operations

Subpart NN Phosphate rock plants

Subpart PP Ammonium sulfate manufacture

Subpart QQ Publication rotogravure printing

Subpart RR Pressure sensitive tape and label surface coating operations

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Subpart SS	Industrial surface coating: Large appliances
Subpart TT	Industrial surface coating: Metal coils
Subpart UU	Asphalt processing and asphalt roofing manufacture
Subpart VV	SOCMI equipment leaks (VOC) <u>(Amended 12/14/00)</u>
Subpart WW	Beverage can surface coating operations
Subpart XX	Bulk gasoline terminals
Subpart AAA	New residential wood heaters
Subpart BBB	Rubber tire manufacturing industry
Subpart DDD	VOC emissions from the polymer manufacturing industry
Subpart FFF	Flexible vinyl and urethane coating and printing
Subpart GGG	Petroleum refineries - compressors and fugitive emission sources
Subpart HHH	Synthetic fiber production facilities
Subpart III	VOC emissions from SOCMI air oxidation unit processes
Subpart JJJ	Petroleum dry cleaners
Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants
Subpart LLL	Onshore natural gas processing; SO <sub>2</sub> emissions
Subpart NNN	VOC emissions from SOCMI distillation operations <u>(Amended 12/14/00)</u>
Subpart PPP	Wool fiberglass insulation manufacturing plants
Subpart QQQ	VOC emissions from petroleum refinery wastewater emissions
Subpart RRR	VOC emissions from synthetic organic chemical manufacturing industry <u>(Amended 12/14/00)</u>
Subpart SSS	Magnetic tape coating facilities
Subpart TTT	Industrial surface coating: Surface coating of plastic parts for business machines
Subpart UUU	Calciners and dryers in mineral industries
Subpart VVV	Polymeric coating of supporting substrates facilities
Subpart WWW	Municipal Solid Waste Landfills <u>constructed, reconstructed or modified on or after May 30, 1991 (See WAC 173-400-070(9) for rules regulating MSW landfills constructed or modified before May 30, 1991.)</u>

<u>Subpart AAAA</u>	<u>Small municipal waste combustion units constructed after August 30, 1999, or modified or reconstructed after June 6, 2001 (See WAC 173-400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999.) (Adopted 12/06/00; effective June 6, 2001)</u>
<u>Subpart CCCC</u>	<u>Commercial and industrial solid waste incinerators constructed after November 30, 1999; or modified or reconstructed on or after June 1, 2001 (Adopted 12/01/00; effective 6/01/01) (See WAC 173-400-050(4) for rules regulating commercial and solid waste incinerators constructed on or before November 30, 1999.)</u>
Appendix A	Test Methods <u>(Amended 10/17/00)</u>
Appendix B	Performance Specifications
Appendix C	Determination of Emission Rate Change
Appendix D	Required Emission Inventory Information
Appendix F	Quality Assurance Procedures
Appendix I	Removable Label and Owner's Manual

((Note:

~~For fossil-fuel-fired steam generators referenced by Subpart D and Da above, units greater than 250 megawatts are governed by the energy facility site evaluation council (EFSEC) in Title 463 WAC.~~

~~(3))~~ (d) Exceptions to adopting 40 CFR Part 60.

(i) The term "administrator" in 40 CFR Part 60 includes the permitting agency.

(ii) The following sections and subparts of 40 CFR Part 60 are not adopted by reference:

(A) 40 CFR 60.5 (determination of construction or modification);

(B) 40 CFR 60.6 (review of plans);

(C) 40 CFR Part 60, subparts C, Cb, Cc, Cd, and Ce (emission guidelines); and

(D) 40 CFR Part 60, subpart OOO (nonmetallic mineral processing plants).

(iii) Effective June 6, 2001, 40 CFR 60.17 (subpart A) is amended by revising paragraphs (h)(1), (h)(2), and (h)(3) to read as follows:

(h)(1) ASME QRO-1-1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators approved for Section 60.56a, 60.54b(a), 60.54b(b), 60.1185(a), 60.1185 (c)(2), 60.1675(a), and 60.1675 (c)(2).

(h)(2) ASME PTC 4.1-1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for Section 60.46b, 60.58a (h)(6)(i), 60.58b (i)(6)(ii), 60.1320 (a)(3) and 60.1810 (a)(3).

(h)(3) ASME interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for Section 60.58a (h)(6)(ii), 60.58b (i)(6)(ii), 60.1320 (a)(4) and 60.1810 (a)(4).

(2) Note that ~~(certain affected facilities under 40 CFR Part 60, subparts D and Da are under the energy facility site~~

~~evaluation council (EFSEC) jurisdiction, pursuant to RCW 80.50.060. These are certain larger energy plants, as defined in RCW 80.50.020(14)) under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ under WAC 463-39-115 are regulated by the energy facility site evaluation council (EFSEC).~~

AMENDATORY SECTION (Amending Order 94-35, filed 9/13/96, effective 10/14/96)

**WAC 173-400-116 New source review fees.** (1) **Applicability.** Every person required to submit a **notice of construction application** to the department of **ecology** as authorized in RCW 70.94.152 for establishment of any proposed **new source** or **emissions unit(s)** shall pay fees as set forth in subsections (2) and (3) of this section. **Persons** required to submit a **notice of construction application** to a local air **authority** may be required to pay a fee to **ecology** to cover the costs of ~~((prevention of significant deterioration (PSD) permits issued))~~ **review** pursuant to WAC 173-400-141, second tier analysis pursuant to WAC 173-460-090, and risk management decisions pursuant to WAC 173-460-100 as set forth in subsection (3) of this section. Fees assessed under this section shall apply without regard to whether an **order of approval** is issued or denied.

(2) **Basic review fees.** All owners or operators of proposed new sources are required to pay a basic review fee. The basic review fee covers the costs associated with preapplication assistance, completeness determination, **BACT** determination, technical review, public involvement and **approval/denial orders**. Complexity determination shall be based on the project described in the **notice of construction application**. Basic review fees are shown below:

(a) Low complexity **new source** or **emission unit (emissions of individual criteria pollutants are all less than one-half of the ((significance)) levels established in the definition of "significant" in WAC 173-400-030(((67)))** or **emissions of individual toxic air pollutants are all less than 2.0 tons/year** - one thousand dollars;

(b) Moderate complexity **new source** or **emission unit (emissions of one or more individual criteria pollutants are greater than one-half of the ((significance)) levels established in the definition of "significant" in WAC 173-400-030(((67)))** or **emissions of one or more toxic air pollutants are greater than 2.0 tons/year and less than ten tons/year** - five thousand dollars; or

(c) High complexity **new source** or **emissions unit (emissions of one or more criteria pollutants are greater than the ((significance)) levels established in the definition of "significant" in WAC 173-400-030(((67)))** or **emissions of one or more toxic air pollutants are greater than ten tons/year** - fifteen thousand dollars.

(d) **Exceptions.** The following fees for **new source** review shall be charged instead of the applicable fees listed in (a) through (c) of this subsection and in subsection (3) of this section:

- (i) Dry cleaners \$200
- (ii) Gasoline stations \$200
- (iii) Storage tanks
  - (A) < 20,000 gallons \$200
  - (B) 20,000 - 100,000 gallons \$500
  - (C) > 100,000 \$700
- (iv) Chromic acid plating and anodizing identified in WAC 173-460-060 \$200
- (v) Solvent metal cleaners identified in WAC 173-460-060 \$200
- (vi) Abrasive blasting identified in WAC 173-460-060 \$200
- (vii) **New emission units** or activities that qualify as insignificant **emission units** under WAC 173-401-530 whether located at a chapter 401 source or nonchapter 401 source \$200

(e) **Additional units.** An owner or operator proposing to build more than one identical **emission unit** shall be charged a fee for the additional units equal to one-third the basic review fee of the first unit.

(3) **Additional charges.** In addition to those fees required under subsection (2)(a) through (c) of this section, the following fees will be required as applicable:

(a) **Prevention of significant deterioration review (includes ecology review of local air authority sources)** - ten thousand dollars;

(b) Establishing **LAER** and offset requirements for a **major stationary source** or **major modification** proposing to locate in a **nonattainment area** - ten thousand dollars;

(c) Tier II toxics review as required under WAC 173-460-090 - seven thousand five hundred dollars;

(d) Tier III review as required under WAC 173-460-100 - five thousand dollars;

(e) State Environmental Policy Act review (where ecology is the lead agency):

(i) Determination of nonsignificance (DNS) and environmental checklist review - two hundred dollars; or

(ii) Environmental impact statement (EIS) review - two thousand dollars;

(iii) Where more than one **ecology** program is charging a fee for reviewing or preparing SEPA documents, **ecology** will not charge a SEPA review fee as part of the **new source** review fees;

(f) Case-by-case MACT determinations required for a **new source** or **modification** under Section 112(g) or Section 112(j) of the **FCAA** - five thousand dollars.

(4) **Small business fee reduction.** The **new source** review fee identified in subsections (2) and (3) of this section may be reduced for a small business.

(a) To qualify for the small business **new source** review fee reduction, a business must meet the requirements of "small business" as defined in RCW 43.31.025.

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(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) **Ecology** may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the **new source** review fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which **ecology** may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the **new source** review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.

(5) Fee reductions for pollution prevention initiatives. **Ecology** may reduce the fees defined in subsections (2) and (3) of this section where the owner or operator of the proposed **source** demonstrates that approved pollution prevention measures will be used.

(6) Fee payments. Fees specified in subsections (2) through (5) of this section shall be paid at the time a **notice of construction application** is submitted to the department. A **notice of construction application** is considered incomplete until **ecology** has received the appropriate **new source** review payment. Additional charges assessed pursuant to subsection (3) of this section shall be due thirty days after receipt of an **ecology** billing statement. All fees collected under this regulation shall be made payable to the Washington department of **ecology**.

(7) Dedicated account. All **new source** review fees collected by the department from permit program **sources** shall be deposited in the air operating permit account created under RCW 70.94.015. All **new source** review fees collected by the department from nonpermit program **sources** shall be deposited in the air pollution control account.

(8) Tracking revenues, time, and expenditures. **Ecology** shall track revenues collected under this subsection on a source-specific basis. **Ecology** shall track time and expenditures on the basis of complexity categories.

(9) Periodic review. **Ecology** shall review and, as appropriate, update this section at least once every two years.

## NEW SECTION

**WAC 173-400-117 Special protection requirements for federal Class I areas.** (1) **Definitions.** The following definition applies to this section:

"**Adverse impact on visibility**" means **visibility impairment** that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the **federal Class I area**. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(a) Times of visitor use of the **federal Class I area**; and

(b) The frequency and timing of natural conditions that reduce visibility.

(2) **Applicability.** The requirements of this section apply to all of the following **sources**:

(a) A **source** that is submitting a **PSD** permit application for a new **major stationary source** or a **major modification**; or

(b) A **source** in a **nonattainment area** that is submitting a **notice of construction application** for a **major stationary source** or a **major modification**, as either of those terms are defined in WAC 173-400-113, Requirements for **new sources in attainment or unclassifiable areas**.

(3) **Contents and distribution of application.**

(a) The application shall include an analysis of the anticipated impacts of the project on visibility in any **federal Class I area**.

(b) The applicant must mail a copy of the application for the project and all amendments to the application to the **permitting agency** and to the responsible **federal land manager**. **Ecology** will provide a list of the names and addresses of the **federal land manager**.

(4) **Notice to federal land manager.**

(a) Within three days of issuing a completeness determination on a project described in subsection (2) of this section, the **permitting agency** shall send a copy of the completeness determination by certified mail to the responsible **federal land manager**.

(b) If, prior to receiving a **notice of construction application** or a **PSD** permit application, the **permitting agency** receives notice of a project described in subsection (2) of this section that may affect visibility in a **federal Class I area**, the **permitting agency** shall notify the responsible **federal land manager** within thirty days of the notification.

(5) **Analysis by federal land manager.**

(a) The **permitting agency** will consider any demonstration presented by the responsible **federal land manager** that **emissions** from a proposed **new source** or the **net emissions increase** from a proposed modification described in subsection (2) of this section would have an **adverse impact on visibility** in any **federal Class I area**, provided that the demonstration is received by the **permitting agency** within thirty days of the **federal land manager's** receipt of the complete

application. The thirty-day clock for the federal land manager begins upon receipt of the completeness determination.

(b) If the **permitting agency** concurs with the **federal land manager's** demonstration, the permit or **approval order** for the project either shall be denied, or conditions shall be included in the permit or **approval order** to prevent the adverse impact.

(c) If the **permitting agency** finds that the **federal land manager's** analysis does not demonstrate that the project will have an adverse impact on visibility in a **federal Class I area**, the **permitting agency** either shall explain its decision in the public notice required by WAC 173-400-171(2), or, in the case of public notice of proposed action on a **PSD** permit application, state that an explanation of the decision appears in the Fact Sheet for the proposed permit.

(6) **Additional requirements for projects that require a PSD permit.**

(a) For sources impacting **federal Class I areas**, the **permitting agency** shall provide notice to EPA of every action related to consideration of the permit.

(b) The **permitting agency** shall consider any demonstration received from the responsible **federal land manager** prior to the close of the public comment period on a proposed **PSD** permit that emissions from the proposed **new source** or the **net emissions increase** from a proposed **modification** would have an adverse impact on the air quality-related values (including visibility) of any **mandatory Class I federal area**.

(c) If the **permitting agency** concurs with the demonstration, the permit either shall be denied, or conditions shall be included in the permit to prevent the adverse impact.

(7) **Additional requirements for projects located in nonattainment areas.** In reviewing a **PSD** permit application or **notice of construction application** for a project proposed for construction in an area classified as **nonattainment**, the **permitting agency** must ensure that the **source's emissions** will be consistent with making reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, **impairment of visibility** by human-caused air pollution in **mandatory Class I federal areas**. In determining the need for **approval order** conditions to meet this requirement, the **permitting agency** may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(8) **Monitoring.** The **permitting agency** may require post-construction monitoring of the impact from the project. The monitoring shall be limited to the impacts on visibility in any **federal Class I area** near the proposed project.

## NEW SECTION

**WAC 173-400-118 Designation of Class I, II, and III areas. (1) Designation.**

(a) Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body. This restriction does not apply to nontrust

lands within the 1873 Survey Area of the Puyallup Indian Reservation.

(b) All areas of the state must be designated either **Class I, II or III**.

(i) The following areas are the **Class I areas** in Washington state:

- (A) Alpine Lakes Wilderness;
- (B) Glacier Peak Wilderness;
- (C) Goat Rocks Wilderness;
- (D) Adams Wilderness;
- (E) Mount Rainier National Park;
- (F) North Cascades National Park;
- (G) Olympic National Park;
- (H) Pasayten Wilderness; and
- (I) Spokane Indian Reservation.<sup>1</sup>

(ii) All other areas of the state are **Class II**, but may be redesignated as provided in subsections (2) and (3) of this section.

<sup>1</sup> EPA redesignated this land based on a request from the Spokane Tribal Council. See 40 CFR 52.2497 and 56 FR 14862, April 12, 1991, for details.

### (2) **Restrictions on area classifications.**

(a) Except for the Spokane Indian Reservation, the **Class I areas** listed in subsection (1) of this section may not be redesignated.

(b) Except as provided in (a) of this subsection, the following areas that exceed 10,000 acres in size may be redesignated as **Class I or II**:

(i) Areas in existence on August 7, 1997:

- (A) A national monument;
- (B) A national primitive area;
- (C) A national preserve;
- (D) A national wild and scenic river;
- (E) A national wildlife refuge; or
- (F) A national lakeshore or seashore.

(ii) Areas established after August 7, 1997:

- (A) A national park; or
- (B) A national wilderness area.

### (3) **Redesignation of area classifications.**

(a) **Ecology** shall propose the redesignation of an area classification as a revision to the **SIP**.

(b) **Ecology** may submit to **EPA** a proposal to redesignate areas of the state as **Class I or II**: Provided, That

(i) **Ecology** followed the public involvement procedures in WAC 173-400-171;

(ii) **Ecology** explained the reasons for the proposed redesignation, including a description and analysis of the health effects of the proposed redesignation; environmental, economic, social and energy;

(iii) **Ecology** made available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation;

(iv) **Ecology** notified other states, tribal governing bodies, and **federal land managers** whose lands may be affected by the proposed redesignation at least thirty days prior to the public hearing;

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(v) **Ecology** consulted with the elected leadership of local governments in the area covered by the proposed redesignation before proposing the redesignation; and

(vi) **Ecology** followed these procedures when a redesignation includes any federal lands:

(A) **Ecology** notified in writing the appropriate **federal land manager** on the proposed redesignation. **Ecology** allowed forty-five days for the **federal land manager** to confer with **ecology** and to submit written comments.

(B) **Ecology** responded to any written comments from the **federal land manager** that were received within forty-five days of notification. **Ecology's** response was available to the public in advance of the notice of the hearing.

(I) **Ecology** sent the written comments of the **federal land manager**, along with **ecology's** response to those comments, to the public location as required in WAC 173-400-171 (2)(a).

(II) If **ecology** disagreed with the **federal land manager's** written comments, **ecology** documented any inconsistency between the redesignation and the comments of the **federal land manager**. In addition, **ecology** explained its decision for making the redesignation against the recommendation of the **federal land manager**.

(c) **Ecology** may submit to EPA a proposal to redesignate any area other than an area to which subsection (1) of this section applies as Class III: Provided, That:

(i) The redesignation followed the public involvement requirements of WAC 173-400-171;

(ii) The redesignation has been specifically approved by the governor of Washington state, after consultation with the appropriate committees of the legislature if it is in session, or with the leadership of the legislature, if it is not in session;

(iii) The redesignation has been approved by local governments representing a majority of the residents of the area to be redesignated. The local governments enacted legislation or passed resolutions concurring in the redesignation;

(iv) The redesignation would not cause, or contribute to, a concentration of any **air contaminant** which would exceed any maximum allowable increase permitted under the classification of any other area or any **National Ambient Air Quality Standard**; and

(v) A PSD permit under WAC 173-400-141 for a new **major stationary source** or **major modification** could be issued only if the area in question were redesignated as Class III, and material submitted as part of that application was available for public inspection prior to any public hearing on redesignation of the area as Class III.

**AMENDATORY SECTION** (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-131 Issuance of emission reduction credits.** (1) **Applicability.** The owner(((s))) or operator(((s))) of any source(((s))) may apply to ((~~ecology or the authority~~)) the permitting agency for an **emission reduction credit (ERC)** if the source proposes to reduce its **actual emissions** rate for any contaminant regulated by state or fed-

eral law for which the **emission** requirement may be stated as an allowable limit in weight of contaminant per unit time for the **emissions unit**(((s))) involved.

(2) **Time of application.** The application for an ERC must be made prior to or within one hundred eighty days after the **emission** reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of ((~~ecology or the authority~~)) the permitting agency.

(a) The quantity of **emissions** in the ERC shall be less than or equal to the old **allowable emissions** rate or the old **actual emissions** rate, whichever is the lesser, minus the new **allowable emissions** rate.

(b) The ERC application must include a description of all the changes that are required to accomplish the claimed **emissions** reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

(c) The ERC must be large enough to be readily quantifiable relative to the **source** strength of the **emissions** unit(s) involved.

(d) No part of the **emission** reductions claimed for credit shall have been used as part of a determination of **net emission increase**, nor as part of an offsetting transaction under WAC 173-400-112(((4))) (2)(d), nor as part of a **bubble** transaction under WAC 173-400-120, nor to satisfy **NSPS, NESHAPS, for Source Categories, BACT, or LAER**.

(e) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a **regulatory order** or permit that establishes total **allowable emissions** from the **source** or **emissions unit** of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(f) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within thirty days after the receipt of an ERC application and all supporting data and documentation, ((~~ecology or the authority~~)) the permitting agency may require the submission of additional information needed to review the application.

(5) **Approval.** Within thirty days after all required information has been received, ((~~ecology or the authority~~)) the permitting agency shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (e) of this section have been satisfied or not. If the application is approved, ((~~ecology or the authority~~)) the permitting agency shall:

(a) Issue a **regulatory order** or equivalent document to assure that the **emissions** from the **source** will not exceed the allowable **emission** rates claimed in the ERC application, expressed in weight of pollutant per unit time for each **emission unit** involved. The **regulatory order** or equivalent document shall include any conditions required to assure that subsection (3)(a) through (e) of this section will be satisfied.

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If the **ERC** depends in whole or in part upon the shutdown of equipment, the **regulatory order** or equivalent document must prohibit operation of the affected equipment; and

(b) Issue a certificate of **emission reduction credit**. The certificate shall specify the issue date, the contaminant((f))s((g)) involved, the **emission** decrease expressed as weight of pollutant per unit time, the **nonattainment area** involved, if applicable, and the **person** to whom the certificate is issued.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

**WAC 173-400-136 Use of emission reduction credits (ERC).** (1) **Permissible use.** An **ERC** may be used to satisfy the requirements for authorization of a **bubble** under WAC 173-400-120((;)); as a part of a determination of "**net emissions increase((;))**" or as an offsetting reduction to satisfy the requirements for **new source** review ((per)) in WAC 173-400-112((;)) or 173-400-113((3) or (6)), or to satisfy requirements for **PSD** review per WAC 173-400-113(4)) (2)(c).

(2) **Surrender of ERC certificate.** When an **ERC** is used under subsection (1) of this section, the certificate for the **ERC** must be surrendered to the ((issuing authority)) **permitting agency**. If only a portion of the **ERC** is used, the amended certificate will be returned to the owner.

(3) **Conditions of use.**

(a) An **ERC** may be used only for the **air contaminant((f))s((g))** for which it was issued.

((Ecology or the authority)) (b) **The permitting agency** may impose additional conditions of use to account for temporal and spatial differences between the **emissions unit((f))s((g))** that generated the **ERC** and the **emissions unit((f))s((g))** that use the **ERC**.

(4) **Sale of an ERC.** An **ERC** may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing **authority**. After receiving the certificate, the issuing **authority** shall reissue the certificate to the new owner.

(5) ((Time of use)) **Redemption period.** An unused ((and any unused portion thereof shall)) **ERC** expires ten years after date of original issue.

(6) **Discount due to change in SIP.** If reductions in emissions beyond those identified in the ((state implementation plan)) **SIP** are required to meet an **ambient air quality standard**, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an **ERC** may be discounted by **ecology** or the **authority** after public involvement ((per)) according to WAC 173-400-171. ((Any such)) **This** discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

AMENDATORY SECTION (Amending Order 94-35, filed 9/13/96, effective 10/14/96)

**WAC 173-400-141 Prevention of significant deterioration (PSD).** ((Section 40 CFR 52.21, Subparts (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (r), (t), (v), and (w), Prevention of Significant Deterioration of Air Quality, as in effect on March 1, 1996, are incorporated by reference with the following additions and modifications:

(1) ~~Construction of "administrator."~~ In 40 CFR 52.21 (b)(17), federally enforceable, (f)(1)(v), (f)(3), and (f)(4)(i), exclusions from increment consumption, (g), redesignation, (l) and (2), air quality models, (p)(2), federal land manager, and (t), disputed permits or redesignations, the word "administrator" shall be construed in its original meaning. In 40 CFR 52.21 (b)(3)(iii) administrator shall mean both the administrator of EPA and the director of ecology.

(2) ~~Contemporaneous.~~ Subpart 40 CFR 52.21 (b)(3)(ii) is changed to read: "An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date ten years before construction on the particular change commences and the date that the increase from the particular change occurs. If a decrease occurred more than one year prior to the date of submittal of the notice of construction application for the particular change it can only be credited if the decrease has been documented by an emission reduction credit."

(3) ~~Public participation.~~ Subpart 40 CFR 51.166(q) public participation, as in effect March 1, 1996, is hereby incorporated by reference except that in 40 CFR 51.166 (q)(2)(iv), the phrase "specified time period" shall mean thirty days and the word "administrator" shall mean the EPA administrator.

(4) ~~Section 40 CFR 51.166 Subpart (p)(1) Sources Impacting Federal Class I areas—additional requirements—Notice to EPA, as in effect on March 1, 1996, is herein incorporated by reference.~~

(5) ~~Secondary emissions.~~ Subpart 40 CFR 52.21 (b)(18) is changed to read:

Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains coming to or from the new or modified stationary source; and

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

(6) ~~Significant.~~ The definition of "significant" in 40 CFR 52.21 (b)(23) is changed to exclude from the list of pollutants which may trigger PSD review any pollutant listed under FCAA § 112.) (1) **The prevention of significant deterioration or PSD program is a construction permitting program for new major stationary sources and major modifications to existing major stationary sources located in areas in**

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attainment or in areas that are unclassifiable for any criteria air pollutant. No major stationary source or major modification to which the requirements of this section apply shall begin actual construction without a PSD permit.

(2) Early planning encouraged. In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available when ecology is the permitting agency.

(3) Application.

(a) The PSD application is a form of a notice of construction application and the PSD permit is a form of an approval order.

(b) The applicant shall provide complete copies of its PSD application, distributed in the following manner:

(i) Three copies shall be sent to the permitting agency. If ecology is the permitting agency, copies must be sent to the Air Quality Program at P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy shall be sent to each of the following federal land managers:

- (A) National Park Service; and
- (B) U.S. Forest Service.

(iii) If the local authority is not the permitting agency and the project lies within the territory of a local authority, one copy shall be sent to the authority in whose territory the source is located.

(c) Ecology shall provide the names and addresses of the federal land managers.

(4) Enforcement.

Ecology or the permitting agency with authority over the source under chapter 173-401 WAC, the Operating permit regulation, shall receive all required reports and enforce the conditions in the PSD permit.

(5) Applicable requirements.

A PSD permit must comply with the following requirements:

- (a) WAC 173-400-110 - New source review;
- (b) WAC 173-400-113 - Requirements for new sources in attainment or unclassifiable areas;

(c) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(d) WAC 173-400-171 - Public involvement; and

(e) The following subparts of 40 CFR 52.21, in effect on July 1, 2000, which are adopted by reference. Exceptions are listed in (5)(e)(i), (ii), (iii), and (iv):

<u>40 CFR 52.21 (b)</u>	<u>Definitions</u> .
<u>40 CFR 52.21 (c)</u>	<u>Ambient air increments</u> .
<u>40 CFR 52.21 (d)</u>	<u>Ambient air ceilings</u> .
<u>40 CFR 52.21 (h)</u>	<u>Stack heights</u> .
<u>40 CFR 52.21 (i)</u>	<u>Review of major stationary sources and major modifications - source applicability and exemptions</u> .

40 CFR 52.21 (j)

40 CFR 52.21 (k)

40 CFR 52.21 (l)

40 CFR 52.21 (m)

40 CFR 52.21 (n)

40 CFR 52.21 (o)(1) and (2)

40 CFR 52.21 (r)

40 CFR 52.21 (v)

40 CFR 52.21 (w)

Control technology review.

Source impact analysis.

Air quality models.

Air quality analysis.

Source information.

Additional impact analysis.

Source obligation.

Innovative control technology.

Permit rescission.

(i) Exception to adopting 40 CFR 52.21 by reference. Every use of the word "administrator" in 40 CFR 52.21 means ecology or the authority except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 CFR 52.21 (p)(2), sources impacting federal Class I areas - additional requirements, "administrator" means the EPA administrator.

(ii) Exception to adopting 40 CFR 52.21 by reference. The following definitions apply to this section instead of the definitions in 40 CFR 52.21(b):

(A) Major modification as defined in WAC 173-400-113;

(B) Major stationary source as defined in WAC 173-400-113;

(C) Net emissions increase as defined in WAC 173-400-113;

(D) Significant as defined in WAC 173-400-113; and

(E) Volatile organic compound as defined WAC 173-400-020.

(iii) Exception to adopting 40 CFR 52.21 by reference. The following definition of "secondary emissions" applies to this section instead of the definition in 40 CFR 52.21 (b)(18): "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

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

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

(iv) Exception to adopting 40 CFR 52.21 by reference. Each reference in 40 CFR 52.21(i) to "paragraphs (j) through

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(r) of this section" is amended to state "paragraphs (j) through (n) of this section, paragraphs (o)(1) and (o)(2) of this section, paragraph (r) of this section, WAC 173-400-117 and 173-400-171."

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-400-151 Retrofit requirements for visibility protection.** (1) ~~((Determination of))~~ **Applicability.** The requirements of this section apply to a stationary source that meets all of these conditions:

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

(b) The stationary source was not in operation prior to August 7, 1997, and was in existence on August 7, 1997.

(2) **Determining best available retrofit technology (BART).** Ecology shall identify and analyze each source which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I area in Washington and any adjacent state ~~((and to))~~. The permitting agency shall determine BART for the air contaminant of concern and determine those additional air pollution control technologies that are to be required to reduce impairment from the source.

~~((2))~~ **Initially defined** (3) **Applying BART.**

(a) The owner~~((s))~~ or operator~~((s))~~ of any source~~((s))~~ to which ~~((significant))~~ visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART for each air contaminant contributing to visibility impairment ~~((that is emitted at more than 250 tons per year))~~. Each source for which BART is required must install and operate BART as expeditiously as possible, but in no case later than five years after the conditions are included in a regulatory order.

~~((3))~~ **Future definitions of BART.** (b) In the case where the permitting agency determined not to require the source to apply BART, the owner~~((s))~~ or operator~~((s))~~ of any source~~((s))~~ to which ~~((significant))~~ visibility impairment of a mandatory Class I area is reasonably attributable shall apply BART as new control technology becomes reasonably available for ~~((a))~~ an air contaminant if:

~~((a))~~ (i) The source has the potential to emit~~((s more than))~~ 250 tons per year or more of ~~((the))~~ any air contaminant; ~~((and,~~

~~((b))~~ (ii) The source emits the air contaminant contributing to visibility impairment;

(iii) The impairment of visibility in any mandatory Class I area is reasonably attributable to the emissions of that air contaminant; and

(iv) The controls representing BART for that air contaminant have not previously been required ~~((th))~~ under this section.

~~((4))~~ **Appeal.** Any source owner or operator required by this section to install, operate, and maintain BART, may apply to the EPA administrator for an exception from that requirement pursuant to 40 CFR 51.303.)

AMENDATORY SECTION (Amending Order 93-40, filed 3/22/95, effective 4/22/95)

**WAC 173-400-171 Public involvement.** (1) **Applicability.** (a) Ecology or the authority shall provide public notice ~~((prior to the approval or denial of))~~ before approving or denying any of the following types of applications or other actions:

~~((a))~~ (i) Notice of construction application for any new or modified source or emissions unit, if a significant net increase in emissions of any pollutant regulated by state or federal law would result; or

~~((b))~~ Any application or other proposed action for which a public hearing is required by PSD rules; or

~~((c))~~ (ii) Any preliminary determination to approve or disapprove a PSD permit application, except for administrative or other changes to an existing permit that do not make the emission limitations or monitoring requirements less stringent than originally issued; or

(iii) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on July 1, 2000) as part of review under WAC 173-400-112, 173-400-141, or 173-400-117; or

(iv) Any order to determine RACT; or

~~((d))~~ (v) An order to establish a compliance schedule or a variance; or

~~((e))~~ The establishment or disestablishment of a nonattainment area, or the changing of the boundaries thereof; or

~~((f))~~ (vi) An order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

~~((g))~~ (vii) An order to authorize a bubble; or

~~((h))~~ (viii) Notice of construction application or regulatory order used to establish a creditable emission reduction;

~~((i))~~ (ix) An order issued under WAC 173-400-091 ~~((which))~~ that establishes limitations on a source's potential to emit; or

~~((j))~~ (x) Any application or other proposed action made ~~((pursuant to))~~ under this chapter in which ecology or the authority determines there is ~~((a))~~ substantial public interest ~~((according to the discretion of ecology or the authority)).~~

(b) Ecology must provide notice on the following actions:

(i) A Washington state recommendation that will be submitted by the director of ecology to EPA for approval of a SIP revision, including plans for attainment, maintenance, and visibility protection; or

(ii) A Washington state recommendation to EPA for designation or redesignation of an area as attainment, nonattainment, or unclassifiable; or



(iii) A Washington state recommendation to EPA for a change of boundaries of an attainment or nonattainment area; or

(iv) A Washington state recommendation to EPA for redesignation of an area under WAC 173-400-118.

(c) A notice of construction application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines.

(2) **Public notice.** Public notice shall be made only after all information required by **ecology** or the **authority** has been submitted and after applicable preliminary determinations, if any, have been made. The ~~((cost of providing public notice shall be borne by the))~~ applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include:

(a) Availability for public inspection ~~((in at least one location near the proposed project, of the nonproprietary))~~. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect~~((s))~~ on air quality, must be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205.

(i) For PSD permit determinations, ecology must include a copy or summary of other materials considered in making the preliminary determination.

(ii) For a redesignation of a class area under WAC 173-400-118, ecology must make available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation.

(iii) For a revision of the SIP subject to subsection (1)(b)(iii) of this section, ecology must make available for public inspection the information related to the action at least thirty days before the hearing.

(b) ~~((Publication))~~ Newspaper publication. Public notice of the proposed project must be published in a newspaper of general circulation in the area of the proposed project ~~((of notice:))~~ and must include:

(i) The name and address of the owner or operator and the facility;

~~((i) Giving))~~ (ii) A brief description of the proposal;

~~((ii) Advising of))~~ (iii) The location of the documents made available for public inspection;

~~((iii) Advising of))~~ (iv) A thirty-day period for submitting written comment to ecology or the authority;

~~((iv) Advising))~~ (v) A statement that a public hearing may be held if ecology or the authority determines within a thirty-day period that significant public interest exists.

(vi) The length of the public comment period in the event of a public hearing;

(vii) For projects subject to Special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), public notice shall either explain the permitting agency's decision or state that an explanation of the decision appears in the Fact Sheet for the proposed PSD permit; and

(viii) For a redesignation of an area under WAC 173-400-118, public notice shall state that an explanation of the reasons for the proposed redesignation is available for review at the public location.

(c) Notifying EPA. A copy of the notice will be sent to the EPA Region 10 regional administrator.

~~((Public participation procedures for notice of construction applications that are processed in coordination with an application to issue or modify an operating permit shall be conducted as provided in the state operating permit rule.))~~ (d) Additional public notice requirements for PSD projects. For projects subject to the PSD program in WAC 173-400-141, the **permitting agency** shall meet the public notice requirements in subsection (2)(a), (b), and (c) of this section and the following requirements:

(i) PSD Permit Fact Sheet. All PSD permit preliminary determinations and final permits will be accompanied by a fact sheet that includes the following information:

(A) A brief description of the type of facility or activity subject to permitting;

(B) The type and quantity of pollutants proposed to be emitted into the air;

(C) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(D) A brief summary of the basis for permit conditions;

(E) The degree of increment consumption expected to result from operation of the facility at the permitted levels;

(F) An analysis of the impacts on air quality related values in federal Class I areas affected by the project; and

(G) An analysis of the impacts of the proposed emissions on visibility following the requirements in WAC 173-400-117.

(ii) For PSD permit preliminary determinations, the public notice required by subsection (2)(b) of this section shall contain:

(A) The name and address of the applicant;

(B) The location of the proposed project;

(C) A brief description of the project proposal;

(D) The preliminary determination to approve or disapprove the application;

(E) How much increment is expected to be consumed by this project;

(F) The name, address, and telephone number of the person to contact for further information;

(G) A brief explanation of how to comment on the project; and

(H) An explanation on how to request a public hearing.

(iii) For PSD permit preliminary determinations, a copy of the public notice required by subsection (2)(b) of this section shall be sent to:

(A) The applicant;

(B) U.S. Forest Service;

(C) National Park Service;

(D) EPA Region 10;

(E) Any tribal governing body whose lands may be affected by emissions from the project;

(F) The chief executive of the city where the project is located;

(G) The chief executive of the county where the project is located;

(H) The **authority** in whose territory the project is located;

(I) The comprehensive regional land use planning agency whose lands may be affected by **emissions** from the project;

(J) Individuals or organizations that requested notification of the specific project proposal;

(K) Other individuals who requested notification of **PSD** permits;

(L) Any state within 100 km of the proposed project; and

(M) The location for public inspection of material required under subsection (2)(a) of this section.

(iv) A copy of the **PSD** permit preliminary determination and the fact sheet must be sent to:

(A) The applicant;

(B) U.S. Forest Service;

(C) National Park Service;

(D) **EPA** Region 10;

(E) The **authority** in whose territory the project is located;

(F) Individuals or organizations who request a copy; and

(G) The location for public inspection of material required under subsection (2)(a) of this section.

(v) The final **PSD** permit determination shall include the following:

(A) A copy of the final **PSD** permit or the determination to deny the permit;

(B) A summary of the comments received;

(C) The **permitting agency's** response to those comments;

(D) A description of what approval conditions changed from the preliminary determination; and

(E) A cover letter that includes an explanation of how the final determination may be appealed.

(vi) The **permitting agency** shall mail a copy of the cover letter that accompanies the final **PSD** permit determination to:

(A) The applicant;

(B) U.S. Forest Service;

(C) National Park Service;

(D) **EPA** Region 10;

(E) Any tribal governing body whose lands may be affected by **emissions** from project;

(F) The chief executive of the city where the project is located;

(G) The chief executive of the county where the project is located;

(H) The **authority** in whose territory the project is located;

(I) The comprehensive regional land use planning agency whose lands may be affected by **emissions** from the project;

(J) Individuals or organizations that requested notification of the specific project proposal;

(K) Other individuals who requested notification of **PSD** permits;

(L) Any state within 100 km of the proposed project; and

(M) The location for public inspection of material required under subsection (2)(a) of this section.

(vii) The **permitting agency** shall mail a copy of the final **PSD** permit determination to:

(A) The applicant;

(B) U.S. Forest Service;

(C) National Park Service;

(D) **EPA** Region 10;

(E) The **authority** in whose territory the project is located;

(F) Individuals or organizations who request a copy; and

(G) The location for public inspection of material required under subsection (2)(a) of this section.

(e) Additional public notice requirements for a **SIP** revision. For a revision to the **SIP** that is submitted by the **director of ecology, ecology** must publish the public notice required by subsection (2)(b) of this section in the *Washington State Register* in advance of the date of the public hearing.

(3) **Public comment.** ((No final decision on any application or action of any of the types described in subsection (1) of this section, shall be made until the public comment period has ended and any comments received have been considered. Unless a public hearing is held;))

(a) The public comment period ((shall) must be at least the thirty-day period for written comment ((published as provided above)) specified in the public notice.

(b) If a public hearing is held, the public comment period ((shall) must extend through the hearing date ((and thereafter for such period, if any, as the notice of public hearing may specify;))

(c) **Ecology** or the **authority** shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received have been considered.

(4) **Public hearings.**

(a) The applicant, any interested governmental entity, any group or any person may request a public hearing within the thirty-day public comment period ((published as above)). ((Any such)) A request ((shall) must indicate the interest of the entity filing it and why a hearing is warranted. **Ecology** or the **authority** may((, in its discretion;)) hold a public hearing if it determines significant public interest exists. ((Any such hearing shall be held upon such notice and at a time(s) and place(s) as **ecology** or the **authority** deems reasonable.)) **Ecology** or the **authority** will determine the location, date, and time of the public hearing.

(b) **Ecology** must hold a hearing on the following actions:

(i) A Washington state recommendation to **EPA** that will be submitted by the **director of ecology** for approval of a **SIP** revision;

(ii) A Washington state recommendation to **EPA** for a change of boundaries of an **attainment** or **nonattainment** area;

(iii) A Washington state recommendation to EPA for designation of an area as attainment, nonattainment, or unclassifiable; and

(iv) A Washington state recommendation to EPA to redesignate an area under WAC 173-400-118.

(c) Ecology must provide at least thirty days prior notice of a hearing required under subsection (4)(b) of this section.

(5) Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, ~~((such))~~ those procedures may be used in lieu of the provisions of this section. This subsection does not apply to a PSD permit application, a notice of construction application for a major modification, and a notice of construction application for a new major stationary source.

(6) Public information. All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205, is available for public inspection at the issuing agency. This includes copies of notices of construction applications, orders, and modifications ~~((thereof which are issued hereunder shall be available for public inspection on request at ecology or the authority))~~.

#### WSR 01-04-074

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Assistance Programs)

[Filed February 6, 2001, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-24-051.

Title of Rule: WAC 388-414-0001 Some food assistance units do not have to meet all eligibility requirements.

Purpose: This rule is being amended to be consistent with current system processing of categorically eligible cases. It has been rewritten to clarify the duration of a family can be considered categorically eligible and under what conditions. The rule also includes information on who cannot be categorically eligible.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.510, USDA AN 99-46.

Statute Being Implemented: RCW 74.08.090, 74.04.-510.

Summary: The rule is being amended to be consistent with current system processing of categorically eligible cases.

Reasons Supporting Proposal: The rule provides clarification on the duration a family can be considered categorically eligible and under what conditions. It also includes who cannot be categorically eligible per federal regulations.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lisa Yanagida, DAP,

1009 College Street, Lacey, WA 98504, Mailstop 45470, (360) 413-3104.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule will match current system processing of categorically eligible cases. It has been rewritten to clarify the duration a family can be considered categorically eligible and under what conditions. It also includes who cannot be considered categorically eligible per federal regulations.

Proposal Changes the Following Existing Rules: WAC 388-414-0001, we have changed the rule to be consistent with current system processing of categorically eligible cases. We have also included the length of time a family can be considered categorically eligible and under what conditions. We have included information on who cannot be considered categorically eligible per federal regulations.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses. It only affects DSHS clients.

RCW 34.05.328 does not apply to this rule adoption. The rule does not meet the definition of a significant legislative rule.

Hearing Location: Blake Office Building East, 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on March 13, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by March 6, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail myer-cme@dshs.wa.gov [coopekd@dshs.wa.gov].

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by March 13, 2001.

Date of Intended Adoption: No sooner than March 14, 2001.

January 31, 2001

Bonita H. Jacques, Chief  
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 00-11-035, filed 5/10/00, effective 8/1/00)

**WAC 388-414-0001 Some food assistance (~~households~~) units do not have to meet all eligibility requirements. (1) What is "categorical eligibility" (CE)?**

**(a)** Some food assistance (~~households~~) units do not have to meet all of the eligibility requirements for food assistance. The department calls this (~~categorical eligibility~~) CE. (~~Categorically eligible households have already met these~~) If your food assistance unit is CE, you do not have to meet the following food assistance requirements because you have met them for another program:

~~((a))~~ (i) Resources;

~~((b))~~ (ii) Gross and net income standards; ~~(and~~

~~(e))~~ (iii) Residency; and

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(iv) Sponsored alien information.

(b) If you are a CE food assistance unit, you will still have your income budgeted to determine the amount of food stamps your assistance unit is eligible for.

(2) Who is ~~((categorically eligible))~~ CE for food assistance?

Your household is ~~((categorically eligible))~~ CE when:

(a) All members of your ~~((household))~~ food assistance unit are getting general assistance (GA) and/or Supplemental Security Income (SSI) cash benefits on their own behalf;

(b) ~~((All members of your household are getting Supplemental Security Income (SSI) on their own behalf;~~

(c) All members of your household are getting either GA or SSI on their own behalf; or

~~((d) Some members))~~ A member of your ~~((household are))~~ food assistance unit is getting or is authorized to ~~((receive))~~ get payments ~~((or services))~~ from the following programs and ~~((the entire household benefits))~~ you all benefit from the assistance:

(i) Temporary assistance for needy families (TANF) cash assistance;

(ii) State family assistance (SFA); or

(iii) Diversion cash assistance (DCA). You are CE for the month you receive ~~((assistance))~~ DCA and the three following months ~~((; or~~

~~((iv) TANF post-employment services (as defined in WAC 388-310-1800) as long as your assistance unit meets TANF resource requirements))~~ as long as you have one adult relative caretaker with a dependent child in the food assistance unit.

(c) You are receiving TANF/SFA cash assistance and no longer get assistance because your earnings are over the earned income limit in WAC 388-478-0035. You are CE for twenty-four months after your TANF/SFA cash assistance ends as long as you have one adult relative caretaker with a dependent child in the food assistance unit.

(3) Who are not considered CE even though the above criteria is met?

(a) A member of your food assistance unit is not CE who:

(i) Is not eligible because of his/her alien or student status;

(ii) Fails to follow work requirements;

(iii) Fails to provide or apply for a Social Security Number;

(iv) Is a SSI recipient in a cash-out state (state where SSI payments are increased to include the value of the food stamp allotment);

(v) Is not eligible for SSI on his/her own behalf since he/she is getting SSI as an essential person or as an ineligible spouse; or

(vi) Is living in an institution.

(b) If a person is not CE, he/she is not included as member in your CE food assistance unit.

(c) Your entire food assistance unit is not CE when your assistance unit:

(i) Is not eligible because of striker provisions;

(ii) Knowingly transferred resources for the purpose of qualifying for benefits;

(iii) Refuses to cooperate in providing information that is needed to determine your eligibility;

(iv) Has a head of the household that failed to meet work requirements; or

(v) Has a member that is not qualified because of an intentional program violation.

**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.

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

**WSR 01-04-075**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed February 6, 2001, 3:58 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: WAC 308-100-140 Commercial driver's license third party tester agreements.

Purpose: Amends the department's criteria for determining the need to enter into an agreement with third parties to test applicants for commercial driver's licenses.

Statutory Authority for Adoption: RCW 46.01.110 and 46.25.060.

Statute Being Implemented: RCW 46.25.060.

Summary: Provides that in counties where there are no third party testers, the department will not base the determination of need for a third party tester solely on the expected number of applicants for a commercial driver's license in those locations.

Reasons Supporting Proposal: The current rule requires that the department determine need prior to entering into an agreement with a third party tester to conduct tests for commercial driver's licenses. "Need" has been interpreted to mean volume of expected applicants, based on factors such as the number of applicants tested in previous years. This proposal would allow the department to consider factors other than the number of applicants in counties that would otherwise have inadequate access to testing facilities.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, (360) 902-3846; Implementation and Enforcement: Denise Movius, Highways-Licenses Building, (360) 902-3850.

Name of Proponent: Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: No new rules are being proposed.

Proposal Changes the Following Existing Rules: Amending WAC 308-100-140 to provide that in counties where there are no third party testers, the department will not base the determination of need for a third party tester solely

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on the expected number of applicants for a commercial driver's license in those locations.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business impact statement is not required pursuant to RCW 19.85.025(3).

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The rule relates to internal governmental operations that are not subject to violation by a nongovernmental party.

Hearing Location: Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA, on April 11, 2001, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by April 10, 2001, TTY (360) 664-0116.

Submit Written Comments to: Clark J. Holloway, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, fax (360) 586-8351, by April 10, 2001.

Date of Intended Adoption: April 13, 2001.

January 26, 2001

Denise M. Movius

Assistant Director

**AMENDATORY SECTION** (Amending WSR 00-18-068, filed 9/1/00, effective 10/2/00)

**WAC 308-100-140 Third party tester.** The department may enter into an agreement with third party testers to conduct the commercial driver's license classified skill examination. An agreement will only be made where the department has determined that a need for a third party tester exists in the location covered by the third party tester, and that the third party tester is otherwise qualified. In counties where there are no third party testers, the department will not base the determination of need solely on the expected number of applicants for a commercial driver's license in those locations. The department may suspend an agreement with a third party tester for any length of time upon a showing of good cause. An agreement between the department and a third party tester will be valid for no more than two years, provided that the department may extend an agreement for up to an additional two years at its discretion. The department may renew an agreement if it has determined that a need for a third party tester still exists in the location covered by the third party tester.

## WSR 01-04-078

### PROPOSED RULES

#### DEPARTMENT OF TRANSPORTATION

[Filed February 7, 2001, 8:26 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 01-01-111.

Title of Rule: Washington state ferries (WSF) and toll bridges, WAC 468-300-010, 468-300-020, 468-300-040, and 468-300-220.

Purpose: The purpose of this rule is to raise the ferry tolls within the specified WACs. The revisions follow the annual review of WSF's farebox revenue needs.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.326.

Statute Being Implemented: RCW 47.56.030 and 47.60.326.

Summary: The four affected WACs are revised to incorporate increased ferry tolls for passengers, vehicles and vessel charters, to meet need for additional farebox revenue.

Reasons Supporting Proposal: WSFs need for additional farebox revenue.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Raymond G. Deardorf, Washington State Ferries, 2911 2nd Avenue, Seattle, WA 98121, (206) 515-3491.

Name of Proponent: Washington State Department of Transportation, Washington State Ferries, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this rule is to raise the ferry tolls within the specified WACs. The WAC revisions follow the annual review of WSF's farebox revenue needs.

No major effects are anticipated.

Proposal Changes the Following Existing Rules: The proposed rule revises the subject WACs by increasing the passenger tolls, vehicle tolls and vessel charter rates specified in the WACs.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered this rule and determined that it does not affect more than 10% of one industry or 20% of all industry.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: King County Courthouse, Old City Council Chambers Conference Room, 516 3rd Avenue 4th Floor, Seattle, WA, on March 28, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Transportation Commission Office, TDD (360) 705-7070.

Submit Written Comments to: Raymond G. Deardorf, Washington State Ferries, Planning Director, fax (206) 515-3499, by March 28, 2001.

Date of Intended Adoption: March 28, 2001.

February 6, 2001

Chris R. Rose, Administrator  
Transportation Commission

PROPOSED

AMENDATORY SECTION (Amending WSR 00-24-050, filed 11/30/00, effective 12/31/00)

WAC 468-300-010 Ferry passenger tolls.

Effective 03:00 a.m. (~~December 31, 2000~~) May 13, 2001

(ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User Ticket Book 20 Rides <sup>1</sup>	Monthly Pass <sup>2</sup>	Quarterly Pass <sup>2</sup>	Annual Pass <sup>2</sup>	Bicycle Surcharge <sup>2,b</sup>
<i>Via Passenger-Only Ferry-</i>								
<i>*Seattle-Vashon</i>								
*Seattle-Bremerton	3.70	1.80	2.60	26.00	54.60	163.80	655.20	0.70
<i>Via Auto Ferry</i>								
<i>*Fauntleroy-Southworth</i>								
<i>*Seattle-Bremerton</i>								
<i>*Seattle-Bainbridge Island</i>								
*Edmonds-Kingston	3.70	1.80	2.60	26.00	54.60	163.80	655.20	0.70
<i>Port Townsend-Keystone</i>								
*Fauntleroy-Vashon	1.85	0.90	1.40	26.00	N/A	N/A	N/A	0.35
<i>*Southworth-Vashon</i>								
<i>*Pt. Defiance-Tahlequah</i>								
*Mukilteo-Clinton	2.50	1.20	1.80	17.50	36.80	110.40	441.60	0.70
<i>*Anacortes to Lopez, Shaw, Orcas or Friday Harbor</i>								
	5.30	2.60	3.80	37.25	N/A	N/A	N/A	3.00
<i>Between Lopez, Shaw, Orcas and Friday Harbor<sup>4</sup></i>								
	N/C	N/C	N/C	N/C	N/A	N/A	N/A	N/C
<i>International Travel</i>								
<i>Anacortes to Sidney and Sidney to all destinations</i>								
	9.10	4.50	6.40	N/A	N/A	N/A	N/A	4.60
<i>From Lopez, Shaw, Orcas and Friday Harbor to Sidney<sup>4</sup></i>								
	4.00	2.00	2.80	N/A	N/A	N/A	N/A	1.75
<i>Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)<sup>3</sup></i>								
	13.10	6.50	9.20	N/A	N/A	N/A	N/A	6.35))

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User Coupon Book 20 Rides <sup>1</sup>	Monthly Pass <sup>2</sup>	Quarterly Pass <sup>2</sup>	Annual Pass <sup>2</sup>	Bicycle Surcharge <sup>2,b</sup>
<i>Via Passenger-Only Ferry Seat-</i>								
<i>tle to Vashon</i>								
Seattle to Bremerton	6.75	3.35	4.75	63.00	132.30	376.90	1,587.60	0.90
<i>Via Passenger-Only Ferry Vas-</i>								
<i>hion to Seattle</i>								
Bremerton to Seattle	2.25	1.10	1.55	63.00	132.30	376.90	1,587.60	N/C
<i>Via Auto Ferry</i>								
<i>*Fauntleroy-Southworth</i>								
	4.00	2.00	2.80	28.00	58.80	176.90	705.60	0.90
<i>*Seattle-Bremerton</i>								
<i>*Seattle-Bainbridge Island</i>								
*Edmonds-Kingston	4.50	2.20	3.20	31.50	66.20	198.60	794.40	0.90
<i>Port Townsend-Keystone</i>								
*Fauntleroy-Vashon	2.00	1.00	1.40	28.00	N/A	N/A	N/A	0.45
<i>*Southworth-Vashon</i>								
<i>*Pt. Defiance-Tahlequah</i>								
	2.90	1.40	2.10	20.50	43.10	129.30	517.20	0.90
*Mukilteo-Clinton	2.70	1.30	1.90	19.00	39.90	119.70	478.80	0.90
<i>*Anacortes to Lopez, Shaw, Orcas or Friday Harbor</i>								
	6.80	3.40	4.80	47.75	N/A	N/A	N/A	3.60
<i>Between Lopez, Shaw, Orcas and Friday Harbor<sup>4</sup></i>								
	N/C	N/C	N/C	N/C	N/A	N/A	N/A	N/C
<i>International Travel</i>								
<i>Anacortes to Sidney and Sidney to all destinations</i>								
	11.00	5.50	7.70	N/A	N/A	N/A	N/A	5.60

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ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Frequent User			Bicycle Surcharge <sup>2,6</sup>
				Coupon Book 20 Rides <sup>1</sup>	Monthly Pass <sup>5</sup>	Quarterly Pass <sup>5</sup>	
<u>From Lopez, Shaw+, Orcas and Friday Harbor to Sidney@</u>	4.25	2.00	3.00	N/A	N/A	N/A	2.00
<u>Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)<sup>3</sup></u>	15.25	7.50	10.70	N/A	N/A	N/A	7.60

@ These fares rounded to the next multiple of \$.25. All other fares rounded to the next multiple of \$.10.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>FREQUENT USER ((TICKETS)) COUPONS - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage. Unused coupons will not be eligible for refund.

Frequent user coupon books purchased prior to May 13, 2001, with an expiration date after June 16, 2001, will be accepted for passage through June 16, 2001, and exchange for 90 days from date of purchase. Unused coupons can only be refunded on a pro rata basis after June 16, 2001.

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

<sup>3</sup>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the Islands served.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

<sup>5</sup>EMPLOYER PASSES - A monthly passenger pass is available for all routes except: Anacortes/San Juan Island/Sidney and Port Townsend/Keystone, as a pilot program. The pass is available through some local employers. It is a flash pass valid for the month printed on the pass and will be presented to Washington state ferries staff whenever a passenger fare is collected. This pass is based on 21 days of passenger travel with a 30% discount. The quarterly pass is based on 63 days of travel with a 30% discount and the annual pass is based on 252 days with a 30% discount.

<sup>6</sup>BICYCLE PASS - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

CHILDREN/YOUTH - Children under five years of age will be carried free when accompanied by parent or guardian. Children/youths five through eighteen years of age will be charged the youth fare, which will be 70% of full fare rounded to the next multiple of \$.10.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

FERRY/TRANSIT PASS - A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 21 days of passenger travel per month at a 40% discount. Passes may be available in monthly, quarterly or annual denominations.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the secretary of transportation for a specific discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route).

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the secretary of transportation for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. Starting September 1, 1999, all school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect.

PROPOSED

AMENDATORY SECTION (Amending WSR 00-24-050, filed 11/30/00, effective 12/31/00)

WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.

Effective 03:00 a.m. (~~December 31, 2000~~) May 13, 2001

((ROUTES	Vehicle Under 20' Incl. Driver One-Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>3</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Frequent User Ticket book 20 Rides <sup>2</sup>	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One-Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One-Way@	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Ticket book 20 Rides <sup>2</sup> @
	Vehicle Under 20' Incl. Driver One-Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>3</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Frequent User Ticket book 20 Rides <sup>2</sup>	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One-Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One-Way@	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Ticket book 20 Rides <sup>2</sup> @
Fauntleroy-Southworth Seattle-Bremerton								
Seattle-Bainbridge Island Port Townsend-Keystone Edmonds-Kingston	6.50	5.55	6.50	104.00	2.80	1.90	0.90	44.80
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	9.00	7.70	9.00	72.00	3.80	2.50	1.30	30.40
Mukilteo-Clinton	4.50	3.85	4.50	72.00	1.90	1.25	0.60	30.40
10 Rides - 5 Round Trips								
*Anacortes to Lopez	13.25	10.55	13.25	53.00	6.90	4.20	1.60	55.20
*Shaw, Oreas	15.75	13.05	15.75	63.00	7.40	4.70	2.10	59.20
*Friday Harbor	17.75	15.05	17.75	71.00	7.80	5.10	2.50	62.40
Between Lopez, Shaw, Oreas and Friday Harbor <sup>3</sup>	7.50	7.50	7.50	30.00	2.25	2.25	2.25	N/A
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destinations	24.75	20.15	24.75	N/A	12.30	10.00	3.20	N/A
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	9.75	5.15	24.75	N/A	N/A	N/A	N/A	N/A
Lopez, Shaw, Oreas and Friday Harbor to Sidney	9.00	7.00	9.00	N/A	5.00	5.00	1.25	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Oreas and Friday Harbor to Sidney <sup>7</sup>	2.00	0.00	9.00	N/A	N/A	N/A	N/A	N/A
Lopez, Shaw, Oreas and Friday Harbor to Sidney (round-trip) <sup>5</sup>	33.75	27.15	33.75	N/A	17.30	15.00	4.45	N/A))
ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Frequent User Coupon book 20 Rides <sup>2</sup>	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One Way@	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One Way@	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Ticket book 20 Rides <sup>2</sup> @
Fauntleroy-Southworth Port Townsend/Keystone	7.00	6.00	7.00	112.00	3.00	2.00	1.00	48.00
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	8.00	6.85	8.00	128.00	3.40	2.25	1.15	54.40
*Fauntleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	10.25	8.75	10.25	82.00	4.40	2.90	1.50	35.20

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ROUTES	Vehicle	Vehicle	Vehicle	Frequent User Coupon book 20 Rides <sup>2</sup>	Motorcycle <sup>5</sup>	Motorcycle w/Sr	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle
	Under 20' Incl. Driver One Way	Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Under 20' Over Height Charge <sup>1</sup>		Incl. Driver Stowage <sup>1</sup> One Way@	Citizen or Disabled Driver Stowage <sup>1</sup> One Way@		Frequent User Ticket book 20 Rides <sup>2</sup> @
<u>Mukilteo-Clinton</u>	5.00	4.30	5.00	80.00	2.10	1.45	0.70	33.60
10 Rides - 5 Round Trips								
* <u>Anacortes to Lopez</u>	17.00	13.60	17.00	68.00	8.90	5.50	2.10	71.20
* <u>Shaw, Orcas</u>	20.00	16.60	20.00	80.00	9.50	6.10	2.70	76.00
* <u>Friday Harbor</u>	22.50	19.10	22.50	90.00	10.00	6.60	3.20	80.00
<u>Between Lopez, Shaw, Orcas and Friday Harbor<sup>3</sup></u>	9.00	9.00	9.00	36.00	2.75	2.75	2.75	N/A
<u>International Travel</u>								
<u>Anacortes to Sidney and Sid- ney to all destinations</u>	29.75	24.25	29.75	N/A	14.80	12.10	3.80	N/A
<u>Travelers with advanced reser- vations (\$15 fee)</u> <u>Anacortes to Sidney and Sid- ney to all destinations<sup>4</sup></u>	14.75	9.25	29.75	N/A	N/A	N/A	N/A	N/A
<u>Lopez, Shaw, Orcas and Friday Harbor to Sidney</u>	9.75	7.50	9.75	N/A	5.50	5.50	1.25	N/A
<u>Travelers with advanced reser- vations (\$7 fee) from Lopez, Shaw, Orcas and Friday Har- bor to Sidney<sup>7</sup></u>	2.75	0.50	9.75	N/A	N/A	N/A	N/A	N/A
<u>Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)<sup>5</sup></u>	39.50	31.75	39.50	N/A	20.30	17.60	5.05	N/A

@ These fares rounded to the next multiple of \$0.10. All other fares rounded to the next multiple of \$.25.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay an overweight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or three wheels will pay an oversize motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

<sup>2</sup>FREQUENT USER ((TICKETS)) COUPONS - Shall be valid only for 90 days from date of purchase after which time the ticket shall not be accepted for passage. Unused coupons will not be eligible for refund.

Frequent user coupon books purchased prior to May 13, 2001, with an expiration date after June 16, 2001, will be accepted for passage through June 16, 2001, and exchange for 90 days from date of purchase. Unused coupons can only be refunded on a pro rata basis after June 16, 2001.

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is

free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

<sup>5</sup>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

<sup>6</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

<sup>7</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$10 fee, a permit valid for one year valid only during the hours shown on the permit. The \$10.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the min-

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imum total paid for all passengers in the van shall not be less than four times the applicable passenger fare.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from the second Sunday in May to the second Sunday in

October except those using frequent user tickets. A ((65)) 38% surcharge shall be applied on fares for the Sidney B.C. route.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the secretary of transportation for a specified discount (not to exceed 50 percent of full fare) and effective only at designated times on designated routes (not to exceed 100 days per year on any one route).

**AMENDATORY SECTION** (Amending WSR 00-24-050, filed 11/30/00, effective 12/31/00)

**WAC 468-300-040 Oversize vehicle ferry tolls.**

Effective 03:00 a.m. ((December 31, 2000)) May 13, 2001

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ROUTES	((Oversize Vehicle Ferry Tolls <sup>1</sup> Overall Unit Length—Including Driver							
	20'	20'					70'	Cost Per Ft. Over 80' @
	To	To					To and	
	Under	Under	30'	40'	50'	60'	include	
30'	30'	To	To Under	To Under	To under	80'		
Under	Over	Under	50'	60'	70'			
7'6"	7'6"	40'						
High	High	40'						
Fauntleroy-Southworth Seattle-Bremerton Seattle-Bainbridge Island Port Townsend-Keystone								
Edmonds-Kingston	9.75	19.50	26.00	32.50	39.00	45.50	52.00	0.65
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	13.50	27.00	36.00	45.00	54.00	63.00	72.00	0.90
Mukilteo-Clinton	6.75	13.50	18.00	22.50	27.00	31.50	36.00	0.45
*Anacortes-to Lopez <sup>2</sup> *Shaw, Oreas *Friday Harbor	23.75	47.25	63.00	78.75	94.50	110.25	126.00	1.55
Between Lopez, Shaw, Oreas and Friday Harbor <sup>3</sup>	11.25	22.50	30.00	37.50	45.00	52.50	60.00	N/A
<i>International Travel</i>								
Anacortes to Sidney and Sidney to all destinations	37.25	74.25	99.00	123.75	148.50	173.25	198.00	2.50
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations <sup>5</sup>	22.25	59.25	84.00	108.75	133.50	158.25	183.00	2.50
Lopez, Shaw, Oreas and Friday Harbor to Sidney	13.50	27.00	36.00	45.00	54.00	63.00	72.00	0.90
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Oreas and Friday Harbor to Sidney <sup>6</sup>	6.50	20.00	29.00	38.00	47.00	56.00	65.00	0.90
Lopez, Shaw, Oreas and Friday Harbor to Sidney (round trip) <sup>4</sup>	50.75	101.25	135.00	168.75	202.50	236.25	270.00	3.40))

**Oversize Vehicle Ferry Tolls<sup>1</sup>**  
Overall Unit Length - Including Driver

ROUTES	20'	20'	30'	40'	50'	60'	70'	Cost Per Ft.
	To Under	To Under						
	30'	30'	40'	50'	60'	70'	70'	
	Under	Over	To Under	To Under	To Under	To Under	To and	Over 80'
	7'6"	7'6"	Under	50'	60'	70'	include	@
	High	High	40'	50'	60'	70'	80'	
<u>Fauntleroy-Southworth</u>								
<u>Port Townsend/Keystone</u>	10.50	21.00	28.00	35.00	42.00	49.00	56.00	0.70
<u>Seattle-Bainbridge Island</u>								
<u>Seattle/Bremerton</u>								
<u>Edmonds-Kingston</u>	12.00	24.00	32.00	40.00	48.00	56.00	64.00	0.80
<u>*Fauntleroy-Vashon</u>								
<u>*Southworth-Vashon</u>								
<u>*Pt. Defiance-Tahlequah</u>	15.00	30.75	41.00	51.25	61.50	71.75	82.00	1.00
<u>Mukilteo-Clinton</u>	7.50	15.00	20.00	25.00	30.00	35.00	40.00	0.50
<u>*Anacortes to Lopez<sup>2</sup></u>								
<u>*Shaw, Orcas</u>								
<u>*Friday Harbor</u>	30.00	60.00	80.00	100.00	120.00	140.00	160.00	2.00
<u>Between Lopez, Shaw, Orcas and Friday Harbor<sup>3</sup></u>	13.50	27.00	36.00	45.00	54.00	63.00	72.00	N/A
<u>International Travel</u>								
<u>Anacortes to Sidney and Sidney to all destinations</u>	44.75	89.25	119.00	148.75	178.50	208.25	238.00	3.00
<u>Travelers with advanced reservations (\$15 fee)</u>								
<u>Anacortes to Sidney and Sidney to all destinations<sup>4</sup></u>	29.75	74.25	104.00	133.75	163.50	193.25	223.00	3.00
<u>Lopez, Shaw, Orcas and Friday Harbor to Sidney</u>	14.75	29.25	39.00	48.75	58.50	68.25	78.00	1.00
<u>Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney<sup>4</sup></u>	7.75	22.25	32.00	41.75	51.50	61.25	71.00	1.00
<u>Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip)<sup>4</sup></u>	59.25	118.50	158.00	197.50	237.00	276.50	316.00	4.00

@ These fares rounded to the next multiple of \$0.05. All other fares rounded to the next multiple of \$25.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles 11 feet in width or wider pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10.

<sup>2</sup>STOPOVERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate stopover ticket for \$2.50 when first purchasing the appropriate vehicle fare. The stopover is valid for a 24-hour period.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of

charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>ROUND TRIP - Round trip tickets for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

<sup>6</sup>RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

PEAK SEASON SURCHARGE - A peak season surcharge of 25% shall apply to all oversize vehicles, except for international travel. The senior citizen discount shall apply to the driver of an oversize vehicle. A 65% surcharge shall be applied on fares for the Sidney B.C. route.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

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DISCOUNT FROM REGULAR TOLL

Oversize vehicles making 12 or more, one-way crossings per week (Sunday thru Saturday) will qualify for a 20% discount from the regular ferry tolls.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

BULK NEWSPAPERS - Per 100 lbs. \$2.20

(Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.10 per 100 lbs.)

Daily Newspapers, in bundles, and medical supplies, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

EXPRESS SHIPMENTS - A flat handling charge of \$25.00 per parcel is charged.

(Shipments exceeding 100 lbs. assessed \$8.30 for each 25 lbs. or fraction thereof.)

Express shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight that can easily be handled by carrier's employees.

Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

San Juan inter-island express shipments will be handled at \$5.00 per parcel.

MEDICAL SUPPLIES - A flat handling charge of \$5.00 per shipment is charged.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

**AMENDATORY SECTION** (Amending WSR 99-08-066, filed 4/5/99, effective 5/6/99)

**WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system.** Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from July 1, ~~((1999))~~ 2000, through June 30, ~~((2000))~~ 2001:

Vessel Class	Deck Crew	
	Deck Crew On Overtime	<del>((Not On Over- time))</del> <u>On Straight Time</u>
<u>Jumbo Mark II</u>	\$1,100	\$906
Jumbo	<del>((971.70))</del>	<del>((790.44))</del>
	<u>1,036</u>	<u>857</u>
Super	<del>((937.74))</del>	<del>((762.90))</del>
	<u>997</u>	<u>824</u>

Deck Crew  
~~((Not On Over-  
time))~~ On Straight  
Time

Vessel Class	Deck Crew On Overtime	<del>((Not On Over- time))</del> <u>On Straight Time</u>
Evergreen	<del>((735.18))</del>	<del>((590.26))</del>
	<u>803</u>	<u>660</u>
Issaquah	<del>((725.33))</del>	<del>((594.37))</del>
	<u>773</u>	<u>630</u>
Steel	<del>((611.76))</del>	<del>((497.09))</del>
	<u>640</u>	<u>526</u>
Rhododendron	<del>((591.76))</del>	<del>((480.09))</del>
	<u>611</u>	<u>497</u>
Hiyu	<del>((445.77))</del>	<del>((370.52))</del>
	<u>429</u>	<u>367</u>
Passenger Only	<del>((433.42))</del>	<del>((371.57))</del>
	<u>514</u>	<u>433</u>
<u>Passenger Only Fast Ferry</u>	<u>585</u>	<u>502</u>

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by fifty percent, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

WSR 01-04-079

PROPOSED RULES

PERSONNEL RESOURCES BOARD

[Filed February 7, 2001, 8:53 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: WAC 356-15-125 Assignment pay provisions.

Purpose: The board may grant additional pay to recognize assigned duties that exceed the ordinary.

Statutory Authority for Adoption: Chapter 41.06 RCW. Statute Being Implemented: RCW 41.06.150.

Summary: This modification will allow the board to grant additional pay to positions in which agencies are experiencing recruitment and/or retention problems and are located in a high cost of living area.

Name of Agency Personnel Responsible for Drafting: Sharon Whitehead, 521 Capitol Way South, Olympia, WA,

(360) 664-6348; Implementation and Enforcement: Department of Personnel.

Name of Proponent: Department of Personnel, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule allows the board to grant additional pay to recognize assigned duties that exceed the ordinary.

Agencies are experiencing recruitment and retention issues in areas of the state with the high cost of living. This modification, adopted on emergency on February 2, 2001, will allow agencies to provide additional pay for individual positions in specific locations with a high cost of living.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. These rules relate to internal government operations that are not subject to violation by a nongovernmental party. Therefore, pursuant to RCW 34.05.328 [(5)](b)(ii), Section 201 does not apply.

Hearing Location: Department of Personnel, 521 Capitol Way South, Olympia, WA, on March 20, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Department of Personnel by March 13, 2001, TDD (360) 753-4107, or (360) 664-6331.

Submit Written Comments to: Sharon Whitehead, Department of Personnel, P.O. Box 47500, fax (360) 586-4694, by March 16, 2001.

Date of Intended Adoption: March 20, 2001.

February 7, 2001

Doug Tanabe

Acting Secretary

**AMENDATORY SECTION** (Amending WSR 98-19-034, filed 9/10/98, effective 10/12/98)

**WAC 356-15-125 Assignment pay provisions.** The board may grant additional pay to recognize assigned duties and/or conditions that exceed the ordinary (~~conditions~~). Hazards, equipment operations and other specialized skills are examples of areas for board consideration. Out of the ordinary conditions include being in a position which is experiencing recruitment and/or retention problems and is located in an area where the cost of living impacts the agency's ability to recruit and/or retain employees. Approved classes will have the letters "AP" appearing after their class title in the compensation plan.

Details of the affected classes or positions within a class, with the additional amount granted, will appear in the salary schedule section of the compensation plan.

## WSR 01-04-081

### PROPOSED RULES

## UTILITIES AND TRANSPORTATION

### COMMISSION

[Commission Docket UE-991168—Filed February 7, 2001, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-19-155.

Title of Rule: Chapter 480-100 WAC, Electric companies, new sections WAC 480-100-388 Electric service reliability definitions, 480-100-393 Electric service reliability monitoring and reporting plans, and 480-100-398 Electric service reliability reports.

Purpose: The objective of these rules is to generate and make available to the commission accurate and meaningful information about the reliability of electricity service to customers of electric utilities regulated by the commission. These rules will allow the commission to track trends in electric service reliability and to identify areas of special reliability concern, and will assist the commission in its assessments of the adequacy of electric service provided to customers.

Statutory Authority for Adoption: RCW 80.01.040 General powers and duties of commission.

Summary: See Explanation of Rule below.

Name of Agency Personnel Responsible for Drafting: Mark Anderson, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1311; Implementation and Enforcement: Carole J. Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: New rules added to chapter 480-100 WAC: The objective of these rules is to generate and make available to the commission accurate and meaningful information about the reliability of electric service to customers of electric utilities regulated by the commission. Declining service quality in other regulated industries, and the commission's concerns that changes in the electric utility industry should not result in unreliable service triggered the development of these rules.

These rules will allow the commission to track trends in electric service reliability and to identify areas of special reliability concern, and will assist the commission in its assessments of the adequacy of electric service provided to customers.

These rules primarily address interruptions to electric service, and establish two key requirements for electric utilities, which must:

(a) File a reliability monitoring and reporting plan with the commission, and

(b) Make an annual reliability report to the commission.

Reliability monitoring and reporting plans will articulate what aspects of interruptions to service each utility will monitor and report to the commission. The rules set some specific requirements, for example, utilities must monitor and report on the reliability of their systems as a whole, yet must also

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identify areas of special reliability concern. The rules give significant discretion to utilities for defining and selecting reliability problems to monitor and report on. However, their plans must be reviewed for acceptance by the commission.

Annual reliability reports will be made by each utility on interruptions to service, in a manner consistent with the monitoring and reporting plans filed with the commission under the rule.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Commission staff contacted companies seeking data regarding whether the proposed rules would impose increased costs. The responses indicate that affected companies have not identified such increased costs. The commission analyzed the rules to identify those that impose requirements that are new or differ from current requirements. The commission analysis identified only minor costs.

RCW 34.05.328 does not apply to this rule adoption. The commission is not an agency to which RCW 34.05.328 applies.

Hearing Location: Commission Hearing Room 206, 2nd Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on March 14, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Pat Valentine by March 1, 2001, TDD (360) 586-8203, or (360) 664-1133.

Submit Written Comments to: Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, or e-mail to <records@wutc.wa.gov>, fax (360) 753-2629, by February 28, 2001. Please include Docket No. UE-991168 in your communication.

Date of Intended Adoption: March 14, 2001.

February 7, 2001  
Carole J. Washburn  
Secretary

#### NEW SECTION

**WAC 480-100-388 Electric service reliability definitions.** "Electric service reliability" means the continuity of electric service experienced by retail customers.

"Reliability statistic" means a number, which may include multiple components (for example, service interruptions, customers, and hours), that measures electric service reliability.

"Baseline reliability statistic" means a number calculated by the utility measuring aspects of electric service reliability in a specified year that may be used as a comparison for measuring electric service reliability in subsequent years.

"Sustained interruption" means an interruption to electric service that has a length of duration specified by the electric utility, but in any case not less than one minute.

"Power quality" means characteristics of electricity, primarily voltage and frequency, that must meet certain specifications for safe, adequate and efficient operations.

"Full-system" means all equipment and lines necessary to serve retail customers whether for the purpose of generation, transmission, distribution or individual service.

"Major event" means an event, such as a storm, that causes serious reliability problems, and that meets criteria established by the utility for such an event.

#### NEW SECTION

**WAC 480-100-393 Electric service reliability monitoring and reporting plan.** (1) Who must file. Electric utilities subject to commission jurisdiction must file a plan for monitoring and reporting electric service reliability information to the commission.

(2) When to file. The plan for monitoring and reporting electric service reliability information must be filed with the commission six months after the effective date of this rule, though utilities are encouraged to file the plan sooner. Any modification to the plan must be filed with the commission before the modification is implemented.

(3) What to file. The utility must file a plan for monitoring and reporting electric service reliability information to the commission. The plan, and any modification to it, must be accepted by the commission. The plan must include the following items:

(a) What reliability statistics and information the utility will report to the commission. The utility must select and define statistics that track full-system reliability, and information, which may include statistics, that tracks localized reliability and identifies areas of greatest reliability concern.

(b) When the utility will establish baseline reliability statistics to report to the commission. Prior to establishing baseline reliability statistics, the utility must report the best information available. The utility must establish baseline reliability statistics within three years of the effective date of this rule.

(c) When the utility will file its annual electric service reliability report to the commission.

#### NEW SECTION

**WAC 480-100-398 Electric service reliability reports.** The electric utility must file an electric service reliability report with the commission at least once a year. The report must meet the following conditions:

(1) The report must be consistent with the electric service reliability monitoring and reporting plan filed under WAC 480-100-393. As set forth in the plan, in an identified year, baseline reliability statistics must be established and reported. In subsequent years, new reliability statistics must be compared to the baseline reliability statistics and to reliability statistics from all intervening years. The utility must maintain historical reliability information necessary to show trends for a minimum of seven years.

(2) The report must address any changes that the utility may make in the collection of data and calculation of reliability information after initial baselines are set. The utility must explain why the changes occurred and explain how the change is expected to affect comparisons of the newer and older information. Additionally, to the extent practical, the

utility must quantify the effect of such changes on the comparability of new reliability statistics to baseline reliability statistics.

(3) The report must identify the utility's geographic areas of greatest reliability concern, explain their causes, and explain how the utility plans to address them.

(4) The report must identify the total number of customer complaints about reliability and power quality made to the utility during the year, and must distinguish between complaints about sustained interruptions and power quality. The report must also identify complaints that were made about major events.

**WSR 01-04-082**  
**PROPOSED RULES**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed February 7, 2001, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-01-160.

Title of Rule: Employer-initiated layoffs or reductions in force.

Purpose: To add a new section to chapter 192-150 WAC clarifying that an individual who volunteers for layoff will not be considered to have separated from work for a disqualifying reason when the layoff is initiated and announced by the employer and the employer takes the final action to terminate the employer-employee relationship.

Other Identifying Information: The proposed rule replaces WAC 192-16-070 Interpretive regulations—Voluntary quit—RCW 50.20.050. As part of the department's ongoing regulatory improvement efforts, rules are being organized under appropriate chapter titles to make them easier for the public to access.

Statutory Authority for Adoption: RCW 50.12.010, 51.12.040.

Statute Being Implemented: RCW 50.20.050 and 50.20.060.

Summary: The rule provides that, under certain conditions, an individual who volunteers for layoff will not be considered to have left work for a disqualifying reason. The conditions require that the employer take the first action by announcing plans to reduce its workforce, and the final action by terminating the individual's employment. The rule excludes those situations in which an employer modifies benefits to encourage early retirements, but does not announce an intention to reduce the workforce.

Reasons Supporting Proposal: Recent conflicting opinions by Divisions I and III of the Court of Appeals have resulted in confusion regarding how the current rule is to be interpreted. The department proposes this rule to clarify the conditions under which benefits will be paid to individuals participating in an employer-instituted layoff or reduction in force.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, Olympia, Washington, (360) 902-9665;

Implementation and Enforcement: Annette Copeland, Olympia, Washington, (360) 902-9303.

Name of Proponent: Employment Security Department, governmental.

Rule is necessary because of state court decision, *Ortega v. ESD*, 90 Wn. App. 617, 953 P.2d 827 (1998) and *Nielson v. ESD*, 99 Wn. App. 21, 966 P.2d 399 (1998).

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule replaces WAC 192-16-070, which was adopted in 1993 in response to changes in the Washington state economy and workforce needs. The purpose of the rule was to benefit employers by allowing them to broaden their choices in determining which workers to lay off as a result of a reduction in their workforce, while minimizing the negative impacts to those workers by clarifying that participation in such a layoff will not in itself make them ineligible for unemployment benefits. Conflicting published opinions from the state Court of Appeals have resulted in confusion over how the current rule is to be interpreted. The proposed rule clarifies the department's position that, when the first and last actions in the termination are taken by the employer, the worker will not be considered to have been separated from work for a disqualifying reason.

Proposal Changes the Following Existing Rules: An existing rule, WAC 192-16-070, is repealed and replaced by WAC 192-150-100. The new rule is similar to the existing rule, but adds language clarifying that the first and final steps in the layoff must be taken by the employer. Language is also added clarifying that the rule does not apply in situations when an employer modifies benefits in an effort to encourage early retirement or staff turnover, but does not announce plans to reduce the workforce.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule clarifies, but does not change, existing policy. The clarifications will not impose additional costs on business.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The proposed rule clarifies, but does not change, existing policy and procedure.

Hearing Location: Commissioner's Conference Room, 2nd Floor, Employment Security Department, 212 Maple Park, Olympia, WA, on March 14, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Karen LaFreniere by March 13, 2001, TDD (360) 902-9589, or (360) 902-9582.

Submit Written Comments to: Barney Hilliard, Rules Coordinator, P.O. Box 9046, Olympia, WA 98507-9046, fax (360) 438-3225, by March 13, 2001.

Date of Intended Adoption: March 21, 2001.

February 5, 2001

Paul Trause

Acting Commissioner

**NEW SECTION**

**WAC 192-150-100 Employer-initiated layoffs or reductions in force.** (1) You will not be considered to have been separated from employment for a disqualifying reason when:

PROPOSED

(a) Your employer takes the first action in the separation process by announcing to its employees that the employer plans to reduce its work force and that employees can offer to be one of the employees included in the layoff or reduction-in-force;

(b) Your offer to be one of the employees included in the layoff or reduction-in-force; and

(c) Your employer takes the final action in the separation process by accepting your offer to be one of the employees included in the layoff or reduction-in-force, thereby ending the employment relationship.

(2) This section does not apply to situations where an employer modifies benefits in a manner to encourage early retirement or early separation, but the employer and employee do not follow the steps in subsection (1)(a) through (c).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-16-070	Interpretive regulations— Voluntary quit—RCW 50.20.050
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### WSR 01-04-088

#### PROPOSED RULES

#### POTATO COMMISSION

[Filed February 7, 2001, 11:27 a.m.]

#### Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: Promotional hosting by the Washington State Potato Commission.

Purpose: The proposed rules implement provisions of RCW 15.04.200 governing hosting expenditures by agricultural commodity commission employees.

Statutory Authority for Adoption: Chapters 15.66 and 15.04 RCW.

Statute Being Implemented: RCW 15.04.200.

Summary: The proposed rules identify those authorized to make expenditures for the Washington State Potato Commission on promotional hosting and the objectives for those expenditures.

Reasons Supporting Proposal: The Washington State Potato Commission is proposing rules on promotional hosting in accordance with RCW 15.04.200.

Name of Agency Personnel Responsible for Drafting and Implementation: Cindy Plummer, Director of Marketing, 108 Interlake Road, Moses Lake, WA 98837, (509) 765-8845; and Enforcement: Lynn Olsen, Chairman, 108 Interlake Road, Moses Lake, WA 98837, (509) 765-8845.

Name of Proponent: Washington State Potato Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules will implement RCW 15.04.200 which governs promotional hosting expenditures by agricultural commodity commission employees. The rules identify the objectives for promotional hosting expenditures and those authorized to make expenditures for the Washington State Potato Commission.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules relate to the internal operations of the commission and are in accordance with RCW 15.04.200.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Potato Commission is not a listed agency under section 201, chapter 403, Laws of 1995.

Hearing Location: Washington State Potato Commission, 108 Interlake Road, Moses Lake, WA 98837, on March 20, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Cindy Plummer by March 6, 2001, (509) 765-8845.

Submit Written Comments to: Cindy Plummer, Director of Marketing, Washington State Potato Commission, 108 Interlake Road, Moses Lake, WA 98837, fax (509) 765-4853, by March 20, 2001.

Date of Intended Adoption: March 28, 2001.

February 5, 2001

Pat Boss

Executive Director

### RULES OF THE WASHINGTON STATE POTATO COMMISSION

#### NEW SECTION

**WAC 16-516-100 Definitions.** The following definitions apply to rules in this chapter adopted by the Washington Potato Commission unless otherwise provided:

"**Hosting**" may include providing meals, refreshments, lodging, transportation, gifts of nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

"**Promotional hosting**" means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations and promoting sales of Washington State potatoes and potato products.

#### NEW SECTION

**WAC 16-516-170 Rules for implementation of promotional hosting by the Washington State Potato Commission.** The laws of section 1, chapter 26, Laws of 1985 (RCW 15.04.200) provide that agricultural commodity commission shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners. The rules governing promotional hosting expenditures for the Washington State Potato Commission shall be as follows:



(1) Budget approval: Commission expenditures for agricultural development or trade promotion and promotional hosting shall be pursuant to specific budget items as approved by the commission at annual public hearings on the commission budget.

(2) Officials and agents authorized to make expenditures. The following officials and agents are authorized to make expenditures for agricultural development or trade promotion and promotional hosting in accordance with the provisions of these rules:

Commissioner/Commission employees—Individual commissioners and commission staff shall make promotional hosting expenditures, or seek reimbursements for those expenditures, only in those instances where the expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be as identified and supported by vouchers to which receipts are attached. Voucher forms will be supplied by the commission, and shall require the following information:

(a) Name and position of each person hosted, provided that in case of a group of twenty-five or more persons, then only the name of the group hosting shall be required;

(b) General purpose of the hosting;

(c) Date of hosting;

(d) To whom payment was or will be made;

(e) Signature of person seeking payment or reimbursement;

(4) The chairman of the commission and/or the Executive Director or Assistant Executive Director are authorized to approve direct payment or reimbursements submitted in accordance with these rules.

(5) The following persons may be hosted when it is reasonably believed such hosting will cultivate trade relations and promote sales of Washington State potatoes and potato products, provided that such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private business and accompanying interpreter or interpreters;

(b) Foreign government officials and accompanying interpreter or interpreters;

(c) Federal, state, and local officials, provided lodging, meals, and transportation will not be provided when such officials may obtain reimbursement for these expenses from their government employer;

(d) The general public, at meetings and gatherings open to the general public;

(e) Commissioners and employees of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through (d) of this subsection are being hosted will cultivate and promote sales of Washington State potatoes and potato products.

**WSR 01-04-091**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed February 7, 2001, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-14-073.

Title of Rule: WAC 296-32-240 Employee protection in public work areas and 296-45-52530 Employee protection in public work areas.

Purpose: State-initiated amendments are proposed to comply with the requirements of chapter 239, Laws of 2000 (ESHB 2647), which directed the department to "adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers." Because of an administrative error, amendments proposed on October 18, 2000, to WAC 296-32-240 and 296-45-52530 were not adopted when the department adopted chapter 296-155 WAC flagger amendments on January 26, 2001 (WSR 01-04-015). As a result the department is again proposing the following amendments to chapter 296-32 WAC, Safety standards for telecommunications and chapter 296-45 WAC, Safety standards for electrical workers. The proposed amendments have been written to comply with the clarity criteria of Executive Order 97-02.

**AMENDED SECTIONS:**

**WAC 296-32-240 Employee protection in public work areas.**

- Rewrote subsection (1) according to clear rule-writing principles and changed "shall" to "must."
- Added requirement in subdivision (a) that traffic control signs, devices, and barriers must be positioned and used according to chapter 296-155 WAC, Part E requirements.
- Added requirement in subdivision (a) that "employers, responsible contractors and/or project owners" must comply with WAC 296-155-305 requirements when flaggers are used.
- In subdivision (b), changed "at night" to "during hours of darkness" to be consistent with WAC 296-155-305.

**WAC 296-45-52530 Employee protection in public work areas.**

- Rewrote and reorganized the section according to clear rule-writing principles and changed "shall" to "must."
- Added the requirement that "employers, responsible contractors and/or project owners" must comply with WAC 296-155-305 requirements when flaggers are used.
- Changed "at night" to "during hours of darkness" to be consistent with WAC 296-155-305.

Statutory Authority for Adoption: RCW 49.17.010, [49.17].040, and [49.17].050, chapter 239, Laws of 2000 (ESHB 2647) and chapter 34.05 RCW.

Statute Being Implemented: Chapter 49.17 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

**PROPOSED**

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Michael A. Silverstein, Tumwater, (360) 902-5495.

Name of Proponent: Department of Labor and Industries, governmental.

Rule is not necessitated by federal law, federal or state court decision. Legislative (state initiated): Chapter 239, Laws of 2000 (ESHB 2647).

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. From "Discussion of Economic Impact" dated February 1, 2001, and prepared by Greg Nothstein, Legislative Economist, Legislative and Government Affairs Office, Department of Labor and Industries:

"New rules and rule amendments must meet the requirements of the Regulatory Fairness Act (RFA), chapter 19.85 RCW and the Administrative Procedure Act (APA), chapter 34.05 RCW. One of the requirements of the RFA is that the economic impact of proposed regulations on small businesses be examined relative to their impact on large businesses. The agency must prepare a small business economic impact statement (SBEIS) when a proposed rule, or rule amendments, have the potential of placing a more than minor economic impact on business. A related requirement in the APA demands an evaluation of the probable costs and benefits of a proposed regulation and that it be shown that these probable benefits exceed the probable costs: Process referred to as a cost-benefit analysis (CBA). A number of criteria and exemptions were established for both the SBEIS analysis and the CBA analysis. One key criteria (RCW 34.05.328 (5)(b)(v)) is that "rules the content of which is explicitly and specifically dictated by (Washington state) statute..." are not subject to the SBEIS and CBA requirements. Because the proposed rule adopts into rule requirements specified in ESHB 2647 it is my conclusion that neither an SBEIS nor a CBA are required."

A copy of the statement may be obtained by writing to Greg Nothstein, Economic Analyst, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, phone (360) 902-6805, fax (360) 902-4202.

RCW 34.05.328 does not apply to this rule adoption. Although the proposed amendments are considered "significant legislative rules" under RCW 34.05.328, the requirements of that section do not apply because the content of the proposed amendments is "explicitly and specifically dictated by statute" (see RCW 34.05.328 (5)(b)(v)).

Hearing Location: Department of Labor and Industries Building, Auditorium, 7273 Linderson Way S.W., Tumwater, WA, on March 14, 2001, at 2:00 p.m.; and at the Department of Labor and Industries Service Location, Conference Room 4, 901 North Monroe, Suite 100, Spokane, WA, on March 15, 2001, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Sally Elliott by March 1, 2001, at (360) 902-5484.

Submit Written Comments to: Tracy Spencer, Standards Manager, WISHA Services Division, P.O. Box 44620, Olympia, WA 98507-4620, by 5:00 p.m. on March 15, 2001.

In addition, the department will accept comments submitted by fax to (360) 902-5529; or electronically to George Huffman, Project Manager, WISHA Standards Section, hufh235@lni.wa.gov. Comments submitted by fax must be ten pages or less.

Date of Intended Adoption: March 20, 2001.

February 7, 2001

Gary Moore

Director

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-32-240 Employee protection in public work areas.** (1)(a) Before work ~~((is begun))~~ begins in the vicinity of vehicular or pedestrian traffic ~~((which))~~ that may endanger employees, ~~((warning signs and/or flags or other traffic control devices shall be placed conspicuously to alert and channel approaching traffic. Where further protection is needed, barriers shall be utilized))~~ traffic control signs, devices, and barriers must be positioned and used according to the requirements of chapter 296-155 WAC, Part E. When flaggers are used, employers, responsible contractors and/or project owners must comply with the requirements of WAC 296-155-305.

(b) ~~((At night))~~ During hours of darkness, warning lights ~~((shall))~~ must be prominently displayed~~((;))~~ and excavated areas ~~((shall))~~ must be enclosed with protective barricades.

(2) When work exposes energized or moving parts that are normally protected, danger signs shall be displayed and barricades erected to warn other personnel in the area.

(3) The employer shall insure that an employee finding any crossed or fallen wires which create or may create a hazardous situation at the work area:

(a) Remains on guard or adopts other adequate means to warn other employees of the danger, and

(b) Has the proper authority notified at the earliest practical moment.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-52530 Employee protection in public work areas.** (1) ~~((Traffic control signs and traffic control devices used for the protection of employees shall meet the requirements of chapter 296-155 WAC, Part E.~~

~~((2) Before work is begun in the vicinity of vehicular or pedestrian traffic that may endanger employees, warning signs or flags and other traffic control devices shall be placed in conspicuous locations to alert and channel approaching traffic.~~

~~((3) Where additional employee protection is necessary, barricades shall be used.~~

~~((4) Excavated areas shall be protected with barricades.~~

~~((5) At night, warning lights shall be prominently displayed.))~~ (a) Before work begins in the vicinity of vehicular

or pedestrian traffic that may endanger employees, traffic control signs, devices, and barriers must be positioned and used according to the requirements of chapter 296-155 WAC, Part E.

(b) When flaggers are used, employers, responsible contractors and/or project owners must comply with the requirements of WAC 296-155-305.

(2) During hours of darkness, warning lights must be prominently displayed.

(3) Excavated areas must be protected with barricades.

**WSR 01-04-094**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed February 7, 2001, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-16-071.

Title of Rule: Examination review and request for rescore of examination questions. Examinees that fail the professional engineering examinations may only review and request a rescore for essay exam questions. Multiple-choice exam questions may not be reviewed or rescored.

Purpose: To streamline the examination review process and provide better service to examinees that do not pass the professional engineering examinations.

Other Identifying Information: These rules are being evaluated in accordance with the requirements of the Governor's Executive Order No. 97-02.

Statutory Authority for Adoption: RCW 18.43.035.

Summary: This rule notifies examinees that do not pass the professional engineer exams that they will only be able to review and request a rescore of essay exam questions. Multiple-choice questions cannot be reviewed or rescored. Instead, each examinee that takes and fails a multiple-choice exam will be sent a report that shows their performance on each subject on the examination. This is the same information that they would receive if they reviewed their examination.

Reasons Supporting Proposal: NCEES no longer allows review of their multiple-choice exams. By sending out performance review reports, each failing examinee will know how he or she actually did on the exam and will therefore know what to study for the next exam.

Name of Agency Personnel Responsible for Drafting: Rick Notestine, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1578; Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1565.

Name of Proponent: Board of Registration for Professional Engineers and Land Surveyors, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule is titled examination review and request for rescore of examination questions. It impacts examinees that fail the professional engineering examinations. The National

Council of Examiners for Engineering and Surveying (NCEES) will no longer allow review of their multiple-choice examinations for security reasons. Therefore, an examinee failing an engineering exam that is in multiple-choice question format will not be allowed to review their examination. Instead, the examinees will be sent an examination performance report that shows how they performed in the various subject areas tested on the exam. This report gives the examinee the same information that they would have gotten if they had reviewed their exam. This information provides the examinee with guidance on what to study to prepare for the next examination.

The purpose is to put the examinee on notice that if they fail an engineering examination, they cannot review or request a rescore on multiple-choice examinations, but they can review and request rescore on essay examination questions. It is also to notify the failing examinee that they will be sent an examination performance report that shows how they did on the various subjects tested on the multiple-choice exam.

The anticipated effect will be less staff time spent scheduling, preparing for and attending examination review sessions. Additionally, the failing examinees receive better service because they all receive information that shows how they did on the various parts of the examination, not just those examinees that would have taken the time to schedule a review [of] their exam.

Proposal Changes the Following Existing Rules: Current rule says that any exam except the Law and Ethics exam may be reviewed. This rule says that multiple-choice exams can no longer be reviewed but essay exams can be reviewed. Subsections (4) and (5) of WAC 196-12-030 Examinations, which discusses examination review, will be deleted.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Choosing to become licensed as a professional engineer is an individual choice, and an engineering examination must be passed in order to become licensed. This rule impacts the person that does not pass their engineering exam. The rule does not place any requirement or burden on either small or large businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Neither the Department of Licensing or the Board of Registration for Professional Engineers and Land Surveyors are one of the named agencies in this statute.

Hearing Location: Department of Licensing, Business and Professions Division, Conference Room No. 1, First Floor, 405 Black Lake Boulevard, Olympia, WA, on March 16, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Kim Chipman by March 12, 2001, TDD (360) 586-2788, or (360) 664-1564.

Submit Written Comments to: Rick Notestine, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9649, Olympia, WA 98507-9649, fax (360) 664-2551, by March 19, 2001.

Date of Intended Adoption: March 22, 2001.

February 7, 2001

Ronald L. Torrence  
Deputy Executive Director

PROPOSED

NEW SECTION

**WAC 196-12-035 Examination review and request for rescore of examination questions.** (1) Examinees who achieve a passing score will not be permitted to review their examination. Examinees who fail to achieve a passing score will be permitted to review, and request a rescore on, only those examinations that have essay (free response) questions. Reviewing and rescoring professional engineering examinations that have multiple choice questions will not be permitted. The board will provide examinees that have not passed an exam a scoring breakdown of how they performed on the various subjects tested on the examination.

(2) For those examinations which the board has identified as permissible for review, examinees may review their examination (test booklet, solution pamphlet and answer key) during a period and location prescribed by the board. Examinees who fail to review their examination during the prescribed time will not be rescheduled for a review of that examination. The examination review guidelines are as follows:

(a) An examinee can review his or her examination one time only. An appointment for this review must be scheduled in advance with board staff.

(b) All examination reviews shall be conducted in the presence of a designated proctor. No one may accompany the examinee during the examination review except where persons with disability require assistance, and that need is conveyed to board staff when the exam review appointment is made.

(c) Each examinee will be given a review sheet that they can take with them following the review. This review sheet will only include the problem number, problem subject matter, the score achieved for each problem and total score.

(d) Scratch paper and writing instruments will be provided during the examination review. No scratch paper may be removed from the review area.

(e) Examinees may request to have their examination rescored only at the time they review their exam. Essay (free response) questions may be rescored if the total exam score falls within the range allowed for rescore established by the National Council of Examiners for Engineering and Surveying (NCEES), and, the examinee can demonstrate, in writing, sufficient technical justification that their solution deserves reconsideration. The required fee must be paid at the time the appeal is prepared. The rescore results are final.

**AMENDATORY SECTION** (Amending WSR 98-12-052, filed 5/29/98, effective 7/1/98)

**WAC 196-12-030 Examinations.** (1) Except as provided in WAC 196-12-050, to become licensed as a professional engineer the candidate must pass two stages of examination. The first stage is the fundamentals-of-engineering examination. The second stage examination consists of multiple parts including the principles and practice (branch) examination and law and ethics examination. The law and ethics exam is a take-home examination covering chapter 18.43 RCW and Title 196 WAC. The fundamentals-of-engineering examination must be passed, or waived in accordance

with WAC 196-12-050, before taking the second stage examination.

Examinations are given at times and places designated by the board. The schedule of future examinations and examination syllabi may be obtained from the board office. Examinees will not be allowed to view any examination material prior to taking the examination other than syllabi available to the public or sample examination booklets published by the National Council of Examiners for Engineering and Surveying. If one examination part is failed, only that examination part must be retaken.

(2) If a professional engineer holding a current registration in the state of Washington wants to become licensed in multiple branches of engineering, an additional principle and practice examination must be taken in each branch.

(3) The branch of structural engineering requires a more exhaustive principle and practice examination to protect the public safety. In addition to the stage 1 fundamentals-of-engineering examination, to become licensed as a professional engineer in the branch of structural engineering, the candidate must pass the stage 2 examination comprised of all parts of the principles and practice of structural engineering examination, including a demonstration of competency in structural engineering issues important to Washington state, and the law and ethics examination.

~~((4) Except for the law and ethics examination, an exam part may be reviewed if it is failed. Examinees who achieve a passing score will not be permitted to review their examination. The purpose of examination review is to permit the examinee an opportunity to review his or her exam in order to identify areas of poor performance. This is not an opportunity to take notes for future reference.~~

~~Failing examinees may review their examination (test booklet, answer sheet and/or solution pamphlet and answer key) during a period of time prescribed by the board. Examinees who fail to review their exam during the prescribed time will not be scheduled for an examination review. The examination review guidelines are as follows:~~

~~(a) An examinee can review his or her examination one time only. An appointment for this review must be arranged in advance with board staff.~~

~~(b) All examination reviews will be in the presence of a member of board staff. No one may accompany the examinee during the examination review, except where persons with disability require assistance. In that case, the need for assistance must be conveyed to staff when the review appointment is made.~~

~~(c) For examinations having machine scored answer sheets, the examinee will be allowed to review a copy of his or her answer sheet, not the original.~~

~~(d) Each reviewer will be given a review sheet that they can take with them following the review. This review sheet will include the problem number, problem subject matter, score achieved for each problem and total score. Reviewers will not be permitted to add further information to the review sheet.~~

~~(e) Scratch paper and writing instruments will be provided during the examination review. However, scratch paper may not be removed from the review area.~~

~~(5) Individuals may appeal to have their examination rescored only at the time they review their exam. Multiple choice questions are not appealable. Essay (free response) type questions may be appealed if the reviewer can demonstrate, in writing, sufficient technical justification that their solution deserves reconsideration.~~

~~The required fee for rescoring must be paid at the time the rescore request is made. The results of the rescore are final and no additional administrative appeals are available.)~~

**PROPOSED**



**WSR 01-03-084**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed January 16, 2001, 3:27 p.m.]

Date of Adoption: January 16, 2001.

Purpose: The department has consolidated and clarified rules regarding ambulance transportation services in a new chapter. The proposed rules reflect long-standing department policy, are more readable, and comply with the Governor's Executive Order 97-02 on regulatory reform.

New Transportation program—Ambulance services, WAC 388-546-0001, 388-546-0100, 388-546-0150, 388-546-0200, 388-546-0250, 388-546-0300, 388-546-0400, 388-546-0450, 388-546-0500, 388-546-0600, 388-546-0700, 388-546-0800, and 388-546-1000.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-86-086 and 388-87-036.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Other Authority: RCW 74.04.050, 74.04.055, and 74.04.057.

Adopted under notice filed as WSR 00-17-125 on August 18, 2000.

Changes Other than Editing from Proposed to Adopted Version: Changes to the proposed rule text for chapter 388-546 WAC are detailed below.

WAC 388-546-0200 Scope of coverage for ground and air ambulance.

(1) All ambulance transportation to and from medical services covered under the client's medical assistance program must be:

- (a) Medically necessary based on the client's condition at the time of the ambulance trip;
- (b) Appropriate to the client's actual medical need;
- (c) ~~To the closest available MAA contracted medical provider of MAA covered services; and~~
- (~~d~~) Documented in the provider's client record as to medical necessity; and

(d) To one of the following destinations:

- (i) The closest appropriate MAA contracted medical provider of MAA covered services; or
- (ii) The designated trauma facility as identified in the Emergency Medical Services and Trauma regional patient care procedures manual.

(2) MAA limits coverage to that medically necessary ambulance transportation required because the client cannot be safely or legally transported any other way. If a client can safely travel by car, van, taxi, or other means, the ambulance trip is not medically necessary and the ambulance service is not covered by MAA. See WAC 388-546-0250 (1) and (2) for MAA's process for determining medical necessity.

(3) If Medicare or another third party is the client's primary health insurer and that primary party denies coverage of an ambulance trip due to a lack of medical necessity, MAA ~~relies on~~ requires the provider to report: (a) † That third party determination on the billing to MAA; and (b) A justification

~~for that the trip does not showing that the trip~~ meets the medical necessity criteria of MAA.

WAC 388-546-0250 Ambulance services that MAA does not cover.

(1) MAA evaluates a request for any service that is listed as noncovered in this section under the provisions of WAC 388-501-0165.

(2) For ambulance services that are otherwise covered under this chapter but are subject to one or more limitations or other restrictions, MAA evaluates, on a case-by-case basis, requests to exceed the specified limits or restrictions. MAA approves such requests when medically necessary, in accordance with WAC 388-501-0165.

(3) MAA does not cover ambulance services when the transportation is:

- (a) Not medically necessary based on the client's condition at the time of service (see exception at WAC 388-546-1000);
- (b) Refused by the client;
- (c) For a client who is deceased at the time the ambulance arrives on-scene;
- (d) For a client who dies after the ambulance arrives on-scene but prior to transport and the ambulance crew did not provide ~~any~~ significant medical services on-scene (see WAC 388-546-0500(2));
- (e) Requested for the convenience of the client or the client's family;
- (f) More expensive than arranging to bring the necessary medical service to the client's location;
- (g) To transfer a client from a medical facility to the client's home (see exception at WAC 388-546-1000);
- (h) Requested solely because a client has no other means of transportation;
- (i) Provided by other than licensed ambulance providers (e.g., wheelchair vans, cabulance, stretcher cars); or
- (j) Not to the nearest appropriate medical facility (e.g., the client's destination is an urgent care clinic or freestanding outpatient facility rather than a hospital emergency room) (see exception at WAC 388-546-1000).

~~(2) (4)~~ MAA does not cover ambulance services for hospital to hospital transportation...

WAC 388-546-0450 Ground ambulance levels of service and other reimbursement.

(7) The first thirty minutes of waiting time is included in MAA's base rate. MAA reimburses ground ambulance providers for additional waiting time if the time:

- (a) Is extensive ~~as determined by MAA;~~
- (b) Constitutes unusual circumstances ~~as determined by MAA;~~ and

(c) Is documented in the provider's records and on the billing form. Documentation must include the reason for the wait, the ~~actual~~ total length of time spent waiting and the amount of waiting time being billed to MAA.

WAC 388-546-0500 Special circumstances and payment limits for ground ambulance services.

(2) MAA ~~may~~ reimburses a provider at the appropriate base rate (no mileage and no separate supplies) if there is no transportation provided...

WAC 388-546-0700 Specific payment limitations for air ambulance services.

(5) If a client's transportation requires use of more than one ambulance to complete the trip to the hospital or other approved facility, MAA limits its reimbursement as follows:

(a) If more than one air ambulance...

(b) If both ~~an~~ air ambulance and a ground ambulances must be used, MAA reimburses one lift-off fee and total air miles to the air ambulance provider, and ~~one~~ the applicable base rate and ground mileage to the each ground ambulance provider involved in the trip, ~~except~~ The one exception to this rule is when the ground ambulance fee(s) is included in the negotiated trip payment as provided in WAC 388-546-0800 (4)(b).

(7) MAA does not reimburse private organizations for volunteer medical air ambulance transportation services, unless the transportation services and fees are prior authorized by MAA. If authorized, MAA's reimbursement is based on the actual cost to provide the service or at MAA's established rates, whichever is lower. MAA does not reimburse separately for items or services that MAA ~~consider~~ included in the established rate(s).

WAC 388-546-0800 Payment for ground and air ambulance services outside the state of Washington.

(1) MAA requires any out-of-state ground or air ambulance provider who provides covered services to an MAA client to:

(a) Meet the licensing requirements of the ambulance provider's home state...; and

~~(b) Be participating in the Medicaid program of the ambulance provider's home state; and~~

~~(c) Sign an MAA core provider agreement.~~

(2) MAA does not reimburse for an interstate trip if the client is eligible for in-state services only.

(3) MAA reimburses out-of-state providers at the lower of:

(a) The provider's billed amount; or

(b) The rate established by MAA.

(4) MAA requires any out-of-state ground ambulance provider who is transporting MAA clients within the state of Washington to comply with RCW 18.73.180 regarding stretcher transportation.

~~(3)~~ (5) Air ambulance providers who provide emergency transportation that takes a client out-of-state or that brings a client in state from an out-of-state location must obtain MAA's prior authorization.

(4) (6) MAA reimburses air ambulance providers the agreed upon rate for each medically necessary interstate air ambulance trip...

~~(5) MAA does not reimburse for an interstate trip if the client is eligible for in-state services only.~~

~~(6) MAA reimburse out of state providers at the lower of:~~

~~(a) The provider's billed amount; or~~

~~(b) The rate established by MAA.~~

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 13, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, Amended 0, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 0, Repealed 2.

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

January 16, 2001

Charles Hunter, Director  
Administrative Services Division

**Chapter 388-546 WAC  
TRANSPORTATION SERVICES**

NEW SECTION

**WAC 388-546-0001 Definitions.** The following definitions and abbreviations, and those found in WAC 388-500-0005, apply to sections WAC 388-546-0150 through 388-546-4000. Defined words and phrases are bolded the first time they are used in the text:

**"Advanced life support (ALS)"** means that level of care that calls for invasive emergency medical services requiring advanced medical treatment skills.

**"Aid vehicle"** means a vehicle used to carry aid equipment and individuals trained in first aid or emergency medical procedure.

**"Air ambulance"** means a rotary blade (helicopter) or fixed-wing aircraft (airplane) designed and used to provide transportation for the ill and injured, and to provide personnel, facilities, and equipment to treat patients before and during transportation.

**"Ambulance"** means a ground or air vehicle designed, licensed per RCW 18.73.140 and used to provide transportation to the ill and injured; and to provide personnel, facilities, and equipment to treat patients before and during transportation.

**"Base rate"** means the medical assistance administration's (MAA) minimum reimbursement amount per covered trip, which includes allowances for emergency medical personnel and their services, the costs of standing orders, reusable supplies and equipment, hardware, stretchers, some disposable supplies, normal waiting time, and the normal overhead costs of doing business. The base rate excludes mileage and MAA specified disposable supplies that can be billed separately.

**"Basic life support (BLS)"** means that level of care that justifies ambulance transportation but requires only basic medical treatment skills. It does not include the need for or delivery of invasive medical services.

**"Broker"** (see "transportation broker").

**"Brokered transportation"** means nonemergent transportation arranged by a broker, under contract with MAA, to or from covered medical services for an eligible client (also, see "transportation broker").

PERMANENT



**"Border area hospitals"** (see WAC 388-501-0175).

**"Emergency medical service"** means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

**"Emergency medical transportation"** means ambulance transportation during which a client receives needed emergency medical services en route to an appropriate medical facility.

**"Fixed wing aircraft"** means an airplane.

**"Ground ambulance"** means a ground vehicle designed and primarily used to provide transportation to the ill and injured and to provide personnel, facilities, and equipment to treat patients before and during transportation.

**"Invasive procedure"** means a medical intervention that intrudes on the client's person or breaks the skin barrier.

**"Liftoff fee"** means either of the two base rates MAA pays to air ambulance providers for transporting a client. MAA establishes one liftoff fee for rotary aircraft and one liftoff fee for fixed wing aircraft.

**"Medical control"** means the medical authority upon whom an ambulance provider relies to coordinate pre-hospital emergency services, triage and trauma center assignment/destination for the person being transported. The medical control is designated in the trauma care plan by the approved medical program director of the region in which the service is provided.

**"Nonemergent ambulance transportation"** means the use of a ground ambulance to carry a client who may be confined to a stretcher but typically does not require the provision of emergency medical services en route. Nonemergent ambulance transportation is usually scheduled or prearranged. See also "prone or supine transportation."

**"Prone or supine transportation"** means transporting a client confined to a stretcher, with or without emergency medical services being provided en route.

**"Rotary blade aircraft"** means a helicopter.

**"Scheduled transportation"** means prearranged transportation for an eligible client, typically in a vehicle other than an ambulance, with no emergency medical services being required or provided en route to and from a covered medical service.

**"Standing order"** means an order remaining in effect indefinitely until canceled or modified by an approved medical program director (regional trauma system) or the ambulance provider's medical control.

**"Transportation broker"** means a person or organization contracted by MAA to arrange, coordinate and manage the provision of necessary but nonemergent transportation services for eligible clients to and from covered medical services.

#### NEW SECTION

**WAC 388-546-0100 The MAA transportation program.** The medical assistance administration (MAA) covers medically necessary transportation to and from the pro-

vider of MAA covered services that is closest and most appropriate to meet the client's medical need. See WAC 388-546-0150 through 388-546-1000 for ambulance transportation and WAC 388-546-5000 through 388-546-5600 for brokered/nonemergency transportation. See WAC 388-546-0150 for client eligibility for ambulance transportation. See WAC 388-546-5100 for client eligibility for brokered/non-emergency transportation.

#### NEW SECTION

**WAC 388-546-0150 Client eligibility for ground and air ambulance transportation.** (1) MAA covers medically necessary ambulance transportation to MAA covered services for medical assistance clients, including clients enrolled in MAA's managed care program(s) (e.g., Healthy Options). The exception is that MAA does not cover ambulance services for clients eligible for "family planning only."

(2) MAA does not cover out-of-state ambulance services for clients who are eligible for:

- (a) The medically indigent program; or
- (b) The general assistance - unemployable program.

#### NEW SECTION

**WAC 388-546-0200 Scope of coverage for ground and air ambulance.** (1) All ambulance transportation to and from medical services covered under the client's medical assistance program must be:

- (a) Medically necessary based on the client's condition at the time of the ambulance trip;
- (b) Appropriate to the client's actual medical need;
- (c) Documented in the provider's client record as to medical necessity; and
- (d) To one of the following destinations:
  - (i) The closest appropriate MAA contracted medical provider of MAA covered services; or
  - (ii) The designated trauma facility as identified in the emergency medical services and trauma regional patient care procedures manual.

(2) MAA limits coverage to that medically necessary ambulance transportation required because the client cannot be safely or legally transported any other way. If a client can safely travel by car, van, taxi, or other means, the ambulance trip is not medically necessary and the ambulance service is not covered by MAA. See WAC 388-546-0250 (1) and (2) for MAA's process for determining medical necessity.

(3) If Medicare or another third party is the client's primary health insurer and that primary party denies coverage of an ambulance trip due to a lack of medical necessity, MAA requires the provider to report:

- (a) That third party determination on the billing to MAA; and
- (b) A justification for the trip showing that the trip meets the medical necessity criteria of MAA.

(4) MAA covers the following ambulance transportation for its eligible clients:

- (a) **Emergency medical transportation by air ambulance** when justified under the conditions of this chapter; and

(b) Medical transportation by **ground ambulance** when the client:

(i) Has an emergency medical need for the transportation;

(ii) Needs medical attention to be available during the trip; or

(iii) Must be transported by stretcher or gurney.

(5) MAA covers (through the healthy options managed care plan) medically necessary ambulance transportation for clients enrolled in the plan. This coverage is included in the prepaid plan premium (see WAC 388-546-0400(2)).

(6) MAA covers medically necessary ambulance transportation for clients enrolled in MAA's primary care case management (PCCM) program. Ambulance services that are **emergency medical services** or that are approved by the PCCM in accordance with MAA requirements are reimbursed by MAA according to MAA's published billing instructions.

(7) MAA covers ambulance trips transporting patients from one hospital to another when the transferring or discharging hospital has inadequate facilities to provide the necessary medical services required. MAA covers air ambulance transportation for hospital transfers only if transportation by ground ambulance would endanger the client's life or health.

#### NEW SECTION

**WAC 388-546-0250 Ambulance services that MAA does not cover.** (1) MAA evaluates a request for any service that is listed as noncovered in this section under the provisions of WAC 388-501-0165.

(2) For ambulance services that are otherwise covered under this chapter but are subject to one or more limitations or other restrictions, MAA evacuates, on a case-by-case basis, requests to exceed the specified limits or restrictions. MAA approves such requests when medically necessary, in accordance with WAC 388-501-0165.

(3) MAA does not cover ambulance services when the transportation is:

(a) Not medically necessary based on the client's condition at the time of service (see exception at WAC 388-546-1000);

(b) Refused by the client;

(c) For a client who is deceased at the time the ambulance arrives on-scene;

(d) For a client who dies after the ambulance arrives on-scene but prior to transport and the ambulance crew did not provide significant medical services on-scene (see WAC 388-546-0500(2));

(e) Requested for the convenience of the client or the client's family;

(f) More expensive than arranging to bring the necessary medical service to the client's location;

(g) To transfer a client from a medical facility to the client's home (see exception at WAC 388-546-1000);

(h) Requested solely because a client has no other means of transportation;

(i) Provided by other than licensed ambulance providers (e.g., wheelchair vans, cabulance, stretcher cars); or

(j) Not to the nearest appropriate medical facility (e.g., the client's destination is an urgent care clinic or freestanding outpatient facility rather than a hospital emergency room) (see exception at WAC 388-546-1000).

(4) MAA does not cover ambulance services for hospital to hospital transportation if the transportation is requested:

(a) To accommodate a physician's or other health care provider preference for facilities;

(b) To move the client closer to family or home (e.g., for personal convenience); or

(c) To meet insurance requirements or hospital/insurance agreements.

#### NEW SECTION

**WAC 388-546-0300 General requirements for air and ground ambulance providers.** (1) Air and ground ambulances must be licensed, operated, and equipped according to federal, state, and local statutes, ordinances and regulations.

(2) Air and ground ambulances must be staffed and operated by appropriately trained and certified personnel. Personnel who provide any **invasive procedure**/emergency medical services for a client during an ambulance trip must be properly authorized and trained per RCW 18.73.150 and 18.73.170.

(3) MAA requires providers of ambulance services to show medical justification on billing documents for transportation and related services/supplies billed to MAA. Documentation in the provider's client record must include adequate descriptions of the severity and complexity of the client's condition (including the circumstances that made the conditions acute and emergent) at the time of the transportation. MAA may review the client record to ensure MAA's criteria are met.

#### NEW SECTION

**WAC 388-546-0400 General limitations to payment for ground and air ambulance services.** (1) MAA reimburses providers of covered ambulance transportation services on the basis of usual and customary charges or the rates established by MAA, whichever is lower.

(2) MAA does not reimburse providers directly for ambulance services provided to a client who is enrolled in an MAA Healthy Options managed care plan. Payment in such cases is the responsibility of the prepaid managed care plan.

(3) MAA includes certain covered ambulance services in its payments to inpatient hospitals. MAA does not reimburse ambulance providers for ambulance transportation services if the client remains as an inpatient in a hospital and the transportation is for temporary transfer to another facility for diagnostic or treatment services (e.g., MRI scanning, kidney dialysis). Transportation of an inpatient for such services is included in MAA's payment to the hospital. It is the responsibility of the hospital where the client is an inpatient to reimburse ambulance providers for these transports.

(4) MAA reimburses for the actual mileage incurred for covered trips by paying from the client's point of origin to the point of destination. MAA does not reimburse mileage for any distances traveled to the pick-up point or any other distances traveled when the client is not on board the ambulance.

(5) MAA does not reimburse for ambulance services if:

(a) The client is not transported to an appropriate treatment facility; or

(b) The client dies before the ambulance trip begins (see the single exception for ground ambulance providers at WAC 388-546-0500(2)).

#### NEW SECTION

**WAC 388-546-0450 Ground ambulance levels of service and other reimbursement.** (1) MAA reimburses at two levels of service for ground ambulance emergency transportation: **Basic life support (BLS)** and **advanced life support (ALS)**:

(a) A BLS emergency ambulance trip is one in which the client requires and receives basic medical services on-scene and/or en route from the scene of the acute and emergent illness or injury to a hospital or other appropriate treatment facility. Examples of basic medical services are: Controlling bleeding, splinting fracture(s), treating for shock, and cardiopulmonary resuscitation (CPR).

(b) An ALS trip is one in which the client requires and receives more complex services on-scene and/or en route from the scene of the acute and emergent illness or injury to a hospital. Examples of more complex medical services are: the initiation of intravenous therapy, airway intubation, or heart defibrillation. To qualify for reimbursement at the ALS level, certified paramedics or other ALS-qualified personnel on-board must provide the advanced medical services in a properly equipped vehicle.

(2) MAA reimburses for ambulance services (BLS or ALS) based on the client's actual medical condition and the level of medical services needed and provided during the trip. Local ordinances or **standing orders** that require all ambulance trips be ALS equipped do not qualify a trip for MAA reimbursement at the ALS level of service.

(3) MAA reimburses separately for: Oxygen and oxygen administration; and/or intravenous supplies and IV administration. All other reusable supplies, disposable supplies, required equipment and up to thirty minutes of waiting time are included in MAA's **base rate**. MAA includes in the base rate equipment and/or supplies that are not specifically listed as separately payable in the medical transportation billing instructions. MAA does not reimburse for separately chargeable items that are provided to the client based on standing orders.

(4) The provider must document each trip to reflect the level of care needed by the patient, the training and qualifications of the personnel on board and the types of medical interventions provided by the personnel on-board. A ground ambulance trip is classified and paid at a BLS level, even if certified paramedics or ALS-qualified personnel are on board

the ambulance, if no ALS-type interventions are needed and provided en route.

(5) MAA reimburses ground ambulance providers one mileage reimbursement rate, regardless of the level of service. Ground ambulance mileage is reimbursed when the client is transported to and from medical services within the local community only, unless necessary medical care is not available locally. The provider must fully document the circumstances that make medical care outside of the client's local community necessary.

(6) MAA reimburses for an extra attendant, when the ground ambulance provider submits justification to MAA for an extra attendant along with the claim for trip reimbursement, and that extra attendant is on-board for the trip because of one or more of the following:

(a) The client weighs three hundred pounds or more;

(b) The client is violent or difficult to control;

(c) The client is being transported for Involuntary Treatment Act (ITA) purposes and the client must be restrained; or

(d) More than one client is being transported, and each requires medical attention and/or close monitoring.

(7) The first thirty minutes of waiting time is included in MAA's base rate. MAA reimburses ground ambulance providers for additional waiting time if the time:

(a) Is extensive;

(b) Constitutes unusual circumstances; and

(c) Is documented in the provider's records and on the billing form. Documentation must include the reason for the wait, the total length of time spent waiting and the amount of waiting time being billed to MAA.

(8) MAA does not reimburse providers for waiting time if:

(a) The waiting time is to provide a return trip pickup; or

(b) The waiting time is to provide a second trip for the same client for the same date of service.

(9) MAA reimburses ambulance providers for ferry tolls incurred when transporting MAA clients. The ferry toll(s) must be thoroughly documented on the claim form. MAA reimburses:

(a) One standard reimbursement rate for all Puget Sound ferry trips (each way); and

(b) Actual cost, based on invoice, for all San Juan Island ferry trips.

(10) MAA reimburses ambulance providers for bridge tolls based on actual cost. To be reimbursed, the provider must submit the receipt(s) for the bridge toll(s) incurred during the trip.

#### NEW SECTION

**WAC 388-546-0500 Special circumstances and payment limits for ground ambulance services.** (1) When more than one client is transported in the same ground ambulance at the same time, the provider must bill MAA:

(a) At a reduced base rate for the additional client, and

(b) No mileage charge for the additional client.

(2) MAA reimburses a provider at the appropriate base rate (no mileage and no separate supplies) if there is no transportation provided because the client died on scene. MAA allows reimbursement only if the ambulance crew provides

necessary and substantial medical care to the client on-scene and prior to the client's death.

#### NEW SECTION

##### **WAC 388-546-0600 Procedure code modifiers.**

Ground ambulance providers must use procedure code modifiers published by MAA when billing MAA for ground ambulance trips. The same modifiers that describe the ambulance trip's place of origin and the client's destination must be used for all services related to the same trip.

#### NEW SECTION

**WAC 388-546-0700 Specific payment limitations for air ambulance services.** (1) MAA reimburses for air ambulance services only when all of the following apply:

(a) The necessary medical treatment is not available locally or the client's pick up point is not accessible by ground ambulance;

(b) The vehicle and crew meet the provider requirements in WAC 388-546-0300 and 388-546-0800;

(c) The client's destination is an acute care hospital; and

(d) The client's physical/medical condition requires immediate and rapid ambulance transportation that cannot be provided by ground ambulance.

(2) MAA reimburses one **liftoff fee** per client, per trip.

(3) MAA reimburses mileage for air ambulance services based on air miles and not on highway mileage charts.

(4) MAA reimburses a lift-off fee for each client when two or more clients are transported on a single air ambulance trip. In such a case, the provider must divide equally the total air mileage by the number of clients transported and bill MAA for the mileage portion attributable to each eligible client.

(5) If a client's transportation requires use of more than one ambulance to complete the trip to the hospital or other approved facility, MAA limits its reimbursement as follows:

(a) If more than one air ambulance is used, MAA reimburses one lift-off fee per client and the total of air miles. Mileage reimbursement will be based on the mode of air transport used for the greater distance traveled.

(b) If both air and ground ambulances must be used, MAA reimburses one lift-off fee and total air miles to the air ambulance provider, and the applicable base rate and ground mileage to each ground ambulance provider involved in the trip. The one exception to this rule is when the ground ambulance fee(s) is included in the negotiated trip payment as provided in WAC 388-546-0800 (4)(b).

(6) MAA does not reimburse separately for individual services or an extra attendant for air ambulance transportation. MAA's lift-off fee and mileage reimbursement includes all personnel, services, supplies, and equipment related to the trip.

(7) MAA does not reimburse private organizations for volunteer medical air ambulance transportation services, unless the transportation services and fees are prior authorized by MAA. If authorized, MAA's reimbursement is based on the actual cost to provide the service or at MAA's established rates, whichever is lower. MAA does not reim-

burse separately for items or services that MAA includes in the established rate(s).

(8) If MAA determines, upon review, that an air ambulance trip was not:

(a) Medically necessary, MAA may deny or recoup its payment and/or limit reimbursement based on MAA's established rate for a ground ambulance trip (if that would result in a lower cost to MAA); or

(b) To the nearest available and appropriate hospital, MAA may deny or recoup its payment and impose a maximum reimbursement for the trip based on the nearer facility.

(9) Providers must have prior authorization from MAA for any nonemergency air transportation whether by air ambulance or other mode of air transportation.

(10) MAA uses commercial airline companies (i.e., limits air ambulance services) whenever the client's medical condition permits the client to be transported by nonmedical and/or scheduled carriers.

(11) MAA does not reimburse for air ambulance services if there is no transportation provided.

#### NEW SECTION

**WAC 388-546-0800 Payment for ground and air ambulance services outside the state of Washington.** MAA reimburses emergency transportation provided to MAA's eligible clients who are out-of-state at the time of service (see WAC 388-546-0150(2) for exceptions).

(1) MAA requires any out-of-state ground or air ambulance provider who provides covered services to an MAA client to:

(a) Meet the licensing requirements of the ambulance provider's home state (United States of America and its territories only); and

(b) Sign an MAA core provider agreement.

(2) MAA does not reimburse for an interstate trip if the client is eligible for in-state services, only.

(3) MAA reimburses out-of-state providers at the lower of:

(a) The provider's billed amount; or

(b) The rate established by MAA.

(4) MAA requires any out-of-state ground ambulance provider who is transporting MAA clients within the state of Washington to comply with RCW 18.73.180 regarding stretcher transportation.

(5) Air ambulance providers who provide emergency transportation that takes a client out-of-state or that brings a client in state from an out-of-state location must obtain MAA's prior authorization.

(6) MAA reimburses air ambulance providers the agreed upon rate for each medically necessary interstate air ambulance trip.

#### NEW SECTION

**WAC 388-546-1000 Nonemergency ground ambulance transportation.** (1) MAA reimburses for nonemergency ground ambulance transportation at the BLS ambulance level of service under the following conditions:

- (a) The client needs to have basic ambulance level medical attention available during transportation; or
- (b) The client must be transported by stretcher or gurney (in the **prone or supine** position) for medical or safety reasons.

(2) MAA requires ambulance providers to thoroughly document the circumstances requiring nonemergency ground ambulance transportation.

(3) Ground ambulance providers may choose to enter into contracts with MAA's **transportation brokers** to provide nonemergency transportation at a negotiated payment rate. Any such subcontracted rate may not exceed the costs MAA would incur under subsection (1) of this section.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 388-86-086      Ambulance services.
- WAC 388-87-036      Payment—Ambulance services.

**WSR 01-04-002**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**  
 (Landscape Architect Unit)  
 [Filed January 25, 2001, 9:52 a.m.]

Date of Adoption: January 25, 2001.

Purpose: WAC 308-13-150, sets registration and examination fees, those examination fees to be collected and passed on to the examination vendor.

Citation of Existing Rules Affected by this Order: Amending WAC 308-13-150.

Statutory Authority for Adoption: RCW 18.96.060.

Other Authority: RCW 43.24.086.

Adopted under notice filed as WSR 01-01-133 on December 20, 2000.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The ear-

lier effective date is necessary because of imminent peril to the public health, safety, or welfare (landscape architect exam will be administered on June 11-13, 2001, and this rule change should be in effect by that date).

Effective Date of Rule: February 25, 2001.

January 25, 2001

Alan E. Rathbun

BPD Assistant Director

**AMENDATORY SECTION** (Amending WSR 99-23-025, filed 11/9/99, effective 11/9/99)

**WAC 308-13-150 Landscape architect fees and charges.** The following fees will be collected from the candidates for examination ~~(effective July 1, 2000)~~:

<b>Title of Fee</b>	<b>Fee</b>
Application fee	\$150.00
Reexamination administration fee	50.00
Exam proctor	100.00
Renewal (2 years)	300.00
Late renewal penalty	100.00
Duplicate license	25.00
Initial registration (2 years)	300.00
Reciprocity application fee	200.00
Certification	45.00
Replacement certificate	20.00

Those ~~(fees)~~ **charges** collected from candidates shall be paid to CLARB for the costs of the examinations ~~(effective November 8, 1999)~~.

<b>Examination and Sections</b>	<b>Charges</b>
Entire examination	\$570.00
Examination sections:	
Section A: Legal and administrative aspects of practice	<del>((40.00))</del> <u>45.00</u>
Section B: Analytical aspects of practice	<del>((80.00))</del> <u>85.00</u>
Section C:	
Planning and site design	<del>((160.00))</del> <u>175.00</u>
Section D:	
Structural considerations and materials and methods of construction	<del>((130.00))</del> <u>140.00</u>
Section E:	
Grading, drainage and stormwater management	<del>((160.00))</del> <u>175.00</u>

**PERMANENT**

**WSR 01-04-015**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 26, 2001, 2:31 p.m., effective February 28, 2001]

Date of Adoption: January 26, 2001.

Purpose: Chapter 296-155 WAC, Safety standards for construction work.

State-initiated amendments are adopted to comply with the requirements of chapter 239, Laws of 2000 (ESHB 2647), which directed the department to "adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers." According to the statute, the permanent rules must be designed to:

- "Improve options available to ensure the safety of flaggers"; and
- "Ensure that flaggers have adequate visual warning of objects approaching from behind them."

Listed below are the specific amendments adopted by the department to satisfy the requirements of chapter 239, Laws of 2000. All adopted amendments have been written to comply with the clarity criteria of Executive Order 97-02.

**AMENDED SECTIONS:**

**WAC 296-155-205 Head protection:** State-initiated amendments are adopted to:

- Rewrite subdivision (a) according to clear rule-writing principles.
- Add subdivision (b) requiring that flaggers working with asphalt paving operations must comply with WAC 296-155-305 requirements.

**WAC 296-155-305 Signaling. Flaggers:** State-initiated amendments are adopted to:

- Retitle the section for clarity.
- Rewrite the section according to clear rule-writing principles.
- **WAC 296-155-305(1):** State-initiated amendments are adopted to add:
  - > A new subdivision with updated references to the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD).
  - > The requirement that job site workers with specific traffic control responsibilities must be trained in traffic control techniques, device usage, and placement.
  - > The requirement that traffic control devices, signs and barricades must be used according to the guidelines and recommendations in the MUTCD.
  - > Locations and addresses where interested parties can either purchase or read copies of the MUTCD.
- **WAC 296-155-305(2):** State-initiated amendment is adopted to add:
  - > A new subdivision (b) clarifying that flaggers are to be used in a work zone only when other reasonable traffic control methods will not adequately control traffic.
- **WAC 296-155-305(3):** State-initiated amendments are adopted to:

- > Add the requirement that a flagger's signaling directions must conform to the guidelines and recommendations of the MUTCD.
- > Update and correct references to the MUTCD and the Washington State Department of Transportation (WSDOT) pamphlet "Washington State Modifications to the MUTCD."
- **WAC 296-155-305(4):** State-initiated amendments are adopted to:
  - > Rewrite flagger hand signaling and paddle requirements for clarity and to accurately reflect MUTCD requirements.
  - > Allow a flagger to use red flags during emergency situations.
  - > Allow a flagger to use red flags during nonemergency situations to supplement sign paddles or lights.
  - > Update MUTCD reference.
  - > Replace outdated reference to the "transportation commission" with the correct reference to WSDOT.
- **WAC 296-155-305(5):** State-initiated amendments are adopted to:
  - > Reorganize the subsection to clearly distinguish the minimum requirements for flagger safety garments and hard hats worn during "daylight hours" and "hours of darkness," including snow and fog conditions.
  - > Add ANSI/ISEA 107-1999 Class 2 specifications as the minimum requirement for high visibility safety garments worn by flaggers during daylight hours.
  - > Allow the use of mesh material for high visibility safety garments if they meet the chromatic specifications of ANSI/ISEA 107-1999.
  - > Add the requirement that the retroreflecting material on high visibility garments must encircle the torso of the garment providing 360 degrees of visibility.
  - > Identify acceptable colors for high visibility safety garments worn during daylight hours to be fluorescent yellow-green, fluorescent orange-red or fluorescent red.
  - > Identify acceptable high visibility colors for hard hats worn during daylight hours to be white, yellow, yellow-green, orange or red.
  - > Add specific coverall/trouser design and color requirements for flaggers working during hours of darkness.
  - > Add the requirement that a flagger working during hours of darkness must wear a high visibility hard hat "marked with at least 12 square inches of retroreflective material providing 360 degrees of visibility."
  - > Add high visibility safety garment requirements for flaggers working in snow and fog conditions.
  - > Add information telling interested parties where they can purchase or read a copy of ANSI/ISEA 107-1999.
- **WAC 296-155-305(6):** State-initiated amendments are adopted to:
  - > Update MUTCD reference and WSDOT pamphlet reference.

PERMANENT

- > Add a definition of "emergency."
  - **WAC 296-155-305(7):** State-initiated amendments are adopted to add:
    - > A specific reference to the Washington traffic control flagger card.
    - > Language recognizing flagger certification reciprocity agreements between Washington and other states.
    - > Language identifying what information must be shown on the flagger certification card.
  - **WAC 296-155-305(8):** State-initiated amendments are adopted to add:
    - > A new subsection to comply with chapter 239, Laws of 2000 requiring "employers, responsible contractors and/or project owners" to use a performance-based approach when developing and using methods to provide flaggers with adequate warning of equipment approaching from behind.
    - > Language to clarify the department's interpretation of chapter 239, Laws of 2000 statutory requirements.
    - > Some **nonmandatory** examples of methods that can be used to adequately warn flaggers of equipment approaching from behind.
    - > Language clarifying the department's position that neither training nor standard backup alarms, which are already required on construction equipment, are sufficient methods of complying with WAC 296-155-305 and the intent of chapter 239, Laws of 2000.
  - **WAC 296-155-305(9):** State-initiated amendment is adopted to add:
    - > A new subsection requiring "employers, responsible contractors and/or project owners" to:
      - ◆ Conduct flagger orientations on the job site. The subsection specifies the minimum content of the orientation and the conditions under which it must be conducted.
      - ◆ Keep a current site-specific traffic control plan on-site at certain jobs where flaggers are used. Specifically, a traffic control plan is required for jobs lasting more than one day. The subsection also specifies the purpose of the traffic control plan and its minimum content.
  - **WAC 296-155-305(10):** State-initiated amendment is adopted to add:
    - > A new subsection that specifies the advance warning sign sequences required for flagger operations.
    - > Table clarifying the required spacing of advance warning sign sequences for a three and four-sign set.
  - **WAC 296-155-305(11):** State-initiated amendment is adopted to add:
    - > A new subsection requiring "employers, responsible contractors and/or project owners" to take several specific actions to ensure flagger safety. For example, floodlights must illuminate flagger workstations during hours of darkness.
    - > Language clarifying how floodlights should be set up to protect the flagger and prevent motorist from being disabled by floodlight glare.
  - > Language clarifying the illumination requirements during emergency situations.
  - > Language clarifying "appropriate breaks."
- WAC 296-155-625 Site clearing:** State-initiated amendments are adopted to:
- Rewrite subdivision (1)(d) according to clear rule-writing principles.
  - Add the requirement that flaggers and flagger activities at site clearing operations must comply with WAC 296-155-305 requirements.
- Citation of Existing Rules Affected by this Order: Chapter 296-155 WAC, Safety standards for construction work, amending WAC 296-155-205 Head protection, 296-155-305 Signaling, and 296-155-625 Site clearing.
- Statutory Authority for Adoption: RCW 49.17.010, [49.17].040, and [49.17].050, chapter 239, Laws of 2000 (ESHB 2647), and chapter 34.05 RCW.
- Adopted under notice filed as WSR 00-21-101 on October 18, 2000.
- Changes Other than Editing from Proposed to Adopted Version: As a result of written and oral comments received, the following sections are being amended as indicated below:
- WAC 296-155-305 Signaling.**
- WAC 296-155-305(1):**
- Based upon public comments, WAC 296-155-305(1) has been rewritten to:
    - ◆ Delete the requirement that set ups be done by a "qualified person." WAC 296-155-305 (1)(b) has replaced this requirement.
    - ◆ Update the MUTCD reference.
  - WAC 296-155-305(1) is adopted as follows:
    - (1)(a) Except as otherwise required in these rules, traffic control devices, signs and barricades must be set up (~~(by a qualified person (a qualified person is someone trained in and familiar with the provisions of Part VI of the MUTCD)))~~ and used according to the guidelines and recommendations in the Federal Highway Administration's:
      - Manual on Uniform Traffic Control Devices (MUTCD), ((1988)) 1995 Edition-Revision ((3)) 4, Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations.
    - (b) Job site workers with specific traffic control responsibilities must be trained in traffic control techniques, device usage, and placement.
- Note:
- You may purchase copies of the MUTCD by writing:
    - U.S. Government Printing Office
    - Superintendent of Documents
    - Mail Stop: SSOP,
    - Washington DC 20402-9328
  - You may read a copy of the MUTCD at any Department of Labor and Industries (L&I) service location.
- WAC 296-155-305(4):**
- Based upon public comments, WAC 296-155-305(4) has been rewritten to:
    - ◆ Allow flaggers to use red flags in certain situations.
    - ◆ Update MUTCD reference.
    - ◆ Replace "retroreflectorized" with "retroreflective."

- WAC 296-155-305(4) is adopted as follows:

(a) Flagger hand signaling must be ~~((either))~~ by sign paddles or lights approved by WSDOT. During emergency situations, red flags may be used to draw a driver's attention to particularly hazardous conditions. In nonemergency situations, a red flag may be held in a flagger's free hand to supplement the use of a sign paddle or lights.

(b) When sign paddles are used, they must comply with the requirements of MUTCD, ~~((1988))~~ 1995 Edition-Revision ~~((3))~~ 4, Part VI. Specifically, sign paddles:

- Must be at least 18 inches in diameter;
- Printed with letters at least 6 inches high;
- The "STOP" side of the paddle must have a red background with white lettering; and
- The "SLOW" side of the paddle must have an orange background with black lettering.

(c) When hand signaling is used during periods of darkness, sign paddles must be ~~((retroreflectorized))~~ retroreflective or illuminated in the same manner as signs.

#### WAC 296-155-305(5):

- Based upon public comments, WAC 296-155-305(5) has been rewritten to:

- ◆ Increase flagger protection by requiring that retroreflective material on high visibility safety garments encircle the flagger's torso to provide 360 degree visibility.
- ◆ Correct error in proposed draft language. Changed "orange" to "green" in WAC 296-155-305 (5)(a).
- ◆ Provide flaggers with increased protection when flagging during fog and snow conditions.
- ◆ Increase flagger visibility while flagging during hours of darkness by requiring retroreflective banding on the legs of ANSI approved nonwhite coveralls or trousers.
- ◆ Define "hours of darkness."
- ◆ Allow the use of mesh materials, under certain conditions, for high visibility safety garments.

- WAC 296-155-305(5) is adopted as follows:

(a) While flagging during daylight hours, a flagger must, at a minimum, wear:

- A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel. Specifically, a garment containing at least 775 square inches of background material and 201 square inches of retroreflective material that encircles the torso and is placed to provide 360 degrees visibility around the flagger. The acceptable high visibility colors are fluorescent yellow/green ~~((orange))~~, fluorescent orange/red or fluorescent red; and
- A high visibility hard hat. The acceptable high visibility colors are white, yellow, yellow-green, orange or red.
- When snow or fog limit visibility, a flagger must wear pants of any high visibility color other than white.

(b) While flagging during hours of darkness, a flagger must at least wear:

- A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel over white coveralls, or other coveralls or trousers that have retroreflective banding on the legs designed according to ANSI/ISEA 107-1999 standards; and
- A high visibility hard hat that is marked with at least 12 square inches of retroreflective material applied to provide ~~((ing))~~ 360 degrees of visibility.
- For the purpose of this rule, "hours of darkness" means one-half hour before sunset and one-half hour after sunrise.
- When snow or fog limit visibility, pants, coveralls, or rain gear in a highly visible color with retroreflective banding on the legs designed according to ANSI/ISEA 107-1999 must be worn.

Note: High visibility safety garments made of mesh material may be worn by flaggers if they meet the chromaticity requirements of ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel.

~~((e) During inclement weather, white rain gear or rain gear designed according to ANSI/ISEA 107-1999 may be substituted for white coveralls.))~~

#### Note:

- You may purchase copies of ANSI/ISEA 107-1999 by writing:  
American National Standards Institute  
11 West 42nd Street  
New York, NY 10036  
Or  
Contacting the ANSI web site at:  
<http://web.ansi.org/>
- You may read a copy of ANSI/ISEA 107-1999 at any Washington state library.

#### WAC 296-155-305(6):

- Based upon public comments, WAC 296-155-305(6) has been rewritten to:

- ◆ Update MUTCD reference.
- ◆ Replace the term "qualified person" with "certified flagger."
- ◆ Include a definition for the term "emergency."

- WAC 296-155-305(6) is adopted as follows:

(a) Each flagger must be trained every three years.

(b) Flagger training must be based upon the Manual on Uniform Traffic Control Devices-~~((1988))~~ 1995 Edition-Revision 4, Part VI, as amended by the Washington State department of transportation pamphlet, "Washington State Modifications to the MUTCD." (M 24-01)

(c) Personnel that have not completed a flagger-training course may be assigned duties as flaggers only during emergencies when a sudden, generally unexpected, set of circumstances demands immediate attention. Such emergency assignments are temporary and last only until a ~~((qualified person))~~ certified flagger can be put into the position. For the purpose of this rule, "emergency" means an unforeseen occurrence endangering life, limb, or property.



**WAC 296-155-305(7):**

- Based upon public comments, WAC 296-155-305(7) has been rewritten to clarify what information must be included on a flagger card.
- WAC 296-155-305(7) is adopted as follows:

(a) Each flagger must have in their possession either a valid Washington traffic control flagger card or a valid flagger card from a state, such as Oregon, Idaho or Montana, having flagger training reciprocity with Washington.

(b) The flagger card must show the following:

- Verification that the flagger training prescribed in subsection (6) of this section is completed; ~~((and))~~
- Date the flagger received their flagger training;
- Name of the instructor providing the flagger training;
- Name of the state that issued the flagger card;
- The card's expiration date; and
- Flagger's picture or a statement that says "valid with photo ID."

**WAC 296-155-305(8):**

- Based upon public comments, WAC 296-155-305(8) has been rewritten to:

- ♦ Clarify when an employer, responsible contractor and/or project owner must develop and use a method to ensure that flaggers will have adequate warning of traffic and equipment approaching the flagger from behind.
- ♦ Add "jersey" barriers as an additional example of a nonmandatory method that may be used to adequately warn flaggers of traffic and equipment approaching from behind.
- ♦ Clarify the department's position regarding the intent of ESHB 2647 and the use of flagger training and backup alarms as appropriate methods for protecting flaggers from traffic and equipment approaching the flagger from behind.

- WAC 296-155-305(8) is adopted as follows:

When it is not possible to position work zone flaggers so they are not exposed to traffic or equipment approaching them from behind, ~~((F))~~ the employer, responsible contractor and/or project owner must develop and use a method to ensure that ~~((whenever there is any potential hazard associated with construction equipment that))~~ flaggers have adequate warning of such traffic and equipment approaching from behind the flagger.

Note: The following are some **nonmandatory** examples of methods that may be used to adequately warn flaggers:

- Mount a mirror on the flagger's hard hat.
- Use a motion detector with an audible warning.
- Use a spotter.
- Use "jersey" barriers.

~~((Regardless of the method chosen, employees must be trained-))~~ The department recognizes the importance of adequately trained flaggers and supports industry efforts to improve the quality of flagger training. However, training alone is not ~~((a))~~ sufficient to comply with the statutory requirement of revising flagger safety standards to improve options available that ensure flagger safety and that flaggers have adequate visual warning of objects approaching from behind them. ~~((method for complying with this rule-))~~

~~((Also))~~ Likewise, the department believes that standard backup alarms, which are already required on construction equipment, do not meet the intent of the legislature on this issue. ~~((and, therefore, are not a sufficient method for complying with this rule-))~~

**WAC 296-155-305(9):**

- Based upon public comments, WAC 296-155-305(9) has been rewritten to:

- ♦ Delete the speed requirement for determining when a site specific traffic control plan is needed.
- ♦ Clarify that the site specific traffic control plan need only contain elements appropriate for the specific job.

- WAC 296-155-305(9) is adopted as follows:

(a) The employer, responsible contractor and/or project owner must conduct an orientation that familiarizes the flagger with the job site each time the flagger is assigned to a new project or when job site conditions change significantly. The orientation must include, but is not limited to:

- The flagger's role and location on the job site;
- Motor vehicle and equipment in operation at the site;
- Job site traffic patterns;
- Communications and signals to be used between flaggers and equipment operators;
- On foot escape route; and
- Other hazards specific to the job site.

(b) When flaggers are used on a job site ~~((on a roadway allowing speeds of 45 mph or more and the job))~~ that will last more than one day, the employer, responsible contractor and/or project owner must keep on site, a current site specific traffic control plan. The purpose of this plan is to help move traffic through or around the construction zone in a way that protects the safety of the traveling public, pedestrians and workers. The plan must include, but is not limited to, such items as the following when they are appropriate:

- Sign use and placement;
- Application and removal of pavement markings;
- Construction;
- Scheduling;
- Methods and devices for delineation and channelization;
- Placement and maintenance of devices;
- Placement of flaggers;
- Roadway lighting;
- Traffic regulations; and
- Surveillance and inspection.

**WAC 296-155-305(10):**

- Based upon public comments, WAC 296-155-305(10) has been rewritten to:

- ♦ Clarify when 3 and 4 sign sets are required.
- ♦ Add a table to clarify the required sign spacing for 3 and 4 sign sets.

- WAC 296-155-305(10) is adopted as follows:

For all flagging operations a three (3) sign advance warning sequence is required on roadways with a speed limit below 45-mph. ~~((and))~~ A four (4) sign advance warning sequence is required on all roadways with a 45-mph or higher speed limit ~~((or higher)).~~

**Note:** The following table contains required spacing for advance warning sign placement.

Road Type	Distance	Between	Advance Warning	Signs
	A	B	C	D
Urban low speed*	200 ft.	200 ft.	200 ft.	N/A
Urban high speed*	350 ft.	350 ft.	350 ft.	350 ft.
Rural	500 ft.	500 ft.	500 ft.	500 ft.
Expressway/ Freeway	1,000 ft.	1,600 ft.	2,600 ft.	2,600 ft.

\*Speed category to be determined by Washington State Department of Transportation in cooperation with local jurisdictions.

#### WAC 296-155-305(11):

- Based upon public comments, WAC 296-155-305(11) has been rewritten to:
  - ♦ Clarify the intent of the illumination requirement and how to properly monitor floodlight placement so disabling glare is eliminated.
  - ♦ Add an exemption from the illumination requirement for emergency situations.
  - ♦ Define "emergency."
  - ♦ Change "should" to "must" to strengthen the requirement and increase flagger protection.
  - ♦ Clarify the meaning of "appropriate breaks."
- WAC 296-155-305(11) is adopted as follows:

To protect flaggers, employers, responsible contractors and/or project owners must ensure that:

(a) Flagger workstations are illuminated during hours of darkness by floodlights.

- ~~(It is important to adequately illuminate the workstation without creating glare in the eyes of approaching drivers.)~~ In no case must floodlighting be permitted to create a disabling glare for drivers. The adequacy ((and proper placement)) of floodlight ((s)) placement and elimination of potential glare can best be determined by driving through and observing the floodlighted area ((workstation)) from each direction on the main roadway after initial floodlight setup.
- Emergency situations are exempt from these illumination requirements. For the purpose of this rule, "emergency" means an unforeseen occurrence endangering life, limb, or property.

(b) Warning signs reflect the actual condition of the work zone. When not in use, warning signs (~~should~~) must either be taken down or covered.

(c) Flaggers are not assigned other duties while engaged in flagging activities.

(d) Flaggers do not use devices (~~e.g.:~~) for example, cell phones, pagers, radio headphone, etc.) that may distract the vision, hearing, or attention of the flagger. Devices such as two-way radios used for communications between flaggers to direct traffic or ensure flagger safety are acceptable.

(e) Flaggers receive appropriate breaks from flagging so they can remain attentive and alert. For the purpose of this

rule, "appropriate break" means a rest period of at least 10 minutes, on the employer's time, for each 4 hours of working time.

- Rest periods must be scheduled as near as possible to the midpoint of the work period.
- A flagger must not be allowed to work more than three hours without a rest period.
- Scheduled rest periods are not required where the nature of the work allows a flagger to take intermittent rest periods equivalent to 10 minutes for each 4 hours worked.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Effective Date of Rule: February 28, 2001.

January 26, 2001

Gary Moore  
Director

AMENDATORY SECTION (Amending Order 91-01, filed 5/20/91, effective 6/20/91)

**WAC 296-155-205 Head protection.** (1) All employees on any construction site shall be provided an individual hard hat which meets all requirements of (a) and (b) of this subsection. Employers shall provide individual hard hats at no cost to the employees.

(a) Hard hats for the protection of employees against impact and/or penetration of falling and flying objects shall meet the specifications contained in American National Standards Institute, Z89.1-1969, Safety Requirements for Industrial Head Protection.

(b) Hard hats for the head protection of employees exposed to high voltage electrical shock and burns shall meet the specifications contained in American National Standards Institute, Z89.2-1971.

(2) All employees must have their individual hard hats on site and readily available at all times.

(3) All employees shall wear a hard hat on any construction site whenever there is a potential exposure to danger of flying or falling objects to persons working or occupying the area.

Note: The hard hat may be removed whenever there is no potential exposure to a hazard.

(4)(a) Employees working on asphalt paving crews (~~when they are~~) exposed to extreme temperatures from hot

mix and ~~((when they are))~~ not exposed to falling objects ~~((need))~~ do not have to wear protective hard hats. ~~((Flaggers working in conjunction with asphalt paving operations shall wear protective hard hats.))~~

(b) Flaggers working with asphalt paving operations must comply with the requirements of WAC 296-155-305.

(5) Caps with metal buttons or metal visors shall not be worn around electrical hazards.

(6) Employees working near moving machinery or in locations which present a hair-catching or fire hazard shall wear caps, nets or other head and face protection that will completely contain the hair.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-155-305 Signaling and flaggers. ~~((Flaggers.~~

~~(1) When operations are such that signs, signals, and barricades do not provide the necessary protection on or adjacent to a highway or street, flaggers or other appropriate traffic controls shall be provided.~~

~~(2) Signaling directions by flaggers shall conform to American National Standards Institute D6.1-1988, Manual on Uniform Traffic Control Devices for Streets and Highways, as amended by the Washington state department of transportation. (M24-01 (HT)).~~

~~(3) Hand signaling by flaggers shall be by use of sign paddles at least 18 inches in diameter with series "C" letters at least 6 inches high or lights approved by the transportation commission. When hand signaling is done in periods of darkness, the sign paddles must be reflectorized or illuminated as required by ANSI D6.1-1988, Manual on Uniform Traffic Control Devices. The "STOP" side of the paddle shall have a red background with white lettering. When a paddle has a "SLOW" side, the background shall be orange and the lettering black. Colors shall conform to ANSI D6.1 current edition.~~

~~(4) Flaggers shall wear an orange warning garment and a yellow protective helmet while flagging. Warning garments worn at night shall be of reflectorized material. Yellow is specified as the color of helmets; the issue is clearly one of high visibility. Other colors providing equal visibility than the specified yellow will be acceptable. The iridescent or reflectorized hard hats, available in several colors, which provide "high visibility" in both day and night applications, will meet standard specifications.~~

~~(5) Each flagger shall be trained every three years in accordance with the American National Standards Institute (ANSI) D6.1-1988 Manual on Uniform Traffic Control Devices as amended by the Washington state department of transportation (M 24-01 (HT)).~~

Note: Personnel that have not completed a flagging course may be assigned duties as flaggers only during emergencies when a sudden, generally unexpected, set of circumstances demands immediate attention.

~~(6) Each flagger shall have in their possession a valid certificate which verifies completion of the training prescribed in subsection (5) of this section. Each certificate shall contain the date the card expires.)~~ (1)(a) Except as otherwise required in these rules, traffic control devices, signs and bar-

ricades must be set up and used according to the guidelines and recommendations in the Federal Highway Administration's:

Manual on Uniform Traffic Control Devices (MUTCD), 1995 Edition-Revision 4, Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations.

(b) Job site workers with specific traffic control responsibilities must be trained in traffic control techniques, device usage, and placement.

Note:

• You may purchase copies of the MUTCD by writing:

U.S. Government Printing Office

Superintendent of Documents

Mail Stop: SSOP,

Washington D.C. 20402-9328

• You may read a copy of the MUTCD at any department of labor and industries (L&I) service location.

(2)(a) Flaggers or other appropriate traffic controls must be used when signs, signals, and barricades do not provide necessary protection from traffic at operations on or adjacent to a highway or street.

(b) Flaggers are to be used only when other reasonable traffic control methods will not adequately control traffic in the work zone.

(3) Flagger signaling directions must conform to the guidelines and recommendations of MUTCD, 1995 Edition-Revision 4, Part VI, as amended by the Washington state department of transportation (WSDOT) pamphlet, "Washington State Modifications to the MUTCD." (M 24-01)

(4)(a) Flagger hand signaling must be by sign paddles or lights approved by WSDOT. During emergency situations, red flags may be used to draw a driver's attention to particularly hazardous conditions. In nonemergency situations, a red flag may be held in a flagger's free hand to supplement the use of a sign paddle or lights.

(b) When sign paddles are used, they must comply with the requirements of MUTCD, 1995 Edition-Revision 4, Part VI. Specifically, sign paddles:

• Must be at least 18 inches in diameter;

• Printed with letters at least 6 inches high;

• The "STOP" side of the paddle must have a red background with white lettering; and

• The "SLOW" side of the paddle must have an orange background with black lettering.

(c) When hand signaling is used during periods of darkness, sign paddles must be retroreflective or illuminated in the same manner as signs.

(5)(a) While flagging during daylight hours, a flagger must, at a minimum, wear:

• A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel. Specifically, a garment containing at least 775 square inches of background material and 201 square inches of retroreflective material that encircles the torso and is placed to provide 360 degrees visibility around the flagger. The acceptable high

visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red; and

- A high visibility hard hat. The acceptable high visibility colors are white, yellow, yellow-green, orange or red.

- When snow or fog limit visibility, a flagger must wear pants of any high visibility color other than white.

(b) While flagging during hours of darkness, a flagger must at least wear:

- A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999 over white coveralls, or other coveralls or trousers that have retroreflective banding on the legs designed according to ANSI/ISEA 107-1999 standards; and

- A high visibility hard hat that is marked with at least 12 square inches of retroreflective material applied to provide 360 degrees of visibility.

- For the purpose of this rule, "hours of darkness" means one-half hour before sunset and one-half hour after sunrise.

- When snow or fog limit visibility, pants, coveralls, or rain gear in a highly visible color with retroreflective banding on the legs designed according to ANSI/ISEA 107-1999 must be worn.

Note: High visibility safety garments made of mesh material may be worn by flaggers if they meet the chromaticity requirements of ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel.

Note:

- You may purchase copies of ANSI/ISEA 107-1999 by writing:

American National Standards Institute  
11 West 42nd Street  
New York, NY 10036

or

Contacting the ANSI web site at:  
<http://web.ansi.org/>

- You may read a copy of ANSI/ISEA 107-1999 at any Washington state library.

(6)(a) Each flagger must be trained every three years.

(b) Flagger training must be based upon the Manual on Uniform Traffic Control Devices-1995 Edition-Revision 4, Part VI, as amended by the Washington state department of transportation pamphlet, "Washington State Modifications to the MUTCD." (M 24-01)

(c) Personnel that have not completed a flagger-training course may be assigned duties as flaggers only during emergencies when a sudden, generally unexpected, set of circumstances demands immediate attention. Such emergency assignments are temporary and last only until a certified flagger can be put into the position. For the purpose of this rule, "emergency" means an unforeseen occurrence endangering life, limb, or property.

(7)(a) Each flagger must have in their possession either a valid Washington traffic control flagger card or a valid flagger card from a state, such as Oregon, Idaho or Montana, having flagger training reciprocity with Washington.

(b) The flagger card must show the following:

- Verification that the flagger training prescribed in subsection (6) of this section is completed;

- Date the flagger received their flagger training;

- Name of the instructor providing the flagger training;

- Name of the state that issued the flagger card;

- The card's expiration date; and

- Flagger's picture or a statement that says "valid with photo ID."

(8) When it is not possible to position work zone flaggers so they are not exposed to traffic or equipment approaching them from behind, the employer, responsible contractor and/or project owner must develop and use a method to ensure that flaggers have adequate warning of such traffic and equipment approaching from behind the flagger.

Note: The following are some nonmandatory examples of methods that may be used to adequately warn flaggers:

- Mount a mirror on the flagger's hard hat.

- Use a motion detector with an audible warning.

- Use a spotter.

- Use "jersey" barriers.

The department recognizes the importance of adequately trained flaggers and supports industry efforts to improve the quality of flagger training. However, training alone is not sufficient to comply with the statutory requirement of revising flagger safety standards to improve options available that ensure flagger safety and that flaggers have adequate visual warning of objects approaching from behind them. Likewise, the department believes that standard backup alarms, which are already required on construction equipment, do not meet the intent of the legislature on this issue.

(9)(a) The employer, responsible contractor and/or project owner must conduct an orientation that familiarizes the flagger with the job site each time the flagger is assigned to a new project or when job site conditions change significantly. The orientation must include, but is not limited to:

- The flagger's role and location on the job site;

- Motor vehicle and equipment in operation at the site;

- Job site traffic patterns;

- Communications and signals to be used between flaggers and equipment operators;

- On-foot escape route; and

- Other hazards specific to the job site.

(b) When flaggers are used on a job that will last more than one day, the employer, responsible contractor and/or project owner must keep on-site, a current site specific traffic control plan. The purpose of this plan is to help move traffic through or around the construction zone in a way that protects the safety of the traveling public, pedestrians and workers. The plan must include, but is not limited to, such items as the following when they are appropriate:

- Sign use and placement;

- Application and removal of pavement markings;

- Construction;

- Scheduling;

- Methods and devices for delineation and channelization;

- Placement and maintenance of devices;

- Placement of flaggers;

- Roadway lighting;

- Traffic regulations; and

- Surveillance and inspection.

(10) For all flagging operations a three (3) sign advance warning sequence is required on all roadways with a speed limit below 45 mph. A four (4) sign advance warning sequence is required on all roadways with a 45 mph or higher speed limit.

Note: The following table contains required spacing for advance warning sign placement.

Road Type	Distances	Between	Advance Warning	Signs
	A	B	C	D
Urban low speed*	200 ft.	200 ft.	200 ft.	N/A
Urban high speed*	350 ft.	350 ft.	350 ft.	350 ft.
Rural	500 ft.	500 ft.	500 ft.	500 ft.
Express-way/Free way	1,000 ft.	1,600 ft.	2,600 ft.	2,600 ft.

\* Speed category to be determined by Washington state department of transportation in cooperation with local jurisdictions.

(11) To protect flaggers, employers, responsible contractors and/or project owners must ensure that:

(a) Flagger workstations are illuminated during hours of darkness by floodlights.

- In no case must floodlighting be permitted to create a disabling glare for drivers. The adequacy of floodlight placement and elimination of potential glare can best be determined by driving through and observing the floodlighted area from each direction on the main roadway after initial floodlight setup.

- Emergency situations are exempt from these illumination requirements. For the purpose of this rule, "emergency" means an unforeseen occurrence endangering life, limb, or property.

(b) Warning signs reflect the actual condition of the work zone. When not in use, warning signs must either be taken down or covered.

(c) Flaggers are not assigned other duties while engaged in flagging activities.

(d) Flaggers do not use devices (for example, cell phones, pagers, radio headPHONE, etc..) that may distract the vision, hearing, or attention of the flagger. Devices such as two-way radios used for communications between flaggers to direct traffic or ensure flagger safety are acceptable.

(e) Flaggers receive appropriate breaks from flagging so they can remain attentive and alert. For the purpose of this rule, "appropriate break" means a rest period of at least 10 minutes, on the employer's time, for each 4 hours of working time.

- Rest periods must be scheduled as near as possible to the midpoint of the work period.

- A flagger must not be allowed to work more than three hours without a rest period.

- Scheduled rest periods are not required where the nature of the work allows a flagger to take intermittent rest periods equivalent to 10 minutes for each 4 hours worked.

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

**WAC 296-155-625 Site clearing.** (1) General.

(a) The word "clearing" means the removal of trees, stumps, logs, brush, debris and rubbish from the surface of the ground in preparation of a site for construction work of any kind. The removal of trees and logs shall be in accordance with the requirements of chapter 296-54 WAC.

(b) All equipment and tools such as axes, sledges, wedges, saws, springboards, etc., shall be maintained in a safe condition and guarded with standard safeguards.

(c) Fallers shall give warning to brushing crews, buckers and other persons in the vicinity where a tree is being felled; taking notice that such persons are not only out of the reach of tree, but also out of danger of possible sidewinders, snags or other trees which may be knocked over by the tree being felled.

(d) ~~((No))~~ Trees ((shall)) must not be felled toward and within range of a traveled road or operational railroad ((in use;)) unless a flagger is ~~((placed on such road or railroad))~~ used to ((warn)) stop all approaching persons ~~((or to stop)),~~ vehicles, or railroad equipment. Flaggers and flagging activities at the site must comply with the requirements of WAC 296-155-305.

(e) Clearing crews shall not be placed immediately below other crews working on hillsides where there is a possible danger of skidding or rolling trees, moving earth or rock.

(f) Pioneer roads on clearing operations shall be constructed to safely accommodate all equipment moved over road.

(g) Hazardous standing and down timber, rocks, etc., shall be moved from upper sides of cuts on side hill operations.

(h) Care shall be exercised in the use of oil for burning brush or timber.

(i) Employees engaged in site clearing shall be protected from hazards of irritant and toxic plants and suitably instructed in the first-aid treatment available.

(j) All equipment used in site clearing operations shall be equipped with rollover guards meeting the requirements of this chapter. In addition, rider-operated equipment shall be equipped with an overhead and rear canopy guard meeting the following requirements:

(i) The overhead covering on this canopy structure shall be of not less than 1/8-inch steel plate or 1/4-inch woven wire mesh with openings no greater than 1 inch, or equivalent.

(ii) The opening in the rear of the canopy structure shall be covered with not less than 1/4-inch woven wire mesh with openings no greater than 1 inch.

(iii) Use of 1/2 inch thick plastic sheets or other thicknesses of plastic panels derived from polycarbonate, acrylic, cellulose acetate butyrate which provides equivalent or better protection against particular hazards involved is acceptable in lieu of 1 or 1 3/4 inch open mesh material.

(A) All panels shall be installed in a manner which can withstand the initial impact, and maintain the protective barrier integrity; and

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(B) All panels must be labeled or marked to distinguish between acceptable and inferior materials.

(k) In addition to observance of the general safety and health standards;

(i) The employer shall assume the responsibility of work assignment so that no worker shall be required to work in a position or location so isolated as to not be within ordinary calling distance of another person who can render assistance in case of emergency. In any operation where cutting, felling trees, loading, or a combination of these duties is carried on, there shall be a minimum crew of two persons who shall work as a team and shall be in visual or voice contact with one another. If one worker at these operations is required to be left alone for a period of time, the worker shall be contacted by another person at reasonable intervals not to exceed fifteen minutes unless such practice can be established to be impractical.

(ii) This does not apply to operators of motor vehicles, watchpersons or certain other jobs which, by their nature, are singular worker assignments. However, a definite procedure for checking the welfare of all workers during working hours shall be instituted and all workers so advised.

**WSR 01-04-016**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed January 26, 2001, 3:57 p.m., effective February 1, 2001]

Date of Adoption: January 26, 2001.

Purpose: Amend rule to explain how the TANF lifetime limit of sixty months of cash assistance will affect clients. Promulgate new rule explaining how time limits affect Indian clients residing in Indian country where at least 50% of Indian adults are not employed.

Citation of Existing Rules Affected by this Order: Amending WAC 388-484-0005.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010, and 42 U.S.C. 608 (a)(7).

Adopted under notice filed as WSR 00-24-039 on November 29, 2000.

Changes Other than Editing from Proposed to Adopted Version: Substituted "parent or other relative as defined by WAC 388-454-0010" for term "adult needy caretaker relative." Clarified that cash assistance will be continued during the course of "initial administrative appeal" rather than "appeal." Minor editing changes for clarity and grammar.

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

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

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

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

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Federal and state law prohibits the department from providing more than sixty months of TANF cash assistance. The department is on a short time frame to develop policies and systems to implement this provision.

Effective Date of Rule: February 1, 2001.

January 26, 2001

Bonita H. Jacques, Chief  
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 99-08-050, filed 4/1/99, effective 5/2/99)

**WAC 388-484-0005** There is a five year (sixty-month) time limit for TANF, SFA and GA-S cash ((benefits)) assistance. (1) What is the sixty-month time limit?

~~((The sixty-month time limit is a lifetime limit of cash benefits))~~

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of sixty months. The time limit applies to cash assistance provided by any combination of these ((cash benefits)) programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance or Medicaid.

(2) When ((does)) did the sixty-month time limit ((start)) go into effect?

The sixty-month time limit ((starts)) applies to cash assistance received on or after August 1, 1997 for TANF and SFA ((and May 1, 1999 for GA-S)). Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999 through July 31, 1999.

(3) ((Who)) Does ((this)) the time limit apply to me?

The sixty-month time limit applies to ((any needy caretaker)) you for any month in which you are a parent or other relative(((s))) as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

(4) ((Are there)) Do any exceptions to the time limits apply to me?

((A month)) The department does not count months of assistance towards the sixty-month time limit ((when)) if you are:

~~(a) ((Unmarried)) A nonneedy adult caretaker relative who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child;~~

~~(b) An unemancipated pregnant or parenting ((minors live)) minor living in a department approved living arrangement as defined by WAC 388-486-0005((:~~

~~(b)); or~~

~~(c) An American Indian or Native Alaskan adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan Native village((, if during the months the needy caretaker relative(s) received)) and you are receiving TANF, SFA, or GA-S cash ((benefits)) assistance during a period when at least fifty percent of the adults living ((on the reservation)) in Indian country or in the village were ((unemployed)) not employed. See WAC 388-484-0010.~~

**(5) What happens if a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?**

~~((The entire assistance unit becomes ineligible for TANF, SFA, or GA-S cash benefits)) Once any ((member)) adult or emancipated minor in the assistance unit has received sixty months of ((these benefits)) cash assistance, the entire assistance unit becomes ineligible for TANF or SFA cash assistance. Some people may be eligible for an extended period of cash assistance based on hardship criteria to be developed by the department.~~

**(6) What can I do if I disagree with how the department has counted my months of cash assistance?**

~~(a) If you disagree with how the department has counted your months of cash assistance, you may ask for a hearing within ninety days of receiving notice of the count.~~

~~(b) If your cash assistance is terminated after sixty months and you ask for a hearing as provided under chapter 388-02 WAC, your cash assistance will be continued during the course of your initial administrative appeal. You must repay the cash assistance, however, if the department's decision is found to be correct.~~

## NEW SECTION

**WAC 388-484-0010 How does the five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance apply to American Indians or Alaskan Natives living in Indian country? (1) If you are American Indian or Alaskan Native, time limits on temporary assistance for needy families (TANF), state family assistance (SFA) and general assistance for pregnant women (from May 1, 1999 to July 31, 1999) do not count under certain circumstances.**

If you are an American Indian or Alaskan Native parent or other relative as defined by WAC 388-454-0010, months of cash assistance do not count against the sixty-month lifetime limit if you live in Indian country or an Alaskan Native village where at least fifty percent of Indian adults are not employed.

**(2) Do time limits on cash assistance apply if I am not an American Indian or Alaskan Native but I am the par-**

**ent or other relative of an American Indian or Alaskan Native child?**

If you are a non-American Indian or non-Alaskan Native parent or other relative, as defined by WAC 388-454-0010, of an American Indian or Alaskan Native child or children living in a qualifying area of Indian country, your months on assistance will count against your lifetime limit. You may, however, receive more than sixty months of assistance under hardship criteria to be developed by the department.

**(3) Where must I live to qualify for the Indian country exemption to time limits?**

To qualify for this exemption to TANF time limits, you must live in "Indian country." The department uses the "Indian country" definition in federal law at 18 U.S.C. 1151. Indian country is defined as reservations, dependent Indian communities, and allotments. Dependent Indian communities must be set aside by the federal government for the use of Indians and be under federal superintendence. Near reservation areas (areas or communities adjacent or contiguous to reservations) are not considered Indian country for purposes of this exemption.

**(4) Can I live on the reservation or Indian country belonging to a tribe other than my own to qualify for this time limit exemption?**

Yes. You do not need to be an American Indian or Alaskan Native of the same tribe as the reservation or other area of Indian country on which you reside.

**(5) How does the department determine if at least fifty percent of adults living in Indian country are not employed?**

The department uses the most current biennial Indian Service Population and Labor Force Estimates Report published by the Bureau of Indian Affairs (BIA), or any successor report, as the default data source to determine if the not employed rates for areas of Indian country are at least fifty percent.

**(6) What if a tribe disagrees with the not employed rate published in the BIA Indian Service Population and Labor Force Estimates Report?**

A tribe may provide alternative data, based on similar periods to the Indian Service Population and Labor Force Estimates Report, to demonstrate that the not employed rate is at least fifty percent.

WSR 01-04-020

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed January 29, 2001, 11:36 a.m.]

Date of Adoption: January 12, 2001.

Purpose: The new section is necessary to provide school districts flexibility in assigning teachers into classroom situations. This new section provides authority to grant waivers, on a case-by-case basis, on written application by school districts, from the provisions of WAC 180-82-105 through 180-82-130.

Citation of Existing Rules Affected by this Order: Amending chapter 180-82 WAC.

Statutory Authority for Adoption: RCW 28A.305.130.

Adopted under notice filed as WSR 00-24-124 on December 6, 2000.

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

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

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

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

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

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

January 24, 2001

Larry Davis  
Executive Director

NEW SECTION

**WAC 180-82-135 Assignment waivers.** On a case-by-case basis, the state board of education may waive the provisions of WAC 180-82-105 through 180-82-130 upon written application by a school district board of directors. The application shall detail the rationale for the waiver request. The waiver may be granted subject to any conditions and stipulations as the state board determines.

**WSR 01-04-021**

**PERMANENT RULES**

**STATE BOARD OF EDUCATION**

[Filed January 29, 2001, 11:37 a.m.]

Date of Adoption: January 12, 2001.

Purpose: Repeal of sections in chapter 180-78A WAC (WAC 180-78A-015, 180-78A-545, 180-78A-550, 180-78A-555, 180-78A-560, and 180-78A-565) repealing the professional education advisory committee, professional certificate field tests, alternative models field tests, participating teachers field tests, and evaluation of criteria field tests.

Citation of Existing Rules Affected by this Order: Repealing WAC 180-78A-015, 180-78A-545, 180-78A-550, 180-78A-555, 180-78A-560, and 180-78A-565.

Statutory Authority for Adoption: RCW 28A.305.130 (1) and (2), 28A.410.010, 28A.150.220(4).

Adopted under notice filed as WSR 00-24-123 on December 6, 2000.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

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

January 22, 2001

Larry Davis  
Executive Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 180-78A-015 Professional education advisory committee.
- WAC 180-78A-545 Field tests—Professional certificate approved programs.
- WAC 180-78A-550 Field tests—Selection of participating programs.
- WAC 180-78A-555 Field tests—Alternative models.
- WAC 180-78A-560 Field tests—Participating teachers.
- WAC 180-78A-565 Field tests—Evaluation criteria.

**WSR 01-04-023**

**PERMANENT RULES**

**SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed January 30, 2001, 11:37 a.m., effective January 30, 2001, 11:37 a.m.]

Date of Adoption: January 23, 2001.

Purpose: The purpose is to reflect policy changes made by the State Safety Net Oversight Committee for the 2000-01 school year regarding special education safety net procedure for school districts and educational service districts.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-600, 392-140-605, 392-140-609, 392-140-613, 392-140-616, 392-140-625, 392-140-626, 392-140-660, and 392-140-675.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 01-01-098 on December 15, 2000.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Immediate implementation is needed in order for the Safety Net Oversight Committee to approve districts' applications at the February 7th meeting.

Effective Date of Rule: At time of filing [January 30, 2001, 11:37 a.m.]

January 30, 2001  
Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 00-03-015, filed 1/7/00, effective 2/7/00)

**WAC 392-140-600 Special education safety net—Applicable provisions.** The provisions of WAC 392-140-600 through 392-140-685 apply to the determination of safety net allocations of state special education moneys and Individuals with Disabilities Education Act (IDEA) federal discretionary moneys for the 2000-01 school year and thereafter.

**AMENDATORY SECTION** (Amending WSR 00-03-015, filed 1/7/00, effective 2/7/00)

**WAC 392-140-605 Special education safety net—**~~((Safety net))~~ **Application**~~((—Basis))~~ **types, certification, worksheets.** Application for safety net funding shall be made on Form SPI 1381 - Maintenance or Form SPI 1381 - Certification published by the superintendent of public instruction as follows:

(1) School districts may make application for safety net funding on ~~((the basis of))~~ one or more of the ~~((following:))~~ four application types described below. Applications will be considered and awards made in the order shown until the district's eligibility is exhausted.

(a) Maintenance of effort (state revenue only) hereafter referred to as MOESR. State safety net funding may be requested when a district shows a MOESR loss calculated by the superintendent of public instruction pursuant to WAC 392-140-620.

~~((Special characteristics and costs:))~~ Students above the funded percentage hereafter referred to as percentage. State safety net funding may be requested ~~((by a school district with special education costs of providing services that are reasonable, but differ significantly from the assumptions contained in the state special education funding formula provided that the applicant school district meets the standards of WAC 392-140-613 and can demonstrate, pursuant to WAC 392-140-625 either of the following:~~

~~((The))~~ if district's actual resident special education enrollment exceeds the district's funded resident special education enrollment, the district ~~((has adopted))~~ is implementing a plan of action to contain or eliminate any unnecessary, duplicative, or ineffective enrollment practices, and all available funding, including state, federal, and local if provided in the past, is insufficient to meet the expenditure level necessary for special education~~((or~~

~~((The district's resident special education enrollment percentage is equal to the funded special education enrollment percentage and the district has incurred an adverse change in the demographics of its resident special education enrollment, and all available funding, including state, federal, and local if provided in the past, is insufficient to meet the expenditure level necessary for special education)).~~

(c) High-cost individual student. A school district may submit applications for federal safety net funding for high-cost individual students meeting the standards in WAC 392-140-616.

(d) Factors other than students above the funded level or high-cost individual students hereafter referred to as other factors. State safety net funding may be requested by a school district with unfunded special education costs due to factors beyond the district's control and not attributable to district philosophy or service delivery style. The applicant district must meet standards of WAC 392-140-613 and 392-140-625.

(2) The school district making application for safety net funding shall certify that:

(a) The application complies with the respective safety net application standards of WAC 392-140-610, 392-140-613, or 392-140-616;

(b) The application provides true and complete information to the best of the school district's knowledge; and

(c) The district understands that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, state safety net funding must be expended in program 21 which impacts the amount that must be maintained for the federal maintenance of effort test, and federal safety net funding must be expended in program 24, and federal Medicaid has been billed for all services to eligible students.

(3) Worksheets included with the application shall demonstrate the need for safety net funding. School districts are encouraged and may be required to submit additional information designed to assist the state oversight committee in analyzing the application.

(a) MOESR applications pursuant to subsection (1)(a) of this section do not require any worksheets. Applications for MOESR shall include certification of standards and criteria described in WAC 392-140-610.

(b) ~~((Special characteristics and costs))~~ Percentage applications pursuant to subsection (1)(b)~~((+))~~ of this section require completion of ~~((the narrative and))~~ worksheet~~((s))~~ "A" described in WAC 392-140-625, certification of standards and criteria pursuant to WAC 392-140-613 and percentage application narrative.

(c) High-cost individual student applications shall include ~~((completed budget forms SPI F 1000B and SPI E 795B, and))~~ worksheets "A" and "C" and summary published in the safety net application, and certification of standards and criteria pursuant to WAC 392-140-616.

(d) Other factors applications pursuant to subsection (1)(d) of this section require completion of application narrative, worksheet "A" described in WAC 392-140-625, and certification of standards and criteria described in WAC 392-140-613.

AMENDATORY SECTION (Amending Order 96-15, filed 9/18/96, effective 10/19/96)

**WAC 392-140-609 Special education safety net—Standards and criteria—Appropriate and properly and efficiently prepared and formulated IEPs.** Individualized education programs (IEPs) which are appropriate, properly and efficiently prepared and formulated are those IEPs that meet all of the following criteria:

(1) The IEPs comply with federal and state procedural requirements.

(2) The delivery of specially designed instruction complies with state standards (regularly scheduled teaching or training activities provided or designed by special education qualified staff).

(3) Areas for the provision of special education services conform with areas of need identified in the students evaluation made pursuant to WAC ~~((392-172-152))~~ 392-172-111.

(4) The state oversight committee determines:

(a) There are no unresolved state audit examination findings related to special education which are material in nature;

(b) There are no unresolved state child count verification findings which are material in nature; and

(c) All corrections to state enrollment reporting, required for resolution of (a) and (b) of this subsection, are completed.

AMENDATORY SECTION (Amending WSR 00-03-015, filed 1/7/00, effective 2/7/00)

**WAC 392-140-613 Special education safety net—Standards and criteria—~~((Special characteristics and costs))~~ Percentage and other factors applications.** For a school district requesting state safety net funding due to ~~((special enrollment characteristics of the district and costs of providing services which differ significantly from the assumptions contained in the state special education funding formula))~~ students above the funded percentage or other factors, the district shall demonstrate at a minimum that:

(1) IEPs are appropriate and are properly and efficiently prepared and formulated.

(2) The district is making reasonable effort to provide appropriate services for students in need of special education

utilizing state funding generated by the basic education apportionment and special education funding formulas.

(3) The district's special education services are operated in a reasonably efficient manner and the district has adopted a plan of action to contain or eliminate any unnecessary, duplicative, or inefficient practices.

(4) Indirect costs included for purposes of determining safety net allocations do not exceed the allowable percent for the federal special education program plus one percent.

(5) Any available federal funding is insufficient to address the additional needs.

(6) The costs of any supplemental contracts are not included for purposes of determining safety net allocations. Supplemental contracts are those contracts made pursuant to RCW 28A.400.200(4) excluding extended school year contracts (ESY) required by an IEP.

(7) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by an IEP.

AMENDATORY SECTION (Amending Order 98-05, filed 3/18/98, effective 4/18/98)

**WAC 392-140-616 Special education safety net—Standards—High-cost individual student applications.**

For districts requesting safety net funding to meet the extraordinary needs of an eligible high-cost individual special education student, the district shall demonstrate at a minimum that:

(1) The IEP for the eligible special education student is appropriate, and properly and efficiently prepared and formulated.

(2) All of the following criteria apply to the high-cost individual student:

(a) Costs eligible for safety net consideration must be direct expenditures for services required in the IEP.

(b) In order to deliver appropriate special education to the student, the district must be providing services which incur additional costs which exceed available district annual average per-pupil revenues, including state, federal and local revenues, by seven thousand dollars. This threshold amount shall be adjusted ~~((downward by the portion of the year for which the individual student was actually enrolled))~~ pro rata for students not counted or expected to be counted for special education services on all eight enrollment count dates (October through May). For example, for a student served and reported for only ~~((one-half the year))~~ six of the eight count dates, the threshold amount shall be reduced ~~((by one-half))~~ to three-quarters of the full amount. The state safety net oversight committee may set a lower threshold for small school districts.

(c) The total cost of educational services must exceed any carryover of federal flow-through special education funding as of August 31 of the prior school year.

(d) The cost of providing special education services, as directed in the IEP, for this student would be detrimental to the school district's ability to provide necessary services to the other students being provided special education in the district.

(3) The state safety net oversight committee shall adapt the high cost individual student application as appropriate for applications prepared by the Washington state school for the blind and the Washington state school for the deaf.

AMENDATORY SECTION (Amending WSR 00-03-015, filed 1/7/00, effective 2/7/00)

**WAC 392-140-625 Special education safety net—~~Demonstration of ((special characteristics and costs)) percentage and other factors.~~** Applications ~~((pursuant to WAC 392-140-605 (1)(b) must demonstrate special characteristics and costs as provided in this section:))~~ for percentage or other factors shall demonstrate need for safety net funding as follows:

(1) Applications from districts with actual enrollment greater than funded enrollment pursuant to WAC 392-140-605 (1)(b)((+)) must demonstrate, through the application narrative, that the district ~~((has adopted))~~ is implementing a plan of action to contain or eliminate any unnecessary, duplicative, or ineffective enrollment practices. The district shall demonstrate a financial need on worksheet "A" of the application. Applicants shall cooperate with the special education program audit team and shall provide the team with any information required by the team to review and verify certifications made on the safety net application.

~~((2) Applications from districts with actual enrollment equal to funded enrollment pursuant to WAC 392-140-605 (1)(b)(ii) must demonstrate, through the application narrative and on application worksheet "A" and "B," an adverse change in resident special education enrollment characteristics and program costs. For initial awards, the district must demonstrate adverse change since the prior school year. For continuing awards, the district must demonstrate continued adverse change:))~~

(a) The application narrative completed by the school district shall provide any information and explanations related to ~~((special enrollment characteristics))~~ students above the funded percentage as required in the published instructions.

(b) Application worksheet "A" shall demonstrate a financial need by displaying the school district's special education expenditures, revenues, and special education enrollments for the prior and current school years. ~~((Application worksheet "B" shall display changes in staff services and staff ratios between the prior and current school years:))~~

(c) Cost differences between the current and prior school years shall be explained in the application narrative. The application narrative shall detail cost differences in services to students which occurred between the current school year and the prior school year. Such details shall include costs and savings associated with each change in services.

(d) A fiscal need shall be demonstrated through the application narrative, on application worksheet(s) "A" ~~((and "B,")~~) and other information available to the state oversight committee.

(2) Applications for other factors pursuant to WAC 392-140-605 (1)(d) must demonstrate, through application narrative and on application worksheet "A," financial need caused

by factors other than the presence of students above the funded percentage or high-cost individual student(s).

(a) The narrative shall identify causal factors beyond the district's control and not attributable to the district philosophy or service delivery style, and:

(i) Outline each causal factor asserted in the application:

(ii) Provide a clear explanation of the impact of each factor to the district in terms of number and/or severity of students;

(iii) Quantify the safety net funding need due to the factor. Show the assumptions and calculations used to arrive at the dollar amount of unfunded costs attributable to each factor.

(b) Provide a copy or explanation of any action plan the district has adopted to contain or eliminate any unnecessary, duplicative, or inefficient practices pursuant to WAC 392-140-613.

(c) If the district received an award in a prior year, describe the program, prior year costs, and compare and contrast to the current year program and costs.

AMENDATORY SECTION (Amending WSR 00-03-015, filed 1/7/00, effective 2/7/00)

**WAC 392-140-626 Special education safety net—Worksheet A—Demonstration of need.** Applications for ~~((special characteristics and costs and))~~ percentage, high cost individual students, and other factors shall demonstrate financial need as follows:

(1) Application worksheet "A" shall demonstrate a fiscal need in excess of ~~((the sum of))~~:

(a) ~~((All current school year safety net awards to the district))~~ The district's maximum eligibility for MOESR ~~((or special characteristics and costs))~~;

(b) Any previous safety net awards for the current school year; and

(c) All other available revenue for special education, including all carryover of federal special education revenue.

(2) Awards ~~((for special characteristics and costs pursuant to WAC 392-140-605 (1)(b)(ii) and high cost individual awards))~~ shall not exceed the amount of need demonstrated on the worksheet "A."

(3) Worksheets submitted with safety net applications are to reflect ~~((an))~~ the state adopted excess cost ~~((basis))~~ method of accounting, consistently applied for both years presented. ~~((The district may be required to describe the district's excess cost methodology:))~~

(4) The safety net oversight committee may revise the district's worksheet "A" submitted for errors or omissions.

(5) The school district shall provide additional information as requested by the state oversight committee.

(6) After the close of the school year, the safety net oversight committee may review the worksheet "A" used to determine need for a district's award against the actual final school year enrollments, revenues, and expenditures reported by the district. Based upon the results of this review:

(a) The safety net allocation for the school year may be adjusted or recovered; or

(b) If the committee finds that a portion of the safety net allocation was not needed to balance revenues and expendi-

tures, the committee may consider that portion of the allocation available to meet the needs of the ensuing school year.

**AMENDATORY SECTION** (Amending WSR 00-03-015, filed 1/7/00, effective 2/7/00)

**WAC 392-140-660 Special education safety net—Approved application—Special education safety net allocations.** The total amount allocated to school districts may not exceed the authorized appropriation.

(1) The special education safety net allocation shall be the smaller of:

(a) The amount requested by the school district; or

(b) The amount authorized by the state oversight committee.

(2) If the district requests and the oversight committee approves the "full" allocation permitted by a state formula, then the allocation shall be adjusted periodically during the year and again in January after the close of the school year to reflect the amount determined under the formula.

(3) Special education safety net allocations of state moneys for ~~((special characteristics))~~ percentage and other factors applicants under WAC 392-140-605 (1)(b) and (d) shall be prorated if total year-to-date state allocations for all safety net applications under WAC 392-140-605 (1)(a) ~~((and)), (b), and (d)~~ exceed the authorized appropriation for that school year.

(4) Special education safety net allocations for high-cost individual students under WAC 392-140-605 (1)(c) shall ~~((first))~~ use appropriated federal moneys. ~~((If federal moneys are insufficient, state moneys may be used if provided for this purpose in the state Operating Appropriations Act, otherwise high cost individual student allocations shall be prorated as needed to stay within the authorized federal appropriation.))~~ If safety net awards to meet the extraordinary needs of one or more individual special education students exceed the general fund—federal appropriation, the superintendent shall expend all available federal discretionary funds necessary to meet this need. General fund—state funds shall not be expended for this purpose.

**AMENDATORY SECTION** (Amending WSR 00-03-015, filed 1/7/00, effective 2/7/00)

**WAC 392-140-675 Special education safety net—Adjustments to special education safety net allocations.** Safety net allocations may be adjusted as follows:

(1) For those districts not maximizing Medicaid billing for special education students under ~~((chapter 318, Laws of 1999))~~ RCW 74.09.5255, special education safety net allocations shall be reduced by the estimated potential additional incentive payments for the school year if the district maximized Medicaid incentive payments. Potential additional incentive payments shall be estimated by the superintendent of public instruction based on the district's percent of Medicaid eligible students billed and a state-wide average incentive payment per student determined by the superintendent in October of the school year. The average incentive payment per student shall be determined using the prior school year's state-wide Medicaid billing data assuming fifty percent

incentive payments for all school districts. The superintendent of public instruction shall update Medicaid billing adjustments to safety net allocations periodically during the school year and again in January following the close of the school year.

(2) Special education safety net allocations for a school district may be adjusted to reflect changes in factors for which additional or revised information becomes available after the awarding of the initial safety net allocation. This means:

(a) MOESR awards for the "full" amount shall be increased, reduced, or nullified when a recalculation pursuant to WAC 392-140-620 results in a change in the amount previously calculated pursuant to WAC 392-140-620.

(b) ~~((Special characteristics and costs))~~ Percentage awards for the full amount under WAC 392-140-605 (1)(b) ~~((+))~~ shall be increased, reduced, or nullified when the district's enrollment or state funding factors change.

(c) ~~((Special characteristics and costs))~~ Percentage and other factors awards may be reduced or nullified when the school district's actual revenues and expenditures for the school year differ significantly from the estimates on which the initial safety net award was based.

(d) A school district's safety net award may be adjusted by the safety net oversight committee based on the results of the review conducted by the special education program audit team pursuant to WAC 392-140-630.

(3) Allocations of state moneys ~~((for special characteristics applicants))~~ under WAC 392-140-605 (1)(b) and (d) shall be prorated if total state allocations for all safety net applications under WAC 392-140-605 (1)(a) ~~((and)), (b), and (d)~~ exceed the authorized appropriation for that school year. Allocations shall be restored to full funding if additional appropriation authority becomes available.

## WSR 01-04-026

### PERMANENT RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. TR-981102, General Order No. R-477—Filed January 30, 2001, 4:14 p.m.]

In the matter of adopting and repealing provisions of chapter 480-62 WAC relating to Railroad companies—Operations.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 00-23-131, filed with the Office of the Code Reviser on November 22, 2000. The commission brings this proceeding pursuant to RCW 80.01.040, 81.04.160, 81.24.010, 81.28.010, 81.28.290, 81.40.110, 81.44.010, 81.44.020, 81.44.101-81.44.105, and chapters 81.48, 81.53, 81.54, 81.60, and 81.61 RCW.

**2 STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW); the Administrative Procedure Act (chapter 34.05 RCW); the State Register Act (chapter 34.08 RCW); the State

Environmental Policy Act of 1971 (chapter 43.21C RCW); and the Regulatory Fairness Act (chapter 19.85 RCW).

**3 DATE OF ADOPTION:** The commission adopts this rule on the date this order is entered.

**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** The purpose of the proposed revisions to chapter 480-62 WAC is to provide clear, objective standards for addressing issues at highway-rail grade crossings, including maintenance and repair, modification, blocking, and safety operations. In addition, the proposed rule provides requirements regarding the reporting of operational information, and procedures for requesting changes in train speed limits.

5 The effect of the proposed revisions will be to contribute to improved safety at highway-rail grade crossings, provide greater communication between railroad companies and the communities through which they operate, as well as provide communities and railroad companies with clear procedures for requesting changes in train speed limits, and streamlined reporting requirements to allow for more efficient exchange of information with railroad companies.

6 RCW 34.05.325 requires that the commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the commission's consideration of the comments.

7 The commission often includes a discussion of those matters in its rule adoption order. In addition, most rule-making proceedings involve extensive work by commission staff that includes summaries in memoranda of stakeholder comments, commission decisions, and staff recommendations in each of those areas.

8 In this docket, to avoid unnecessary duplications, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the commission considered whether to begin a rule making and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

**9 REFERENCE TO AFFECTED RULES:** This order adopts the following new sections of the Washington Administrative Code (WAC):

- WAC 480-62-125 Definitions.
- WAC 480-62-130 Application of this chapter.
- WAC 480-62-135 Additional requirements.
- WAC 480-62-140 Exemptions from rules.
- WAC 480-62-145 Commission proceedings.
- WAC 480-62-150 Grade crossing petitions.
- WAC 480-62-155 Procedure to set train speed limits.
- WAC 480-62-160 Compliance policy.
- WAC 480-62-165 Severability.
- WAC 480-62-170 Resolving disputes about the meaning of these rules.

- WAC 480-62-200 Roadway worker safety and operating rules and statutes.
- WAC 480-62-205 Track safety standards.
- WAC 480-62-210 Crossing signal circuitry.
- WAC 480-62-220 Blockage of public grade crossing.
- WAC 480-62-225 Crossing surfaces.
- WAC 480-62-230 Traffic control devices.
- WAC 480-62-235 Flaggers.
- WAC 480-62-240 Passenger carrying vehicles—Equipment.
- WAC 480-62-245 Passenger carrying vehicles—Operations.
- WAC 480-62-250 On track equipment.
- WAC 480-62-300 Annual reports.
- WAC 480-62-305 Railroad community notice requirements.
- WAC 480-62-310 Accident reports.
- WAC 480-62-315 Miscellaneous reporting requirements.
- WAC 480-62-320 Remote controlled operations.
- WAC 480-62-325 Railroad police officers—Notice.
- WAC 480-62-999 Adoption by reference.

10 This order repeals the following sections of the Washington Administrative Code (WAC):

- WAC 480-62-010 Locomotive speedometers.
- WAC 480-62-020 Traffic control devices.
- WAC 480-62-030 Flagpersons.
- WAC 480-62-040 Exemption.
- WAC 480-62-050 Passenger carrying vehicles—General.
- WAC 480-62-060 Passenger carrying vehicles—Equipment.
- WAC 480-62-070 Passenger carrying vehicles—Operation.
- WAC 480-62-080 Accident reports.
- WAC 480-62-085 Annual reports.
- WAC 480-62-090 Hazardous materials regulations.
- WAC 480-62-100 Bridge safety rules.
- WAC 480-62-120 Train operations—Tacoma.

**11 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on April 1, 1999, at WSR 99-08-053. The statement advised interested persons that the commission was considering entering a rule making on railroad company operations and would consider amending chapter 480-62 WAC in accordance with Executive Order 97-02.

**12 ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The commission informed persons of the inquiry into this matter by providing notice of the

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subject and the CR-101 served April 1, 1999, to all railroad companies operating in the state, and to those persons who have expressed interest in related matters before the commission or appeared on lists of organizations, including: State agencies; city and county governments; labor unions; port associations; and members of the public. In addition to information about the rule making, the notice requested written responses to several issue questions and invited participation in a scheduled public workshop on May 27, 1999. The commission also issued a second notice of rule-making workshop on June 4.

13 Pursuant to the notices, commission staff held workshops on May 27, 1999 and June 17, 1999, in Olympia. The workshops were attended by representatives from railroad companies, local agencies, the law enforcement community, labor unions, and the public.

14 On September 15, 1999, the commission issued another notice of rule-making workshop that contained a discussion draft of the rules. The notice also invited comments regarding the discussion draft. The corresponding workshop, as well as an additional workshop to further discuss the draft rules, were held in Olympia, on September 28, 1999, and October 2, 2000, respectively.

15 Discussions at the first three workshops focused mainly on language, format, repealing sections that are no longer valid in the current environment, and drafting new rules regarding maintenance requirements, safety operations, and reporting. The October 2, 2000, workshop focused on identifying unresolved issues and working with interested parties to resolve those issues. At the conclusion of that workshop, unresolved issues included the draft rules relating to train speeds (WAC 480-62-155), crossing surfaces (WAC 480-62-225), flaggers (WAC 480-62-235), community notice requirements (WAC 480-62-305), and miscellaneous reporting requirements (WAC 480-62-315).

16 In compliance with chapter 19.85 RCW, on October 5, 2000, the commission sent all eighteen railroad companies operating in the state a memorandum and questionnaire concerning the potential economic effects of the draft rules on regulated companies. Only two incomplete questionnaires were returned. Due to lack of adequate data from railroad companies, it was necessary to explore and utilize data from existing literature, information reported to the commission, prior survey results from a recent railroad rule making completed under Docket No. TR-981101, and the knowledge and experience of staff. A small business economic impact statement, or SBEIS, was developed by staff based on responses to the questionnaire, and staff research.

17 On November 8, 2000, at an open meeting of the commission, the commission received a staff report and heard oral comments from railroad company representatives on the content of the draft rules. After hearing the staff report and oral comments, the commission directed the secretary to file a notice of proposed rule making (CR-102) with the Office of the Code Reviser.

18 **NOTICE OF PROPOSED RULEMAKING:** The commission filed a notice of proposed rule making (CR-102) and small business economic impact statement with the Office of the Code Reviser on November 22, 2000, published at WSR

00-23-131. In that notice, the commission scheduled this matter for oral comment and adoption at 9:30 a.m., Thursday, January 11, 2001, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA.

19 Further, on November 27, 2000, the commission issued a notice of opportunity to submit written comments on the proposed rule and notice of proposed rule adoption hearing to all interested persons on file. Written comments were requested by December 13, 2000, and the rule adoption hearing was specified as January 11, 2001.

20 **COMMENTERS - WRITTEN COMMENTS:** Written comments on the proposed rules were received from David Reeve, on behalf of the Burlington Northern Santa Fe Railroad Company (BNSF), Carolyn Larson, on behalf of Union Pacific Railroad Company (UP), James Slakey (Director of the Public Transportation and Rail Division), on behalf of the Washington State Department of Transportation (WSDOT), Christopher Keuss (Deputy Executive Director), on behalf of the Port of Edmonds, David Gebert (Director of Public Works), on behalf of the Town of Steilacoom, Frederick Ohly, Sr. (Associate General Counsel), on behalf of AMTRAK, and Joan Sterling (Legislative and Policy Analyst), on behalf of the Washington Military Department - Emergency Management Division.

21 **BNSF, UP:** All comments from BNSF and UP were submitted jointly. The railroads addressed the proposed rules relating to train speeds (proposed WAC 480-62-155), community notice requirements (WAC 480-62-305) and miscellaneous reporting requirements (WAC 380-62-315 [480-62-315]). Staff sent letters responding to the railroads' comments on January 3, 2001.

22 First, the railroads questioned the commission's authority to regulate train speeds, arguing that the regulation of train speeds is preempted by federal law, and that the proposed rule exceeds commission authority. In a written response to BNSF and UP, staff disagreed with the assertion that states were completely preempted by federal law from regulating train speeds. Staff explained that the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20106, limits state authority to regulate train speeds to situations where "essentially local safety hazards" would require reduced train speeds to eliminate or reduce the hazards. Staff maintained that the proposed rule provides an objective mechanism for reviewing requests for changes in train speeds within the authority reserved to states by the FRSA.

23 BNSF and UP requested increased flexibility for railroad companies for proposed rules regarding community notice requirements (WAC 480-62-305) and miscellaneous reporting requirements (WAC 380-62-315 [480-62-315]).

24 The railroad community notice rule requires railroad companies to notify local jurisdictions and the commission "at least ten days prior to taking any planned action that may have a significant impact on a community" (e.g., reconstruction or maintenance that impedes traffic flow through a crossing, and may delay emergency response). The purpose of the proposed rule is to allow local jurisdictions to plan detours and otherwise be prepared for the closures of certain roadway routes. At the October 2, 2000, workshop, BNSF and UP

explained that since actions at crossings, such as maintenance, rarely coincide with planned schedules, the proposed rule should be revised to include the phrase "best estimate of the start and completion date" for an action. This language, as well as a disclaimer stating, "This rule is not intended to include immediate safety hazards or emergencies," was incorporated to provide flexibility for the railroads. In their written comments, BNSF and UP continued to express concern about the rule being "inconsistent with maintenance practices and could result in the delays of routine, non-emergency repairs." For example, if the opportunity presented itself to replace a broken plank, the railroad would be less likely to seize that opportunity if the rule is adopted. The comments requested that the rule be modified to allow flexibility needed to perform routine maintenance.

25 In its written response, staff explained that there is no need to further change the proposed rule. Since the maintenance practices that BNSF and UP are concerned about are not planned and could prevent safety hazards, the flexibility that the railroads are requesting is already present in the proposed rule.

26 BNSF and UP expressed concern over a section of the proposed rule requiring railroad companies to provide the commission, upon request, with information in the railroad's control regarding train operations through crossings. BNSF and UP asserted that the requirement would impose an unreasonable burden on them to collect information the railroad companies do not ordinarily maintain.

27 Staff responded that the requested information is important to the commission's rail section in performing various duties. The information has been easily obtained from railroad companies in the past, and staff sees no need to require the information on a scale that would create an unreasonable burden on railroad companies. Therefore, staff did not believe the proposed rule should be modified.

28 **WSDOT/AMTRAK:** WSDOT and AMTRAK filed separate comments, but both focused solely on the train speed rule (proposed WAC 480-62-155). Like the railroads, WSDOT and AMTRAK questioned the commission's authority to regulate train speeds, arguing that the train speed issue is preempted by federal law, and that the proposed rule exceeds commission authority. In a written response sent to WSDOT and AMTRAK on January 2, 2001, staff disagreed with the assertion that states were completely preempted by federal law from regulating train speeds. Staff explained that the Federal Railroad Safety Act (FRSA), 49 U.S.C. § 20106, limits state authority to regulate train speeds to situations where "essentially local safety hazards" would require reduced train speeds to eliminate or reduce the hazards. Staff maintained that the proposed rule provides an objective mechanism for reviewing requests for changes in train speeds within the authority reserved to states by the FRSA.

29 **Port of Edmonds:** The Port of Edmonds submitted comments regarding the proposed rule on crossing surfaces (WAC 480-62-225 (5)(a)). The proposed rule requires road authorities to provide ten days advance notice to railroad companies prior to performing maintenance that would affect a crossing. The Port of Edmonds recommended that road

authorities also notify local jurisdictions when such work is carried out.

30 Staff incorporated this recommendation into the proposed rule due to the fact that, in some cases, the road authority at a crossing may be a separate agency than the local jurisdiction in which the crossing is located. For example, WSDOT may be the road authority for a crossing in Edmonds. The additional language would require WSDOT to notify the City of Edmonds, in addition to the railroad, when planning work that affects the crossing.

31 **Town of Steilacoom:** The Town of Steilacoom submitted comments regarding the proposed rule concerning train speeds (WAC 480-62-155(3)), and specifically what constitutes an "essentially local safety hazard," and the proposed rule on flaggers (WAC 480-62-235 (8)(e)).

32 Steilacoom requested that man-made conditions be considered by the commission, in addition to natural conditions, when assessing situations that constitute essentially local safety hazards. In written comments sent by staff on January 3, 2001, staff agreed that man-made conditions present applicable hazards; however, there is a qualitative difference between the two types of conditions. Man-made conditions can often be changed to eliminate dangers, while natural conditions often cannot be changed. Local discretionary actions, such as placing certain types of structures near tracks are not allowed to dictate national policy, while natural conditions predate track construction. Despite those differences, the proposed rule does allow consideration of man-made structures in the section that provides for analysis of potential for accidents. Man-made structures are simply not emphasized, because of the differences mentioned above.

33 Staff notified Steilacoom that it had decided to delete the word "natural" from proposed WAC 480-62-155 (3)(b), as it is probably too limiting to suggest that only natural (e.g., geological) conditions would meet the definition of an "essentially local safety hazard" under the state regulation savings clause of the Federal Railroad Safety Act, 49 U.S.C. § 20106.

34 Other comments by Steilacoom requested that a section of the flagger rule, concerning flagger breaks, be modified to include the sentence, "during breaks, another qualified flagger must take over flagging duties."

35 In written comments, staff notified Steilacoom that the purpose of the flagger rule is to require methods for ensuring the protection of flaggers when they are used, and is not intended to suggest circumstances when flaggers should be used. However, proposed WAC 480-62-230, "Traffic control devices" states that "flaggers be provided where necessary to adequately protect the public and railroad employees," thus implicitly stating that when flaggers are appropriate for traffic control, they should be relieved by other qualified flaggers when on breaks. Therefore, there is no need to change the proposed rule.

36 **Washington Military Department - Emergency Management Division:** The Emergency Management Division of the Washington Military Department filed written comments supporting the proposed rule on train speeds (WAC 480-62-155), and suggested changes to the proposed rules on blocking grade crossings (WAC 480-62-220), cross-

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ing surfaces (WAC 480-62-225), railroad community notice requirements (WAC 480-62-305), and accident reports (WAC 480-62-310). Specifically the Emergency Management Division recommended that, in addition to notice to the local jurisdiction in those proposed rules, notice of the location of the affected crossing also be provided to the Public Safety Answering Point (PSAP) responsible for dispatch of necessary services.

37 In written comments sent to the Emergency Management Division on January 2, 2001, staff agreed that the recommendations were appropriate. However, staff stated that it would pursue the suggested modifications in a subsequent rule making due to the need to adopt certain proposed rules as permanent rules no later than March 1, 2001, and the fact that additional notice requirements would likely require filing an additional CR-102 with the Office of the Code Reviser.

38 **RULE-MAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rule-making hearing scheduled during the commission's regularly scheduled open public meeting on January 11, 2001, before Chair Marilyn Showalter and Commissioner Richard Hemstad. During the adoption hearing, the commission received a staff report and heard oral comments from representatives of BNSF, UP, and WSDOT. In addition to the staff report and stakeholder comments, Jonathan Thompson of the Attorney General's Office provided information on the issue of the commission's jurisdiction over train speeds.

39 **COMMENTS AT ADOPTION HEARING:** The following people provided oral comments at the January 11, 2001, adoption hearing:

40 **UP and BNSF:** Carolyn Larson spoke on behalf of UP, and Daniel Kinerk spoke on behalf of BNSF. In their comments, both parties reaffirmed their comments and concerns from previous written comments regarding the proposed rule concerning train speeds, and Ms. Larson repeated her concerns concerning the proposed rules on miscellaneous reporting requirements, and community notice requirement.

41 **Washington State Department of Transportation:** Jeff Schultz spoke on behalf of WSDOT, also reaffirming previous written comments objecting to the train speed rule.

42 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** As noted above, BNSF, UP, WSDOT, and AMTRAK all suggested that the commission not adopt the proposed rule concerning train speeds (WAC 480-62-155). In addition, the Town of Steilacoom requested changes to the proposed rule concerning flaggers (WAC 480-62-235 (8)(e)), and the Emergency Management Division of the Washington Military Department requested certain changes to be made to a number of proposed notification rules, e.g., blocking grade crossings (WAC 480-62-220), crossing surfaces (WAC 480-62-225), railroad community notice requirements (WAC 480-62-305), and accident reports (WAC 480-62-310). The commission rejects the suggestions for change to these proposed rules.

43 **Proposed Flagger Rule:** Steilacoom requested that a section of the flagger rule, concerning flagger breaks, be modified to include the sentence, "during breaks, another qualified flagger must take over flagging duties." The commission believes the purpose of the flagger rule is to require

methods for ensuring the protection of flaggers when they are used, and is not intended to suggest circumstances when flaggers should be used. However, proposed WAC 480-62-230 Traffic control devices states that "flaggers be provided where necessary to adequately protect the public and railroad employees," thus implicitly stating that when flaggers are appropriate for traffic control, they should be relieved by other qualified flaggers when on breaks. Therefore, there is no need to incorporate the suggested change.

44 **Proposed Notification Rules:** The Emergency Management Division of the Washington Military Department recommended changes to the proposed rules on blocking grade crossings (WAC 480-62-220), crossing surfaces (WAC 480-62-225), railroad community notice requirements (WAC 480-62-305), and accident reports (WAC 480-62-310). Specifically the Emergency Management Division recommended that, in addition to notifying the local jurisdiction in those proposed rules, notice of the location of the affected crossing also be provided to the Public Safety Answering Point (PSAP) responsible for dispatch of necessary services.

45 The commission agrees that the recommendations are appropriate, but believes that properly addressing the suggestions would require an additional round of stakeholder meetings and comments. In particular, additional notice requirements would likely require filing an additional CR-102 with the Office of the Code Reviser. Due to the need to adopt certain proposed rules in this docket as permanent rules no later than March 1, 2001, the commission believes it is best to pursue the suggested modifications in a subsequent rule making.

#### 46 **Proposed Train Speed Rule:**

47 In their written and oral comments on the proposed train speed rule, BNSF, UP, WSDOT, and AMTRAK all assert that the commission is preempted by federal law from regulating train speeds and that the commission should not adopt the proposed rule. Specifically, BNSF and UP assert that the proposal to require railroad companies to obtain prior approval from the commission before modifying train speeds is "patently unconstitutional." Further, the railroads assert that the state statutes authorizing the commission to regulate train speeds, RCW 81.48.030 and 81.48.040, have been preempted by federal law.

48 The commission rejects the suggestion that the commission is preempted from adopting the proposed rule on train speeds. The federal statute addressing the issue of preemption is a section of the Federal Railroad Safety Act, appearing in 49 U.S.C. § 20106. This statute provides that:

Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when the law, regulation, or order-

(1) is necessary to eliminate or reduce an essentially local safety hazard;



- (2) is not incompatible with a law, regulation, or order of the United States Government; and
- (3) does not unreasonable [unreasonably] burden interstate commerce.

U.S.C. § 20106.

49 The statute [statute] clearly provides a role for the states in determining whether an essentially local safety hazard exists that should result in a lower train speed than that set by the secretary of transportation. Given the commission's statutory authority to regulate train speeds, the commission believes it is appropriate to adopt a rule that establishes a clear procedure for reviewing whether a local safety hazard exists. That procedure requires the commission to review a proposal made by either a railroad company or other party to modify existing train speed limits, before the speed is modified.

50 Over the past several years, the railroads have made and the commission has reviewed numerous requests to increase train speed limits in the state of Washington to the limits established by the Federal Railroad Administration. Requests to modify train speed limits usually result in a strong response from local jurisdictions and members of the public requesting the commission to take action under its statutory authority. The commission believes that the process set forth in the proposed rule will provide clear guidance to the railroads, local jurisdictions and other interested parties as to the procedure before the commission when reviewing requests to modify train speed limits, as well as the commission's jurisdictional limits in setting train speed limits. For these reasons, the commission rejects the suggestions made by BNSF, UP, WSDOT, and AMTRAK.

51 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission repealed the existing rules in chapter 480-62 WAC and adopted the proposed rules with the changes described below.

52 **CHANGES FROM PROPOSAL:** The commission adopted the proposal with the following changes from the text noticed at WSR 00-23-131. First, a number of typographical changes were made to correct grammatical or citation errors in the text. In addition, more detailed changes were made to the rules concerning train speeds (WAC 480-62-155), crossing signal circuitry (WAC 480-62-210), crossing surfaces (WAC 480-62-225), railroad community notice requirements (WAC 480-62-305), and miscellaneous reporting requirements (WAC 480-62-315).

53 **Train speeds (WAC 480-62-155):** In order to address some of the concerns raised by the railroads, WSDOT, and AMTRAK, the commission simplified the language of the rule heading from "Procedure to set train speed limits" to "Train speeds," to eliminate the focus on the "setting" of train speed limits.

54 Second, the commission added language to subsection (2)(a) to state more explicitly the process a railroad must follow when seeking modification of an existing limit set by the commission. This language recognizes the different information that the commission requires from a railroad company than from a person or local jurisdiction seeking to modify a train speed limit.

55 Third, the commission added a section outlining the burden of proof for the railroad and other persons when filing a petition with the commission to modify or set train speeds. This new subsection (2)(c), recognizes that the railroad will have made a prima facie case as to why the speed must be modified if the railroad includes all information required by subsection (2)(a)(ii)(A)-(E). The new subsection also recognizes that the local jurisdiction or commission staff bear the burden to show the existence of an essentially local safety hazard.

56 Finally, proposed changes to subsection (3) incorporate a suggestion made by the Town of Steilacoom concerning what constitutes an essentially local safety hazard. Specifically, the rule includes the words "at a minimum," in the first sentence, and deletes the word "natural" from subsection (3)(a).

57 **Crossing signal circuitry (WAC 480-62-210):** A change to proposed WAC 480-62-210(3) clarifies that the commission will enforce the rule against certain railroad companies that are not subject to the jurisdiction of the Federal Railroad Administration pursuant to the compliance policy set forth in proposed WAC 480-62-160.

58 **Crossing surfaces (WAC 480-62-225):** The Port of Edmonds recommended that the commission require highway authorities to notify local jurisdictions as well as railroad companies when performing maintenance on a crossing surface. The suggestion is adopted and the entire notification section is moved to WAC 480-62-305 concerning railroad community notice requirements, substituting in WAC 480-62-225 a reference to WAC 480-62-305.

59 **Railroad community notice requirements (WAC 480-62-305):** The commission added two new subsections to the proposed rule to clarify requirements for notice by highway authorities and railroad companies when performing maintenance on a crossing.

60 In addition, during the adoption hearing before the commission on January 11, 2001, the commission added language to address a concern raised by Ms. Larson, representing UP. The commission adds a note after subsection (1), to read "NOTE: Maintenance practices, such as replacing broken planks if the opportunity to do so is unexpectedly presented, are not considered to be planned actions and would likely prevent safety hazards. In such situations, advance notice would not be required."

61 **Miscellaneous reporting requirements (WAC 480-62-315):** During the adoption hearing, Ms. Larson also raised a concern with subsection (2) of the proposed rule on miscellaneous reporting requirements. The commission adds words to clarify that railroads are not required to conduct new or additional research to provide the required information on train operations.

62 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the commission determines that WAC 480-62-010, 480-62-020, 480-62-030, 480-62-040, 480-62-050, 480-62-060, 480-62-070, 480-62-080, 480-62-085, 480-62-090, 480-62-100 and 480-62-120 should be repealed; and WAC 480-62-125, 480-62-130, 480-62-135, 480-62-140, 480-62-145, 480-62-150, 480-62-155, 480-62-160, 480-62-165, 480-62-170, 480-62-200, 480-62-205, 480-

62-210, 480-62-220, 480-62-225, 480-62-230, 480-62-235, 480-62-240, 480-62-245, 480-62-250, 480-62-300, 480-62-305, 480-62-310, 480-62-315, 480-62-320, 480-62-325, and 480-62-999 should be adopted as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Office of the Code Reviser.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 27, Amended 0, Repealed 12.

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

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

#### ORDER

##### 63 THE COMMISSION ORDERS:

1. WAC 480-62-010, 480-62-020, 480-62-030, 480-62-040, 480-62-050, 480-62-060, 480-62-070, 480-62-080, 480-62-085, 480-62-090, 480-62-100 and 480-62-120 are repealed, and WAC 480-62-125, 480-62-130, 480-62-135, 480-62-140, 480-62-145, 480-62-150, 480-62-155, 480-62-160, 480-62-165, 480-62-170, 480-62-200, 480-62-205, 480-62-210, 480-62-220, 480-62-225, 480-62-230, 480-62-235, 480-62-240, 480-62-245, 480-62-250, 480-62-300, 480-62-305, 480-62-310, 480-62-315, 480-62-320, 480-62-325, and 480-62-999 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

2. This order and the rules set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Office of the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 30th day of January, 2001.

Washington Utilities and  
Transportation Commission  
Marilyn Showalter, Chairwoman  
Richard Hemstad, Commissioner

#### PART 1: GENERAL AND PROCEDURAL RULES

##### NEW SECTION

**WAC 480-62-125 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Class I railroad company"** means a railroad company having annual operating revenues of \$250 million or more;

**"Class II railroad company"** means a railroad company having annual operating revenue of less than \$250 million, but more than \$20 million; and

**"Class III railroad company"** means a railroad company having annual operating revenues of \$20 million or less.

**"Commission"** means the Washington utilities and transportation commission.

**"Department of labor and industries"** means the Washington state department of labor and industries.

**"Department of transportation"** means the Washington state department of transportation.

**"On track equipment"** means self-propelled equipment, other than locomotives, that can be operated on railroad tracks.

**"Passenger carrying vehicle"** means those buses and trucks owned, operated, and maintained by a railroad company which transports railroad employees in other than the cab of such vehicles and are designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks.

**"Railroad"** means every permanent road with a line of rails fixed to ties providing a track for cars or equipment drawn by locomotives or operated by any type of power, including interurban and suburban electric railroads, for the public use of conveying persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. Unless otherwise provided by rule, the term "railroad" does not include logging and industrial railroads, or street railways operating within the limits of any incorporated city or town.

**"Railroad company"** means every corporation, company, partnership, association, joint stock association, or person, their lessees, trustees, or receivers appointed by any court, and any common carrier owning, operating, controlling or managing any railroad or any cars or other equipment used on, or in connection with the railroad within this state.

**"Railroad police officer"** means a peace officer who is commissioned in his or her state of legal residence or state of employment by a railroad company to enforce state laws for the protection of railroad property, personnel, passengers and/or cargo.

**"State"** means the state of Washington.

##### NEW SECTION

**WAC 480-62-130 Application of this chapter.** The rules in this chapter apply within certain cities and to any railroad company subject to the jurisdiction of the commission under RCW 81.04.010 and chapters 81.04, 81.24, 81.28, 81.36, 81.40, 81.44, 81.48, 81.52, 81.53, 81.54, 81.60, and 81.61 RCW, as set forth below:

(1) To all Class I, II, and III railroad companies operating within the state of Washington, with the exceptions noted in subsections (2), (3), and (4) of this section.

(2) To and within first class cities except for WAC 480-62-145, 480-62-150, 480-62-155, and 480-62-225.

(3) To and within cities with a population of more than 400,000 except for WAC 480-62-145, 480-62-150, 480-62-155, 480-62-225, 480-62-230, and 480-62-235.

(4) To logging and industrial railroads except for WAC 480-62-200, 480-62-205, 480-62-215, 480-62-240, 480-62-245, 480-62-250, 480-62-300, the portions of WAC 480-62-310 that do not involve grade crossing accidents, WAC 480-62-315 (2), (4) and (5), and WAC 480-62-325.

#### NEW SECTION

**WAC 480-62-135 Additional requirements.** (1) These rules do not relieve any railroad company from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any railroad company in appropriate circumstances, consistent with the requirements of law.

#### NEW SECTION

**WAC 480-62-140 Exemptions from rules.** (1) The commission may grant an exemption from the provision of any rule in this chapter, when doing so in chapter 480-62 WAC is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

(2) To request a rule exemption, a person must file with the commission a written request identifying the rule for which an exemption is sought, giving a full explanation of the reason the exemption is requested.

(3) The commission will assign the request a docket number, if it does not arise in an existing docket, and will schedule the request for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other affected persons, of the date of the hearing or open meeting when the commission will consider the request.

(4) In determining whether to grant the request, the commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

(5) The commission will enter an order granting or denying the request or setting it for hearing, pursuant to chapter 480-09 WAC.

#### NEW SECTION

**WAC 480-62-145 Commission proceedings.** The commission's rules governing administrative practices and procedures are in chapter 480-09 WAC. When a rule in this chapter conflicts with a rule in chapter 480-09 WAC, the rule in this chapter applies.

#### NEW SECTION

**WAC 480-62-150 Grade crossing petitions.** (1) Whenever a railroad company, city, county, the department of transportation, the parks and recreation commission, or the commission seeks to take any of the following actions at a railroad-highway grade crossing, it must file a petition with the commission seeking approval under RCW 81.53.020 and 81.53.060:

(a) Opening a railroad-highway crossing at-grade, or by constructing an overcrossing or undercrossing;

(b) Closing a railroad-highway crossing;

(c) Constructing supplemental safety measures under RCW 81.48.015(1), including, but not limited to, median barriers;

(d) Realigning highway or railroad tracks;

(e) Widening highways;

(f) Constructing multiple tracks; or

(g) Changes to crossing surfaces that alter:

- The dimensions of an existing surface;

- The angle at which the tracks intersect a highway; or

- The vertical alignment of a crossing (i.e., to accommodate track superelevation, or changes in railroad or roadway grade).

(2) Whenever a railroad company, city, county, the department of transportation, the parks and recreation commission, or the commission seeks to take any of the following actions at a railroad-highway grade crossing, it must file a petition with the commission seeking approval under RCW 81.53.261:

(a) Modifying or upgrading warning signals or devices;

(b) Adding a crossing signal;

(c) Adding gates to a crossing signal;

(d) Modifying or upgrading circuitry for a warning signal; or

(e) Installing an intertie between railroad crossing signals and highway traffic signals.

(3) This rule applies to all railroad companies, including logging and industrial railroads, however, it does not apply to crossings within the limits of first class cities, unless federal funding is used at the crossing.

#### NEW SECTION

**WAC 480-62-155 Train speeds.** (1) **Scope of commission authority.** The commission's authority to regulate the speed of trains is established in RCW 81.48.030 but limited by federal law. Under RCW 81.48.030, the commission has the power to "fix and regulate" the speed of trains within the limits of any city and town, other than a first class city and at grade crossings outside the limits of cities and towns. However, under section 205 of the Federal Railroad Safety Act, 49 U.S.C. §20106, states are limited to actions which are "necessary to eliminate or reduce an essentially local safety hazard." Accordingly, the commission will act to limit train speeds below those set by the United States Secretary of Transportation only where it finds that there exists such a local safety hazard and that reduction of the train speed is necessary to eliminate or reduce that hazard.

(2) **Procedure.** The commission will consider whether to set train speed limits below those authorized by the United States Secretary of Transportation either upon petition or upon its own motion.

(a) **Petition process.**

(i) Any person, other than a railroad company, who seeks to have the commission set a train speed limit different from the federally set speed limit or modify an existing limit set by the commission must file with the commission a petition. Such petition must contain the following information:

(A) Name and address of the petitioner;

(B) Specific location and length of track over which the speed limit is sought;

(C) Reasons for the speed limit;

(D) If the petitioner seeks a speed limit different from the federally set speed limit, a detailed explanation of why there exists an "essentially local safety hazard" and why that speed limit is necessary to eliminate or reduce the hazard; and

(E) Any other information the petitioner deems relevant.

(ii) A railroad company that seeks to modify an existing limit set by the commission must file with the commission a petition. Such petition must contain the following information:

(A) Name and address of the railroad company, and a contact person;

(B) Specific location and length of track over which the speed limit is sought;

(C) Class of track over which the speed limit is sought;

(D) Reason for the speed limit requested; and

(E) Any other information the railroad company deems relevant.

(iii) Upon receipt of a petition, the commission will serve the petition on the railroad company, if the railroad company did not file the petition; the governing body of any local government within which the proposed speed limit is intended to apply; and the secretary of the department of transportation. The commission will ask for responses from those persons. The commission will set the matter for consideration at a regularly scheduled or special open meeting or, in its discretion, for a formal adjudicatory proceeding under chapter 34.05 RCW.

(b) **Commission-initiated process.** After investigation, the commission may also initiate a proceeding to set a train speed limit. Such a proceeding will be initiated by serving a notice on the railroad company or companies; the chief executive officer of any local government within which the proposed speed limit is intended to apply; and the secretary of the department of transportation. The notice will contain the information described in (a)(i)(A) through (E) of this subsection, the time for filing responses to the notice and the date, time, and place at which the commission will consider the matter. Such consideration may be at a regular or special open meeting or, in the commission's discretion, in a formal adjudicatory proceeding under chapter 34.05 RCW.

(c) **Burden of proof.**

(i) When a railroad company files a petition to modify an existing limit set by the commission to or within a federally set speed limit, including the information set forth in (a)(ii)(A) through (E) of this subsection, the railroad will be

deemed to have met its burden of proof as to why the speed limit should be modified. The burden then shifts to the governing body of the local government, commission staff, or other interested persons to show that there exists "an essentially local safety hazard," and that a speed limit different from that proposed by the railroad company is necessary to eliminate or reduce the hazard.

(ii) When a person, other than a railroad company, files a petition with the commission to set a train speed limit different from the federally set speed limit or modify an existing limit set by the commission, that person bears the burden of showing that there exists "an essentially local safety hazard," and that the speed limit is necessary to eliminate or reduce the hazard.

(iii) When the commission initiates a proceeding on its own motion to set a train speed limit different from the federally set speed limit or modify an existing limit set by the commission, the commission staff bears the burden of showing that there exists "an essentially local safety hazard," and that the speed limit is necessary to eliminate or reduce the hazard.

(3) **Evidence of what constitutes an "essentially local safety hazard."** In determining whether a train speed limit, lower than authorized by federal law, is necessary to eliminate or reduce an essentially local safety hazard, the commission will include in its consideration, at a minimum, the following:

(a) Whether the local situation is one that is covered by or is capable of being adequately covered by uniform national standards;

(b) Whether there exist unusual local geographic or other conditions which contribute to the existence of the hazard;

(c) The history of accidents or potential for accidents at the location; and

(d) Whether there exist alternate means to reduce or eliminate any hazard that can be included as conditions to an order setting a train speed.

### NEW SECTION

**WAC 480-62-160 Compliance policy.** (1) The commission encourages voluntary compliance with state statutes, rules, and commission orders through the following:

(a) A program emphasizing education and technical assistance; and

(b) A compliance program including inspections and investigation of railroad company operations:

(i) For compliance with state statutes, rules, and commission orders;

(ii) For compliance with Federal Railroad Administration (FRA) rules through the State Safety Participation Program, 49 CFR Part 212. Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) The commission may pursue administrative actions, including, but not limited to, issuing defect notices to railroad companies, reports and recommendations to the FRA, warnings, sanctions, and penalty assessments.

NEW SECTION

**WAC 480-62-165 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

**WAC 480-62-170 Resolving disputes about the meaning of these rules.** If the interpretation of any rule in this chapter is questioned by a railroad company, a request for clarification may be filed with the commission.

**PART 2: SAFETY RULES**NEW SECTION

**WAC 480-62-200 Roadway worker safety and operating rules and statutes.** (1) The commission adopts by reference the following parts of Title 49 of the Code of Federal Regulations (CFR) and Title 49 of the United States Code (U.S.C.) and all pertinent appendices:

- (a) 49 CFR Part 209: Railroad safety enforcement procedure;
  - (b) 49 CFR Part 214: Railroad workplace safety;
  - (c) 49 CFR Part 217: Railroad operating rules;
  - (d) 49 CFR Part 218: Railroad operating practices;
  - (e) 49 CFR Part 219: Procedures for transportation workplace drug testing programs;
  - (f) 49 CFR Part 220: Radio standards and procedures;
  - (g) 49 CFR Part 221: Rear end marking device - passenger, commuter and freight trains;
  - (h) 49 CFR Part 225: Railroad Accidents/Incidents: Reports classification, and investigations;
  - (i) 49 CFR Part 228: Hours of service of railroad employees;
  - (j) 49 CFR Part 239: Passenger train emergency preparedness;
  - (k) 49 CFR Part 240: Qualification and Certification of Locomotive Engineers Hours of Service;
  - (l) 49 U.S.C. Chapter 211: Hours of Service.
- (2) Information about Title 49 CFR and Title 49 U.S.C. regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(3) All violations of the above incorporated rules and statutes will be submitted to the Federal Railroad Administration for enforcement action pursuant to the State Safety Participation Program, 49 CFR Part 212.

NEW SECTION

**WAC 480-62-205 Track safety standards.** (1) Rules governing track safety standards are prescribed by the United States Department of Transportation in Title 49, Part 213, of the Code of Federal Regulations, along with appendices. Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) All violations of the above incorporated rules will be submitted to the Federal Railroad Administration for enforcement action pursuant to the State Safety Participation Program, 49 CFR Part 212.

NEW SECTION

**WAC 480-62-210 Crossing signal circuitry.** (1) Rules governing grade crossing signal system safety are prescribed by the United States Department of Transportation in Title 49 of the Code of Federal Regulations, Part 234 along with appendices. Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) All violations of the above incorporated rules will be submitted to the Federal Railroad Administration for enforcement action pursuant to the State Safety Participation Program, 49 CFR Part 212.

(3) Violations involving all railroad companies not subject to the jurisdiction of the Federal Railroad Administration will be enforced pursuant to WAC 480-62-160, Compliance policy.

NEW SECTION**WAC 480-62-215 Hazardous materials regulations.**

(1) Rules governing hazardous materials are prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Parts 171 through 174, and Parts 178 and 179, and the appendices to Title 49. Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) All violations of the above incorporated rules and statutes will be submitted to the Federal Railroad Administration for enforcement action pursuant to the State Safety Participation Program, 49 CFR Part 212.

NEW SECTION**WAC 480-62-220 Blockage of public grade crossings.**

(1) Railroad companies must not block a grade crossing for more than ten consecutive minutes, if reasonably possible.

(2) A blocked grade crossing must be cleared immediately by the fastest available method, if the train movement will not violate rules issued by the Federal Railroad Administration, upon the request of law enforcement or other emergency services personnel, or when the engineer becomes aware that the crossing is being approached by a law enforcement or other emergency services vehicle with its emergency lights flashing or that such a vehicle is stopped with its emergency lights flashing at the crossing blocked by the train.

(3) A grade crossing is "blocked" if any part of a stopped train occupies the crossing or causes warning devices to be activated.

NEW SECTION

**WAC 480-62-225 Crossing surfaces.** (1) **Areas of responsibility.**

(a) Highway authorities must maintain and keep in repair the surfaces and the subgrades of the roadway approaches up to one foot from the outside of either rail at a grade crossing with one track. At crossings involving more than one track, the highway authority must maintain and keep in repair the roadway approaches up to one foot from the outside of each of the two outside rails.

(b) At a grade crossing with one track, railroad companies must maintain and keep in repair the crossing surfaces between the rails and for a distance of one foot on the outside of either rail. At crossings involving more than one track, railroad companies must maintain and keep in repair the crossing surfaces and the roadway for the entire area between the outermost rails at the crossing, and for a distance of one foot outside of the two outermost rails.

(c) If tracks at a crossing involving more than one track are owned by different railroad companies, each company must maintain and keep in repair the crossing surfaces and roadway within its right of way that is within the area specified in (b) of this subsection.

**(2) Crossing surfaces.**

(a) Crossing surfaces include shoulders and pedestrian walkways immediately adjacent to a roadway or shoulder. If reasonably possible, roadways and adjacent shoulders and pedestrian walkways must be continued through a crossing without narrowing the roadway, shoulder or walkway.

(b) The subgrade to a crossing surface must be maintained in a manner which minimizes damage to the crossing surface, taking into account the effects of topography, water tables, weather, and the types of vehicular traffic generally using the crossing.

**(3) Roadways.**

(a) Roadways between tracks at crossings involving more than one set of tracks, including the roadway subgrade, must be of the same quality as the roadway approaches to the crossing unless the highway authority and the railroad company agree to a higher quality.

(b) Roadway approaches must be constructed and maintained so that the transition between the roadway and crossing surface is on the same plane and smooth.

(c) At grade crossings where track superelevation exists, roadway approaches must be constructed and maintained so that the transition between the roadway and crossing surface is as smooth as practicable.

**(4) Standards for surface maintenance and repair.** Crossing surfaces must be convenient and safe for passage. Some factors in determining compliance with this general standard are:

(a) Whether crossing surfaces and the adjacent roadways are level with the top of the rails on the plane created by each set of tracks.

(b) Whether crossing surfaces are broken or loose.

(c) The existence of potholes.

(d) The existence of curled or rolled asphalt.

(e) Whether traffic generally slows to traverse the crossing.

(f) Citizen complaints.

(5) **Notice.** Notice requirements for highway authorities and railroad companies when performing maintenance on a crossing surface are located in WAC 480-62-305 (4) and (5).

NEW SECTION

**WAC 480-62-230 Traffic control devices.** (1) Whenever a railroad company performs any construction, maintenance or repairs at a grade crossing or grade separated crossing, the company must install and maintain traffic control devices adequate to protect the public and railroad employees. Flaggers must also be provided where necessary to adequately protect the public and railroad employees.

(2) The rules governing traffic control devices are prescribed in the Manual on Uniform Traffic Control Devices and chapter 468-95 WAC. Information about the Manual on Uniform Traffic Control Devices and chapter 468-95 WAC regarding the versions adopted and where to obtain them is set out in WAC 480-62-999.

(3) Any traffic control device must be used only as long as the device is needed or applicable. Any device that is no longer needed or applicable must be immediately removed or inactivated so as to prevent confusion.

(4) All barricades, signs, and similar devices must be constructed and installed in a workmanlike manner.

(5) Bushes, weeds, or any other material or object must not be allowed to obscure any traffic control devices.

(6) All signs, barricades, and other control devices intended for use during hours of darkness must be adequately illuminated or reflectorized, with precautions taken to protect motorists from glare.

NEW SECTION

**WAC 480-62-235 Flaggers.** (1) The rules in this section apply whenever a railroad company engages in the maintenance, repair, or construction of a grade crossing or grade separated crossing; however, they do not apply when flaggers are provided only because of a crossing signal malfunction or only because of inspections or repairs to a crossing signal system. The latter circumstances are covered by 49 CFR, Part 234. In addition, 49 CFR Part 234.5 recommends that railroad companies follow the requirements of Part VI of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) to the extent possible. The commission further recommends that railroads also abide by the following rules to the extent possible in situations covered by 49 CFR Part 234.

(2) Except as otherwise required in this section, traffic control devices, signs, barricades, and signaling methods must be set up and used by individuals trained in and familiar with the provisions of and according to the guidelines in the Manual on Uniform Traffic Control Devices, Part VI.

(3) Flaggers are to be used only when other reasonable means of control will not adequately control traffic in work zones. It may be reasonable in some cases to close the road on which the crossing is located, but only if agreed to by the public authority responsible for the roadway.

(4) Standards for high-visibility safety apparel.

(a) While flagging during daylight hours, a flagger must, at a minimum, wear:

- A high-visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, American National Standards for High-Visibility Safety Apparel, specifically, a garment containing at least seven hundred seventy-five square inches of background material and two hundred one square inches of retroreflective material; and

- A high-visibility hard hat.

(b) While flagging at night, a flagger must, at a minimum, wear:

- A high-visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999 over white coveralls, or other coveralls or trousers designed according to ANSI/ISEA 107-1999 standards; and

- A high-visibility hard hat that is marked with at least twelve square inches of reflectorized material providing three hundred sixty degrees of visibility.

(c) While flagging during inclement weather, yellow rain gear, white rain gear, or rain gear designed according to ANSI/ISEA 107-1999 may be substituted for white coveralls.

(5) Railroad companies must develop and use a method to ensure that whenever there is any potential hazard associated with motor vehicles, construction equipment, or on-track equipment, that flaggers have adequate warning of objects approaching from behind the flagger.

Note: The following are some nonmandatory examples of methods that may be used to adequately warn flaggers:

- Mount a mirror on the flagger's hard hat;
- Use a motion detector with audible warning; or
- Use a spotter.

(6)(a) Railroad companies must conduct an on-site safety briefing for flaggers each time a flagger reports for duty, and also when job site conditions change significantly. The briefing must include applicable portions of the traffic control plan and any changes applicable during the flagger's shift. If not covered in the traffic control plan, the briefing must also include:

- The flagger's role and location at the job site;
- Motor vehicles and equipment in operation at the site;
- Job site traffic patterns;
- Communications and signals to be used between flaggers and equipment operators;
- Expected train and other on-track equipment movements;
- On-foot escape route; and
- Other hazards specific to the job site.

(b) When flaggers are used on a job site at a roadway allowing speeds of forty-five mph or more and the job will last more than one day, the railroad company must keep on the site a current site-specific traffic control plan. The purpose of this plan is to help move traffic through or around the construction zone in a way that protects the safety of the traveling public, pedestrians and workers. The plan must include, but is not limited to, such items as:

- Sign use and placement;
- Application and removal of pavement markings;
- Construction;
- Scheduling;

- Methods and devices for delineation and channelization;

- Placement and maintenance of devices;
- Placement of flaggers;
- Roadway lighting;
- Traffic regulations; and
- Surveillance and inspection.

(7)(a) Where flaggers are used on roads allowing speeds of at least forty-five mph, the railroad company must provide an additional warning sign marked "BE PREPARED TO STOP."

(b) This sign is in addition to those required by Part VI of the Manual on Uniform Traffic Control Devices. It should be placed between the last two warning signs in the series or on the opposite side of the road when used on undivided roads.

(c) This additional sign does not increase the required advance warning area.

(d) The purpose of this additional sign is to clearly point out that a flagger will be encountered and the driver should be prepared to stop.

(8) To protect flaggers, railroad companies must ensure that:

(a) Flagger workstations are illuminated at night and during inclement weather by floodlights. It is important to adequately illuminate the workstation without creating glare in the eyes of approaching drivers. The adequacy and proper placement of floodlights can best be determined by driving through and observing the workstation from each direction on the roadway.

(b) Warning signs reflect the actual condition of the work zone. When not in use, warning signs should either be taken down or covered.

(c) Flaggers are not assigned other duties while engaging in flagging activities.

(d) Flaggers do not use devices (e.g., cell phones, pagers, or radio headsets) that may distract the vision, hearing, or attention of the flagger. Devices such as two-way radios used for communication between flaggers to direct traffic or ensure flagger safety are acceptable.

(e) Flaggers receive appropriate breaks from flagging so they can remain attentive and alert.

(9) Unless an emergency makes it impossible, before performing any work, railroad companies must coordinate all repair, maintenance, and construction work with the governing authority responsible for the road on which the crossing exists.

(10) Information about Title 49 CFR, the Manual on Uniform Traffic Control Devices, and ANSI/ISEA 107-1999 regarding the versions adopted and where to obtain them is set out in WAC 480-62-999.

## NEW SECTION

**WAC 480-62-240 Passenger carrying vehicles—Equipment.** (1) Equipment requirements for all vehicles.

(a) Vehicles must comply with all applicable equipment requirements of Title 46 RCW.

(b) Vehicles must have exhaust systems that prevent exposure of passengers to the vehicle's emissions.

(c) Vehicles must have two external rear vision mirrors, one at each side of the cab. The mirrors must be firmly

attached to the motor vehicle at a point where the driver is provided a view of the highway to the rear along both sides of the vehicle. An outside mirror may be placed only on the driver's side on vehicles in which the driver has a view to the rear by means of an interior mirror.

(d) Vehicles must be equipped with a steering system maintained to insure that lash or preplay do not exceed those values set forth in 49 CFR, Parts 570.7 and 570.60 (Vehicle in Use Inspection Standards). Information about Title 49 CFR regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(e) Vehicles must have a heating system that will maintain an ambient temperature of at least fifty-five degrees in passenger areas.

(f) Vehicles must have at least three red-burning fuses, three red portable emergency reflectors, or at least two red cloth flags suitable for warning the motoring public in an emergency. The driver must ensure that such equipment is in the vehicle and is maintained in good condition. Any devices that may create a spark or open flame must be carried in a separate compartment or a closed metal container provided for that purpose.

(g) Vehicles must have a two and one-half pound dry chemical fire extinguisher or its equivalent, properly filled and located where it is readily accessible for use. The extinguisher must allow visual determination of the state of its charge at all times. The extinguishing agent must be non-toxic and preferably noncorrosive. The fire extinguisher must be suitable for attachment to the motor vehicle, bear the label of approval by the Underwriters Laboratories, Inc., and be kept in good working condition at all times.

(h) Vehicles must have a first-aid kit located where it is readily accessible. The kit must contain all of the items specified in WAC 296-24-06145 and 296-24-06160, Appendix 2, adopted by the department of labor and industries. Additionally, the kit must contain gloves capable of preventing exposure to bloodborne pathogens. Items used from first-aid kits must be replaced before the next shift, and kits must be checked for compliance with this rule if the seal on the kit is broken. Information about chapter 296-24 WAC regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(2) Equipment requirements for specified vehicles.

(a) Coupling devices used on a vehicle equipped with retractable flange wheels for operation on railroad tracks must be substantial and made of metal. The devices must be equipped with safety chains or straps of sufficient strength to prevent separation in the event of accidental uncoupling.

(b) A passenger compartment separate from the cab of the vehicle must be made of metal and be fastened directly to the frame of the vehicle. The compartment must have an interior lining sufficient to absorb condensation, and padded seats and backrests firmly secured in place. The floor of the compartment must be constructed to bear the weight of all cargo and passengers. The floor must not have unnecessary openings, and it must be constructed to prevent the entry of noxious fumes or permeation with flammable materials. The compartment must have a curtain of nonpermeable material of sufficient weight and size to close off the rear opening and a tailgate which must be closed whenever the vehicle is in

motion. If the bottom of the entrance to the passenger compartment is more than three feet six inches above ground level, the vehicle must have permanent or temporary steps designed for the safe boarding and discharge of passengers.

(c) Communication between a cab and a separated passenger compartment must be provided by means of a light or audible device mounted in the cab of the vehicle that may be activated by a passenger in the rear compartment.

(d) On vehicles designed to transport nine or more passengers, an emergency exit must be placed at the end of the vehicle opposite the regular entrance. The exit must be at least six and one-half square feet in area, and the smallest dimension must be at least eighteen inches. The route to and from the emergency exit must be unobstructed at all times.

## NEW SECTION

### **WAC 480-62-245 Passenger carrying vehicles—**

**Operation.** (1) **General.** All passenger carrying motor vehicles must be operated in compliance with state law no matter where the vehicle is operated. Drivers must operate vehicles in a careful and prudent manner and at reasonable and proper speeds, with due regard to circumstances and to the use of highways by others.

(2) **Minimum age, skill, and physical condition of drivers.** Drivers of passenger carrying vehicles must be at least eighteen years old. Before being allowed to drive or operate a passenger carrying vehicle, drivers must have demonstrated the physical capability of handling the controls of the vehicle with ease. Before driving a vehicle, drivers or operators must obtain either a valid Washington state driver's license or a valid license from the state of the driver's residence. The driver must carry the license at all times while operating a vehicle. If the passenger carrying vehicle is a type for which the state of Washington requires an extraordinary license or endorsement, the driver must have such license or endorsement.

(3) **Driver's daily hours of service.** No driver of any passenger carrying vehicle may drive for more than ten hours without resting afterward for a minimum of eight consecutive hours.

(4) **Refueling.** No driver or any employee of a railroad company operating within the state may:

(a) Fuel a passenger carrying vehicle with the engine running;

(b) Smoke or expose any flame in the vicinity of a vehicle being fueled;

(c) Fuel a passenger carrying vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank;

(d) Insofar as practicable, permit any other person to engage in activities that might result in a fire or explosion. Except on buses, all occupants of the vehicle, except the driver and those within the operating cab, must dismount and stand clear while the vehicle is being refueled.

(5) **Driving rules.**

(a) Drivers must bring vehicles to a complete stop not less than fifteen feet from the nearest rail of any at-grade crossing before crossing the track except:



- Where traffic is controlled by a police officer or a duly authorized flagger;
- Where traffic is regulated by a traffic control signal;
- Where traffic is controlled by crossing gate arms or an alternately flashing light signal intended to give warning of the approach of a train;
- Where an official traffic control device as designated by the commission pursuant to RCW 81.53.060 (i.e., an "EXEMPT" sign, specified as R15-3 by the Manual on Uniform Traffic Control Devices) gives notice that the stopping requirement imposed by this section does not apply. Information about the Manual on Uniform Traffic Control Devices regarding the version adopted and where to obtain it is set out in WAC 480-62-999.

(b) Drivers must not change gears while crossing any railroad tracks.

(c) No driver may drink intoxicating liquors while on duty, or drive while affected by the use of intoxicating liquor or other substance which might impair the ability to drive.

(d) No driver may proceed down a grade with the gears in neutral or the clutch disengaged.

(e) At the beginning of his or her use of a vehicle, the driver must perform a brake test immediately before, and immediately after, the vehicle begins moving to ensure that the brakes are functioning properly.

(6) **Loading and carrying of passengers.** Drivers are in charge of the vehicle and must require passengers to observe vehicle rules. Passengers may not enter or exit from the vehicle while it is in motion, or ride on running boards, fenders, bumpers, tops of cabs, or with any part of their body projecting beyond the sides or the ends of the vehicle. When equipment or tools are carried inside the vehicle, they must be stored in enclosed racks or boxes that are secured to the vehicle in a manner that prevents employees from being struck in the event of sudden starts, stops, or turns. The driver must assure that tools and materials are properly secured before moving the vehicle.

(7) **Limitation on transportation of explosives, gasoline, and other hazardous materials on passenger carrying vehicles.** Explosives other than track torpedoes and fuses may not be carried in or on any vehicle while the vehicle is being used to transport crew members in a passenger compartment. If track torpedoes or fuses are carried in a passenger carrying vehicle, they must be carried in a separate compartment or container provided for that purpose. Gasoline, or other hazardous materials, must not be carried in either the cab or in the passenger compartment; however, oxygen or acetylene cylinders may be carried if gauges and regulators have been removed with caps in place before loading. Passenger carrying vehicles may be used to carry flammable materials when they are located outside of and isolated from the passenger carrying area, and are stored in containers approved by the Underwriters Laboratories, Inc. Containers for fuel must be vented in a manner that prevents the hazardous concentration of fumes. All tools and equipment, including cylinders, containers, or drums, must be properly secured where they will not interfere with the use of any exit. A passenger carrying vehicle containing hazardous materials must not be parked within three hundred feet of an open fire.

Smoking is prohibited within fifty feet of a vehicle carrying explosive or flammable materials.

#### NEW SECTION

**WAC 480-62-250 On-track equipment.** (1) When approaching and passing over a railroad-highway grade crossing, operators of motor track cars, speeders, or other on track equipment must remain in complete control of the equipment, be prepared to stop for vehicular or pedestrian traffic on the highway, stop if necessary to avoid an accident, and provide effective warning for vehicular or pedestrian traffic at the crossing.

(2) Railroad companies that allow persons other than railroad personnel on official railroad business to operate motor track cars, speeders, or other on track equipment on their track must ensure that the operators comply with subsection (1) of this section.

### **PART 3: REPORTING REQUIREMENT RULES**

#### NEW SECTION

**WAC 480-62-300 Annual reports.** (1) The surface transportation board annual report form R1 must be used by Class I railroad companies as the annual report form for submission to the commission. Class II and Class III railroad companies must use report forms periodically published by the commission.

(2) Each year every railroad company is responsible for obtaining the proper report form from the commission. Reports must be completed for the preceding calendar year's operations. One copy of the completed annual report must be submitted to the commission no later than May 1 of the succeeding year.

#### NEW SECTION

**WAC 480-62-305 Railroad community notice requirements.** This rule is not intended to cover immediate safety hazards or emergencies.

(1) At least ten days prior to taking any planned action that may have a significant impact on a community, railroad companies must notify, in writing, the governing authority of the community and the commission of the planned action.

Note: Maintenance practices, such as replacing broken planks if the opportunity to do so is unexpectedly presented, are not considered to be planned actions and would likely prevent safety hazards. In such situations, advance notice would not be required.

(2) Examples of actions that may have significant impact on a community include disrupting the use of a crossing for track inspection, reconstruction, maintenance, or blocking a crossing.

(3) The notice must contain a heading with the words "important notice" in prominent type and contain, at a minimum, the following:

- (a) Date the notice is issued;
- (b) A clear explanation of the type of planned event;
- (c) Specific location of the event;

(d) An estimation of the start and completion date of the event;

(e) Any additional information that will assist the community to plan for the event;

(f) Railroad company contact person and phone number; and

(g) A statement substantially as follows: "If you have questions about the regulatory process, you may contact the Washington Utilities and Transportation Commission at: WUTC, 1300 S. Evergreen Park Dr. S.W., P.O. Box 47250, Olympia, WA 98504-7250; 1-800-562-6150 (toll-free). Also, you may contact the Federal Railroad Administration at 1-800-724-5998 (toll-free)."

(4) Whenever a highway authority plans to perform maintenance that will affect a crossing, it must notify the railroad company and local jurisdiction at least ten days before performing the maintenance.

(5) Whenever a railroad company plans to perform maintenance that involves changing the type of material used as a grade crossing surface, it must also notify the commission at least ten days prior to performing the replacement.

#### NEW SECTION

**WAC 480-62-310 Accident reports.** (1) A railroad company must make a telephone report to the commission's designee, the Washington state emergency operations center's twenty-four-hour duty officer (duty officer) at 1-800-258-5990 of any event connected to the operation of the railroad company that results in the:

(a) Release of any hazardous material (i.e., materials that are corrosive, flammable, explosive, reactive with other materials, or toxic);

(b) Death of any person;

(c) Injury to any person involved in a railroad-highway crossing accident that requires medical treatment in addition to first aid; or

(d) Property damage, amounting to fifty thousand dollars or more to property.

(2)(a) Telephone reports of events listed in subsection (1) of this section must be made by the railroad company within thirty minutes of when it learned of the event. The report must provide detailed information of the event to the duty officer. After receiving the telephone report from the railroad company, the duty officer will identify the necessary critical response and remediation resources and agencies on an initial and continuous basis through the completion of the response to the event; and

(b) The duty officer will notify the commission, the affected county or city emergency management office and other appropriate agencies of the event report.

(c) Provisions contained in (a) and (b) of this subsection must be carried out in accordance with the state's twenty-four hour duty officer standard procedures and the Washington Emergency Management Act, chapter 38.52 RCW.

(3) Each event report made under subsection (1) of this section by a railroad company must state, to the extent known, the:

(a) Name of the railroad(s) involved;

(b) Name and position of the reporting individual;

(c) Time and date of the event;

(d) Circumstances of the event;

(e) Number and identity of persons suffering injuries;

(f) Number of fatalities and the identities of the deceased;

(g) The type and amount of hazardous material spilled; and

(h) Other details that will assist in identifying the necessary response, as prompted by the duty officer.

(4) Accidents involving joint railroad company operations must be reported by the railroad company that controls the track and directs the movement of trains where the accident has occurred.

(5) Whenever a railroad company submits an event report to the Federal Railroad Administration, it must submit a copy to the commission at the same time.

(6) Whenever a railroad submits a report to the United States Department of Transportation concerning a hazardous materials incident or accident, it must submit a copy of the report to the commission at the same time.

#### NEW SECTION

**WAC 480-62-315 Miscellaneous reporting requirements.** (1) Within thirty days of a request from the commission, every railroad company must report to the commission on the sales, transfers or abandonments of all trackage which crosses a public road. The report must contain a description of the transaction, clear identification of the track involved in the transaction, the effective date of the transaction, and the name and address of the last known owner(s) or operator(s) of the section transferred.

(2) Upon request, every railroad company and railroad company official must report to the commission the information then available to it regarding the average number of daytime through trains, nighttime through trains, and switching movements over specific grade crossings in its control. Reports must identify each crossing by USDOT number and road name.

(3) Upon request, every railroad company must inform the commission in writing of the names, addresses, and telephone numbers of the persons to whom to report emergencies of any nature, and problems or defects with crossing signals, passive warning devices, and crossing surfaces. The information must be current at all times.

(4) Upon request, every railroad company must provide the commission with access to or copies of track profiles. This requirement may be satisfied by allowing electronic access to track profiles.

(5) Upon request, every railroad company must provide the commission with access to or copies of its timetable. This requirement may be satisfied by allowing electronic access to the timetables.

#### NEW SECTION

**WAC 480-62-320 Remote controlled operations.** (1) Railroad companies, including logging and industrial railroad companies, must report their intention to use remote control

devices to operate trains thirty days before operations begin. The report must include:

- (a) The name of the railroad company;
- (b) The date operations will start;
- (c) The location of the operations; and
- (d) Whether trains with locomotives operated by remote control will travel over at-grade pedestrian or vehicular crossings.

(2) If remote controlled trains will be operated over crossings, the railroad company must list the affected crossings.

(3) Each railroad company using remote control devices on the effective date of this rule must submit the report within thirty days after the effective date.

NEW SECTION

**WAC 480-62-325 Railroad police officers—Notice.**

(1) Every railroad company that has employees who are commissioned as railroad police officers pursuant to chapter 81.60 RCW must send written notice to the commission within thirty days after the effective date of these rules.

(2) When any person is commissioned as a railroad police officer, an officer’s commission is terminated, or a change occurs in the information previously reported under subsection (3) of this section, the affected railroad company must send written notice to the commission within ten days after the change occurs.

(3) The notices specified in subsections (1) and (2) of this section must contain the following information:

- (a) The name of the railroad police officer;
- (b) The badge number, identification number, code or other identifying information assigned to the railroad police officer;
- (c) The date of commission;
- (d) The state or states where the railroad police officer is commissioned; and
- (e) The address and telephone number of the officer’s primary business office.

**PART 4: ADOPTION BY REFERENCE**

NEW SECTION

**WAC 480-62-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) Title 49 Code of Federal Regulations, cited as 49 CFR, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 29, 2001.

(b) This publication is referenced in WAC 480-62-160, 480-62-200, 480-62-205, 480-62-210, 480-62-215, 480-62-235 and 480-62-240.

(c) Copies of Title 49 Code of Federal Regulations are available from the Seattle Office of the Government Printing Office and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on January 29, 2001.

(b) This publication is referenced in WAC 480-62-230, 480-62-235 and 480-62-245.

(c) Copies of the MUTCD are available from the Seattle Office of the Government Printing Office and from various third-party vendors.

(3) **Washington state department of transportation rules**, cited as chapter 468-95 WAC, are published by the statute law committee.

(a) The commission adopts the version in effect on January 29, 2001.

(b) This publication is referenced in WAC 480-62-230.

(c) Copies of the Washington state department of transportation rules are available from the department of transportation or on the internet website for the office of the code reviser (slc.leg.wa.gov).

(4) **Washington state department of labor and industries rules**, cited as chapter 296-24 WAC, are published by the statute law committee.

(a) The commission adopts the version in effect on January 29, 2001.

(b) This publication is referenced in WAC 480-62-240.

(c) Copies of the Washington state department of labor and industries rules are available from the department of labor and industries or on the internet website for the office of the code reviser (slc.leg.wa.gov).

(5) **ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on January 29, 2001.

(b) This publication is referenced in WAC 480-62-235.

(c) Copies of ANSI/ISEA 107-1999 - American National Standard for High-Visibility Safety Apparel are available from the American National Standards Institute, 11 West 42nd Street, NY, NY 10036 or on the internet website for the American National Standards Institute (<http://web.ansi.org/>).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-62-010	Locomotive speedometers.
WAC 480-62-020	Traffic control devices.
WAC 480-62-030	Flagpersons.
WAC 480-62-040	Exemption.
WAC 480-62-050	Passenger carrying vehicles—General.

PERMANENT

WAC 480-62-060	Passenger carrying vehicles—Equipment.
WAC 480-62-070	Passenger carrying vehicles—Operation.
WAC 480-62-080	Accident reports.
WAC 480-62-085	Annual reports.
WAC 480-62-090	Hazardous materials regulations.
WAC 480-62-100	Bridge safety rules.
WAC 480-62-120	Train operations—Tacoma.

**WSR 01-04-037****PERMANENT RULES****DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 00-254—Filed January 31, 2001, 11:23 a.m.]

Date of Adoption: December 8, 2000.

Purpose: To amend WAC 232-28-02203, 232-28-02204, 232-28-02206, 232-28-260, 232-28-271, 232-28-275, and 232-28-277.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-02203, 232-28-02204, 232-28-02206, 232-28-260, 232-28-271, 232-28-275, and 232-28-277.

Statutory Authority for Adoption: RCW 77.12.040, 77.12.020, 77.04.012.

Adopted under notice filed as WSR 00-22-110, 00-22-111, 00-22-112, 00-22-106, 00-22-109, 00-22-108, 00-22-107 on November 1, 2000.

Changes Other than Editing from Proposed to Adopted Version: WAC 232-28-02203 Game management units (GMUs)—Special game areas—Boundary descriptions—Region three. Changes, if any, from the text of the proposed rule and reasons for difference: None.

WAC 232-28-02204 Game management units (GMUs)—Special game areas—Boundary descriptions—Region four. Changes, if any, from the text of the proposed rule and reasons for difference: In the GMU 426 Diablo description all of the geographic abbreviations were spelled out to be consistent with the other boundary descriptions.

WAC 232-28-02206 Game management units (GMUs)—Special game areas—Boundary descriptions—Region six. Changes, if any, from the text of the proposed rule and reasons for difference: None.

WAC 232-28-260 Special hunting seasons. Changes, if any, from the text of the proposed rule and reasons for difference:

- Subsection (5)(a) delete "is not" and insert "are." This makes it consistent with WILD system requirements.
- Subsection (5), delete subsections (5)(b) through (5)(d). The change is because, given the WILD system, a valid license and transport tag are required to submit a special permit application.

- Subsection (7)(b), delete the complete sentence "To qualify or a black bear drawing..." and replace with "To qualify for a black bear drawing, all applications must be submitted no later than 12:00 a.m. on March 18 of the year of the drawing." The change is because licenses are not available for purchase until March 1.
- Subsection (7)(f)(ii), changed the word applicant to application; for clarity.

WAC 232-28-271 Private lands wildlife management area seasons, rules, and boundary descriptions. Changes, if any, from the text of the proposed rule and reasons for difference:

- In the Merrill and Ring (PLWMA 600) Pysht Tree Farm Deer General Seasons on Private Lands Wildlife Management Areas table: Changed the Modern Firearm season dates from November 18-21 to November 15-18. This was changed at the request of Joe Murray, Merrill and Ring.
- In the 2001 Mule and Whitetail deer table for Buckrun Limited: Changed the Access Quotas from 100 to 150, this quota will provide greater flexibility in meeting population objectives.
- In the 2000 Mule Deer Buckrun Limited Population Control Deer Hunting table: Eliminated the whole table to reduce hunter confusion.
- In the Merrill and Ring 2001 Blacktail Deer table: Deleted the word "Raffle" from the title and eliminated the sentence starting with - Only hunters possessing a valid..., and replaced it with the sentence starting with - Hunters must possess a valid... This change was necessary to reduce hunter confusion regarding Merrill and Ring raffle hunts. Also the Raffle Season dates for the Pysht North B hunt were changed from October 1-9 to October 1-10. This day was added at the request of Joe Murray, Merrill and Ring. In the table under Pysht North D, delete the word raffle. Delete the Pysht Tree Farm hunt.
- In the Merrill and Ring 2001 Elk table: Changed the wording in the Special Restriction column from - Raffle, Any Elk, Any Tag - to Any Bull Elk, Any Weapon. This change was made at the request of Joe Murray, Merrill and Ring.
- In the PLWMA 201 - Buckrun Limited Area Description: The description was proposed to be eliminated, to ensure legal certainty we will retain the PLWMA legal description.

WAC 232-28-275 Black bear special permit season and quotas. Changes, if any, from the text of the proposed rule and reasons for difference:

- Eliminated the Harvest Report Cards section; to be consistent with the draft mandatory reporting system.
- In the section: "Who May Apply," delete new language and replace with: Who May Apply: Anyone with a valid Washington big game license which includes black bear. The change will allow WDFW to use the new WILD system for the spring black bear application and selection process. Given the WILD system, applicants must have a valid license and transport tag to purchase and submit a spring black bear application.

WAC 232-28-277 Big game and wild turkey auction permits and raffles. Changes, if any, from the text of the proposed rule and reasons for difference:

- Add headings for 2001 and 2002-2003 auction permit hunts; for clarity.
- Add original language for 2001 auction permits for elk, sheep, and moose; added because contracts have already been established for auctioning these permits.
- Add language for 2001 deer and mountain goat auction permits; for clarity.
- Change wording for open season dates for 2002-2003 auction and raffle permits; for clarity.
- Add language for weapon restrictions for 2001 and 2002-2003 auction permits for Westside elk, moose, and mountain goat; for clarity.
- Add sheep unit 14 (Swakane) to hunt area for 2002-2003 bighorn sheep auction and raffle permits; added because the number of mature rams is increasing.
- Add headings for 2001 and 2002-2003 raffle permit hunts; for clarity.
- Add original language for 2001 raffle permits for deer, elk, sheep, and moose; for consistency with 2001 auction opportunities.
- Add language for 2001 mountain goat raffle permit; for clarity.
- Add open season dates for 2002-2003 Westside elk raffle permit; for clarity.
- Change language in 2001 deer raffle permit hunt to be consistent with the deer auction permit.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

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

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

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

January 30, 2001

Debbie Nelson

for Kelly D. White, Chairman  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

**WAC 232-28-02203 Game management units (GMUs)—Special game areas—Boundary descriptions—Region three.**

**GMU 328-NANEUM (Kittitas and Chelan counties):** Beginning at Swauk Pass on U.S. Highway 97 and USFS Road 9716; east on USFS Road 9716 to the Liberty-Beehive Road (USFS 9712); east on the Liberty-Beehive Road to the west boundary of Section 22 (T21N, R19E); southeast along the ridge past Mission Peak to Wenatchee Mountain and Naneum Ridge Road (WDFW Road 9); southeast on the Naneum Ridge Road to the Colockum Pass Road (WDFW Road 10); south on the Colockum Pass Road to the East Highline Canal; northwest along the East Highline Canal to the Lower Green Canyon Road; south on the Lower Green Canyon Road to U.S. Highway 97; north on U.S. Highway 97 to Swauk Pass and the point of beginning.

**GMU 329-QUILOMENE (Kittitas and Chelan counties):** Beginning on the Columbia River at the mouth of Tarpiscan Creek; south along the Columbia River to Vantage and Interstate Highway 90; west on Interstate Highway 90 to the East Highline Canal; north on the East Highline Canal to the Colockum Pass Road (Road 10); north on the Colockum Pass Road to North Fork Tarpiscan ((~~Creek~~) Road (Rd 10.10)); east (~~(down)~~) on North Fork Tarpiscan Road to North Fork Tarpiscan Creek; east on North Fork Tarpiscan Creek and Tarpiscan Creek to the Columbia River and the point of beginning.

**GMU 334-ELLENSBURG (Kittitas County):** Beginning on U.S. Highway 97 and the Lower Green Canyon Road; north on the Lower Green Canyon Road to the East Highline Canal; east and south along the canal past Interstate 90 to the pump station; south and west along the north branch of the canal to State Highway 821 and the Yakima River; north along the Yakima River to the Damon Road; south on Damon Road and Shushuskin Canyon to the South Branch Extension Canal; west along the canal to the Bradshaw Road; west along Bradshaw Road to the elk fence; west and north along the elk fence to Taneum Creek; east along Taneum Creek to the Yakima River; southeast along the Yakima River to the Thorp Highway; east on the Thorp Highway and State Highway 10 to U.S. Highway 97; north along U.S. Highway 97 to the Lower Green Canyon Road and the point of beginning.

**GMU 335-TEANAWAY (Kittitas County):** Beginning at Snoqualmie Pass on the Pacific Crest Trail; north on the Pacific Crest Trail to the Alpine Lakes Wilderness Boundary; east on the Alpine Wilderness Boundary to the Chelan-Kittitas County line; southeast on the county line and Trail 1226 to Swauk Pass and U.S. Highway 97; south on U.S. Highway 97 to State Highway 10; northwest on State Highways 10, 970, 903 to Cle Elum and Interstate 90; west on Interstate 90 to Snoqualmie Pass and the Pacific Crest Trail and the point of beginning.

**GMU 336-TANEUM (Kittitas County):** Beginning at the Pacific Crest Trail and Interstate 90 at Snoqualmie Pass; east on Interstate 90 to Cle Elum and State Highway 903; east on State Highways 903, 970 and 10 to the Thorp Highway; southeast on the Thorp Highway to the Thorp Highway Bridge and the Yakima River; southwest along the Yakima River (upstream) to Taneum Creek; west along Taneum Creek to the South Fork Taneum Creek; west along the South

Fork Taneum Creek to Trail 1367; west on Trail 1367 to Trail 1363; south on Trail 1363 and south along Peaches Ridge to Trail 1388; west on Trail 1388 to Blowout Mountain on the Pacific Crest Trail; north on the Pacific Crest Trail to Snoqualmie Pass and the point of beginning.

**GMU 340-MANASTASH (Kittitas County):** Beginning at Quartz Mountain and Peaches Ridge (Trail 1363); north and east on Trail 1363 to Trail 1367; southeast on Trail 1367 to the South Fork Taneum Creek; east along the South Fork Taneum Creek to Taneum Creek; east along Taneum Creek to the elk fence; southeast along the elk fence to Bradshaw Road; east on Bradshaw Road to the South Branch Highline Canal; southeast along the South Branch Highline Canal to the Wenas-Ellensburg Road (at Shushuskin Canyon); north on the Wenas-Ellensburg Road to the Damon Road; north on the Damon Road to the Yakima River; south along the Yakima River to Umtanum Creek; west along Umtanum Creek to the Wenas-Ellensburg Road; west on the Wenas-Ellensburg Road to Ellensburg Pass and the Observatory Road (Section 6, T16N, R17E); north on the Observatory Road to Manastash Ridge (Section 20, T17N, R17E, W.M.); northwest along the Manastash Ridge to USFS Trail 694 (T17N, R15E, NW 1/4 of Section 12) near the USFS fence; northwest on ORV Trail 694 to ORV Trail 688 near Rocky Saddle; northwest on ORV Trail 688 to USFS Trail 1388; northwest on Trail 1388 to Quartz Mountain and Peaches Ridge Trail and the point of beginning.

**GMU 342-UMTANUM (Kittitas and Yakima counties):** Beginning at Manastash Ridge at the junction of Forest Road 1701; east along the Manastash Ridge to the Observatory Road in Section 20, T17N, R17E, W.M.; south on the Observatory Road to the Wenas-Ellensburg Road near Ellensburg Pass (Section 6, T16N, R17E, W.M.); east on the Wenas-Ellensburg Road to Umtanum Creek; east along the Umtanum Creek to the Yakima River; south along the Yakima River to Yakima and U.S. Highway 12; northwest on U.S. Highway 12 to State Highway 410; northwest on State Highway 410 to USFS Road 1701; north on USFS Road 1701 to the point of beginning.

**GMU 346-LITTLE NACHES (Yakima and Kittitas counties):** Beginning at Blowout Mountain and the USFS Road 1388; east on USFS Road 1388 to USFS ORV Trail 688 to Rocky Saddle; east on USFS ORV Trail 694 to USFS Road 1701 near the USFS fence (T17N, R15E, NW 1/4 of Section 12); south on USFS Road 1701 to State Highway 410; northwest and southwest on State Highway 410 to the Pacific Crest Trail near Chinook Pass; north on the Pacific Crest Trail to Blowout Mountain and the point of beginning.

**GMU 352-NILE (Yakima County):** Beginning on the Bumping Lake Road and State Highway 410; east and south on State Highway 410 to Nile and USFS Road 1500; west on USFS Road 1500 to the McDaniel Lake Road (USFS Road 1502); west on the McDaniel Lake Road to the North Fork of Rattlesnake Creek; west along the North Fork Rattlesnake Creek to the USFS Richmond Mine Trail 973; north on the Richmond Mine Trail 973 to the Bumping Lake Road; north

on the Bumping Lake Road to State Highway 410 and the point of beginning.

**GMU 356-BUMPING (Yakima County):** Beginning on the Pacific Crest Trail and State Highway 410 at Chinook Pass; northeast on State Highway 410 to the Bumping Lake Road; southwest on the Bumping Lake Road to the USFS Richmond Mine Trail 973; southeast on the Richmond Mine Trail 973 to the North Fork Rattlesnake Creek; southeast along the North Fork Rattlesnake Creek to the McDaniel Lake Road (USFS Road 1502); southeast on the McDaniel Lake Road to USFS Road 1500; south on USFS Road 1500 to State Highway 12; west on Highway 12 to the Pacific Crest Trail at White Pass; north on the Pacific Crest Trail to Chinook Pass and the point of beginning. (Lands within the boundary of Mt. Rainier National Park along the Pacific Crest Trail are not open to hunting.)

**GMU 360-BETHEL (Yakima County):** Beginning on USFS Road 1500 and Highway 410 at Nile; southeast on Highway 410 to Highway 12; southwest on Highway 12 to USFS Road 1500; north and east on USFS Road 1500 to Nile and the point of beginning.

**GMU 364-RIMROCK (Yakima County):** Beginning on the Pacific Crest Trail and Highway 12 at White Pass; east on Highway 12 to Windy Point and the Jump Off Road (USFS 1302); southwest on Jump Off Road to Jump Off Lookout; south on Divide Ridge Crest to Darland Mountain and to the Darland Mountain Road and the north boundary of the Yakama Indian Reservation; west on the Yakama Indian Reservation boundary to the Pacific Crest Trail; north on the Pacific Crest Trail to Highway 12 at White Pass and the point of beginning.

**GMU 366-RIMROCK-COWICHE (Yakima County):** GMUs 364 (Rimrock) and 368 (Cowiche).

**GMU 368-COWICHE (Yakima County):** Beginning on Highway 12 and Jump Off Road near Windy Point; northeast and southeast on Highway 12 to the Yakima River; south along the Yakima River to the Yakama Indian Reservation boundary south of Union Gap; west on the reservation boundary to Darland Mountain; north on the crest of Divide Ridge to the Jump Off Lookout and the Jump Off Road (USFS Road 1302); northeast on the Jump Off Road to Highway 12 and the point of beginning.

**GMU 371-ALKALI (Kittitas and Yakima counties):** Beginning one mile south of Thrall and Highway 821 at the Yakima River and the East High Canal; east and north along the East High Canal to Interstate Highway 90; east on Interstate Highway 90 to Vantage and the Columbia River; south along the Columbia River to Priest Rapids Dam and the Yakima Training Center (YTC) boundary; south and west along the YTC boundary to the main gate at Firing Center Road; west along Firing Center Road and Harrison Road to the Yakima River; north along the Yakima River to the East High Canal and the point of beginning.

**GMU 372-KIONA (Benton and Yakima counties):** Beginning at Priest Rapids Dam and the Columbia River; east and

south along the Columbia River (Yakima, Grant, Benton, and Walla Walla County line) to the Alderdale Road; north on the Alderdale Road to the Klickitat-Yakima County line; west on the county line to the Yakama Indian Reservation boundary; northeast on the reservation boundary to the Mabton-Sunnyside Road; north on the Mabton-Sunnyside Road to the Yakama River; northwest along the Yakama River to Harrison Road; east along Harrison Road and Firing Center Road to the main gate of the Yakima Training Center (YTC); south and east along the YTC boundary to Priest Rapids Dam and the Columbia River and the point of beginning. The Hanford Nuclear Reservation is closed to all unauthorized public entry.

**GMU 381-ESQUATZEL (Franklin, Grant and Adams counties):** Beginning at the Vernita Bridge on the west shore of the Columbia River and State Highway 24; north and east on State Highway 24 to Muse Road; east on Muse Road to State Highway 17; north on State Highway 17 to State Highway 26; east on State Highway 26 to Palouse River; south on Palouse River to Snake River; west and southwest on Snake River to Columbia River; north and west on Columbia River (including all islands) to the Vernita Bridge and the point of beginning. The Hanford Nuclear Site and the Saddle Mountain National Wildlife Refuge are closed to unauthorized public entry.

**GMU 382-EAST KLICKITAT (Klickitat County):** Beginning at the U.S. Highway 97 Bridge on the Columbia River (Maryhill); north on U.S. Highway 97 to Satus Pass and the Yakama Indian Reservation; east along south reservation boundary to the Yakima County line; east on the Yakima/Klickitat County line to Alderdale Road; southeast and south on Alderdale Road to Alderdale and the Columbia River; west down the Columbia River to U.S. Highway 97 Bridge and the point of beginning.

AMENDATORY SECTION (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

**WAC 232-28-02204 Game management units (GMUs)—Special game areas—Boundary descriptions—Region four.**

**GMU 407-NORTH SOUND (Whatcom, Skagit, Snohomish and King counties):** Beginning at the northwest corner of Whatcom County and the Canadian border; east on the Canadian border to the Silver Lake Road; south on the Silver Lake Road to the Mount Baker Highway 542; southwest on the Mount Baker Highway 542 to the Mosquito Lake Road; south on the Mosquito Lake Road to Valley Highway 9; south on Valley Highway 9 through Sedro Woolley to the town of Arlington; northeast on State Highway 530 to the Trafton School at Trafton; southeast along the Jim Creek-Trafton Road (242nd St. N.E.) to the City of Seattle power transmission line; southwest on the transmission line to the Jordan Road in Section 20, T31N, R6E; southeast along the Jordan Road to Granite Falls and the Menzel Lake Road; south on the Menzel Lake Road past Lake Roesiger to the Woods Creek Road; south on the Woods Creek Road to Mon-

roe and Highway 203; south on Highway 203 to the Snoqualmie River at Duvall; north along the Snoqualmie River to the Snohomish River; west along the Snohomish River to Puget Sound; north along the Island/Snohomish county line in Possession Sound and Port Susan to Juniper Beach and through West Pass; west and north through Skagit Bay, Deception Pass, Rosario Strait and Bellingham Channel to Carter Point on Lummi Island; west along the Skagit-Whatcom County line to the Whatcom-San Juan County line; northwest along the Whatcom-San Juan County line to the Canadian border and the point of beginning.

**GMU 410-ISLANDS (San Juan and Island counties):** Beginning at the north corner of San Juan-Whatcom County line; southeast on the county line to Carter Point on Lummi Island; southwest down the middle of Bellingham Channel to the Skagit-San Juan County line; south through Rosario Strait on the San Juan-Skagit County line to the Island County line; east on the Skagit-Island County line through Deception Pass and south through Skagit Bay; southeast on the Island—Snohomish County line through Juniper Beach, Port Susan, Possession Sound to the Island-Kitsap County line; northwest on the Island-Kitsap-Jefferson County line through Puget Sound, Admiralty Inlet, and the Strait of Juan De Fuca; west on the San Juan-Jefferson-Clallam County lines to the Canadian border; north on the Canadian border through Middle Bank, Haro Strait, and Boundary Pass to the north corner of San Juan-Whatcom County line and the point of beginning.

**GMU 418-NOOKSACK (Whatcom and Skagit counties):** Beginning at the Silver Lake Road and the Canadian border; east on the Canadian border to the North Cascades National Park Boundary; south on the North Cascades National Park Boundary to Noisy Diobsud Wilderness Boundary; west and south on Noisy Diobsud Wilderness Boundary to Watson Creek; down Watson Creek to Thunder Creek and Baker River Road to Concrete and State Highway 20; west along Highway 20 to Highway 9 (at Sedro Woolley); north along Highway 9 to Mosquito Lake Road; north on the Mosquito Lake Road to Mount Baker Highway 542; north on Mount Baker Highway 542 to the Silver Lake Road; north on the Silver Lake Road to the Canadian border to the point of beginning.

**GMU 426-DIABLO (Skagit and Whatcom counties):** ~~((The Ross Lake National Recreation Area and that part of the Mt. Baker Snoqualmie National Forest east of the Ross Lake Recreation Area to the Pacific Crest Trail from the Canadian border to Rainy Pass and the North Cascades National Park Boundary.))~~ Beginning at the Canadian border and the west boundary of the Ross Lake National Recreation Area; south on the Ross Lake National Recreation Area Boundary across the North Cascades Highway and Skagit River; north and east on the Ross Lake National Recreation Area Boundary to a point 2 miles east of Panther Creek; south on North Cascades National Park Boundary to Fisher Peak; east along the Skagit - Chelan county line, across State Highway 20 to the Pacific Crest Trail; north on the Pacific Crest Trail to Jim Pass; west along the Pasayten Wilderness Boundary to the Ross Lake National Recreation Area Boundary; north along the Ross Lake National Recreation Area -

Pasayten Wilderness Area Boundary to the Canadian border; west along the Canadian border to the northwest corner of the Ross Lake National Recreation Area and the point of beginning.

**GMU 437-SAUK (Skagit and Snohomish counties):** Beginning at the intersection of State Highway 9 and Highway 20; east along Highway 20 to Baker River Road at Concrete; north on Baker River Road to Thunder Creek; east and north up Thunder Creek and Watson Creek to Noisy Diobsud Wilderness Boundary; north and east on Noisy Diobsud Wilderness Boundary to North Cascades National Park Boundary to the Ross Lake National Recreation Area Boundary; south on the Ross Lake National Recreation Area Boundary across the North Cascade Highway 20 and the Skagit River and east along the Ross Lake National Recreation Area to the North Cascades National Park Boundary near Big Devil Peak; southeast on the North Cascades National Park Boundary to the north boundary of Glacier Peak Wilderness Area; west and south on Glacier Peak Wilderness Area Boundary to the Suiattle River; west along the Suiattle River to State Highway 530 (Sauk Valley Road); south on State Highway 530 to Darrington; west on State Highway 530 to Highway 9 at Arlington; north on State Highway 9 to Highway 20 and the point of beginning.

**GMU 448-STILLAGUAMISH (Snohomish and Skagit counties):** Beginning at Trafton on the Highway 530 (Arlington-Darrington Highway); northeast on Highway 530 to Darrington; north on Highway 530 (Sauk Valley Road - Bennets Store Road) to the Suiattle River; east along the Suiattle River to the Glacier Peak Wilderness Area Boundary; south on the Glacier Peak Wilderness Area Boundary to June Mountain and USFS Trail 650; west on the USFS Trail 650 on the crest between Sloan Creek and the North Fork Skykomish River Drainages to Curry Gap and the Quartz Creek Trail 1050; south on the Quartz Creek Trail 1050 and 1054 to West Cady Creek; south along West Cady Creek through Section 36, T28N, R12E to Meadow Creek; south along Meadow Creek to Rapid River; east along Rapid River to Lake Janus and the Pacific Crest Trail; south on the Pacific Crest Trail to Stevens Pass and Highway 2; west on Highway 2 to Monroe and the Woods Creek Road; north on the Woods Creek Road past Lake Roesiger to the Menzel Lake Road; north on the Menzel Lake Road to Granite Falls and the Jordan Road; northwest on the Jordan Road through Jordan to the City of Seattle power transmission lines; northeast on the transmission lines to the Jim Creek-Trafton Road (242nd St. N.E.); west on the Jim Creek-Trafton Road to Trafton and the point of beginning.

**GMU 450-CASCADE (Skagit and Snohomish counties):** Beginning on the Glacier Peak Wilderness Boundary one mile north of Jordan Lakes on the township line between T34 & 35N; east on the Wilderness Boundary to USFS Road 1590 (USFS Road 1590); north on USFS Road 1590 to the Cascade River Road; north on Cascade River Road to the North Cascades National Park Boundary; east on the North Cascades National Park Boundary to the Pacific Crest Trail Boundary; south on the Pacific Crest Trail to Lake Janus and the Rapid River; northwest along the Rapid River to Meadow

Creek; north along Meadow Creek to West Cady Creek; northwest along West Cady Creek near Excelsior Mountain and USFS Trail 1054; north on USFS Trail 1054 and the Quartz Creek Trail (USFS 1050) to Curry Gap and USFS Trail 650; east on USFS Trail 650 to June Mountain and the Glacier Peak Wilderness Boundary; north on the Glacier Peak Wilderness Boundary across the Suiattle River to Jordan Lakes on township line between T34 & 35N and the point of beginning.

**GMU 454-ISSAQUAH (King and Snohomish counties):** Beginning at the mouth of the Snohomish River near Everett; southeast along the Snohomish River to the Snoqualmie River; southeast along the Snoqualmie River to Duvall and State Highway 203; south on State Highway 203 to Fall City; southwest on Preston-Fall City Road to Preston and Interstate Highway 90; east on Interstate Highway 90 to State Highway 18; south on State Highway 18 to the Raging River; southeast along the Raging River to Keriston Road; south on Keriston Road to the City of Seattle Cedar River Watershed; west, south and east on the Cedar River Watershed to the City of Tacoma Green River Watershed; south on the Green River Watershed to USFS Road 7110 near Lynn Lake; southwest on USFS Road 7110 to U.S. Highway 410; west on U.S. Highway 410 to Enumclaw and State Highway 164; west on State Highway 164 to Auburn and State Highway 18; west on State Highway 18 to U.S. Highway 99; north on U.S. Highway 99 to Buenna and Redondo Beach; due west to Puget Sound; west along East Passage and north along Colvos Passage (including Vashon and Maury Islands) to Puget Sound; north to the mouth of the Snohomish River and the point of beginning.

**GMU 460-SNOQUALMIE (King and Snohomish counties):** Beginning at Monroe on State Highway 203 and U.S. Highway 2; east on U.S. Highway 2 to Stevens Pass and the Pacific Crest Trail; south on the Pacific Crest Trail to the City of Seattle Cedar River Watershed; west on the Cedar River Watershed Boundary to Keriston Road; north on Keriston Road to the Raging River; west and north along the Raging River to State Highway 18; north on State Highway 18 to Interstate Highway 90; west on Interstate Highway 90 to the Preston-Fall City Road; north on the Preston-Fall City Road to State Highway 203; north on State Highway 203 to Monroe and the point of beginning.

**GMU 466-STAMPEDE (King County):** Beginning on the Pacific Crest Trail (USFS Trail 2000) and the east boundary of the City of Seattle Cedar River Watershed; south on the Pacific Crest Trail past Blowout Mountain to USFS Road 7038 at its closest point to the Pacific Crest Trail near Windy Gap north of Pyramid Peak; northwest on USFS Roads 7038, 7036, 7030, and 7032 to USFS Trail 1172; west on USFS Trail 1172 to about 1/4 mile past Williams Hole to the posted boundary of the City of Tacoma Green River Watershed Boundary; north on the Green River Watershed Boundary to the City of Seattle Cedar River Watershed Boundary and along this boundary to Pacific Crest Trail and the point of beginning.



**GMU 485-GREEN RIVER (King County):** Beginning at the northwest corner of the Green River Watershed; east on the boundary between the Green River Watershed and the Cedar River Watershed to the USFS Road 5060; south on the USFS Road 5060 to the posted boundary of the Green River Watershed; along the southern boundary of the Green River Watershed over Huckleberry Mountain and Grass Mountain and across the Green River to the northwest corner of the Green River Watershed and the point of beginning.

**GMU 490-CEDAR RIVER (King County):** The area within the posted boundary of the city of Seattle Cedar River Watershed.

AMENDATORY SECTION (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

**WAC 232-28-02206 Game management units (GMUs)—Special game areas—Boundary descriptions—Region six.**

**GMU 601-HOKO (Clallam County):** Beginning on the Makah Indian Reservation Boundary and the Strait of Juan de Fuca; southeast along the shore of the Strait of Juan de Fuca to the mouth of the Hoko River; south along the Hoko River to State Highway 112; southeast on State Highway 112 to the Hoko-Ozette Road; southwest on the Hoko-Ozette Road to the Olympic National Park Boundary near Ozette; north on the Olympic National Park Boundary to the Makah Indian Reservation Boundary; east and north on the Makah Indian Reservation Boundary to the Strait of Juan de Fuca and the point of beginning.

**GMU 602-DICKEY (Clallam County):** Beginning at the mouth of the Hoko River and the Strait of Juan de Fuca; southeast along the shore of the Strait of Juan de Fuca to the mouth of the Clallam River; south along the Clallam River to State Highway 112; south on State Highway 112 to the Burnt Mountain Road; south on the Burnt Mountain Road to Sappho and U.S. Highway 101; southwest on U.S. Highway 101 to the LaPush Road; southwest on the LaPush Road to the Olympic National Park Boundary; north on the Olympic National Park Boundary to the Hoko-Ozette Road; northeast on the Hoko-Ozette Road to State Highway 112; northwest on State Highway 112 to the Hoko River and the point of beginning.

**GMU 603-PYSHT (Clallam County):** Beginning at the mouth of the Clallam River and the Strait of Juan de Fuca; east along the shore of the Strait of Juan de Fuca to the mouth of the Elwha River; south along the Elwha River to the Olympic National Park Boundary; west on the Olympic National Park Boundary to one mile west of Lake Crescent; south on the Olympic National Park Boundary to U.S. Highway 101; west on U.S. Highway 101 to the Burnt Mountain Road; north on the Burnt Mountain Road to State Highway 112; north on State Highway 112 to the Clallam River; north along the Clallam River to its mouth and the point of beginning, EXCEPT that part of the lower Elwha Indian Reservation within this boundary and EXCEPT Private Lands Wildlife Management Area 600, Merrill and Ring.

**GMU 607-SOL DUC (Clallam County):** Beginning at Sappho and U.S. Highway 101; east on U.S. Highway 101 to the Olympic National Park Boundary; south and west on the Olympic National Park Boundary to the Bogachiel River; west along the Bogachiel River to U.S. Highway 101; north on U.S. Highway 101 through Forks to Sappho and the point of beginning.

**GMU 612-GOODMAN (Jefferson and Clallam counties):** Beginning two miles east of LaPush on the Olympic National Park Boundary and the LaPush Road; northeast on the LaPush Road to U.S. Highway 101 at Forks; south on U.S. Highway 101 across the Hoh River and west to Olympic National Park Boundary; north on the Olympic National Park Boundary to the LaPush Road and the point of beginning.

**GMU 615-CLEARWATER (Jefferson County):** Beginning on U.S. Highway 101 and the Bogachiel River; east along the Bogachiel River to the Olympic National Park Boundary; southeast and west on the Olympic National Park Boundary to the Quinault Indian Reservation Boundary; west on the Quinault Indian Reservation Boundary to the Olympic National Park Boundary; north along the Olympic National Park Boundary to U.S. Highway 101; east, north, and west on U.S. Highway 101 to the Bogachiel River and the point of beginning.

**GMU 618-MATHENY (Jefferson and Grays Harbor counties):** Beginning at the boundary junction of Olympic National Park and the Quinault Indian Reservation near the Queets River Road; north, east, south, and west along the Olympic National Park Boundary to the Park and Reservation boundary junction just west of Lake Quinault; northwest along the Quinault Indian Reservation boundary to its junction with the boundary of Olympic National Park near the Queets River Road, and the point of beginning.

**GMU 621-OLYMPIC (Jefferson, Clallam and Mason counties):** Beginning at the Olympic National Park Boundary and the Elwha River; north along the Elwha River to U.S. Highway 101; east on U.S. Highway 101 through Port Angeles, and Sequim to Quilcene and the Chimacum Center Road; north on the Chimacum Center Road to the East Quilcene Road; east on the East Quilcene Road to Quilcene Bay; south along the shore of Quilcene Bay to Dabob Bay; south along the shore of Dabob Bay to Hood Canal; southwest along the shore of Hood Canal to U.S. Highway 101 at Hoodspport; west across U.S. Highway 101 to the Lake Cushman Road; northwest on the Power Dam Road; west on Power Dam Road to Upper Cushman Dam and the shore of Lake Cushman; northwest on the west shore of Lake Cushman to the North Fork Skokomish River; north along the North Fork Skokomish River to the Olympic National Park Boundary; north and west on the Olympic National Park Boundary to the Elwha River and the point of beginning.

**GMU 624-COYLE (Clallam and Jefferson counties):** Beginning at the mouth of the Elwha River and the Strait of Juan de Fuca; east along the shore including islands and spits to Admiralty Inlet and Puget Sound; south along the shore of Admiralty Inlet and Puget Sound to Hood Canal; (including

Marrowstone Island and Indian Island) southwest along the shore of Hood Canal to Dabob Bay; north along the shore of Dabob Bay and Quilcene Bay to East Quilcene Road; west on the East Quilcene Road to the Chimacum Center Road; south on the Chimacum Center Road to U.S. Highway 101; north and west on U.S. Highway 101 through Sequim and Port Angeles to the Elwha River; north along the Elwha River to its mouth and the Strait of Juan de Fuca and the point of beginning.

**GMU 627-KITSAP (Kitsap, Mason, and Pierce counties):** Beginning at the Hood Canal Bridge; north along the shore of Hood Canal to Admiralty Inlet, and Puget Sound; south along the shore of Puget Sound, including Bainbridge Island, Blake Island, through Clovis Passage to The Narrows; south along the shore of Carr Inlet; including Fox Island; through Pitt Passage and Drayton Passage to Nisqually Reach (Pierce-Thurston County line); northwest along the Nisqually Reach and the Pierce County line to North Bay; along the east shore of North Bay to the town of Allyn and State Highway 3; north on State Highway 3 to Belfair; north on the Old Belfair Highway to the Bear Creek-Dewatto Road; west on the Bear Creek-Dewatto Road to the Dewatto Road West; north along the Dewatto Road to its intersection with the Albert Pfundt Road; north on the Albert Pfundt Road to the easternmost point of Anderson Cove; north from Anderson Cove along the east shore of Hood Canal to the Hood Canal Bridge and the point of beginning.

**GMU 633-MASON (Mason and Kitsap counties):** Beginning at the easternmost point of Anderson Cove and south on the Albert Pfundt Road to the West Dewatto Road; south on the West Dewatto Road to the Bear Creek-Dewatto Road; east along the Bear Creek-Dewatto Road to the Old Belfair Highway; south on the Old Belfair Highway to Belfair; south on State Highway 3 to Allyn and North Bay; south along the west shore of North Bay including Reach and Stretch Islands, to Case Inlet (includes Hartstene Island) and the Mason-Pierce-Thurston County line intersection; west through Dana Passage to Squaxin Passage; northwest through Squaxin Passage including Hope and Squaxin Islands following the Mason County line; southwest through Totten Inlet to Oyster Bay and U.S. Highway 101; north on U.S. Highway 101 to Hoodsport; east across Hood Canal to Cougar Spit; north along the east shore of Hood Canal to the point of beginning:

**GMU 636-SKOKOMISH (Grays Harbor and Mason counties):** Beginning on the Olympic Park Boundary and the North Fork Skokomish River; south along the North Fork Skokomish River to Lake Cushman; southeast along the west shore of Lake Cushman to Cushman Upper Dam and the Power Dam Road; east on the Power Dam Road to Lake Cushman Road; southeast on Lake Cushman Road to U.S. Highway 101 at Hoodsport; south on U.S. Highway 101 to Shelton and the Shelton-Matlock Road (County Road 9010); west on to the Shelton-Matlock Road to Matlock and the Deckerville Road; west on the Deckerville Road to the Middle Satsop Road; west and south on the Middle Satsop Road to the Kelly Road; north on the Kelly Road to USFS Road 2153 (old 600 line); west on USFS Road 2153 to Wynoochee Road (USFS 22 Road); northwest on USFS 22 Road to USFS

Road 2294 near Big Creek; northwest on USFS Road 2294 to junction with USFS Road 2281; west on USFS Road 2281 to the watershed divide between the Humptulips River Watershed and the Wynoochee River Watershed; north on the hydrologic boundary between the Humptulips and Wynoochee River drainages to Olympic National Park Boundary to the point of beginning.

**GMU 638-QUINAULT RIDGE (Grays Harbor and Jefferson counties):** Beginning on the Olympic National Park Boundary at the northwest corner of Lake Quinault; northeast on the Olympic National Park Boundary along the Quinault River; south and northeast on the Olympic National Park Boundary to the hydrologic boundary between the Wynoochee and Humptulips Watershed drainages; south along the watershed divide between the Humptulips River Watershed and the Wynoochee River Watershed to its intersection with USFS Road 2281; east along USFS Road 2281 to USFS Road 2294; southeast on USFS Road 2294 to USFS 22 Road (Donkey Creek Road); west on the Donkey Creek Road to U.S. Highway 101; north on U.S. Highway 101 to the Quinault Indian Reservation Boundary; northeast on the reservation boundary to Lake Quinault; northeast along the south shore of Lake Quinault to the Olympic National Park Boundary and the point of beginning.

**GMU 642-COPALIS (Grays Harbor County):** Beginning at the Quinault Indian Reservation and U.S. Highway 101; south on U.S. Highway 101 to the Hoquiam River; south along the Hoquiam River to the City of Hoquiam and Grays Harbor; west along the north shore of Grays Harbor to the Pacific Ocean; north along the shore of the Pacific Ocean to the Quinault Indian Reservation Boundary; east and northeast along the Quinault Indian Reservation to U.S. Highway 101 and the point of beginning.

**GMU 648-WYNOOCHEE (Grays Harbor County):** Beginning at the junction of U.S. Highway 101 and the Donkey Creek Road; northeast along the Donkey Creek Road (USFS Road 22) to its junction with the Donkey Creek-Grisdale Road; continuing east on this road (USFS Road 22) to Camp Grisdale (south of Wynoochee Lake); south along the Grisdale-Montesano Road (USFS Road 22) to USFS Road 2153 (old 600 line); east on USFS 2153 to Kelly Road; south on Kelly Road to Middle Satsop Road; south on Middle Satsop Road to Cougar Smith Road; west on Cougar Smith Road to the West Fork of the Satsop River; south down the West Fork and the main stream of the Satsop River to U.S. Highway 12; west along U.S. Highway 12 to its junction with U.S. Highway 101 in Aberdeen; west and north along U.S. Highway 101 to its junction with the Donkey Creek Road (USFS Road 22) and the point of beginning.

**GMU 651-SATSOP (Grays Harbor, Mason and Thurston counties):** Beginning at the U.S. Highway 12 bridge on the Satsop River; upstream on the Satsop River to its junction with the West Fork of the Satsop River; up the West Fork of the Satsop River to the Cougar Smith Road; east on the Cougar Smith Road to the Middle Satsop Road; north and east on the Middle Satsop and Matlock-Deckerville Roads to the Town of Matlock; east on the Shelton-Matlock Road (County

Road 9010) to its junction with U.S. Highway 101; south on U.S. Highway 101 to its junction with State Route 8; west on State Route 8 to its junction with U.S. Highway 12; west along U.S. Highway 12 to the Satsop River and the point of beginning.

**GMU 652-PUYALLUP (Pierce and King counties):**

Beginning at Redondo Junction on the shore of Puget Sound and Redondo Way South; southeast on Redondo Way South to Pacific Highway South (Old Highway 99); south on Pacific Highway South to Auburn and State Highway 18; east on State Highway 18 to State Highway 164; southeast on State Highway 164 to Enumclaw and State Highway 410 (Chinook Pass Highway); east on State Highway 410 to the second set of Bonneville Power Transmission Lines near the Mud Mountain Dam Road; southwest on the transmission lines to the White River; northwest along the White River to the Champion ownership line (along west line of Section 6, T19N, R7E); west and south along the Champion ownership line to South Prairie Creek (Section 14, T19N, R6E); south along South Prairie Creek to the intersection with the Bonneville Power Line; southwest on this transmission line to Puyallup River and the Orville Road East; south on the Orville Road East to State Highway 161; down the Mashel River to the Nisqually River (Pierce-Thurston County line); northwest along the Nisqually River to Puget Sound; north along Nisqually Reach, Drayton Passage, Pitt Passage, including Anderson Island, McNeil Island, and Ketron Island to Redondo and the point of beginning, except Private Lands Wildlife Management Area 401 (Champion).

**GMU 653-WHITE RIVER (King and Pierce counties):**

Beginning at the lookout at Grass Mountain mainline (USFS Road 7110) and the City of Tacoma Green River Watershed Boundary; east on the Green River Watershed Boundary and USFS Trail 1172 to USFS Road 7032; east along USFS Road 7032 to USFS Road 7030; southeast along USFS Road 7030 and USFS Road 7036 and USFS 7038; onto the Pacific Crest Trail (USFS 2000) at its closest point to Road 7038 near Windy Gap north of Pyramid Peak; south on the Pacific Crest Trail to the Mount Rainier National Park Boundary at Chinook Pass; north and west on the park boundary to the Carbon River; northwest along the Carbon River to Bonneville Power Transmission Line; northeast along the transmission line to South Prairie Creek; north along South Prairie Creek to intersection with Champion ownership line (Section 14, T19N, R6E); east and north along Champion ownership line to the White River (along west line of Section 6, T19N, R7E); southeast along the White River to the Bonneville Power Line on the north side of the river near Mud Mountain Dam Road; northeast on the transmission lines to State Highway 410; east on State Highway 410 to USFS Road 7110; north on USFS Road 7110 to the City of Tacoma Green River Watershed and the point of beginning, except Private Lands Wildlife Management Area 401 (Champion).

**GMU 654-MASHEL (Pierce County):** Beginning at the Bonneville Power Transmission Line at the Puyallup River Bridge on the Orville Road East; northeast on the Bonneville Power Transmission Line to the Carbon River; southeast along the Carbon River to the west boundary of Mt. Rainier

National Park; south on the park boundary to the Nisqually River; west on the Nisqually River to the mouth of the Mashel River; up the Mashel River to the Highway 161 Bridge (Eatonville-LaGrande Road); north on Highway 161 through Eatonville to Orville Road East (Kapowsin-Eatonville Road); north on the Orville Road East to the Puyallup River Bridge and the point of beginning, except Private Lands Wildlife Management Area 401 (Champion).

**GMU 658-NORTH RIVER (Grays Harbor and Pacific counties):**

Beginning at the Pacific Ocean and the south shore of Grays Harbor; east along the south shore of Grays Harbor to Aberdeen and the mouth of the Chehalis River including Rennie Island; east along the Chehalis River to the U.S. Highway 101 bridge and U.S. Highway 101; south on U.S. Highway 101 to Raymond and the Willapa River; west along the Willapa River to Willapa Bay; west along Willapa Bay to the Pacific Ocean; north along the Pacific Ocean to the south shore of Grays Harbor and the point of beginning.

**GMU 660-MINOT PEAK (Grays Harbor and Pacific counties):**

Beginning at Aberdeen on U.S. Highway 12; east and south on U.S. Highway 12 to Oakville and the Chehalis Indian Reservation Road; south on the Reservation Road to the South Bank Road; southeast on the South Bank Road to the Garrard Creek Road; southwest on the Garrard Creek Road to the Oakville Brook Road; west on the Oakville Brook Road to the North River Valley Road; west on the North River Valley Road to the Smith Creek Road; west on the Smith Creek Road to U.S. Highway 101; north on U.S. Highway 101 to Aberdeen and U.S. Highway 12 and the point of beginning.

**GMU 663-CAPITOL PEAK (Grays Harbor and Thurston counties):**

Beginning at Elma on State Highway 8; east on State Highway 8 to U.S. Highway 101; east on U.S. Highway 101 to the Delphi Road S.W.; south on the Delphi Road S.W. to 110th Avenue; east on 110th Avenue to Littlerock Road; south on Littlerock Road to U.S. Highway 12; northwest on U.S. Highway 12 to Elma and State Highway 8 and the point of beginning.

**GMU 666-DESCHUTES (Thurston County):**

Beginning on U.S. Highway 101 at the Mason-Thurston County line near Oyster Bay; following the Thurston County line through Totten Inlet and Puget Sound to the mouth of the Nisqually River; southeast on the Nisqually River to Highway 507; southwest on Highway 507 to Tenino; southwest on Old Highway 99 to Interstate 5; west on Highway 12 to Littlerock Road; north on the Littlerock Road to 110th Avenue; west on 110th Avenue to Delphi Road; north on Delphi Road to U.S. Highway 101; northwest on U.S. Highway 101 to the Mason-Thurston County line at Oyster Bay and the point of beginning.

**GMU 667-SKOOKUMCHUCK (Thurston and Lewis counties):**

Beginning at the Highway 507 Bridge on the Nisqually River; southeast along the Nisqually River to Alder Lake; southeast along the north shore of Alder Lake to Elbe and State Highway 7; south on State Highway 7 to Morton and State Highway 508; west on State Highway 508 to the

Centralia-Alpha Road; west and north on the Centralia-Alpha Road to Salzer Valley Road; west on Salzer Valley Road to Summa Street and Kresky Road; north on Kresky Road to Tower Street to State Highway 507; west on State Highway 507, Cherry, Alder and Mellen Streets to Interstate 5; north on I-5 to Old Highway 99 (Pacific Highway Southwest); northeast on Old Highway 99 to Highway 507; northeast on Highway 507; to the Nisqually River Bridge and the point of beginning.

**GMU 672-FALL RIVER (Pacific, Lewis and Grays Harbor counties):** Beginning at Raymond and U.S. Highway 101; north on U.S. Highway 101 to Smith Creek Road; north-east on the Smith Creek Road to the North River Valley Road; east on the North River Valley Road to the Oakville-Brook Road; east on the Oakville-Brook Road to the Garrard Creek Road; south on the Garrard Creek Road to the 720 Road; southwest on the 720 Road to the 7800 Road; west on the 7800 Road to the 7050 Road and the 7040 Road; east on the 7400 Road to the 7000 Road; south on the 7000 Road to the Elk Creek Road; east on the Elk Creek Road to the Stevens Road (Doty Road); east on the Stevens Road to State Highway 6; south, west and northwest on State Highway 6 to Raymond, U.S. Highway 101 and the point of beginning.

**GMU 673-WILLIAMS CREEK (Pacific County):** Beginning at Willapa Bay and the mouth of the Willapa River; southeast along the Willapa River to Raymond and State Highway 6; southeast on State Highway 6 to the Bonneville Powerline Road; southwest and south on the Powerline Road to the Salmon Creek Road; southwest on the Salmon Creek Road to State Highway 4; west on State Highway 4 to U.S. Highway 101 at Johnson's Landing; west on U.S. Highway 101 to the Naselle River Bridge and the Naselle River; west along the Naselle River to Willapa Bay; north along the east shore of Willapa Bay to the mouth of the Willapa River and the point of beginning.

**GMU 681-BEAR RIVER (Pacific and Wahkiakum counties):** Beginning at Willapa Bay and the mouth of the Naselle River; southeast along the Naselle River to U.S. Highway 101 Bridge; east on U.S. Highway 101 to State Highway 4; southeast on State Highway 4 to Deep River Bridge; south along the Deep River to the Columbia River; west along the shore of the Columbia River to the mouth of the Wallacut River; north along the Wallacut River to U.S. Highway 101; northwest on U.S. Highway 101 to alternative U.S. Highway 101; north and west on alternative U.S. Highway 101 to Bear River; west along Bear River to Willapa Bay; north along the shore of Willapa Bay to the mouth of the Naselle River and the point of beginning.

**GMU 684-LONG BEACH (Pacific County):** All of the Long Beach Peninsula west of the mouth of Bear River; south along Bear River to U.S. Highway 101; southwest on U.S. Highway 101 to Alternate U.S. Highway 101; south and west on U.S. Highway 101 to the Wallacut River; south along the Wallacut River to the Columbia River.

**GMU 699-LONG ISLAND (Pacific County):** Includes all of Long Island.

**AMENDATORY SECTION** (Amending Order 98-250, filed 12/22/98, effective 1/1/99)

**WAC 232-28-260 Special hunting seasons.** (1) The commission may establish special hunting seasons limited to species and/or weapon type.

(2) The commission establishes the following types of special hunting seasons, called permit hunts, for purposes of taking specified wildlife:

- (a) General permit hunts;
- (b) Persons of disability permit hunts;
- (c) Youth permit hunts;
- (d) Age 65 and older permit hunts;
- (e) Advanced hunter education permit hunts;
- (f) Raffle and auction permit hunts.

(3) In addition to the requirements for general permit hunts, the following are hunt requirements for:

(a) Persons of Disability Permit Hunts: Only applicants with a Washington disabled hunter permit are eligible to apply for any persons of disability permit hunts.

(b) Youth Permit and General Season Hunts: Only persons who have lawfully purchased a youth hunting license will be eligible to apply for the youth permit hunts, or to participate in youth general season hunts.

(c) Age 65 and older Permit and General Season Hunts: Only applicants sixty-five years of age or older on March 31 of the license year will be eligible to apply for age 65 and older permit hunts or participate in age 65 and older general season hunts.

(d) Advanced Hunter Education Permit Hunts: Only persons who have successfully completed the Washington department of fish and wildlife advanced hunter education (AHE) course will be eligible to apply for AHE permit hunts.

(4) Deer((;)) or elk(~~(; cougar or black bear)~~) special hunting seasons permit hunt application:

(a) To apply for permit hunts for deer((;)) or elk(~~(; cougar or black bear)~~) applicants must have a valid Washington big game hunting license and a valid transport tag for the appropriate species. Each applicant must have the proper transport tag as identified in the current deer((;)) or elk (~~(; cougar or black bear)~~) hunting permit tables.

(b) No exchanges for deer((;)) or elk(~~(; cougar or black bear)~~) transport tags will be made for persons applying for permit hunts.

(c) Holders of deer((;)) or elk(~~(; cougar or black bear)~~) special permit hunts may hunt only with a weapon in compliance with the permit hunts.

(5) Black bear special hunting seasons permit application: A valid Washington big game hunting license and black bear transport tag are required to apply.

(6) Mountain goat, moose and mountain sheep permit hunts applications:

(a) Persons who have previously drawn a Washington mountain goat, mountain sheep or moose permit are ineligible to apply for that species. This restriction on eligibility does not apply to permits awarded pursuant to a raffle or auction hunt.

(b) No refunds or exchanges for mountain goat, moose or mountain sheep permits will be made for persons drawing for permit hunts.

(c) Successful applicants under this section must purchase the permit within fifteen days of the department notification mailing. Failure to purchase forfeits the permit to an alternate.

(d) Permit hunting report: A hunter report will be sent to each mountain goat, moose or mountain sheep permit holder and must be returned to the department within ten days after the close of the permit hunt.

~~((6))~~ (7) General permit hunts application:

(a) Partnership applications will be accepted for ~~((any species))~~ deer, elk, black bear, mountain goat, moose, mountain sheep, or wild turkey. A partnership consists of two hunters. If a partnership application is drawn, both hunters will receive a permit and both hunters can take an animal.

(b) Application deadline: To qualify for a deer, elk, mountain goat, mountain sheep or moose drawing, all applications must be postmarked no later than the second Friday of June or received at a department office no later than 5:00 p.m. on the second Friday of June of the year of the drawing. To qualify for a ~~((eoguar or))~~ black bear drawing, all applications must be ~~((postmarked no later than the second Friday of February or received at a department office no later than 5:00 p.m. on the second Friday of February of the year of the drawing.))~~ submitted no later than 12:00 a.m. on March 18 of the year of the drawing.

(c) An applicant's name may appear on only one single special permit hunt application or one partnership application for each species. If an applicant's name appears on more than one application for a species, the application will be made ineligible for the drawing and no points will be accrued for that year for that species.

(d) For partnership applications that are ineligible because one of the partners has his/her name on more than one application for that species, both applicants will be made ineligible for the drawing and no points will be accrued for that year for that species.

(e) Permits will be drawn by computer selection using a weighted point selection system.

(f) Incomplete applications:

(i) To be eligible for the deer~~((;))~~ or elk~~((eoguar or black bear))~~ permit hunts drawing, each application must include a valid hunt number, complete name, correct mailing address, date of birth, a marked species check box, a valid Washington hunting license number, and a valid species transport tag number for each applicant.

(ii) To be eligible for a black bear permit hunt drawing, each application must include a valid hunt number, complete name, correct mailing address, and date of birth.

(iii) To be eligible for the special mountain goat, moose or mountain sheep permit hunts drawing, each application must include a valid hunt number, complete name, correct mailing address, date of birth, and a marked species check box.

~~((iii))~~ (iv) To be eligible to accrue points, each application must include either a valid social security number, driver's license number, or a state-issued identification number for each applicant. Applicants choosing not to submit one of the above-listed numbers will be eligible for the drawing, but will not accrue points. The same identification number must be used each year to accrue points. If a different number

is used (i.e., driver's license number instead of social security number), point accrual will begin anew for the applicant while maintaining the point accrual under the former identification number.

(g) Inaccurate applications:

(i) If an applicant makes a mistake, applies for the wrong hunt, and is drawn, the permit can be returned to the department of fish and wildlife Olympia headquarters before the opening day of the hunt or the opening day of the general season, whichever comes first. The applicant's points will be restored to the condition they were in prior to the drawing.

(ii) If an applicant inaccurately submits his/her identification number on an application, no points will be accrued for that year for that species under the correct identification number.

~~((7))~~ (8) The commission establishes auction and raffle Private Lands Wildlife Management Areas (PLWMA) hunts:

(a) The commission may authorize, by agreement with PLWMA, the sale, auction, or raffle of hunts on PLWMAs.

(b) PLWMA auction/raffle hunts are awarded to hunt big game or wild turkey. The PLWMA manager will conduct the raffle drawing. Raffle tickets will be sold for not more than \$25.00 each.

(c) Any person may purchase PLWMA raffle tickets in addition to WDFW raffle tickets and participate in general permit hunt application drawing.

(d) An additional deer or elk transport tag will be issued upon payment for a deer or elk PLWMA raffle permit hunt.

(e) The PLWMA manager conducting an authorized big game auction or raffle will provide an annual report to the department of fish and wildlife prior to December 31. The report will include information on how the event was administered, where and when it occurred, who the winners are, the cost of tickets and numbers sold.

~~((8))~~ (9) The commission establishes auction and raffle hunts:

(a) The commission may establish big game and wild turkey auction and raffle permit hunts. The director may conduct the auction or raffle or may contract to a non-profit wildlife conservation organization (registered 5013c) for marketing. The organization may retain the vendor fee for each raffle ticket sold to cover expenses incurred or a percentage of the auction permit receipt.

(b) There is no limit on the number of raffle tickets a person may purchase. Raffle tickets cost no more than \$25.00 each with a 50 cent vendor fee included in the price.

(c) The organization interested in conducting an auction or raffle for an authorized permit hunt shall submit a proposal outlining its experience and plans to conduct an auction or raffle. The department of fish and wildlife shall solicit bids consistent with established state competitive bid rules. The proposal shall include:

(i) Name of the organization, articles of incorporation, and contact person.

(ii) The date, time and place of the proposed auction and raffle drawing.

(iii) The approximate number of people expected to attend the function.

(iv) Past experience in conducting auctions or raffles and special functions.

- (v) Other marketing strategies to be used.
- (vi) Portion of funds to be retained by the organization.
- (d) The director will select an organization to conduct an auction or raffle.
  - (i) Revenue potential to the department will be a key criterion in applicant selection.
  - (ii) The department shall enter into a contract with the auctioning or raffling organization identifying specific terms of the contract.
  - (iii) The director may authorize a nonprofit wildlife conservation organization to sell raffle tickets for the department and retain a vending fee of 50 cents for each ticket sold.
- (e) The department or organization conducting a raffle shall notify the public about the raffle hunt opportunity and offer raffle tickets for sale.
  - (i) The department or organization shall inform the public of date, time and place of the raffle and hold the drawing as specified.
  - (ii) Raffle tickets sales conducted through agency license vendors or the director authorized nonprofit wildlife conservation organization vendor must be received at the department's Olympia office headquarters on or before the last business day prior to the public drawing. Contracting organizations conducting hunting raffles must account for raffle tickets and funds received. A representative of the department will monitor the drawing.
  - (iii) Additional tickets may be purchased at the raffle site prior to the drawing.
  - (iv) One winner and two alternates shall be drawn at the drawing.
  - (v) The raffling organization shall notify the department of the name, address and phone number of the raffle permit winner and two alternates immediately (but no later than two business days) after the drawing. The department will notify the winner and two alternates by mail. The winner must claim the raffle permit during the regular business hours within 15 days of being notified or he/she shall be disqualified and the department will offer the raffle permit to the first alternate.

The first alternate must claim the raffle permit within 10 business days of notification or he/she shall be disqualified and the department will notify the second alternate. The second alternate must claim the permit within 10 business days of notification or he/she shall be disqualified and the department will not offer the raffle permit.

(vi) The department's share of the auction or raffle revenue shall be returned to the department within 30 days of the drawing.

(f) Residents and nonresidents shall be eligible to purchase WDFW raffle tickets in addition to PLWMA raffle tickets and participate in the general permit hunt application drawing.

(g) There shall be no refunds for any raffle ticket purchases.

(h) The raffle winners must purchase a valid hunting license or permit prior to issuance of the raffle permit. An additional transport tag will be issued upon payment for a deer or elk auction or raffle permit hunt. Only one permit may be purchased for sheep or moose annually.

(i) The department will issue the permit to the person whose name appears on the winning raffle ticket. Raffle permits may not be resold or reassigned.

(j) All revenue to the department from a species permit auction or raffle shall be used for the management and benefit of that species.

~~((9))~~ (10) Citizen reward for reporting violations - bonus points:

A person who provides information which contributes substantially to the arrest of another person for illegally killing big game or an endangered species as defined by Title 77 RCW is eligible to receive ten bonus points toward the department drawing for deer and elk special permits.

(a) Ten bonus points may only be awarded to only one person providing information for each person charged regardless of the number of violations involved.

(b) Selection of bonus points is in lieu of application for a cash award which may be authorized by RCW 77.21.080.

**AMENDATORY SECTION** (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

**WAC 232-28-271 Private lands wildlife management area hunting seasons, rules and boundary descriptions.**

**DEER GENERAL SEASONS ON PRIVATE LANDS  
WILDLIFE MANAGEMENT AREAS**

<b><del>((Champion))</del> IP Pacific Timberlands, Inc. (PLWMA 401) Kapowsin Tree Farm</b>		
<b>Hunting Method</b>	<b><del>((2000))</del> 2001 Dates</b>	<b>Special Restrictions</b>
Archery	<del>((August 28-Sept. 10))</del> <u>Aug. 27-Sept. 9</u> <del>((October 1-9))</del> <u>Sept. 30-Oct. 8</u>	2 Pt. Min. or Antlerless 2 Pt. Min. or Antlerless
Modern Firearm	<del>((October 10-24))</del> <u>Oct. 9-23</u>	2 Pt. Min.
Muzzleloader	<del>((November 24-Dec. 5))</del> <u>Nov. 23-Dec. 4</u>	2 Pt. Min. or Antlerless

<b>Merrill and Ring (PLWMA 600) Pysht Tree Farm</b>		
<b>Hunting Method</b>	<b><del>((2000))</del> 2001 Dates</b>	<b>Special Restrictions</b>
Archery	<del>((September 1-14))</del> <u>Sept. 1-14 and Nov. 21-Dec. 31</u>	Either Sex South Unit <u>(600B)</u>

PERMANENT

Merrill and Ring (PLWMA 600) Pysht Tree Farm		
Hunting Method	<del>((2000))</del> 2001 Dates	Special Restrictions
Modern Firearm	<del>((Nov. 25-Dec. 31))</del> <del>((Oct. 14-31))</del> <u>Oct. 13-31</u>	<del>((Antlerless Only North Unit; Either Sex South Unit))</del> Buck Only South Unit (600B)
Muzzleloader	<del>((Nov. 16-18))</del> <u>Nov. 15-18</u> <del>((Oct. 1-9))</del> <u>Oct. 1-10</u>	Buck Only South Unit (600B) <del>((Antlerless Only North Unit; Buck Only South Unit))</del> <u>Buck Only South Unit (600B)</u>

~~((2000))~~ 2001 DEER PERMIT SEASONS ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS

~~((2000))~~ 2001 - Mule and Whitetail Deer

**Buckrun Limited Permit Draw Permits. Hunters apply to Washington Department of Fish and Wildlife in WDFW permit draw process. Only hunters possessing a modern firearm deer tag are eligible for Buckrun Limited draw hunts. Hunters are limited to one day of hunting during the permit season with written authorization from the PLWMA manager.**

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Buckrun A	10	Sept 15-Dec. 31	<u>3 pt.</u> , 2 pt, spike or antlerless only	PLWMA 201
Buckrun B	20	Sept 15-Dec 31	AHE <u>graduates only</u> , 3 pt, 2 pt, spike or <del>((antlerless))</del> <u>antlerless deer</u> only	PLWMA 201
Buckrun C	20	Sept 15-Dec 31	*Youth <u>hunters</u> , 3 pt, 2 pt, spike or antlerless <u>deer</u> only	PLWMA 201
Buckrun D	20	Sept 15-Dec 31	<del>((Persons of disability))</del> <u>Disabled hunters</u> , 3 pt, 2 pt, spike or antlerless only	PLWMA 201

\* Youth hunters on Buckrun must be 12 - 15 years of age and must be accompanied by an adult during the hunt.

~~((Access for these))~~ Hunts are ~~((for one day,))~~ scheduled by the manager. ~~((There are no access fees for these hunts. All hunters shall have a valid modern firearm deer tag and written authorization from the manager to participate in these hunts.))~~ All other hunting regulations apply.

~~((2000))~~ 2001 - Blacktail Deer

~~((Champion's))~~ IP Pacific Timberlands, Inc. Kapowsin Tree Farm -

~~((Champion))~~ IP Pacific Timberlands, Inc. Permit Draw Deer Permits - Hunters apply to Washington Department of Fish and Wildlife in WDFW permit draw process.

Hunt Name	Permit Number	Permit Season	Special Restrictions	Boundary Description
Kapowsin North	<del>((25))</del> <u>30</u>	Dec. <del>((10-12))</del> <u>8-10</u>	Antlerless Only, Age 65 and older Hunters	PLWMA 401A North
	<del>((25))</del> <u>20</u>	Dec. <del>((10-12))</del> <u>8-10</u>	<u>Antlerless Only</u> , AHE Hunters <del>((Only))</del>	PLWMA 401A North
Kapowsin Central	<del>((100))</del> <u>50</u>	Dec. <del>((10-12))</del> <u>8-10</u>	Antlerless Only	PLWMA 401B Central
Kapowsin South	50	Dec. <del>((10-12))</del> <u>8-10</u>	Antlerless Only, Youth Hunters	PLWMA 401C South
	50	Dec. <del>((10-12))</del> <u>8-10</u>	Antlerless Only <del>((Persons of Disability))</del> <u>Disabled Hunters</u>	PLWMA 401C South

PERMANENT

ACCESS QUOTAS AND RAFFLE SEASONS  
ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS

~~((2000))~~ **2001 - Mule and Whitetail Deer**  
**Buckrun Limited Area - Access Quotas and Seasons**  
 Only hunters possessing a modern firearm deer tag are eligible for access authorizations on PLWMA 201. You may contact the PLWMA manager, Derek Stevens, at (509) 345-2577 for information on these hunts.

Hunt Name	Quota	Access Season	Special Restrictions	Boundary Description
Buckrun	<del>((100))</del> 150	Sept 15-Dec. 31	Any Deer (Access Fee) ( <del>(Modern-Firearm-Deer-Tag)</del> )	PLWMA 201

~~((2000 - Mule Deer~~  
**~~Buckrun Limited Population Control Deer Hunting~~**  
 If deer counts conducted the last week of November or first week of December exceed 1350 deer, special hunting opportunities will be available on Buckrun Limited PLWMA. All hunts will be available only to Advanced Hunter Education (AHE) graduates. The harvest quota will be the number of deer exceeding 1350 but not more than 100. Legal animals will be antlerless only, except one in ten hunters will be allowed to take a management buck (3 points or less on one side).  
 AHE hunters will be contacted by the Buckrun Limited PLWMA manager to determine their interest in the hunt. After harvest quotas are determined, Buckrun Limited PLWMA manager will contact the desired number of AHE hunters to participate in the hunt. Hunt dates will be during the month of December, but exact dates will be determined by the PLWMA manager and the hunter.))

~~((2000))~~ **2001 - Blacktail Deer**  
~~((Champion's))~~ **IP Pacific Timberlands, Inc, Kapowsin Tree Farm -- Raffle Quotas and Seasons**  
 Hunter must contact ~~((Champion))~~ **IP Pacific Timberlands, Inc.** for auction/raffle permit opportunity.  
 Only hunters possessing a valid deer tag (any ~~((2000))~~ 2001 deer tag) are eligible for ~~((Champion))~~ **IP Pacific Timberlands, Inc.** buck permits. Hunters drawing ~~((a-Champion))~~ **an IP Pacific Timberlands, Inc.** deer raffle permit may purchase a second deer tag for the ~~((Champion))~~ hunt. Persons interested in these deer permits should contact ~~((Champion))~~ **IP Pacific Timberlands, Inc., 31716 Camp 1 Road, Orting, WA 98360. For more information, please call ((Champion at)) 1-800-782-1493.**

Hunt Name	Permit Number	Raffle Season	Special Restrictions	Boundary Description
Kapowsin North/Buck	8	Nov. <del>((6-18))</del> <u>5-17</u>	Buck Only ( <del>((Auction/))</del> Raffle)	PLWMA 401A North
Kapowsin Central/Buck	29	Nov. <del>((6-18))</del> <u>5-17</u>	Buck Only ( <del>((Auction/))</del> Raffle)	PLWMA 401B Central
Kapowsin South/Buck	14	Nov. <del>((6-18))</del> <u>5-17</u>	Buck Only ( <del>((Auction/))</del> Raffle)	PLWMA 401C South
<u>Kapowsin Central</u>	<u>50</u>	<u>Dec. 8-10</u>	<u>Antlerless Only (Raffle)</u>	<u>PLWMA 401B Central</u>

PERMANENT



~~((2000))~~ **2001 - Blacktail Deer**  
**Merrill and Ring's Pysht Tree Farm - ((Raffle)) Quotas and Seasons**  
 An access fee will be charged by the landowner for hunting on the Pysht Tree Farm. ~~((Pysht North A is archery only, all other hunts are open to any legal weapon hunters.))~~ The following hunts are raffle hunts offered by Merrill and Ring. ~~((Only hunters possessing a valid deer tag (any 2000 deer tag) are eligible for Merrill and Ring hunts.))~~ **Hunters must possess a valid deer tag when participating in these hunts.** Persons interested in these hunts should contact Merrill and Ring, 11 Pysht River Rd., Clallam Bay, WA 98326. For more information, please call Merrill and Ring at 1-800-998-2382.

Hunt Name	Quota	Raffle Season	Special Restrictions	Boundary Description
Pysht North A	15	Sept. 1-14	Raffle, Archery, 3 pt. minimum or Antlerless	PLWMA (600A) North <u>Unit</u>
Pysht North B	<del>((40))</del> <u>20</u>	Oct. <del>((19-31))</del> <u>1-10</u>	Raffle, <u>Muzzleloader</u> , 3 pt. minimum or Antlerless <del>((Only))</del>	PLWMA (600A) North <u>Unit</u>
Pysht North C	<del>((30))</del> <u>25</u>	Nov. 10-24	Raffle, 3 pt. min. or Antlerless	PLWMA (600A) North <u>Unit</u>
Pysht <del>((South A))</del> <u>North D</u>	<del>((40))</del> <u>5</u>	<del>((Oct. 19-31))</del> <u>Nov. 10-24</u>	<del>((Raffle,))</del> <u>Restricted</u> , 3 pt. minimum or Antlerless <del>((Only))</del>	PLWMA (600 <del>((B-South))</del> <u>A</u> ) North <u>Unit</u>

**ELK RAFFLE SEASONS ON PRIVATE LANDS WILDLIFE MANAGEMENT AREAS**

~~((2000))~~ **2001 - Elk**  
**~~((Champion))~~ IP Pacific Timberlands, Inc. (PLWMA 401) Kapowsin Tree Farm - Raffle Quotas and Seasons**  
 Only hunters possessing a valid ~~((2000))~~ **2001** elk tag and meeting the special restrictions noted for each hunt are eligible for ~~((Champion))~~ **IP Pacific Timberlands, Inc.** access permits on PLWMA 401. Hunters must contact ~~((Champion))~~ **IP Pacific Timberlands, Inc.** for auction/raffle permit opportunity. Hunters drawing ~~((a-Champion))~~ **an IP Pacific Timberlands, Inc.** elk raffle permit are eligible to purchase a second elk tag for the ~~((Champion))~~ hunt. ~~((Champion))~~ **IP Pacific Timberlands Inc., 31716 Camp 1 Road, Orting, Washington 98360. For more information, please call ((Champion at)) 1-800-782-1493.**

Hunt Name	Quota	Raffle Season	Special Restrictions	Boundary Descriptions
Kapowsin Bull North	2	Sept. <del>((15-30))</del> <u>14-29</u>	Auction/Raffle Any Bull, Any Tag	PLWMA 401A North
Kapowsin Bull Central	2	Sept. <del>((15-30))</del> <u>14-29</u>	Auction/Raffle Any Bull, Any Tag	PLWMA 401B Central
Kapowsin Bull South	2	Sept. <del>((15-30))</del> <u>14-29</u>	Auction/Raffle Any Bull, Any Tag	PLWMA 401C South

~~((2000))~~ **2001 - Elk**  
**Merrill and Ring PLWMA 600 Pysht Tree Farm - Raffle Quota and Season**  
 Hunter must contact Merrill and Ring for raffle hunt opportunity. For more information please call Merrill and Ring at 1-800-998-2382 or write to them at Merrill and Ring Tree Farm, 11 Pysht River Rd., Clallam Bay, WA 98326.

Hunt Name	Quota	Raffle Season	Special Restrictions	Boundary Descriptions
Pysht	2	Sept. 15-30	<del>((Raffle))</del> Any Bull <u>Elk</u> , Any <del>((Tag))</del> <u>Weapon</u>	PLWMA 600

**AREA DESCRIPTIONS - PRIVATE LANDS WILDLIFE MANAGEMENT AREAS**

**PLWMA 201 - Buckrun Limited (Grant County):** Beginning at the southwest corner of S27 T23 R27E; 2 miles east, 1/2 mile north, 1 mile east, 1/2 mile south of S25; continuing 2 miles east to the southwest corner of S26 T23 R28E; 1 mile south to the southwest corner of S33 T23 R28E; east 1 mile; thence 1/4 mile north, 1 mile east, 1/4 mile to the intersection

with the Stratford Game Reserve; from the southwest corner of S6 T22 R29E; east 1 mile along BNSF right-of-way to the intersection of S5 T22 R29E; south 1.75 miles to the southwest corner of S8 T22 R29E; east 2 miles to the southeast corner of S9 T22 R29E; north 1.5 miles (except the southeast 1/4 of the southeast 1/4 of S4 T22 R29E); east 1.5 miles to the middle 1/4 corner of S2 T22 R29E; north 1/4 mile, west 1/2 mile, north 1/2 mile; east at the northeast corner of S2 T22 R29E; 1 mile east to the southeast corner of S35 T23 R29E;

PERMANENT

north 1 mile to the southeast corner of S26 T23 R29E; east 1 mile to the southeast corner of S25 T23 R29E; north 4.25 miles to the northeast 1/4 of the southeast 1/4 of S1 T23 R29E; west 1 mile to the northwest corner of the northwest 1/4 of S1 T23 R29E; south 1 mile to the southwest corner of the northwest 1/4 of the southwest 1/4 of S12 T23 R29E; 1/2 mile east to the northwest corner of the southeast 1/4 of the southwest 1/4 of S12 T23 R29E; south 1/4 mile to the southeast corner of the southwest 1/4 of S12 T23 R29E; west 3 miles to the northwest corner of the east 1/2 of S16 T23 R29E; south 1 mile to the southeast corner of the east 1/2 of S16 T23 R29E; west 1/2 mile to the northeast corner of S20 T23 R29E; north 1 mile to the northwest corner of S16 T23 R29E; east 1 mile to the northeast corner of S9 T23 R29E; north 1 mile to the northeast corner of S9 T23 R29E; west 1 mile to the northeast corner of S8 T23 R29E; north 1 mile to the northeast corner of S5 T23 R29E; west 1/2 mile to the southeast corner of the west 1/2 of S32 T23 R29E; north 1 mile to the corner of the west 1/2 of S32 T23 R29E; 1.5 miles west to the northwest corner of S31 T24 R29E; south 1 mile to the northwest corner of S6 T23 R29E; west 1 mile to the northeast corner of S2 T23 R28E; north 1 mile to the northeast corner of S35 T24 R28E; west 1 mile to the northwest corner of S35 T24 R28E; south 1 mile to the northwest corner of S2 T23 R28E; west 3/4 mile to the northwest corner of the northeast 1/4 of S3 T23 R28E; south 1.5 miles to the intersection with the Stratford Game Reserve; continue from the southeast corner of the southeast 1/4 of the northeast 1/4 of S9 T23 R28E; north 1/2 mile to the northeast corner of S9 T23 R28E; west 1/4 mile north to the intersection of the Pinto Ridge Road; southwest on the Pinto Ridge Road to the northeast corner of the southeast 1/4 of S8 T23 R28E; west 1/2 mile to the northwest corner of the southeast 1/4 of S8 T23 R28E; south 1/4 mile to the intersection with the old NPRR bed. Follow the NPRR bed southwest to the southeast corner of the southwest 1/4 of S13 T23 R27E; northeast along the Dry Coulee Road to the northeast corner of S13 T23 R27E; west 1/4 mile to the southwest corner of the southeast 1/4 of S12 T23 R27E; north 1/4 mile, west 1/2 mile, north 1/4 mile, west 1/4 mile to the corner of the southwest 1/4 of S12 T23 R27E; west 1 mile to the northwest corner of the south 1/2 of S11 T23 R27E; south 1.5 miles to the northwest corner of S23 T23 R27E; west 2 miles to the northwest corner of S22 T23 R27E; south 1 mile to the southwest corner of S21 T23 R27E; east 1 mile, south 1 mile to the point of beginning. Public lands within the external boundaries are not part of the PLWMA. A map of PLWMA 201 is available from WDFW's Region 2 office in Ephrata. (509) 754-4624.

**PLWMA 401 - ((Champion)) IP Pacific Timberlands, Inc. (IPPTI) (Pierce County):** Beginning at the intersection of ((Champion)) IPPTI haul road (((Champion)) IPPTI 1 Rd.) and the Camp One Road near the town of Kapowsin; southwest along the east side of Lake Kapowsin to Ohop Creek; up Ohop Creek to ((Champion)) IPPTI ownership line; along ownership line to S.W. corner of the north half of Section 6, T16N, R5E; easterly along Weyerhaeuser/((Champion)) IPPTI ownership line to the intersection with Busy Wild Creek; up Busy Wild Creek to intersection with ((Champion)) IPPTI ownership on the section line between Sections

10 & 15, T15N, R6E; west and south along DNR/((Champion)) IPPTI ownership line and Plum Creek Timber Co./((Champion)) IPPTI ownership line to most southerly point of ((Champion)) IPPTI ownership (northwest of Ashford, WA); easterly along ((Champion)) IPPTI ownership line to DNR/((Champion)) IPPTI ownership line; north and east to USFS/((Champion)) IPPTI ownership line; east along USFS/((Champion)) IPPTI ownership line to S.W. corner of Section 31, T16N, R7E; north along USFS/((Champion)) IPPTI ownership line to N.W. corner Section 32, T16N, R7E; east along Plum Creek Timber Co./USFS ownership line to N.E. corner of Section 32, T16N, R7E; south along USFS/((Champion)) IPPTI ownership line to S.E. corner Section 32, T16N, R7E; east along USFS/((Champion)) IPPTI ownership line to Mount Rainier National Park Boundary; north along Mount Rainier National Park Boundary to N.E. corner Section 24, T17N, R7E; northwest along SR 165 to intersection with Carbon River; down Carbon River to the BPA Transmission Line; south and west along the powerline to the Fisk Road; south along the Fisk Road to the King Creek Gate; north and west along the Brooks Road BPA Transmission line; southwest along BPA Transmission line to the Puyallup River (excluding all small, private ownerships); up Puyallup River to intersection with ((Champion)) IPPTI haul road bridge; south along ((Champion)) IPPTI haul road to point of beginning. Another portion of PLWMA 401 ((Champion)) IPPTI is the Buckley block (Kapowsin North described as follows: Beginning at the intersection of the BPA Transmission line and South Prairie Creek; up South Prairie Creek to East Fork South Prairie Creek; up East Fork South Prairie Creek to Plum Creek Timber Co./((Champion)) IPPTI ownership line (on south line of Section 33, T19N, R7E); along ((Champion)) IPPTI ownership line to center line of Section 34, T19N, R7E; north and east along DNR/((Champion)) IPPTI ownership line to S.W. corner of Section 27, T19N, R7E; north along Weyerhaeuser/((Champion)) IPPTI ownership line to White River; down White River to where it crosses west line Section 6, T19N, R7E; south and west along ((Champion)) IPPTI ownership line to intersection with South Prairie Creek; up South Prairie Creek to point of beginning.

**PLWMA 401A - Kapowsin North (Buckley):** That portion of PLWMA 401 description which includes the Buckley block.

**PLWMA 401B - Kapowsin Central (King Creek):** That portion of PLWMA 401 description which lies to the north of the Puyallup River, excluding the Buckley block.

**PLWMA 401C - Kapowsin South (Kapowsin):** That portion of PLWMA 401 description which lies to the south of the Puyallup River.

**PLWMA 600 - Merrill and Ring (Clallam County):** Beginning at Clallam Bay, east along the Strait of Juan de Fuca to the mouth of Deep Creek, south along Deep Creek to the township line between Townships 30 and 31, west along said township line to Highway 113 (Burnt Mt. Road) and north along Burnt Mt. Road (Highway 112 and 113) to Clallam Bay and point of beginning, except the following

described lands: T31N R10W: E 1/2 W 1/2, E 1/2 West of Deep Creek Section 19, Except SW 1/4 NW 1/4, SW 1/4, W 1/2 E 1/2 West of Deep Creek Section 30, Except North & West of Deep Creek Section 31: T31N R11W; Except the SW 1/4 SE 1/4 Section 7, Except that portion of NW 1/4 SE 1/4 which is County Park Section 10, Except the NE 1/4 NE 1/4 Section 14, Except W 1/2, W 1/2 E 1/2, SE 1/4 NE 1/4, NE 1/4 SE 1/4 Section 16, Except SW 1/4 NE 1/4 Section 17, Except NW 1/4 NW 1/4, SE 1/4 NW 1/4, SE 1/4, NE 1/4, NW 1/4 SE 1/4 Section 18, Except W 1/2 SW 1/4, SW 1/4 NE 1/4 Section 19, Except W 1/2 SW 1/4 Section 27, Except S 1/2 S 1/2, N 1/2 SW 1/4 Section 28, Except E 1/2 SE 1/4, SW 1/4 SE 1/4, NE 1/4, SW 1/4 Section 29, Except SW 1/4 SE 1/4 Section 30, Except NE 1/4 Section 31, Except All Section 32, Except All Section 33, except SW 1/4 NE 1/4, S 1/2 Section 34, T31N R12W; Except SE 1/4 SE 1/4, W 1/2 SE 1/4 East of Highway 112 Section 4, Except All East of Highway 112 Section 9, Except E 1/2 NE 1/4, SW 1/4 NE 1/4, W 1/2, SW 1/4, NW 1/4 SE 1/4 Section 13, Except S 1/2 SE 1/4 Section 14, Except E 1/2 NW 1/4 East of Highway 112 Section 23, Except N 1/2 SW 1/4, SE 1/4 NW 1/4 Section 24, Except SE 1/4 SW 1/4, SW 1/4 SE 1/4 Section 26, Except N 1/2 N 1/2, NE 1/4 SW 1/4 Section 35, Except All Section 36: T32N R12W; Except W 1/2 SE 1/4 Section 21, Except All Section 22, Except NW 1/4 Section 27, Except NE 1/4, N 1/2 SE 1/4, E 1/2 W 1/2 East of Highway 112 Section 28, Except E 1/2 W 1/2 East of Highway 112 Section 33, Except S 1/2 Section 36.

**PLWMA 600A North - Merrill and Ring North:** That portion of PLWMA 600 north of Highway 112.

**PLWMA 600B South - Merrill and Ring South:** That portion of PLWMA 600 south of Highway 112.

AMENDATORY SECTION (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

**WAC 232-28-275 ((2000)) 2001 and 2002 Black bear special permit season and quotas.**

**BLACK BEAR SPECIAL PERMIT HUNTS**

**Who May Apply:** Any one with a valid ((2000)) Washington big game license which includes black bear.

**Bag Limit:** One (1) black bear per black bear special permit season.

Hunt Name	Permit Season	Permit Hunt Boundary	Special Restrictions	((2000 Permits)) Permit Level
Blue Creek	April 15 - May ((25)) 31	GMU 154	Any Legal Weapon	15
Dayton	April 15 - May ((25)) 31	GMU 162	Any Legal Weapon	15
Tucannon	April 15 - May ((25)) 31	GMU 166	Any Legal Weapon	10

Hunt Name	Permit Season	Permit Hunt Boundary	Special Restrictions	((2000 Permits)) Permit Level
Wenaha	April 15 - May ((25)) 31	GMU 169	Any Legal Weapon	((25)) 30
Mt. View	April 15 - May ((25)) 31	GMU 172	Any Legal Weapon	15
Lick Creek	April 15 - May ((25)) 31	GMU 175	Any Legal Weapon	15
Grande Ronde	April 15 - May ((25)) 31	GMU 186	Any Legal Weapon	5

**License Required:** A valid big game hunting license which includes black bear as a species option is required to hunt black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option. A second black bear transport tag must be purchased to take a second bear.

**Hunting Method:** Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of hounds and bait to hunt black bear is prohibited statewide.

~~((Harvest Report Cards: All hunters that purchase a big game hunting license which includes black bear as an option are required to fill out and return their black bear harvest report card(s). Successful hunters must complete the report card(s) and return within 10 days after taking an animal. Unsuccessful hunters are required to complete and return their report card(s) within 10 days after the close of the bear season, except that unsuccessful spring bear hunters may retain their harvest report card for use during the general season.))~~

**Submitting Bear Teeth:** Successful bear hunters must submit the black bear premolar tooth located behind the canine tooth of the upper jaw.

AMENDATORY SECTION (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

**WAC 232-28-277 2001, 2002, 2003 Big game and wild turkey auction permits and raffles.**

**BIG GAME AUCTION PERMITS**

The director will select a conservation organization(s) to conduct the 2001, 2002, and 2003 auction(s). Selection of the conservation organizations will be based on criteria adopted by the Washington department of fish and wildlife. The organization shall notify the department of the name and address of the successful bidder within ten days of the auction.

2001 AUCTION PERMIT HUNT(S)

SPECIES - ONE DEER PERMIT

Hunting season dates: September 1 - December 31, 2001

PERMANENT

Hunt Area: Statewide EXCEPT all Private Lands Wildlife Management Areas (PLWMAs) and GMUs 157, 418, 485, and 522 are closed.

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One additional any buck deer

SPECIES - ONE ELK PERMIT

Hunting season dates: September 15-30, 2001

Hunt Area: Statewide in any area open to general or permit season muzzleloader, archery, or modern firearm elk hunting during the 2001 season EXCEPT all Private Lands Wildlife Management Areas (PLWMAs) and GMUs 157 and 485 are closed.

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One bull elk

SPECIES - ONE BIGHORN SHEEP PERMIT

Hunting season dates: September 1 - October 31, 2001

Hunt Area: Sheep Unit 4 (Selah Butte), Sheep Unit 5 (Umtanum), Sheep Unit 7 (Cleman Mountain), or Sheep Unit 13 (Quilomene).

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One bighorn ram

SPECIES - ONE MOOSE PERMIT

Hunting season dates: October 1 - November 30, 2001

Hunt Area: Any moose unit open during the 2001 season.

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One moose of either sex

SPECIES - ONE MOUNTAIN GOAT PERMIT

Hunting season dates: September 15 - October 31, 2001

Hunt Area: Goat Unit 3-6 (Naches Pass), Goat Unit 3-9 (Tieton River), Goat Unit 3-10 (Blazed Ridge), or Goat Unit 5-4 (Goat Rocks).

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One mountain goat of either sex

2002 AND 2003 AUCTION PERMIT HUNT(S)

SPECIES - ONE DEER PERMIT

Hunting season dates: September 1 - December 31, 2002 and 2003

Hunt Area: Statewide EXCEPT all Private Lands Wildlife Management Areas (PLWMAs) and GMUs 157, 418, 485, and 522 are closed.

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One additional any buck deer

SPECIES - ONE WESTSIDE ELK PERMIT

Hunting Season Dates: ((September 15-30, 2001)) September 1 - December 31, 2002 and 2003

Hunt Area: ((Statewide in any area open to general or permit season muzzleloader, archery, or modern firearm elk hunting during the 2001 season)) Western Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMAs) and GMUs ((157 and 485)) 418, 485, and 522 are closed.

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag Limit: One additional any bull elk

((ELK AUCTION HUNT PERMITTEE RULES

(1) Permittee shall contact the appropriate regional office of the department of fish and wildlife when entering the designated hunt area.

(2) The permittee may be accompanied by others; however, only the permittee is allowed to carry a legal weapon or harvest an animal.

(3) Any attempt by members of the permittee's party to herd or drive wildlife is prohibited.

(4) If requested by the department, the permittee is required to direct department officials to the site of the kill.))

SPECIES - ONE EASTSIDE ELK PERMIT

Hunting season dates: September 1 - December 31, 2002 and 2003

Hunt Area: Eastern Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMAs) and GMU 157 are closed.

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One additional any bull elk

SPECIES - ONE BIGHORN SHEEP PERMIT

Hunting Season Dates: September 1 - October 31, ((2001)) 2002 and 2003

Hunt Area: Sheep Unit 4 (Selah Butte), Sheep Unit 5 (Umtanum), Sheep Unit 7 (Cleman Mountain), ((or)) Sheep Unit 12 (Lincoln Cliffs), Sheep Unit 13 (Quilomene), or Sheep Unit 14 (Swakane).

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag Limit: One bighorn ram

((BIGHORN SHEEP AUCTION HUNT PERMITTEE RULES

(1) Permittee shall contact the appropriate regional office of the department of fish and wildlife when entering the designated hunt area.

(2) The permittee may be accompanied by others; however, only the permittee is allowed to carry a firearm and harvest an animal.

(3) Any attempt by members of the permittee's party to herd or drive wildlife is prohibited.

(4) If requested by the department, the permittee is required to direct department officials to the site of the kill.

~~(5) The permittee will present the head and carcass of the bighorn sheep killed to any department office within 72 hours of date of kill.)~~

**SPECIES - ONE MOOSE PERMIT**

~~Hunting Season Dates: October 1 - November 30, ((2001) 2002 and 2003~~

~~Hunt Area: Any open moose unit ((open during the 2001 season)).~~

~~Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.~~

~~Bag Limit: One moose of either sex~~

~~((MOOSE AUCTION HUNT PERMITTEE RULES~~

~~(1) The permittee may be accompanied by others; however, only the permittee is allowed to carry a legal weapon or harvest an animal.~~

~~(2) If requested by the department, the permittee is required to direct department officials to the site of the kill.)~~

**SPECIES - ONE MOUNTAIN GOAT PERMIT**

Hunting season dates: September 15 - October 31, 2002 and 2003

Hunt Area: Goat Unit 3-6 (Naches Pass), Goat Unit 3-9 (Tieton River), Goat Unit 3-10 (Blazed Ridge), or Goat Unit 5-4 (Goat Rocks).

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One mountain goat of either sex

**RAFFLE PERMITS**

~~((The following)) Raffle permits will be issued to individuals selected through a Washington department of fish and wildlife drawing((:)) or the director may select a conservation organization(s) to conduct the 2001, 2002, and 2003 raffle(s). Selection of a conservation organization will be based on criteria adopted by the Washington department of fish and wildlife. The organization shall notify the department of the name and address of the individual selected, and two alternatives, within two business days of the raffle.~~

2001 RAFFLE PERMIT HUNT(S)

DEER RAFFLE PERMIT HUNT

Bag limit: One additional any buck deer

Open area: Statewide EXCEPT all Private Lands Wildlife Management Areas (PLWMAs) and GMUs 157, 418, 485, and 522 are closed.

Open season: September 1 - December 31, 2001.

Weapon: Any legal weapon EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Number of permits: 1

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

ELK RAFFLE PERMIT HUNT

Bag limit: One additional any bull elk

Open area: Statewide in any area open to general or permit season muzzleloader, archery, or modern firearm elk hunting during the 2001 season, EXCEPT all Private Lands Wildlife Management Areas (PLWMAs) and GMUs 157 and 485 are closed.

Open season: The elk raffle permit holder may hunt in any 2001 general or permit archery, muzzleloader, or modern firearm season.

Weapon: The raffle permit hunter may use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons and any legal weapon during modern firearm seasons.

Number of permits: 1

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

BIGHORN SHEEP RAFFLE PERMIT HUNT

Bag limit: One bighorn ram

Open area: Sheep Unit 4 (Selah Butte), Sheep Unit 5 (Umtanum), Sheep Unit 7 (Cleman Mountain), or Sheep Unit 13 (Quilomene).

Open season: September 1 - October 31, 2001.

Weapon: Hunter may use any legal weapon.

Number of permits: 1

Raffle ticket cost: \$10.00 including a 50-cent vendor fee.

MOOSE RAFFLE PERMIT HUNT

Bag limit: One moose of either sex

Open area: Hunter may hunt in any moose unit open during the 2001 season.

Open season: October 1 - November 30, 2001.

Weapon: Hunter may use any legal weapon.

Number of permits: 1

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

MOUNTAIN GOAT RAFFLE PERMIT HUNT

Bag limit: One mountain goat of either sex

Open area: Goat Unit 3-6 (Naches Pass), Goat Unit 3-9 (Tieton River), Goat Unit 3-10 (Blazed Ridge), or Goat Unit 5-4 (Goat Rocks).

Open season: September 15 - October 31, 2001.

Weapon: Hunter may use any legal weapon.

Number of permits: 1

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

2002 AND 2003 RAFFLE PERMIT HUNT(S)

DEER RAFFLE PERMIT HUNT

Bag limit: One additional any buck deer

Open area: Statewide ((in any area open to general or permit season muzzleloader, archery, or modern firearm deer hunting during the 2001 season.)) EXCEPT all Private Lands Wildlife Management Areas (PLWMAs) and GMUs 157 ((and 485)), 418, 485, and 522 are closed.

Open season: ((The deer raffle permit holder may hunt in any 2001 general or permit archery, muzzleloader, or modern firearm season.)) September 1 - December 31, 2002 and 2003.

Weapon: ((The raffle hunter may use only archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons and any legal weapon during modern

~~firearm seasons.)) Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.~~

Number of permits: 1

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

#### WESTSIDE ELK RAFFLE PERMIT HUNT

Bag limit: One additional any bull elk

Open area: ~~((Statewide in any area open to general or permit season muzzleloader, archery, or modern firearm elk hunting during the 2001 season.))~~ Western Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMA) and GMUs ((457 and 485)) 418, 485, and 522 are closed.

Open season: ~~((The elk raffle permit holder may hunt in any 2001 general or permit archery, muzzleloader, or modern firearm season.))~~ September 1 - December 31, 2002 and 2003.

Weapon: ~~((The raffle permit hunter may use only archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons and any legal weapon during modern firearm seasons.))~~ Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Number of permits: 1

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

#### EASTSIDE ELK RAFFLE PERMIT HUNT

Bag limit: One additional any bull elk

Open area: Eastern Washington EXCEPT all Private Lands Wildlife Management Areas (PLWMA) and GMU 157 are closed.

Open season: September 1 - December 31, 2002 and 2003.

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Number of permits: 1

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

#### BIGHORN SHEEP RAFFLE PERMIT HUNT

Bag limit: One bighorn ram

Open area: Sheep Unit 4 (Selah Butte), Sheep Unit 5 (Umtanum), Sheep Unit 7 (Cleman Mountain), ~~((ø))~~ Sheep Unit 12 (Lincoln Cliffs), Sheep Unit 13 (Quilomene), or Sheep Unit 14 (Swakane).

Open season: September 1 - October 31, ~~((2001)) 2002 and 2003.~~

Weapon: Hunter may use any legal weapon.

Number of permits: 1

Raffle ticket cost: \$10.00 including a 50-cent vendor fee.

~~((1) Permittee shall contact the appropriate regional office of the department when entering the designated hunt area.~~

~~((2) The permittee may be accompanied by others; however, only the permittee is allowed to carry a firearm and harvest an animal.~~

~~((3) Any attempt by members of the permittee's party to herd or drive wildlife is prohibited.~~

~~((4) If requested by the department, the permittee is required to accompany department officials to the site of the kill.~~

~~((5) The permittee will present the head and carcass of the bighorn sheep killed to any department office within 72 hours of date of kill.))~~

#### MOOSE RAFFLE PERMIT HUNT

Bag limit: One moose of either sex

Open area: ~~((Hunter may hunt in))~~ Any open moose unit ~~((open during the 2001 season)).~~

Open season: October 1 - November 30, ~~((2001)) 2002 and 2003.~~

Weapon: Hunter may use any legal weapon.

Number of permits: 1

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

~~((1) Permittee shall contact the appropriate regional office of the department when entering the designated hunt area.~~

~~((2) If requested by the department, the permittee is required to accompany department officials to the site of the kill.))~~

#### MOUNTAIN GOAT RAFFLE PERMIT HUNT

Bag limit: One mountain goat of either sex

Open area: Goat Unit 3-6 (Naches Pass), Goat Unit 3-9 (Tieton River), Goat Unit 3-10 (Blazed Ridge), or Goat Unit 5-4 (Goat Rocks).

Open season: September 15 - October 31, 2002 and 2003.

Weapon: Hunter may use any legal weapon.

Number of permits: 1

Raffle tickets cost: \$5.00 including a 50-cent vendor fee.

#### TURKEY RAFFLE PERMIT HUNTS

Bag limit: Three (3) additional wild turkeys, but not to exceed more than one ~~((of each subspecies: Eastern, Rio Grande, and Merriams)) turkey in Western Washington or two turkeys in Eastern Washington.~~

Open area: Statewide.

Open season: April 1 - May 31, 2001, 2002, and 2003.

Weapon: Archery or shotgun only.

Number of permits: 2

Raffle ticket cost: \$5.00 including a 50-cent vendor fee.

~~((1) Permittee shall contact the appropriate regional office of the department when entering the region to hunt outside the general season for wild turkeys.~~

~~((2) The permittee may be accompanied by others. Only the permittee is allowed to carry a weapon and harvest a turkey outside the general season.))~~

#### Auction and raffle hunt permittee rules

(1) Permittee shall contact the appropriate regional office of the department of fish and wildlife when entering the designated hunt area or entering the region to hunt outside the general season.

(2) The permittee may be accompanied by others; however, only the permittee is allowed to carry a legal weapon or harvest an animal.

(3) Any attempt by members of the permittee's party to herd or drive wildlife is prohibited.

(4) If requested by the department, the permittee is required to direct department officials to the site of the kill.

(5) The permit is valid during the hunting season dates for the year issued.

(6) The permittee will present the head and carcass of the bighorn sheep killed to any department office within 72 hours of date of kill.

(7) The permittee must abide by all local, state, and federal regulations including firearm restriction areas and area closures.

**WSR 01-04-052**  
**PERMANENT RULES**  
**SALMON RECOVERY**  
**FUNDING BOARD**

[Filed February 2, 2001, 12:15 p.m.]

Date of Adoption: January 26, 2001.

Purpose: Establish administrative rules for the Salmon Recovery Funding Board, for consistency with state law and to better inform the public of its operating methods and structure.

Statutory Authority for Adoption: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW.

Adopted under notice filed as WSR 00-24-104 on December 6, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 22, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 22, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 22, Amended 0, Repealed 0.

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

February 1, 2001

Greg Lovelady  
Rules Coordinator

**Title 420 WAC**

**SALMON RECOVERY FUNDING BOARD**

**Chapter 420-04 WAC**

**GENERAL**

**NEW SECTION**

**WAC 420-04-010 Definitions.** For purposes of Title 420 WAC, the definitions in RCW 77.85.010 apply. In addition,

unless the context clearly indicates otherwise, the following definitions also apply:

"Acquisition" means the gaining of rights of public ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property, and related interests such as water or mineral claims and use rights.

"Applicant" means any agency, person or organization that meets qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the board. Generally, eligible applicants for SRFB funds include a state, local, tribal or special purpose government, a non-profit organization, a combination of such governments, or a landowner for projects on its land.

"Application" means the form(s) developed and implemented for use by applicants in soliciting project funds administered by the board.

"Board" means the Salmon Recovery Funding Board (SRFB) created by chapter 13, Laws of 1999 1st sp. sess. (2E2SSB 5595), now codified as chapter 77.85 RCW.

"Chair" means the chair of the board.

"Development" means the construction or alteration of facilities, the placement or removal of materials, or other physical activity to restore or enhance salmon habitat resources.

"Director" means the director of the IAC or that person's designee, responsible for implementation of board activities under chapters 79A.25 and 77.85 RCW.

"IAC" means the interagency committee for outdoor recreation (IAC), an executive state agency established under chapter 79A.25 RCW.

"Lead entity" means the local organization or group designated under RCW 77.85.050.

"Manual(s)" means a compilation of state and federal policies, procedures, rules, forms, and instructions that have been assembled in manual form and which have been approved by the board for dissemination by paper, electronic or other formats to all who may wish to participate in the board's grant program(s).

"Preliminary expense" means project costs incurred prior to board approval, other than site preparation/development costs, necessary for the preparation of a development project.

"Project" means the undertaking which is, or may be, funded in whole or in part with funds administered by the IAC on behalf of the board.

"Project agreement" means a project agreement, supplemental agreement, intergovernmental agreement, or project contract between the IAC acting on behalf of the board, and a project sponsor.

"Project sponsor" means an applicant under RCW 77.85.010(6) who has been awarded a grant of funds, and has a signed project agreement.

**NEW SECTION**

**WAC 420-04-015 Address.** All communications with the board shall be directed to the IAC offices at the Natural Resources Building, 1111 Washington Street S.E., P.O. Box 40917, Olympia, Washington 98504-0917. Telephone (360) 902-3000. Web site: [www.wa.gov/iac/salmonmain](http://www.wa.gov/iac/salmonmain).

NEW SECTION

**WAC 420-04-020 Organization and operations.** The board:

(1) Is an unsalaried body of ten members. Five members are citizens appointed by the governor from the public-at-large, with the consent of the senate, for a term of three years each. The other members are the:

- (a) Commissioner of public lands;
- (b) Director of the department of fish and wildlife;
- (c) Director of the state conservation commission;
- (d) Director of the department of ecology; and
- (e) Secretary of transportation (or the designees of these individuals).

The five citizen members, including the chair, are voting members. The chair of the board is appointed by the governor from among the five citizen members.

(2) Is authorized and obligated to administer grant programs for salmon recovery, and related programs and policies.

(3) Performs and accomplishes work by a staff under the supervision of the IAC director appointed by the governor.

(4)(a) Conducts regular meetings, pursuant to RCW 42.30.075, according to a schedule it adopts in an open public meeting.

(b) May conduct special meetings at any time, pursuant to RCW 42.30.080, if called by the chair.

(c) Maintains an official record of its meetings in a recorded audio format, unless written minutes are otherwise indicated for logistical reasons.

(5) Defines a quorum as three of its voting members, with a preference that at least two of the agency members shall also be present.

(6) Adopts parliamentary meeting procedure generally as described in *Robert's Rules of Order*. Only voting members may make motions or formal amendments, but agency members may request the chair for leave to present a proposal for board consideration.

NEW SECTION**WAC 420-04-030 Manuals and waivers—Guidance.**

(1) The board shall adopt one or more manuals that describe its general administrative policies, for use by grant applicants, potential applicants, project sponsors, and others. The board shall inform all applicants in any given grant cycle of the specific project application process and methods of review, including current evaluation tests and instruments, by explaining these items in the manuals or other publicly available formats. Manuals may be adopted for each grant cycle, or for a topical issue, and shall contain a clear statement of the applicability of the policies outlined. The board also instructs the director to use applicable IAC administrative manuals for general guidance in the implementation of SRFB grant contracts. These include IAC manuals regarding land acquisition, conservation easements, funded projects, and reimbursement procedures.

(2) Board policies, including those referenced in the manuals, shall be considered and approved by the board in an open public meeting. Notice of such considerations will be

given by distribution of the agenda for the meeting, press releases, meeting notice in the *Washington State Register*, or other means.

(3) Project applicants, project sponsors, or other interested parties may petition the director for a waiver or waivers of those items within the manuals dealing with general administrative matters and procedures. Determinations on petitions for such waivers made by the director are subject to review by the board at the request of the petitioner.

(4) Petitions for waivers of subjects regarding board policy, and those petitions that in the judgment of the director require board review, shall be referred to the board for deliberation. Policy waivers may be granted after consideration by the board at an open public meeting.

NEW SECTION

**WAC 420-04-040 Project selection.** The board shall use an open public selection process to guide it in allocating funds to and among project applicants. The board's priority rating system for evaluating projects and lists shall:

(1) Be adopted by the board in advertised public meetings;

(2) Consider applicant, local, regional, and statewide needs, technical merits, and other criteria;

(3) Be developed through the participation of interested parties and specialists, and include best available science;

(4) Be made widely available to interested parties in published manuals and related electronic materials;

(5) Be designed for use by an independent technical panel or team of evaluators with relevant expertise when selected for this purpose on behalf of the board;

(6) Be in accord with statutes.

The director shall implement the board's criteria, assessment, evaluation and rating systems in preparing funding options or recommendations for board consideration.

NEW SECTION

**WAC 420-04-050 Final decision.** The board shall review options or recommendations for grant awards at scheduled board meetings announced as funding sessions. It retains the final authority and responsibility to award grant or loan funds, and to accept or depart from any recommendations. Unless otherwise required by law, the board's decision is the final decision concerning the funding of a project.

NEW SECTION

**WAC 420-04-060 Delegated authority.** Consistent with RCW 79A.25.240 and other applicable laws, the director is delegated the authority and responsibility to carry out policies and administrative functions of the board. This includes, but is not limited to, the authority to:

(1) Administer board programs at the offices of the IAC;

(2) Administer all applicable rules, regulations and requirements established by the board or reflected in the laws of the state;

(3) Implement board decisions; and



(4) Approve certain waiver requests or other administrative matters.

#### NEW SECTION

**WAC 420-04-070 Compliance with Environmental Policy Act guidelines.** (1) The board finds that, pursuant to RCW 43.21C.0382, all of its activities and programs are exempt from threshold determinations and environmental impact statement requirements.

(2) To the extent applicable, it is the responsibility of applicants and project sponsors to comply with the provisions of chapter 43.21C RCW, the State Environmental Policy Act rules, the National Environmental Protection Act, and to obtain associated land-use and regulatory permits and reviews.

#### NEW SECTION

**WAC 420-04-080 Declaratory order—Petition requisites—Consideration—Disposition.** (1) Any person may submit a petition for a declaratory order pursuant to RCW 34.05.240 in any written form so long as it:

(a) Clearly states the question the declaratory order is to answer; and

(b) Provides a statement of the facts which raise the question.

(2) The director may conduct an independent investigation in order to fully develop the relevant facts.

(3) The director shall present the petition to the board at the first meeting when it is practical to do so and will provide the petitioner with at least five days notice of the time and place of such meeting. Such notice may be waived by the petitioner.

(4) The petitioner may present additional material and/or argument at any time prior to the issuance of the declaratory order.

(5) The board may issue either a binding or a nonbinding order or decline to issue any order.

(6) The board may decide that a public hearing would assist its deliberations and decisions. If such a hearing is ordered, it will be placed on the agenda of a meeting and at least five days notice of such meeting shall be provided to the petitioner.

(7) If an order is to be issued, the petitioner shall be provided a copy of the proposed order and invited to comment.

(8) The declaratory order cannot be a substitute for a compliance action and is intended to be prospective in effect.

(9) The board will decline to consider a petition for a declaratory or to issue an order when:

(a) The petition requests advice regarding a factual situation which has actually taken place; or

(b) When a pending investigation or compliance action involves a similar factual situation.

#### NEW SECTION

**WAC 420-04-085 Petitions for rule making, amendment or repeal—Form—Consideration—Disposition.** Any person may submit a petition requesting the adoption,

amendment or repeal of any rule by the board, pursuant to RCW 34.05.330 and the uniform rules adopted by the office of financial management that are set forth in chapter 82-05 WAC.

#### NEW SECTION

**WAC 420-04-100 Public records access.** (1) The board is committed to public access to its public records. All public records of the board, as defined in RCW 42.17.260 as now or hereafter amended, are available for public inspection and copying pursuant to this regulation, except as otherwise provided by law, including, but not limited to, RCW 42.17.310 and 42.17.255 (Exemptions).

(2) The board's public records shall be available through the public records officer designated by the director. All records access for board records shall be conducted in the same manner as records access for IAC records, including office location, hours, copy fee and request forms. The board adopts by reference the records access procedures of the IAC and charges the director to administer for access purposes the board's records in the same manner as records of the IAC are administered, pursuant to chapter 286-06 WAC.

(3) Any person who objects to the denial of a request for a public record of the board may petition the director for review by submitting a written request. The request shall specifically refer to the written statement which constituted or accompanied the denial.

(4) After receiving a written request for review of a decision denying inspection of a public record, the director, or designee, will either affirm or reverse the denial by the end of the second business day following receipt according to RCW 42.17.320. This shall constitute final board action. Whenever possible in such matters, the director or designee shall consult with the board's chair and members.

### Chapter 420-12 WAC

#### GRANT ASSISTANCE RULES

#### NEW SECTION

**WAC 420-12-010 Scope of chapter.** This chapter contains general rules for grant program eligibility, applications, and projects funded with money from or through the board.

#### NEW SECTION

**WAC 420-12-020 Application form.** (1) All grant requests must be completed and submitted in the format and manner prescribed by the board.

(2) If the director determines that the applicant is eligible to apply for federal funds administered by the board, the applicant must execute any additional forms necessary for that purpose.

#### NEW SECTION

**WAC 420-12-030 Deadlines—Applications and agreements.** (1) Applications. To allow time for review,

applications must be submitted by the announced due date. Unless otherwise authorized by the board, the director and staff have no authority to extend the application filing deadlines.

(2) Project agreement. An applicant has three calendar months from the date of the board's mailing of the project agreement document to execute and return the agreement to the board's office. After this period, the board or director may reject any agreement not completed, signed and returned, and may reallocate the grant funds to another project(s). The director may waive compliance with this deadline for good cause.

#### NEW SECTION

**WAC 420-12-040 Eligible matching resources.** (1) Applicant resources used to match board funds may include: Cash, certain federal funds, the value of privately owned donated real estate, equipment, equipment use, materials, labor, or any combination thereof. The specific eligible matches for any given grant cycle shall be detailed in the published manual. The director shall require documentation of values.

(2) Agencies and organizations may match board funds with other state funds, including IAC funds, so long as the other state funds are not administered by the board and if otherwise allowed by state law. For the purposes of this subsection, grants issued by other agencies under the Jobs for Environment program and the Forests & Fish program are not considered to be administered by the board.

(3) Private donated real property, or the value of that property, must consist of real property (land and facilities) that would otherwise qualify for board grant funding.

(4) The eligibility of federal funds to be used as a match is governed by federal requirements and thus may vary with individual proposals and grant cycles.

#### NEW SECTION

**WAC 420-12-050 Project agreement.** For every funded project, an agreement shall be executed within the deadlines in WAC 420-12-030 and as provided in this section.

(1) The project agreement shall be prepared by the director after approval of the project by the board at a public meeting. The director shall execute the agreement on behalf of the board and submit the document to the applicant. After the applicant signs the agreement, the applicant becomes and is referred to as the project sponsor. The parties are then bound by the agreement's terms. The applicant shall not proceed with the project until the agreement has been signed and the project start date listed in the agreement has arrived, unless the applicant has received specific authorization pursuant to WAC 420-12-070.

(2) If the project is approved by the board to receive a grant from federal funds, the director shall not execute an agreement or amendment with the applicant until federal funding has been authorized through execution of a concurrent project agreement with the applicable federal agency, if and as necessary.

#### NEW SECTION

**WAC 420-12-060 Disbursement of funds.** Except as otherwise provided in this rule, the director will authorize disbursement of project funds only on a reimbursable basis, after the project sponsor has spent its own funds and has presented a billing showing satisfactory evidence of property rights acquired and/or compliance with partial or all provisions of the project agreement.

(1) Reimbursement method. Reimbursement shall be requested on voucher forms authorized by the director. Requests must include all documentation as detailed in the manual in effect at the time reimbursement is requested.

(2) Reimbursement level. The amount of reimbursement may never exceed the cash spent on the project by the sponsor.

(3) Partial payment. Partial reimbursements may be made during the course of a project on presentation of billings showing satisfactory evidence of partial acquisition or development by the project sponsor. The director may require written assurance that full project completion is scheduled by a specific date. In the event of appropriation reductions or terminations, the project agreement shall allow the board to suspend or terminate future obligations and payments.

(4) Direct payment. Direct payment to escrow of the board's share of the approved cost of real property may be made following board approval of an acquisition project when the project sponsor indicates a temporary lack of funds to purchase the property. Prior to release of the board's share of escrow funds, the project sponsor must provide the director with a copy of a binding sale agreement between the project sponsor and the seller and evidence of deposit of the project sponsor's share (if any) into an escrow account.

(5) Advance payments may be made in limited circumstances only, pursuant to the policy outlined in the adopted reimbursement manual.

#### NEW SECTION

**WAC 420-12-070 Retroactive expenses and increased costs.** The definitions in WAC 420-04-010 apply to this section.

(1) The board shall not reimburse expenses for activities undertaken, work performed or funds expended before the date on which the agreement was signed. This policy is referred to as the board's prohibition on retroactivity. The only exceptions are as outlined in the adopted reimbursement manual, for certain preliminary expenses.

(2) If such exceptions do not apply, a waiver may be issued to avoid the prohibition on retroactivity only under the following circumstances, for retroactive land acquisition cost reimbursements:

The director may grant a waiver of retroactivity when an applicant documents, in writing, that a condition exists which may jeopardize the project. When evidence warrants, the director may grant the applicant permission to proceed prior to the signing of an agreement by issuing the written waiver. This waiver of retroactivity shall not be construed as an approval of the proposed project. If the project is subse-

quently approved for board funding, the expenditures described in the waiver incurred shall be eligible for assistance if they otherwise satisfy the reimbursement requirements under WAC 420-12-060.

(3) Cost increases. The board shall reimburse only for allowable expenses under WAC 420-12-070. If costs increase after the agreement is signed, a project sponsor is solely responsible, unless the adopted manual for the relevant grant cycle specifically establishes a cost-increase method for that cycle.

#### NEW SECTION

##### **WAC 420-12-075 Nonconformance and repayment.**

In the event any project sponsor's expenditure of board grant moneys is determined by the board or director to conflict with applicable statutes, rules and/or related manuals, or the project agreement, the board reserves the right to demand repayment to the appropriate state account, by written notice from the director to the project sponsor. Such repayment requests may be made following consideration of an applicable report from the state auditor's office.

#### NEW SECTION

**WAC 420-12-080 Acquisition projects—Deed of right, conversions, leases and easements.** For acquisition projects sponsors must execute a binding instrument or instruments which contain:

(1) For fee, less-than-fee, and easement acquisition projects:

(a) A legal description of the property acquired;

(b) A conveyance to the state of Washington of the right to use the described real property forever for the designated salmon habitat protection purposes; and

(c) A restriction on conversion of use of the land.

Without prior approval of the board, a facility or property acquired with money granted by the board shall not be converted to a use other than that for which funds were originally approved. The board shall only approve such a conversion under conditions which assure the substitution of other land of at least equal fair market value at the time of conversion, and of as nearly feasible equivalent usefulness and location.

(2) For lease acquisition projects, a binding agreement which contains a legal description of the property and rights acquired and which meets the following criteria. The interest:

(a) Must be for at least fifty years unless precluded by state law;

(b) May not be revocable at will;

(c) Must have a value supported through standard appraisal techniques;

(d) Must be paid for in lump sum at initiation;

(e) May not be converted, during the lease period, to a use other than that for which funds were originally approved, without prior approval of the board.

#### NEW SECTION

**WAC 420-12-085 Development projects—Conversion to other uses.** (1) Without prior approval of the board, a facility or site aided or developed with money granted by the board, shall not be converted to a use other than that for which funds were originally approved.

(2) The board shall only approve such a conversion under conditions which assure that:

(a) All practical alternatives to the conversion have been evaluated and rejected on a sound basis;

(b) A new project or facility will be provided to serve as a replacement which:

(i) Is of reasonably equivalent habitat utility and location;

(ii) Will be administered under similar stewardship methods as the converted development;

(iii) Will satisfy need(s) identified in the project sponsor's watershed strategy or plan; and

(iv) Includes only elements eligible under the board's program from which funds were originally allocated.

(3) The board may condition any conversion approval as needed to protect the public habit investment.

#### NEW SECTION

**WAC 420-12-090 Condemnation not eligible.** The board shall not approve any grant for proposals where the title to property is acquired through or as a direct result of condemnation proceedings. All acquisitions must be on a willing-seller basis.

#### **WSR 01-04-054**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

[Filed February 5, 2001, 10:06 a.m.]

Date of Adoption: February 5, 2001.

Purpose: To adopt by reference the 1999 National Shellfish Sanitation Program (NSSP) model ordinance, make revisions in this chapter to be consistent with the 1999 NSSP Model Ordinance, adopt Department of Health (DOH) shellfish operation licensing policies into WAC, and adopt recommendations of the department's Shellfish Advisory Committee into WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-282-030, 246-282-040 and 246-282-090; and amending WAC 246-282-001, 246-282-005, 246-282-010, 246-282-020, 246-282-050, 246-282-060, 246-282-070, 246-282-080, 246-282-100, 246-282-110, 246-282-120, 246-282-130, and 246-282-990.

Statutory Authority for Adoption: RCW 69.30.030.

Other Authority: RCW 43.20.030.

Adopted under notice filed as WSR 00-22-125 on November 1, 2000.

Changes Other than Editing from Proposed to Adopted Version: See Concise Explanatory Statement. The DOH is adding two definitions to improve the clarity of the rules:

PERMANENT

"Abatement" means an action or series of actions to eliminate a public health hazard or reduce it to a level acceptable to the secretary.

"Approved laboratory" means a laboratory that is in conformance with requirements of the NSSP model ordinance.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 4, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 4, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 11, Amended 13, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 13, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 13, Repealed 3.

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

February 5, 2001

Mary C. Selecky

Secretary

**AMENDATORY SECTION** (Amending Order 124B, filed 12/27/90, effective 1/31/91)

**WAC 246-282-001 Scope and purpose.** These requirements, as authorized under chapter 69.30 RCW (~~chapter 144, Laws of 1955~~), establish minimum performance standards for the growing, harvesting, processing, packing, storage, transporting, and selling of shellfish for human consumption. These requirements do not apply to persons who conduct activities limited to:

(1) Retail food service, in compliance with the requirements of chapter 246-215 WAC, Food service;

(2) Personal use, in compliance with requirements of chapters 77.32 RCW, Licenses, and 77.15 RCW, Fish and wildlife enforcement code; and

(3) Transporting as a common carrier of freight.

**AMENDATORY SECTION** (Amending WSR 98-18-066, filed 8/31/98, effective 10/1/98)

**WAC 246-282-005 Minimum performance standards.** (1) (~~Every~~) Any person engaged in a shellfish operation (~~shall~~) or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and (~~shall be~~) is subject to:

(a) The requirements of the (~~1997~~) 1999 National Shellfish Sanitation Program (NSSP) Model Ordinance, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration(-) (copies (~~can be obtained~~) available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of food safety and shellfish programs(-));

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans(-) (copies (~~can be obtained~~) available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs(-)); and

(c) All other provisions of this chapter.

(2) (~~Where~~) If a (~~"satisfactory compliance" provision~~) requirement of the NSSP Model Ordinance or a provision of 21 CFR, Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, ~~then~~ the more stringent provision, as determined by the department, (~~shall~~) will apply.

**AMENDATORY SECTION** (Amending Order 225B, filed 12/23/91, effective 1/23/92)

**WAC 246-282-010 Definitions.** The following definitions (~~shall~~), as well as those in the NSSP Model Ordinance, apply in the interpretation and the implementation of these rules and regulations(-).

(1) "Abatement" means an action or series of actions to eliminate a public health hazard or reduce it to a level acceptable to the secretary.

(2) "Approved" means acceptable to the secretary based on (~~his or her~~) the department's determination as to conformance with appropriate standards and good public health practice.

(~~(2)~~) (3) "Approved laboratory" means a laboratory that is in conformance with requirements of the NSSP Model Ordinance.

(4) "Certificate of approval" means a license issued by the department.

(5) "Civil penalty" means a monetary penalty administratively issued by the secretary. It does not include any criminal penalty; damage assessment; wages, premiums, or taxes owed; or interest or late fees on any existing obligation.

(6) "Commercial quantity" means any quantity exceeding:

(a) Forty pounds of mussels;

(b) One hundred oysters;

(c) Fourteen horse clams;

(d) Six geoducks; or

(e) Fifty pounds of other hard or soft shell clams; or

(f) Fifty pounds of scallops.

(~~(3)~~) (7) "Culch" means any material, other than live shellfish, used for the attachment of seed shellfish.

(8) "Department" means the state department of health.

(~~(4)~~) "Easily cleanable" means readily accessible and of such material and finish, and so fabricated that residue may be completely removed by approved cleaning methods.

(5) "Food contact surfaces" means those surfaces of equipment and utensils with which the shellfish meat normally comes in contact, and those surfaces that drain onto surfaces that may come into contact with said food being processed.

(6) (9) "Export certificate" means a certificate issued by the department to a licensed shucker-packer or shellstock

shipper for use in the foreign export of a lot or shipment of shellfish.

(10) "Harvest" means the act of removing shellstock from a harvest site and its placement on or in a container for transport.

(11) "Harvester" means a shellfish operation with activities limited to growing shellstock, placing shellstock in a container, harvesting shellstock, transporting shellstock within Washington state, and delivering shellstock to a shellfish dealer licensed by the department within four hours of landing it. A harvester does not process shellfish, ship shellfish outside of Washington state, sell shellfish outside of Washington state, sell shellfish to retail outlets, shuck shellfish, repack shellfish, or store shellfish in any location outside of the approved growing area from where the shellfish is harvested.

(12) "Harvest site" means an area of intertidal or subtidal property within a commercial shellfish growing area, that is described by a unique county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, tribal identification number, or other government identification.

(13) "Harvest site certificate" means a type of certificate of approval that designates one or more harvest sites approved for the harvesting of shellfish.

(14) "Hatchery" means an operation where shellfish larvae are produced and grown to the first sessile stage of life.

(15) "Notice of correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance and is not subject to civil penalties as provided for in RCW 43.05.110. It is not a formal enforcement action and is not subject to appeal. It is a public record.

(16) "Nursery" means an operation where shellfish are grown from an early sessile stage of life up to a maximum size meeting the definition of shellfish seed.

(17) "Number of previous violations" means the number of prior violations of the same or a similar nature for which the department has taken a license action or assessed a civil penalty.

(18) "Person" means any individual, firm, corporation, partnership, company, association, or joint stock association, and the legal successor thereof.

((7)) (19) "Person in charge" means an individual responsible for the supervision of employees and the management of any shellfish operation ((as defined in subsection (12) of this section)).

((8) "Sanitized" means the treatment of clean surfaces of equipment and utensils by an approved process which is effective in destroying microorganisms, including pathogens.

(9)) (20) "Public health threat" is either:  
(a) "Low," which means a violation that poses a minor possibility of direct or indirect hazard to public health;

(b) "Intermediate," which means a violation that poses a moderate possibility of direct or indirect hazard to public health; or

(c) "High," which means a violation that poses a known significant hazard or possibility of significant direct or indirect hazard to public health.

(21) "Sale" means to sell; offer for sale; barter; trade; deliver; consign; hold for sale; consignment; barter; trade; or delivery; and/or possess with intent to sell or dispose of in a commercial manner.

(22) "Secretary" means the secretary of the department of health or the secretary's authorized representative.

((10)) (23) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:

(a) Thirteen millimeters (1/2 inch) for mussels;

(b) Twenty-five millimeters (1 inch) for scallops;

(c) Nineteen millimeters (3/4 inch) for Olympia oysters;

(d) Nineteen millimeters (3/4 inch) for Kumamoto oysters;

(e) Fifty-one millimeters (2 inches) for other oyster species;

(f) Thirty-eight millimeters (1 and 1/2 inch) for geoducks; and

(g) Thirteen millimeters (1/2 inch) for other clam species.

(24) "Shellfish" means all varieties of fresh or fresh-frozen oysters, clams, scallops or mussels, either shucked or in the shell, and all fresh or fresh-frozen edible products thereof.

((11)) (25) "Shellfish dealer" means a person with a shellstock shipper or shucker-packer license.

(26) "Shellfish growing area(s)" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantities or for sale for human consumption.

((12)) (27) "Shellfish operation" means ((any activity in the)) growing, placing in a container, harvesting, transporting, processing, ((to include, but not limited to)) culling, shucking, packing, and repacking ((or)), storing, shipping, or reshipping of shellfish in commercial quantities or for sale for human consumption.

(28) "Shellfish operation license" means a type of certificate of approval applying to the overall activities of a shellfish operation.

(29) "Shellstock shipper" means a shellfish operation that does not shuck shellfish or repack shucked shellfish.

(30) "Shucker-packer" means a shellfish operation that may shuck and pack shellfish.

(31) "Technical assistance" means information provided by the department to a person regarding chapter 69.30 RCW; this chapter; technologies or other methods to achieve compliance with these rules; assistance in applying for a departmental license or permit required by these rules; or the goals and objectives of these rules. This is not intended to modify the definition of "technical assistance" as provided in RCW 43.05.010(3).

(32) "Violation" means the commission of an act or acts prohibited by the provisions of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance.

(33) "Wet storage" means the temporary storage of shellstock in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

(34) "Wild seed" means naturally set seed shellfish.

NEW SECTION

**WAC 246-282-012 Certificates of approval—Operation licenses, harvest site certificates.** (1) The department issues two types of certificates of approval to persons who conduct shellfish operations. They are shellfish operation licenses and harvest site certificates.

(2) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid shellfish operation license. To obtain a shellfish operation license, a person must:

(a) Submit to the department a completed application on a form developed by the department;

(b) Submit to the department an acceptable written plan of operations that completely describes the shellfish operation;

(c) Pass a preoperational inspection demonstrating compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance; and

(d) Pay the department any shellfish operation license fee required by this chapter.

(3) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid harvest site certificate. In order for a person to obtain a harvest site certificate, all of the following requirements must be met.

(a) The person possesses a valid shellfish operation license.

(b) The person submits to the department a completed application that describes the following characteristics of the site:

(i) Geographic location;

(ii) Map showing legal boundaries;

(iii) Unique government identification number, such as county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, or tribal identification number; and

(iv) Documentation of legal ownership or lease for shellfish harvesting.

(c) The harvest site is in a growing area that meets the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance for a commercial shellfish growing area.

(d) The harvest site is not impacted by any actual or potential sources of pollution.

(e) The harvest site passes a pollution assessment inspection conducted by the department if necessary to determine if the site is impacted by any actual or potential sources of pollution.

(f) The person signs the current conditionally approved area management plan, if applicable.

(g) The person pays the department any harvest site application fee required by this chapter.

(4) All shellfish operation licenses and harvest site certificates for shellfish dealers expire on the thirtieth day of September each year. All shellfish operation licenses and harvest site certificates for harvesters expire on the thirty-first day of March each year, beginning in 2002.

NEW SECTION

**WAC 246-282-014 Operating provisions.** (1) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must display a photocopy or original of a valid shellfish operation license, upon request, to any authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

(2) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must display a photocopy or original of a valid harvest site certificate, upon request, to any authorized representative of the department, a fish and wildlife patrol officer, or an ex officio patrol officer. Failure to do so subjects the person to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

(3) Any person who places a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption in containers at a harvest site must do so only at a site for which the person possesses a valid harvest site certificate. (4) The owner(s) of a shellfish operation must designate an individual as the person in charge of the operation. The owner(s) of a shellfish operation that includes one or more harvest sites may designate a different individual as the person in charge of the operation's harvest site(s) than the individual designated as the person in charge of all other phases of the shellfish operation.

(5) The owner(s) and the designated person in charge of a shellfish operation must:

(a) Ensure that at least one individual harvesting shellfish on behalf of the operation at each harvest site carry a copy of both the operation license and the harvest site certificate designating that the site is approved by the department for harvesting by that operation;

(b) Furnish shellfish tags meeting the requirements of chapter 69.30 RCW, these rules, and the NSSP Model Ordinance to those individuals harvesting on behalf of the operation;

(c) Ensure, by supervision at harvest sites or other adequate means, that those individuals working on behalf of the operation harvest only from harvest sites approved by the department for the operation; and

(d) Notify the department if an owner or person in charge has reason to believe that any individual is using the operation's tags, shellfish operation license, or harvest site certificate for any purpose other than one approved by the department.

(6) The designated person in charge of a shellfish operation must have a functioning telephone message device or service issued by a telephone service provider to the owner(s) or person in charge. The person in charge must:

(a) Monitor the device or service each day that the shellfish operation is active, regarding messages from the department about emergency closure of harvest areas or recall of shellfish products; and

(b) Notify the department whenever the telephone number used for this purpose changes; or

(c) Maintain another equivalent method of contact with the department approved in the plan of operations.

#### NEW SECTION

**WAC 246-282-016 Aquaculture.** Any person who conducts an aquaculture operation and is in possession of a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must meet all requirements of this chapter, except such person is exempt from all requirements of this chapter for the purpose of conducting aquaculture activities limited to the following:

- (1) A hatchery operation; or
- (2) A nursery operation handling only seed that is obtained from a hatchery.

**AMENDATORY SECTION** (Amending Order 124B, filed 12/27/90, effective 1/31/91)

**WAC 246-282-020 Growing areas.** (1) ~~((All shellfish to be sold as defined in RCW 69.30.010(2) in the state of Washington shall be obtained from approved growing areas or from approved growing areas outside the state that have programs of control and standards equivalent to that of the state of Washington:~~

~~(2) Approved shellfish growing areas shall be located in areas not adversely affected by human waste, industrial or natural toxins, recreational use, or other sources of pollutants which may have a detrimental influence on the water quality of the shellfish growing beds and subsequent hazards to the human consumers of shellfish.~~

~~(3) No commercial quantities of shellfish or shellfish to be sold as defined in RCW 69.30.010(2), for human consumption, shall be harvested from growing areas which are not approved as provided herein. Provided, That permission may be granted by the director for the removal of shellfish from nonapproved growing areas for relaying to approved growing areas under the following conditions:~~

~~(a) Shellfish shall be relayed to a designated, approved growing area for a minimum of two weeks or for a longer time period as prescribed by the director.~~

~~(b) Relaying and subsequent removal from the approved area for sale or shipment shall be under the supervision of the director.~~

~~(c) Records shall be kept showing growing areas from which the shellfish were taken, where relayed, dates of relaying, and dates of harvesting.~~

~~(4) All boats, oyster harvesters, and floats used for harvesting or transporting shellfish shall be so constructed, operated, and maintained as to prevent contamination or deterioration of the shellfish. Approved facilities shall be provided for the disposal of human waste.) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must do so only from a harvest site that meets one or more of the following conditions:~~

~~(a) The department has classified the growing area as "approved" or "conditionally approved," according to provisions of the NSSP Model Ordinance and the harvest site is in open status at the time of harvest;~~

(b) The department has approved the harvest site according to provisions of a permit for relay, wild seed, or bait;

(c) The harvest site is used for shellfish activities limited to a hatchery or a nursery operation handling only seed obtained from a hatchery; or

(d) The harvest site is used for shellfish activities limited to the initial harvest of seed attached to containerized empty shellfish shells or other cultch material.

(2) The department classifies a shellfish growing area as "restricted" or "prohibited" according to provisions of the NSSP Model Ordinance. However, the department considers classifying a harvest site as "restricted" only when the department has received a valid application for a permit for relay or wild seed harvest from the site.

(3) While a harvest site is in closed status, no person may move shellfish from it to a location outside of the harvest site or above the mean low tide line of the harvest site, unless the department has approved:

(a) Harvesting shellfish by that person from the site according to provisions of a permit for relay, wild seed harvest, or bait harvest; or

(b) Moving shellfish by that person from the site to another site in a natural body of water within the same "conditionally approved" growing area under a written plan of operations.

(4) Harvesting is prohibited from all growing areas unclassified by the department.

#### NEW SECTION

**WAC 246-282-032 Relay permit.** (1) The department will issue a relay permit to a person to move shellfish from a harvest site in a growing area classified as "restricted" or "conditionally approved" in closed status meeting the criteria for "restricted" classification, if all of the following conditions are met.

(a) The person possesses a valid shellfish operation license.

(b) The person possesses a valid harvest site certificate listing both the initial harvest site and the grow-out site.

(c) The initial harvest site and grow-out site meet the requirements for relay specified in this chapter and the NSSP Model Ordinance.

(d) The person submits a completed written application and plan of operations approved by the department completely describing the procedures and conditions of the relay operation.

(e) The person conducts and documents a separate validation study approved by the department for each of the following periods of time when shellfish will be relayed:

(i) May 1 through October 31; and

(ii) November 1 through April 30.

(f) The person pays the department a relay permit application fee or renewal fee as required by this chapter.

(2) Each validation study for a relay permit must demonstrate that shellfish harvested from a specified initial site do not contain excessive levels of fecal coliform bacteria and when relayed to a specified grow-out site for a specified time period consistently purge themselves of bacteria to approved

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levels. Each validation study must meet all of the following conditions.

(a) It must document that the geometric mean fecal coliform bacteria level in a minimum of five 100-gram tissue samples, representative of shellfish of the same species in the entire initial harvest site, is equal to or less than 1300, with no sample having more than 2300.

(b) It must document that specified relay procedures, times, and environmental conditions reduce fecal coliform bacteria in a minimum of five 100-gram tissue samples, representative of the entire lot of shellfish relayed, to levels that are equal to or less than:

(i) 330, with no more than two samples having greater than 230; or

(ii) Ten percent greater than the geometric mean of a minimum of five 100-gram tissue samples representative of the same shellfish species grown continuously for a minimum of six months at the grow-out site.

(c) It must be repeated a minimum of once every twelve years for a continuing operation and whenever relay conditions change.

(d) All samples must be analyzed by an approved laboratory.

(3) A person operating under a relay permit must follow all procedures in the plan of operations approved by the department, including:

(a) Staking or marking the grow-out site to be easily identified by the person until the minimum relay period of time is passed;

(b) Considering the beginning of the minimum relay time period for a lot to be the moment that the last part of the lot is added to the grow-out site;

(c) Relaying shellfish to a designated grow-out site for a minimum of seven days, or longer period of time as approved by the department; and

(d) Keeping records for each relayed lot of shellfish that show a lot identification number; the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.

(4) For each lot of shellfish relayed to a site for a grow-out period of less than fourteen days, a person must:

(i) Collect at least one sample from the shellfish lot at the initial harvest site and have it analyzed by an approved laboratory to demonstrate that the lot contains no more than 2300 fecal coliform bacteria per 100 grams of shellfish tissue; and

(ii) Collect at least one sample from the shellfish lot at the grow-out site at the end of the relay period and have it analyzed by an approved laboratory to demonstrate that the lot contains fecal coliform bacteria within the maximum limits determined by a validation study, as described in subsection (2)(b) of this section, before releasing control of the shellfish lot.

(5) A person is exempt from any fees for an initial application and a validation study conducted by the department for a relay permit for the purpose of relaying shellfish from a growing area that the department downgraded from a classification of "approved" or "conditionally approved" to "restricted" within the previous twenty-four months.

(6) A person's relay permit expires on the same date as the person's shellfish operation license.

(7) A person is exempt from the provisions of subsection (1) (e) of this section for the purpose of relaying shellfish to an approved grow-out site for a minimum of six months.

(8) A person possessing a valid shellfish operation license may act as an agent for another person possessing a valid shellfish relay permit for the purpose of harvesting shellfish from the initial harvest site specified in the permit, provided that the agent conducting the harvest is:

(a) Documented in the permit;

(b) In possession of a copy of the permit at the time of harvest; and

(c) Conducting activities described in the written plan of operations approved by the department for the agent's shellfish operation.

NEW SECTION

**WAC 246-282-034 Wild seed permit.** (1) The department will issue a wild seed permit to a person to move shellfish from a harvest site in a growing area classified by the department as "conditionally approved" in closed status, "restricted," or "prohibited," if all of the following conditions are met.

(a) The person possesses a valid shellfish operation license.

(b) The person possesses a harvest site certificate listing both the initial harvest site for the seed and the grow-out site.

(c) The original harvest site has acceptable levels of poisonous chemicals, is not in an area known to be a hazardous chemical disposal site, and is not in a closure zone of a wastewater treatment plant or marina.

(d) The grow-out site is in a natural body of water classified by the department as "approved" or "conditionally approved."

(e) The person submits a completed written application and plan of operations approved by the department completely describing the procedures of the wild seed operation, including the size distribution of the seed.

(f) The person pays the department a wild seed permit application fee or renewal fee as required by this chapter.

(2) A person operating under a wild seed permit must:

(a) Follow all procedures in the plan of operations approved by the department;

(b) Harvest seed from an area classified as "prohibited" only during daylight hours;

(c) Harvest seed from an area classified as "prohibited" only under direct monitoring by a person approved by the department;

(d) Leave seed in a grow-out site for a minimum of six months before final harvest;

(e) Limit harvest of live shellfish larger than seed size attached to, or commingled with, the seed to less than five percent of the total number of the shellfish harvested from the site;

(f) Place any live shellfish larger than seed size attached to, or commingled with, the seed in the grow-out site for a minimum of six months after initial harvest;

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(g) Stake or mark the grow-out site to be easily identified by the person for a minimum of six months from the time of moving to the site any seed attached to, or commingled with, shellfish larger than seed size; and

(h) Keep records for each lot of seed harvested that show a lot identification number; the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.

(3) A person's wild seed permit expires on the same date as the person's shellfish operation license.

(4) A person is exempt from the requirements of this section for the activity of harvesting seed attached to containerized empty shellfish shells or other cultch material, provided that the person:

(a) Meets the conditions of subsection (1)(a) through (d) of this section;

(b) Leaves the seed in the grow-out site for a minimum of six months before final harvest; and

(c) Fully describes the seed harvest and grow-out activities in a written plan of operations approved by the department for the person's shellfish operation license.

#### NEW SECTION

**WAC 246-282-036 Bait permit.** (1) The department will approve and issue a bait permit to a person to harvest shellfish from a harvest site in a growing area classified by the department as "prohibited," "restricted," or "conditionally approved" in closed status if all of the following conditions are met.

(a) The person possesses a valid shellfish operation license.

(b) The person possesses a valid harvest site certificate for the site.

(c) The harvest site is not impacted by biotoxin levels that would cause the department to close it for harvest for human consumption.

(d) The person submits a completed written application and plan of operations approved by the department completely describing the procedures of the bait operation.

(e) The person pays the department a bait permit application fee or renewal fee as required by this chapter.

(2) A person operating under a bait permit must:

(a) Follow all procedures in the plan of operations approved by the department;

(b) Harvest bait from an area classified as "prohibited" only during daylight hours;

(c) Harvest bait from an area classified as "prohibited" only under direct monitoring by a person approved by the department;

(d) Completely immerse the shellfish in an approved dye that imparts an easily noticeable permanent color to the tissue immediately upon landing the shellfish;

(e) Label each container of shellfish "NOT FOR HUMAN CONSUMPTION - BAIT USE ONLY" prior to removal from the harvest site;

(f) Store the shellfish physically separated from any shellfish intended for human consumption; and

(g) Keep records for each lot of shellfish harvested for use as bait showing a lot identification number, the species, the harvest site, the harvest date, the quantity harvested, the names of all buyers, and the quantity sold to each buyer.

(3) A person's bait permit expires on the same date as the person's shellfish operation license.

(4) Any person possessing a commercial quantity of bait shellfish is exempt from the requirement to obtain a bait permit provided that the person:

(a) Obtains the shellfish from a person with a valid bait permit;

(b) Possesses a sales invoice for the shellfish from a person with a valid bait permit; and

(c) Maintains each container of shellfish prominently labeled "NOT FOR HUMAN CONSUMPTION - BAIT USE ONLY."

#### NEW SECTION

**WAC 246-282-042 Wet storage permit.** (1) Any person who wet stores a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must have a written plan of operations, approved by the department, completely describing the activity.

(2) A person licensed as a harvester may wet store only in a natural body of water that is part of the same growing area as the harvest site of the shellfish.

(3) Any person who operates a recirculating or flow-through wet storage system must possess a wet storage permit issued by the department. A wet storage permit will be issued to a person for a recirculating or flow-through wet storage system if the person:

(a) Possesses a valid shellfish operation license;

(b) Submits a completed written application and plan of operations to the department completely describing the procedures of the wet storage operation;

(c) Documents that the water used for the operation meets the requirements of the NSSP Model Ordinance;

(d) Passes an inspection by the department; and

(e) Pays the department a wet storage application fee or renewal fee as required by this chapter.

(4) If a person uses a natural body of water for a wet storage operation, the person must possess a valid harvest site certificate listing the body of water.

(5) If a person uses artificial seawater for a wet storage operation, the chemicals used to make the seawater must be approved food grade.

(6) A person operating under a wet storage permit must follow all procedures in the plan of operations approved by the department.

(7) A person's wet storage permit expires on the same date as the person's shellfish operation license.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

**WAC 246-282-050 Packing, handling, and storing of shucked shellfish.** (1) ~~((Shucked shellfish shall be protected from contamination during all phases of processing and shall be packed in approved containers which are clean, and free from contamination.~~

(2)) Any person who packs, handles, or stores shucked shellfish ((shall be maintained at)) must maintain it at an internal product temperature of forty-five degrees Fahrenheit or less ((until received by the consumer. A temperature of thirty-four degrees Fahrenheit to forty degrees Fahrenheit shall be maintained in refrigerators where shucked shellfish are stored.

(3) ~~Shellfish which are to be marketed as a frozen product shall be frozen as quickly as practicable and maintained at a product temperature of zero degrees Fahrenheit or less until received by the consumer.~~

(4) ~~The packing of shucked shellfish shall take place in the same plant in which the shellfish are shucked, unless specific approval for repacking is granted by the director.)) beginning within three hours after it is shucked.~~

(2) Any person who operates a shucked shellfish repacking plant((s shall)) must meet all the requirements ((as)) specified in this chapter and the NSSP Model Ordinance for packing plants. ((Frozen shucked shellfish shall not be repacked.))

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

**WAC 246-282-060 Personal health and cleanliness.**

(1) Any person((s)) ill with or the carrier of a communicable disease which is ((transmissible)) transmissible through food and is in the infectious stage((, or persons having exposed boils, infected lesions or wounds, or similar skin infections, or persons having an acute respiratory infection shall)) may not work in any growing area, shucking, packing or repacking plant in any capacity where ((they)) that person might contaminate the shellfish or food contact surfaces with pathogenic organisms. ((Both)) The owner, the person in charge, and the employee ((shall be)) are all responsible for compliance with the requirements of this section.

(2) ~~((Persons who shuck or handle shucked shellfish shall wear clean, waterproof aprons or coats and clean clothing that can be easily cleaned and shall practice good personal cleanliness during all periods of duty. They shall wash their hands thoroughly with soap and warm water before starting to work and as often thereafter as may be necessary to remove soil and contamination. Gloves or other protective gear worn on the hands shall be made of waterproof, easily cleanable material and shall be clean. When manual handling of shucked shellfish becomes necessary, sanitized rubber gloves shall be worn or the hands shall be thoroughly cleaned immediately before such handling. Effective means shall be taken to keep hair from shellfish (shucked meats) and from food contact surfaces.))~~ Any person who is an owner, a person in charge, or an employee of a shellfish operation must practice good personal cleanliness while handling shellfish. These persons must wash their hands thoroughly with soap and water before starting to handle shellfish and as often as is necessary to remove filth and soil that might contaminate shellfish.

(3) If the department determines by investigation that an owner or employee of a shellfish operation might be the source of a foodborne illness transmitted through shellfish, then the secretary may require medical examination of that person and laboratory examination of clinical specimens

from that person to determine presence of infection. Any person failing to obtain an examination required by the secretary may not work for a shellfish operation, for a period of time the department determines that person could be infectious, in any capacity that could result in contamination of shellfish with pathogenic organisms.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

**WAC 246-282-070 Construction and maintenance.**

(1) ~~((Equipment and utensils: All food contact surfaces of equipment and utensils shall be constructed of nontoxic, corrosion resistant, and nonabsorbent materials, designed to be easily cleanable and shall be clean and in an approved condition of repair. Equipment shall be installed and maintained so that it and adjacent areas can be readily cleaned. Articles intended for single service use shall be used only once and then discarded.~~

Utensils and food contact surfaces of equipment shall be cleaned, sanitized and stored in an approved manner so as to be protected from recontamination. Cleaning and sanitization shall occur before use and at such intervals as necessary to preclude contamination of the shucked product.

Nonfood contact surfaces of equipment shall be constructed of corrosion resistant and nonabsorbent materials, designed to be easily cleanable and shall be clean and in an approved condition of repair.

(2)) All owners and persons in charge of shellfish operations must arrange their physical facilities((The plant shall be so arranged)) to ((facilitate)) aid in the flow of ((the)) shellfish products through all handling, processing, and storage areas in a manner that will ((preclude)) minimize contamination of the shellfish. ((Shucking and packing operations shall be conducted in separate rooms. Only authorized persons shall be allowed in the packing room during periods of operation.

Interior surfaces of rooms or areas where shellfish are stored, processed or utensils or hands are washed, and in walk-in refrigerators and freezers shall be easily cleanable, clean and in an approved condition of repair.

Rooms for utensil and packaging material storage shall be provided, and separate from areas which shall be provided for employee clothing storage. These areas shall be separate and apart from the shucking and packing rooms.

Approved lighting, heating and ventilation shall be provided. Approved measures for control of rodents and flies, roaches, and other insects on the premises shall be utilized. Live animals shall be excluded from all areas of the plant.

(3) Sanitary facilities: Hot and cold water adequate in quality and quantity, and under pressure shall be provided or easily accessible to all rooms in which shellfish are processed or utensils are washed. The water supply, plumbing, sewage, garbage and rubbish disposal, handwashing, toilet and other facilities shall be installed, operated, and maintained in an approved manner.

Ice shall be from an approved source and shall be stored and handled in a manner as to be protected from contamination.

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Handwashing facilities consisting of a lavatory or lavatories and equipped with hot and cold or tempered running water, hand-cleansing soap or detergent, single service towels or approved hand-drying devices shall be located and maintained to permit convenient use by all employees in shellfish processing areas, utensil-washing areas, and toilet rooms or vestibules. Such facilities shall be kept clean and in an approved condition of repair.)) (2) Any owner of a shellfish operation must submit to the department for consultation properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities at least thirty days before the facilities are:

(a) Originally constructed;

(b) Converted from another use; or

(c) Extensively remodeled to the extent that a plan for a building permit is required by the city or county where located.

(3) The department will review properly prepared plans and specifications of physical facilities for shellfish processing or sanitation activities required by subsection (2) of this section within thirty days of receipt and provide technical assistance to the owner of the shellfish operation regarding whether the proposed physical facilities would meet the requirements of this chapter.

**AMENDATORY SECTION** (Amending Order 225B, filed 12/23/91, effective 1/23/92)

**WAC 246-282-080 Identification and records.** ((+) Shellfish shall be so identified by label, tag or other permanent means at the wholesale or retail level that any given container of shucked meats or lot of shellstock can be traced to the original growing area source(s).

(2) Shipments of shellfish in the shell shall be accompanied by a tag, label or other mark showing that the shipper has been duly certified by the state in which the growing area is located.

(3) Shucked shellfish shall be packed, shipped and sold retail in approved containers that are legibly marked by embossing, lithographing, or other permanent means with the name, address, and certification number of the packer, and the date packed or coded in such a manner that the date packed can be determined. Fresh packs shall be labeled with wording equivalent to "keep refrigerated," and frozen packs shall be labeled with wording equivalent to "keep frozen."

(4) All shippers, reshippers, packers, repackers, and wholesalers shall keep an accurate record of all lots of shellfish received, shipped and sold. Retailers shall keep a record of all lots received. Such records shall be kept on file for a minimum of six months.

(5) Information recorded by the harvester-shipper shall include: (a) Location of harvesting area(s) by name or code, (b) name and quantity of shellfish, (c) date of harvest, (d) date shipped.

(6) Shucker packers and repackers shall record the following information: (a) Location of harvesting area(s) by name or code, or name of harvester, (b) name and quantity of shellfish, (c) date of harvest or date received, and (d) packing date.)) (1) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human

consumption must possess a written record documenting that the shellfish came from one or more of the following sources:

(a) Harvest site(s) for which the person possesses a valid harvest site certificate;

(b) Another shellfish operation licensed by the department; or

(c) A shellfish dealer located outside of the state who is in compliance with the requirements of the NSSP Model Ordinance and is eligible for inclusion on the current Interstate Certified Shellfish Shippers List, published by the U.S. Food and Drug Administration.

(2) Any person who possesses a commercial quantity of shellstock or any quantity of shellstock for sale for human consumption must identify the shellstock by an approved tag with permanent marking, according to requirements of the NSSP Model Ordinance, upon removal from the harvest site.

(3) Any person who packs a commercial quantity of shucked shellfish or any quantity of shucked shellfish for sale for human consumption must do so in approved containers that are legibly labeled by permanent marking, in accordance with the requirements of the NSSP Model Ordinance and with:

(a) Wording equivalent to "keep refrigerated" on containers of fresh shellfish; and

(b) Wording equivalent to "keep frozen" on containers of frozen shellfish.

(4) The owner or person in charge of a shellfish operation must keep accurate records of all lots of shellfish harvested, received, wet stored, shucked, packed, shipped, or sold by the shellfish operation for a minimum of three years.

(5) Information recorded by the harvester-shipper shall include: (a) Location of harvesting area(s) by name or code, (b) name and quantity of shellfish, (c) date of harvest, (d) date shipped.

(6) All tags for shellstock and labels for containers of shucked shellfish required by this section must be used only for the original lot of shellfish for which they were intended and must not be reused.

#### **NEW SECTION**

**WAC 246-282-082 Export certificate.** The department will issue an export certificate to a shellfish dealer for a specific lot of shellfish if the dealer:

(1) Is exporting the lot to an Asian country that requires a production certificate from a governmental health authority;

(2) Possesses a shellfish operation license issued by the secretary;

(3) Is in compliance with the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance;

(4) Completes an application specified by the department;

(5) Documents use of each export certificate as specified by the department; and

(6) Pays the department any fee for each export certificate required by this chapter.

NEW SECTION

**WAC 246-282-092 Inspection by department.** (1) The department enters and inspects any harvest site, physical facility, vehicle or vessel used by a shellfish operation as often as necessary to determine compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance.

(2) The department inspects each shellfish operation:

(a) A minimum of once per year;

(b) Before issuing a new shellfish operation license to a person;

(c) Before a shellfish operation uses any physical facility for the first time; and

(d) Before the shellfish operation uses any extensively remodeled physical facility.

(3) If the department determines by inspection that an owner, person in charge, or any person working on behalf of the shellfish operation is in violation of any of the requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance, then the department may conduct a reinspection of the shellfish operation. If the same violation is identified by the department during the reinspection, then another reinspection may be conducted by the department within one month. The department may charge the owner of a shellfish operation a fee for a second or subsequent reinspection.

(4) If necessary to conduct an inspection, then the department may apply to a court of competent jurisdiction for an administrative warrant in accordance with RCW 69.30.120.

(5) During inspections, the department has free and unimpeded access to any of the following in order to determine whether the operation is in compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance:

(a) Buildings, yards, warehouses, storage facilities, transportation facilities, vehicles, vessels and other places reasonably considered to be or to have been used in connection with the shellfish operation;

(b) Ledgers, books, accounts, memorandums, or records reasonably believed to be or to have been used in connection with the shellfish operation;

(c) Shellfish, shellfish products, components, or other materials reasonably believed to be or to have been used, processed or produced by or in connection with the shellfish operation;

(d) Copies of any documents reasonably believed to be or to have been used in connection with the shellfish operation; and

(e) Samples of shellfish to determine whether they are safe for human consumption.

(6) The department may inspect shellfish growing areas at any time of day and will inspect any other aspect of a shellfish operation:

(a) Between 8:00 a.m. and 5:00 p.m. on any weekday that is not a legal holiday;

(b) During any time the shellfish operation has established as its business hours;

(c) During any time the shellfish operation is open for business or is otherwise in operation; and

(d) During any other time with the consent of the owner or the person in charge of the shellfish operation.

AMENDATORY SECTION (Amending Order 225B, filed 12/23/91, effective 1/23/92)

**WAC 246-282-100 Notice of decision—Adjudicative proceeding.** (1) The department's notice of a denial, suspension, modification, or revocation of a license (~~shall be~~) is consistent with RCW 43.70.115. An applicant or license holder has the right to an adjudicative proceeding to contest the decision.

(2) The department's notice of imposition of a civil (~~fine shall be~~) penalty is consistent with RCW 43.70.095. A person upon whom the department imposes a civil fine has the right to an adjudicative proceeding to contest the decision.

(3) A license applicant or holder or a person upon whom the department imposes a civil (~~fine, contesting~~) penalty may contest a department decision, (~~shall~~) within twenty-eight days of receipt of the decision(=

~~(a) File~~) by filing a written application for an adjudicative proceeding by a method showing proof of receipt with the administrative hearings unit, department of health, (~~1300 Quince Street S.E., P.O. Box 47851, Olympia, WA 98504-7851; and~~

~~(b))~~. The person must include the following in or with the application:

((+)) (a) A specific statement of the issue or issues and law involved;

((++)) (b) The grounds for contesting the department decision; and

((+++)) (c) A copy of the contested department decision.

(4) (~~The~~) An adjudicative proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 246-08 WAC. If a provision in this chapter conflicts with chapter 246-08 WAC, the provision in this chapter governs.

NEW SECTION

**WAC 246-282-102 Denial, revocation, suspension of license, certificate, or permit—Civil penalties.** (1) The department may deny, revoke, or suspend a shellfish operation license, harvest site certificate, or permit and may assess a civil penalty if a person:

(a) Fails to comply with any of the provisions of chapter 69.30 RCW, these rules, and the NSSP Model Ordinance;

(b) Refuses an inspection by the department;

(c) Harvests shellfish from any harvest site for which the secretary has not issued a harvest site certificate to the person;

(d) Knowingly obtains shellfish from a person who is not in compliance with any requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance;

(e) Makes false statements or misrepresentations to the department during any investigation, inspection, or application for a shellfish operation license or any permit required by these rules;

(f) Makes false statements or misrepresentations to the department during any investigation, inspection, or application for a shellfish harvest site certificate;

(g) Fails to cooperate with the department or the department of fish and wildlife during an investigation;

(h) Aids another person in violating any requirement of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance;

(i) Provides the department with false or fraudulent records of the shellfish operation;

(j) Transfers or reassigns a shellfish operation license to another person without the written approval of the department; or

(k) Fails to comply with the terms of a conditional area management plan, shellfish operation license, harvest site certificate, or any permit required by this chapter.

(2) Violations of chapter 69.30 RCW, these rules, or the NSSP Model Ordinance committed by a person in charge, employee, or agent of a person issued a shellfish operation license may be treated by the department as a violation committed by the licensee.

NEW SECTION

**WAC 246-282-104 Penalty assignment—Calculation of penalty and proportionate adjustment—Aggravating and mitigating factors.** (1) The department calculates an appropriate penalty based on the following factors:

(a) The level of threat to public health;

(b) The number of previous violations attributed to the violator; and

(c) The presence of aggravating or mitigating factors.

(2) The department determines administrative penalties from the range in the following penalty schedule. The standard penalty is assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present.

**Penalty Schedule**

NUMBER OF PREVIOUS VIOLATIONS	ADJUSTMENT FACTORS	PUBLIC HEALTH THREAT		
		LOW License Action/ Civil Penalty	INTERMEDIATE License Action/ Civil Penalty	HIGH License Action/ Civil Penalty
0	Mitigated	0 Months/\$150	0 Months/\$300	3 Months/\$350
	Standard	0 Months/\$200	1 Month/\$350	6 Months/\$400
	Aggravated	1 Month/\$250	3 Months/\$400	9 Months/\$450
1	Mitigated	0 Months/\$200	1 Month/\$350	6 Months/\$400
	Standard	0 Months/\$250	3 Months/\$400	9 Months/\$450
	Aggravated	3 Months/\$300	6 Months/\$450	12 Months/\$500
2	Mitigated	0 Months/\$250	3 Months/\$400	12 Months/\$500
	Standard	3 Months/\$300	6 Months/\$450	18 Months/\$500
	Aggravated	6 Months/\$350	9 Months/\$500	24 Months/\$500
3 or More	Mitigated	3 Months/\$300	6 Months/\$450	18 Months/\$500
	Standard	6 Months/\$350	9 Months/\$500	24 Months/\$500
	Aggravated	9 Months/\$400	12 Months/\$500	36 Months/\$500

(3) The department reserves the right to proportionately increase the civil penalty and decrease the license action under certain circumstances. These circumstances include situations where license actions as a deterrent are ineffective and include, but are not limited to, violations by persons who are not licensed.

(4) The department reserves the right to proportionately decrease the civil penalty and increase the license action when circumstances in a particular case demonstrate the ineffectiveness of a civil penalty as a deterrent.

(5)(a) When assessing a civil penalty or license action, the department considers any previous violation(s) for the following period of time, depending on the severity of the previous violation(s):

- (i) Three years for low public health threat;
- (ii) Five years for intermediate public health threat; or
- (iii) No limit for high public health threat.

(b) The time period will begin on the date of adjudication or settlement of the previous violation(s), rather than the date on which the incident or conduct occurred.

(6) The department considers circumstances that increase the seriousness of a violation, including, but not limited to, the following aggravating factors:

(a) The extent to which the violation is part of a pattern of the same or substantially similar conduct;

(b) The extent to which previous education, technical assistance, or notice of correction has been provided for the same or substantially similar conduct; and

(c) The extent to which the violation caused serious and actual injury or death to a person or persons.

(7) If the department determines that one or more aggravating factors are present, then the department may assess the aggravated penalty or may increase the penalty to a level greater than listed in the penalty schedule, including, but not limited to, revocation of the license.

(8) The department will consider circumstances that decrease the seriousness of a violation, including, but not limited to, the following mitigating factors:

(a) Voluntary disclosure of the violation;

(b) Complete cooperation and voluntary disclosure during the investigation of the violation; and

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(c) Voluntary taking of remedial measures that will result in increased public health protection and that will result in a decreased likelihood that the violation will be repeated and that other violations will occur.

(9) If the department determines that one or more mitigating factors are present, then the department may assess the mitigated penalty or may decrease the penalty to a level less than listed in the penalty schedule.

(10) The maximum civil penalty that may be imposed by the department is five hundred dollars per day for each violation.

(11) The department considers each violation to be a separate and distinct event. Each day a violation is continued is a separate and distinct violation. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties are added together, rather than served concurrently.

(12) Nothing in this section prevents the department from responding to a violation by:

(a) Declining to pursue an administrative penalty;

(b) Issuing a notice of correction instead of pursuing an administrative penalty; or

(c) Negotiating settlement of a case on such terms and for such reason as the department deems appropriate. Violations covered by a prior settlement agreement may be used for the purpose of determining the appropriate penalty for the current alleged violation(s), unless prohibited by the prior settlement agreement.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

**WAC 246-282-110 Administrative provisions. (1)**

~~(The person in charge of shellfish growing areas or processing plant operations shall ensure operations are conducted in a manner complying with the requirements of these regulations. The person in charge shall periodically inspect the shellfish operations to determine compliance with these regulations, and shall take measures to correct any deficiencies thereby revealed.~~

~~(2) The director shall have access to and be permitted to inspect any and all areas comprising the shellfish operation for the purpose of determining compliance with these regulations and chapter 69.30 RCW, or for the purpose of determining whether any person, shellfish, or condition in the shellfish operation constitutes a nuisance or a threat to the public health.~~

~~(a) In the course of such inspection, the director may, among other things, examine or sample the shellfish in the shellfish operation as often as necessary to determine its safety for human consumption, and he or she may also examine any and all pertinent records pertaining to shellstock, shellfish, or operational supplies purchased, received, or used, and records pertaining to persons employed.~~

~~(b) If, after the inspection of a shellfish operation, the director finds such operation fails to comply with the requirements of the law, rules and regulations, he or she shall issue to the person in charge of the shellfish operation a written order specifying the manner in which the operation fails to comply with the law, rules and regulations and which sets out~~

~~a specific and reasonable period of time for correction of the violations.~~

~~(c) In the event the person in charge of the shellfish operation fails to correct the violations as required by the order of the director, the director may revoke the certificate of compliance and/or license of such person and/or initiate such legal enforcement proceeding as authorized by law.~~

~~(d) During or after an investigation or inspection of a shellfish operation, the director may, if he or she suspects the shellfish are unsafe for human consumption, give to the owner or person in charge of the shellfish operation a written hold order prohibiting the disposition or sale of the shellfish pending the director's further investigation of the shellfish's safety. The person in charge shall thereafter cease from offering such shellfish for human consumption and shall store such shellfish in a suitable place as prescribed by the director until the hold order is lifted or modified by the director or by a court of competent jurisdiction. Shellfish placed under a hold order shall not be destroyed for at least two days and shall not be held longer than fifteen days; however, upon a finding that the shellfish are safe for human consumption, the director may release them immediately.~~

~~(e) If, during an inspection of a shellfish harvesting operation, the owner or person in charge of the operation fails to immediately display his or her certificate of approval upon request from an authorized representative of the department, a fisheries patrol officer, or an ex officio patrol officer, a written hold order may be issued prohibiting the disposition or sale of the shellfish or the shellfish may immediately be seized. If a hold order is issued, the person in charge shall thereafter cease from offering such shellfish for human consumption and shall store such shellfish in a suitable place as prescribed by the director until the hold order is lifted or modified by the director or by a court of competent jurisdiction. Shellfish placed under a hold order or seizure shall not be destroyed for at least two days and shall not be held longer than fifteen days; however, upon a finding that the shellfish are safe for human consumption, the director shall determine disposition. If the director determines that the operation is certified, the shellfish shall be released to the owner or person in charge of the operation. If the director determines that the operation is not certified, the director may release the shellfish according to his or her discretion.~~

~~(f) If after investigation the director determines the shellfish are unsafe for human consumption, he or she shall give the owner or person in charge of the shellfish operation a written abatement order, which abatement order may require any or all of the following measures:~~

~~(i) A) If the department finds during an inspection that any owner or person working on behalf of a shellfish operation fails to comply with any requirements of chapter 69.30 RCW, this chapter, or the NSSP Model Ordinance, then the department may issue a written statement of deficiencies or notice of correction to the owner, person in charge, or other employee of the operation who is present.~~

~~(a) The statement of deficiencies or notice of correction specifies the manner in which the operation fails to comply with chapter 69.30 RCW and these rules. It specifies a reasonable period of time for the owner or person in charge to correct the violation(s).~~

(b) In the event the owner or person in charge fails to correct the violation(s) specified in the statement of deficiencies, the department may revoke the license and certificate of compliance for that shellfish operation or may initiate any other enforcement proceeding authorized by law.

(2) Any authorized representative of the department, fish and wildlife patrol officer or ex officio patrol officer may, without previously providing a statement of deficiencies, immediately seize shellfish or issue written hold orders prohibiting the disposition or sale of shellfish whenever a commercial quantity of shellfish or any amount of shellfish for sale for human consumption is on the premises of, or in the possession of, any person who:

(a) Fails to display an original or photocopy of a valid shellfish operation license;

(b) Is reasonably expected to have harvested the shellfish and fails to display an original or photocopy of a valid shellfish operation license and a valid harvest site certificate; or

(c) Fails to maintain each container of shellfish properly tagged or labeled as required by chapter 69.30 RCW, these rules, and the NSSP Model Ordinance.

(3) If the department determines during an inspection or investigation that there is reasonable cause to believe that shellfish is potentially unsafe for human consumption, then the department may issue a hold order prohibiting the disposition or sale of the shellfish pending further investigation by the department of the safety of the shellfish.

(a) The department must complete its further investigation within ten days.

(b) At the conclusion of the investigation, the department may release the shellfish for sale or issue a written abatement order regarding the shellfish.

(c) Any person in possession of shellfish for which the department has issued a hold order must store the shellfish in a suitable place prescribed by the department and prevent the shellfish from being offered for human consumption or other use until:

(i) The hold order is lifted by the department or by a court of competent jurisdiction; or

(ii) The person disposes of the shellfish in accordance with an abatement order issued by the department.

(4) Shellfish that the department seizes or places under a hold order and determines are unsafe for human consumption are subject to such abatement as the department considers appropriate. The department may require any one or more of the following measures be taken by a person in possession of shellfish that are the subject of an abatement order:

(a) Permanent prohibition ~~(against)~~ on the ~~(sale or)~~ disposition of the shellfish for human consumption;

~~((i))~~ (b) Immediate destruction of the shellfish ~~((in question))~~ by measures such as denaturing and ~~((placement))~~ placing in a sanitary landfill ~~((Such destruction shall be accomplished by at least two employees of the department or)),~~ witnessed by an authorized representative ~~((s-))~~ of the department who provides a record of destruction to the person; or

~~((iii))~~ At the discretion of the director, shellfish having been found to be unsafe) (c) Temporary prohibition on the disposition of the shellfish for human consumption ~~((may be relayed to))~~ pending relay to an approved growing area for

~~((subsequent reharvest))~~ a sufficient period of time to assure natural purification of the shellfish.

~~((g))~~ When the director) (5) The secretary may issue an abatement order to the owner or person in charge of a shellfish operation whenever the department, after conducting an appropriate investigation, determines ~~((either))~~ that ~~((:~~

~~(i) A shellfish operation or employee is transmitting a disease; or~~

~~(ii) There is a substantial risk a shellfish operation or employee may be transmitting a disease, he or she may thereafter give to the owner or person in charge of the shellfish operation an abatement order, which order may require any or all of the following measures:~~

~~(A))~~ a shellfish operation, or person working on behalf of a shellfish operation, presents a potential risk for transmitting an infectious disease to consumers of shellfish.

~~(a) The secretary may require any or all of the following measures be taken by the owner or person in charge of a shellfish operation who is issued the abatement order:~~

~~(i) Immediate closure of the shellfish operation until, in the opinion of the ~~((director))~~ secretary, no further danger of a disease outbreak exists;~~

~~((B))~~ (ii) Immediate exclusion of ~~((the employee))~~ any person suspected to be infected with a disease agent transmissible through food from all activities with the shellfish operation ~~((s or food service establishments)); and~~

~~((C))~~ (iii) Restriction of the ~~((employee's service))~~ activities of any person who is suspected to be infected with a disease agent transmissible through food to some area of the shellfish operation where there would be no danger of the person transmitting disease agents to shellfish consumers.

~~((H))~~ (b) As an alternative to the abatement order described in ~~((subsection (2)(g) of))~~ this section, the ~~((director))~~ secretary may require ~~((any or all of the employees))~~ the owner, or any person working on behalf of the shellfish operation to submit to adequate medical and laboratory examinations, including examination of their bodily discharges as needed to determine if the person is infected with a microbial agent transmissible through food.

~~((I))~~ (6) No person ~~((shall))~~ may remove or alter a notice or tag constituting a hold order or abatement order placed on ~~((the))~~ shellfish by the ~~((director, and neither such shellfish nor its container shall be relabeled, repacked, reprocessed, altered, disposed of, destroyed, or released without permission of the director, except on))~~ department.

~~(7) No person may relabel, repack, reprocess, alter, dispose of, destroy, or release shellfish or containers of shellfish for which the department has issued a hold order or abatement order without:~~

~~(a) Permission of the department; or~~

~~(b) An order by a court of competent jurisdiction.~~

~~((j))~~ In the event) (8) If the owner or person in charge of ~~((the))~~ a shellfish operation fails to comply with ~~((either the))~~ a hold order or ~~((the))~~ an abatement order ~~((described above))~~ issued according to this section, then the ~~((director))~~ department may revoke the ~~((certificate of compliance and/or))~~ license of ~~((such person and/))~~ the shellfish operation or initiate ~~((such))~~ other legal enforcement proceedings ~~((as are))~~ authorized by law ~~((; except that the director may undertake summary abatement of the shellfish, an article, or a condition~~

which is so severely contaminated or contaminating that a delay in abatement until legal enforcement proceedings could be had would pose a grave threat to the public health).

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

**WAC 246-282-120 Penalty clause.** Any person found violating any of the provisions of these regulations or chapter 69.30 RCW ((shall be)) is guilty of a gross misdemeanor, and upon conviction ((thereof shall)) will be subject to:

- (1) A fine ((of not less than twenty-five dollars nor more than one thousand dollars,)); or
- (2) Imprisonment in the county jail of the county in which the offense was committed ((for not less than thirty days nor more than one year,)); or ((to))
- (3) Both fine and imprisonment.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

**WAC 246-282-130 Separability clause.** Should any section, paragraph, clause or phrase of these rules and regulations be declared unconstitutional or invalid for any reason, the remainder of ((said)) these rules and regulations ((shall)) are not ((be)) affected ((thereby)).

AMENDATORY SECTION (Amending WSR 00-02-016, filed 12/27/99, effective 1/27/00)

**WAC 246-282-990 ((Shellfish program certification)) Fees.** (1) Annual ((certificate)) shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$250.
Shellstock Shipper	
0 - 49 Acres	\$275.
50 or greater Acres	\$440.
<u>Scallop Shellstock Shipper</u>	<u>\$275.</u>
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$500.
Plants with floor space ((>)) 2000 sq. ft. ((and <)) <u>to</u> 5000 sq. ft.	\$605.
Plants with floor space > 5000 sq. ft.	\$1,115.

- (2) ((Type of operations are defined as follows:
  - (a) ~~"Shellstock shipper" means shippers growing, harvesting, buying, or selling shellstock. Shellstock shippers are not authorized to shuck shellfish or to repack shucked shellfish.~~
  - (b) ~~"Shucker packer" means shippers shucking and packing shellfish. A shucker packer may act as a shellstock dealer.~~
  - (c) ~~"Harvester" means a commercial shellfish operation with activities limited to harvesting shellstock, and shipping and selling it within Washington state to shellfish dealers~~

licensed by the department. ~~Harvesters do not shuck shellfish; repack shucked shellfish; repack shellstock; or store shellstock in any location other than the approved growing area where the shellstock was harvested.~~

(3) ~~"Export certificate" means a certificate issued by the department to a licensed shucker packer or shellstock shipper for use in the foreign export of a lot or shipment of shellfish.)~~ The fee for each export certificate ((shall be)) is \$10.

(3) The fee for a harvester shellfish operation license is \$125 for the period of time between October 1, 2001, and March 31, 2002. This subsection expires on April 1, 2002.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-282-030      Storage, cleansing and washing and shipping of shellstock.
- WAC 246-282-040      Shucking of shellfish.
- WAC 246-282-090      Certificate of compliance—Certificate of approval—Suspension for revocation of certificate of approval—License—Revocation of license.

**WSR 01-04-055**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 (Board of Pharmacy)  
 [Filed February 5, 2001, 10:07 a.m.]

Date of Adoption: October 12, 2000.

Purpose: To amend rules pertaining to patient counseling by pharmacists to promote appropriate use of medications by patients.

Citation of Existing Rules Affected by this Order: Amending WAC 246-869-220.

Statutory Authority for Adoption: RCW 18.64.005(7).

Adopted under notice filed as WSR 00-16-108 on August 2, 2000.

Changes Other than Editing from Proposed to Adopted Version: Rule was amended to clarify that the pharmacist is not responsible for determining "the optimal therapeutic outcome" for any patient. The pharmacist is responsible for determining the amount of counseling necessary to promote the safe and effective administration of a medication to facilitate an appropriate therapeutic outcome.

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

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

PERMANENT



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

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

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

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

November 15, 2000

C. A. Leon Alzola  
Chair

AMENDATORY SECTION (Amending Order 277B, filed 5/28/92, effective 6/28/92)

**WAC 246-869-220 Patient ((information)) counseling required.** ~~((Except in those cases when the prescriber has advised that the patient is not to receive specified information regarding the medication:~~

~~(1) In order to assure the proper utilization of the medication or device prescribed, with each new prescription dispensed by the pharmacist, in addition to labeling the prescription in accordance with the requirements of RCW 18.64.245 and WAC 246-869-210, the pharmacist must:~~

~~(a) Orally explain to the patient or the patient's agent the directions for use and any additional information, in writing if necessary, for those prescriptions delivered inside the confines of the pharmacy; or~~

~~(b) Explain by telephone or in writing for those prescriptions delivered outside the confines of the pharmacy.~~

~~(2) In those instances where it is appropriate, when dispensing refill prescriptions, the pharmacist shall communicate with the patient or the patient's agent, by the procedure outlined in subsection (1)(a) or (b) of this section or the patient's physician regarding adverse effects, over or under utilization, or drug interaction with respect to the use of medications:~~

~~(3) Subsections (1) and (2) of this section shall not apply to those prescriptions for inpatients in hospitals or institutions where the medication is to be administered by a nurse or other individual authorized to administer medications.~~

~~(4) In the place of written statements regarding medications, the pharmacist may use abstracts of the Patient USP DI 1988 edition, or comparable information:)) The purpose of this counseling requirement is to educate the public in the use of drugs and devices dispensed upon a prescription.~~

~~(1) The pharmacist shall directly counsel the patient or patient's agent on the use of drugs or devices.~~

~~(2) For prescriptions delivered outside of the pharmacy, the pharmacist shall offer in writing, to provide direct counseling and information about the drug, including information on how to contact the pharmacist.~~

~~(3) For each patient, the pharmacist shall determine the amount of counseling that is reasonable and necessary under the circumstance to promote safe and effective administration of the medication and to facilitate an appropriate therapeutic outcome for that patient from the prescription.~~

(4) This rule applies to all prescriptions except where a medication is to be administered by a licensed health professional authorized to administer medications.

**WSR 01-04-064**  
**PERMANENT RULES**  
**SPOKANE COUNTY AIR**  
**POLLUTION CONTROL AUTHORITY**

[Filed February 5, 2001, 2:25 p.m.]

Date of Adoption: February 1, 2001.

Purpose: To postpone the expiration of the open burning program for certain areas in Spokane County beyond the current deadline of December 31, 2000.

Citation of Existing Rules Affected by this Order: Amending SCAPCA Regulation I, Article VI, Section 6.01.D.5.

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

Adopted under notice filed as WSR 01-01-092 on December 15, 2000.

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

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

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

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

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

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

February 2, 2001

Matt Holmquist

Compliance Administrator

**ARTICLE VI**

**EMISSIONS PROHIBITED**

AMENDATORY SECTION

**SECTION 6.01 OPEN BURNING**

D. Prohibitions. Except as provided in Section 6.01.E., no person shall practice or permit the practice of open burning in any of the following circumstances and locations:

1. Within the No-Burn Area, as defined by resolution of the Board of Directors of the Authority.

2. Within any part of a nonattainment area that is not within an open burning phase-out area.

3. After November 1, 1994, in any area where no permit program is being administered by a permitting authority.

4. Within any open burning phase-out area after the final phase-out date as approved by the Department of Ecology.

5. After December 31, 2000, within any urban growth area having a population of 5,000 or more people, or within any incorporated city or town ~~((with))~~ having a population of 10,000 or more people, or within any urban growth area contiguous with a nonattainment area. After April 30, 2001, within any urban growth area.

6. Outside the period designated by the Authority or permitting authority for burning yard and garden debris.

7. When the materials to be burned include any prohibited materials.

8. During an episode or impaired air quality as declared by the Department of Ecology or the Authority for a defined geographical area.

9. When the fire is larger than a small fire, unless a valid written permit has been issued by a permitting authority.

10. In or within 500 feet of forest slash, unless a written permit has been issued by the permitting authority.

11. When burning is for commercial purposes, other than silvicultural burning, agricultural burning, or burning of land clearing debris.

12. Where the Authority, Department of Ecology, or permitting authority has determined that reasonable alternatives are available.

13. When burning causes a nuisance, or the Authority or permitting authority determines that the creation of a nuisance is the likely result of burning.

#### WSR 01-04-065

##### PERMANENT RULES

### SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

[Filed February 5, 2001, 2:26 p.m.]

Date of Adoption: February 2, 2001.

Purpose: To define the circumstances under which agricultural burning may or may not occur. To define responsibilities of farmers, relative to agricultural burning. To define responsibilities of permitting authorities.

Citation of Existing Rules Affected by this Order: Repealing SCAPCA Regulation I, Article VI, Section 6.10 Grass Field Burning; and amending SCAPCA Regulation I, Article VI, Section 6.11 Agricultural Burning.

Statutory Authority for Adoption: RCW 70.94.141(1).

Adopted under notice filed as WSR 01-01-093 on December 15, 2000.

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

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

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

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

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

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

February 2, 2001

Eric P. Skelton

Director

### SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY, REGULATION I

**REPEALER** (Repealing SCAPCA Res. 90-05, 5/3/90, and Order 93-11-036, filed 5/11/93)

#### SECTION 6.10 GRASS FIELD BURNING

**AMENDATORY SECTION** (Amending Order 94-23-036, filed 11/9/94)

#### SECTION 6.11 AGRICULTURAL BURNING

A. Purpose. ~~((This Section establishes fees and controls for agricultural burning in Spokane County, consistent with best management practices.))~~ The primary purpose of this Section is to establish specific requirements for agricultural burning in Spokane County, consistent with Chapter 173-430 WAC.

B. Applicability. This Section applies to agricultural burning in all areas of Spokane County unless specifically exempted. This Section does not apply to Silvicultural Burning (see Chapter 332-24 WAC) or to Outdoor Burning (see Chapter 173-425 WAC).

#### NEW SECTION

#### SECTION 6.11 AGRICULTURAL BURNING

C. Statement of Authority. The Spokane County Air Pollution Control Authority is empowered, pursuant to Chapter 70.94 RCW, to administer the agricultural burning program in Spokane County. Included is the authority to:

1. Issue and deny burning permits;
2. Establish conditions on burning permits to insure that the public interest in air, water, and land pollution, and safety to life and property is fully considered;
3. Determine if a request to burn is consistent with best management practices, pursuant to WAC 173-430-050; or qualifies for a waiver, pursuant to WAC 173-430-045;
4. Delegate local administration of permit and enforcement programs to certain political subdivisions;
5. Declare burn days and no-burn days, based on meteorological, geographical, population, air quality, and other pertinent criteria; and

6. Restrict the hours of burning, as necessary to protect air quality.

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

**AMENDATORY SECTION** (Amending Order 94-23-036, filed 11/9/94)

**SECTION 6.11 AGRICULTURAL BURNING**

D((€)). Definitions. Unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning:

1. Agricultural Burning means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural burning practices and research task force, established in RCW 70.94.650, or other authoritative source on agricultural practices.

2. Authority means the Spokane County Air Pollution Control Authority.

3. Episode means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as ~~((stated))~~ provided in Chapter 173-435 WAC.

4. Extreme Conditions means conditions, usually associated with a natural disaster, that prevent the delivery and placement of mechanical residue management equipment on the field, and applies only to the growing of field and turf grasses for seed, for which a waiver is requested.

5((4)). Impaired Air Quality, for purposes of agricultural burning, means a condition declared by the Authority when meteorological conditions are conducive to an accumulation of air contaminants, concurrent with at least one of the following criteria:

a. Particulates ((which)) that are ten microns or smaller in diameter (PM10) are measured at any location inside Spokane County at or above an ambient level of ~~((seventy-five))~~ sixty micrograms per cubic meter of air, measured on a 24-hour average, by a method which has been determined, by Ecology or the Authority, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix J, or equivalent.

b. Carbon monoxide is measured at any location inside Spokane County at or above an ambient level of eight parts of contaminant per million parts of air by volume (ppm), measured on an eight-hour average by a method which has been determined, by Ecology or the Authority, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix C, or equivalent.

c. Particulates that are two and one-half microns or smaller in diameter (PM2.5) are measured at any location inside Spokane County at or above an ambient level of 15 micrograms per cubic meter of air, measured on a 24-hour average, by a method which has been determined, by Ecology or the Authority, to have a reliable correlation to the fed-

eral reference method, CFR Title 40 Part 50 Appendix L, or equivalent.

d((e)). Air contaminant levels reach or exceed other limits, established by Ecology pursuant to RCW 70.94.331 ((Chapter 173-425-030(5)(b) WAC, by resolution of the Board of Directors of the Authority)).

6((5)). Nuisance means an emission of smoke or other emissions from agricultural burning that unreasonably interferes with the use and enjoyment of property or public areas.

7((6)). Permitting Authority means the Spokane County Air Pollution Control Authority (Authority), or one or more of the following entities, whenever the Authority has delegated administration of the permitting program, pursuant to RCW 70.94.654, to one or more of the referenced entities, provided such delegation of authority has not been withdrawn: Spokane County, the Spokane County Conservation District, or any fire protection agency within Spokane County ((, whenever the referenced agency is delegated the authority, pursuant to RCW 70.94.654, to issue permits)).

8. Pest means weeds, disease, or insects, infesting agricultural lands, crops, or residue.

9((7)). Prohibited Materials means garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction debris, demolition debris, metal or any substance (other than natural vegetation) ~~((which when burned))~~ that releases toxic emissions, dense smoke or obnoxious odors, when burned.

10((8)). Responsible Person means any person who has applied for and received a permit for agricultural burning, or any person allowing, igniting or attending to agricultural burning, or any person who owns or controls property on which agricultural burning occurs.

**NEW SECTION**

**SECTION 6.11 AGRICULTURAL BURNING**

E. Requirements. No person shall practice or permit the practice of Agricultural Burning, other than incidental agricultural burning pursuant to RCW 70.94.745(7), unless the applicant demonstrates to the satisfaction of the Authority or permitting authority that burning, as requested:

1. Is reasonably necessary to successfully carry out the enterprise in which the applicant is engaged; or

2. Constitutes a best management practice and no practical alternative is reasonably available.

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

**AMENDATORY SECTION** (Amending Order 94-23-036, filed 11/9/94)

**SECTION 6.11 AGRICULTURAL BURNING**

F((D)). Prohibitions. ((Except as provided in Section 6.11.E, n)) No person shall practice or permit the practice of agricultural burning in any of the following circumstances ((and locations)):

~~((1. Within the No Burn Area, as defined by resolution of the Board of Directors of the Authority.))~~

1. Where there is a practice, program, technique, or device, that Ecology has certified as a practical alternative to burning.

2. When the materials to be burned include any prohibited materials.

3. During an episode, as declared by Ecology, or during ~~((impaired air quality))~~ Impaired Air Quality, as declared by ~~((the Department of))~~ Ecology or the Authority for a defined geographical area.

4. ~~((When))~~ Where burning causes a nuisance or when the Authority or permitting authority determines that the creation of a nuisance ~~((is the))~~ would likely result ~~((of))~~ from burning.

5. ~~((Unless))~~ Without a written permit, ~~((has been))~~ issued by the permitting authority, except for incidental agricultural burning, as provided in RCW 70.94.745(7).

~~((6. If the applicant is unable to show to the satisfaction of the Authority or permitting authority that burning, as requested-~~

~~a. is reasonably necessary to successfully carry out the enterprise in which the applicant is engaged; or~~

~~b. constitutes a best management practice; or~~

~~c. is necessary to control disease or insect infestation, and other measures are not available.))~~

6~~((7))~~. ~~((If the burning))~~ When the materials to be burned include~~((s))~~ any material other than natural vegetation generated on the property, which is the burning site, or was transported to the burning site by wind or water.

7. In the case of growing of field or turf grasses for seed, unless the request to burn qualifies for a waiver for slope or extreme conditions pursuant to WAC 173-430-045(4).

8. When a no-burn day is declared by the Authority or the permitting authority.

## REPEALER

### SECTION 6.11 AGRICULTURAL BURNING

~~((E. Nothing in Section 6.11 shall apply to the following types of fires:~~

~~1. Silvicultural burning.~~

~~2. Grass Field Burning pursuant to Section 6.10.))~~

AMENDATORY SECTION (Amending Order 94-23-036, filed 11/9/94)

### SECTION 6.11 AGRICULTURAL BURNING

G~~((F))~~. General Conditions. Considering population density and local conditions affecting air quality, the Authority or permitting authority shall establish conditions for all permits to minimize air pollution as much as practical. Such conditions may be general (applying to all permits) or specific (applying to individual permits). Conditions may ~~((include but are not limited to restricting the))~~ address permissible hours of burning, ~~((restricting burning to a defined season, restricting the size of fires))~~ maximum daily burn acreage or volume of material to be burned, ~~((imposing))~~ requirements for good combustion practice, ~~((and restrict-~~

~~ing))~~ burning ~~((to))~~ under specified weather conditions, pre and post-burn reporting, and other criteria, determined by the permitting authority, as necessary to minimize air pollution. Any person who practices or permits the practice of agricultural burning shall, in addition to any specific permit conditions imposed, comply with the general agricultural burning permit conditions and criteria in WAC 173-430-070 and all of the following conditions:

1. Whenever an episode or ~~((impaired air quality))~~ Impaired Air Quality is declared, or other meteorological condition occurs that the permitting authority determines is likely to contribute to a nuisance, all fires shall be extinguished by withholding new fuel or ceasing further ignition, as appropriate ~~((and))~~ to allow~~((ing))~~ the fire to burn down in the most expeditious manner. In no case shall a fire be allowed to burn longer than 3 hours after declaration of an episode or Impaired Air Quality, or determination of the specific meteorological condition.

2. Until extinguished, the ~~((The))~~ fire shall be attended by a person who is responsible for the same, ~~((and))~~ capable of extinguishing the fire, and has the permit or a copy of the permit in his or her immediate possession. ~~((The fire must be extinguished before leaving it.))~~

3. Burning shall occur only during daylight hours ~~((only))~~, or a more restrictive period as determined by the Authority or the permitting authority.

4. Permission from ~~((a))~~ the landowner, or the landowner's designated representative, must be obtained before starting the fire.

5. The fire district of jurisdiction shall be notified by the responsible person, prior to igniting a fire.

6. If it becomes apparent at any time to the Authority or permitting authority that limitations need to be imposed to reduce smoke, ~~((and))~~ prevent air pollution and/or protect property and the health, safety and comfort of persons from the effects of burning, the Authority or permitting authority shall notify the permittee or responsible person and any limitation so imposed shall become a condition under which the permit is issued.

7. Follow the smoke management guidelines of the permitting authority.

H~~((G))~~. Administrative requirements.

1. ~~((Until January 1, 1995, all applicants for agricultural burning permits shall pay a one-time interim fee of \$20 at the time the application is submitted. Payment shall be made by check, payable to the Washington Department of Ecology.))~~ All applicants for agricultural burning permits must submit their requests to burn, on forms or in a format provided by the permitting authority.

2. The permitting authority may require additional information from the applicant, as necessary to determine if agricultural burning is reasonably necessary to carry out the enterprise, to determine how best to minimize air pollution, and as necessary to compile information for the annual program summary (Section 6.11.J.10).

3. The permitting authority may deny an application or revoke a previously issued permit if it is determined by the permitting authority that the application contained inaccurate information, or failed to contain pertinent information, which information is deemed by the permitting authority to be sig-

nificant enough to have a bearing on the permitting authority's decision to grant a permit.

~~4((2)). ((After January 1, 1995, a)) All applicants for agricultural burning permits shall pay a fee at the time of application, ((not to exceed the level determined by the agricultural burning practices and research task force, pursuant to Chapter 70.94.650 RCW)) according to ((The)) a schedule of fees, ((shall be)) established by resolution of the permitting authority. When the permitting authority is the Spokane County Air Pollution Control Authority, the fee shall be according to the schedule in Regulation I, Article X.~~

~~4. ((The permitting authority shall act upon a complete permit application within 7 days from the date such complete application is filed.))~~

5. No permit for agricultural burning shall be granted on the basis of a previous permit history.

6. The permitting authority may waive or reduce the sixty and thirty-day advance requirements for submitting and completing a waiver request, made pursuant to WAC 173-430-045(5), if the permitting authority determines that an alternate advance period will suffice for evaluating the request.

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

## NEW SECTION

### SECTION 6.11 AGRICULTURAL BURNING

1. Responsibilities of Farmers. In order to make the required showing, referenced in Section 6.11.E., a farmer, as defined in WAC 173-430-030(7), is responsible for providing the following to the permitting authority, if applicable:

1. Advance notice of the potential need to burn, including documentation of pest problems, which if possible, shall be given prior to crop maturity.

2. For pest management burning requests, a plan establishing how a recurring pest problem will be addressed through non-burning management practices by the following year, if possible, or by no later than three years.

3. An evaluation of alternatives to burning, including those successfully and customarily used by other farmers in similar circumstances, with particular attention to alternatives customarily used in Spokane County, which evaluation shall include an explanation as to why the alternatives are unreasonable and burning is necessary.

4. A showing as to how burning will meet the applicable crop-specific or general Best Management Practices, established pursuant to RCW 70.94.650(4).

5. For residue management burn requests, a showing that the residue level meets the permitting authority's criteria for consideration of a residue management burn.

6. For residue management burn requests, a showing that non-burning alternatives would limit attaining the desired level of water infiltration/retention, soil erodibility, seed/soil contact, seeding establishment or other desirable agronomic qualities.

7. Field access to representatives of the permitting authority.

J. Responsibilities of Permitting Authorities. Permitting authorities are responsible for performing the following activities:

1. Evaluation of individual permit applications to determine whether the applicant has made the required showing, referenced in Section 6.11.E.

2. Consultation with a trained agronomist on individual permit applications, as necessary, to evaluate the need to burn and non-burning alternatives.

3. Field inspection, as necessary to verify the following:  
a. Accuracy of information in permit and waiver applications,

b. Compliance with permit conditions and applicable laws and regulations, and

c. Acreage and materials burned.

4. Taking final action on permit applications within 7 days of the date the application is deemed complete.

5. Incorporation of appropriate permit conditions, both general and specific, as referenced in Section 6.11.G. in order to achieve the following:

a. Minimizing air pollution and emissions of air pollutants, and

b. Insuring that the public interest in air, water, and land pollution, and safety to life and property has been fully considered, in accordance with RCW 70.94.650(1)(c).

6. Enforcement and compliance efforts, with the goal of assuring compliance with all applicable laws, regulations, and permit conditions, and ensuring that timely and appropriate enforcement actions are commenced, when violations are discovered.

7. Complaint logging and appropriate level of response.

8. Collection of fees.

9. Declaration of burn days and no-burn days, taking into consideration, at a minimum, the following criteria:

a. Local air quality and meteorological conditions;

b. Time of year when agricultural burning is expected to occur;

c. Acreage/volume of material expected to be burned per day and by geographical location;

d. Proximity of burn locations to roads, homes, population centers, and public areas;

e. Public interest and safety; and

f. Risk of escape of fire onto adjacent lands, during periods of high fire danger.

10. Development of smoke management guidelines, that include procedures to minimize the occurrence of nuisance, and to facilitate making burn/no burn decisions.

11. Dissemination of burn decisions, as necessary to inform responsible persons and the public.

12. Compilation of an annual program summary, which at a minimum, includes the following:

a. Permits and acres approved for burning;

b. Permit/waiver requests and acres denied;

c. Number and dates of complaints received; and

d. Number of documented violations.

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

**AMENDATORY SECTION** (Amending Order 94-23-036, filed 11/9/94)

### SECTION 6.11 AGRICULTURAL BURNING

~~K((H)). Compliance ((with other laws and regulations)). The responsible person is expected to comply with all applicable laws and regulations.~~ Compliance with Section 6.11 does not ((necessarily mean)) insure that agricultural burning complies with other applicable laws and regulations implemented by any other ((authorities)) authority or entity.

#### WSR 01-04-080

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

[Order 00-06—Filed February 7, 2001, 8:56 a.m.]

Date of Adoption: February 7, 2001.

Purpose: Clarification and simplification of existing language. Amended language to include dental hygienists. Elimination of outdated funding formula language for the community health clinics funding under the community health services program.

Citation of Existing Rules Affected by this Order: Amending WAC 182-20-001, 182-20-010, 182-20-100, 182-20-160, 182-20-200, and 182-20-400.

Statutory Authority for Adoption: RCW 41.05.160.

Adopted under notice filed as WSR 00-24-099 on December 6, 2000.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

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

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

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

February 7, 2001

Melodie Bankers

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 95-12-010, filed 5/26/95, effective 6/26/95)

**WAC 182-20-001 Purpose.** The purpose of this chapter is to establish procedures at the Washington state health care authority for determining eligibility and distribution of funds for medical, dental, and migrant services to community health clinics under section 214(3), chapter 19, Laws of 1989 1st ex. sess., including other state general fund appropriations

for medical, dental, and migrant services in community health clinics since 1985.

**AMENDATORY SECTION** (Amending WSR 95-12-010, filed 5/26/95, effective 6/26/95)

**WAC 182-20-010 Definitions.** For the purposes of these rules, the following words and phrases shall have these meanings unless the context clearly indicates otherwise.

(1) "Community health clinic" means a public or private nonprofit tax exempt corporation with the mission of providing primary health care to low income individuals at a charge based upon ability to pay.

(2) "Authority" means the Washington state health care authority.

(3) "Encounter" means a face-to-face contact between a patient and a health care provider exercising independent judgment, providing primary health care, and documenting the care in the individual's health record.

(4) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care including:

(a) Physicians under chapters 18.57 and 18.71 RCW;

(b) Dentists under chapter 18.32 RCW;

(c) Advanced registered nurse practitioner under chapter ~~((48.88))~~ 18.79 RCW;

(d) Physician's assistant under chapters 18.71A and 18.57A RCW;

(e) Dental hygienist under chapter 18.29 RCW;

(f) Licensed midwife under chapter 18.50 RCW;

(g) Federal uniformed service personnel lawfully providing health care within Washington state.

(5) "Low-income individual" means a person with income at or below two hundred percent of federal poverty level. The poverty level has been established by Public Law 97-35 § 652 (codified at 42 USC 9847), § 673(2) (codified at 42 USC 9902 (2)) as amended; and the *Poverty Income Guideline* updated annually in the *Federal Register*.

(6) "Primary health care" means comprehensive care that includes a basic level of preventive and therapeutic medical and/or dental care, usually delivered in an outpatient setting, and focused on improving and maintaining the individual's general health.

(7) "Relative value unit" means a standard measure of performance based upon time to complete a clinical procedure. The formula is one unit equals ten minutes. A table is available from the authority stating the actual values.

(8) "Administrator" means the administrator of the health care authority or the administrator's designee.

(9) "User" means an individual having one or more primary health care encounters and counted only once during a calendar year.

(10) "Contractor" means the community health clinic or other entity performing services funded by chapter 182-20 WAC, and shall include all employees of the contractor.

**AMENDATORY SECTION** (Amending WSR 95-12-010, filed 5/26/95, effective 6/26/95)

**WAC 182-20-100 Administration.** The authority shall contract with community health clinics to provide primary health care in the state of Washington by:

- (1) Developing criteria for the selection of community health clinics to receive funding;
- (2) Establishing statewide standards governing the granting of awards and assistance to community health clinics;
- (3) Disbursing funds appropriated for community health clinics only to those clinics meeting the criteria in WAC 182-20-160;
- (4) Distributing available state funds to community health clinics according to the following priority in the order listed:
  - (a) First, to community health clinics that are private, nonprofit corporations classified exempt under Internal Revenue Service Rule 501 (c)(3) (~~when~~) and governed by a board of directors including representatives from the populations served;
  - (b) Second, to local health jurisdictions with an organized primary health clinic or division;
  - (c) Third, to private nonprofit or public hospitals with an organized primary health clinic or department.
- (5) Reviewing records and conducting on-site visits of contractors or applicants as necessary to assure compliance with these rules; and
- (6) Withholding funding from a contractor or applicant until such time as satisfactory evidence of corrective action is received and approved by the authority, if the authority determines:
  - (a) Noncompliance with applicable state law or rule; or
  - (b) Noncompliance with the contract; or
  - (c) Failure to provide such records and data required by the authority to establish compliance with section 214(3), chapter 19, Laws of 1989 1st ex. sess., this chapter, and the contract; or
  - (d) The contractor or applicant provided inaccurate information in the application.

**AMENDATORY SECTION** (Amending WSR 95-12-010, filed 5/26/95, effective 6/26/95)

**WAC 182-20-160 Eligibility.** Applicants shall:

- (1) Demonstrate private, nonprofit, tax exempt status incorporated in Washington state or public agency status under the jurisdiction of a local or county government;
- (2) Receive other funds from at least one of the following sources:
  - (a) Section 329 of the Public Health Services Act;
  - (b) Section 330 of the Public Health Services Act;
  - (c) Community development block grant funds;
  - (d) Title V Urban Indian Health Service funds; or
  - (e) Other public or private funds providing the clinic demonstrates:
    - (i) Fifty-one percent of total clinic population are low income;
    - (ii) Fifty-one percent or greater of funds come from sources other than programs under WAC 182-20-160;

(3) Operate as a community health clinic providing primary health care for at least eighteen months prior to applying for funding;

(4) Provide primary health care services with:

(a) Twenty-four-hour coverage of the clinic including provision or arrangement for medical and/or dental services after clinic hours;

(b) Direct clinical services provided by one or more of the following:

(i) Physician licensed under chapters 18.57 and 18.71 RCW;

(ii) Physician's assistant licensed under chapters 18.71A and 18.57A RCW;

(iii) Advanced registered nurse practitioner under chapter ~~(18.88)~~ 18.79 RCW;

(iv) Dentist under chapter 18.32 RCW;

(v) Dental hygienist under chapter 18.29 RCW;

(c) Provision or arrangement for services as follows:

(i) Preventive health services on-site or elsewhere including:

(A) Eye and ear examinations for children;

(B) Perinatal services;

(C) Well-child services; and

(D) Family planning services;

(ii) Diagnostic and treatment services of physicians and where feasible a physician's assistant and/or advanced registered nurse practitioner, on-site;

(iii) Services of a dental professional licensed under Title 18 RCW on-site or elsewhere;

(iv) Diagnostic laboratory and radiological services on-site or elsewhere;

(v) Emergency medical services on-site or elsewhere;

(vi) Arrangements for transportation services;

(vii) Preventive dental services on-site or elsewhere; and

(viii) Pharmaceutical services, as appropriate, on-site or elsewhere;

(5) Demonstrate eligibility to receive and receipt of reimbursement from:

(a) Public insurance programs; and

(b) Public assistant programs, where feasible and possible;

(6) Have established ~~((a))~~ for at least eighteen months an operating sliding scale fee schedule for adjustment of charges, based upon the individual's ability to pay for low-income individuals;

(7) Provide health care regardless of the individual's ability to pay; and

(8) Establish policies and procedures reflecting sensitivity to cultural and linguistic differences of individuals served and provide sufficient staff with the ability to communicate with the individuals.

**AMENDATORY SECTION** (Amending WSR 95-12-010, filed 5/26/95, effective 6/26/95)

**WAC 182-20-200 Allocation of state funds.** The authority shall allocate available funds to medical, dental and migrant contractors providing primary health care based on the following criteria:

(1) **Medical.**

(a) The authority may withhold appropriated funds as follows:

(i) As specified under law or up to ten percent to provide funding for new contractors, special projects, and emergency needs:

(A) With distribution of any remaining portion of this ten percent among contractors by ~~((April 1))~~ the end of each funding year;

(B) Prorated according to the percentage of total medical contract funds distributed to each contractor;

(ii) Up to ten percent for administration.

(b) The remainder of the appropriated funds is referred to as the "medical base." The medical base means the total amount of money appropriated by the legislature for the medical program minus the amounts specified in (a)(i) and (ii) of this subsection. The medical base is distributed to medical contractors based upon the following formulas:

~~(i) ((The medical base is distributed to medical contractors based upon the following formula until June 30, 1995:~~

~~(A) Forty percent of the medical base is distributed equally among all medical contractors;~~

~~(B) Thirty percent of the medical base is distributed by the ratio of the contractor's primary health care (PHC) medical users divided by the total medical sliding fee users of all contractors as reported in the prior calendar year annual reports.~~

individual contractor's medical users

\_\_\_\_\_ X 30% medical base

total of all contractors' medical users

~~(C) Thirty percent of the medical base is distributed by the ratio of the contractor's primary health care (PHC) medical encounters by the total number of medical encounters reported by all contractors as reported in the prior calendar year annual reports.~~

individual contractor's medical encounters

\_\_\_\_\_ X 30% medical base

total of all contractors' medical encounters

~~(ii) Starting July 1, 1995, the medical base is distributed to medical contractors based upon the following formula:~~

~~(A) Forty percent of the medical base is distributed equally among all medical contractors;~~

~~(B) Sixty percent of the medical base is distributed by the ratio of the contractor's primary health care (PHC) medical sliding fee users divided by the total medical sliding fee users of all contractors as reported in the prior calendar year annual reports.~~

individual contractor's medical sliding fee users

\_\_\_\_\_ X 60% medical base

total of all contractors' medical sliding fee users

~~((iii))~~ Starting July 1, 1996, the medical base is distributed to medical contractors based upon the following formula:

(A) Forty percent of the medical base is distributed equally among all medical contractors;

(B) Thirty percent of the medical base is distributed by the ratio of the contractor's primary health care (PHC) medical sliding fee users divided by the total medical sliding fee users of all contractors as reported in the prior calendar year annual reports.

individual contractor's medical sliding fee users

\_\_\_\_\_ X 30% medical base

total of all contractors' medical sliding fee users

(C) Thirty percent of the medical base is distributed by the ratio of the contractor's primary health care (PHC) medical sliding fee encounters by the total number of medical sliding fee encounters reported by all contractors as reported in the prior calendar year annual reports.

individual contractor's medical sliding fee encounters

\_\_\_\_\_ X 30% medical base

total of all contractors' medical sliding fee encounters

(2) **Dental.**

(a) The authority may withhold appropriated funds as follows:

(i) As specified under law or up to ten percent of appropriated funds to provide funding for new contractors, special projects, and emergency needs:

(A) With distribution of any remaining portion of this ten percent among contractors by ~~((April 1))~~ the end of each funding year;

(B) Prorated according to the percentage of total dental contract funds distributed to each contractor.

(ii) Up to ten percent for administration.

(b) The remainder of the funds is referred to as the dental base. The dental base means the total amounts appropriated by the legislature for dental programs minus the amounts specified in (a)(i) and (ii) of this subsection and as follows:

~~(i) ((The dental base is distributed to dental contractors based upon the following formula until June 30, 1995:~~

~~(A) Forty percent of the dental base distributed equally among all dental contractors;~~

~~(B) Thirty percent of the dental base distributed by the ratio of contractor primary health care (PHC) medical users divided by the total medical users of all contractors as reported in the prior calendar year annual reports.~~

individual contractor's medical users

\_\_\_\_\_ X 30% dental base

total of all contractors' users

~~(C) Thirty percent of the dental base is distributed by the ratio of the contractor's relative value units (RVU) divided by~~

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the total relative value units of all contractors as reported in the prior calendar year annual reports:

individual contractor's RVU

~~\_\_\_\_\_ X 30% dental base~~

total of all contractors' RVU

~~(ii) Starting July 1, 1995, the dental base is distributed to dental contractors based upon the following formula:~~

~~(A) Forty percent of the dental base is distributed equally among all dental contractors;~~

~~(B) Sixty percent of the dental base is distributed by the ratio of the contractor's primary health care (PHC) dental sliding fee users divided by the total dental sliding fee users of all contractors as reported in the prior calendar year annual reports:~~

~~individual contractor's dental sliding fee users~~

~~\_\_\_\_\_ X 60% dental base~~

~~total of all contractors' dental sliding fee users~~

~~(iii)) Starting July 1, 1996, the dental base is distributed to dental contractors based upon the following formula:~~

~~(A) Forty percent of the dental base is distributed equally among all dental contractors;~~

~~(B) Thirty percent of the dental base is distributed by the ratio of the contractor's primary health care (PHC) dental sliding fee users divided by the total dental sliding fee users of all contractors as reported in the prior calendar year annual reports.~~

~~individual contractor's dental sliding fee users~~

~~\_\_\_\_\_ X 30% dental base~~

~~total of all contractors' dental sliding fee users~~

~~(C) Thirty percent of the dental base is distributed by the ratio of the contractor's primary health care (PHC) dental sliding fee relative value units (RVU) divided by the total number of dental sliding fee relative value units (RVU) reported by all contractors as reported in the prior calendar year annual reports.~~

~~individual contractor's dental sliding fee RVUs~~

~~\_\_\_\_\_ X 30% dental base~~

~~total of all contractors' dental sliding fee RVUs~~

**(3) Migrant.**

(a) The authority may withhold appropriated funds as follows:

(i) As specified under law or up to ten percent to provide funding for new contractors, special projects, and emergency needs:

(A) With distribution of any remaining portion of this ten percent among contractors by ~~((April 1))~~ the end of each funding year;

(B) Prorated according to the percentage of total migrant contract funds distributed to each contractor.

(ii) Up to ten percent for administration.

(b) The remainder of the appropriated funds is referred to as the "migrant base." The migrant base means the total amount of money appropriated by the legislature for the migrant program minus the amounts specified in (a)(i) and (ii) of this subsection. The migrant base is distributed to migrant contractors based upon the following formula:

The migrant base is distributed to migrant contractors based upon the following formula starting July 1, 1995: One hundred percent of the migrant base is distributed by the ratio of the contractor's primary health care (PHC) migrant users divided by the total migrant users of all contractors as reported in the prior calendar year annual reports.

individual contractor's migrant users

~~\_\_\_\_\_ X 100% migrant base~~

total of all contractors' migrant users

AMENDATORY SECTION (Amending WSR 95-12-010, filed 5/26/95, effective 6/26/95)

**WAC 182-20-400 Limitations on awards.** Specific to the medical, dental, and migrant base as referenced in WAC 182-20-200 (1)(b), (2)(b), and (3)(b):

~~((1) Until June 30, 1995:~~

~~(a) Any approved contractor shall initially receive no more than one hundred ten percent of that contractor's previous year's initial allotment.~~

~~(b) Any approved contractor shall initially receive no less than ninety percent of that contractor's previous year's initial allotment. In the event that funding is inadequate to provide ninety percent, criteria shall be established to equitably allocate the available funds.~~

~~(c) Funds in excess of the initial allocation shall be distributed in a supplemental allotment pursuant to WAC 182-20-200.~~

~~(2) Between July 1, 1995, and June 30, 1996:~~

~~(a) Any approved contractor shall initially receive no more than one hundred twenty five percent of that contractor's previous year's initial allotment.~~

~~(b) Any approved contractor shall initially receive no less than eighty five percent of that contractor's previous year's initial allotment. In the event that funding is inadequate to provide eighty five percent, criteria shall be established to equitably allocate the available funds.~~

~~(c) Funds in excess of the initial allocation shall be distributed in a supplemental allotment pursuant to WAC 182-20-200.~~

~~(3) Between July 1, 1996, and June 30, 1997:~~

~~(a) Any approved contractor shall initially receive no more than one hundred twenty five percent of that contractor's previous year's initial allotment.~~

~~(b) Any approved contractor shall initially receive no less than eighty percent of that contractor's previous year's initial allotment. In the event that funding is inadequate to~~

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~~provide eighty percent, criteria shall be established to equitably allocate the available funds.~~

~~(e) Funds in excess of the initial allocation shall be distributed in a supplemental allotment pursuant to WAC 182-20-200.~~

~~(4))~~ Starting July 1, 1997:

~~((a))~~ (1) Any approved contractor shall initially receive no more than one hundred twenty-five percent of that contractor's previous year's initial allotment.

~~((b))~~ (2) Any approved contractor shall initially receive no less than seventy-five percent of that contractor's previous year's initial allotment. In the event that funding is inadequate to provide seventy-five percent, criteria shall be established to equitably allocate the available funds.

~~((c))~~ (3) Funds in excess of the initial allocation shall be distributed in a supplemental allotment pursuant to WAC 182-20-200.

### WSR 01-04-086

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

[Filed February 7, 2001, 10:53 a.m.]

Date of Adoption: January 12, 2001.

Purpose: The rules revision was undertaken to update the list of reportable cancers and data elements to current standards of practice, to define reporting responsibilities and to clarify access and use of cancer registry data for public health purposes.

Citation of Existing Rules Affected by this Order: Repealing chapter 246-430 WAC.

Statutory Authority for Adoption: RCW 70.54.270.

Other Authority: RCW 43.20.050, 43.70.130.

Adopted under notice filed as WSR 00-24-131 on December 6, 2000.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-102-010 (1)(d) was deleted due to changes in the national standard for cancer case reporting effective for cases diagnosed January 1, 2001, and later.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 0, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 7.

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

February 6, 2001

Mary C. Selecky

Secretary

### Chapter 246-102 WAC

### CANCER REGISTRY

#### NEW SECTION

**WAC 246-102-001 Purpose.** The purpose of cancer case reporting is to monitor the incidence of cancer in the state. Information collected through the cancer registry system is used by medical, research and public health professionals to understand, control and reduce occurrences of cancer in residents of Washington. This chapter establishes the criteria and procedures for identifying and reporting cancer cases and defines the standards for access and release of cancer information.

#### NEW SECTION

**WAC 246-102-010 Definitions.** For the purposes of RCW 70.54.230, 70.54.240, 70.54.250, 70.54.260, 70.54.270, and this chapter, the following words and phrases shall have the following meaning unless the context clearly indicates otherwise:

(1) "Cancer case" means:

(a) Any malignant neoplasm with the exception of basal and squamous cell carcinoma of the skin;

(b) All brain tumors;

(c) Basal and squamous cell carcinoma of the external genital organ sites (vulva, labia, clitoris, prepuce, penis, scrotum);

(d) Cancer in situ, except carcinoma in situ of the uterine cervix; or

(e) Other diagnoses necessary to meet the reporting requirements of the Center for Disease Control's National Program of Cancer Registries, the National Cancer Institute's Surveillance Epidemiology and End Results Program, the Commission on Cancer, and the North American Association of Central Cancer Registries (a copy is available for review at the department).

(2) "Cancer diagnosis or treatment facilities" means hospitals, surgical centers, outpatient radiation therapy centers, doctors' offices, independent clinical laboratories and any other facilities where cancer cases are diagnosed or treated.

(3) "Confidential information" means any information which could lead to the identification of cancer patients, cancer diagnosis or treatment facilities, independent clinical laboratories, or attending health care providers.

(4) "Contractors" means agencies designated by contract with the department of health to perform activities related to identification, collection, and processing of cancer data.

(5) "Department" means the Washington state department of health.

(6) "Designees" means hospital-based cancer registries and other persons or entities designated by the department to perform data collection activities.

(7) "Hospital-based cancer registry" means a cancer registry which is maintained by a hospital or other health care facility. (8) "In situ" means tumors described as "in situ" by the pathologist reading the diagnostic report(s).

(9) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects as defined in RCW 70.02.010.

(10) "Patient" means a case, suspected case or contact.

(11) "Principal health care provider" means the attending health care provider recognized as primarily responsible for diagnosis and treatment of a patient, or in the absence of such, the health care provider initiating diagnostic testing or treatment for the patient.

(12) "Reportable cancer case" means any cancer case diagnosed in a Washington state resident after the effective date of these rules.

(13) "Resident" means an individual residing in Washington state at the time of cancer diagnosis.

(14) "Stage of disease" means a cancer classification system encompassing attributes of a tumor as determined and described by:

(a) *Summary Staging Guide, Surveillance Epidemiology and End Results (SEER), Program, April 1977*; except when superseded by more up-to-date measures (a copy is available for review at the department); and

(b) *Manual for Staging of Cancer, 5th Edition, American Joint Committee on Cancer, (AJCC), 1998*, except when superseded by more up-to-date measures (a copy is available for review at the department).

(15) "State cancer registry" means the statewide cancer data base maintained by the department of health.

(16) "State cancer registry contract" means the legal agreement by which contractors are authorized to obtain information on reportable cancer cases. It also means the document specifying the contractors' obligations to the state cancer registry with respect to how and when information is collected, processed, and provided and how quality assurance standards are met.

#### NEW SECTION

**WAC 246-102-020 Who must report.** By statute (RCW 70.54.240), the responsibility for identifying and reporting cases of cancer rests with health care facilities, independent clinical laboratories, and other principal health care providers. The department may, at its discretion, delegate some or all of these responsibilities to contractors or other designees. A list of the contractors and designees responsible for identifying and reporting cases of cancer diagnosed at specific sites in Washington is available for review at the department.

#### NEW SECTION

**WAC 246-102-030 Cancer case identification.** (1) Contractors or designees shall identify reportable cancer cases diagnosed and treated at cancer diagnosis and treatment facilities.

(2) Cancer diagnosis or treatment facilities shall:

(a) Organize case finding documents by procedure or service date to permit identification of cancer cases; and  
(b) Submit or make available, case finding documents including the following if maintained:

(i) Disease and operation indices for cancer cases;

(ii) Pathology and cytology reports;

(iii) New patient radiation logs;

(iv) New patient chemotherapy logs; and

(v) Other alternative case finding documents that are necessary to identify or verify reportable cancer cases;

(c) Cancer diagnosis or treatment facilities shall submit case finding documents by paper form, computer disk, or electronic file or make batched hard copy documents available for on-site review, within forty-five days of the date of service.

(3) On request, principal health care providers shall identify to contractors, designees, or the department reportable cancer cases diagnosed at facilities other than hospitals, surgical centers, and outpatient radiation therapy centers (as specified under WAC 246-102-030 and 246-102-040) unless the patient was hospitalized for additional cancer diagnosis or treatment services within one month of diagnosis.

#### NEW SECTION

**WAC 246-102-040 Data collection requirements.** (1) Contractors or designees shall complete cancer abstracts for patients identified through cancer diagnosis and treatment facilities.

(2) Cancer diagnosis or treatment facilities shall provide contractors or their designees with access to pathology and cytology reports and all medical records pertaining to identified cancer cases.

(3) On request by the contractor, designee or the department, principal health care providers or their staff shall be responsible for completing cancer abstracts for patients diagnosed at facilities other than hospitals, surgical centers, and outpatient radiation therapy centers, unless the patient was hospitalized for additional cancer diagnosis or treatment services within one month of diagnosis.

(4) The following information items shall be included in cancer abstracts, providing the information is available from the patient's medical records:

(a) Patient information:

(i) Name;

(ii) Address at time of diagnosis;

(iii) Sex;

(iv) Race;

(v) Hispanic origin;

(vi) Birthdate;

(vii) Age at time of diagnosis;

(viii) Social Security number;

(ix) State or country of birth;

- (x) Usual occupation;
- (b) Diagnostic information:
  - (i) Date first seen for this cancer;
  - (ii) Primary site or sites;
  - (iii) Histologic type or types, behavior and grade;
  - (iv) Date of each diagnosis;
  - (v) Method or methods of diagnostic confirmation;
  - (vi) Stage of disease at diagnosis using:
    - (A) Summary stage; and
    - (B) AJCC system if maintained by the cancer diagnostic or treatment facility;
  - (vii) Sequence;
  - (viii) Laterality;
- (c) First course of treatment information:
  - (i) Date of initial treatment;
  - (ii) All treatment modalities given as part of first course of therapy;
  - (d) Other information:
    - (i) Name and address of cancer diagnosis or treatment facility providing information;
    - (ii) Medical record number;
    - (iii) Name and address of principal health care provider; and
    - (iv) Other items necessary to meet the reporting requirements of the Center for Disease Control's National Program of Cancer Registries, the National Cancer Institute's Surveillance Epidemiology and End Results Program, the Commission on Cancer, and the North American Association of Central Cancer Registries (a copy is available at the department).
- (5) The department may require submission of additional information from contractors or designees as needed to assess data reliability and validity.
- (6) Contractors shall prepare detailed data collection protocols for inclusion in the state cancer registry contract.

#### NEW SECTION

**WAC 246-102-050 Form, frequency, and format for reporting.** (1) Contractors or designees shall:

- (a) Prepare electronic data files containing information from cancer abstracts in a format specified by the department; and
  - (b) Provide electronic files to the state cancer registry at intervals specified by written agreement with the department.
- (2) On request by the contractor, designee or the department, principal health care providers shall complete and submit cancer abstracts to contractors, designees, or the department under WAC 246-102-020 and 246-102-030 within sixty days following a patient's cancer diagnosis date if the patient was not hospitalized for a cancer-related diagnosis or treatment within one month of diagnosis.

#### NEW SECTION

**WAC 246-102-060 Data quality assurance.** (1) Contractors or designees shall:

- (a) Assess the completeness and accuracy of case identification and data collection through computerized edit programs and on-site audits, or make available information and documentation for this purpose; and

- (b) Maintain a system for retrieval of completed cancer abstracts for a period up to ten years.
- (2) Cancer diagnosis or treatment facilities shall:
- (a) Make available to the contractor, designee or the department, all case finding source documents and medical records for data quality assurance activities.
  - (b) Maintain a system for retrieval of case finding source documents and medical records for a period up to ten years.
- (3) The department may require contractors or designees to make available all findings from data quality assurance activities for review and verification.

#### NEW SECTION

**WAC 246-102-070 Access and release of information.** (1) Cancer registry information shall be used only for statistical, scientific, medical research and public health purposes. Contractors and designees must comply with chapter 70.02 RCW regarding the disclosure of patient health care information.

(2) The department may release confidential registry information for research purposes after the research project has been reviewed and approved by an institutional review board and a confidentiality agreement is negotiated (a copy of the institutional review board procedures and application are available from the department).

(3) The department may release confidential registry information for projects to assess threats to public health or improve public health practice after the project has been reviewed and approved by the department and a data-sharing agreement is negotiated (a copy of the procedures for data-sharing agreements is available from the department).

(4) Cancer diagnosis or treatment facilities may require contractors or designees to sign an agreement of confidentiality regarding access and release of cancer data and prepare, administer, and maintain confidentiality oaths as needed.

(5) Cancer diagnosis or treatment facilities shall adhere to recommendations in RCW 70.54.260 regarding content of confidentiality agreement if confidentiality agreements are used.

(6) Cancer diagnosis and treatment centers shall make available to cancer patients printed information which describes the purpose of the state cancer registry, the statutory requirements which apply to health care facilities, independent clinical laboratories, and other principal health care providers to identify and report cases of cancer to the state cancer registry, and to protect the confidential information that is reported, the public health and research uses of information in the state cancer registry, the circumstances under which cancer registry information is disclosed for these purposes and the relevant RCW and WAC pertaining to the state cancer registry.

**WSR 01-04-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 01-10—Filed January 25, 2001, 3:00 p.m.]

Date of Adoption: January 25, 2000 [2001].

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule provides for tribal fishing in Hood Canal pursuant to the state/tribal management plan. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Effective Date of Rule: Immediately.

January 25, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

**WAC 220-52-04000V Commercial crab size restriction.** Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice it is lawful for licensed wholesale dealers to possess male Dungeness crab measuring greater than 6 inches across the back immediately in front of the tips if those crabs were taken by a treaty Indian fisher fishing in Marine Fish/Shellfish Management and Catch Reporting Areas 27A, 27B and 27C.

**WSR 01-04-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 01-11—Filed January 25, 2001, 3:02 p.m., effective January 26, 2001, 12:01 a.m.]

Date of Adoption: January 25, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-52-07300F; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of sea urchins exist in the areas described. South and Central Puget Sound will be closed due to lack of buyer interest. Prohibition of all diving within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Effective Date of Rule: January 26, 2001, 12:01 a.m.

January 25, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

**WAC 220-52-07300G Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 3 and 4 are open only on January 29 and 30, 2001. The minimum size for green sea urchins is 2.25 inches in diameter exclusive of the spines.

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on January 29, 2001. It is unlawful to harvest red sea urchins smaller than 4.0 inches or larger than 5.5 inches in diameter exclusive of the spines.

(3) It is unlawful to dive for any purpose from a commercially-licensed fishing vessel, except vessels actively fishing geoducks under contract with the Washington Department of Natural Resources on Saturdays and Sundays of each week.

(4) Sea Urchin Districts:

(a) Sea Urchin District 1 (Northern San Juan Islands) is defined as Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, and those waters of Area 22A north of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and west of a line projected true north from Limestone Point on San Juan Island.

(b) Sea Urchin District 2 (Southern San Juans and Port Townsend) is defined as those waters of Marine Fish/Shellfish Management and Catch Reporting Area 22A south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and east of a line projected true north from Limestone Point on San Juan Island, and Areas 21A, 21B, 22B, 23A, 23B, 25A, and 25B. The following areas within Sea Urchin District 2 are closed to the harvest of sea urchins at all times.

(I) Those waters of Haro Strait north of a line projected east-west one-half mile south of Eagle Point on San Juan Island and south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island.

(ii) Those waters of San Juan Channel and Upright Channel within the following lines: south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island, west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island, south of a line projected from Flat Point on Lopez Island true west to Shaw Island, and north of a line projected from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. January 25, 2001:

WAC 220-52-07300F Sea urchins. (01-08)

**WSR 01-04-011  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 01-09—Filed January 25, 2001, 3:04 p.m., effective February 1, 2001, 12:01 a.m.]

Date of Adoption: January 25, 2001.  
Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900P; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The nontribal sport allotment of 298 wild winter steelhead is anticipated to be taken by January 31, 2001. Harvestable hatchery steelhead remain available for harvest. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Effective Date of Rule: February 1, 2001, 12:01 a.m.

January 25, 2001

J. P. Koenings

Director

by Larry Peck

#### NEW SECTION

**WAC 232-28-61900P Exceptions to statewide rules—Green River (King County).** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective 12:01 a.m. February 1, 2001 through February 28, 2001 wild steelhead release in those waters of the Green River from the First Avenue South Bridge to the S. 277th Bridge in Auburn.

(2) Effective 12:01 a.m. February 1, 2001 through March 15, 2001, wild steelhead release in those waters of the Green River upstream of the S. 277th Bridge in Auburn to the Tacoma Headworks Dam.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 16, 2001:

WAC 232-28-61900P Exceptions to statewide rules—Green River (King County).

**WSR 01-04-029**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
[Filed January 30, 2001, 4:49 p.m.]

Date of Adoption: February 1, 2001.

Purpose: Effective January 10, 2001, the Internal Revenue Service amended Income Tax Regulations (26 C.F.R. Part 1) under section 125 of the Internal Revenue Code. The changes in the department's dependent care assistance salary reduction plan will make the department's rules as consistent as possible with the increased flexibility in the federal rules.

Citation of Existing Rules Affected by this Order: Amending WAC 415-630-030 Changes in the family status.

Statutory Authority for Adoption: RCW 41.40.020, 41.50.050(5), 41.04.640.

Other Authority: RCW 34.05.350, 26 U.S.C. 125, 26 C.F.R. Part 1 (Tax Treatment of Cafeteria Plans).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The Internal Revenue Service amended Income Tax Regulations (26 C.F.R. Part 1) effective January 10, 2001. Immediate adoption is needed to make state rules consistent with the federal change.

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

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

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

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

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

Effective Date of Rule: Immediately.

January 30, 2001  
John Charles  
Director

AMENDATORY SECTION (Amending WSR 96-16-020, filed 7/29/96, effective 7/29/96)

**WAC 415-630-030 Changes in family status.** A participant is permitted to revoke a salary reduction agreement after the period of coverage has commenced and to enter a new salary reduction agreement regarding the remainder of the plan year if both the revocation and new election are on account of and consistent with any of the following changes in family status:

- (1) Marriage;
- (2) Divorce or legal separation;

- (3) Death of a spouse or dependent;
- (4) Birth or adoption of a child or addition of a dependent to the eligible employee's household;
- (5) Termination of employment of a spouse;
- (6) Employment of an unemployed spouse; ~~(and)~~
- (7) A change in the eligible employee's or eligible employee's spouse's working hours which significantly alters the need for dependent care; example: A shift from full time to part time, part time to full time, or a change to or from leave without pay status(-);

(8) Such other events that the department determines will permit a change or revocation of an election during a plan year under regulations and rulings of the Internal Revenue Service; or

(9) Any other reason provided by the Internal Revenue Code, 26 CFR Part 1.

An eligible employee may also become a participant in the plan on the basis of a change in family status.

**WSR 01-04-030**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Order 01-12—Filed January 30, 2001, 4:53 p.m.]

Date of Adoption: January 30, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000W and 220-52-04600I; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These actions are necessitated to maintain state/tribal crab allocations. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

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

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

EMERGENCY

Effective Date of Rule: Immediately.

January 30, 2001

J. P. Koenings

Director

by Larry Peck

**NEW SECTION**

**WAC 220-52-04000W Commercial crab fishery— Exceptions to permanent rules for pot limits.** Notwithstanding the provisions of WAC 220-52-040, effective 10:00 a.m. February 1 until 4:00 p.m. February 7, it is unlawful for any person to fish for crabs for commercial purposes with more than 45 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and that portion of 26A north of line from the south tip of Possession Point on Whidbey Island to the shipwreck at Picnic Point.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600I Commercial crab fishery— Allocation closure. (00-256)

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. February 7, 2001:

WAC 220-52-04000W Commercial crab fishery— Exceptions to permanent rules for pot limits

**NEW SECTION**

**WAC 220-52-04600K Puget Sound crab fishery— Exceptions to permanent seasons and areas.** Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice:

- 1) The following area is open to commercial crab fishing:
  - a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected true north from the green number 1 buoy at Scatchet Head and west of a line projected true north from the green number 1 buoy at Possession Point, and north of a line connecting the two buoys described herein.
  - 2) The following areas are closed to commercial crab fishing except as provided herein:
    - a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.
    - b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, and the portion of Marine Fish-Shellfish Catch Area 26A north of line from the south tip of Possession Point on Whidbey Island to the shipwreck at Picnic Point, with the following exception:

1) From 10:00 a.m. February 1 to 4:00 p.m. February 7, it is lawful to fish for commercial crab in those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, that portion of 24B north of line from Sandy Point on Whidbey Island to Hermosa Point on the north end of Tulalip Bay, 24C, that portion of 24D north of a extending from the point located at the southern end of Honeymoon Bay (48° 03.047', 122° 32.306") to the point just north of Beverly Beach, and the portion of Marine Fish/Shellfish Catch Area 26A west of a line from the Mukilteo ferry dock to Sandy Point on Whidbey Island and north of line from Sandy Point on Whidbey Island to Hermosa Point on the north end of Tulalip Bay.

c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the outermost tip of the abandoned dock at the Three Crabs Restaurant.

d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25E south of a line from Contractors Point to Tukey Point.

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

**WSR 01-04-042**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 01-13—Filed January 31, 2001, 4:56 p.m., effective February 1, 2001, 6:00 a.m.]

Date of Adoption: January 30, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100W; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets tribal winter season. Impacts to ESA - listed stocks in the tribal fishery through February "do not constitute an irreversible or irretrievable commitment of resources, in compliance with section 7(d)" (Darm letter to Stan Speaks, January 16, 2001). The National Marine Fisheries Service estimates that the biological opinion will be done by February 28, 2001, and will address fisheries beginning March 1, 2001. Rule is consistent with action of the Columbia River Compact on January 25, 2001. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

EMERGENCY



Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Effective Date of Rule: February 1, 2001, 6:00 a.m.

January 30, 2001

J. P. Koenigs

Director

by Larry Peck

## NEW SECTION

**WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, shad, or sturgeon under the following provisions:

1) Open Periods: 6:00 a.m. February 1, 2001 through 4:00 p.m. March 21, 2001.

2) Open Areas: SMCRA 1F, 1G, 1H

3) Gear: No mesh restriction.

4) Allowable sale includes: salmon, steelhead, sturgeon, carp, and shad. Sturgeon between 4 feet and 5 feet in length may be sold.

5) Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the

eastern shoreline to one mile downstream from the western shoreline.

e) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

f) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

3) Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

## REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. March 21, 2001:

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam.

EMERGENCY

**WSR 01-04-046**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 01-15—Filed February 1, 2001, 2:02 p.m., effective February 7, 2001, 12:01 p.m.]

Date of Adoption: January 31, 2001.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-56-36000; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Test results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Effective Date of Rule: February 7, 2001, 12:01 p.m.

January 31, 2001

J. P. Koenings

Director

by Larry Peck

**NEW SECTION**

**WAC 220-56-36000G Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3, or except as provided for in this section:

(1) Effective 12:01 p.m. February 7 through 11:59 p.m. February 10, 2001, between 12:01 p.m. to 11:59 p.m. only, razor clam digging is allowed in the following areas: all of Razor Clam Areas 1 and 2 and the portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County).

(2) Effective 12:01 p.m. February 9 through 11:59 p.m. February 10, 2001, between 12:01 p.m. to 11:59 p.m. only, razor clam digging is allowed in the portion of Razor Clam Area 3 that is between the Copalis River and the southern boundary of the Quinault Indian Nation.

(3) It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 11, 2001:

WAC 220-56-36000G Razor clams.

**WSR 01-04-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 01-14—Filed February 2, 2001, 10:31 a.m.]

Date of Adoption: February 1, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-52-07300G; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of sea urchins exist in the areas described. Prohibition of all diving within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

EMERGENCY

Effective Date of Rule: Immediately.

February 1, 2001  
J. P. Koenings  
Director

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-52-07300G Sea urchins. (01-11)

NEW SECTION

**WAC 220-52-07300H Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 3 and 4 are open only on February 5 and 6, 2001. Marine Fish/Shellfish Management and Catch Reporting Areas 26B, 26C, 26D, and 28A are open only on February 5, 6, and 7, 2001. The minimum size for green sea urchins is 2.25 inches in diameter exclusive of the spines.

(2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on February 5, 2001. It is unlawful to harvest red sea urchins smaller than 4.0 inches or larger than 5.5 inches in diameter exclusive of the spines.

(3) It is unlawful to dive for any purpose from a commercially-licensed fishing vessel, except vessels actively fishing geoducks under contract with the Washington Department of Natural Resources on Saturdays and Sundays of each week.

(4) Sea Urchin Districts:

(a) Sea Urchin District 1 (Northern San Juan Islands) is defined as Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, and those waters of Area 22A north of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and west of a line projected true north from Limestone Point on San Juan Island.

(b) Sea Urchin District 2 (Southern San Juans and Port Townsend) is defined as those waters of Marine Fish/Shellfish Management and Catch Reporting Area 22A south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and east of a line projected true north from Limestone Point on San Juan Island, and Areas 21A, 21B, 22B, 23A, 23B, 25A, and 25B. The following areas within Sea Urchin District 2 are closed to the harvest of sea urchins at all times.

(I) Those waters of Haro Strait north of a line projected east-west one-half mile south of Eagle Point on San Juan Island and south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island.

(ii) Those waters of San Juan Channel and Upright Channel within the following lines: south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island, west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island, south of a line projected from Flat Point on Lopez Island true west to Shaw Island, and north of a line projected from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

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

**WSR 01-04-051**

**EMERGENCY RULES**

**PERSONNEL RESOURCES BOARD**

[Filed February 2, 2001, 11:33 a.m.]

Date of Adoption: February 2, 2001.

Purpose: This rule allows the board to grant additional pay to recognize assigned duties that exceed ordinary conditions.

Citation of Existing Rules Affected by this Order: Amending WAC 356-15-125.

Statutory Authority for Adoption: RCW 41.06.150.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This modification is needed to address recruitment and retention issues in areas of the state where the cost of living affects agency's ability to recruit and retain employees. State agencies are experiencing recruitment and retention problems which are resulting in situations which require immediate attention. In order for these agencies to continue to provide services to the citizens of the state of Washington this problem needs to be addressed immediately.

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

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

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

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

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

Effective Date of Rule: Immediately.

February 2, 2001

Doug Tanabe

Acting Secretary

AMENDATORY SECTION (Amending WSR 98-19-034, filed 9/10/98, effective 10/12/98)

**WAC 356-15-125 Assignment pay provisions.** The board may grant additional pay to recognize assigned duties and/or conditions that exceed the ordinary ((conditions)). Hazards, equipment operations and other specialized skills are examples of areas for board consideration. Out of the ordinary conditions include being in a position which is experiencing recruitment and/or retention problems and is located in an area where the cost of living impacts the agency's ability to recruit and/or retain employees. Approved classes will have the letters "AP" appearing after their class title in the compensation plan.

Details of the affected classes or positions within a class, with the additional amount granted, will appear in the salary schedule section of the compensation plan.

**WSR 01-04-076**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 01-18—Filed February 6, 2001, 4:04 p.m., effective February 7, 2001, 10:00 a.m.]

Date of Adoption: February 6, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-52-04000W and 220-52-04600K; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These actions are necessitated to maintain state/tribal crab allocations. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

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

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

Effective Date of Rule: February 7, 2001, 10:00 a.m.

February 6, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

**WAC 220-52-04000X Commercial crab fishery - Exceptions to permanent rules for pot limits.** Notwithstanding the provisions of WAC 220-52-040, effective 10:00 a.m. February 7 until 4:00 p.m. February 15, it is unlawful for any person to fish for crabs for commercial purposes with more than 45 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and that portion of 26A north of line from the south tip of Possession Point on Whidbey Island to the shipwreck at Picnic Point.

NEW SECTION

**WAC 220-52-04600M Puget Sound crab fishery— Exceptions to permanent seasons and areas.** Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice:

1) The following area is open to commercial crab fishing:

a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected true north from the green number 1 buoy at Scatchet Head and west of a line projected true north from the green number 1 buoy at Possession Point, and north of a line connecting the two buoys described herein.

2) The following areas are closed to commercial crab fishing except as provided herein:

a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, and the portion of Marine Fish/Shellfish Catch Area 26A north of line from the south tip of Possession Point on Whidbey Island to the shipwreck at Picnic Point, with the following exception:

1) From 10:00 a.m. February 7 to 4:00 p.m. February 15, it is lawful to fish for commercial crab in those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, that portion of 24B north of line from Sandy Point on Whidbey Island to Hermosa Point on the north end of Tulalip Bay, 24C, that portion of 24D north of a extending from the point located at the southern end of Honeymoon Bay (48° 03.047', 122° 32.306') to the point just north of Beverly Beach, and the portion of Marine Fish/Shellfish Catch Area 26A west of a line from the Mukilteo ferry dock to Sandy Point on Whidbey Island and north of line from Sandy Point on Whidbey Island to Hermosa Point on the north end of Tulalip Bay.

c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new

Dungeness Light to the outermost tip of the abandoned dock at the Three Crabs Restaurant.

d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25E south of a line from Contractors Point to Tukey Point.

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

## REPEALER

The following sections of the Washington Administrative Code are repealed effective 10:00 a.m. February 7, 2001:

- WAC 220-52-04600K Commercial crab fishery—  
Allocation closure. (01-12)
- WAC 220-52-04000W Commercial crab fishery—  
Exceptions to permanent  
rules for pot limits (01-12)

**WSR 01-04-087**  
**EMERGENCY RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2001-01—Filed February 7, 2001,  
11:00 a.m.]

Date of Adoption: February 6, 2001.

Purpose: Extending the effective date of rules adopted under R 2000-03 regarding maternity and prescription contraceptive benefits.

Citation of Existing Rules Affected by this Order:  
Amending WAC 284-43-824.

Statutory Authority for Adoption: RCW 48.02.060, 48.20.450, 48.20.460, 48.30.010, 48.30.300, 48.44.020, 48.44.050, 48.46.200, 48.46.243.

Other Authority: RCW 48.43.023, 48.43.041, 48.46.066.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Interested parties have asserted that in the promulgation of rules adopted under R 2000-03 deficiencies may have occurred in the Administrative Procedure Act (chapter 34.05 RCW) compliance process. The commissioner requires a period of time to review these assertions and take action, as needed. Although the rules do not take effect until July 1, 2001, health carriers have indicated that they require a minimum of four months to make the necessary health plan modifications before new products can be offered. The current effective date does not provide enough time for the commissioner's review in synchronization with carriers' preparation needs. Extending the effective date to January 1, 2002, will provide adequate time for both activities.

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

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

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

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

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

Effective Date of Rule: Immediately.

February 6, 2001

Mike Kreidler

Insurance Commissioner

[AMENDATORY SECTION] (Amending Matter No. R 2000-03, filed 1/9/01)]

**WAC 284-43-824 Effective date.** WAC 284-43-821 and 283-43-823 are effective for plans offered, issued, or renewed on or after (~~July 1, 2001~~) January 1, 2002.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

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

**WSR 01-04-090**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed February 7, 2001, 11:30 a.m.]

Date of Adoption: February 7, 2001.

Purpose: WAC 296-32-240 Employee protection in public work areas and 296-45-52530 Employee protection in public work areas.

Topic: It was the department's intent that these amendments to WAC 296-32-240 and 296-45-52530 be a part of its January 26, 2001, permanent flagger rule adoption filing. Unfortunately, due to an administrative error, these sections were not included in that filing, therefore, the immediate adoption of these rules is necessary for the preservation of worker safety in the telecommunications and electrical industries. Observing the notice requirements and opportunity to be heard is contrary to the public interest in this instance. The department does intend to propose permanent rule amendments covering WAC 296-32-240 and 296-45-52530 in the near future and will follow the requirements of the Administrative Procedure Act (chapter 34.05 RCW) in doing so.

Citation of Existing Rules Affected by this Order:  
Amending WAC 296-32-240 Employee protection in public

work areas and 296-45-52530 Employee protection in public work areas.

Statutory Authority for Adoption: RCW 49.17.010, [49.17].040, and [49.17].050.

Other Authority: RCW 34.05.328 and [34.05.]350, 19.85.025.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Flaggers working on telecommunications and electrical job sites will not benefit from the protective requirements contained in WAC 296-155-305 unless these emergency rules are adopted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Effective Date of Rule: Immediately.

February 7, 2001

Gary Moore

Director

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

**WAC 296-32-240 Employee protection in public work areas.** (1)(a) Before work ~~((is begun))~~ begins in the vicinity of vehicular or pedestrian traffic ~~((which))~~ that may endanger employees, ~~((warning signs and/or flags or other traffic control devices shall be placed conspicuously to alert and channel approaching traffic. Where further protection is needed, barriers shall be utilized))~~ traffic control signs, devices, and barriers must be positioned and used according to the requirements of chapter 296-155 WAC, Part E. When flaggers are used, employers, responsible contractors and/or project owners must comply with the requirements of WAC 296-155-305.

(b) ~~((At night))~~ During hours of darkness, warning lights ~~((shall))~~ must be prominently displayed~~((;))~~ and excavated areas ~~((shall))~~ must be enclosed with protective barricades.

(2) When work exposes energized or moving parts that are normally protected, danger signs shall be displayed and barricades erected to warn other personnel in the area.

(3) The employer shall insure that an employee finding any crossed or fallen wires which create or may create a hazardous situation at the work area:

(a) Remains on guard or adopts other adequate means to warn other employees of the danger, and

(b) Has the proper authority notified at the earliest practical moment.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

**WAC 296-45-52530 Employee protection in public work areas.** (1) ~~((Traffic control signs and traffic control devices used for the protection of employees shall meet the requirements of chapter 296-155 WAC, Part E.~~

~~((2) Before work is begun in the vicinity of vehicular or pedestrian traffic that may endanger employees, warning signs or flags and other traffic control devices shall be placed in conspicuous locations to alert and channel approaching traffic.~~

~~((3) Where additional employee protection is necessary, barricades shall be used.~~

~~((4) Excavated areas shall be protected with barricades.~~

~~((5) At night, warning lights shall be prominently displayed.))~~ (a) Before work begins in the vicinity of vehicular or pedestrian traffic that may endanger employees, traffic control signs, devices, and barriers must be positioned and used according to the requirements of chapter 296-155 WAC, Part E.

(b) When flaggers are used, employers, responsible contractors and/or project owners must comply with the requirements of WAC 296-155-305.

(2) During hours of darkness, warning lights must be prominently displayed.

(3) Excavated areas must be protected with barricades.

**WSR 01-04-001**

**DEPARTMENT OF CORRECTIONS**

[Filed January 24, 2001, 1:12 p.m., effective February 22, 2001.]

**Reviser's note:** The following material has *not* been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but has been filed in the office of the code reviser and is published in the Register exactly as filed.

Following is an amendment to chapter 137-52 WAC, Resident of adult correctional institution escorted leave of absence. This amendment is submitted for publication in the Washington State Register and the Washington Administrative Code. Pertinent information follows:

1. The amendment to chapter 137-52 WAC, Resident of adult correctional institution escorted leave of absence, is adopted as of January 22, 2001.
2. The effective date of this amendment shall be February 22, 2001.
3. I certify pursuant to RCW 34.05.030 that the rule as stated above is excluded from the Administrative Procedure Act.

Joseph D. Lehman  
Secretary

AMENDATORY SECTION (Amending Order 85-07, filed 3/19/85)

**WAC 137-52-010 Definitions.** (1) "Escorted leave" is an approved leave of absence by an inmate from a correctional facility under the continuous supervision of trained correctional staff.

(2) "Immediate family" includes an inmate's parents, stepparents, parent surrogates, grandparents, legal guardians, spouse, brothers, sisters, half or step-brothers or sisters, children, stepchildren, and dependents whether or not in direct lineal relationship to the inmate.

(3) "Indigent" shall be understood to mean an inmate who has not been credited with five dollars or more total from any source(s) for deposit to the inmate's trust fund account during the thirty days preceding the request for an escorted leave and has less than a five dollar balance in his/her trust fund account on the day the escorted leave is requested, or together with his/her immediate family cannot post a five hundred dollar bond to secure the repayment of the expenses of the escorted leave on the day the escorted leave is requested. A declaration of indigency shall be signed by the inmate and the inmate's family on forms provided by the department.

(4) "Director" means the (~~director of the division of prisons~~) deputy secretary of the office of correctional operations or his/her designee(s).

(5) "Superintendent" means the superintendent of a state correctional institution, state honor camp, or other penal institutions as now or hereafter established under the jurisdiction of the department of corrections pursuant to law or his/her designee.

(6) "Department" means the department of corrections.

(7) "Secretary" means the secretary of the department of corrections or his/her designee(s).

(8) "Nonviolent offender" means any person convicted of a felony not classified as a violent offense under chapter 9.94A RCW.

**WSR 01-04-003**

**NOTICE OF PUBLIC MEETINGS  
EDMONDS COMMUNITY COLLEGE**

[Memorandum—January 19, 2001]

At the January 18, 2001, meeting of the Edmonds Community College board of trustees, Resolution No. 01-1-1, 2001 EdCC Board of Trustees Meeting Schedule, was passed by the board of trustees.

**2001 Schedule of Board of  
Trustees Meetings**

The board of trustees of Edmonds Community College adopts the following schedule for its 2001 meetings, and directs the president or designee to file this schedule in the Office of the Code Reviser.

2001 EdCC Board of Trustees Meeting Schedule

	January 18	4:00 p.m.	Thursday
*	February 14	4:00 p.m.	Wednesday
*	March 27	4:00 p.m.	Tuesday
	April 19	4:00 p.m.	Thursday
*	May 15	4:00 p.m.	Tuesday
	June 21	4:00 p.m.	Thursday
	July 19	4:00 p.m.	Thursday
	August 16	4:00 p.m.	Thursday
	September 20	4:00 p.m.	Thursday
	October 18	4:00 p.m.	Thursday
	November 15	4:00 p.m.	Thursday
**	December 13	4:00 p.m.	Thursday
*	Changed from third Thursday of month		
**	One week early due to holidays		

**WSR 01-04-006**

**AGENDA  
DEPARTMENT OF  
FINANCIAL INSTITUTIONS**

[Filed January 25, 2001, 1:13 p.m.]

**Department of Financial Institutions  
Semi-Annual Agenda for Rules Under Development  
January 1, 2001 - June 30, 2001**

**DIVISION OF BANKS**

1. Amendments to chapters 208-512, 208-514, 208-528, 208-532, 208-544, 208-512, 208-556, and 208-586 WAC to correct outdated WAC numbers referred to in those chapters. No substantive changes have been requested.

**MISC.**

2. The preproposal statement of inquiry filed in June 2000 as WSR 00-13-099 has been withdrawn. The preproposal concerns amending current rules (chapter 208-512 WAC) and adopting new rules governing lending limits of state-chartered commercial banks. A new preproposal statement of inquiry will be filed at a later date (expected to be filed within the next six months).

3. Amendments to chapters 208-544 and 208-586 WAC to increase fees and assessments charged to banks, trust companies, alien banks, and savings and loan associations. The rules would provide for an automatic annual increase in fee and assessment levels, up to the "fiscal growth factor" under chapter 43.135 RCW, and allow for the waiver of fee and assessment increases.

**DIVISION OF CONSUMER SERVICES**

1. Amendments to chapter 208-680 WAC, Escrow agents, to bring the rules into conformance with amendments made to chapter 18.44 RCW in 1999. By clarifying the language in the rules, the statute should be more understandable.

2. Amendments to chapter 208-620 WAC, Consumer loan companies. The department has submitted legislation that will copy some provisions from the Mortgage Broker Practices Act (MBPA) over to the Consumer Loan Act, chapter 31.04 RCW. These will include enforcement provisions such as fines, order restitution, ban individuals, temporary cease and desist authority and prohibited practices; minimum bond amount for loans secured by real estate; and allows for prepaid interest for up to forty-five days on loans secured by real estate. Assuming this legislation passes and is signed by the governor, the division will begin the process to amend chapter 208-620 WAC.

3. Amendments to chapter 208-620 WAC, Consumer loan companies, chapter 208-630 WAC, Check cashers and sellers, chapter 208-660 WAC, Mortgage brokers, and chapter 208-680 WAC, Escrow agents, to increase fees in all four programs by the fiscal growth factor.

**DIVISION OF CREDIT UNIONS**

1. Amendments to WAC 208-472-041, small occupational and associational groups up to five hundred persons, to create parity with federal credit unions.

2. Adopt rules regarding member business lending by state credit unions (chapter 208-460 WAC).

3. Amendments to chapter 208-218 WAC, increasing fees and assessments charged to credit unions and related parties.

**DIVISION OF SECURITIES**

1. Amendments to chapter 460-33A WAC, Mortgage paper securities, as part of a general update.

2. Amendments to chapter 460-24A WAC, Investment advisers, to mandate electronic filing by investment advisers.

3. Amendments to WAC 460-16A-205, NASAA policy statements, to reflect updates made to various NASAA policy statements.

**WSR 01-04-007**

**AGENDA**

**DEPARTMENT OF CORRECTIONS**

[Memorandum—January 25, 2001]

**SEMI-ANNUAL RULE MAKING AGENDA  
JANUARY 1 - JUNE 30, 2001**

Shown below is the Department of Corrections' semi-annual rule development agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

There may be additional rule-making activity not on the agenda as conditions warrant.

**DEPARTMENT OF CORRECTIONS  
RULE DEVELOPMENT CALENDAR  
January - June 30, 2001**

WAC Chapter or Section	Purpose
Chapter 137-04 WAC	Housekeeping amendments.
Chapter 137-10 WAC	Housekeeping amendments.
Chapter 137-09 WAC	Public disclosure - revise policies and procedures for disclosure of public records.
Chapter 137-xx WAC	Community mental health information sharing joint rule making with DSHS to comply with statutory requirements.

John Nispel  
Rules Coordinator

**WSR 01-04-012**

**DEPARTMENT OF ECOLOGY**

[Filed January 26, 2001, 10:33 a.m.]

**Notice of Public Hearing**

Concerning the proposed award list for flood control assistance account program grants for the 2001-2003 biennium, by the Washington State Department of Ecology, Shorelands and Environmental Assistance Program, as mandated by WAC 173-145-070(3).

**Public Hearing**

**Date:** Wednesday, April 4, 2001  
**Time:** 9:30 a.m. to noon  
**Location:** Department of Ecology  
300 Desmond Drive  
Lacey  
Room IS-17

**Contacts:** Tim D'Acci, (360) 407-6796, tdac461@ecy.wa.gov or Bev Huether, (360) 407-7254, bhue461@ecy.wa.gov.

MISC.



**WSR 01-04-013**  
**PROCLAMATION**  
**OFFICE OF THE GOVERNOR**

[January 26, 2001]

**WHEREAS:** Several factors, which include low precipitation to feed hydropower, shut down of electrical power generating plants in California for unscheduled maintenance or repair, the failure of California's attempt to deregulate electricity, and increased competition for natural gas supplies have converged to create a shortage of electrical energy and unprecedented high prices for electricity throughout the western United States power grid, which ties Washington and the other western states to California. During a typical year, Washington shares excess electricity with California during the summer when demands are highest there, and California supplies excess power to Washington in winter when our demands are highest. California is unable to meet its usual obligations this winter.

**WHEREAS:** Shortages of electricity have caused current physical disruptions, and rolling blackouts to ration energy in California. The blackouts in California have caused nearly debilitating harm to the public and businesses there, in particular to oil refineries and terminals, which, in turn, may trigger shortages of gasoline, diesel, heating oil, jet fuel and other petroleum products. California's two largest electricity utilities, Pacific Gas & Electric and Southern California Edison are reported to be insolvent and on the verge of bankruptcy, and may not be able to pay Washington generators who have sold substantial amounts of power to them. The crisis in California threatens the supply and price of electricity in Washington and other parts of the West Coast, and could affect the solvency of electricity generators in Washington. We must take all steps necessary to avoid a crisis of the proportions experienced by California, a crisis that directly threatens the very foundations of the entire California economy, vital public services, and the health and safety of the public.

**WHEREAS:** The Bonneville Power Administration and private electrical power generating companies in Washington have begun extraordinary measures to use electricity reserves by drawing down their reservoirs beyond normal and raising prices in efforts to mitigate the electricity shortage.

**WHEREAS:** Tacoma Public Utilities is facing unprecedented financial difficulties, and could alleviate its problem with temporary generators and alternative fuels. Several large businesses have ceased operations due to the cost of electricity, putting hundreds of people out of work. Public facilities have ceased operations due to inability to pay current and projected power expenses. Conservation efforts by the public and government have been quite successful, but insufficient to solve the problem alone.

**WHEREAS:** Demand for power in Washington is at its highest during winter months. Citizens of Washington, beginning with vulnerable people of limited means, may be unable to afford power for basic heating, lighting and cooking needs, threatening their health and safety.

**WHEREAS:** Vital public services are at risk, and immediate steps must be taken to alleviate social and economic impacts to people and property. We must operate all electrical generating capacity necessary to avoid jeopardizing the public health and safety while doing everything possible to minimize the impact on fish and our environment.

**NOW, THEREFORE,** I Gary Locke, Governor of the state of Washington, find that vital public services, particularly affordable electrical power are at risk, and there exists a situation that threatens to disrupt or diminish the supply of energy to the extent that the public health, safety, and general welfare may be jeopardized; and find that an energy supply alert exists within this state; and hereby declare a state of energy supply alert under Chapters 43.06 and 43.21G RCW. I further direct all state and local governmental agencies to fully comply with all orders that may accompany this declaration or that I may issue pursuant to this declaration as deemed necessary to preserve and protect the public health, safety, and general welfare, and to minimize, to the fullest extent possible, the injurious economic, social, and environmental consequences of this energy supply crisis. This declaration applies statewide.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia, this 26th day of January, A.D., Two Thousand one.

Gary Locke

\_\_\_\_\_  
 Governor of Washington

**BY THE GOVERNOR:**

Sam Reed

\_\_\_\_\_  
 Secretary of State

**WSR 01-04-014**

**NOTICE OF PUBLIC MEETINGS**

**WASHINGTON STATE LIBRARY**

(Library Commission)

[Memorandum—January 26, 2001]

**Washington State Library Commission Meetings**

This is to inform you of the changes being made in the previous schedule sent to you for the Library Commission meetings.

The February 8, 2001, workshop will now be a regular business meeting. It will be held at the Labor and Industries Building, Room S-118, 7273 Linderson Way S.W., Tumwater, from 10:00 a.m. to 12:00 noon, or until business is completed.

The March 6, 2001, meeting is changed to March 20, 2001. The time and meeting place have not changed.

If there are any questions, please call 753-2914.

**WSR 01-04-031**  
**NOTICE OF PUBLIC MEETINGS**  
**NOXIOUS WEED CONTROL BOARD**

[Memorandum—January 30, 2001]

The Washington State Noxious Weed Control Board 2001 meetings will be held as follows:

March 20, 2001

8:30 a.m. to 5:00 p.m.

West Coast Wenatchee Center Hotel  
and Conference Center

201 North Wenatchee Avenue  
Wenatchee, WA

May 15, 2001

8:30 a.m. to 5:00 p.m.

North Olympic Library  
Raymond Carver Room  
2210 South Peabody Street  
Port Angeles, WA

July 17, 2001

8:30 a.m. to 5:00 p.m.

USDA Building  
230 Williams Lake Road  
Colville, WA

September 18, 2001

8:30 a.m. to 5:00 p.m.

Train Depot (city meeting facility)  
205 East McClellan Avenue  
North Bend, WA

November 13-14, 2001

Spokane County Extension Education Center  
Room C

222 North Havana

Spokane, WA

The public is welcome to attend all meetings. Contact Lisa Lantz, Executive Secretary, Washington State Noxious Weed Control Board, (253) 872-2972, if you have any questions.

**WSR 01-04-032**

**AGENDA**

**PUBLIC DISCLOSURE COMMISSION**

[Filed January 31, 2001, 10:04 a.m.]

**Public Disclosure Commission**  
**Agenda for Rules Under Development,**  
**January - June, 2001**

Agency Contact: Doug Ellis, Director of Public Outreach, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 664-2735, toll free 1-877-601-2828, fax (360) 753-1112, e-mail dellis@pdc.wa.gov.

At present, the Public Disclosure Commission has seven rules under development:

1. **Topic:** Adjusting the dollar threshold amounts for eligibility under the abbreviated reporting option.

**Status:** On January 24, 2001, the commission filed the preproposal statement with the code reviser giving notice that it is considering inflationary adjustments to the abbreviated reporting dollar thresholds. A public hearing on this issue may occur on April 24, 2001. If new thresholds are established by rule, they will likely go into effect on June 1, 2001.

**Statutory Authority:** RCW 42.17.370(8).

**Statute Being Implemented:** RCW 42.17.060 - 42.17.-090.

**WAC Cite:** WAC 390-16-105 Abbreviated campaign reporting—Eligibility.

2. **Topic:** Adjusting the dollar threshold amounts for eligibility under the mini-reporting option.

**Status:** On January 24, 2001, the commission filed the preproposal statement with the code reviser giving notice that it is considering adjustments to the mini-reporting dollar thresholds. A public hearing on this issue may occur on April 24, 2001. If new thresholds are established by rule, they will likely go into effect on June 1, 2001.

**Statutory Authority:** RCW 42.17.370(8).

**Statute Being Implemented:** RCW 42.17.060 - 42.17.-090.

**WAC Cite:** WAC 390-16-150 Mini campaign reporting.

3. **Topic:** Adjusting the dollar thresholds that can be accepted by candidates and committees using the abbreviated reporting from any one contributor at a fund-raising event.

**Status:** On January 24, 2001, the commission filed the preproposal statement with the code reviser giving notice that it is considering adjustments to the maximum aggregate amount that can be accepted from any one contributor at a fund-raising event. A public hearing on this issue may occur on April 24, 2001. If new thresholds are established by rule, they will likely go into effect on June 1, 2001.

**Statutory Authority:** RCW 42.17.370(1).

**Statute Being Implemented:** RCW 42.17.060 - 42.17.-090.

**WAC Cite:** WAC 390-16-111 Abbreviated campaign reporting—Special fund raising events.

4. **Topic:** Revising language on the registration statement for political committees to reflect new dollar thresholds that can be accepted by committees using the abbreviated reporting.

**Status:** On January 24, 2001, the commission filed the preproposal statement with the code reviser giving notice that it is considering adjustments to the instructional language on the registration form. A public hearing on this issue may occur on April 24, 2001. If new language is established by rule, it will likely go into effect on June 1, 2001.

**Statutory Authority:** RCW 42.17.370(1).

**Statute Being Implemented:** RCW 42.17.040.

**WAC Cite:** WAC 390-16-011 Registration statement for political committees.

5. **Topic:** Revising language on the registration statement for candidates to reflect new dollar thresholds that can

be accepted by committees using the mini and abbreviated reporting options.

**Status:** On January 24, 2001, the commission filed the preproposal statement with the code reviser giving notice that it is considering adjustments to the instructional language on the registration form. A public hearing on this issue may occur on April 24, 2001. If new language is established by rule, it will likely go into effect on June 1, 2001.

**Statutory Authority:** RCW 42.17.370(1).

**Statute Being Implemented:** RCW 42.17.040 and 42.17.050.

**WAC Cite:** WAC 390-16-012 Registration statement for candidates.

**6. Topic:** Revising language on the reporting of real property on the personal financial affairs statement (PDC Form F-1).

**Status:** On January 24, 2001, the commission filed the preproposal statement with the code reviser giving notice that it is considering changing language to make the listing of the street address as one of the options for reporting real property. A public hearing on this issue may occur on April 24, 2001. If new language is established by rule, it will likely go into effect on June 1, 2001.

**Statutory Authority:** RCW 42.17.370(1).

**Statute Being Implemented:** RCW 42.17.241 [(1)](h).

**WAC Cite:** WAC 390-24-200 Descriptions of real property.

**7. Topic:** Revising the aggregate dollar amount that triggers reporting of a contributor's occupation and the employer's name and address.

**Status:** The commission may file a preproposal statement with the code reviser giving notice that it is considering increasing the aggregate dollar amount that necessitates reporting of occupation and employer. No date has been set for such action.

**Statutory Authority:** RCW 42.17.370(1).

**Statute Being Implemented:** RCW 42.17.090 (1)(k).

**WAC Cite:** WAC 390-16-034 Additional reporting requirements.

A complete listing of rule making from 1999 to present can be found on the Public Disclosure Commission website at [www.pdc.wa.gov](http://www.pdc.wa.gov) under rule making activity.

January 31, 2001

Douglas J. Ellis

Director of Public Outreach

### WSR 01-04-034

NOTICE OF PUBLIC MEETINGS  
SOUTH PUGET SOUND  
COMMUNITY COLLEGE  
[Memorandum—January 31, 2001]

#### SPECIAL BOARD OF TRUSTEES MEETING

Thursday, February 1, 2001 - 12:00 - 1:00 p.m.  
Senate Hearing Room 1

### John A. Cherberg Building Olympia, Washington 98504

SPECIAL MEETING 12:00 p.m. Under RCW 42.30.080, a special meeting of the board of trustees, Community College District 24, South Puget Sound Community College, will be held on Thursday, February 1, 2001, 12:00 - 1:00 p.m. in Senate Hearing Room 1, John A. Cherberg Building, Capitol Campus, Olympia, Washington 98504.

The board will join members of the College Legislative Contact Committee to discuss with District 20, 22 and 35 Senators and Representatives South Puget Sound Community College's capital budget request before the legislature.

No action will be taken as a result of the special meeting.

If you require special accommodations during your attendance at the board special meeting, please contact Patty Pynch at 754-7711 ext. 5202 one day before the scheduled meeting.

### WSR 01-04-035

#### OFFICE OF THE GOVERNOR

[Filed January 31, 2001, 11:13 a.m.]

January 29, 2001

VIA FIRST CLASS MAIL

R. Gerard Lutz

One Bellevue Center, Suite 1800

411 108th Avenue N.E.

Bellevue, Washington 98004-5584

*Re: Appeal pursuant to RCW 34.05.330(3) of the November 17, 2000 denial by the Department of Ecology of that certain Petition for Adoption, Amendment, or Repeal of a State Administrative Rule, dated September 14, 2000, filed by Puget Sound Energy (the "Petition")*

Dear Mr. Lutz:

We received a letter this morning from your Olympia office, signed by Tom McDonald, withdrawing the Petition. Accordingly, the Governor issues no ruling and the appeal is dismissed.

Sincerely,

Everett H. Billingslea

General Counsel

cc: Dennis W. Cooper, Code Reviser  
Tim Martin, Co-Chief Clerk, House of Representatives  
Cindy Zehnder, Co-Chief Clerk, House of Representatives  
Tony Cook, Secretary of the Senate  
Tom Fitzsimmons, Director, Department of Ecology

**WSR 01-04-036****NOTICE OF PUBLIC MEETINGS  
PENINSULA COLLEGE**

[Memorandum—January 29, 2001]

Please be advised that the board of trustees will hold their March 13 meeting at the Port Townsend Campus, 181 Quincy Street, and the April 10 meeting at the new Forks facility at #71 South Forks Avenue, Forks, WA.

All other schedules will remain as previously submitted.

**WSR 01-04-038****INTERPRETIVE STATEMENT  
DEPARTMENT OF HEALTH**

[Filed January 31, 2001, 2:08 p.m.]

**Title of Interpretive Statement:** Discontinuing Water Service Because of a Cross-Connection Hazard.

**Issuing Entity:** Alan Rowe, Operations Manager, Division of Drinking Water.

**Description of Subject Matter:** Shutting off water service to a consumer is one, but not the only, corrective action option available to a purveyor when a cross-connection hazard is present on the consumer's property. During review of a purveyor's cross-connection control program or when responding to purveyor inquiries regarding corrective actions, DOH staff shall provide direction regarding other options available under the regulations. DOH staff shall also inform purveyors of circumstances under which shutting off water may present a greater public health or safety risk to the consumers and request that the purveyor consider these risks and other options available before discontinuing water service.

**Division Contact:** Ethan Moseng, Division of Drinking Water, P.O. Box 47829, Olympia, WA 98504-7829, (360) 236-3562.

**Effective Date:** January 8, 2001.

**Consistency Statement**

January 8, 2001

**Topic:** Discontinuing Water Service Because of a Cross-Connection Hazard Section: WAC 246-290-490 (2)(j) and (k).

**Issue/Question:** A purveyor is allowed to shut-off service to a user when a cross-connection hazard is present on his/her property and the connection is not isolated using an appropriate backflow prevention assembly (BPA). The circumstances could be the failure to install a BPA or failure to test a BPA already installed. During review of cross-connection control (CCC) programs or responding to purveyor inquiries regarding WAC 246-290-490 (3)(b), what direction should DOH staff provide to purveyors that include water shut-off as a corrective action option?

**Discussion:** WAC 246-290-490 (2)(i) states that a purveyor "shall take appropriate corrective action within its authority if...a cross-connection exists that is not controlled..." The corrective action may include, but is not lim-

ited to (1) denying or discontinuing water service to a consumer's premises, (2) requiring the consumer to install an approved backflow preventer, or (3) the purveyor installing an approved backflow preventer. WAC 246-290-490 (2)(k) further states that purveyors denying or discontinuing water service to a consumer's premises because of a cross-connection hazard shall notify the local administrative authority prior to taking such action except in the event of an emergency.

There are circumstances under which shutting off the water may present a greater risk to the consumer than the cross-connection alone presents. These include, but are not limited to: (1) The use of kidney dialysis on the premises, (2) loss of air conditioning in extreme heat, (3) supply to a fire suppression sprinkler system, (4) unsanitary conditions that might promote disease at essential commercial establishments such as care facilities (daycare, animal shelter, convalescent center, etc.) or medical facilities (hospital, clinic, physicians' offices, etc.), or (5) a medical emergency present. DOH staff should direct the purveyor to consider these risks and other options available before discontinuing water service.

**Decision:** DOH staff shall provide direction, consistent with the recommended water shut-off decision process flow-chart (below), to purveyors as follows:

1. The purveyor may immediately shut off water if a public health emergency exists, including when a backflow is occurring or an unprotected cross-connection with sewage exists.

2. Before discontinuing water service because of the presence of any other cross-connection hazard, the purveyor should take the following steps in order:

a. If a CCC service agreement exists, implement the breach-of-contract remedies.

b. If a CCC service agreement does not exist, issue the shutoff notice to the consumer and local administrative authority to assure that sufficient warning is provided.

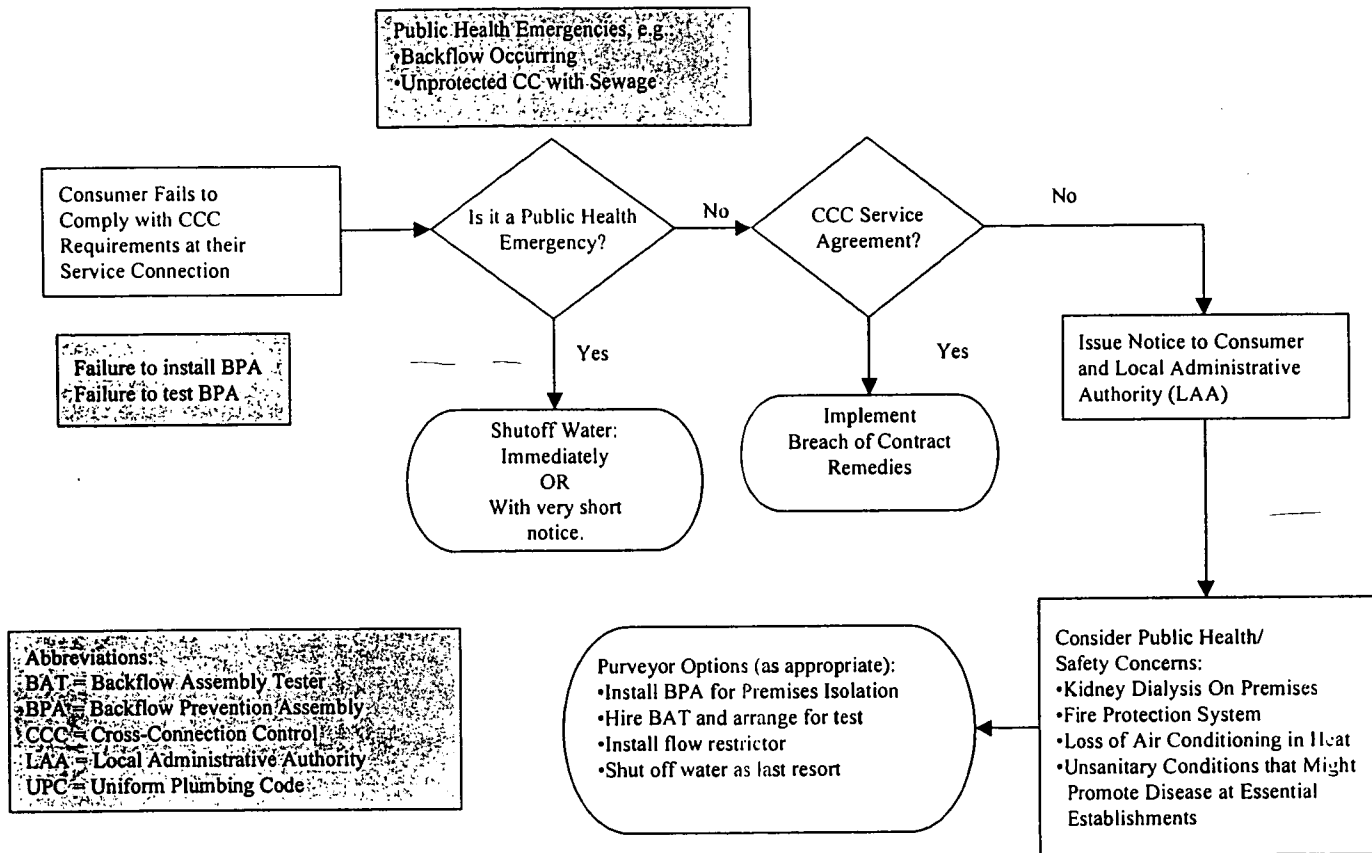
c. Try to determine if extenuating circumstances, such as those listed above, are present and document your efforts. Consider other options first such as installing a BPA, hiring a Backflow Assembly Tester and arranging a test, or installing a flow restrictor.

d. Shut off the water only as a last resort.

"This Consistency Statement is provided as guidance to drinking water staff to ensure consistent implementation of DDW program elements. Decisions by DDW staff to grant/deny an approval, or to take enforcement action, must be based on an RCW or WAC."

MISC.

Recommended Water Shut-off Decision Process



Alan Rowe

WSR 01-04-039

AGENDA

DEPARTMENT OF HEALTH

[Filed January 31, 2001, 2:09 p.m.]

State Board of Health and Department of Health  
January 2001 Rules Agenda

This report details the anticipated rule-making activities of the State Board of Health and the Department of Health for the next six months. If you have any questions regarding this report or Department of Health rule-making activities, please contact Michelle Davis at (360) 236-4044. If you have any questions regarding State Board of Health rule-making activities please contact Don Sloma at (360) 236-4102.

State Board of Health Rules

WAC	RCW	Authority	Status	Subject	SBOH Staff and DOH Program Contact	WSR/Date
Pre-CR-101						
246-491	43.70.040, 26.33.330	State Board of Health	Pre-CR-101	Certificate revision.	Doreen Garcia, (360) 236-4101, Epidemiology and Health Statistics, Michelle Davis, (360) 236-4044.	Anticipate CR-101 by 3/15/2001

WAC	RCW	Authority	Status	Subject	SBOH Staff and DOH Program Contact	WSR/Date
CR-101 Filed						
246-205	64.44	State Board of Health dele-gated* to Secretary 5/00	CR-101 filed	Meth lab clean-up stan-dards.	Janice Englehart, (360) 236-4103, Environmental Health Programs, Jan Haywood, (360) 236-3011.	99-21-063 10/19/99
246-217-025	69.06	State Board of Health	CR-101 filed	Food worker card fees.	Janice Englehart, (360) 236-4103, Environmental Health Programs, Jan Haywood, (360) 236-3011.	99-23-087 11/16/99
246-260	70.90.120, 70.90.150, 43.20.050	State Board of Health	CR-101 filed	Water recreation facili-ties.	Janice Englehart, (360) 236-4103, Environmental Health Programs, Jan Haywood, (360) 236-3011.	00-22-112 11/1/00
246-760	28A.210.020	State Board of Health	CR-101 filed	Auditory and visual standards—School dis-tricts.	Doreen Garcia, (360) 236-4101, Community and Family Health, Rick McNeely, (360) 236-3713.	99-11-030 5/13/99
246-762	28A.210.020	State Board of Health	CR-101 filed	Scoliosis screening—School districts.	Doreen Garcia, (360) 236-4101, Community and Family Health, Rick McNeely, (360) 236-3713.	99-11-031 5/13/99
CR-102 Filed, Pending Hearing, or Pending Adoption						
246-282	69.30	State Board of Health dele-gated* to Secretary 5/00	CR-102 filed Pending Adop-tion	Shellfish chapter revi-sion.	Janice Englehart, (360) 236-4103, Environmental Health Programs, Jan Haywood, (360) 236-3011.	00-22-125 11/1/00 Antici-pate CR-103 by 2/01

\*Note: The State Board of Health may delegate rule making or rescind delegation to the Department of Health under RCW 43.20.050(3).

**Department of Health Rules**

Pre-CR-101 and rules exempt from RCW 34.05.310						
WAC	RCW	Authority	Status	Subject	Program/Contact	WSR/Date
246-243 246-244	70.98.050	Secretary	Pre-CR-102, Exempt	Dosimetry and well logging.	Environmental Health Pro-grams, Jan Haywood, (360) 236-3011.	Anticipate CR-102 by 2/01
246-320	70.41	Secretary	Pre-CR-101	Hospital licensing—Posting of toll-free number.	Facilities and Service Licensing, Jennell Prentice, (360) 705-6661.	Anticipate CR-101 by 9/01
246-817	43.70.250	Secretary	Pre-CR-101	Impaired dentist fees.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985 .	Anticipate CR-101 by 2/01
246-828-350	18.35.161	Board of Hearing and Speech	Pre-CR-102, Exempt	Reasonable cause for recision—Hearing and speech.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	Anticipate CR-102 by 3/01
246-907-030	43.70.250	Secretary	Pre-CR-101	Charity export license fees.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	Anticipate CR-101 by 2/01
246-928	18.89	Secretary	Pre-CR-101	Continuing education respiratory care practi-tioners.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4940 [4985].	Anticipate CR-101 by 2/01
CR-101 Filed						
246-XXX New chapter to include 246-323, 246-325, 246-326	71.12	Secretary	CR-101 filed	Residential care facili-ties.	Facilities and Services Licens-ing, Jennell Prentice, (360) 705-6661.	00-05-097 2/16/00
246-XXX	18.83.050, 18.83.070	Psychology Board	CR-101 filed	Psychology education requirements/ prerequi-sites.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-22-088 11/3/98 antici-pate CR-102 by 3/01
246-XXX	18.83.050, 18.83.075	Psychology Board	CR-101 filed	Temporary practice permits.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-23-070 11/17/98

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246-XXX	18.64.005	Pharmacy Board	CR-101 filed	Legal use of needles and syringes.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-03-171 1/19/00
246-XXX	18.64.005, 69.41, 69.50	Pharmacy Board	CR-101 filed	Electronic communication of prescription information.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-14-118 7/1/98
246-XXX	18.57.080, 18.57.005, 18.130.050	Osteopathic Board	CR-101 filed	COMSPEX—USA exam.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-11-035 5/13/99
246-XXX	18.57A.020	Osteopathic Board	CR-101 filed	Review of controlled substances issued by physician assistants.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-07-078 3/17/98
246-XXX	18.35.161	Hearing and Speech Board	CR-101 filed	Audiology and speech language path interim permits.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	97-22-089 11/5/97
246-XXX	18.71.017	Medical Quality Assurance Commission	CR-101 filed	ARNP prescriptive authority (joint rules by consensus with NQAC and Osteopathic Board).	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-11-162 5/24/00
246-50	43.70.510	Secretary	CR-101 filed	Coordinated quality improvement program.	Office of the Secretary, Michelle Davis, (360) 236-4044.	98-20-066 10/2/98
246-205	64.44	Secretary/ SBOH	CR-101 filed	Meth lab clean-up standards.	Environmental Health Programs, Jan Haywood, (360) 236-3011.	DOH: 99-21-062 10/19/99 SBOH: 99-21-063, 10/19/99
246-224, 246-225, 246-227, 246-228, 246-229	70.98	Secretary	CR-101 filed	X-ray rules (radiation protection).	Environmental Health Programs, Jan Haywood, (360) 236-3011.	00-16-106 8/2/00
246-249-080	70.98.050, 70.98.080	Secretary	CR-101 filed	Naturally occurring radioactive materials.	Environmental Health Programs, Jan Haywood, (360) 236-3011.	96-11-129 5/22/96
246-260	70.90.120, 70.90.150, 43.20.050	Secretary/ SBOH	CR-101 filed	Water recreation facilities.	Janice Englehart, (360) 236-4103, Environmental Health Programs, Jan Haywood, (360) 236-3011.	00-22-112 11/1/00
246-310	70.38.135, C 59, L 00	Secretary	CR-101 filed	Certificate of need methodologies.	Facilities and Services Licensing, Jennell Prentice, (360) 705-6661.	00-08-097 4/5/00
246-327, 246-331, 246-336	70.127	Secretary	CR-101 filed	In-home services (home health, hospice and home care agencies).	Facilities and Service Licensing, Jennell Prentice, (360) 705-6661.	00-15-079 7/19/00
246-370 (New Chapter)	74.15.060, 43.70.040	Secretary	CR-101 filed	Child day care regulations.	Facilities and Services Licensing, Jennell Prentice, (360) 705-6661.	97-09-054 4/7/99 anticipate CR-102 by 6/01
246-380	43.70.040, 43.70.130	Secretary	CR-101 filed	Sanitation and health care standards for state institutions.	Facilities and Services Licensing, Jennell Prentice, (360) 705-6661.	98-15-088 7/16/98
246-808	18.130.050	Chiropractic Commission	CR-101 filed	Independent chiropractic exams.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-22-123 11/1/00
246-811	18.205.100	Secretary	CR-101 filed	Chemical dependency counselors, retired active status.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-14-073 7/6/99
246-811	18.205.060	Secretary	CR-101 filed	Continuing competency—Chemical dependency counselors.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-15-034 7/14/99
246-811	18.205.100	Secretary	CR-101 filed	CDP-education programs, alternative training, fees.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-16-048 7/30/99

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246-817	18.32.035	Dental Commission	CR-101 filed	Dentist continuing education.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-19-081 9/20/00
246-826-080	18.135	Secretary	CR-101 filed	Health care assistants update of chapter.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	96-15-072 7/18/96
246-828	18.130.250	Board of Hearing and Speech	CR-101 filed	Retired active status—Hearing and speech.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-20-055 10/1/99
246-828-080 to 100	18.35.161	Board of Hearing and Speech	CR-101 filed	Standards of practice—Hearing and speech.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-22-089 11/2/99
246-828-510	18.35.090	Board of Hearing and Speech	CR-101 filed	Hearing/speech—Continuing education requirements.	Health Professions Quality Assurance, Pam Lovinger (360) 236-4985.	97-15-097 7/21/97
246-830	18.108.025	Secretary	CR-101 filed	Massage therapy examinations.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-21-080 10/21/98
246-834	18.122.140	Secretary	CR-101 filed	Reactivation of midwifery license.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-21-081 10/21/98
246-834-220, 230 and 240	18.50.040	Secretary	CR-101 filed	Educational requirements for nonlicensed midwives.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	97-22-024 10/29/97
246-834-900	18.130.250	Secretary	CR-101 filed	Retired active status—Midwives.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-06-090 3/3/99
246-840	18.79.240, C 64, L 00	Nursing Commission	CR-101 filed	ARNP prescriptive authority (joint rules by consensus w/MQAC and Osteo.).	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-11-160 5/24/00
246-840, 246-841	18.79, 18.88A, C 95, L 00	Nursing Commission	CR-101 filed	Nurse delegation protocols.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-11-158 5/24/00
246-840-010, 760, 920, 020, 565	18.79.110	Nursing Commission	CR-101 filed	Nursing definitions.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-11-032 5/13/99
246-840-500 to 575	18.70.110	Nursing Commission	CR-101 filed	Approval of RN and PN education.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-11-163 5/24/00
246-840-840 to 900	18.79.110, 18.13.180	Nursing Commission	CR-101 filed	Nursing technicians.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-14-002 6/23/99
246-841-400 through 510	18.88A	Nursing Commission	CR-101 filed	Nursing assistants.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-03-072 1/19/00
246-843-150, 246-843-180, 246-843-330	18.52, 43.70	Nursing Commission	CR-101 filed	Nursing home administrators licenses.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-13-093 6/21/00
246-843-220	18.52	Nursing Commission	CR-101 filed	NHA administration, complaints and hearing procedures.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-01-162 12/22/97
246-850	18.200	Secretary	CR-101 filed	Continuing competency for orthotists and prosthetist.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-08-098 4/5/00
246-853	18.57.005	Osteopathic Board	CR-101 filed	ARNP prescriptive authority (joint rules by consensus with NQAC and MQAC).	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-11-161 5/24/00
246-853	18.57.005 18.57.020	Osteopathic Board	CR-101 filed	Approved schools of osteopathic medicine.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-13-020 6/7/99

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246-853-225	18.57.005, 18.57.020	Osteopathic Board	CR-101 filed	Osteopathic pain management guidelines.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-22-086 11/3/98
246-883-030	18.64.450	Pharmacy Board	CR-101 filed	Ephedrine prescription restrictions.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	97-10-033 4/30/97
246-904	18.64.005	Pharmacy Board	CR-101 filed	Health care entity definitions.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-04-037 1/29/98
246-915	18.74.023, 18.74.025, 18.130.050, 18.130.180	Physical Therapy Board	CR-101 filed	Sexual misconduct—Physical therapists.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-13-106 6/17/98
246-915-010 and 085	18.74.023	Physical Therapy Board	CR-101 filed	Continuing competency—Physical therapists.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-15-088 7/16/98
246-915-020, 030, 120	18.74.023, 18.74.035	Physical Therapy Board	CR-101 filed	Application requirements—Physical therapists.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-13-107 6/17/98
246-915-010, 078, 140-170	18.74.023	Physical Therapy Board	CR-101 filed	Defining professional responsibilities—Physical therapists.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-13-104 6/17/98
246-915-150	18.74.023, 18.74.010	Physical Therapy Board	CR-101 filed	Physical therapy supervision ratio.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-13-105 6/17/98
246-915-210 to 280	18.74.023, 18.130.070	Physical Therapy Board	CR-101 filed	Mandatory reporting—Physical therapists.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-13-103 6/17/98
246-922-195	18.22.015	Podiatry Board	CR-101 filed	Podiatry pain management.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-22-084 11/3/98
246-924-370	18.83.050, 18.83.121	Psychology Board	CR-101 filed	Child custody evaluations.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-22-087 11/3/98
246-928	18.89.050	Secretary	CR-101 filed	Respiratory care practitioners.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	98-08-114 4/1/98
246-930	18.155.040	Secretary	CR-101 filed	Sexual offender treatment provider education and exams.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-08-099 4/5/00
246-930-330	18.155.040 18.13.050	Secretary	CR-101 filed	Standards for treatment sexual offender treatment providers.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-14-001 6/23/99
246-933-255	18.92.030, 070	Veterinary Board	CR-101 filed	Exams for out-of-state veterinarians.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-11-157 5/24/00
246-935	18.92.030	Veterinary Board	CR-101 filed	Continuing education and competency for animal technicians.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-15-102 7/21/99
246-935-040 to 060	18.92.030	Veterinary Board	CR-101 filed	Animal technicians—Supervision, health care tasks, exam.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-15-103 7/21/99
236-939-005	18.215	Secretary	CR-101 filed	Surgical technologists.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-11-159 5/24/00
Pending Hearing, CR-102 Filed						
246-220, 246-221, 246-244	70.98, 43.70	Secretary	CR-102 filed Hearing 2/7/01	National standards and respiratory protection—Radiation protection.	Environmental Health Programs, Jan Haywood, (360) 236-3011.	01-02-087 1/3/01
246-840-700, 705, 710 and 715	18.79.110	Nursing Commission	CR-102 filed Hearing 3/9/01	Nursing care quality assurance.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	01-02-064 12/29/00

Pending Adoption						
246-102	43.20.050, 43.70.130, 70.54.270	Secretary	CR-102 filed Pending Adoption	Cancer registry.	Community and Family Health, Rick McNeely, (360) 236-3712.	00-24-131 12/6/00 anticipate CR-103 2/01
246-282	69.30	Secretary/SBOH	CR-102 filed Pending Adoption	Shellfish chapter revision.	Janice Englehart, (360) 236-4103, Environmental Health Program, Jan Haywood, (360) 236-3011.	00-22-125 11/1/00 anticipate CR-103 2/01
246-305	Chapter 5, Laws of 2000	Secretary	CR-102 filed Pending Adoption	Certification of independent review organizations.	Office of the Secretary, Michelle Davis, (360) 236-4627.	00-23-118 11/22/00 anticipate CR-103 2/01
246-808-101, 301, 320 to 390, 640	18.25	Chiropractic Commission	CR-101XR filed Pending Adoption	Chiropractic standards of care for conduct of practice.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	99-03-061 1/18/99 anticipate CR-103 by 6/01
246-808-700	70.02	Chiropractic Commission	CR-101XR filed Pending Adoption	Chiropractic—Cooperation with an investigation.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-04-087 2/2/2000 anticipate CR-103 by 6/01
246-869-220	18.65.005	Pharmacy Board	CR-102 filed Pending Adoption	Patient information required.	Health Professions Quality Assurance, Pam Lovinger, (360) 236-4985.	00-16-108 8/2/00 anticipate CR-103 by 2/01

KEY:

*CR-101 Filed:* The statement of inquiry has been filed with the Code Reviser's Office.

*Pending Hearing:* The CR-102 has been filed but the hearing has not been held yet.

*Pending Adoption:* The hearing has been held OR the rule qualifies under the Expedited Repeal or Adoption processes (RCW 34.05.354 and 34.05.356), but the CR-103 has not been filed.

**WSR 01-04-041**

**AGENDA**

**OFFICE OF THE INSURANCE COMMISSIONER**

[Filed January 31, 2001, 4:26 p.m.]

Semi-Annual Rules Agenda  
January 31, 2001

In accordance with RCW 34.05.314, Insurance Commissioner Mike Kreidler states that the rule makings noted below are currently under development. The commissioner will review all rules recently adopted by the previous administration. If modifications are required, the commissioner will initiate rule makings necessary to protect consumers and improve the market. The commissioner retains the ability to pursue rule making to address emerging issues or implement new legislation.

**R 98-14** *Washington Medicare Supplement Insurance Regulation.* Improve clarity and efficiency of rules and amend the chapter to reflect the passage of the Balanced Budget Act (BBA).

**R 2000-06** *Extending the "reasonable time" under RCW 48.104.090.* The commissioner will consider extending the "safe harbor" time under the Holocaust Victims Insurance Relief Act

**R 2000-09**

*Annual Statement Filing Instructions.* Change quarterly filing instructions to comply with NAIC standards.

Questions or comments regarding this agenda or any ongoing or possible rule making should be directed to Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, phone (360) 664-3784, fax (360) 664-2782, e-mail KacyB@oic.wa.gov.

This agenda is submitted by Jon Hedegard, Rules Coordinator, Office of the Insurance Commissioner.

**WSR 01-04-043**

**NOTICE OF PUBLIC MEETINGS  
OFFICE OF THE GOVERNOR**

(Clemency and Pardons Board)

[Memorandum—January 30, 2001]

The Washington State Clemency and Pardons Board hereby files with the Code Reviser the following changes in its schedule of regular meetings for 2001:

The March 2 and June 8 meetings of the board have been canceled. The next regular meeting of the Clemency and Pardons Board will be July 13 and will be held in the John A. Cherberg Building, Hearing Room 4, Olympia, Washington, starting at 10:00 a.m.

## WSR 01-04-044

## DEPARTMENT OF CORRECTIONS

[Filed February 1, 2001, 1:18 p.m., effective March 1, 2001]

**Reviser's note:** The following material has *not* been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but has been filed in the office of the code reviser and is published in the Register exactly as filed.

Shown below are the Department of Corrections' new rules, chapter 137-104 WAC, Community custody violation hearings. These rules are submitted for publication in the Washington State Register and the Washington Administrative Code. Pertinent information follows:

1. Chapter 137-104 WAC, Community custody violation hearings, is adopted as of February 1, 2001.
2. The effective date of these rules shall be March 1, 2001.
3. I certify pursuant to RCW 34.05.030 that the rules as stated above are excluded from the Administrative Procedure Act.
4. The new rules establish procedural guidelines for the conduct of hearings for offenders violating the terms of their community custody.

Joseph D. Lehman  
Secretary

## Chapter 137-104 WAC

## COMMUNITY CUSTODY VIOLATION HEARINGS

NEW SECTION

**WAC 137-104-010 Purpose.** The purpose of this chapter is to specify policies and procedures pertaining to the Washington state department of corrections' community custody violation hearings. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted as having sufficient flexibility to be consistent with law and permit the department to accomplish its statutory purposes.

NEW SECTION

**WAC 137-104-020 Definitions.** For purposes of this chapter, the following words have the following meanings:

- (1) "Appeals panel" means three reviewing officers designated by the secretary with the authority to review hearing officers' decisions, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.94A.205.
- (2) "Community corrections officer" means an employee of the department responsible for carrying out specific duties concerning the supervision of sentenced offenders and monitoring of sentence conditions.
- (3) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time served in the community subject to controls placed on the offender's movement and activities by the department. Offenders supervised on community custody include those

subject to community placement (as defined in RCW 9.94A.-030), drug offender sentencing alternative (as described in RCW 9.94A.120), community custody for a sex offense (as described in RCW 9.94A.120), community custody max, first-time offender waiver (as described in RCW 9.94A.120), or a work ethic camp program (as defined in RCW 9.94A.030), and those sentenced to community custody by the court for crimes committed on or after July 1, 2000, whose sentence is less than one year of confinement. For purposes of this subsection, "community custody max" means a term of community custody for certain sex offenders who have completed their maximum sentences of confinement.

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

(5) "Deputy secretary" means the deputy secretary of the office of correctional operations of the department, or the deputy secretary's designee.

(6) "Graduated sanction system" means structured incremental responses designed to reduce risk to the public, effectively intervene in noncompliant behavior, where possible, repair harm to the community, and make efficient use of limited state resources. Sanctions may include, but are not limited to, partial or total confinement; home detention with electronic monitoring; work crew; community service; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervisions enhanced through electronic monitoring; or any other sanctions available in the community.

(7) "Hearing officer" means an employee of the department authorized to conduct department hearings.

(8) "Hearings program manager" means the manager of the hearings unit of the department, or the hearings program manager's designee.

(9) "Offender" means any person in the custody of or subject to the jurisdiction of the department.

(10) "Partial confinement" means confinement in a facility or institution operated or utilized under contract by the state or by any other unit of government, to include, but not be limited to, work release, treatment center, residential facility, or home detention with electronic monitoring.

(11) "Probable cause" means a determination, made by a hearing officer, that there is cause to believe a violation has occurred.

(12) "Secretary" means the secretary of the department, or the secretary's designee.

(13) "Stipulated agreement" means an agreement between the offender and the department in which the offender admits violations and agrees to comply with intermediate sanctions. For the purposes of this subsection, "intermediate sanction" means department-imposed sanctions that are served in the community rather than total confinement.

(14) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities or a county or municipal jail.

(15) "Working day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

NEW SECTION

**WAC 137-104-030 Hearing officers.** (1) Hearing officers will report to and be supervised by the hearings program manager, within the department's office of correctional operations, through an independent chain of command.

(2) Hearing officers may not hear a case in which they have direct personal involvement in the incident under consideration and must formally disqualify themselves by notifying the hearings program manager. The hearings program manager will select a replacement hearing officer.

(3) Hearing officers shall disqualify themselves if they believe that they cannot render a fair judgment in the hearing. The hearings program manager may change the hearing officer assigned to hear a case upon a written request from an offender and a showing of good cause.

NEW SECTION

**WAC 137-104-040 Notice and service.** (1) When placed on community custody, offenders shall be provided with written notice of all court and department-imposed conditions and/or requirements.

(2) If an offender is being held in total confinement prior to the hearing for allegedly violating conditions and/or requirements of community custody, the department shall, within three working days of a probable cause determination by the hearings unit, serve the notice of allegations, hearing and rights, and waiver form.

(a) Within three working days of the service of the notice of allegations, hearing and rights, and waiver form, the community corrections officer shall submit to the hearing officer and the offender, a report of alleged violations which shall contain the following: Alleged violations, a summary of facts supporting the allegations, and all other supporting documentary evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.

(b) Reports of alleged violations may be submitted electronically.

(3) The factual allegations may be amended and/or new allegations added at any time prior to the hearing, provided, the offender receives written notice of such new and/or amended allegations and all other supporting documentary evidence at least twenty-four hours prior to the hearing. The offender may waive the right to such notice at the hearing.

(4) Offenders who have allegedly violated conditions and/or requirements of community custody, but are not detained, shall be served with the notice of allegations, hearing and rights, and waiver form within thirty days of the community corrections officer becoming aware of the alleged violation behavior.

(a) A report of alleged violations and all other supporting documentary evidence shall be provided to the offender at least seven working days prior to the hearing.

(b) The report of alleged violations shall contain the following: Alleged violations, a summary of facts supporting the allegations, and the evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.

(c) Reports may be submitted electronically.

(5) Community corrections officers shall obtain interpretive services for offenders with known language or communication barriers when serving documents, and, if required, for the hearing.

NEW SECTION

**WAC 137-104-050 Hearing procedures.** (1) Offenders accused of violating any of the conditions or requirements of community custody will be entitled to a hearing, prior to the imposition of sanctions by the department.

(2) The hearing shall be conducted by a hearing officer in the department's hearing unit, and shall be considered as an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

(3) Hearings for community custody offenders, who are being held in total confinement prior to a hearing, shall be conducted within five working days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

(4) Hearings for community custody offenders who are not being held in total confinement shall be conducted within fifteen calendar days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

(5) If an offender is arrested and detained, without a warrant, for violation of conditions of supervision, a probable cause determination will be made by a hearing officer within three working days of the initial detention.

(6) Prior to the commencement of a hearing, the hearing officer shall verify that proper notice of the hearing has been given and that the offender was properly served with the notice of allegations, hearing and rights, and waiver form, given a copy of the report of alleged violations, and provided with all supporting documentary evidence.

(7) The hearing officer, if requested by the offender or the community corrections officer, shall conduct an administrative review of the violation report and any additional information submitted to determine whether there is reason to allow the offender to be conditionally released pending the violation hearing. Such administrative review will be conducted within twenty-four hours of the request for conditional release. Such release must be recommended by the reviewing hearing officer and authorized by the hearings program manager or his or her designee.

(8) A hearing shall be held in all instances when an offender is served with a notice of allegations, hearing and rights, and waiver form.

(9) Community custody hearings shall be electronically recorded on audio cassette tape and the hearing tape shall be retained by the department for twelve months. An offender, who is the subject of the hearing, may request a copy of the tape recording of that hearing by submitting a request in writing along with a blank tape.

MISC.

(10) The offender may call witnesses to testify on his/her behalf at the hearing. The hearing officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.

(11) Witnesses may testify outside the presence of the offender when there is substantial likelihood that the witness will suffer significant psychological or emotional trauma if the witness testifies in the presence of the offender, or when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender. The hearing officer shall enter findings in the record, as to the necessity of such testimony, and provide the offender an opportunity to submit questions to be asked of the witness.

(12) Community custody violation hearings shall be open to the public unless the hearing officer, for a specifically stated reason, closes the hearing in whole or in part.

(13) At the hearing, the community corrections officer has the obligation of setting forth evidence supporting the allegations of violations and of offering recommendations for disposition.

(14) The department has the obligation of proving each of the allegations of violations by a preponderance of the evidence.

(15) The hearing officer shall:

- (a) Administer oaths and affirmation;
- (b) Issue warrants, as necessary;
- (c) Weigh the credibility of the witnesses;
- (d) Rule on all procedural matters, objections and motions;
- (e) Rule on offers of proof, and receive relevant evidence including hearsay evidence;
- (f) Question witnesses called by the parties in an impartial manner to elicit any facts deemed necessary to fairly and adequately decide the matter;
- (g) Render or defer a decision; and
- (h) Take any other actions necessary and authorized by these rules and law.

(16) The hearing officers may grant a request for a continuance of the hearing as long as such continuation is granted for good cause and does not unduly delay the hearing.

#### NEW SECTION

**WAC 137-104-060 Rights specified.** The offender has the right to:

- (1) Receive written notice of the alleged violations of the conditions/requirements of supervision.
- (2) Have an electronically recorded, community custody hearing conducted within five working days of service of the notice of allegations, hearing and rights, and waiver form; however, if the offender has not been placed in confinement, the hearing will be conducted within fifteen calendar days of service of the notice.
- (3) Have a neutral and detached hearing officer conduct the hearing.
- (4) Examine, no later than twenty-four hours before the hearing, all supporting documentary evidence which the department intends to present during the hearing.

(5) Admit to any or all of the allegations, which may result in limiting the scope of the hearing.

(6) Be present during the fact-finding and disposition phases of the hearing. If the offender waives his/her right to be present at the hearing, the department may conduct the hearing in the absence of the offender and may impose sanctions that could include loss of liberty of the offender.

(7) Present the case to the hearing officer. If there is a language or communication barrier, the hearing officer may appoint someone to interpret or otherwise assist. However, no other person may provide representation in presenting the case. There is no right to an attorney or counsel.

(8) Cross-examine witnesses appearing and testifying at the hearing.

(9) Testify during the hearing or to remain silent. Silence will not be held against the offender.

(10) Have witnesses provide testimony on his/her behalf, either in person or in a witnessed statement/affidavit; provided, however:

- (a) In an in-custody hearing, outside witnesses may be excluded due to institutional concerns; or
- (b) The hearing officer may exclude persons from the hearing upon a finding of good cause; or
- (c) The hearing officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the offender's presence when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. In either event, the offender may submit a list of questions to ask a witness. Testimony may be limited to evidence relevant to the issues under consideration.

(11) Receive a written hearing and decision summary including the evidence presented, a finding of guilty or not guilty, and the reasons to support the findings of guilt and the sanction imposed immediately following the hearing or, in the event of a deferred decision, within two working days.

(12) Receive a copy of the full department hearing report.

(13) Obtain a copy of the audio recording of the hearing, provided, the offender provides a blank audio cassette tape to be used for this purpose.

(14) Appeal to the regional appeals panel, in writing, within seven calendar days of receipt of the hearing and decision summary form. The offender may also file a personal restraint petition to appeal the department's final decision through the Washington state court of appeals.

(15) Waive any or all of the above rights in this section.

#### NEW SECTION

**WAC 137-104-070 Determination of competency.** (1) Whenever, as a preliminary matter, the offender or the community corrections officer raises the issue of the offender's competency, or there is reason to doubt his/her competency, the hearing officer shall request a county mental health professional or a qualified expert within the department to examine the offender and report upon the mental condition and competency of the offender to participate in the hearing.

(2) Once the report is delivered to the hearing officer, the hearing shall be reconvened. Based on all evidence, includ-

ing the competency evaluation, the hearing officer shall determine whether the offender is competent to participate in the hearing and shall determine the appropriate disposition.

**NEW SECTION**

**WAC 137-104-080 Appeals.** (1) The offender may appeal the decision of the hearing officer within seven calendar days to the appeals panel. The request for review should be submitted in writing and list specific concerns.

(2) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to the:

- (a) Crime of conviction;
- (b) Violation committed;
- (c) Offender's risk of reoffending; or
- (d) Safety of the community.

(3) The appeals panel will also examine evidence presented at the hearing and reverse any finding of a violation based solely on unconfirmed or unconfirmable allegations.

**WSR 01-04-045  
NOTICE OF PUBLIC MEETINGS  
OFFICE OF THE  
INTERAGENCY COMMITTEE**

(Interagency Committee for Outdoor Recreation)  
[Memorandum—January 31, 2001]

The Interagency Committee for Outdoor Recreation (IAC) will meet Thursday, March 8, 2001, beginning at 8:30 a.m. in Room 172 of the Natural Resources Building in Olympia.

The draft agenda for this meeting includes updates on legislative issues, NOVA Plan, Statewide Boating Infrastructure Study, Statewide Recreation Participation Study, Public Lands Inventory Project and LWCF Project Lists updates, which is an action item.

If you plan to participate or have materials for committee review, please submit information to IAC no later than February 16, 2001. This will allow for distribution to committee members in a timely fashion.

IAC public meetings are held in locations accessible to people with disabilities. Arrangements for individuals with hearing or visual impairments can be provided by contacting IAC by February 16 at (360) 902-2637 or TDD (360) 902-1996.

**WSR 01-04-047**

**AGENDA**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed February 1, 2001, 4:02 p.m.]

The Employment Security Department Rule-Making Agenda for January 2001 is submitted for filing in accordance with E2SHB 1032, section 206.

**Employment Security Department  
Semi-Annual Rule-Making Agenda  
(January 31, 2001 - July 31, 2001)**

WAC CHAPTER	CHAPTER TITLE	AGENCY CONTACT	TIMING	SCOPE OF RULE CHANGES
Chapter 192-150 WAC Chapter 192-170 WAC Chapter 192-180 WAC	Job separations; Availability to accept work; Job search requirements	Juanita Myers (360) 902-9665	CR-101 - 5/97 CR-102 - 9/99 Hearing - 11/99 2nd CR-102 - 2/01 2nd Hearing - 3/01 CR-103 - 4/01 Effective - 5/01	Adopt rules regarding availability, suitable work, and job search requirements for disabled claimants, including those with pregnancy-related disabilities.
Chapter 192-270 WAC	Training benefits for dislocated workers	Juanita Myers (360) 902-9665	CR-101 - 2/00 CR-102 - 2/07/01 Hearing - 3/01 CR-103 - 3/01 Effective - 4/01	Adopt rules implementing new legislation (SHB 3077) providing a period of additional benefits for certain dislocated workers while in training.
Chapter 192-150 WAC	Job separations	Juanita Myers (360) 902-9665	CR-101 - 2/00 CR-102 - 2/07/01 Hearing - 3/01 CR-103 - 3/01 Effective - 4/01	Adopt rules clarifying provisions in new legislation (SHB 3077) related to requalification requirements and bona fide work, and defining "employer-initiated mandatory transfer."
Chapter 192-150 WAC	Job separations	Juanita Myers (360) 902-9665	CR-101 - 12/98 CR-102 - 2/07/01 Hearing - 3/14/01 CR-103 - 3/01 Effective - 4/01	Adopt rule to replace WAC 192-16-070, clarifying the conditions under which benefits will be paid to individuals who are subject to an employer-initiated layoff or reduction in force.

MISC.

Chapter 192-230 WAC	Recovery of overpayments	Juanita Myers (360) 902-9665	CR-101 - 12/00 CR-102 - 4/01 Hearing - To be determined CR-103 - 6/01 Effective - 7/01	Adopt rules clarifying the conditions under which unpaid overpayments will be referred to a collection agency, and addressing how collection fees will be assessed.
Chapter 192-170 WAC Chapter 192-180 WAC	Availability to accept work; Job search requirements	Juanita Myers (360) 902-9665	CR-101 - 2/01 CR-102 - 6/01 Hearing - To be determined CR-103 - 7/01 Effective - 8/01	Adopt rules to clarify job search and availability requirements for individuals who are members of full referral unions, and the conditions under which an employer creates a cause for doubting an individual's availability.
Chapter 192-210 WAC	Special category occupations	Juanita Myers (360) 902-9665	CR-101 - 11/99 CR-102 - 5/01 Hearing - To be determined CR-103 - 6/01 Effective - 7/01	Adopt rules for individuals who work or worked for a temporary service or employee leasing agency. These will include policies related to job separations and availability requirements.

Janet Leach-Ruth  
for Barney Hilliard  
Rules Coordinator

**WSR 01-04-056**  
**POLICY STATEMENT**  
**DEPARTMENT OF HEALTH**  
[Filed February 5, 2001, 10:08 a.m.]

Contact Person: Markay Newton, Department of Health,  
Nursing Care Commission, P.O. Box 47864, Olympia, WA  
98504-7864, (360) 236-4724.

NOTICE OF ADOPTION OF POLICY STATEMENT

Title of Policy: "Property Accountability," 107.01.  
Issuing Entity: Health Professions Quality Assurance,  
Department of Health.

Subject Matter: This is a new policy and it provides specific guidance for the accountability and assignment of responsibility for property issued within Health Professions Quality Assurance (HPQA).

Effective Date: December 21, 2000.

Contact Person: Linda McCue, Project Manager,  
Department of Health, Health Professions Section One,  
Health Professions Quality Assurance, P.O. Box 47860, 1300  
S.E. Quince Street, Olympia, WA 98504-7860, (360) 236-  
4986.

**WSR 01-04-057**  
**INTERPRETIVE STATEMENT**  
**DEPARTMENT OF HEALTH**  
[Filed February 5, 2001, 10:09 a.m.]

NOTICE OF ADOPTION OF INTERPRETIVE STATEMENT

Title: Shall specially trained RN's supervise cardiac stress tests?

Issuing Entity: Washington State Nursing Care Quality Assurance Commission.

Subject: The Nursing Commission issued an advisory opinion in response to the request from Polyclinic Cardiology Department.

Effective Date: January 12, 2001.

**WSR 01-04-058**  
**INTERPRETIVE STATEMENT**  
**DEPARTMENT OF HEALTH**  
[Filed February 5, 2001, 10:10 a.m.]

NOTICE OF ADOPTION OF INTERPRETIVE STATEMENT

Title: Is an oral and maxillofacial surgeon with a DDS degree allowed to do elective cosmetic surgery such as rhinoplasty or blepharoplasty?

Issuing Entity: Washington State Dental Quality Assurance Commission.

Subject: The commission issued an interpretive statement in response to a request for an interpretive statement from Deaconess Medical Center.

Effective Date: January 18, 2001.

Contact Person: Lisa Anderson, Program Manager,  
Department of Health, Dental Quality Assurance Commission, P.O. Box 47867, Olympia, WA 98504-7867, (360) 236-  
4863.

MISC.

**WSR 01-04-059**  
**POLICY STATEMENT**  
**DEPARTMENT OF HEALTH**

[Filed February 5, 2001, 10:10 a.m.]

NOTICE OF ADOPTION OF POLICY STATEMENT

Title of Policy: Signature Authority Delegation For Credentialing, Rulemaking, Disciplinary Functions And Red Jacket Correspondence, 106.02.

Issuing Entity: Health Professions Quality Assurance, Department of Health.

Subject Matter: This revises the current division policy. This policy establishes which staff can be delegated signature authority for credentialing, rule-making, disciplinary functions such as legal forms and red jacket correspondence.

Effective Date: December 14, 2000.

Contact Person: Linda McCue, Project Manager, Department of Health, Health Professions Section One, Health Professions Quality Assurance, P.O. Box 47860, 1300 S.E. Quince Street, Olympia, WA 98504-7860, (360) 236-4986.

**WSR 01-04-060**  
**INTERPRETIVE STATEMENT**  
**DEPARTMENT OF HEALTH**

[Filed February 5, 2001, 10:11 a.m.]

Title of Interpretive Statement: Small Water System Management Programs (SWSMP) in lieu of Water System Plans (WSP) for non-expanding systems in Critical Water Supply Service Areas (CWSSAs).

Issuing Entity: Alan Rowe, Operations Manager, Division of Drinking Water.

Description of Subject Matter: A nonexpanding water system located within a critical water supply service area and required to complete a WSP under WAC 246-293-230(1) may, as directed by the department, submit a SWSMP in lieu of a WSP. A water system utilizing this option will be considered nonexpanding by the Department of Health (DOH) and will be notified that they cannot expand unless they complete a WSP in accordance with WAC 246-290-100. The term "expanding public water system" is defined in WAC 246-290-010. Routine updates of the SWSMP will not be required. An update may be required by DOH if warranted.

Division Contact: Ethan Moseng, Division of Drinking Water, P.O. Box 47829, Olympia, WA 98504-7829, (360) 236-3562.

Effective Date: January 18, 2001.

**Consistency Statement**  
**January 18, 2001**

Topic: Small water system management programs (SWSMP) in lieu of water system plans (WSP) for nonexpanding systems in critical water supply service areas (CWSAs).

Section: WAC 246-290-100(10).

Purpose: To clarify Department of Health (DOH) planning requirements for nonexpanding public water systems

(PWSs) located within CWSSAs defined under the Public Water System Coordination Act (PWSCA). (Chapter 70.119 RCW, chapter 246-293 WAC, WAC 246-290-100, 246-290-105.)

Issue/Question: Should nonexpanding water systems within (CWSSAs) required to develop a plan pursuant to RCW 70.116.050(1) and WAC 246-293-230(1) be allowed to develop a SWSMP in lieu of a WSP?

Discussion: RCW 70.116.050(1) and WAC 246-293-230(1) require certain nonexpanding municipally owned systems within CWSSAs to complete a WSP. This requirement was put into place in 1978. In 1978, WSP requirements were far less rigorous than they are today. Most small systems met the requirement for completion of a WSP by developing an "Abbreviated Water System Checklist" (a short 'check the box' document). In 1999, the elements of the SWSMP (WAC 246-290-105) were expanded. Those elements broadly mirror the WSP requirements found in WAC 246-290-100. The SWSMP has been identified as a key element of 'capacity' as federally defined (for those systems not required to obtain WSP approval).

WAC 246-290-100(10) states that "The purveyor shall update the plan and submit it for approval at least every six years. If the system no longer meets the conditions of subsection (2) of this section, the purveyor shall as directed by the department, submit either a plan amendment the scope of which will be determined by the department, or a small water system management program under WAC 246-290-105."

The cost of development of a WSP has increased tremendously in the past few years. The increasing cost has become an obstacle that many small nonexpanding systems are finding more and more difficult to overcome. Many systems outside of CWSSAs that meet the requirements of WAC 246-290-100(10) are now provided (as determined by the department) alternatives to major six-year WSP updates.

Chapter 70.116 RCW only generally defined minimum requirements to include in a WSP and directed the secretary of the department to "adopt regulations pursuant to chapter 34.05 RCW concerning the scope and content of coordinated water system plans..." Since 1977, the scope and content of WSPs has changed significantly, incorporating many other requirements beyond the intent of the PWSCA. Chapter 246-290 WAC revisions effective in April 1999 renamed nonexpanding PWSs' planning requirements as "small water system management programs" rather than water system plans, however, the content is still sufficient to meet the intent of the WSP requirement under the PWSCA.

Decision:

- A nonexpanding water system located within a CWSSA and required to complete a WSP under WAC 246-293-230(1) may, as directed by the department, submit a SWSMP in lieu of a WSP.
- A water system utilizing this option will be considered nonexpanding by DOH and will be notified that they cannot expand unless they complete a WSP in accordance with WAC 246-290-100. The term "expanding public water system" is defined in WAC 246-290-010.
- Routine updates of the SWSMP will not be required. An update may be required by DOH if warranted.



This consistency statement is provided as guidance to DDW staff to ensure consistent implementation of DDW program elements. Decisions by DDW staff to grant/deny an approval, or to take enforcement action, must be based on an RCW or WAC.

Alan Rowe

**WSR 01-04-063**  
**OFFICE OF THE GOVERNOR**

[Filed February 5, 2001, 2:05 p.m.]

February 2, 2001

Samuel P. Harvey  
6420 Illihee Road NE  
Bremerton, WA 98311

*Re: RCW 34.05.330(3) appeal of the November 29, 2000 denial by the Washington Department of Labor and Industries (the "Department") of that certain petition to repeal WAC 296-19A regarding vocational rehabilitation, dated October 15, 2000 (the "Petition").*

Dear Mr. Harvey:

Thank you for your letter dated December 16, 2000 and received by our office on December 19, 2000, appealing the Department's decision to deny the Petition.

Pursuant to RCW 34.05.330(3), I have fully reviewed your appeal and the relevant statutes and regulations, and affirm the Department's decision.

It is our policy to intervene in matters presented to the Governor under RCW 34.05.330(3) only when we believe the agency whose decision is at issue has abused its discretion or acted arbitrarily or capriciously. It is also our policy not to second-guess the thoughtful and deliberate decisions of a state agency, so long as those decisions are well founded under the law. This is an extremely high standard of review.

The Department has a proper basis for its decision to deny the Petition for the reasons described below. We have responded to each of your arguments in turn:

1. The goal of vocational services: In Item 1, Point 1 of the Petition, you argue that the Department's rule (WAC 296-19A-020) is in conflict with RCW 51.32.095. You argue that once the Department decides to provide vocational services, the priorities in RCW 51.32.095(2) dictate the services to be provided by the Department and the order in which they are to be provided, and the Department's rule is inconsistent with the statutory mandate. The Department clearly has discretion to determine whether to offer vocational services. When it decides to do so, it does apply the nine priorities listed in the statute. It is important to note that the statute prefaces the list of priorities with the following language.

"When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and *likely to make the worker employable at*

*gainful employment*, then the following order of priorities shall be used." (emphasis added)

The statute thus in fact indicates that the goal of vocational services is services "likely to make the worker employable at gainful employment." While you may have a differing construction of the statute, the Department has interpreted the statute reasonably and in good faith.

2. Legislative Activity: In Item 1, Point 2 of the Petition you express concern that the rules defined in WAC 296-19A-020(1) are weak because the Department has also sought to clarify this issue by seeking statutory amendments in the legislature. The Department's decision whether or not to clarify statutes does not in any way diminish the fact the Department has the authority to implement the rules, or imply that the current interpretation is unauthorized.

3. Placement Services as a Requirement: In Item 1, Point 3 of the Petition you argue that the statute, RCW 51.32.095(2), requires job training and placement, but WAC 296-19A-110 does not list those as required services. The rule does not list *any* individual services as required; it is prefaced with the phrase "may include, but are not limited to." Furthermore, RCW 51.32.095(2) does not specifically list services that are to be provided. The statute sets forth outcomes in a list of priorities. "Short term retraining and job placement" is one of several outcomes on the list. Again, the Department has interpreted the statute reasonably and in good faith.

4. Credentials for Department employees: In Item 2 of the Petition you argue that the rules governing credentials for vocational counselors apply differently to public and private parties. Your letter to the Department of October 15, 2000 indicates a concern that the Department will not make the adjustments necessary for Department staff to obtain the credentials spelled out in the rules. While we understand your concern, education and training policy of the Department is covered under collective bargaining agreements between employees and the Department and negotiations are going on now in an attempt to resolve these concerns.

5. Small business impact: In Item 3 of the Petition you argue that the small business impact statement is flawed for several reasons. Our review indicates that the Department surveyed the vocational rehabilitation industry and that the survey did include small providers. The results clearly indicated per employee costs were lower for small business even when "outlier" data is included in the final tabulation. The Department went beyond its minimum its statutory obligations, and acted reasonable and in good faith.

6. Due Process; Intimidation: In Item 4 of the Petition you indicate that the Department did not follow due process requirements when WAC 296-19A was being adopted, and Department employees were intimidated from testifying. Our review indicates that the requirements set forth in Chapter RCW 34.05 pertaining to announcing the rule-making process and mailing announcements of the public hearings to all Washington-registered vocational counselors, including Department staff, were followed. Allegations regarding participation by Department employees in the hearing process

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are again matters covered by collective bargaining agreements. Irrespective the settlement of your individual grievance with the Department, the Department had adequate information to satisfy due process requirement in adopting the rule.

7. **Conclusion:** Many of your arguments are based on your interpretation of various statutes and rules when compared to the Department's interpretation. Statutes and rules are nearly always subject to various interpretations by those who read them. It is clear that in all instances argued in your appeal, the Department has made reasonable interpretations of the statutes in good faith, and did not act arbitrarily or capriciously. Accordingly, your appeal is denied. Thank you for your extensive efforts and profound commitment to improve our assistance to injured workers in Washington.

Sincerely,

Everett H. Billingslea  
General Counsel

cc: Dennis W. Cooper, Code Reviser  
Tim Martin, Co-Chief Clerk, House of Representatives  
Cindy Zehnder, Co-Chief Clerk, House of Representatives  
Tony Cook, Secretary of the Senate  
Gary Moore, Director, Department of Labor & Industries

**WSR 01-04-066**  
**NOTICE OF PUBLIC MEETINGS**  
**EDMONDS COMMUNITY COLLEGE**

[Memorandum—February 1, 2001]

**February 1, 2001**  
**EDMONDS COMMUNITY COLLEGE**  
**BOARD OF TRUSTEES**  
**NOTICE OF SPECIAL MEETINGS**  
**TO MEDIA/OTHER**

- February 4-6, 2001\* Association of Community College Trustees (ACCT) Legislative Seminar, Washington Marriott at Metro Center, Washington, D.C.  
*Purpose: To address legislative issues.*
- February 7, 2001\* Black History Month Performance—Brazil Dancers, EdCC, Brier Hall Cafeteria, 20000 68th Avenue West, Lynnwood, WA, 12:00 Noon - 1:00 p.m.  
*Purpose: Black History Month Event.*
- February 14, 2001 Edmonds Community College Board of Trustees Special Board Meeting: EdCC, Snohomish Hall, Room 304A, 20226 68th Avenue West, Lynnwood, WA, 4:00 p.m.  
*Purpose: To address routine college business issues.*
- February 15, 2001\* Black is Beautiful Program, EdCC, Triton Union Building, Room 202, 20000 68th Avenue West, Lynnwood, WA, 11:00 a.m. - 2:00 p.m.  
*Purpose: Black History Month Event.*

February 27, 2001\* "Don't Stop Now" High School Students of Color Conference, EdCC, Triton Union Building, Room 202, 20000 68th Avenue West, Lynnwood, WA, 7:30 a.m. - 1:00 p.m.  
*Purpose: Black History Month Event.*

\*This meeting is being scheduled as a special meeting, which is a study session where no action will be taken.

**WSR 01-04-067**  
**NOTICE OF PUBLIC MEETINGS**  
**BELLINGHAM TECHNICAL COLLEGE**  
[Memorandum—February 5, 2001]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, February 15, 2001, 9-11 a.m., in the College Services Building Board Room on the Bellingham Technical College campus. Call 738-3105 ext. 334 for information.

**WSR 01-04-071**  
**DEPARTMENT OF ECOLOGY**  
[Filed February 6, 2001, 2:40 p.m.]

JANUARY 30, 2001

**PUBLIC COMMENT PERIOD ON THE TOTAL MAXIMUM DAILY LOAD (TMDL) STRATEGY FOR REDUCING WATER TEMPERATURE IN THE UPPER CHEHALIS RIVER**

Water temperatures in many areas of the Upper Chehalis River Watershed (upstream from Porter) have become too warm during the dry summer months to sustain all the expected life-cycle stages of cold water fish, including salmon, steelhead, and trout.

This is a violation of state water quality standards. When this occurs, the Federal Clean Water Act requires that the state develop strategies called total maximum daily loads (TMDLs) to reverse these conditions and restore water temperatures to levels that will sustain the cold water fish that still survive in the Upper Chehalis River system.

In 1999 the Department of Ecology developed a TMDL for reducing water temperature in the Upper Chehalis River. The TMDL was presented for public comment, and submitted to EPA. Technical issues raised during review resulted in changes to the original TMDL and its recommendations. The changes are substantial enough that ecology is asking for additional public review and comment before submitting the TMDL to EPA for final approval.

The primary changes in the current draft are:

- Adjustments to the waste load allocations for point source discharges, resulting in lower temperature limits for some municipalities and industries that discharge into the river; and
- Changes in the section of the TMDL 'summary implementation strategy' that discusses requirements of the Washington state forest practices regulations.

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You are invited to comment on this draft TMDL and its recommendations through March 16, 2001. Please submit comments to Dave Rountry, Department of Ecology, P.O. Box 47775, Olympia, WA 98504-7775, or e-mail drou461@ecy.wa.gov. You can review the draft Upper Chehalis River Basin Temperature TMDL on the Internet at <http://www.ecy.wa.gov/programs/wq/tmdl/tmdls-review.html>. There are also hard copies available for review at the Centralia Timberland Library, 110 South Silver Street, and at the Olympia Timberland Library, 313 8th Avenue S.E.

For more information call Dave Rountry at (360) 407-6276.

**WSR 01-04-077**  
**OFFICE OF THE GOVERNOR**

[Filed February 6, 2001, 4:25 p.m.]

**NOTICE OF APPEAL**  
**(RCW 34.05.330(3))**

On February 6, 2001 the Governor received an appeal to the denial by Department of Ecology Director, Tom Fitzsimons, of a petition for rulemaking relating to the adoption of wheat stubble burning regulations, dated February 5, 2001, filed by the Center for Justice on behalf of Save Our Summers, et al.

DATED: February 6, 2001

Everett H. Billingslea  
General Counsel to the Governor

**WSR 01-04-084**  
**ATTORNEY GENERAL'S OFFICE**

[Filed February 7, 2001, 10:48 a.m.]

**NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION**  
**WASHINGTON ATTORNEY GENERAL**

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the Attorney General's Office of your interest by February 28, 2001. This is not the due date by which comments must be received. However, if you do not notify the Attorney General's Office of your interest in commenting on an opinion request by February 28, 2001, the opinion may be issued before your comments have been received. You may notify the Attorney General's Office of your intention to comment by calling (360) 586-4218, or by writing to the Solicitor General, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you will

be provided with a copy of the opinion request in which you are interested; information about the Attorney General's Opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered.

The Attorney General's Office seeks public input on the following opinion request(s).

**01-01-03 Request by Honorable Gary Chandler, State Representative, 13th District**

**Regarding the Blue Ribbon Commission on Transportation's final recommendation #17f, can the revenue generated by the described tax be spent for other than "highway purposes" within the meaning of the 18th Amendment to the Washington Constitution?**

**WSR 01-04-085**  
**ATTORNEY GENERAL'S OFFICE**

[Filed February 7, 2001, 10:49 a.m.]

**NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION**  
**WASHINGTON ATTORNEY GENERAL**

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the Attorney General's Office of your interest by February 28, 2001. This is not the due date by which comments must be received. However, if you do not notify the Attorney General's Office of your interest in commenting on an opinion request by February 28, 2001, the opinion may be issued before your comments have been received. You may notify the Attorney General's Office of your intention to comment by calling (360) 586-4218, or by writing to the Solicitor General, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you will be provided with a copy of the opinion request in which you are interested; information about the Attorney General's Opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered.

The Attorney General's Office seeks public input on the following opinion request(s).

**01-01-06 Request by Honorable Jeff Morris, State Representative, 40th District**

**1. When a PUD or a rural port district provides telecommunications facilities for its own internal telecommunications needs, is the pub-**

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lic utility district or rural port district engaging in a proprietary or a governmental activity? 2. When a PUD or a rural port district is providing telecommunications facilities for the provision of wholesale telecommunications services, is this activity a proprietary or governmental activity? 3. RCW 39.34.080 allows public agencies to contract with one or more other public agencies to perform any governmental service activity or undertaking that each public agency entering into the contract is authorized by law to perform. Does this statute or any other statute authorize a PUD or rural port district to provide telecommunications services or facilities directly to another public agency as an end-user? 4. Does RCW 54.16.330(1) and 53.08.370(1) preclude PUDs and rural port districts from providing telecommunications services or facilities to end-users under any circumstance? 5. Could a PUD or rural port district sell excess capacity from internal telecommunications systems directly to end-users under any circumstances?

**Table of WAC Sections Affected**

**KEY TO TABLE**

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

**Symbols:**

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJECT = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind of existing section
- REVIEW = Review of previously adopted rule
- SUSP = Suspending an existing section

**Suffixes:**

- C = Continuance of previous proposal
- E = Emergency action
- P = Proposed action
- S = Supplemental notice
- W = Withdrawal of proposed action
- XA = Expedited adoption
- XR = Expedited repeal
- No suffix means permanent action

**WAC #** Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

**WSR #** Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

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132W-108-330	REP-P	01-04-004	173-400-070	AMD-P	01-04-072	183- 04-090	NEW-P	01-04-033
132W-108-340	REP-P	01-04-004	173-400-075	AMD-P	01-04-072	183- 04-100	NEW-P	01-04-033
132W-108-350	REP-P	01-04-004	173-400-100	AMD-P	01-04-072	183- 04-110	NEW-P	01-04-033
132W-108-360	REP-P	01-04-004	173-400-102	AMD-P	01-04-072	183- 06-010	NEW-P	01-04-033
132W-108-400	REP-P	01-04-004	173-400-105	AMD-P	01-04-072	183- 06-020	NEW-P	01-04-033
132W-108-410	REP-P	01-04-004	173-400-110	AMD-P	01-04-072	183- 06-030	NEW-P	01-04-033
132W-108-420	REP-P	01-04-004	173-400-112	AMD-P	01-04-072	192- 16-061	REP	01-03-009
132W-108-430	REP-P	01-04-004	173-400-113	AMD-P	01-04-072	192- 16-070	REP-P	01-04-082
132W-108-440	REP-P	01-04-004	173-400-114	AMD-P	01-04-072	192-150-100	NEW-P	01-04-082

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196-12-035	NEW-P	01-04-094	220-88C-030	NEW-S	01-02-082	246-282-104	NEW	01-04-054
196-23-070	NEW-P	01-04-050	220-88C-040	NEW-S	01-02-082	246-282-110	AMD	01-04-054
204-96-010	AMD-E	01-03-078	220-88C-050	NEW-S	01-02-082	246-282-120	AMD	01-04-054
208-512	PREP-W	01-03-106	232-28-02203	AMD	01-04-037	246-282-130	AMD	01-04-054
208-512-045	AMD-P	01-03-107	232-28-02204	AMD	01-04-037	246-282-990	AMD	01-04-054
208-512-110	AMD-P	01-03-107	232-28-02206	AMD	01-04-037	246-430-001	REP	01-04-086
208-512-115	AMD-P	01-03-107	232-28-260	AMD	01-04-037	246-430-010	REP	01-04-086
208-512-116	AMD-P	01-03-107	232-28-271	AMD	01-04-037	246-430-020	REP	01-04-086
208-512-117	AMD-P	01-03-107	232-28-274	REP-W	01-03-077	246-430-030	REP	01-04-086
208-512-240	AMD-P	01-03-107	232-28-275	AMD	01-04-037	246-430-040	REP	01-04-086
208-512-280	AMD-P	01-03-107	232-28-277	AMD	01-04-037	246-430-050	REP	01-04-086
208-512-300	AMD-P	01-03-107	232-28-42400C	NEW-E	01-03-013	246-430-060	REP	01-04-086
208-514-140	AMD-P	01-03-107	232-28-42400C	REP-E	01-03-013	246-843-072	REP	01-03-114
208-528-040	AMD-P	01-03-107	232-28-61900N	NEW-E	01-03-061	246-843-074	REP	01-03-114
208-532-050	AMD-P	01-03-107	232-28-61900N	REP-E	01-03-061	246-869-220	AMD	01-04-055
208-544-025	AMD-P	01-03-107	232-28-61900P	NEW-E	01-04-011	246-887-100	AMD	01-03-108
208-544-037	AMD-P	01-03-107	232-28-61900P	REP-E	01-04-011	246-919-475	NEW	01-03-115
208-544-039	AMD-P	01-03-107	246-102-001	NEW	01-04-086	262-01-110	PREP	01-03-144
208-556-080	AMD-P	01-03-107	246-102-010	NEW	01-04-086	262-01-120	PREP	01-03-144
208-586-135	AMD-P	01-03-107	246-102-020	NEW	01-04-086	262-01-130	PREP	01-03-144
208-586-140	AMD-P	01-03-107	246-102-030	NEW	01-04-086	284-04-120	NEW	01-03-034
220-16-260	AMD	01-03-016	246-102-040	NEW	01-04-086	284-04-200	NEW	01-03-034
220-16-270	AMD	01-03-016	246-102-050	NEW	01-04-086	284-04-205	NEW	01-03-034
220-20-016	AMD-P	01-02-085	246-102-060	NEW	01-04-086	284-04-210	NEW	01-03-034
220-32-05100	NEW-E	01-04-042	246-102-070	NEW	01-04-086	284-04-215	NEW	01-03-034
220-32-05100	REP-E	01-04-042	246-220-010	AMD-P	01-02-087	284-04-220	NEW	01-03-034
220-33-040	AMD-W	01-03-015	246-221-005	AMD-P	01-02-087	284-04-225	NEW	01-03-034
220-33-060	AMD-S	01-02-082	246-221-010	AMD-P	01-02-087	284-04-300	NEW	01-03-034
220-44-020	AMD-S	01-02-082	246-221-015	AMD-P	01-02-087	284-04-305	NEW	01-03-034
220-44-05000C	NEW-E	01-03-088	246-221-030	AMD-P	01-02-087	284-04-310	NEW	01-03-034
220-47-301	AMD-P	01-02-085	246-221-055	AMD-P	01-02-087	284-04-400	NEW	01-03-034
220-52-04000V	NEW-E	01-04-009	246-221-090	AMD-P	01-02-087	284-04-405	NEW	01-03-034
220-52-04000	NEW-E	01-04-030	246-221-100	AMD-P	01-02-087	284-04-410	NEW	01-03-034
220-52-04000	REP-E	01-04-030	246-221-110	AMD-P	01-02-087	284-04-500	NEW	01-03-034
220-52-04000	REP-E	01-04-076	246-221-113	AMD-P	01-02-087	284-04-505	NEW	01-03-034
220-52-04000X	NEW-E	01-04-076	246-221-117	AMD-P	01-02-087	284-04-510	NEW	01-03-034
220-52-04600I	REP-E	01-04-030	246-221-230	AMD-P	01-02-087	284-04-515	NEW	01-03-034
220-52-04600K	NEW-E	01-04-030	246-221-250	AMD-P	01-02-087	284-04-520	NEW	01-03-034
220-52-04600K	REP-E	01-04-076	246-221-285	AMD-P	01-02-087	284-04-525	NEW	01-03-034
220-52-04600	NEW-E	01-04-076	246-244-070	AMD-P	01-02-087	284-04-600	NEW	01-03-034
220-52-051	AMD	01-03-016	246-282-001	AMD	01-04-054	284-04-605	NEW	01-03-034
220-52-071	AMD-P	01-02-086	246-282-005	AMD	01-04-054	284-04-610	NEW	01-03-034
220-52-073	AMD-P	01-02-086	246-282-010	AMD	01-04-054	284-04-615	NEW	01-03-034
220-52-07300B	REP-E	01-03-014	246-282-012	NEW	01-04-054	284-04-620	NEW	01-03-034
220-52-07300C	NEW-E	01-03-014	246-282-014	NEW	01-04-054	284-04-900	NEW	01-03-034
220-52-07300C	REP-E	01-03-043	246-282-016	NEW	01-04-054	284-43-130	AMD	01-03-032
220-52-07300D	NEW-E	01-03-043	246-282-020	AMD	01-04-054	284-43-130	AMD	01-03-033
220-52-07300D	REP-E	01-03-062	246-282-030	REP	01-04-054	284-43-200	AMD	01-03-033
220-52-07300E	NEW-E	01-03-062	246-282-032	NEW	01-04-054	284-43-251	NEW	01-03-033
220-52-07300E	REP-E	01-03-093	246-282-034	NEW	01-04-054	284-43-410	NEW	01-03-033
220-52-07300F	NEW-E	01-03-093	246-282-036	NEW	01-04-054	284-43-610	REP	01-03-033
220-52-07300F	REP-E	01-04-010	246-282-040	REP	01-04-054	284-43-615	NEW	01-03-033
220-52-07300G	NEW-E	01-04-010	246-282-042	NEW	01-04-054	284-43-620	AMD	01-03-033
220-52-07300G	REP-E	01-04-049	246-282-050	AMD	01-04-054	284-43-630	NEW	01-03-033
220-52-07300H	NEW-E	01-04-049	246-282-060	AMD	01-04-054	284-43-815	NEW	01-03-032
220-56-24000E	NEW-E	01-03-044	246-282-070	AMD	01-04-054	284-43-820	NEW	01-03-033
220-56-36000G	NEW-E	01-04-046	246-282-080	AMD	01-04-054	284-43-821	NEW	01-03-035
220-56-36000G	REP-E	01-04-046	246-282-082	NEW	01-04-054	284-43-823	NEW	01-03-035
220-69-240	AMD-P	01-02-085	246-282-090	REP	01-04-054	284-43-824	NEW	01-03-035
220-69-240	AMD-P	01-02-086	246-282-092	NEW	01-04-054	284-43-824	AMD-E	01-04-087
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296- 17	PREP	01-03-157	308- 93-056	AMD	01-03-128	314- 17-035	NEW	01-03-085
296- 20	PREP	01-02-091	308- 93-060	AMD-P	01-03-017	314- 17-040	NEW	01-03-085
296- 23	PREP	01-02-091	308- 93-069	AMD-P	01-03-017	314- 17-045	NEW	01-03-085
296- 30-130	PREP	01-03-156	308- 93-070	AMD-P	01-03-017	314- 17-050	NEW	01-03-085
296- 32-240	AMD-E	01-04-090	308- 93-071	AMD-P	01-03-017	314- 17-055	NEW	01-03-085
296- 32-240	AMD-P	01-04-091	308- 93-073	REP-P	01-03-017	314- 17-060	NEW	01-03-085
296- 45-52530	AMD-E	01-04-090	308- 93-078	AMD-P	01-03-017	314- 17-065	NEW	01-03-085
296- 45-52530	AMD-P	01-04-091	308- 93-079	AMD	01-03-128	314- 17-070	NEW	01-03-085
296- 62	PREP	01-04-089	308- 93-090	AMD	01-03-128	314- 17-075	NEW	01-03-085
296-150C	PREP	01-03-070	308- 93-160	AMD	01-03-128	314- 17-080	NEW	01-03-085
296-150F	PREP	01-03-070	308- 93-285	AMD-P	01-03-017	314- 17-085	NEW	01-03-085
296-150M	PREP	01-03-070	308- 93-350	AMD-P	01-03-017	314- 17-090	NEW	01-03-085
296-150P	PREP	01-03-070	308- 93-360	AMD-P	01-03-017	314- 17-095	NEW	01-03-085
296-150R	PREP	01-03-070	308- 93-390	AMD-P	01-03-072	314- 17-100	NEW	01-03-085
296-150T	PREP	01-03-070	308- 93-640	AMD-P	01-03-017	314- 17-105	NEW	01-03-085
296-150V	PREP	01-03-070	308- 96A-065	AMD-P	01-04-017	314- 17-110	NEW	01-03-085
296-155-205	AMD	01-04-015	308- 96A-066	REP-P	01-04-017	314- 17-115	NEW	01-03-085
296-155-305	AMD	01-04-015	308- 96A-067	REP-P	01-04-017	314- 29-005	NEW	01-03-086
296-155-625	AMD	01-04-015	308- 96A-068	REP-P	01-04-017	314- 29-010	NEW	01-03-086
308- 08-085	AMD	01-03-129	308- 96A-070	AMD-P	01-04-017	315- 06-040	PREP	01-04-040
308- 13-150	AMD	01-04-002	308- 96A-071	AMD-P	01-04-017	332- 10-020	AMD-P	01-04-061
308- 29-010	AMD-P	01-03-130	308- 96A-072	AMD-P	01-04-017	332- 10-040	AMD-P	01-04-061
308- 29-020	AMD-P	01-03-130	308- 96A-073	AMD-P	01-04-017	356- 06-045	AMD-C	01-02-088
308- 29-025	NEW-P	01-03-130	308- 96A-074	AMD-P	01-04-017	356- 10-040	AMD-C	01-02-089
308- 29-030	AMD-P	01-03-130	308- 96A-175	AMD-P	01-04-017	356- 14-067	AMD-C	01-02-089
308- 29-045	AMD-P	01-03-130	308- 96A-176	AMD-P	01-04-017	356- 14-075	AMD-C	01-02-089
308- 29-050	AMD-P	01-03-130	308- 96A-177	NEW-P	01-04-017	356- 14-085	AMD-C	01-02-089
308- 29-060	AMD-P	01-03-130	308- 96A-295	AMD-P	01-04-062	356- 14-110	AMD-C	01-02-089
308- 29-070	AMD-P	01-03-130	308- 96A-550	AMD-P	01-04-017	356- 14-120	AMD-C	01-02-089
308- 29-080	AMD-P	01-03-130	308- 96A-560	AMD-P	01-04-017	356- 15-125	AMD-E	01-04-051
308- 29-090	NEW-P	01-03-130	308-100-140	AMD-P	01-04-075	356- 15-125	AMD-P	01-04-079
308- 29-100	NEW-P	01-03-130	314- 04-005	REP	01-03-086	356- 15-140	AMD-C	01-02-089
308- 29-110	NEW-P	01-03-130	314- 04-006	REP	01-03-086	356- 18-140	AMD-C	01-02-089
308- 29-120	NEW-P	01-03-130	314- 04-007	REP	01-03-086	356- 18-220	AMD-C	01-02-089
308- 32-100	REP	01-03-065	314- 09-005	NEW	01-03-087	356- 30-320	AMD-C	01-02-088
308- 32-110	REP	01-03-065	314- 09-010	NEW	01-03-087	356- 30-331	AMD-C	01-02-088
308- 32-120	REP	01-03-065	314- 09-015	NEW	01-03-087	356- 49-040	AMD-C	01-02-089
308- 56A-021	AMD-P	01-03-072	314- 12-020	AMD	01-03-087	356- 56-210	AMD	01-03-003
308- 56A-065	AMD-P	01-03-072	314- 14-010	REP	01-03-085	356- 56-220	AMD	01-03-003
308- 56A-310	AMD-P	01-03-072	314- 14-020	REP	01-03-085	365-195-900	AMD-P	01-03-166
308- 56A-335	AMD	01-03-002	314- 14-030	REP	01-03-085	365-197-010	NEW-P	01-03-165
308- 56A-355	REP	01-03-002	314- 14-040	REP	01-03-085	365-197-020	NEW-P	01-03-165
308- 63-010	AMD	01-03-141	314- 14-050	REP	01-03-085	365-197-030	NEW-P	01-03-165
308- 63-040	AMD	01-03-141	314- 14-060	REP	01-03-085	365-197-040	NEW-P	01-03-165
308- 63-070	AMD	01-03-141	314- 14-070	REP	01-03-085	365-197-050	NEW-P	01-03-165
308- 63-100	AMD	01-03-141	314- 14-080	REP	01-03-085	365-197-060	NEW-P	01-03-165
308- 78-010	AMD-P	01-03-083	314- 14-090	REP	01-03-085	365-197-070	NEW-P	01-03-165
308- 78-020	AMD-P	01-03-083	314- 14-100	REP	01-03-085	365-197-080	NEW-P	01-03-165
308- 78-030	AMD-P	01-03-083	314- 14-110	REP	01-03-085	388- 11-011	REP	01-03-089
308- 78-035	NEW-P	01-03-083	314- 14-120	REP	01-03-085	388- 11-015	REP	01-03-089
308- 78-040	AMD-P	01-03-083	314- 14-130	REP	01-03-085	388- 11-045	REP	01-03-089
308- 78-045	AMD-P	01-03-083	314- 14-140	REP	01-03-085	388- 11-048	REP	01-03-089
308- 78-046	NEW-P	01-03-083	314- 14-150	REP	01-03-085	388- 11-065	REP	01-03-089
308- 78-060	REP-P	01-03-083	314- 14-160	REP	01-03-085	388- 11-067	REP	01-03-089
308- 78-070	AMD-P	01-03-083	314- 14-165	REP	01-03-085	388- 11-100	REP	01-03-089
308- 78-075	NEW-P	01-03-083	314- 14-170	REP	01-03-085	388- 11-120	REP	01-03-089
308- 78-080	AMD-P	01-03-083	314- 17-005	NEW	01-03-085	388- 11-135	REP	01-03-089
308- 78-090	AMD-P	01-03-083	314- 17-010	NEW	01-03-085	388- 11-140	REP	01-03-089
308- 93-010	AMD	01-03-128	314- 17-015	NEW	01-03-085	388- 11-143	REP	01-03-089
308- 93-030	AMD	01-03-128	314- 17-020	NEW	01-03-085	388- 11-145	REP	01-03-089





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388-14A-4620	NEW	01-03-089	388-310-0900	AMD-P	01-03-060	392-125-080	AMD-E	01-03-098
388-14A-5000	NEW	01-03-089	388-310-0900	AMD-E	01-03-132	392-140-600	AMD	01-04-023
388-14A-5001	NEW	01-03-089	388-310-1000	AMD-P	01-03-060	392-140-605	AMD	01-04-023
388-14A-5002	NEW	01-03-089	388-310-1000	AMD-E	01-03-132	392-140-609	AMD	01-04-023
388-14A-5003	NEW	01-03-089	388-310-1050	AMD-P	01-03-060	392-140-613	AMD	01-04-023
388-14A-5004	NEW	01-03-089	388-310-1050	AMD-E	01-03-132	392-140-616	AMD	01-04-023
388-14A-5005	NEW	01-03-089	388-310-2000	NEW	01-03-042	392-140-625	AMD	01-04-023
388-14A-5006	NEW	01-03-089	388-400-0005	AMD	01-03-121	392-140-626	AMD	01-04-023
388-14A-5007	NEW	01-03-089	388-400-0015	REP	01-03-121	392-140-660	AMD	01-04-023
388-14A-5008	NEW	01-03-089	388-400-0020	REP-P	01-03-120	392-140-675	AMD	01-04-023
388-14A-5050	NEW	01-03-089	388-400-0030	AMD-P	01-03-040	392-141-200	PREP	01-03-099
388-14A-5100	NEW	01-03-089	388-400-0030	AMD-E	01-03-041	392-151-090	AMD-P	01-03-097
388-14A-5200	NEW	01-03-089	388-404-0005	AMD	01-03-121	392-151-095	AMD-P	01-03-097
388-14A-5300	NEW	01-03-089	388-408-0005	AMD	01-03-121	399-10-010	AMD-P	01-03-143
388-14A-5300	NEW	01-03-089	388-408-0010	AMD	01-03-121	399-30-030	AMD-P	01-03-143
388-14A-5400	NEW	01-03-089	388-408-0015	AMD	01-03-121	399-30-040	AMD-P	01-03-143
388-14A-5500	NEW	01-03-089	388-408-0020	AMD	01-03-121	399-30-042	AMD-P	01-03-143
388-14A-5505	NEW	01-03-089	388-408-0025	AMD	01-03-121	399-50-040	AMD-P	01-03-143
388-14A-5510	NEW	01-03-089	388-408-0030	AMD	01-03-121	415-610	PREP	01-04-028
388-14A-5515	NEW	01-03-089	388-414-0001	AMD-P	01-04-074	415-620	PREP	01-04-028
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388-14A-5530	NEW	01-03-089	388-450-0190	AMD-P	01-03-038	415-630-030	AMD-E	01-04-029
388-14A-5535	NEW	01-03-089	388-450-0190	AMD-E	01-03-039	415-640	PREP	01-04-028
388-14A-5540	NEW	01-03-089	388-454-0005	AMD	01-03-121	415-650	PREP	01-04-028
388-14A-6000	NEW	01-03-089	388-454-0010	AMD	01-03-121	415-660	PREP	01-04-028
388-14A-6100	NEW	01-03-089	388-472-0005	PREP	01-03-119	415-670	PREP	01-04-028
388-14A-6200	NEW	01-03-089	388-478-0055	AMD-P	01-04-068	415-680	PREP	01-04-028
388-14A-6300	NEW	01-03-089	388-478-0056	REP-P	01-04-068	415-690	PREP	01-04-028
388-14A-6400	NEW	01-03-089	388-484-0005	AMD	01-04-016	415-695	PREP	01-04-028
388-14A-6405	NEW	01-03-089	388-484-0010	NEW	01-04-016	420-04-010	NEW	01-04-052
388-14A-6410	NEW	01-03-089	388-488	PREP	01-03-024	420-04-015	NEW	01-04-052
388-14A-6415	NEW	01-03-089	388-535-1230	AMD-P	01-03-154	420-04-020	NEW	01-04-052
388-14A-6500	NEW	01-03-089	388-546-0001	NEW	01-03-084	420-04-030	NEW	01-04-052
388-14A-7100	NEW	01-03-089	388-546-0100	NEW	01-03-084	420-04-040	NEW	01-04-052
388-14A-7200	NEW	01-03-089	388-546-0150	NEW	01-03-084	420-04-050	NEW	01-04-052
388-14A-8100	NEW	01-03-089	388-546-0200	NEW	01-03-084	420-04-060	NEW	01-04-052
388-14A-8105	NEW	01-03-089	388-546-0250	NEW	01-03-084	420-04-070	NEW	01-04-052
388-14A-8110	NEW	01-03-089	388-546-0300	NEW	01-03-084	420-04-080	NEW	01-04-052
388-14A-8120	NEW	01-03-089	388-546-0300	NEW	01-03-084	420-04-085	NEW	01-04-052
388-14A-8200	NEW	01-03-089	388-546-0400	NEW	01-03-084	420-04-100	NEW	01-04-052
388-14A-8300	NEW	01-03-089	388-546-0450	NEW	01-03-084	420-04-100	NEW	01-04-052
388-14A-8400	NEW	01-03-089	388-546-0500	NEW	01-03-084	420-12-010	NEW	01-04-052
388-14A-8500	NEW	01-03-089	388-546-0600	NEW	01-03-084	420-12-020	NEW	01-04-052
388-31-010	REP-P	01-04-070	388-546-0700	NEW	01-03-084	420-12-030	NEW	01-04-052
388-31-015	REP-P	01-04-070	388-546-0800	NEW	01-03-084	420-12-040	NEW	01-04-052
388-31-020	REP-P	01-04-070	388-546-1000	NEW	01-03-084	420-12-050	NEW	01-04-052
388-31-025	REP-P	01-04-070	388-551	PREP	01-03-095	420-12-060	NEW	01-04-052
388-31-030	REP-P	01-04-070	388-551	PREP	01-03-096	420-12-070	NEW	01-04-052
388-31-035	REP-P	01-04-070	388-825-020	PREP	01-03-059	420-12-075	NEW	01-04-052
388-71-0605	AMD-P	01-03-155	388-825-205	PREP	01-03-059	420-12-080	NEW	01-04-052
388-71-0613	NEW-P	01-03-155	390-16-011	PREP	01-03-164	420-12-085	NEW	01-04-052
388-86-086	REP	01-03-084	390-16-012	PREP	01-03-163	420-12-090	NEW	01-04-052
388-86-100	REP-W	01-03-001	390-16-105	PREP	01-03-161	458-20-169	AMD-P	01-03-091
388-87-036	REP	01-03-084	390-16-111	PREP	01-03-159	458-20-22802	AMD-P	01-03-105
388-222-001	REP	01-03-066	390-16-150	PREP	01-03-162	458-20-247	AMD-P	01-04-048
388-222-010	REP	01-03-066	390-16-309	PREP	01-03-081	468-300-010	AMD-P	01-04-078
388-222-020	REP	01-03-066	390-16-311	PREP	01-03-082	468-300-020	AMD-P	01-04-078
388-273-0010	NEW-P	01-04-070	390-24-200	PREP	01-03-160	468-300-040	AMD-P	01-04-078
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388-273-0030	NEW-P	01-04-070	392-122-322	PREP	01-03-099	478-355-030	AMD-P	01-03-122

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480-62-010	REP	01-04-026	480-90-033	NEW-P	01-02-084	480-90-308	NEW-P	01-02-084
480-62-020	REP	01-04-026	480-90-036	REP-P	01-02-084	480-90-313	NEW-P	01-02-084
480-62-030	REP	01-04-026	480-90-041	REP-P	01-02-084	480-90-323	NEW-P	01-02-084
480-62-040	REP	01-04-026	480-90-043	REP-P	01-02-084	480-90-328	NEW-P	01-02-084
480-62-050	REP	01-04-026	480-90-046	REP-P	01-02-084	480-90-333	NEW-P	01-02-084
480-62-060	REP	01-04-026	480-90-051	REP-P	01-02-084	480-90-338	NEW-P	01-02-084
480-62-070	REP	01-04-026	480-90-056	REP-P	01-02-084	480-90-343	NEW-P	01-02-084
480-62-080	REP	01-04-026	480-90-061	REP-P	01-02-102	480-90-348	NEW-P	01-02-084
480-62-085	REP	01-04-026	480-90-066	REP-P	01-02-084	480-90-353	NEW-P	01-02-084
480-62-090	REP	01-04-026	480-90-071	REP-P	01-02-084	480-90-999	NEW-P	01-02-084
480-62-100	REP	01-04-026	480-90-072	REP-P	01-02-084	480-100-001	NEW-P	01-02-083
480-62-120	REP	01-04-026	480-90-076	REP-P	01-02-084	480-100-003	NEW-P	01-02-083
480-62-125	NEW	01-04-026	480-90-081	REP-P	01-02-084	480-100-008	NEW-P	01-02-083
480-62-130	NEW	01-04-026	480-90-086	REP-P	01-02-084	480-100-011	REP-P	01-02-083
480-62-135	NEW	01-04-026	480-90-091	REP-P	01-02-084	480-100-013	NEW-P	01-02-083
480-62-140	NEW	01-04-026	480-90-096	REP-P	01-02-084	480-100-016	REP-P	01-02-083
480-62-145	NEW	01-04-026	480-90-101	REP-P	01-02-084	480-100-018	NEW-P	01-02-083
480-62-150	NEW	01-04-026	480-90-103	NEW-P	01-02-084	480-100-021	REP-P	01-02-083
480-62-155	NEW	01-04-026	480-90-106	REP-P	01-02-084	480-100-023	NEW-P	01-02-083
480-62-160	NEW	01-04-026	480-90-108	NEW-P	01-02-084	480-100-026	REP-P	01-02-083
480-62-165	NEW	01-04-026	480-90-113	NEW-P	01-02-084	480-100-028	NEW-P	01-02-083
480-62-170	NEW	01-04-026	480-90-116	REP-P	01-02-084	480-100-031	REP-P	01-02-083
480-62-200	NEW	01-04-026	480-90-118	NEW-P	01-02-084	480-100-032	REP-P	01-02-083
480-62-205	NEW	01-04-026	480-90-121	REP-P	01-02-084	480-100-033	NEW-P	01-02-083
480-62-210	NEW	01-04-026	480-90-123	NEW-P	01-02-084	480-100-036	REP-P	01-02-083
480-62-215	NEW	01-04-026	480-90-126	REP-P	01-02-084	480-100-041	REP-P	01-02-083
480-62-220	NEW	01-04-026	480-90-128	NEW-P	01-02-084	480-100-043	REP-P	01-02-083
480-62-225	NEW	01-04-026	480-90-131	REP-P	01-02-084	480-100-046	REP-P	01-02-083
480-62-230	NEW	01-04-026	480-90-133	NEW-P	01-02-084	480-100-051	REP-P	01-02-083
480-62-235	NEW	01-04-026	480-90-136	REP-P	01-02-084	480-100-056	REP-P	01-02-083
480-62-240	NEW	01-04-026	480-90-138	NEW-P	01-02-084	480-100-061	REP-P	01-02-102
480-62-245	NEW	01-04-026	480-90-141	REP-P	01-02-084	480-100-066	REP-P	01-02-083
480-62-250	NEW	01-04-026	480-90-143	NEW-P	01-02-084	480-100-071	REP-P	01-02-083
480-62-300	NEW	01-04-026	480-90-146	REP-P	01-02-084	480-100-072	REP-P	01-02-083
480-62-305	NEW	01-04-026	480-90-148	NEW-P	01-02-084	480-100-076	REP-P	01-02-083
480-62-310	NEW	01-04-026	480-90-151	REP-P	01-02-084	480-100-081	REP-P	01-02-083
480-62-315	NEW	01-04-026	480-90-153	NEW-P	01-02-084	480-100-086	REP-P	01-02-083
480-62-320	NEW	01-04-026	480-90-156	REP-P	01-02-084	480-100-091	REP-P	01-02-083
480-62-325	NEW	01-04-026	480-90-158	NEW-P	01-02-084	480-100-096	REP-P	01-02-083
480-62-999	NEW	01-04-026	480-90-161	REP-P	01-02-084	480-100-101	REP-P	01-02-083
480-80-010	AMD-P	01-02-102	480-90-163	NEW-P	01-02-084	480-100-103	NEW-P	01-02-083
480-80-035	NEW-P	01-02-102	480-90-166	REP-P	01-02-084	480-100-108	NEW-P	01-02-083
480-80-047	REP-P	01-02-102	480-90-168	NEW-P	01-02-084	480-100-111	REP-P	01-02-083
480-80-048	REP-P	01-02-102	480-90-171	REP-P	01-02-084	480-100-113	NEW-P	01-02-083
480-80-049	REP-P	01-02-102	480-90-173	NEW-P	01-02-084	480-100-116	REP-P	01-02-083
480-80-120	REP-P	01-02-102	480-90-176	REP-P	01-02-084	480-100-118	NEW-P	01-02-083
480-80-325	NEW-P	01-02-102	480-90-178	NEW-P	01-02-084	480-100-121	REP-P	01-02-083
480-80-326	NEW-P	01-02-102	480-90-181	REP-P	01-02-084	480-100-123	NEW-P	01-02-083
480-80-390	REP-P	01-02-102	480-90-183	NEW-P	01-02-084	480-100-126	REP-P	01-02-083
480-90-001	NEW-P	01-02-084	480-90-188	NEW-P	01-02-084	480-100-128	NEW-P	01-02-083
480-90-003	NEW-P	01-02-084	480-90-191	REP-P	01-02-084	480-100-131	REP-P	01-02-083
480-90-008	NEW-P	01-02-084	480-90-193	NEW-P	01-02-102	480-100-133	NEW-P	01-02-083
480-90-011	REP-P	01-02-084	480-90-203	NEW-P	01-02-084	480-100-136	REP-P	01-02-083
480-90-013	NEW-P	01-02-084	480-90-208	NEW-P	01-02-084	480-100-138	NEW-P	01-02-083
480-90-016	REP-P	01-02-084	480-90-211	REP-P	01-02-084	480-100-141	REP-P	01-02-083
480-90-018	NEW-P	01-02-084	480-90-213	NEW-P	01-02-084	480-100-143	NEW-P	01-02-083
480-90-021	REP-P	01-02-084	480-90-218	NEW-P	01-02-084	480-100-146	REP-P	01-02-083
480-90-023	NEW-P	01-02-084	480-90-223	NEW-P	01-02-084	480-100-148	NEW-P	01-02-083
480-90-026	REP-P	01-02-084	480-90-228	NEW-P	01-02-084	480-100-151	REP-P	01-02-083
480-90-028	NEW-P	01-02-084	480-90-233	NEW-P	01-02-084	480-100-153	NEW-P	01-02-083
480-90-031	REP-P	01-02-084	480-90-238	NEW-P	01-02-084	480-100-156	REP-P	01-02-083

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480-100-163	NEW-P	01-02-083	480-120-096	REP-P	01-03-100			
480-100-166	REP-P	01-02-083	480-120-136	AMD-P	01-03-100			
480-100-168	NEW-P	01-02-083	480-120-530	AMD-P	01-03-100			
480-100-171	REP-P	01-02-083	480-120-531	NEW-P	01-03-100			
480-100-173	NEW-P	01-02-083	480-120-541	NEW-P	01-02-102			
480-100-176	REP-P	01-02-083	480-120-542	NEW-P	01-02-102			
480-100-178	NEW-P	01-02-083	480-120-543	NEW-P	01-02-102			
480-100-181	REP-P	01-02-083	480-120-544	NEW-P	01-02-102			
480-100-183	NEW-P	01-02-083	480-120-545	NEW-P	01-03-100			
480-100-186	REP-P	01-02-083	480-121-061	NEW-P	01-02-102			
480-100-188	NEW-P	01-02-083	480-121-062	NEW-P	01-02-102			
480-100-191	REP-P	01-02-083	480-121-063	NEW-P	01-02-102			
480-100-193	NEW-P	01-02-102	480-121-064	NEW-P	01-02-102			
480-100-201	REP-P	01-02-083						
480-100-203	NEW-P	01-02-083						
480-100-206	REP-P	01-02-083						
480-100-208	NEW-P	01-02-083						
480-100-211	REP-P	01-02-083						
480-100-213	NEW-P	01-02-083						
480-100-218	NEW-P	01-02-083						
480-100-223	NEW-P	01-02-083						
480-100-228	NEW-P	01-02-083						
480-100-233	NEW-P	01-02-083						
480-100-251	REP-P	01-02-083						
480-100-308	NEW-P	01-02-083						
480-100-311	REP-P	01-02-083						
480-100-313	NEW-P	01-02-083						
480-100-318	NEW-P	01-02-083						
480-100-328	NEW-P	01-02-083						
480-100-333	NEW-P	01-02-083						
480-100-338	NEW-P	01-02-083						
480-100-343	NEW-P	01-02-083						
480-100-353	NEW-P	01-02-083						
480-100-358	NEW-P	01-02-083						
480-100-363	NEW-P	01-02-083						
480-100-368	NEW-P	01-02-083						
480-100-373	NEW-P	01-02-083						
480-100-378	NEW-P	01-02-083						
480-100-383	NEW-P	01-02-083						
480-100-388	NEW-P	01-04-081						
480-100-393	NEW-P	01-04-081						
480-100-398	NEW-P	01-04-081						
480-100-999	NEW-P	01-02-083						
480-120-011	AMD-P	01-03-100						
480-120-015	NEW-P	01-03-100						
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480-120-025	REP-P	01-02-102						
480-120-026	AMD-P	01-03-100						
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480-120-028	NEW-P	01-03-100						
480-120-029	NEW-P	01-03-100						
480-120-032	AMD-P	01-03-100						
480-120-033	AMD-P	01-03-100						
480-120-036	REP-P	01-03-100						
480-120-043	NEW-P	01-02-102						
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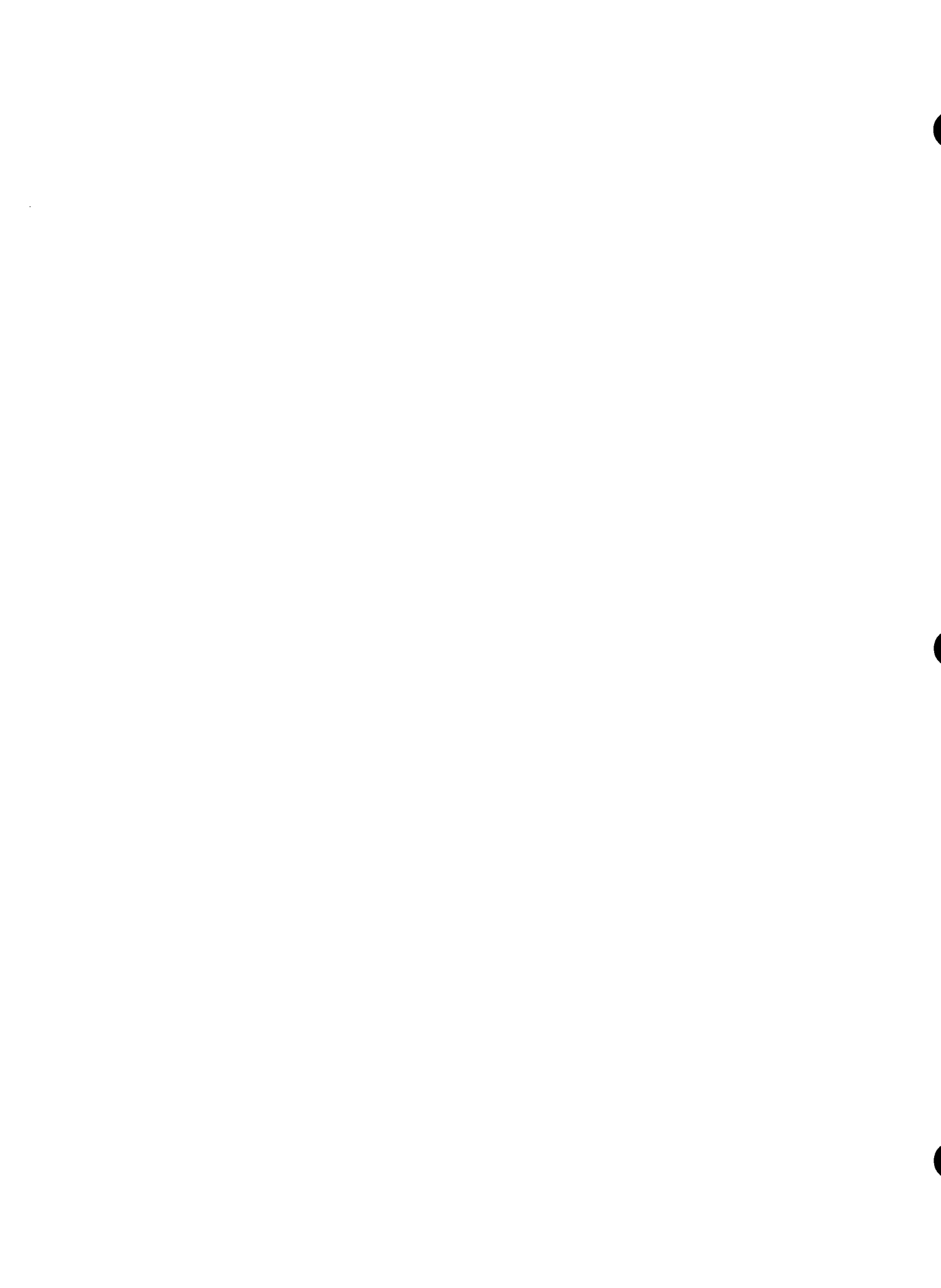
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