

Washington State Register

March 7, 2001

OLYMPIA, WASHINGTON

ISSUE 01-05



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filed not later than February 21, 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

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

John G. Schultz
Chair, Statute Law Committee

Dennis W. Cooper
Code Reviser

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Chief Assistant Code Reviser

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Editor

Joyce Matzen
Subscription Clerk

STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following eight sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Inquiry that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **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 ¹			Distribution Date	First Agency Hearing Date ³	Expedited Adoption ⁴
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS ² or 10 p. max. Non-OTS	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
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01 - 07	Feb 21, 01	Mar 7, 01	Mar 21, 01	Apr 4, 01	Apr 24, 01	N/A
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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
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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

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

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

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

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

REGULATORY FAIRNESS ACT

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

Small Business Economic Impact Statements (SBEIS)

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

Mitigation

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

When is an SBEIS Required?

When:

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

When is an SBEIS Not Required?

When:

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

There is less than minor economic impact on business;

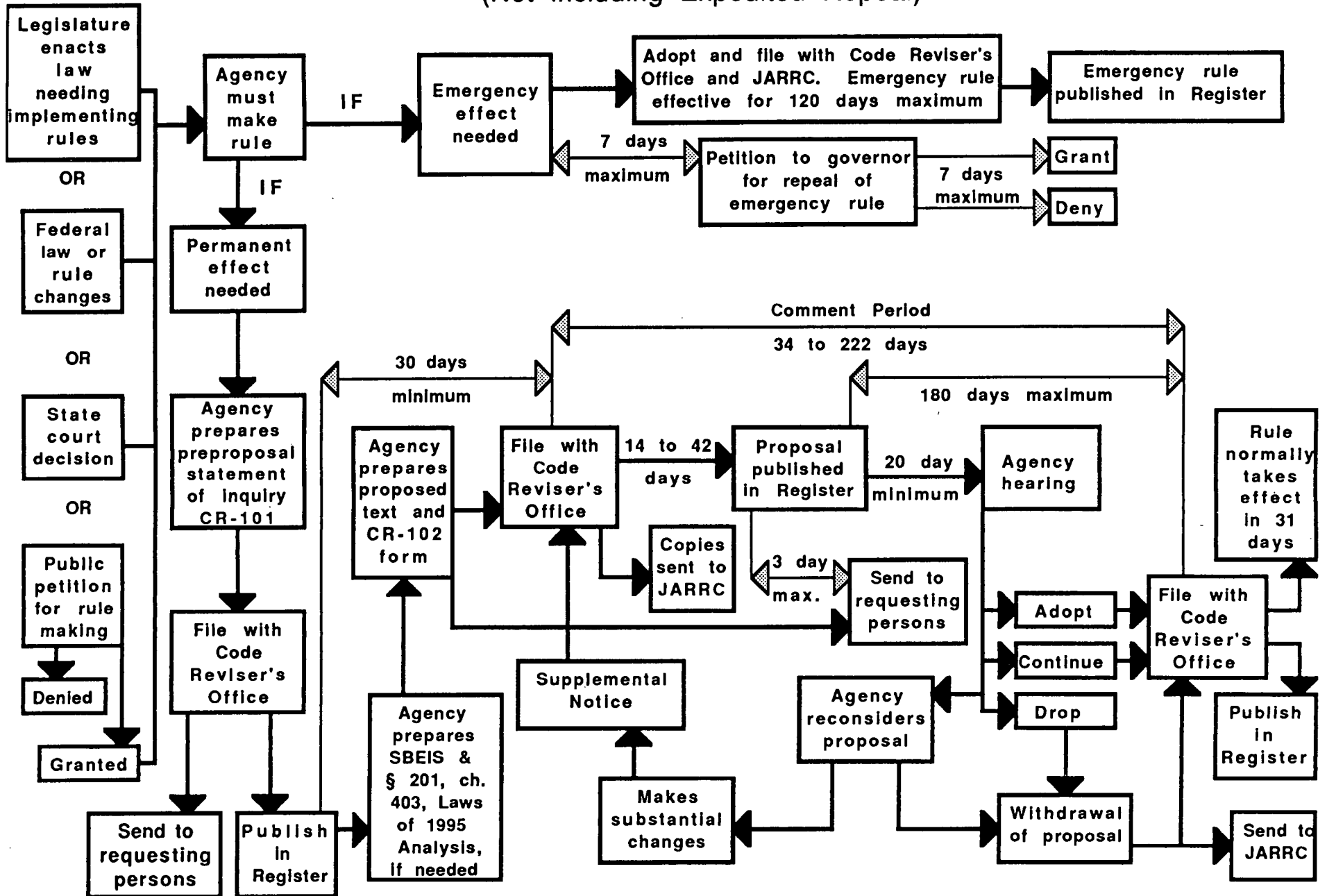
The rule REDUCES costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

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

The rule is pure restatement of state statute.

RULE-MAKING PROCESS

(Not including Expedited Repeal)



WSR 01-05-001
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed February 7, 2001, 2:50 p.m.]

Subject of Possible Rule Making: Coastal bottom fish seasons.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Coastal bottom fish seasons are set by the Pacific Fisheries Management Council, and the state adopts equivalent rules to regulate landings of bottom fish taken in the exclusion economic zone.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Pacific Fisheries Management Council sets the seasons and the state files concurrent rules.

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 Lew Atkins, Fish Program Assistant Director, 600 Capitol Way, Olympia, WA 98501-1091, phone (360) 902-2651. Contact by April 17, 2001, expected proposal filing April 18, 2001.

February 7, 2001
 Evan Jacoby
 Rules Coordinator

WSR 01-05-002
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed February 7, 2001, 2:51 p.m.]

Subject of Possible Rule Making: North of Falcon process rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Each year the North of Falcon subgroup make recommendations regarding anadromous salmon harvest levels, which drive recreational and commercial fishing season setting. These rules will allow harvest of anticipated surplus salmon, while providing protection for depressed stocks.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Pacific Fisheries Management Council, National Marine Fisheries Service, United States Fish and Wildlife Service are all represented in the North of Falcon process.

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 Lew Atkins, Fish Program Assistant Director, 600 Capitol Way, Olympia, WA 98501-1091,

phone (360) 902-2651. Contact by April 17, 2001, expected proposal filing April 18, 2001.

February 7, 2001
 Evan Jacoby
 Rules Coordinator

WSR 01-05-027
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medical Assistance Administration)
 [Filed February 12, 2001, 4:00 p.m.]

Subject of Possible Rule Making: Amending WAC 388-543-2800 Reusable and disposable medical supplies; new section WAC 388-543-1150 Limits and limitation extensions; and other related rules in chapter 388-543 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.530.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is establishing a new section in chapter 388-543 WAC (WAC 388-543-1150) to list non-DME (MSE) and durable medical equipment (DME) and related supplies, prosthetics, orthotics, medical supplies, and related services that have limitations on amount, frequency, or duration. The new section states the limitations and how to request additional services, supplies, or equipment beyond those stated limitations. The rules are necessary in order to agree with recently changed Medicare guidelines, to assist in utilization reviews, and to prevent the inappropriate use of these items, which will in turn contribute toward the department maintaining fiscal responsibility.

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

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of the proposed WAC. Draft material and information about how to participate may be obtained by contacting the person listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ann Myers, Regulatory Improvement, Medical Assistance Administration, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1345, fax (360) 586-9727, e-mail myersea@dshs.wa.gov.

Bonita H. Jacques, Chief
 Office of Legal Affairs

WSR 01-05-045
PREPROPOSAL STATEMENT OF INQUIRY
GAMBLING COMMISSION
 [Filed February 14, 2001, 4:10 p.m.]

Subject of Possible Rule Making: Card games.

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: To clarify that electronic facsimiles of playing cards can be utilized in licensed social card games.

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

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting 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. Greenwood 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.

February 14, 2001
Susan Arland
Rules Coordinator

WSR 01-05-046

**PREPROPOSAL STATEMENT OF INQUIRY
GAMBLING COMMISSION**

[Filed February 14, 2001, 4:10 p.m.]

Subject of Possible Rule Making: Card rooms.

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: In April 2000, the commission adopted the largest rules package in the history of the agency - the card room rules package. Since that time, staff and card room licensees have been operating under those rules. This filing will begin the process to address comments and concerns brought forward by both staff and licensees, about the card room rules.

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

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting 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 Heathman Lodge; 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on April 12 and 13, 2001; at The Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 858-1111, on May 10 and 11, 2001; and at the LaConner Country Inn, meeting at Maple Hall, 108 Commercial Street, LaConner, WA 98257, (360) 466-3101, on June 14 and 15, 2001.

February 14, 2001
Susan Arland
Rules Coordinator

WSR 01-05-074

**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed February 15, 2001, 3:23 p.m.]

Subject of Possible Rule Making: The Department of Retirement Systems (DRS) is considering enhancing its definition section in WAC 415-02-030. The department plans to add definitions of some words and phrases in common usage, that are not currently defined within the department's WACs or statutes. Other definitions, spread throughout other department WAC sections, will be moved or duplicated, to provide a central location for definitions.

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

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, definitions of frequently used terms, such as "defined benefit" and "defined contribution" exist neither in statute nor rule. The proposed change would add many new definitions to assist in customer understanding. In addition, many definitions are spread throughout the department's WACs. A central location will help the department's customers and staff by eliminating long searches through many pages of rules for the information they seek.

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 DRS encourages your active participation in the rule-making process. Anyone interested in participating should contact the rules coordinator, below. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making, and send a copy to everyone currently on the mailing list and anyone else who requests a copy. For more information on how to participate, please contact Merry A. Kogut, Rules Coordina-

tor, 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.

February 15, 2001
Merry A. Kogut
Rules Coordinator

(360) 586-5450, e-mail merryk@drs.wa.gov, fax (360) 753-3166.

February 15, 2001
Merry A. Kogut
Rules Coordinator

WSR 01-05-075

PREPROPOSAL STATEMENT OF INQUIRY

DEPARTMENT OF RETIREMENT SYSTEMS

[Filed February 15, 2001, 3:25 p.m.]

Subject of Possible Rule Making: The department would amend chapter 415-210 WAC, Teachers' retirement system plan III—Defined contribution plan, and transfer it to chapter 415-112 WAC, which covers the majority of the teachers' retirement system (TRS). The amendment would provide an annual window during which time TRS Plan 3 members could change their contribution rate and retain the 5% minimum contribution rate.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.34.040, 41.50.050(5).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The proposed rules would provide an annual window during which time TRS Plan 3 members could change their contribution rate and retain the 5% minimum contribution rate. Any such change would be contingent on the legislature's statutory change to RCW 41.34.040, and the IRS' approval (as described below).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Internal Revenue Service (IRS) regulates the type of defined contribution plan that TRS Plan 3 provides. Any changes in this WAC would be contingent on a favorable IRS determination letter.

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 (DRS) encourages your active participation in the rule-making process. Anyone interested in participating should contact the rules coordinator; below. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making, and send a copy to everyone currently on the mailing list and anyone else who requests a copy. For more information on how to participate, please contact Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, Mailstop 48380, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY

WSR 01-05-076

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LICENSING

[Filed February 16, 2001, 9:13 a.m.]

Subject of Possible Rule Making: Chapter 308-93 WAC, General provisions for vessel subject to and exempt from titling, to include but not limited to WAC 308-93-145.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 88.02.070 and 88.02.100.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule making may be required as a result of this review in accordance with Executive Order 97-02.

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

Process for Developing New Rule: Negotiated rule making.

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

February 15, 2001
Deborah McCurley, Administrator
Title and Registration Services

WSR 01-05-078

PREPROPOSAL STATEMENT OF INQUIRY WASHINGTON STATE UNIVERSITY

[Filed February 16, 2001, 1:48 p.m.]

Subject of Possible Rule Making: Permit fees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28B.30.095, 28B.30.125, and 28B.30.150.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To allow parking fees at the student-run student recreation center to be set by the president or his designee, rather than the board of regents.

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

Process for Developing New Rule: Change amendment needed because of status of student recreation center as being student run. Reviewed internally at many levels before formal proposal.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. There will be a public hearing to permit comment on the proposed rule. There will also be an opportunity to provide written comments on the proposed rule.

February 13, 2001
Loretta M. Lamb
Assistant Vice-President
for Personnel and Administration

WSR 01-05-079
PREPROPOSAL STATEMENT OF INQUIRY
WASHINGTON STATE UNIVERSITY

[Filed February 16, 2001, 1:48 p.m.]

Subject of Possible Rule Making: Small works roster.
Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 39.04.155.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To accomplish mission of statute to allow state agencies to develop a small works roster for use in minor public works process. Will help expedite the selection of appropriate contractors for this purpose.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Potentially all state agencies can adopt a small works roster. Notification will be provided to other four year higher education institutions of this proposed rule.

Process for Developing New Rule: New rules to comply with statutory ability to have a small works roster. Reviewed internally at many levels before formal proposal.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. There will be a public hearing to permit comment on the proposed rule. There will also be an opportunity to provide written comments on the proposed rule.

February 13, 2001
Loretta M. Lamb
Assistant Vice-President
for Personnel and Administration

WSR 01-05-092
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION

[Filed February 20, 2001, 1:06 p.m.]

Subject of Possible Rule Making: WAC 180-51-063 Certificate of mastery—High school graduation requirement—Effective date.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.230.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording, repeal provisions unsupported by rule-making authority, or

provide greater flexibility or discretion to persons or entities subject to the rules.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments 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 publication 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.

February 9, 2001
Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 00-13-039, filed 6/14/00, effective 7/15/00)

WAC 180-51-063 Certificate of mastery—High school graduation requirement—Effective date. (1) Pursuant to RCW 28A.655.060 (3)(c):

(a) The certificate of mastery shall be a graduation requirement, but not the only requirement for graduation from high school; and

(b) The state board of education is responsible for determining when the secondary Washington assessment of student learning has been implemented and is sufficiently valid and reliable.

(2)(a) The state board of education establishes the 2007-08 school year as the first year in which graduating high school students shall be required to have attained the state certificate of mastery in order to graduate, in addition to other state and local graduation requirements.

(b) The state board of education fully recognizes that a higher standard of validity and reliability must be applied when the result of the assessment affects the ability of an individual student to receive a high school diploma. Therefore, the state board of education will continue to monitor the high school level Washington assessment of student learning. If the board finds that the assessment is lacking in this higher level of validity or reliability, or both, by the beginning of the 2004-05 school year, the state board may change the effective date of the certificate of mastery, for state graduation purposes, to a later school year.

(c) Beginning the 2007-08 school year, the certificate of mastery shall consist of the subject areas under the student learning goals for which a Washington assessment of student learning secondary assessment has been implemented and declared valid and reliable for graduation purposes. It is expected that the initial certificate of mastery will be comprised of reading, writing, communications, and mathematics.

(d) Beginning the 2009-10 school year, the certificate of mastery shall include science if a Washington assessment of student learning secondary assessment has been implemented and declared valid and reliable for this subject area.

(e) As determined by the state board of education, in consultation with the legislature and the academic achieve-

ment and accountability commission, successful completion of the Washington assessment of student learning secondary assessment in social studies may be required to achieve the certificate of mastery or may lead to an endorsement on the high school transcript.

(f) As determined by the state board of education, in consultation with the legislature and the academic achievement and accountability commission, successful completion of the Washington assessment of student learning secondary assessment in arts and health and fitness may lead to an endorsement on the high school transcript.

(g) ~~((Beginning))~~ Effective with students ~~((in 2004))~~ who begin the ninth grade in 2003 (the graduating class of 2007), students who take the secondary Washington assessment of student learning and earn the certificate of mastery and/or meet the standard, attainment of the state certificate of mastery and/or meeting the standard shall be noted on the student's transcript pursuant to WAC 180-57-070.

(3) Notwithstanding WAC 180-18-055 and 180-51-107, subsection (2) of this section shall not be waived.

(4) The certificate of mastery shall not be a graduation requirement for students who receive home-based instruction under RCW 28A.200.101(3) nor for students attending private schools under RCW 28A.195.010(6).

WSR 01-05-094

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF RETIREMENT SYSTEMS

[Filed February 20, 2001, 1:30 p.m.]

Subject of Possible Rule Making: WAC 415-100-055 Retirement benefit options (judicial retirement system).

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 2.10.052, 2.10.070(6), 2.10.140 - [2.10.]146, 2.12.030, 41.50.050(5).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Judicial Retirement System statutes direct the Department of Retirement Systems (DRS) to establish survivor and nonsurvivor retirement benefit options. The survivor options are to be actuarially equivalent to the unreduced options. The WAC change will eliminate the provision in WAC 415-100-055 [(3)](d) in which, under certain condition[s], the remaining balance is retained by the retirement fund, rather than directed to the estate.

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

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

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. Anyone interested in participating should contact the rules coordinator, below. After the rule(s) is drafted, DRS will file a copy with the Office of the Code

Reviser with a notice of proposed rule making, and send a copy to everyone currently on the mailing list and anyone else who requests a copy. For more information on how to participate, please contact Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, Mailstop 48380, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, e-mail merryk@drs.wa.gov, fax (360) 753-3166.

February 20, 2001

Merry A. Kogut

Rules Coordinator

WSR 01-05-095

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF RETIREMENT SYSTEMS

[Filed February 20, 2001, 1:31 p.m.]

Subject of Possible Rule Making: The Department of Retirement Systems (DRS) may need to change WACs related to post-retirement employment in one or more of the retirement plans it administers.

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

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The legislature is considering bills that would eliminate the limits on post-retirement employment in one or more of the retirement systems that DRS administers. If the legislature passes these bills, DRS will need to make appropriate changes to its WAC.

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

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

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. Anyone interested in participating should contact the rules coordinator, below. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of the 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.

February 20, 2001

Merry A. Kogut

Rules Coordinator

WSR 01-05-102

PREPROPOSAL STATEMENT OF INQUIRY
REDISTRICTING COMMISSION

[Filed February 20, 2001, 4:06 p.m.]

Subject of Possible Rule Making: Agency administrative procedures and third party submission rules, including WAC 417-01-105, 417-01-110, 417-01-115, 417-01-125, 417-01-130, 417-01-135, 417-01-150, 417-01-155, and chapter 417-06 WAC. The agency will also review Public Records Act (chapter 42.17 RCW) and Administrative Procedure Act (chapter 34.05 RCW) requirements with the intent of drafting language to ensure compliance with existing law.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 44.05.080(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The commission, which was just reconvened in January 2001, is required to prepare a redistricting plan according to the specifications of the state constitution and state law. Because of the decennial nature of the commission, and the importance of public participation and input in the development [of] such plans, the commission finds that chapters 417-01 and 417-06 WAC must be reviewed to ensure the proper dissemination of contact and meeting information; compliance with public records and APA requirements; adherence to commission directives on the conduct of business and administrative matters; and the development of proper criteria for third-party plan submissions.

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

Process for Developing New Rule: The commission will provide the opportunity for interested persons to make written or oral comments throughout the rule-making process. The commission will schedule one or more hearings for adoption of final rules in a manner designed to develop consensus, to the extent possible, regarding rule proposals.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Public comment on these rules is welcome, and the public is invited to submit written comments or provide oral comments at commission meetings where rule making is scheduled. Interested parties can request to be on a mailing list for notification of the date and location of public input meetings. Questions concerning rules coordination should be directed to Darleen Muhly, Washington State Redistricting Commission, 505 East Union Avenue, P.O. Box 40948, Olympia, WA 98504-0948. The commission telephone number is (360) 586-9000; the commission fax number is (360) 586-8995; the commission website is www.redistricting.wa.gov; and the commission electronic mail address is contact@redistricting.wa.gov. A commission hearing for adoption of final rules on proposed changes will not occur before May 22, 2001. The commission is expected to address draft language at a special meeting in early March and a reg-

ular meeting at 1 p.m. on April 5, 2001, in the commission's office in Olympia.

February 20, 2001
Ethan Moreno
Executive Director

WSR 01-05-108

PREPROPOSAL STATEMENT OF INQUIRY
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2001-02—Filed February 21, 2001, 9:48 a.m.]

Subject of Possible Rule Making: The agency will consider new rules governing unfair sex discrimination. The agency will review existing and possibly unfair practices by carriers that may aid, abet, or encourage violations of state or federal discrimination laws or that may obstruct compliance with such laws. The agency also will consider amending or repealing existing rules to conform with standards governing sex discrimination, including pregnancy discrimination.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.02.060, 48.18.480, 48.20.450, 48.20.460, 48.21.04 [48.21.040], 48.30.010, 48.30.300, 48.41.110, 48.41.170, 48.42.010, 48.42.040, 48.42.100, 48.43.012, 48.43.025, 48.43.035, 48.43.041, 48.43.115, 48.43.520, 48.44.020, 48.44.023, 48.44.050, 48.44.220, 48.46.060, 48.46.066, 48.46.110, 48.46.200, 49.60.010, 49.60.030, 49.60.120, 49.60.178, 49.60.220.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: (1) Carriers need guidance on how to comply with state and federal laws that prohibit sex discrimination in insurance transactions and health plan benefits. There are a number of state and federal laws that prohibit sex discrimination in health insurance benefits, including but not limited [to] maternity and contraceptive health care services. The laws include 42 U.S.C. 2000 and chapter 49.60 RCW, in addition to provisions of the state insurance code. Office of the Insurance Commissioner (OIC) rules governing sex discrimination need to be amended and new rules adopted to provide clear guidance to carriers and consumers as to what are prohibited discriminatory practices.

(2) Carriers are required by various laws to provide maternity and prescription drug benefits, including prescription contraceptives. Clarification of these requirements is sought. Existing OIC rules may need to be amended to provide clear guidance to carriers and consumers as to the minimum standards for these benefits.

(3) Existing rules governing sex discrimination in insurance transactions and health care benefits need to be updated to reflect changes in law.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The United States Equal Employment Opportunity Commission and the Washington State Human Rights Commission administer unfair discrimination laws applicable to employers and employee health benefits. In addition, the insurance commissioner and the Washington State Human

Rights Commission have concurrent jurisdiction over the issue of unfair practices in insurance, including practices that aid and abet violations of the state Civil Rights Act. The commissioner's staff will confer with representatives of these agencies.

Process for Developing New Rule: Agency study. Please send any comments regarding this rule to Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacyb@oic.wa.gov, fax (360) 664-2782, by April 6, 2001.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacyb@oic.wa.gov, fax (360) 664-2782, by April 6, 2001.

February 20, 2001

Mike Kreidler
Insurance Commissioner

WSR 01-05-109

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF HEALTH

[Filed February 21, 2001, 10:10 a.m.]

Subject of Possible Rule Making: Chapter 246-907 WAC, Licensing periods and fees, the department is considering establishing a reduced license fee for charitable organizations involved in the exporting of drugs for humanitarian efforts.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.70.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Any person or firm that ships drugs into foreign countries is required to be licensed as an export drug wholesaler. The license fee for an export drug wholesaler is \$540.00. This license fee creates a hardship for charitable organizations involved in the exporting of drugs for humanitarian reasons. Establishing a reduced fee will allow charitable organizations to continue their efforts to provide medications to persons in need.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None, the proposed rule change pertains to license fees only.

Process for Developing New Rule: Public meetings and mailings to interested persons.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lisa Salmi, Department of Health, P.O. Box 47863, Olympia, WA 98504-7863, Lisa.Salmi@doh.wa.gov, phone (360) 236-4828, fax (360) 586-4359. Interested persons can participate through meetings and by submitting written comments.

February 15, 2001

M. C. Selecky
Secretary

WSR 01-05-114

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 21, 2001, 10:42 a.m.]

Subject of Possible Rule Making: Minimum wage for minors in agriculture, chapter 296-131 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 43.22, 49.30, and 49.46 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To adopt the similar minimum wage (including the application of a subminimum wage) provisions in the agriculture employment standards rules (chapter 296-131 WAC).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Not applicable.

Process for Developing New Rule: Parties interested in the formulation of these rules for proposal may contact the individual listed below. The public may also participate by providing written comments or giving oral testimony after these rules changes are proposed 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 Josh Swanson, Department of Labor and Industries, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail swaj235@lni.wa.gov.

February 21, 2001

Gary Moore
Director

WSR 01-05-115

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 21, 2001, 10:44 a.m.]

Subject of Possible Rule Making: WAC 296-155-200 General requirements, 296-155-605 Equipment, 296-155-615 Material handling equipment, 296-155-655 General protection requirements, and any other rule sections that the department and stakeholders believe need to be amended and/or created in order to protect workers on construction sites from vehicular traffic.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, [49.17].040, [49.17].050, and chapter 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule amendment project is the result of stakeholders requesting that the department adopt permanent rules to increase worker protection from vehicular traffic on construction sites. Although the requesting stakeholders supported the department's recent effort to adopt permanent rules complying with chapter 239, Laws of 2000 (ESHB 2647) that increase traffic flagger safety, they

felt key components of the flagger rules should be extended to construction sites in order to protect job site workers from vehicular traffic in the work zone.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No federal agencies, other than OSHA, are known to regulate this subject. The Washington State Department of Transportation (WSDOT) does have rules regulating work zone traffic. WSDOT is directly participating in this project and the department will communicate its rule-making activity to OSHA.

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 plan agreement. The department held an initial stakeholder meeting (December 18, 2000) with a group of volunteers who agreed to help the department identify relevant rule sections and draft proposed rule amendments. This volunteer work group represents industry, labor, other state agencies and local governments. Parties interested in the progress of the work group and the formulation of proposed rule amendments may contact the individuals listed below. The public may also participate by attending future public hearings and 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 Jim Szpek, Department of Labor and Industries, Policy and Technical Services, P.O. Box 44650, Olympia, WA 98504-4650, phone (360) 902-5582, fax (360) 902-5438; Dan McMurdie, Department of Labor and Industries, Policy and Technical Services, P.O. Box 44650, Olympia, WA 98504-4650, phone (360) 902-5460, fax (360) 902-5438; and George Huffman, Project Manager, Department of Labor and Industries, WISHA Services Division, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5008, fax (360) 902-5529.

February 21, 2001
Gary Moore
Director

WSR 01-05-116
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 21, 2001, 10:45 a.m.]

Subject of Possible Rule Making: Review the current fees that exist in the rules for electrical (chapters 296-46A and 296-401B WAC), plumber certification (chapter 296-400A WAC), contractor registration (chapter 296-200A WAC), elevator (chapter 296-96 WAC) and factory assembled structures (chapters 296-150C, 296-150F, 296-150M, 296-150P, 296-150R, and 296-150V WAC) for possible increases.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 18.27, 18.106, 19.28, 43.22 and 70.87 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: A 2.87% fee increase, which is the Office of Financial Management's maximum allowable fiscal growth rate factor for fiscal year 2001, may be necessary to maintain the operational effectiveness of the contractor registration, factory assembled structures, plumber certification, electrical and elevator programs.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The department is the sole agency charged with setting plumbing, contractor registration, elevator, electrical and most FAS fees. However, the United States Department of Housing and Urban Development (HUD) will review any proposed increase in manufactured home fees.

Process for Developing New Rule: The department will solicit input from the director's FAS Advisory Board, the Elevator Advisory Committee and the Electrical Board. Other interested parties and the public may also participate 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 Josh Swanson, Department of Labor and Industries, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail swaj235@lni.wa.gov.

February 21, 2001
Gary Moore
Director

WSR 01-05-122
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION
[Filed February 21, 2001, 11:41 a.m.]

Subject of Possible Rule Making: WAC 180-52-041 Approval of list of standardized tests for use by students receiving home-based instruction.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 34.05.310(4).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording, repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

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

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments 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 publication 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.

February 20, 2001
Larry Davis
Executive Director

WSR 01-05-123
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION

[Filed February 21, 2001, 11:42 a.m.]

Subject of Possible Rule Making: Chapter 180-52 WAC, Parents' rights regarding pupil testing and recordkeeping.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 34.05.310(4).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording, repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

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

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments 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 publication 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.

February 20, 2001
Larry Davis
Executive Director

WSR 01-05-124
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION

[Filed February 21, 2001, 11:42 a.m.]

Subject of Possible Rule Making: WAC 180-51-060 Minimum subject areas for high school graduation.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.030.090 [28A.230.090].

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording, repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

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

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments 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 publication 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.

February 20, 2001
Larry Davis
Executive Director

WSR 01-05-125
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION

[Filed February 21, 2001, 11:42 a.m.]

Subject of Possible Rule Making: WAC 180-51-061 Minimum requirements for high school graduation.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.030.090 [28A.230.090].

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording, repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

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

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments 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 publication 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.

February 20, 2001
Larry Davis
Executive Director

WSR 01-05-126**PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION**

[Filed February 21, 2001, 11:43 a.m.]

Subject of Possible Rule Making: WAC 180-79A-257
Out-of-state candidates.

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 do one or more of the fol-
lowing, as deemed appropriate: Make technical adjustments,
clarify existing provisions, repeal unnecessary wording,
repeal provisions unsupported by rule-making authority, or
provide greater flexibility or discretion to persons or entities
subject to the rules.

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.

February 20, 2001

Larry Davis

Executive Director

WSR 01-05-127**PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION**

[Filed February 21, 2001, 11:43 a.m.]

Subject of Possible Rule Making: WAC 180-82-202
Certificate endorsements.

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 do one or more of the fol-
lowing, as deemed appropriate: Make technical adjustments,
clarify existing provisions, repeal unnecessary wording,
repeal provisions unsupported by rule-making authority, or
provide greater flexibility or discretion to persons or entities
subject to the rules.

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.

February 20, 2001

Larry Davis

Executive Director

WSR 01-05-128**PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION**

[Filed February 21, 2001, 11:43 a.m.]

Subject of Possible Rule Making: WAC 180-82-204
Endorsement requirements.

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 do one or more of the fol-
lowing, as deemed appropriate: Make technical adjustments,
clarify existing provisions, repeal unnecessary wording,
repeal provisions unsupported by rule-making authority, or
provide greater flexibility or discretion to persons or entities
subject to the rules.

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.

February 20, 2001

Larry Davis

Executive Director

WSR 01-05-129**PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION**

[Filed February 21, 2001, 11:44 a.m.]

Subject of Possible Rule Making: WAC 180-82-210 Pri-
mary and supporting endorsements.

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 do one or more of the fol-
lowing, as deemed appropriate: Make technical adjustments,
clarify existing provisions, repeal unnecessary wording,
repeal provisions unsupported by rule-making authority, or
provide greater flexibility or discretion to persons or entities
subject to the rules.

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 publication 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.

February 20, 2001
Larry Davis
Executive Director

WSR 01-05-130
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION

[Filed February 21, 2001, 11:44 a.m.]

Subject of Possible Rule Making: WAC 180-33-042 Replacement option.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.525.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording, repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments 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 publication 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.

February 20, 2001
Larry Davis
Executive Director

WSR 01-05-131
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 21, 2001, 11:49 a.m.]

Subject of Possible Rule Making: Review the current fees that exist in the Board of Boiler Rules (chapter 296-104 WAC) for possible increases.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70.79 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: A 2.87% fee increase, which is the Office of Financial Management's maximum allowable fiscal growth rate factor for fiscal year 2001, may be neces-

sary to maintain the operational effectiveness of the boiler 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: The Board of Boiler [Rules] will review and approve all rules changes. Other interested parties and the public may also participate 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 Josh Swanson, Department of Labor and Industries, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail swaj235@lni.wa.gov.

February 21, 2001
Ken E. Eshleman, Chair
Board of Boilers

WSR 01-05-147
PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF EDUCATION

[Filed February 21, 2001, 12:00 p.m.]

Subject of Possible Rule Making: WAC 180-79A-265 Endorsements on teacher certificates for out-of-state candidates.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.305.130.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To do one or more of the following, as deemed appropriate: Make technical adjustments, clarify existing provisions, repeal unnecessary wording, repeal provisions unsupported by rule-making authority, or provide greater flexibility or discretion to persons or entities subject to the rules.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments 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 publication 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.

February 20, 2001
Larry Davis
Executive Director



WSR 01-05-119
EXPEDITED REPEAL
GAMBLING COMMISSION
[Filed February 21, 2001, 11:11 a.m.]

The Following Sections are Proposed for Expedited Repeal: WAC 230-02-138 Positive cash flow from bingo operation defined.

Rules Proposed for Expedited Repeal Meet the Following Criteria: Rule is no longer necessary because of changed circumstances.

Any person who objects to the repeal of the rule must file a written objection to the repeal within thirty days after publication of this preproposal statement of inquiry.

Address Your Objection to: Susan Arland, Rules Coordinator, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504, 1-800-345-2529 ext. 374.

Reason the Expedited Repeal of the Rule is Appropriate: The term defined in WAC 230-02-138 Positive cash flow from bingo operation, was referenced in WAC 230-20-059. An amended version of WAC 230-20-059 was adopted at the February 9, 2001, commission meeting. The amended version of WAC 230-20-059 deleted this term and replaced it with "adjusted cash flow." Adjusted cash flow is defined within WAC 230-20-059. Because the definition of "positive cash flow" in WAC 230-02-138 is no longer referred to in any rule, this rule is recommended for repeal.

March 20, 2001
Susan Arland
Rules Coordinator

EXPEDITED REPEAL



WSR 01-05-004
WITHDRAWAL OF PROPOSED RULES
COMMISSION ON
JUDICIAL CONDUCT

[Filed February 7, 2001, 3:05 p.m.]

The proposed modifications to Commission on Judicial Conduct Rules of Procedure (CJCRP) 24 filed with your office under WSR 00-17-047 and distributed in the State Register is withdrawn.

If you have questions, please contact (360) 753-4585.

David Akana

WSR 01-05-028
WITHDRAWAL OF PROPOSED RULES
BUILDING CODE COUNCIL

(By the Code Reviser's Office)

[Filed February 13, 2001, 9:59 a.m.]

WAC 51-40-0403, 51-40-0804, 51-40-1103, 51-40-1505, 51-40-1600, 51-40-1616, 51-40-1700, 51-40-1800, 51-40-1900, 51-40-2000, 51-40-2100, 51-40-2106, 51-40-2200, 51-40-2300 and 51-40-2929, proposed by the Building Code Council in WSR 00-16-128 appearing in issue 00-16 of the State Register, which was distributed on August 16, 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 01-05-029
WITHDRAWAL OF PROPOSED RULES
BUILDING CODE COUNCIL

(By the Code Reviser's Office)

[Filed February 13, 2001, 9:59 a.m.]

WAC 51-46-001, 51-46-002, 51-46-003, 51-46-007, 51-46-008, 51-46-0100, 51-46-0101, 51-46-0102, 51-46-0103, 51-46-0205, 51-46-0215, 51-46-0218, 51-46-0300, 51-46-0301, 51-46-0310, 51-46-0311, 51-46-0313, 51-46-0314, 51-46-0316, 51-46-0392, 51-46-0400, 51-46-0402, 51-46-0412, 51-46-0413, 51-46-0500, 51-46-0501, 51-46-0502, 51-46-0505, 51-46-0507, 51-46-0509, 51-46-0512, 51-46-0513, 51-46-0514, 51-46-0515, 51-46-0516, 51-46-0517, 51-46-0518, 51-46-0519, 51-46-0520, 51-46-0521, 51-46-0522, 51-46-0523, 51-46-0524, 51-46-0525, 51-46-0600, 51-46-0604, 51-46-0608, 51-46-0609, 51-46-0610, 51-46-0700, 51-46-0701, 51-46-0704, 51-46-0710, 51-46-0713, 51-46-0793, 51-46-0800, 51-46-0810, 51-46-0814, 51-46-0815, 51-46-0900, 51-46-0903, 51-46-1000, 51-46-1003, 51-46-1012, 51-46-1300, 51-46-1301, 51-46-1302, 51-46-1303, 51-46-1304, 51-46-1305, 51-46-1400, 51-46-1401, 51-46-1491, 51-46-97120, 51-46-97121, 51-46-97122, 51-46-97123, 51-46-97124, 51-46-97125, 51-46-97126, 51-46-97127, 51-46-97128, 51-46-97129, 51-47-001, 51-47-002, 51-47-003, 51-47-007, 51-47-008, 51-56-001, 51-56-002, 51-56-003, 51-56-007, 51-56-

008, 51-56-0100, 51-56-0200, 51-56-0300, 51-56-0400, 51-56-0500, 51-56-0600, 51-56-0700, 51-56-0800, 51-56-0900, 51-56-1300, 51-56-1400, 51-56-1500, 51-56-201300, 51-57-001, 51-57-002, 51-57-003, 51-57-007, 51-57-008, 51-57-790000 and 51-57-895000, proposed by the Building Code Council in WSR 00-16-129 appearing in issue 00-16 of the State Register, which was distributed on August 16, 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 01-05-030
WITHDRAWAL OF PROPOSED RULES
BUILDING CODE COUNCIL

(By the Code Reviser's Office)

[Filed February 13, 2001, 10:00 a.m.]

WAC 51-42-1101, proposed by the Building Code Council in WSR 00-16-130 appearing in issue 00-16 of the State Register, which was distributed on August 16, 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 01-05-031
WITHDRAWAL OF PROPOSED RULES
BUILDING CODE COUNCIL

(By the Code Reviser's Office)

[Filed February 13, 2001, 10:00 a.m.]

WAC 51-44-6100, 51-44-6300, 51-44-8000, 51-44-8102 and 51-45-10100, proposed by the Building Code Council in WSR 00-16-132 appearing in issue 00-16 of the State Register, which was distributed on August 16, 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 01-05-033
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed February 13, 2001, 3:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-11-088 and 00-22-043.

Title of Rule: This will be new chapter 196-33 WAC, Rules of professional practice. The chapter contains five sec-

PROPOSED

tions that provide information to licensed individuals regarding professional conduct, practice, direct supervision, stamping and seals, as provided for in chapter 18.210 RCW.

Purpose: The purpose of this new chapter is to implement those parts of RCW 18.210.005, 18.210.020, 18.210.130, and 18.210.150 requiring the establishment of standards of practice, outlining professional conduct, defining direct supervision and establishing the professional seal/stamp and its proper usage for persons who are licensed under chapter 18.210 RCW to practice, or offer to practice the design of on-site wastewater treatment systems in the state, and licensed professional engineers under chapter 18.43 RCW practicing on-site design.

Statutory Authority for Adoption: RCW 18.210.060 and 18.43.035.

Statute Being Implemented: Chapter 18.210 RCW.

Summary: 2SSB 5821 established the on-site wastewater treatment system designer licensing/inspector certification program in July 1999. That legislation was codified as chapter 18.210 RCW. This law requires the statewide regulation of persons practicing on-site wastewater treatment system design services through the establishment of a licensing program and standards of practice. These standards shall apply to the affected practitioners, whether licensed professional designers under chapter 18.210 RCW, or licensed professional engineers under chapter 18.43 RCW.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Joe Vincent Jr., 405 Black Lake Boulevard, Olympia, WA, (360) 664-1567; **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, On-Site Wastewater Treatment System Designer Licensing/Inspector Certification Advisory Committee, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This new WAC chapter and set of rules establishes the standard of professional conduct, defines direct supervision, and seal and stamp design and usage.

The purpose of these rules is to notify all persons who practice on-site wastewater treatment system design services and local health department employees who inspect designs, of the expected professional conduct of designers, the requirements of direct supervision, and the appropriate use of the professional seal/stamp and its design.

The effect is to implement the requirements of chapter 18.210 RCW, establishing a professional standard for this industry.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The legislature, through 2SSB 5821, mandated the examination and licensing of persons practicing on-site wastewater treatment system design services and the examination and certification of local health department employees who inspect designs. The bill does not require a business to pay for the examination, license, or certificate or the time needed to complete the examination;

those costs are typically borne by the license or certificate applicant. In addition, research conducted by the Engineer Registration Board and the On-Site Advisory Committee found that all businesses doing on-site designer work fall into the states' definition of "small business." Consequently, these small businesses cannot be placed at a disadvantage by larger businesses doing the same work.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Neither the Department of Licensing, or the board of registration are one of the named agencies in this statute.

Hearing Location: La Quinta Inn, 1425 East 27th Street, Tacoma, WA 98421, on April 12, 2001, at 7:00 p.m.; and at The Double Tree Hotel, 322 North Spokane Falls Court, Spokane, WA 99201, on April 19, 2001, at 7:00 p.m.

Assistance for Persons with Disabilities: Contact Kim Chipman by March 16, 2001, TDD (360) 586-2788, or (360) 664-1564.

Submit Written Comments to: Joe Vincent Jr., Manager, On-Site Program, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9649, Olympia, WA 98507-9649, fax (360) 664-2551, by May 1, 2001.

Date of Intended Adoption: May 17, 2001.

February 7, 2001

George A. Twiss

Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-06 issue of the Register.

WSR 01-05-034

PROPOSED RULES

ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY COMMISSION

[Filed February 13, 2001, 4:28 p.m.]

Original Notice.

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

Title of Rule: Performance improvement goals.

Purpose: As provided by RCW 28A.655.030 (1)(a), the Academic Achievement and Accountability Commission is authorized to adopt and revise performance improvement goals, including revisions to goals provided in RCW 28A.655.050. The purpose is to provide school districts with minimum performance improvement goals to encourage improved student learning as measured by increasing percentages of students meeting the reading and mathematics standards on the Washington assessment of student learning.

Statutory Authority for Adoption: RCW 28A.655.030 (1)(a).

Statute Being Implemented: RCW 28A.655.030 (1)(a).

Summary: The rule is intended to provide school districts with specific goals for how much student learning should improve in reading and mathematics as measured on the Washington assessment of student learning at grades 4, 7 and 10.

Reasons Supporting Proposal: It is believed that specific state expectations will help focus school and school district efforts to help continuously increasing percentages of students achieve the essential academic learning requirements for these critical subjects. Performance improvement goals have never been set for tenth grade reading or mathematics or seventh grade reading. Existing goals for fourth grade reading expire this year. Currently planned goals for mathematics at the fourth and seventh grades (in RCW 28A.655.050) may not be sufficiently rigorous.

Name of Agency Personnel Responsible for Drafting: Christopher M. Thompson, Old Capitol Building, 7th and Washington Street, (360) 586-9429; **Implementation:** Cheryl Mayo, Office of Superintendent of Public Instruction, (360) 753-0793.

Name of Proponent: Academic Achievement and Accountability Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: RCW 28A.655.030 (1)(a) authorizes the Academic Achievement and Accountability Commission to adopt and revise performance improvement goals, including revisions to goals provided in RCW 28A.655.050. The rule requires school districts to set goals for improving student learning on reading and mathematics as measured by the fourth, seventh and tenth grade Washington assessment of student learning. The minimum improvement expected is a reduction in the percentage of students not meeting the standard on each of the six assessments by 25% over the three years ending in the 2004 assessments, using the 2001 assessments as the baseline. The purpose of the rule is to assist and encourage school and school district staff to help increase the proportions of students meeting the learning expectations established by the state in RCW 28A.150.210 and 28A.655.060. It is anticipated that adoption of specific student learning improvement targets will focus and strategically concentrate efforts of staff sufficiently to increase significantly the percentage of students who meet state learning expectations.

Proposal does not change existing rules. No, the proposal does not change existing rules (in the Washington Administrative Code) but the proposal does change the provisions of RCW 28A.655.050 in accordance with RCW 28A.655.030 (1)(a), which authorizes the commission to revise RCW 28A.655.050 by rule. Current provisions of RCW 28A.655.050 contain a requirement for goals in mathematics for fourth and seventh grades. The proposal would require 2001 assessment results be used as the baseline for the goals, rather than permitting school districts to choose one from among up to three or four years' results (from 1998 to 2001).

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not apply to any small businesses nor to any other nongovernmental entity.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. RCW 34.05.328 does not apply to this rule adoption because the rule relates only to internal governmental operations that are not subject to violation by a non-government party.

Hearing Location: Tacoma School District Central Office Auditorium, 601 South 8th Avenue, Tacoma, WA, on April 2, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Debra Crawford by March 14, 2001, TDD (360) 664-3631, or (360) 586-9284.

Submit Written Comments to: Christopher M. Thompson, Executive Director, Academic Achievement and Accountability Commission, P.O. Box 47220, Olympia, WA 98504-7220, fax (360) 586-9429, by March 16, 2001.

Date of Intended Adoption: April 2, 2001.

February 12, 2001

Christopher M. Thompson
Executive Director

Title 3 WAC

ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY COMMISSION

Chapter 3-20 WAC

PERFORMANCE IMPROVEMENT GOALS

NEW SECTION

WAC 3-20-100 Reading and mathematics. (1) Each school district board of directors shall:

(a) By December 15, 2001, establish three-year district-wide goals to increase the percentage of students who meet or exceed the standard on the Washington assessment of student learning for elementary school reading, elementary school mathematics, middle or junior high school reading, middle or junior high school mathematics, high school reading and high school mathematics. The baseline for all the performance improvement goals required under this section shall be the results obtained on the Washington assessment of student learning administered in the spring of 2001. The three-year percentage increase goals shall not be less than the district's total percentage of students who did not meet the baseline standard for the relevant subject and grade level multiplied by twenty-five percent; and

(b) Direct each school in the district that administers the Washington assessment of student learning for grade four, seven, or ten to establish three-year goals relating to the percentage of students meeting the standard for its fourth, seventh or tenth grade students in reading and mathematics, subject to approval by the board. The aggregate of the school-level goals for any given subject and grade must meet or exceed the districtwide goals established by the board for that given subject and grade. Each school level goal shall not be less than the school's total percentage of students who did not meet the baseline standard for the relevant subject and grade level multiplied by twenty-five percent, unless the office of the superintendent of public instruction grants a waiver.

(2) Schools and school districts that meet or exceed the level of performance stipulated under the three-year goal on the assessment administered in the spring of 2002 or 2003 may be considered to have exceeded the goal and may be rec-

ognized for having exceeded the goal early, but ultimately shall not be deemed to have met the three-year goal unless the school or school district also meets the goal on the assessment administered in the spring of 2004.

(3) Schools and school districts in which ten or fewer students are eligible to be assessed in a grade level on the 2001 Washington assessment of student learning are not required to establish numerical improvement goals. Schools and school districts in which ten or fewer students are eligible to be assessed in a grade level on the assessment in 2002 or in a subsequent year are not required to establish performance relative to the goals.

(4) For state level accountability purposes:

(a) A school district shall be deemed to have met the performance improvement goals established pursuant to this chapter if the district achieves the minimum improvement level required under subsection (1)(a) of this section, even if the district does not achieve the performance improvement goals adopted by its board of directors; and

(b) A school shall be deemed to have met the performance improvement goals established pursuant to this chapter if the school achieves the minimum improvement level required under subsection (1)(b) of this section, even if the school does not achieve the performance improvement goals adopted by its board of directors.

WSR 01-05-070

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed February 15, 2001, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-01-110.

Title of Rule: Modification of rule language governing bottom fish trawl seasons in the southern Strait of Georgia.

Purpose: Clarify the language intent regarding why and when the seasons will be closed.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

Summary: Housekeeping change to clarify language intent - no substantive change to current rule.

Reasons Supporting Proposal: Language rationale for season closure is vague and likely unenforceable.

Name of Agency Personnel Responsible for Drafting: Morris Barker, 600 Capitol Way North, Olympia, WA 98501-1091, (360) 902-2826; Implementation: Lew Atkins, 600 Capitol Way North, Olympia, WA 98501-1091, (360) 902-2325; and Enforcement: Bruce Bjork, 600 Capitol Way North, Olympia, WA 98501-1091, (360) 902-2373.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Rule will be a housekeeping change to clarify exist-

ing rule intent, provide rationale for the seasonal closure and provide for regulatory enforcement.

Proposal Changes the Following Existing Rules: [See Small Business Economic Impact Statement below.]

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: None required.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: No costs will occur.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

a. Cost per employee;

b. Cost per hour of labor; or

c. Cost per one hundred dollars of sales. There are no costs for compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: There are no costs to the industry associated with this rule.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department will hold a workshop with the affected industry and the Fish and Wildlife Commission will hold a public hearing on the rule proposal.

8. A List of Industries That Will Be Required to Comply with the Rule: Puget Sound food fish trawlers.

A copy of the statement may be obtained by writing to Evan Jacoby, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2942.

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

Hearing Location: Ramada Inn, 8909 Airport Road, Spokane, WA, on April 6 and 7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 14, 2001, TDD (360) 902-2207, or (360) 902-2226.

Submit Written Comments to: Evan Jacoby, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2944, by April 4, 2001.

Date of Intended Adoption: April 6, 2001.

February 14, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-266, filed 12/29/00, effective 1/29/01)

WAC 220-48-015 Beam trawl and bottom trawl—

Seasons. (1) It is lawful to fish for and possess bottomfish taken with bottom trawl and beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 22A, 22B, 23A, 23B, 23C, 25A, and 25B the entire year with the following exceptions:

(a) Those waters of Area 20A east of a line projected from Point Whitehorn to Sandy Point are closed the entire year.

(b) Those waters of Area 20A within an area bounded by lines from Lilly Point to Birch Point and from the southwest corner of Point Roberts to Point Whitehorn to where these two lines are intersected by a line south from Kwomais Point in British Columbia and a line from Lilly Point to the north Alden Bank buoy are closed April 15 through May 31.

(c) Those waters of Area 20A within an area bounded by lines from Lilly Point to Birch Point and Lilly Point to the north Alden Bank buoy to where those lines are intersected by a line projected approximately 230 degrees south from Birch Point to Alden Point on Patos Island are closed June 1 through June 30.

(d) Areas 20A, 20B, 21A, 22A and 22B are closed to all trawl fishing in waters less than 30 feet deep.

(e) Areas 20A, 20B, 21A, 22A and 22B are closed in waters deeper than 40 fathoms from ~~((such time as))~~ 12:01 a.m. September 15 through December 31 except if the Pacific cod quota for these waters has not been ((obtained)) taken by September 15, these waters may be opened by emergency rule for the taking of the Pacific cod quota.

(f) Area 23C is closed to otter trawl fishing the entire year in waters shallower than 50 fathoms and is closed to beam trawl fishing in waters less than 60 feet deep.

(g) Area 23C is closed to otter trawl Wednesday, Saturday and Sunday, January 1 through August 31, and closed to all otter trawl September 1 through December 31.

(2) It is lawful to fish for and possess bottomfish taken with beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 25A and 25B the entire year with the following exceptions:

(a) All of Area 25A is closed February 1 through April 15 of each year.

(b) Those waters of Area 25A lying southerly and westerly of a line projected from Kiapot Point to Gibson Spit (Sequim Bay) are closed the entire year.

(c) Areas 23A, 25A and 25B are closed to beam trawl fishing in waters less than 60 feet deep.

(3) It is unlawful to fish for or possess bottomfish taken with otter trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 25A and 25B the entire year.

(4) It is unlawful to take, fish for or possess bottomfish taken with bottom trawl or beam trawl gear in Marine Fish-Shellfish Management and Catch Reporting Areas 21B, 23D, 24A, 24B, 24C, 24D, 25C, 25D, 25E, 26A, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, 28D, and 29 the entire year.

(5) It is unlawful to take more than 500 pounds of rockfish with beam trawl and bottom trawl gear during any vessel

trip in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas.

**WSR 01-05-072
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS**

[Filed February 15, 2001, 1:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-16-028.

Title of Rule: Member business loans.

Purpose: 1. Adopt a new rule on member business loans (MBL) made by Washington state-chartered credit unions.

2. Review the proposed rule under the criteria described in Executive Order 97-02:

A. Need. Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, duplicative, or ambiguous to a degree that warrants repeal or revision? Have laws or other circumstances changed so that the rule should be amended or repealed? Is the rule necessary to protect or safeguard the health, welfare, or safety of Washington's citizens?

B. Effectiveness and Efficiency. Is the rule providing the results that it was originally designed to achieve in a reasonable manner? Are there regulatory alternatives or new technologies that could more effectively or efficiently achieve the same objectives?

C. Clarity. Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?

D. Intent and Statutory Authority. Is the rule consistent with the legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop a more specific legislative authorization in order to protect the health, safety, and welfare of Washington's citizens?

E. Coordination. Could additional consultation and coordination with other governmental jurisdictions and state agencies with similar regulatory authority eliminate or reduce duplication and inconsistency?

F. Cost. Have qualitative and quantitative benefits of the rule been considered in relation to its cost?

G. Fairness. Does the rule result in equitable treatment of those required to comply with it? Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection?

The agency is interested in your comments on the proposed rule in light of these criteria.

Statutory Authority for Adoption: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

Statute Being Implemented: Chapter 31.12 RCW.

Summary: The proposed MBL rule:

- Defines "member business loan" and other relevant terms.
- Specifies what MBL are prohibited.

PROPOSED

- Specifies requirements for development and construction MBL.
- Specifies requirements for implementing a MBL program.
- Requires that MBL be collateralized, with certain exceptions.
- Limits MBL to one borrower or associated borrowers.
- Allows for regulatory waiver of certain restrictions, upon application by a credit union.
- Provides for classification of and reserving for MBL.
- Limits aggregate MBL, with certain exceptions.
- Requires certain record keeping in regard to MBL.

Reasons Supporting Proposal: To regulate member business lending by credit unions to protect their safety and soundness.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Parker Cann, 210 11th Street S.W., Room 300, Olympia, WA 98504, (360) 902-8778.

Name of Proponent: Department of Financial Institutions, Division of Credit Unions, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: All Washington state-chartered credit unions are federally insured by the National Credit Union Share Insurance Fund (NCUSIF), administered by the National Credit Union Administration (NCUA). RCW 31.12.408. Among other requirements, the NCUA requires all insured credit unions to comply with its MBL rule. 12 C.F.R. Section 741.203; 12 C.F.R. Part 723 (MBL rules).

The NCUA's MBL rule preempts the application of any less restrictive state laws to federally insured, state credit unions, including DFI's former MBL rule, chapter 208-464 WAC. Consequently, the DFI repealed chapter 208-464 WAC. WSR 99-03-009. To a large degree, the prior Washington MBL rule mirrored the NCUA's MBL rule.

However, a state's MBL rule may, upon a determination by the NCUA board, supersede the NCUA's MBL rule. Although in the past the NCUA would not reach such a determination unless the state MBL rules were virtually identical to the NCUA's, the NCUA has relaxed its standards for approval. 12 C.F.R. Section 741.203(a).

The DFI submitted the proposed MBL rule to the NCUA board for approval and the rule was approved by the NCUA board at its January 18, 2001, meeting. The proposed MBL rule is more flexible and less restrictive than the NCUA's MBL rule. A more flexible rule will allow credit unions to better serve the MBL needs of their members.

For a short summary or explanation of the rule, see Summary and Reasons Supporting Proposal above. For a brief explanation of the purpose of the rule and reasons supporting the proposal, see Summary and Reasons Supporting Proposal above.

Proposal does not change existing rules.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Subject: Rule proposed by the Division of Credit Unions ("division") of the Washington State Department of Financial Institutions (DFI) to add a new chapter 208-460 WAC. Chapter 208-460 WAC is entitled "Member business loans."

By: Parker Cann, Director of Credit Unions.

Date: February 15, 2001.

Introduction: The division has prepared this SBEIS in compliance with chapter 19.85 RCW, the Regulatory Fairness Act (RFA). The Preproposal Statement of Inquiry (form CR-101) in connection with the proposed rule was filed at WSR 00-16-028.

Background For Proposed Rule: All Washington state-chartered credit unions are federally insured by the National Credit Union Share Insurance Fund (NCUSIF), administered by the National Credit Union Administration (NCUA). RCW 31.12.408. Among other requirements, the NCUA requires all insured credit unions to comply with its MBL rule. 12 C.F.R. Section 741.203; 12 C.F.R. Part 723 (MBL rules).

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However, a state's MBL rule may, upon a determination by the NCUA board, supersede the NCUA's MBL rule. Although in the past the NCUA would not reach such a determination unless the state MBL rules were virtually identical to the NCUA's, the NCUA has relaxed its standards for approval. 12 C.F.R. Section 741.203(a).

The DFI submitted the proposed MBL rule to the NCUA board for approval and the rule was approved by the NCUA board at its January 18, 2001, meeting. The proposed MBL rule is more flexible and less restrictive than the NCUA's MBL rule. A more flexible rule will allow credit unions to better serve the MBL needs of their members.

Description of Proposed Rule: The proposed MBL rule:

- Defines "member business loan" and other relevant terms.
- Specifies what MBL are prohibited.
- Specifies requirements for development and construction MBL.
- Specifies requirements for implementing a MBL program.
- Requires that MBL be collateralized, with certain exceptions.
- Limits MBL to one borrower or associated borrowers.
- Allows for regulatory waiver of certain restrictions, upon application by a credit union.
- Provides for classification of and reserving for MBL.
- Limits aggregate MBL, with certain exceptions.
- Requires certain records in regard to MBL.

Required Elements of SBEIS: The elements of the SBEIS required by the RFA are set forth below.

ELEMENT 1. A brief description of the reporting, record-keeping, and other compliance requirements of the proposed rule and the kinds of professional services that a small business is likely to need in order to comply with the requirements.

RESPONSE: See "Description of Proposed Rules" above for a brief description of the requirements of the proposed rule. As noted above, the rule is overall more flexible and less restrictive than the NCUA's MBL rule. Consequently, the rule does not add new compliance requirements that need to be addressed.

ELEMENT 2. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, labor and increased administrative costs.

RESPONSE: As noted above, the rule is overall more flexible and less restrictive than the NCUA's MBL rule. Consequently, the rule does not add new compliance requirements that need to be addressed.

Moreover, it is difficult to assess the costs of compliance for several reasons:

- Many credit unions may not wish to make MBL. They would therefore not incur costs for compliance with the proposed rule.
- For those credit unions that currently have a MBL program, the rule does not add new compliance requirements. For those credit unions that wish to implement a MBL program, the cost of compliance will vary extensively depending on the exact nature and extent of the MBL program.

Because of this uncertainty, we have assumed that the cost of compliance would be more than minor.

ELEMENT 3. Whether compliance with the proposed rule will cause business to lose sales or revenue.

RESPONSE: Relative to the existing NCUA rule on MBL, the proposed rule will be more flexible and less restrictive, enabling credit unions to better serve their members' MBL needs. It is unlikely that credit unions would lose sales or revenue because of the proposed rule, as compared to the NCUA's existing MBL rule that they are subject to.

ELEMENT 4. A comparison of the compliance costs for the small business segment and large business segment of the affected industry(ies), and whether the impact on the small business segment is disproportionate.

RESPONSE: Because the cost of compliance, as uncertain as it may be, would probably be the same in regard to a given MBL program, whether the credit union is large or small, we have assumed that the cost of compliance for the small business segment of credit unions would be higher per unit, whether the unit is an employee, hour of labor to comply, or one hundred dollars of sales. Consequently, the cost to small credit unions may be considered disproportionate.

ELEMENT 5. Steps taken by the agency under RCW 19.85.030(3) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.

RESPONSE: We have reviewed the six steps under RCW 19.85.030 (3)(a) through (f). Our analysis is as follows:

(a) **Reducing, modifying, or eliminating substantive regulatory requirements:** We believe that the proposed rule is necessary to ensure the safety and soundness of credit unions, regardless of size, and that the compliance requirements in this area should not be reduced for small credit unions.

(b) **Simplifying, reducing, or eliminating record-keeping and reporting requirements:** We believe that the proposed rule is necessary to ensure the safety and soundness of credit unions, regardless of size, and that the compliance requirements in this area should not be diminished for small credit unions. However, one inherent advantage for small credit unions is that their MBL programs tend to be simpler and more narrow, allowing them to avoid some of the complexities of the rule.

(c) **Reducing the frequency of inspections:** This step is not applicable, because the proposed rule does not provide for inspections.

(d) **Delaying compliance timetables:** Considering that the proposed rule actually relaxes existing restrictions, we do not feel it is appropriate to delay compliance.

(e) **Reducing or modifying fine schedules for noncompliance:** This step is not applicable, because the division does not have fining authority.

(f) **Any other mitigation techniques:** We are not aware of other mitigation techniques. However, we have encouraged comments from small credit unions on how to make the proposed rule less onerous for them and we will consider comments received. To date we have not received any such comments.

Consequently, as discussed above, we do not believe that it is legal or feasible to reduce the costs of the proposed rule on small businesses, beyond what the rule already provides.

ELEMENT 6. A description of how the agency will involve small business in the development of the proposed rule.

RESPONSE: All credit unions, including smaller credit unions, will be provided with a copy of the proposed rule and an opportunity to provide comment on the proposal. Credit unions are encouraged to contact the division to comment on the rule. Small credit unions in particular are encouraged to provide comments on how the rule could be made less onerous for them.

ELEMENT 7. A list of the industry (ies) affected by the proposed rule.

RESPONSE: The industry affected by the proposed rule is state credit unions, Standard Industrial Classification 6062.

A copy of the statement may be obtained by writing to Parker Cann, Division of Credit Unions, P.O. Box 41200, Olympia, WA 98504-1200, phone (360) 902-8718, fax (360) 704-6978.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Financial Institutions is not a listed agency in section 201.

Hearing Location: Department of Financial Institutions, 210 11th Street S.W., Room 300, Olympia, WA 98504, on March 27, 2001, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Tina Phillippsen by March 9, 2001, TDD (360) 664-8126, or (360) 902-8718.

Submit Written Comments to: Parker Cann, Division of Credit Unions, P.O. Box 41200, Olympia, WA 98504-1200, fax (360) 704-6978, by March 27, 2001.

Date of Intended Adoption: May 1, 2001.

February 15, 2001

John L. Bley

Director

Chapter 208-460 WAC

MEMBER BUSINESS LOANS

NEW SECTION

WAC 208-460-010 What is a member business loan?

(1) **Definition of MBL.** "Member business loan" or "MBL" includes any loan, line of credit, letter of credit, or any unfunded commitment to make a loan, where the borrower intends to use the proceeds for any of the following purposes:

- (a) Commercial;
- (b) Corporate;
- (c) Investment property;
- (d) Business venture; or
- (e) Agricultural.

(2) **Exemptions.** The following are not member business loans:

(a) A business purpose loan fully secured by a lien on a one to four family dwelling that is the member's primary residence;

(b) A business purpose loan fully secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions;

(c) One or more business purpose loans to a member or any associated member which in the aggregate do not exceed the amount of 49,999 dollars. The entire amount of such a loan that exceeds this figure, or that causes the aggregate to exceed this figure, is a MBL;

(d) A business purpose loan where a federal or state agency (or any political subdivision of a state) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or

(e) A loan granted by a corporate credit union to another credit union.

(3) **Other definitions.** Certain other terms used in this chapter are defined in WAC 208-460-170.

NEW SECTION

WAC 208-460-020 What member business loans are prohibited? (1) Who is ineligible to receive a member business loan? You may not grant a member business loan to the following:

(a) Your chief executive officer (typically this individual holds the title of president or treasurer/manager);

(b) Any assistant chief executive officers (e.g., assistant president, vice-president, or assistant treasurer/manager);

(c) Your chief financial officer (comptroller); or

(d) Any associated member or immediate family member of anyone listed in (a) through (c) of this subsection.

(2) **Equity agreements/joint ventures.** You may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(3) **Loans to directors.** A credit union may not grant a member business loan to a director unless the board of directors approves granting the loan and the director is recused from the decision-making process.

NEW SECTION

WAC 208-460-030 What are the requirements for MBL development and construction lending? Unless the director grants a waiver, a credit union that makes MBL development or construction loans is subject to the following requirements:

(1) The aggregate of all such loans may not exceed fifteen percent of net worth. To determine the aggregate, you may exclude any portion of a loan that is:

(a) Secured by shares or deposits in the credit union making the extension of credit or in other credit unions, and by deposits in other financial institutions; or

(b) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state);

(2) The borrower on such loans must have a minimum of:

(a) Thirty percent equity interest in the project being financed if the loan is for land development; and

(b) Twenty-five percent equity interest in the project being financed if the loan is for construction or for a combination of development and construction;

(3) The funds for such loans may be released only after on-site inspections, documented in writing, by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation; and

(4) The credit union may not make such loans unless it utilizes the services of an individual with at least five years direct experience in development and construction lending.

NEW SECTION

WAC 208-460-040 How do you implement a member business loan program? The board of directors must adopt specific member business loan policies and review them at least annually. The credit union must utilize the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in, except as required by WAC 208-460-030(4).

Credit unions do not have to hire staff to meet the requirements of this section; however, credit unions must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization, an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

NEW SECTION

WAC 208-460-050 What must your member business loan policy address? At a minimum, your member business loan policy must address the following:

- (1) The types of MBL you will make;
- (2) Your trade area;
- (3) The maximum amount of your assets, in relation to net worth, that you will invest in MBL;
- (4) The maximum amount of your assets, in relation to net worth, that you will invest in a given type of MBL;
- (5) The maximum amount of your assets, in relation to net worth, that you will loan to a member or associated members, subject to WAC 208-460-070;
- (6) The qualifications and experience of personnel (minimum of two years) involved in making and administering the loans;
- (7) A requirement for analysis and documentation of the ability of the borrower to repay the loan;
- (8) Receipt and periodic updating of financial statements and other documentation, including tax returns;
- (9) Documentation sufficient to support each request to extend credit, or increase an existing loan or line of credit, except where the board of directors finds that the required documentation is not generally available for a particular type of loan and states the reasons for those findings in the credit union's written policy. At a minimum, the documentation must include the following:
 - (a) Balance sheet;
 - (b) Cash flow analysis;
 - (c) Income statement;
 - (d) Tax data;
 - (e) Analysis of leveraging; and
 - (f) Comparison with industry average or similar analysis;
- (10) Collateral requirements, including:
 - (a) Loan-to-value ratios;
 - (b) Determination of value;
 - (c) Determination of ownership;
 - (d) Steps to secure various types of collateral; and
 - (e) How often the credit union will reevaluate the value and marketability of collateral;
- (11) The interest rates and maturities of the loans;
- (12) General MBL procedures which include:
 - (a) Loan monitoring;
 - (b) Servicing and follow-up; and
 - (c) Collection;
- (13) Identification of those individuals prohibited from receiving member business loans; and

(14) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.

The division recognizes that all of the provisions of the policy may not apply to every MBL.

NEW SECTION

WAC 208-460-060 What are the collateral and security requirements? Unless the director grants a waiver:

(1) All member business loans must be secured by collateral in accordance with this section, except the following:

(a) A credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and

(b) A loan made by a credit union where the loan and the credit union meet each of the following criteria:

(i) The amount of the loan does not exceed one hundred thousand dollars;

(ii) The aggregate of unsecured MBL under (b) of this subsection does not exceed ten percent of the credit union's net worth;

(iii) The credit union has a net worth of at least seven percent; and

(iv) The credit union submits reports to the division of credit unions with its NCUA 5300 reports, providing figures and other detail as may be requested by the director to demonstrate compliance with (b) of this subsection.

(2) In the case of a member business loan secured by collateral on which the credit union will have a first lien, you may grant the loan with a LTV ratio in excess of eighty percent only where the value in excess of eighty percent is:

(a) Covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union; or

(b) Insured or guaranteed, or subject to advance commitment to purchase, by any federal or state agency (or any political subdivision of a state);

In no case may the LTV ratio exceed ninety-five percent;

(3) In the case of a member business loan secured by collateral on which the credit union will have a second or lesser priority lien, you may not grant the loan with a LTV ratio in excess of eighty percent; and

(4) In the case of member business loans secured by the same collateral:

(a) On which the credit union will have a first lien as well as other lesser priority liens, you may grant the loans with a LTV ratio in excess of eighty percent only if subsection (2)(a) or (b) of this section is satisfied. In no case may the LTV ratio exceed ninety-five percent; and

(b) On which the credit union will have lesser priority liens but no first lien, you may not grant the loans with a LTV ratio in excess of eighty percent.

NEW SECTION

WAC 208-460-070 How much may a member or associated members borrow? Unless the director grants a waiver for a higher amount, the aggregate amount of member

business loans to a member or associated members may not exceed the greater of:

- (1) Fifteen percent of the credit union's net worth; or
- (2) One hundred thousand dollars.

NEW SECTION

WAC 208-460-080 How do you calculate the aggregate fifteen percent limit? (1) Step 1. Calculate the numerator by adding together the amount of the member business loans to the member and associated members (if any). From this amount, subtract any portion:

(a) Secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions; or

(b) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state).

- (2) Step 2. Divide the numerator by net worth.

NEW SECTION

WAC 208-460-090 What waivers are available? You may seek a waiver for a type of member business loan in the following areas:

- (1) Development and construction loan requirements under WAC 208-460-030;
- (2) Loan-to-value ratios under WAC 208-460-060;
- (3) Maximum loan amount to a member or associated members under WAC 208-460-070; and
- (4) Appraisal requirements under Section 722.3 of NCUA rules.

NEW SECTION

WAC 208-460-100 How do you obtain a waiver? (1) To obtain a waiver under WAC 208-460-090, a credit union must submit its request to the director. The waiver request must contain the following:

- (a) A copy of your member business loan policy;
- (b) The higher limit sought (if applicable);
- (c) An explanation of the need to raise the limit (if applicable);
- (d) Documentation supporting your ability to manage this activity; and
- (e) An analysis of the credit union's prior experience making member business loans, including, as a minimum:
 - (i) The history of loan losses and loan delinquency;
 - (ii) Volume and cyclical or seasonal patterns;
 - (iii) Diversification;
 - (iv) Concentrations of credit to a member and associated members in excess of fifteen percent of net worth;
 - (v) Underwriting standards and practices;
 - (vi) Types of loans grouped by purpose and collateral; and
 - (vii) The qualifications of personnel responsible for underwriting and administering member business loans.
- (2) The director will:
 - (a) Review the information you provided in your request;
 - (b) Evaluate the level of risk to your credit union;

(c) Consider your credit union's historical CAMEL composite and component ratings;

(d) Notify you whenever your waiver request is deemed complete; and

(e) Notify you of the action taken within forty-five calendar days of receiving a complete request.

(3) In connection with a waiver request under WAC 208-460-090 (1) through (3):

(a) The director will provide a copy of the waiver request to Region VI of the NCUA and will consult and seek to work cooperatively with Region VI in making his or her decision on the request;

(b) The waiver is not effective until the director approves it;

(c) If you do not receive notification within forty-five calendar days after the date the complete request was received by the director, the waiver request is deemed approved by the director; and

(d) The director will promptly notify Region VI of the NCUA of his or her decision on the request.

(4) In connection with a waiver request under WAC 208-460-090(4):

(a) If the director approves the request, the director will promptly forward the request to Region VI of the NCUA for decision under NCUA rules at 12 C.F.R. 723.12;

(b) The waiver is not effective until the regional director of the NCUA approves it in accordance with NCUA rules at 12 C.F.R. 723.12; and

(c) The credit union may appeal the regional director's decision in accordance with NCUA rules at 12 C.F.R. 723.13.

NEW SECTION

WAC 208-460-110 How do I classify member business loans so as to reserve for potential losses? Nondelinquent member business loans may be classified based on factors such as the adequacy of analysis and supporting documentation. You must classify potential loss loans as either substandard, doubtful, or loss. The criteria for determining the classification of loans are:

(1) **Substandard.** A substandard loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. The loan must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. It is characterized by the distinct possibility that the credit union will sustain some loss if the deficiency is not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard;

(2) **Doubtful.** A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include:

Proposed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans; and

(3) **Loss.** A loan classified loss is considered uncollectible and of such little value that its continuance as a loan is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

NEW SECTION

WAC 208-460-120 How much must I reserve for potential losses? The following schedule sets the minimum amount you must reserve for classified member business loans:

Classification	Amount Required
Substandard	10% of outstanding balance unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.
Doubtful	50% of the outstanding balance.
Loss	100% of the outstanding balance.

NEW SECTION

WAC 208-460-130 What is the aggregate member business loan limit? The aggregate limit on the amount of a credit union's member business loans is the lesser of:

- (1) One and three quarters times the credit union's net worth; or
- (2) Twelve and one quarter percent of the credit union's total assets.

NEW SECTION

WAC 208-460-140 Are there any exceptions to the aggregate MBL limit? (1) Credit unions that meet any one of the following four criteria qualify for an exception from the aggregate member business loan limit in WAC 208-460-130:

- (a) Credit unions that have a low-income designation;
- (b) Credit unions that participate in the Community Development Financial Institutions program;
- (c) Credit unions that are chartered for the purpose of making member business loans, as supported by documentary evidence, such as the credit union's charter, bylaws, business plan, field of membership, board minutes and loan portfolio; and
- (d) Credit unions that have a recent history of primarily making member business loans, established by the fact that the outstanding balance of member business loans comprises:
 - (i) At least twenty-five percent of the outstanding balance of the credit union's loans; or
 - (ii) The largest portion of the outstanding balance of the credit union's loans.

Such facts must be evidenced in an NCUA call report or any equivalent documentation, such as financial statements, for a period within two years before the date of application. For example, a credit union qualifies for the exception under (d)(ii) of this subsection if, based on the outstanding balance of a credit union's loans, the credit union's loan portfolio is comprised of twenty-three percent member business loans, twenty-two percent first mortgage loans, twenty-two percent new automobile loans, twenty percent credit card loans, and thirteen percent total other real estate loans.

(2) Unless the director gives his or her prior consent, a credit union granted an exception from the aggregate MBL limit may not make MBL in excess of the greater of:

- (a) Twelve and one quarter percent of the credit union's total assets; or
- (b) Three times the credit union's net worth.

NEW SECTION

WAC 208-460-150 How do I obtain an exception? (1) The exception under WAC 208-460-140 (1)(a) and (b) is effective upon written notice to the director of such designation or participation.

(2) To obtain an exception under WAC 208-460-140 (1)(c) or (d), a credit union must submit its request to the director. An exception is not effective until it is approved by the director. The exception request must include documentation demonstrating that the credit union meets the criteria for one of the exceptions. The exception does not expire unless revoked for safety and soundness reasons by the director.

(3) The director will promptly notify Region VI of the NCUA of his or her decision on the request.

NEW SECTION

WAC 208-460-160 What are the recordkeeping requirements? You must separately identify member business loans in your records and in the aggregate on your financial reports.

NEW SECTION

WAC 208-460-170 Definitions. For purposes of this chapter, the following definitions apply:

- (1) The "amount" of a MBL includes:
 - (a) Any unfunded commitment to make the loan;
 - (b) The outstanding balance of the loan; and
 - (c) Any undisbursed proceeds of the loan.
- (2) A person is "associated" with another if they have a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor.
- (3) A "business purpose" loan means a loan where the borrower intends to use the proceeds for any of the purposes listed in WAC 208-460-010(1).
- (4) "Development or construction loan" is a financing arrangement for acquiring real property or rights to real property, including land or structures, with the intent to develop or improve it for:
 - (a) Residential housing for sale;
 - (b) Income property;

PROPOSED

- (c) Commercial use;
- (d) Industrial use; or
- (e) Similar uses.
- (3) "Immediate family member" is a spouse or other family member living in the same household.
- (4) "Loan-to-value ratio" or "LTV ratio" is derived by dividing:
 - (a) The amount of all member business loans by the credit union and loans by other lenders secured by an item of collateral, by
 - (b) The market value of the item of collateral.
- (5) "Member business loan" or "MBL" is defined in WAC 208-460-010.
- (6) "NCUA" means the National Credit Union Administration.
- (7) "Net worth" is retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. Net worth does not include the allowance for loan and lease losses.

WSR 01-05-077
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
 [Filed February 16, 2001, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-08-007A.

Title of Rule: WAC 415-108-467 (PERS) and 415-110-467 (SERS), Reinstatement or payment instead of reinstatement.

Purpose: The changes are being made to make these WACs consistent with WAC 415-112-477 (TRS).

Statutory Authority for Adoption: RCW 41.40.020, 41.50.050(5).

Statute Being Implemented: RCW 41.35.010(6), 41.40.010(8).

Summary: The changes are being made to make these WACs consistent with WAC 415-112-477 (TRS). The changes clarify how to report reinstatement or payments in lieu of reinstatement. In addition, DRS is adding a definition of "reinstatement" to these WACs.

Reasons Supporting Proposal: WAC 415-108-467 and 415-110-467 cover the same topic as the TRS version, but are not as clear.

Name of Agency Personnel Responsible for Drafting: Merry A. Kogut, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Jack Bryant, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7193.

Name of Proponent: Department of Retirement Systems, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 415-108-467 (PERS) and 415-110-467 (SERS), Reinstatement or payment instead of reinstatement, cover the same topic as the TRS version (WAC 415-112-477), but are not as clear. The changes are being made to make these three WACs consistent with one another.

Proposal Changes the Following Existing Rules: The changes clarify how to report reinstatement or payments in lieu of reinstatement. In addition, DRS is adding a definition of "reinstatement" to these WACs.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments have no effect on businesses.

RCW 34.05.328 does not apply to this rule adoption. The Department of Retirement Systems is not one of the named departments in RCW 34.05.328.

Hearing Location: Department of Retirement Systems, 6835 Capitol Boulevard, Boardroom, 3rd Floor, Tumwater, WA, on March 27, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact rules coordinator by seven days before hearing, if possible, phone (360) 664-7291, TTY (360) 586-5450, e-mail merryk@drs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Merryk@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m., March 27, 2001.

Date of Intended Adoption: No sooner than March 28, 2001.

February 16, 2001
Merry A. Kogut
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-09-059, filed 4/17/98, effective 5/18/98)

WAC 415-108-467 Reinstatement or payment ((in lieu)) instead of reinstatement. ~~((If an employer makes payments to an employee for periods where the employee was not employed and those payments are made upon reinstatement of the employee or in lieu of reinstatement, the payments are not earned for services rendered. However, RCW 41.40.010(8) specifically designates such payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working.))~~
(1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.40.010(8) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

PROPOSED

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-467 Reinstatement or payment ((in lieu)) instead of reinstatement. ((If an employer makes payments to an employee for periods where the employee was not employed and those payments are made upon reinstatement of the employee or in lieu of reinstatement, the payments are not earned for services rendered. However, RCW 41.35.010(6) specifically designates such payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working.))

(1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.35.010(6) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

WSR 01-05-086

PROPOSED RULES

WESTERN WASHINGTON UNIVERSITY

[Filed February 20, 2001, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-12-012.

Title of Rule: General conduct.

Purpose: Expand conduct to include persons other than students; place external affairs in new chapter 516-25 WAC.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Summary: The university police are named instead of the outdated campus security title; conduct on campus issues to include persons other than students; cashier's office reference deleted; external affairs given its own chapter.

Reasons Supporting Proposal: Update wording.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: G. Pierce, Vice-President

Business Affairs, OM 400, Western Washington University, Bellingham, WA 98225, (360) 650-3180.

Name of Proponent: Western Washington University, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Updates university's general conduct policy; deletes reference to cashier's office; gives external affairs a separate WAC chapter.

Proposal Changes the Following Existing Rules: See Summary, Reasons Supporting Proposal and Explanation of Rule above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No monetary implications are attached; no costs imposed on small business through adoption of these changes and amendments.

RCW 34.05.328 does not apply to this rule adoption. Rules relate to internal governmental operations.

Hearing Location: Western Washington University, Old Main 340, 516 High Street, Bellingham, WA 98225, on March 27, 2001, at 11 a.m.

Assistance for Persons with Disabilities: Contact Gloria McDonald by March 22, 2001, TDD (360) 650-3725.

Submit Written Comments to: Gloria McDonald, fax (360) 650-6197, by March 22, 2001.

Date of Intended Adoption: April 5, 2001.

February 16, 2001

Gloria A. McDonald

Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

WAC 516-24-001 Conduct of campus guests and visitors. (1) The rules and regulations prescribed in this Title 516 WAC shall be observed by guests and visitors while on the campus, or other university property.

(2) Guests and visitors on campus or other university property who willfully refuse to obey an order of a ((uniformed campus security)) **university police** officer or other law enforcement officer to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order will subject the person to arrest under the provisions of the Criminal Trespass Act, in addition to such other sanctions as may be applicable.

AMENDATORY SECTION (Amending Order 72-10, filed 11/17/72)

WAC 516-24-110 Vendor solicitation. Door-to-door on-campus solicitation by vendors is prohibited. All unsolicited sales contacts shall be restricted to the **purchasing** office ((of the division of purchases)). Unauthorized solicitation or selling in the residence halls should be immediately reported to a member of the residence hall staff.

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

WAC 516-24-130 Demonstrations. The value of active participation in political and social issues is recognized by Western Washington University as enhancing the education of the individual and contributing to the betterment of American society. The rights of free speech, petition and assembly are fundamental to the democratic process guaranteed under the Constitution of the United States and will be promoted and respected at all times.

The university further recognizes that it has an obligation to maintain on campus an atmosphere that allows the institution to perform the fundamental task of providing an opportunity for all members of the community to pursue knowledge through accepted academic processes.

To achieve these objectives it is essential that demonstrations be orderly and conducted in a manner that allows the ~~((college to function toward its established goals))~~ orderly function of the university. Any ~~((student or group of students))~~ person or group of persons shall not, by their conduct, disrupt, disturb or interfere with:

- (1) Classroom activities and other educational pursuits;
- (2) Recognized university activities including, but not limited to, ceremonies, meetings, office functions or residence hall activities;
- (3) Pedestrian and vehicular traffic;
- (4) Preservation and protection of university property and personal property of individuals.

Any person persisting in such conduct after being requested to cease by university authorities, shall be subject, as appropriate, to disciplinary proceedings or arrest and prosecution. ~~((Such disciplinary proceedings shall be by the appropriate campus justice committee, subject to final review, hearing, and decision by the president and the board of trustees.~~

~~Where necessary for the preservation of order and to enforce the law, the president of the university or his or her designee is authorized to call upon law enforcement officers for assistance.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 516-24-050	Community relations.
WAC 516-24-060	Alumni relations.
WAC 516-24-115	Business office—Cashier.

Chapter 516-25 WAC

EXTERNAL AFFAIRS

NEW SECTION

WAC 516-25-001 External affairs. The office of external affairs shall be the principal office responsible for maintenance of current files concerning alumni information.

Alumni mailing lists maintained by the university shall be confidential property of the university and shall not generally be provided to any other agency. Requests for lists for purposes of conducting legitimate educational research shall be subject to the review and approval of the office of external affairs and the office of the president.

WSR 01-05-088 PROPOSED RULES STATE BOARD OF EDUCATION

[Filed February 20, 2001, 12:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-06-075.

Title of Rule: WAC 180-33-023 State assistance in providing school plant facilities—Modernization state assistance in post 1992 facilities.

Purpose: Establishes criteria that must be met for schools facilities built after January 1, 1993, to be eligible for state assistance.

Statutory Authority for Adoption: RCW 28A.525.020.

Summary: Clarifies language to ensure provisions of section apply only to facilities that meet such provisions. Defines accounting codes for general and capital funds that must be charged to post 1992 buildings to qualify for state assistance for modernization.

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: Current language related to state assistance for post-1992 facilities does not adequately define the expenditures that would be allowed for these facilities for maintenance. This rule, also known as "The 2% Rule," requires that districts spend at least 2% of the replacement cost of the building for the last fifteen years of its thirty year life in order to receive full state assistance. Two accounting activities in the general fund would be allowed along with expenditures from two capital fund accounts. Although the first year that districts would need to begin tracking these expenditures is not until 2008, it is important that the ground rules be established early so that districts may begin setting budgets that will provide the required expenditures.

Proposal Changes the Following Existing Rules: 1. Provides clarifying language to ensure that the provisions of the section apply only to facilities that meet the provisions of the section.

2. Provides specific information that defines the accounting codes for general and capital funds that must be charged to post-1992 buildings in order to qualify for state assistance for modernization.

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: Board Room, North Thurston School District, 305 College Street N.E., Lacey, WA 98516, on March 28, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Patty Martin 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.

February 16, 2001

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 91-12-058, filed 6/5/91, effective 7/6/91)

WAC 180-33-023 State assistance in post 1992 facilities. State assistance for modernization of school facilities accepted by the school district board of directors after January 1, 1993, shall be limited according to the following conditions:

(1) A school facility shall be ineligible for state assistance if the total expenditures for maintenance of plant and equipment for that facility during the fifteen-year period immediately preceding the project application was below one-half of one percent of the total of the annually determined building replacement values during the same period;

(2) The allowable cost per square foot used to determine the amount of state assistance in any modernization project where the total expenditures for maintenance of plant and equipment for that facility during the fifteen-year period immediately preceding the project application was at least one-half but less than two percent of the total of the annually determined building replacement values during the same period shall be reduced as follows:

(a) The allowable cost per square foot shall be reduced by twenty-two and one-half percent where the above expenditure is at least one-half but less than one percent;

(b) The allowable cost per square foot shall be reduced by fifteen percent where the above expenditure is at least one but less than one and one-half percent;

(c) The allowable cost per square foot shall be reduced by seven and one-half percent where the above expenditure is at least one and one-half but less than two percent;

(3) No reduction in the allowable cost per square foot shall be applied to any modernization project where the total expenditures for maintenance of plant and equipment for that facility during the fifteen-year period immediately preceding the project application was two percent, or greater, of the total of the annually determined building replacement values during the same period;

(4) A district shall not be allowed to replace a school facility through new construction in lieu of modernization under WAC 180-33-042 where the total expenditures for maintenance of plant and equipment for that facility during the fifteen-year period immediately preceding the project

application was below two percent of the total of the annually determined building replacement values during the same period.

(5) For the purpose of this section "maintenance of plant and equipment" shall be general fund expenditures charged to maintenance and operations activities 61-supervision and 64-maintenance and capital projects fund expenditures charged to type code 22-remodeling and 42-capital improvements as defined in the Accounting Manual for Public School Districts.

WSR 01-05-089

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed February 20, 2001, 12:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-06-079.

Title of Rule: WAC 180-27-070 State assistance in providing school plant facilities—Basic state support—Architectural and engineering fees.

Statutory Authority for Adoption: RCW 28A.525.020.

Summary: Deletes requirement for prorating A/E fees in two steps based on size of project. Fees would be assigned to projects based on schedule for projects in size ranges.

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: Present system of calculating architectural and engineering (A/E) fees is a two-step procedure whereby a percentage from the schedule is used up to the schedule area nearest but below the actual project square footage. Difference between scheduled square footage and actual square footage is calculated using lower percentage for next step on schedule.

Proposed change would simplify this procedure by scheduling a range of square footages for which a percentage applies. Then the square footage for any project will fall into a range, and the appropriate percentage will be used for the entire square footage; a simple, one-step multiplication.

Proposal Changes the Following Existing Rules: Deletes requirement for prorating A/E fees in two steps based on size of project. Fees would be assigned to projects based on schedule for projects in size ranges.

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: Board Room, North Thurston School District, 305 College Street N.E., Lacey, WA 98516, on March 28, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Patty Martin 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.

February 16, 2001
Larry Davis
Executive Director

AMENDATORY SECTION (Amending WSR 98-19-143, filed 9/23/98, effective 10/24/98)

WAC 180-27-070 Architectural and engineering services. School districts shall select their architectural and engineering consultants in accordance with chapter 39.80 RCW. As required by RCW 39.80.050, the district shall negotiate a contract with the most qualified consultants at a price which the school district determines is fair and reasonable. In making its determination, the district shall take into account the estimated value of the services to be rendered based upon the scope and complexity of the project.

The allocation of state moneys for matching purposes for a school facility project shall be based on architectural and engineering services as defined by the latest edition of the *American Institute of Architects Handbook of Professional Practice* and calculated by the percentage(s) in relation to the square foot area of construction as calculated in WAC 180-27-040 and project type, as set forth below:

(1) New construction projects:

Architectural and Engineering Team Fee Matching Limitations

Square Feet of Construction	Percent of Construction Cost
(Under 3,700) 0 - 3,699	10.0
3,700 - 7,349	9.0
7,350 - 10,999	8.75
11,000 - 14,649	8.5
14,650 - 18,299	8.25
18,300 - 25,699	8.0
25,700 - 36,699	7.75
36,700 - 54,999	7.5
55,000 - 73,399	7.25
73,400 - 100,999	7.0
101,000 - 128,449	6.75
128,450 - 155,999	6.5
156,000 - 183,499	6.25
183,500 & above	6.0

((Note: Compensation for projects with square foot area of construction between the values shown shall be established for matching purposes by the process as indicated in the example below.

Example:

Assume: Area of construction = 75,000 sq. ft.
Area cost allowance = \$90/sq. ft.

73,400 sq. ft. x \$90/sq. ft. x 7.0% = \$462,420.00
1,600 sq. ft. x \$90/sq. ft. x 6.75% = 9,720.00
75,000 sq. ft. \$472,140.00

State share = \$472,140.00 x state matching percentage))

(2) Modernization projects:

For modernization projects, the limits of state participation shall be one and one-half times the amount calculated for new construction.

(3) Combination projects:

For those projects which include a combination of new construction and modernization, the limits of state participation shall be prorated as set forth in subsection (1) and (2) of this section.

WSR 01-05-090

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed February 20, 2001, 1:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-21-080.

Title of Rule: WAC 180-57-070 Mandatory high school transcript contents—Items.

Purpose: To update language in the current WAC.

Statutory Authority for Adoption: RCW 28A.04.155.

Summary: Amendment of WAC 180-57-070 Mandatory high school transcript—Items.

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: To amend language in WAC 180-57-070 to reflect changes in the high school transcript.

Proposal Changes the Following Existing Rules: Amends WAC 180-57-070.

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: Board Room, North Thurston School District, Administration Building, 305 College Street N.E., Lacey, WA 98516-5390, on March 28, 2001, at 8:30 a.m.

PROPOSED

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.

February 9, 2001

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 00-19-107, filed 9/20/00, effective 10/21/00)

WAC 180-57-070 Mandatory high school transcript contents—Items. The standardized high school transcript shall contain only the following information:

(1) The student's legal name (last name, first name, and middle name(s) or middle initial(s));

(2) The student's current address, address at graduation, or address at withdrawal from school (street, city, state, zip code);

(3) The name and address of parent(s) or guardian(s) (street, city, state, zip code) if such information is available;

(4) The student's birth date and sex;

(5) The student's identification number (if applicable);

(6) The school's name;

(7) The school's address (street, city, state, zip code, and telephone number);

(8) The dates of the student's entry, reentry, withdrawal, and graduation (if applicable) related to the school issuing the transcript;

(9) A list of previous high schools attended (school name, (~~address~~), city, state, and month and year of entrance and exit);

(10) The student's attendance record (total unexcused absences. "Unexcused absence" shall mean the same as defined under RCW 28A.225.020(2)) by year;

(11) The student's academic history for high school (grade level and date of course completion, course titles, including the high school department code and course number, marks/grades earned as defined in WAC 180-57-050, credits attempted as defined in WAC 180-57-040, and grade point average as defined in WAC 180-57-055).

(12) The following courses shall be designated on the transcript as dual credit (d/c) courses with the coding indicated. Courses completed and credits earned through running start shall be noted with an "RS" designation. Courses completed and credits earned through advanced placement shall be noted with an "AP" designation. Courses completed and credits earned through college in the high school shall be noted with a "CHS" designation. Courses completed and credits earned through an international baccalaureate program shall be noted with an "IB" designation. Courses completed which earn college credit through tech-prep and/or the corresponding credits or certification earned shall be noted with a (~~"TP"~~) "TP" designation;

(~~(13)~~) (13) The transcript shall include notation that the student has met the standard on the secondary Washington

assessment of student learning and/or earned the state certificate of mastery; and

(~~(13)~~) (14) The signature and/or seal of the authorized school official (name, title, and date).

WSR 01-05-091

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed February 20, 2001, 1:03 p.m.]

Title of Rule: WAC 180-82-130 Assignment of persons providing instruction of Braille to students.

Purpose: To amend WAC 180-82-130 regarding the assignment of teachers of Braille.

Statutory Authority for Adoption: RCW 28A.305.130 (1) and (2), 28A.410.010, 28A.150.220(4).

Summary: Amendment of WAC 180-82-130 Assignment of persons providing instruction of Braille to students.

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: The amendments to WAC 180-82-130 provide for the needed instruction to maintain certification to teach Braille to students.

Proposal Changes the Following Existing Rules: Amends WAC 180-82-130.

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: Bower Center, North Thurston School District, 316 N.E. College Street, Lacey, WA 98516, on March 28, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Laura Moore by March 15, 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 15, 2001.

Date of Intended Adoption: March 30, 2001.

February 14, 2001

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 99-04-008, filed 1/21/99, effective 2/21/99)

WAC 180-82-130 Assignment of persons providing instruction of Braille to students. (1) No certificated school district employee shall be assigned to provide instruction of Braille to students who has not demonstrated competency with the grade two standard literary Braille code by:

(a) Successful completion of the National Literary Braille Competency Test; or

(b) Successful completion of the Braille competency test developed at Portland State University; or

(c) Successful completion of any other test approved for use by the state board of education.

(2) No classified school district employee working under the supervision of a certificated school district employee, which certificated employee meets the requirement of subsection (1) of this section, may produce Braille material or provide instruction in the Braille code unless the employee has demonstrated competency with the grade two standard literary Braille code as provided under subsection (1) of this section.

(3)(a) Each school district is responsible for monitoring the appropriate assignment of personnel under subsections (1) and (2) of this section.

(b) Any person under subsections (1) and (2) of this section shall have one year from the date of request to successfully pass the testing requirement under subsection (1) of this section.

(c) The Washington Instructional Resource Center for the Visually Impaired shall forward to the state board of education the names of individuals who have passed the testing requirement under subsection (1) of this section and the date of passage. The center also shall forward to the state board the names of individuals who have not passed the testing requirement within one year and the name of the employing school district of the individual.

(4) The state board shall establish a test review committee which shall be responsible for developing criteria to evaluate a test under subsection (1)(c) of this section. No test shall be considered for approval by the state board under subsection (1)(c) of this section unless it has been evaluated by the test review committee and a recommendation for approval or disapproval has been submitted to the board. At a minimum, the membership of the committee shall include persons representing:

(a) National Federation of the Blind of Washington;

(b) Washington council of the blind;

(c) Association of education and rehabilitation of the blind and visually impaired of Washington;

(d) Washington instructional resource center for the visually impaired;

(e) Washington state school for the blind; and

(f) Office of the superintendent of public instruction.

~~((4))~~ (5) A person who has met the requirement of subsection (1) of this section shall maintain their facility with the grade two standard literary Braille code by:

(a) Completing ten hours every five years of continuing education; or

(b) Successful completion every five years of one of the tests under subsection (1) of this section.

~~((5) This section shall take effect September 1, 1997.)~~

(6)(a) For the purpose of subsection (5)(a) of this section, the continuing education option may be satisfied by:

(i) Completing the equivalent of ten clock hours through completion of college credits as provided under WAC 180-85-030 (1) and (2); or

(ii) Completing ten clock hours of continuing education as provided under WAC 180-85-030 (3) and (4); or

(iii) Completing the equivalent of ten clock hours through completion of continuing education units through a college or university. One continuing education unit shall equal not fewer than ten clock hours of attendance.

(b) For the purpose of subsection (5)(a) of this section, "continuing education" shall mean one or more of the following:

(i) Instructional methodology in Braille;

(ii) Improving Braille code skills; or

(iii) Maintaining or refreshing Braille code skills, not including technology or software. "Braille code skills" means literary, music, and the Nemeth code of mathematics and scientific notation.

(c) For the purpose of subsection (5)(a) of this section, an approved provider of continuing education may include:

(i) The National Braille Association;

(ii) The Library of Congress;

(iii) The Braille Authority of North America;

(iv) A regionally accredited institution of higher education under WAC 180-78A-010(6);

(v) An educational service district;

(vi) The American Foundation for the Blind;

(vii) The Association of Education and Rehabilitation of the Blind and Visually Impaired of Washington;

(viii) The American Foundation for the Blind annual American Braille literacy conference; or

(ix) Any other entity approved by the state board of education based upon a recommendation to approve from the test review committee established under subsection (4) of this section.

(d) For the purpose of subsection (1) of this section, a person who holds a Library of Congress transcriber's certificate is exempt only from the testing requirement under subsection (1) of this section. If an individual earns the Library of Congress transcriber's certificate, they shall be deemed to have met the continuing education option under subsection (5)(a) of this section.

(e) Individuals who seek through subsection (5)(a) of this section to remain eligible to work with visually impaired students are responsible for documenting completion of continuing education. Such individuals are strongly encouraged to provide a copy of their documentation to their employing school district. The documentation shall not be collected by the state board of education. However, the documentation could be audited for purposes of compliance with basic education appropriation requirements under WAC 180-16-195.

WSR 01-05-093

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed February 20, 2001, 1:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-24-119.

Title of Rule: WAC 180-79A-130 Fee for certification.

Purpose: The proposed amendment establishes fees for the professional certificate which are equitable to fees for other certificates.

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. 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 98516-5390, on March 28, 2001, at 8:0 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.

Larry Davis
Executive Director

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

WAC 180-79A-130 Fee for certification. (1) In accordance with provisions of RCW 28A.410.060 and 28A.415.010, the fee for certificates which are valid for more than one year, issued by authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be as follows:

(a) The continuing (~~and professional~~) certificate~~((s))~~, seventy dollars;

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

(c) Any other certificate or credential or any renewal thereof, five dollars for each year of validity;

(d) Provided, That the fee for all vocational certificates shall be one dollar.

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

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

(a) Local school districts employing more than one hundred teachers and other professional staff and collecting certification fees may retain one dollar of each fee in order to hold a professional training institute. If such district does not hold an institute, all such moneys shall be placed to the credit of the educational service district.

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

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

WSR 01-05-096
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
[Filed February 20, 2001, 1:40 p.m.]

Original Notice.

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

Title of Rule: What happens if I do not cash a warrant or check?

Purpose: The rule clarifies an internal DRS process by amending an unclear existing rule (WAC 415-02-060).

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 43.08.062, 41.50.055(5), 41.50.260.

Summary: The rule clarifies that members who request funds from a defined benefit plan will not receive interest on their funds once the department issues a warrant. The rule also clarifies that members who request funds from a defined contribution plan will have their investments sold and then transferred to a noninterest bearing account until their check is cashed. The rule also clarifies what happens when withdrawal checks and warrants are not cashed.

Reasons Supporting Proposal: The current rule is unclear and fails to accurately reflect steps that the department takes.

Name of Agency Personnel Responsible for Drafting: Merry A. Kogut, 6835 Capitol Boulevard, Tumwater, WA, (360) 664-7291; Implementation and Enforcement: Lucille Christensen and Mark Feldhausen, 6835 Capitol Boulevard, Tumwater, WA, (360) 664-7069.

Name of Proponent: Department of Retirement Systems, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule clarifies an internal DRS process by amending an existing rule (WAC 415-02-060) that is unclear. The rule clarifies that members who request funds from a defined benefit plan will not receive interest on their funds once the department issues a warrant. The rule also clarifies that members who request funds from a defined contribution plan will have their investments sold and then transferred to a noninterest bearing account until their check is cashed. The rule also clarifies what happens when withdrawal checks and warrants are not cashed.

Proposal Changes the Following Existing Rules: The primary change is to change the rule into plain English. The secondary change is to ensure that the rule correctly reflects RCW 43.08.062 and current DRS business practices, as well as its contractual relationship with various third party record keepers.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments have no effect on businesses.

RCW 34.05.328 does not apply to this rule adoption. The Department of Retirement Systems is not one of the named departments in RCW 34.05.328.

Hearing Location: Department of Retirement Systems, 6835 Capitol Boulevard, Boardroom, 3rd Floor, Tumwater, WA, on March 27, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Rules Coordinator by seven days before hearing, if possible, phone (360) 664-7291, TTY (360) 586-5450, e-mail mer-ryk@drs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Merryk@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m., March 27, 2001.

Date of Intended Adoption: No sooner than March 28, 2001.

February 20, 2001
Merry A. Kogut
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-10-016, filed 4/21/00, effective 5/22/00)

~~WAC 415-02-060 ((Refund of contributions—Application.)) What happens if I do not cash a warrant or check? ((The department will cancel a member's request for refund of defined benefit plan member contributions if the refund warrant is not cashed within one hundred eighty days of the date on the warrant. There will be no earnings on~~

~~returned contributions for the one hundred eighty day period that funds were held for distribution to the member.~~

~~If the member does not cash a warrant for a distribution of defined contribution plan member contributions within one hundred eighty days of the date on the warrant, the contributions will be returned to the member's account with the same allocation as existed on the date of the warrant. There will be no earnings on returned contributions for the one hundred eighty day period that funds were held for distribution to the member.)) (1) Warrant for defined benefit retirement allowance. A warrant for your monthly retirement allowance will be canceled if it is not cashed within the time frame set by RCW 43.08.062. If the warrant is canceled, the department will attempt to contact you for instructions. You will not earn interest on the warrant amount pending payment.~~

~~(2) Warrant for defined benefit withdrawal. When you request a withdrawal of some or all of your defined benefit accumulated contributions:~~

~~(a) Once the department issues the warrant you will stop receiving interest.~~

~~(b) Whether payable to you or to a qualified investment account, the warrant will be canceled if it is not cashed within the time frame set by RCW 43.08.062.~~

~~(c) After the department receives notice that the warrant has been canceled, the department will attempt to contact you and ask for further instructions.~~

~~(3) Check for defined contribution distribution. When you request a withdrawal of some or all of your defined contribution fund:~~

~~(a) The requested amount will be liquidated and the department's third-party recordkeeper will transfer the funds into a noninterest bearing account.~~

~~(b) You will not receive interest, earnings, or losses after the third-party recordkeeper processes your request.~~

~~(c) Whether you request that the refund check be sent directly to you or to a qualified investment account, the check will be canceled if it is not cashed within one hundred eighty days from the date on the check.~~

~~(d) If the check is canceled:~~

~~(i) The funds will continue to receive no interest, earnings, or losses while the recordkeeper waits to receive instructions from you; and~~

~~(ii) The department or the third-party recordkeeper will attempt to contact you and ask for further instructions.~~

WSR 01-05-097

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed February 20, 2001, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-3-008 [00-23-008].

Title of Rule: Chapter 204-38 WAC, Flashing amber lights.

Purpose: To update the WAC and bring it into compliance with the requirements of our neighboring states for carriers towing oversize loads.

Statutory Authority for Adoption: RCW 46.37.005.

Summary: The amendments to chapter 204-38 WAC, Flashing amber lights; will eliminate problems for the trucking industry and will enable us to be in compliance with neighboring states.

Reasons Supporting Proposal: The Washington State Patrol has received calls from trucking companies who have had their trucks stopped at Washington scales and received warnings against these lights.

Name of Agency Personnel Responsible for Drafting: Ms. Carol Morton, P.O. Box 42614, Olympia, WA 98504, (360) 753-3697; Implementation and Enforcement: Captain Frederick Fakkema, P.O. Box 42614, Olympia, WA 98504, (360) 753-0306.

Name of Proponent: Washington Trucking Association, private.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Approve of the amendment.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will eliminate problems for the truckers who use the flashing amber lights on their oversize loads when they come into our state by allowing the use of flashing amber lights if they wish to.

Proposal Changes the Following Existing Rules: This amendment will allow the use of amber lamps for oversize loads in our state.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

A copy of the statement may be obtained by writing to Ms. Carol Morton, Washington State Patrol, Equipment and Standards, P.O. Box 42614, Olympia, WA 98504, phone (360) 753-3697, fax (360) 493-9090.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Commercial Vehicle Division Conference Room, Ground Floor, General Administration Building, 210 11th Southwest, Olympia, WA 98504, on April 11, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Ms. Gretchen Dolan by April 10, 2001, TDD (253) 536-4270, or (360) 753-0655.

Submit Written Comments to: Ms. Carol Morton, Equipment and Standards, P.O. Box 42614, Olympia, WA 98504, fax (360) 493-9090, by April 6, 2001.

Date of Intended Adoption: April 12, 2001.

February 16, 2001

R. M. Lechner
Chief

AMENDATORY SECTION (Amending WSR 00-03-023, filed 1/10/00, effective 2/10/00)

WAC 204-38-030 Definitions. (1) "Flashing" lamps shall include those lamps which emit a beam of light which is broken intermittently and regularly by use of an electronic or

electric switch, a rotating reflector, a rotating lamp, or a strobe lamp.

(2) "Other construction and maintenance vehicles" shall mean those vehicles owned or operated by a private company which is in the process of providing highway construction or maintenance services or is working in conjunction with any public utility.

(3) "Pilot cars" shall mean those vehicles which are used to provide escort for overlegal size loads upon the roadways of this state.

(4) "Public utilities vehicles" shall mean those vehicles used for construction, operations, and maintenance, and which are owned or operated by a public or private utility, including, but not limited to, companies providing water, electricity, natural gas, telephone, and television cable services, and railroads.

(5) "Tow trucks" shall mean those vehicle engaged in removing disabled or abandoned vehicles from the roadway and which are used primarily for that purpose.

(6) "Animal control vehicles" shall mean those vehicles, either publicly or privately owned, which are used primarily for transportation of animals to or from animal shelters, humane society facilities, or veterinary medicine facilities.

(7) "Hazardous materials response team vehicles" shall mean those vehicles either publicly or privately owned which are used for responding to hazardous materials incidents.

(8) "Search and rescue team vehicles" shall mean those vehicles either publicly or privately owned which are used for responding to search and rescue situations.

(9) "Rural newspaper carrier vehicles" shall mean those vehicles driven on rural roads by carriers delivering newspapers on their route.

(10) "Oversize units" shall mean a vehicle towing a load that exceeds legal dimensions which may be equipped with flashing amber lights in addition to any other lights required by law.

AMENDATORY SECTION (Amending WSR 00-03-023, filed 1/10/00, effective 2/10/00)

WAC 204-38-040 Mounting of lamps. One or more flashing amber lamps may be mounted on public utilities vehicles, other construction and maintenance vehicles, pilot cars, tow trucks, animal control vehicles, hazardous materials response team vehicles, search and rescue team vehicles, and rural newspaper carrier vehicles, and vehicles towing a load that exceeds legal dimensions. The lamp(s) shall be mounted and shall be of sufficient intensity so as to be clearly visible to approaching traffic for at least five hundred feet in normal sunlight.

The provisions of WAC 204-72-030 and 204-72-040 shall be adhered to as they relate to the mounting of warning lamps.

AMENDATORY SECTION (Amending WSR 00-03-023, filed 1/10/00, effective 2/10/00)

WAC 204-38-050 Use of lamps. Flashing amber lamps shall be used on the vehicles described in WAC 204-38-040

only when such vehicles are actually involved in construction, maintenance, or operations which require that warning be given to ensure the protection of the motoring public or the work crew. Warning lamps shall not be illuminated while traveling to or from the site of operations. For the purposes of tow truck operations, the site of operations shall be only that place where vehicles are attached to or detached from the tow truck. Lamps on pilot cars shall be illuminated only while the vehicle is actually providing escort service. Lamps on rural newspaper delivery vehicles shall only be illuminated when the vehicle is traveling on the delivery route. Lamps on over-size units may be illuminated when traveling on public roadways.

Nothing in this chapter shall relieve the operator of any vehicle from displaying any other light or warning device required by statute or regulation, and nothing herein shall permit any vehicle operator to disregard any traffic law. To be considered approved equipment for use under the provisions of this section, all devices must meet the criteria established in RCW 46.37.320. In descending order of preference, these are:

- (1) Conformance to Federal Motor Vehicle Safety Standards, or, if none,
- (2) Conformance to current standards and specifications of the Society of Automotive Engineers, or, if none,
- (3) Certified for compliance by any recognized organization or agency such as, but not limited to, the American National Standards Institute, the Society of Automotive Engineers, or the American Association of Motor Vehicle Administrators.

WSR 01-05-106

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed February 21, 2001, 7:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-06-001.

Title of Rule: Chapter 308-57 WAC, Motor vehicle excise tax, chapter 308-96A WAC, Vehicle licenses, and chapter 308-97 WAC, Vehicle license interstate and intransit permits.

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, chapter 82.44 RCW.

Summary: Amending WAC 308-57-005, 308-57-010, 308-57-020, 308-57-030, 308-57-110, 308-57-140, 308-57-210, 308-57-230, 308-57-240 and 308-96A-099; repealing WAC 308-57-120, 308-57-130, 308-57-135 and 308-57-500; amending WAC 308-96A-145 Cab and chassis, 308-96A-180 Registration of rental cars, 308-96A-202 Power units towing trailers with permanent registrations, 308-96A-203 Permanent trailer registrations, 308-96A-400 Excise tax exemption—Indians and 308-96A-230 Appointment of vehi-

cle trip permit agents; and repealing WAC 308-96A-135 Fixed load vehicles and 308-96A-410 Study fee.

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

Name of Agency Personnel Responsible for Drafting: Katherine I. 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: This rule implements the requirements of RCW 88.42.022. It clarifies what personal use vehicles qualify and hot [how] the credit applies.

The anticipated effects will be a clarification of the above mentioned requirements.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required 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 28, 2001, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact Katherine I. Vasquez by March 27, 2001, TTY (360) 664-8885, or (360) 902-3718.

Submit Written Comments to: Katherine I. Vasquez, Rules Manger, Title and Registration Services, P.O. Box 2957, Olympia, WA 98507-2957, fax (360) 664-0831, by March 27, 2001.

Date of Intended Adoption: April 27, 2001.

February 21, 2001

D. McCurley, Acting Administrator

Title and Registration Services

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-005 Definitions. The following definitions apply to the terminology used in this chapter:

(1) ("~~Excise tax fee schedule one~~" means the depreciation table described in RCW 82.44.041 (3)(b).

(2) "~~Excise tax fee schedule two~~" means the depreciation table described in RCW 82.44.041(1).

(3) "~~Excise tax fee schedule three~~" means the depreciation table described in RCW 82.50.425(2).

(4) "~~Excise tax fee schedule four~~" means the depreciation table established for power units towing trailers with permanent plates issued in accordance with RCW 46.16.068.

(5) "~~RTA excise tax fee schedule five~~" means the depreciation table described in RCW 82.44.041 (3)(b) for use in the Central Puget Sound Regional Transit Authority area.

~~((6))~~ "RTA excise tax ~~((fee))~~ schedule ~~((six))~~" means the value depreciation table described in RCW 82.44.041(1) for use in the Central Puget Sound Regional Transit Authority area.

~~((7))~~ (2) "Fleet" means any person with ~~((fifteen))~~ five or more vehicles registered in the same name.

~~((8))~~ (3) "Light duty truck" means a truck which is smaller than a truck type power unit. The empty scale weight is six thousand pounds or less. It includes vehicles such as pickup trucks, vans, and utility vehicles.

~~((9))~~ (4) "MSRP" means the base manufacturer's suggested retail price as defined in RCW 82.44.041(3) and 82.50.425.

~~((10))~~ (5) "Purchase price" means the selling price of the vehicle before deducting for trade-in value or adding sales/use tax.

~~((11))~~ (6) "Registered within a county" means the county which the vehicle registered owner indicates as their resident address.

~~((12))~~ (7) "Tax code" means a two-digit alpha, numeric, or alpha-numeric representation of a value assigned by the department of revenue to passenger vehicles, light duty trucks, and motor homes prior to vehicle model year 1986. This value represents the value of the vehicle when first offered for sale. In 1986 and thereafter, the MSRP is used to represent the value of the vehicle.

~~((13))~~ (8) "Truck type power unit" means trucks as defined in RCW 82.44.010(3). This includes vehicles with FIX (fixed load), or TOW (tow truck) use classes, regardless of scale weight; CMB (combination), COM (commercial), FAR (farm), FCB (farm combination), F/H (for hire), LOG (logging trucks), STA (stage), and TRK (trucks whose empty scale weights exceed six thousand pounds and whose declared gross weight does not exceed twelve thousand pounds) use class.

~~((14))~~ (9) "Truck type trailing unit" means trailers as defined in RCW 82.44.010(3). This includes trailers with CMB (combination), LOG (logging), and COM (commercial) use classes.

~~((15))~~ (10) "Value code" means the value which is used to calculate the excise tax. In determining the value code, it may be a tax code, purchase price, assessor's appraisal, or MSRP.

~~((16))~~ (11) "Regional Transit Authority" or "(RTA)" means the Central Puget Sound Regional Transit Authority.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-010 Premise for assessing RTA excise tax. ~~((Truck type power units and trailing units))~~ All trailers and all vehicles where MSRP is not available are taxed according to the most recent purchase price and purchase year and the depreciation rates in the RTA excise tax fee schedule ~~((s two, four or six))~~. All other vehicles as noted on the first MSRP, the year of service or value year are taxed using the value of the vehicle ~~((when it was first offered for sale))~~ and the ~~((appropriate))~~ RTA excise tax fee schedule. Current physical condition, mileage, or monetary value of a particular vehicle is not used to determine excise tax.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-020 Modified vehicles. All new or unused vehicles modified by a licensed manufacturer, ~~((including but not limited to, van conversions, sport utility vehicles, and limousines;))~~ shall be taxed according to the MSRP provided by the modifying manufacturer plus the cost involved in converting the vehicle. Modified vehicles include, but are not limited to, vans, pickups, utility vehicles and limousines, incomplete vehicles and kits. If the vehicle is modified by someone other than a licensed manufacturer, the original MSRP issued for the vehicle prior to the modifications plus the costs of the modifications shall be used.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-030 Declaration of value. If there is no ~~((tax))~~ value code for a model year 1985 or older model vehicle and there is no MSRP information available for a model year 1986 or newer model vehicle, the owner may be required to provide a certified declaration of original value and supporting documentation to be used as the basis for assessing the RTA excise tax.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-110 RTA excise tax fee schedule ~~((s one and five))~~. Vehicles with the following use classes are ~~((taxed according to))~~ assessed RTA excise tax ~~((fee schedule one and when applicable, schedule five))~~:

CAB (taxicab)

CMB (combination)

COM (commercial) (if powered and the scale weight is six thousand pounds or less)

CYC (motorcycle)

~~((FAR (farm) (if powered and the scale weight is six thousand pounds or less)))~~

F/H (for hire) (if six or fewer seats or if more than six seats and the scale weight is six thousand pounds or less)

FIX (fixed load)

H/C (horseless carriage under six thousand pounds scale weight)

LOG (logging trucks under six thousand pounds scale weight)

MH (motor home)

PAS (passenger)

PER (nonpowered personal use trailer)

RES (restored under six thousand pounds scale weight)

STA (stage) (if six or fewer seats or if more than six seats and the scale weight is six thousand pounds or less)

TLR (nonpowered trailer)

TRK (if the scale weight is six thousand pounds or less)

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-140 RTA excise tax exemptions. The following vehicles are exempt from RTA excise taxes imposed in chapter ~~((s 82.44 and 82.50))~~ 81.104 RCW:

(1) Vehicles with tax code 95 (vehicles taxed as personal property, such as mobile homes);

(2) Vehicles with the following use classes: CMP (campers), C/G (converter gear), CMB (combination), COM (commercial if powered over 6,000 pounds scale weight or commercial nonpowered), EX (exempt), FAR (farm combination), EX (exempt), FED (federally owned), FEX (farm exempt), F/H (for hire if over 6,000 pounds scale weight and more than six seats), FIX (fixed load), H/C (horseless carriage), H/D (house moving dolly), LOG (if powered and over 6,000 pounds scale weight), MOB (mobile home), PED (moped), ORV (off road vehicle), RES (restored), SCH (private school), SNO (snowmobile), ~~((ø))~~ SNX (exempt snowmobile), STA (stage if over 6,000 pounds scale weight and more than six seats), TVL (travel trailer), TOW (tow trucks), or TRIS (if over 6,000 pounds scale weight and 12,000 pounds or less gross weight);

(3) Vehicles registered pursuant to WAC 308-96A-050, (nonresident members of the armed forces);

(4) Vehicles registered pursuant to WAC 308-96A-400, (Indian tribes and tribal members);

(5) Vehicles registered pursuant to WAC 308-96A-046, ~~((veteran's free license))~~ (disabled American veterans or former prisoner of war);

(6) Vehicles registered pursuant to WAC 308-96A-180, (rental cars);

(7) Passenger motor vehicles registered pursuant to WAC 308-96A-175 and 308-96A-176, ride-sharing and transportation needs ride-sharing vehicles; ~~((and))~~

(8) Vehicles registered pursuant to WAC 308-96A-063, Foreign organization special license plate;

(9) Medal of Honor recipients under RCW 46.16.305; and

(10) Vehicles registered under WAC 308-96A-046, former prisoner of war.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-210 RTA excise tax in even dollars. ~~((Individual vehicle))~~ RTA excise taxes are rounded to the nearest whole dollar.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-230 Fleet abatement. A fleet vehicle, which is required to have a December registration expiration date, shall be charged RTA excise tax based on the current depreciation rate for the number of months required to license through December 31 of the current year. If the number of months to December 31 is fewer than four, an additional twelve months excise tax will be charged at the current depreciation rate.

AMENDATORY SECTION (Amending WSR 97-12-015, filed 5/28/97, effective 6/28/97)

WAC 308-57-240 Nonfleet abatement. With department approval, the owner of a nonfleet vehicle may change the vehicle's registration expiration date. The owner shall be assessed RTA excise tax based on the current depreciation rate for the number of months from the current expiration to the requested expiration date. The new expiration date must be greater than twelve months but not more than eighteen months from the current registration expiration date. New expiration dates may only be granted when validation tabs for the desired month and year are available.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-57-120	Excise tax fee schedules two and six.
WAC 308-57-130	Excise tax fee schedule three.
WAC 308-57-135	Excise tax fee schedule four.
WAC 308-57-500	Personal use motor vehicle excise tax credit—Qualifications.

AMENDATORY SECTION (Amending WSR 99-06-029, filed 2/24/99, effective 3/27/99)

WAC 308-96A-099 Use class descriptions. (1) Why does the department assign use classes to vehicles?

The department assigns use classes to:

- Assess the proper license fees and ~~((excise tax))~~ taxes for vehicles;
- Assign special brands on subsequent owner's certificate of ownership;
- Apply certain restrictions on the use of the vehicles, which prints on the vehicle registrations;
- Assign the proper license plates.

(2) Under what authority does the department assign use classes to vehicles?

The department assigns use classes under the authority of RCW 46.16.040.

(3) What use classes does the department assign and when do they apply?

The use classes the department assigns are described below:

ABBREVIATION	TRANSLATION	DESCRIPTION
CAB	TAXI CAB	Vehicle is used for carrying passengers between two points for compensation for an on-demand trip rather than a scheduled route. A vehicle with this use class may not carry any luggage or commodities that do not belong to a passenger being carried at the same time. In other words, the vehicle cannot just carry cargo between two points.
C/G	CONVERTER GEAR	Vehicle is an axle that is used to convert a semi-trailer to a full trailer. A converter gear may be titled but may not be licensed.
CMB	COMBINATION	Vehicle is either (1) a power unit with a declared gross weight of 42,000 pounds or more and towing a trailer; or (2) a trailing unit with permanent plates. The trailer may be towed only by a power unit with a CMB use class, or FCB depending on what is being hauled.
CMP	CAMPER	Vehicle is a slide-in pickup camper (not a canopy) as defined in RCW 46.04.085. Even if the owner has chosen to permanently attach the camper to the pickup, the units need to be titled and licensed separately.
COM	COMMERCIAL	Vehicle is either (1) a power unit that does not pull a trailer or that pulls a trailer but the gross weight for the truck and trailer does not exceed 40,000 pounds; or (2) a trailing unit that is titled in a business name (including the name of a farm). A commercial trailer may be towed by a vehicle with PAS, TRK, COM, CMB, FAR or FCB use classes. If the trailer is being towed by a vehicle with FAR or FCB use class, the use of the trailer (items carried, etc.) must meet the farm use class requirements.
CYC	MOTORCYCLE	Vehicle is a motorcycle, motor driven cycle or scooter. A moped does not qualify to be licensed as a motorcycle as defined in RCW 46.04.330 and 46.04.332.
EX	EXEMPT	Vehicle can be any type of vehicle, which is owned by a city, county or state government agency or federally recognized Indian tribe located in the state of Washington. This includes school buses, which are owned or leased by school districts. If the school district contracts a company to provide total bus service, such as the bus, the driver and the maintenance, and the vehicle is registered in the name of the school district as registered owner, the vehicle qualifies for exempt license plates.
FAR	FARM	Vehicle is a truck (or tractor) used to transport the farmer's own farm, orchard or dairy products as defined in RCW 46.16.090, or aquatic products as defined in RCW 15.85.020, from point of production to market or warehouse. The vehicle may also be used to transport the farmer's own farm supplies.
FCB	FARM COMBINATION	Vehicle is (1) a power unit (not a trailer) with a declared gross weight of 42,000 pounds or more and towing a trailer; and (2) meets the criteria of FAR use class above.
FED	FEDERAL	Vehicle is owned by the federal government of the United States. Like exempt vehicles, this could be any type of vehicle. This does not include vehicles displaying license plates issued by the federal government.
FEX	FARM EXEMPT	Vehicle is used exclusively in agricultural pursuits on farms as defined in RCW 46.16.010(3) and 46.04.181. The vehicle is usually a truck, but it could also be a bus, a motorcycle or off-road cycle.

PROPOSED

ABBREVIATION	TRANSLATION	DESCRIPTION
FIX	FIXED LOAD	Vehicle as defined in RCW 46.16.070(1). These vehicles have a unique use class because they are exempt from the law, which requires vehicles with a scale weight of more than six thousand pounds to have a declared gross weight of at least 150 percent of the scale weight. The basic license fee is based on the declared gross weight, or the next two thousand pound increment above the scale weight, or the next two thousand pound increment above the legal maximum gross weight as determined by the Washington state patrol or department of transportation. Fixed load vehicles are the only ones whose gross weight may actually be less than their scale weight, depending on their legal maximum gross weight. An oversize permit is required in addition to the registration in these cases.
F/H	FOR HIRE	Vehicle is used to transport people and/or commodities for compensation as defined in RCW 46.72.010. A for hire permit from business and professions division (BPD) is required.
H/C	HORSELESS CARRIAGE	Vehicle is a motorized vehicle over 40 years old with limited use as defined in RCW 46.16.307. The vehicle may not be used for normal transportation to and from work, to go to the store and pick up groceries, and so on.
H/D	HOUSE DOLLY	Vehicle constructed and used exclusively to move buildings or homes.
LOG	LOGGING	Vehicle is a truck or trailer used exclusively for hauling logs.
MH	MOTOR HOME	Motorized vehicle designed for human habitation and defined in RCW 46.04.305
MOB	MOBILE HOME	Vehicle is a manufactured home as defined in RCW 46.04.302. Mobile homes are titled but generally not registered because of their size. Manufactured homes are taxed by the county, either as personal property or real property.
ORV	OFF-ROAD VEHICLE	Vehicle is used off-road. A vehicle licensed only as an ORV may not be operated on public roadways or ocean beaches.
PAS	PASSENGER	Vehicle is used to transport passengers as defined in RCW 46.04.382. Typically passenger cars, utility or multipurpose vehicles, passenger vans, and private busses are licensed as passenger vehicles.
PED	MOPEL	Vehicle as defined in RCW 46.04.304 and subject to the restrictions in RCW 46.61.710.
PER	PERSONAL	Vehicle is a personal use trailer as defined in RCW 46.16.065. Trailers owned by businesses or used for commercial purposes do not qualify for this use class.
RES	RESTORED	Vehicle is a motorized collector vehicle over 30 years old with limited use as defined in RCW 46.16.307. The vehicle may display either a collector vehicle license plate provided by the department or a license plate, which must have been first issued, for use the year the vehicle was manufactured. The vehicle must be currently registered in order to be assigned this use class and receive a special collector license plate or authority to use a restored license plate.
SCH	SCHOOL	Vehicle is owned and operated by a private school meeting the accreditation requirements of RCW 28A.195.010. The vehicle is used to transport children to and from school or in connection with school activities.
SNO	SNOWMOBILE	Vehicle is a snowmobile as defined in RCW 46.10.020(2).
SNX	EXEMPT SNOWMOBILE	Vehicle is a snowmobile as defined in RCW 46.10.010(2) and owned by a city, county or state agency.
STA	STAGE	Vehicle is used as an auto stage as defined in RCW 46.04.050.

PROPOSED

PROPOSED

ABBREVIATION	TRANSLATION	DESCRIPTION
TLR	TRAILER	Vehicle is a personal use trailer as defined in RCW 46.04.620 but does not meet the size criteria for a PER use class. Trailers used by businesses or others for commercial purposes do not qualify for this use class.
TOW	TOW	Vehicle is a tow truck as defined in RCW 46.16.079 and 46.55.010(8). If the vehicle carries other vehicles, it does not qualify for the TOW use class and must be licensed as COM.
TRK	TRUCK	Vehicle is a personal use, light duty truck, with a declared gross weight of twelve thousand pounds or less. Trucks used for business or commercial purposes do not qualify for the TRK use class.
TVL	TRAVEL TRAILER	Vehicle is a travel trailer as defined in RCW 46.04.623, which includes park models of four hundred square feet or less and camp/tent trailers. It is designed and manufactured for temporary habitation.

(4) What use classes may the department assign to specific types of vehicles?

Use classes are assigned as listed below:

VEHICLE TYPE	USE CLASS	SPECIAL REQUIREMENTS
PASSENGER CARS	CAB, COM, EX, FED, F/H, H/C, PAS, RES, ORV, FEX, STA	COM-Scale weight, Statement of use F/H and STA-Scale weight, Number of seats
LIGHT DUTY TRUCKS (INCLUDING SMALL VANS)	COM, EX, FAR, FED, FEX, H/C, RES, STA, TOW, TRK, FIX, F/H, ORV	F/H and STA-Number of seats All use classes-Scale weight
MEDIUM/HEAVY DUTY TRUCKS (INCLUDING BUSES)	CMB, COM, EX, FAR, FCB, FEX, FIX, LOG, SCH, TOW, TRK, FED, H/C, RES, F/H	F/H and STA-Number of seats All use classes-Scale weight
TRAILERS	C/G, CMB, COM, EX, FEX, LOG, PER, TLR, FED	PER-Number of wheels All use classes-Scale weight
CYCLES		
MOTORCYCLES	CYC, EX, FED, FEX, H/C, ORV, RES	
MOPEDS	EX, FED, FEX, ORV, PED	
SNOWMOBILES	SNO, SNX	
UTILITY/MULTIPURPOSE VEHICLES	CAB, COM, EX, FED, F/H, PAS, STA, TRK, FAR, FEX, H/C, ORV, RES, SCH	COM, F/H, STA, TRK, FAR and FEX-Scale weight F/H and STA-Number of seats
RECREATION VEHICLES		
TRAVEL TRAILERS (INCLUDING CAMP AND TENT TRAILERS)	EX, FED, TVL	
CAMPERS	CMP, EX, FED	
MOTOR HOMES	EX, FED, MH	
NOTE: Gross weight and seat requirements per RCW 46.16.040.		

(5) Do all powered three-wheeled vehicles need to be licensed as motorcycles?

No. If the vehicle qualifies as a motorcycle as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a motorcycle for street use. However, if the vehicle has a bench seat and a steering wheel as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a passenger vehicle or truck.

(6) What license plates and use class will be assigned to my for hire vehicle?

The license plates and use class assigned to your for hire vehicle depends upon how you use your vehicle. All for hire vehicles transport passengers and commodities for compen-

sation. For hire vehicles include cabulances, limousines, taxi cabs, and busses hauling passengers for compensation in addition to transporting school children. There are two use classes and license plate combinations assigned to for hire vehicles:

(a) CAB use class vehicles are assigned passenger license plates. These vehicles are used exclusively for transporting passengers and their possessions; and

(b) F/H use class vehicles are assigned truck license plates. These vehicles not only transport passengers for compensation, but also transport commodities, without passengers, for compensation.

(7) When may truck license plates be assigned to my passenger vehicle?

Truck license plates may be assigned to your passenger vehicle whenever the vehicle is used to transport commodities, produce, freight or animals for commercial purposes. The use class would be COM instead of PAS. This would require a title application, a scale weight slip and a certified/notarized statement of use describing how the vehicle will be used commercially.

(8) When may passenger license plates be assigned to my pick-up truck?

Passenger license plates may only be assigned to your pick-up truck if it has been modified to qualify as a passenger vehicle. The department requires confirmation from the Washington state patrol that the vehicle has been modified to qualify for passenger use.

(9) What use classes and license plates will be assigned to school buses?

(a) EX use class and county exempt license plates will be assigned to a school bus owned or leased by an exempt agency (school district);

(b) SCH use class and passenger license plates will be assigned to a school bus owned or leased by an accredited private school; or

(c) F/H use class and truck license plates will be assigned to school buses used for transporting passengers for compensation and not used exclusively for transporting school children to and from school or school related activities.

(10) May I license my motorcycle or any other motor vehicle for both road and off road use?

Yes, you may license your motorcycle or any other motor vehicle for both uses as long as the vehicle qualifies for road use. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.

(11) May I license my amphibious vehicle as a vehicle and a vessel?

Yes, you may license your amphibious vehicle for both uses as long as it qualifies for both uses. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.

(12) May I license my truck, truck tractor or tractor as a motor home?

Yes, you may license your truck, truck tractor or tractor as a motor home if:

(a) The vehicle meets the definition of a motor home in RCW 46.04.305; and

(b) You provide a Washington state patrol inspection confirming your vehicle may be licensed as a motor home; and

(c) You certify the vehicle will be used exclusively as a motor home and is not used for commercial use.

(13) Is my truck, truck tractor or tractor which I use exclusively for towing my travel trailer licensed differently than any other like truck?

No. Your truck, truck tractor or tractor used exclusively for towing your travel trailer must be licensed in accordance with RCW 46.16.070. Depending on scale weight the use class will be TRK or COM.

AMENDATORY SECTION (Amending WSR 99-06-029, filed 2/24/99, effective 3/27/99)

WAC 308-96A-145 Cab and chassis. (1) What is a cab and chassis?

A cab and chassis is an incomplete truck shipped from the manufacturer. The customer chooses the type of bed to be installed.

(2) Will the department issue a certificate of ownership for my cab and chassis?

Yes. However, because the cab and chassis is an incomplete vehicle, when the body or special equipment has been installed you must apply for a new certificate of ownership to reflect the correct series and body type, scale weight and the completed vehicle's new value.

(3) Will the department issue a certificate of registration for my cab and chassis?

Yes, if you intend to use the vehicle on the public highways. The gross weight will be limited to one hundred fifty percent of the scale weight. Gross weight is rounded up to the nearest two thousand pound increment and may not be increased until the certificate of ownership is corrected to reflect the completed vehicle information.

(4) What do I need to provide the department when my cab and chassis has been converted to a complete vehicle and I am applying for a new license and certificate of ownership?

Whether you titled the cab and chassis or waited until the vehicle was completed before titling, you need to provide the department with the following before you use the completed vehicle on the public highways:

(a) Proof of ownership for the cab and chassis;

(b) Proof of ownership for the equipment installed to make it a complete vehicle;

(c) A weight slip from a certified scale;

(d) Proof or payment of sales or use tax on the equipment installed to make a complete vehicle; and

(e) Applicable fees and ~~((excise tax))~~ taxes for any increased value of the completed vehicle.

AMENDATORY SECTION (Amending WSR 99-01-133, filed 12/21/98, effective 1/21/99)

WAC 308-96A-202 Power units towing trailers with permanent registrations. (1) What determines if I pay the higher gross weight fees ~~((and additional excise tax on my power unit))~~?

If the declared gross weight of the power unit exceeds forty thousand((s)) pounds AND the power unit will be towing a trailer, the power unit must be licensed with a combination (CMB) or farm combination (FCB) use class. This results in higher gross weight fees ~~((and excise tax)).~~

(2) How do I change to a CMB or FCB use class during the registration year?

If you choose to change the use class of your power unit during the registration year, you will need to:

(a) ~~((Pay the additional excise tax for the remaining months of the registration year;~~

~~(b)))~~ Pay the additional gross weight fees for the remaining months of the gross weight license period currently in effect; and

~~((e)))~~ (b) Immediately attach the combination decals between the lower boltholes on the front and rear license plates.

If the license plates were issued prior to January 1, 1987, new plates are required.

(3) What if I change to a CMB or FCB use class at renewal time?

If you change use class at renewal time, you will pay the ~~((additional excise tax and))~~ gross weight fees for the new registration year. Fees are not due for the remainder of the current registration year. If the plates were issued prior to January 1, 1987, new plates are required. The combination decals assigned may not be attached to the license plates until the first day of the new registration year, when the new use class is effective.

(4) What if I change from CMB or FCB to COM or FAR?

If you change from CMB or FCB to COM or FAR, you will need to purchase new plates. ~~((If you change use class during the registration year, you would forfeit the higher amount of excise tax paid.))~~ Excess gross weight fees may be used to purchase additional months of gross weight to the end of the current registration year.

(5) If I sell the power unit with a CMB or FCB use class, will the new owner need to purchase new plates?

If the new owner retains the CMB or FCB use class, new plates are not required. If the use class is changed to commercial (COM) or farm (FAR), new plates are required.

(6) If new plates are required because of the change of use class or because they were issued prior to January 1, 1987, am I required to pay replacement plate fees?

No, you would only pay the reflectorization fee in RCW 46.16.237 and plate fee in RCW 46.16.650.

AMENDATORY SECTION (Amending WSR 99-01-133, filed 12/21/98, effective 1/21/99)

WAC 308-96A-203 Permanent trailer registrations.**(1) Do I have an option of purchasing a permanent registration for my trailer to offset the higher fees on my power unit?**

Yes, if the power unit towing the trailer is properly licensed to tow a trailer with a permanent registration.

(2) How does the power unit need to be licensed to tow a trailer with a permanent registration?

The power unit must have a combination (CMB) or farm combination (FCB) use class.

(3) How does the power unit qualify for the CMB or FCB use class?

The declared gross weight of the power unit must exceed forty thousand pounds. The CMB and FCB use classes require a ~~((higher excise tax rate and))~~ higher gross weight fees to offset the annual revenue loss of the permanently licensed trailer(s) the power unit is towing.

(4) If I am not required to renew the permanent trailer registration each year, how is my registration kept updated?

Your registration will show an expiration date of "PERM." Your vehicle record will show a current expiration date, which is updated annually. And your trailer plate will have a permanent trailer validation tab assigned to it.

(5) Are there any restrictions on the use of the trailer with permanent plates?

Yes, there is a restriction printed on the registration stating that the vehicle must be towed by a power unit with a CMB or FCB use class and gross weight in excess of forty thousand pounds.

(6) How long is the permanent registration valid?

The permanent registration is valid until ownership in the trailer changes. For purposes of this section, the following are not considered changes of ownership:

- (a) Addition or deletion of spouse or co-owner; or
- (b) Change of lessee with the same lessor.

(7) What do I do if I want to cancel the permanent registration and register the trailer as commercial?

You may change from CMB to COM use class at any time. You will need to pay all fees and taxes from the date of application to the expiration date shown on the vehicle record. A partial month requires a full month's fees.

(8) What type of plates do I display on a trailer with a permanent registration?

A regular trailer plate, including a permanent trailer tab and combination decal, must be displayed on the trailer. The trailer may not display personalized or other special plates in this case.

(9) How is the expiration date established for a permanent trailer registration?

If the vehicle is unlicensed at the time of application, an expiration date is established based on the date of application as defined in WAC 308-96A-260. The permanent trailer plate fee is charged. If the vehicle is currently registered, either as COM or CMB, the permanent trailer plate fee is charged and the expiration date remains the same.

(10) Do I need to get a new plate when I get a permanent trailer registration?

If the vehicle is new, is currently registered to another owner with CMB use class, or the plate was issued prior to January 1, 1987, a new plate must be issued. If the vehicle is currently registered with a COM use class, and the plate has been issued since January 1, 1987, the permanent trailer tab and combination decal may be attached to the existing plate.

(11) If the trailer has a permanent registration and I no longer wish to use the trailer, or I sell the trailer and the new owner does not wish to license the trailer, may a title purpose only title be issued?

Yes, however, a title purpose only title will not eliminate the requirement for license fees to be paid. As soon as the

vehicle is no longer used as a CMB trailer, license fees are due. The owner has the choice of:

(a) Paying to change the use class to COM, in which case the registration would not need to be renewed the following year if it is not being used; or

(b) Paying the permanent trailer registration fee one time and having the vehicle be licensed.

(12) If I need to purchase new plates because of changing the use class or because the plates were issued prior to January 1, 1987, do I need to pay replacement plate fees?

No. You would only pay the reflectorization fee in RCW 46.16.237 and the plate fee in RCW 46.16.650.

AMENDATORY SECTION (Amending WSR 99-19-026, filed 9/8/99, effective 10/9/99)

WAC 308-96A-400 Excise tax exemption—Indians.

(1) What definitions does the department apply to this section? For purposes of this rule, the following words and terms have the following meanings:

(a) "Indian (~~(reservation)~~) country" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries set aside by the United States for the use and occupancy of Indian tribes by treaty, law or executive order and which are areas currently recognized as "Indian (~~(reservations)~~) country" by the United States Department of the Interior as referenced in 18 U.S.C. 1151 and C.F.R. 25.

(b) "Indian tribe" means an Indian nation, tribe, band, or community recognized as an "Indian tribe" by the United States Department of the Interior.

(c) "Indian" means a person on the tribal rolls of the Indian tribe occupying an Indian reservation.

(2) What Indian (~~(reservations)~~) tribes in Washington are recognized by the United States Department of the Interior? The (~~(following are the)~~) only Washington "Indian (~~(reservations)~~) tribes" are those currently recognized as such by the United States Department of the Interior (~~(Chehalis Confederated tribes, Colville Confederated tribes, Hoh tribe, Jamestown S'Klallam tribe, Kalispell tribe, Lower Elwha Klallam tribe, Lummi Nation, Makah tribe, Muckleshoot tribe, Nisqually tribe, Nooksack tribe, Port Gamble S'Klallam tribe, Puyallup tribe, Quileute tribe, Quinault Nation, Samish Nation, Sauk-Suiattle tribe, Shoalwater Bay tribe, Skokomish tribe, Spokane tribe, Squaxin Island tribe, Stillaguamish tribe, Suquamish tribe, Swinomish tribe, Tulalip tribes, Upper Skagit tribe, Yakama Nation)~~). As of the effective date of this rule, there are twenty-eight federally recognized tribes in the state of Washington. You may contact the governor's office of Indian affairs for an up-to-date list of federally recognized Indian tribes in the state of Washington at its website www.goia.wa.gov or at:

Governor's Office of Indian Affairs

531 15th Ave. S.E.

P.O. Box 40909

Olympia, WA 98504-0909

360-753-2411

(3) How does an Indian qualify for a motor vehicle excise tax exemption? To qualify for a motor vehicle excise tax exemption, an Indian shall:

(a) Be enrolled as a tribal member of a recognized Washington tribe;

(b) Have their principal residence within the boundaries of the Indian reservation of the tribe of which they are a member. Mobile homes, travel trailers and campers owned by Indians having their principal residence within the recognized Indian reservation, for the tribe in which they are duly registered on the tribal rolls, are exempt from payment of the mobile home, travel trailer and camper excise tax imposed by chapter 82.50 RCW; and

(c) Be a registered owner of the vehicle for which the exemption is requested.

(4) Are vehicles owned or leased by a governing body of an Indian tribe subject to motor vehicle excise tax? No. Vehicles owned or leased by a governing body of an Indian tribe are not subject to motor vehicle excise tax as provided in RCW 46.16.020 and 46.16.022. Mobile homes, travel trailers and campers owned by Indian tribes located on recognized Washington Indian reservations are exempt from payment of the mobile home, travel trailer and camper excise tax imposed by chapter 82.50 RCW.

(5) What documentation does the department require from a tribal member to qualify for a motor vehicle excise tax exemption? The department requires a properly completed affidavit of exemption on a form supplied or approved by the department. An affidavit for each vehicle must be submitted at the time the exemption is established and at the time of renewal if there is a change of address. The department may require such other proof of qualification for exemption, as it deems necessary.

(6) What information must be contained within the affidavit of exemption described in subsection (5) of this section? At the minimum, the affidavit of exemption must include the following:

(a) Description of the vehicle including the year and make and either the license plate number or the vehicle identification number;

(b) The registered owner's name, tribe, reservation and enrollment or Bureau of Indian Affairs number;

(c) The principal address of the registered owner as will be shown on the vehicle registration certificate;

(d) Signature of the registered owner;

(e) A certification of an authorized tribal authority representing the Indian (~~(reservation of the)~~) tribe of which the registered owner is a member. The position or title of the tribal authority, their telephone number and their signature must appear on the certification. The certification must include a statement that the registered owner is an enrolled tribal member and that the address provided by the registered owner is within the boundaries of their reservation;

(f) The position or title of the tribal authority, their telephone number and their signature.

(7) Are there any types of vehicles for which the Indian excise tax exemption does not apply? No, the Indian

excise tax exemption applies to all types of vehicles for which excise tax is due.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|----------------------|
| WAC 308-96A-135 | Fixed load vehicles. |
| WAC 308-96A-410 | Study fee. |

AMENDATORY SECTION (Amending WSR 98-23-026, filed 11/9/98, effective 12/10/98)

WAC 308-97-230 Appointment of vehicle trip permit agents. (1) Who can sell vehicle trip permits?

Vehicle trip permits may be sold by those entities cited in RCW 46.16.160. These entities include government and nongovernment organizations.

(2) How does a nongovernment organization obtain approval to sell vehicle trip permits?

Nongovernment organizations must:

- Apply to the department;
- Execute an agreement to abide by the requirements of this section and RCW 46.16.160;
- Provide a surety bond; and
- Provide transmission fee schedule if issuing permits electronically.

(3) How do I obtain an application to become an agent for selling trip permits?

Any nongovernment organization may obtain an application form from the department of licensing, prorated and fuel tax section.

(4) What are the components of the agreement?

The components of the agreement require the agent to:

- Timely account and pay all permit fees;
- Subject their books and records to periodic audit;
- Pay interest and penalties upon any deficiency;
- Maintain records of transmittals for a period of four calendar years and make these records available to the department or its representative during business hours at the agent's office;
- Mail or deliver transmittals at least bimonthly to the department by the last Friday of each recording period for permit sales covering the preceding fifteen days. Transmittals shall be accompanied by the appropriate fees and any documents required by the department;
- Reimburse the department for the administrative fee and excise tax of any permit, which is missing, lost, or otherwise unaccounted for. For the purposes of this section, "excise tax" means the tax collected as explained in RCW 46-16-160(9).

(5) What are the requirements of a surety bond?

The requirements of a surety bond are to:

- Be on a form provided by the department;
- Meet the provisions of chapter 48.28 RCW for a corporate surety bond;
- Be executed by the applicant as principal;

(d) Be payable to the state conditioned upon the performance of all the requirements of this section and RCW 46.16.160, including payment of any and all permit fees, payment of audit assessments, interest and penalties due or which become due;

(e) Be in an amount equal to the monetary value of vehicle trip permits issued to an agent.

(6) What is the agent fee for selling a vehicle transit permit?

The agent fee is the filing fee mandated by RCW 46.01.140.

(7) How may vehicle trip permits be issued?

Vehicle trip permits may be issued by:

- Original two-part manual form;
- Facsimile of the two-part manual form; or
- Authorized electronic form.

(8) If the permit is issued by facsimile or other electronic means, may the agent collect an additional transmission fee?

Yes. As long as the fee does not exceed that listed on the transmission schedule filed with the department.

(9) What happens if the agent fails to comply with the agreement?

The department may, after proper notice, served personally or by an affidavit of mailing, revoke the appointment of any agent who has violated any provisions of RCW 46.16.160, chapter 308-97 WAC, or breached the appointment agreement. Upon notice of revocation of an agent's appointment, the agent shall return to the department any vehicle trip permits in inventory and any money owed to the department.

WSR 01-05-107
PROPOSED RULES
HEALTH CARE AUTHORITY
(Basic Health Plan)

[Order 00-08—Filed February 21, 2001, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-054.

Title of Rule: Washington basic health plan, definitions.

Purpose: Changes the definition of preexisting condition to follow the same general standards for preexisting condition limitations as adopted in the 2000 legislative session.

Statutory Authority for Adoption: RCW 70.47.050.

Summary: Changes the definition of preexisting condition to include conditions experienced within the past six months, rather than past three months.

Reasons Supporting Proposal: Basic health elected to follow the same general standards for preexisting conditions limitations as were adopted in the 2000 legislative session. On November 9, 2000, basic health amended WAC 182-25-020 to reflect the nine month preexisting condition waiting period from E2SSB 6067, but inadvertently neglected to amend this section as well. This amendment was filed as emergency rules on December 29, 2000, to be effective Janu-

ary 1, 2001, in order to complete the changes to the rule to be consistent with the changes negotiated with the health carriers for the year 2001. This draft is nearly identical to that rule, with the addition of revisions to WAC 182-25-010 (30)(b) for readability, and is intended to complete the process of filing that change as a permanent rule.

Name of Agency Personnel Responsible for Drafting: Rosanne Reynolds, Lacey, Washington, (360) 923-2948; Implementation and Enforcement: Becky Loomis, Lacey, Washington, (360) 923-2996.

Name of Proponent: Health Care Authority, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Changes definition of preexisting condition to follow the same general standards as were adopted during the 2000 legislative session.

Proposal Changes the Following Existing Rules: Changes six months to three months in the definition of preexisting condition. Other minor changes to improve readability.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required. There will be little, if any, cost to small businesses.

RCW 34.05.328 does not apply to this rule adoption. RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

Hearing Location: Health Care Authority, 676 Woodland Square Loop S.E., Building B, 3rd Floor Conference Room, Northwest Room, Lacey, WA, on March 27, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Nikki Johnson by March 20, 2001, TDD (888) 923-5622, or (360) 923-2805.

Submit Written Comments to: Rosanne Reynolds, P.O. Box 42683, Olympia, WA 98504, or e-mail to rrey107@hca.wa.gov, fax (360) 412-4276, by March 27, 2001.

Date of Intended Adoption: March 30, 2001.

February 21, 2001

Melodie Bankers

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-04, filed 12/20/00, effective 1/20/01)

WAC 182-25-010 Definitions. The following definitions apply throughout these rules.

(1) "Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

(2) "Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction.

(3) "Basic health plan" (or BHP) means the system of enrollment and payment for basic health care services admin-

istered by the administrator through managed health care systems.

(4) "BHP plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and basic health plan. Eligibility for BHP Plus is determined by the department of social and health services, based on Medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for Medicare, and may be required to meet additional DSHS eligibility requirements.

(5) "Co-payment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the MHCS.

(6) "Covered services" means those services and benefits in the BHP schedule of benefits (as outlined in the member handbook issued to the enrollee, or to a subscriber on behalf of the enrollee), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments.

(7) "Disenrollment" means the termination of covered services in BHP for a subscriber and dependents, if any.

(8) "Effective date of enrollment" means the first date, as established by BHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

(9) "Dependent" means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is:

(i) Younger than age nineteen, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(ii) Younger than age twenty-three, and a registered student at an accredited secondary school, college, university, technical college, or school of nursing, attending full time, other than during holidays, summer and scheduled breaks; or

(c) A person of any age who is under legal guardianship of the subscriber or the subscriber's dependent spouse, and who is incapable of self-support due to disability.

(10) "Eligible full-time employee" means an employee who meets all eligibility requirements in WAC 182-25-030 and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of

1986 shall not be considered eligible employees for purposes of minimum participation requirements.

(11) "Eligible part-time employee" means an employee who meets all the criteria in subsection (10) of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

(12) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

(13) "Employer" means an enterprise licensed to do business in Washington state, as defined by RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

(14) "Enrollee" means a person who meets all eligibility requirements, who is enrolled in BHP, and for whom applicable premium payments have been made.

(15) "Family" means an individual or an individual and spouse, if not legally separated, and dependents. For purposes of eligibility determination and enrollment in the plan, an individual cannot be a member of more than one family.

(16) "Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

(17) "Gross family income" means total cash receipts, as defined in (a) of this subsection, before taxes, from all sources, for subscriber and dependents whether or not they are enrolled in BHP, with the exceptions noted in (b) of this subsection.

(a) Income includes:

(i) Money wages, tips and salaries before any deductions;

(ii) Net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses);

(iii) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses);

(iv) Regular payments from Social Security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance, alimony, child support, military family allotments, private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments;

(v) Work study or training stipends;

(vi) Dividends and interest accessible to the enrollee without a penalty;

(vii) Net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

(b) Income does not include the following types of money received:

(i) Capital gains;

(ii) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(iii) Tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury (except workers' compensation);

(iv) Noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee

fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance;

(v) Income earned by dependent children;

(vi) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(vii) College or university scholarships, grants, fellowships and assistantships;

(viii) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145;

(ix) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction, the subscriber must be employed during the time the child care expenses were paid, and payment may not be paid to a parent or step parent of the child or to a dependent child of the subscriber or his/her spouse.

(18) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, Medicaid Personal Care, Community Options Program Entry System (COPES) or Respite Care (up to level three).

(19) "Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions; government-funded acute health care or mental health facilities except as provided above; chemical dependency facilities; and nursing homes.

(20) "Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in subsection (19) of this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

(21) "Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

(22) "Managed health care system" (or "MHCS") means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide basic health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(23) "Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all Medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on Medicaid eligibility criteria.

(24) "Medicaid" means the Title XIX Medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

(25) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(26) "Nonsubsidized enrollee" or "full premium enrollee" means an individual who enrolls in BHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in BHP, without subsidy from the HCA.

(27) "Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

(28) "Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage under BHP.

(29) "Participating employer" means an employer who has been approved for enrollment in BHP as an employer group.

(30) "Preexisting condition" means any illness, injury or condition for which, in the ~~((three))~~ six months immediately preceding an enrollee's effective date of enrollment in BHP:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee (~~((was prescribed or recommended medication))~~); or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

(31) "Premium" means a periodic payment, based upon gross family income and determined under RCW 70.47.060(2), which an individual, their employer or a financial sponsor makes to BHP for subsidized or nonsubsidized enrollment in BHP.

(32) "Program" means subsidized BHP, nonsubsidized BHP, BHP Plus, or maternity benefits through medical assistance.

(33) "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

(34) "Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.020, negotiated by the administrator with and paid to a managed health care system, to provide BHP health care benefits to enrollees.

(35) "Schedule of benefits" means the basic health care services adopted and from time to time amended by the administrator, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, as described in the member handbook.

(36) "Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

(37) "Subscriber" is a person who applies to BHP on his/her own behalf and/or on behalf of his/her dependents, if any, who meets all applicable eligibility requirements, is enrolled in BHP, and for whom the monthly premium has been paid. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

(38) "Subsidized enrollee" or "reduced premium enrollee" means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(39) "Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

WSR 01-05-111

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed February 21, 2001, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-01-018.

Title of Rule: Trapping rules.

Purpose: Establish interim trapping rules pursuant to Initiative 713.

PROPOSED

Statutory Authority for Adoption: Initiative 713, Laws of 2000.

Statute Being Implemented: Initiative 713, Laws of 2000, RCW 77.12.047.

Summary: Interim trapping rules to prohibit body gripping traps except certain traps for control purposes.

Reasons Supporting Proposal: Initiative to the people.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, 902-2930; Implementation: Dave Brittell, 1111 Washington Street, Olympia, 902-2504; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, 902-2927.

Name of Proponent: Washington State Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Initiative 713 requires the department to establish rules for issuance of special permits to trap wildlife for specific purposes. Additionally, it bans the use of body gripping traps. This rule provides the special permit application requirements, and overrides the current trapping rules to prohibit the use of body gripping traps and commerce in furs taken with body gripping traps. Since the Initiative is currently in litigation, these rules are proposed as interim rules.

Proposal Changes the Following Existing Rules: Prohibits commerce in furs and animals taken with body gripping traps and disallows body gripping traps except for specified purposes.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of Reporting, Record-keeping and Other Compliance Measures Required by Proposed Rule: None.

2. Professional Services Required by the Rule: None.

3. Costs of Compliance, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Contract trappers will have to complete an application to control an animal problem. It is estimated that it will take .25 hour to complete each application. Commercial trappers will have to use alternative trapping methods, with the largest cost being box and suitcase traps for large fur bearers.

4. Will Compliance Cost Businesses to Lose Sales or Revenue? Contract trappers may be ineffective in controlling certain pests, moles in particular. This could cause a loss of revenue if assurances cannot be given that the animal nuisance problem will be corrected. Compliance with this rule will cause commercial trappers to lose revenue because of the inefficiencies of nonbody gripping traps in the fur trade.

5. Comparison of Costs for the 10% of Businesses that are the Largest Businesses Required to Comply with the Proposed Rule: One large pest control operator has estimated that the inability to use body gripping traps will result in a loss of \$8,000 to \$10,000 per year.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses: The department has created a simplified application form for a special permit.

7. Description of How the Agency will Involve Small Businesses in Rule Development: The department has reviewed the special permit application with selected businesses.

8. List of Industries Required to Comply with the Rule: Contract and commercial trappers.

A copy of the statement may be obtained by writing to Evan Jacoby, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98504-1091, phone (360) 902-2930, fax (360) 902-2942.

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

Hearing Location: Ramada Inn, Spokane International Airport, Spokane, Washington, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 16, 2001, TDD (360) 902-2207, or (360) 902-2226.

Submit Written Comments to: Evan Jacoby, 600 Capitol Way North, Olympia, WA 98501, fax (360) 902-2942, by April 5, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

NEW SECTION

WAC 232-12-142 Interim trapping rules pursuant to Initiative 713. The following rules apply to use of body gripping traps, and are interim during the pendency of the current litigation regarding the constitutionality of Initiative 713, passed by the voters in November, 2000. Unless otherwise provided, the provisions of this section apply to all trapping of mammals for recreation and commerce in fur and the issuance of special permits allowing use of certain traps as specified in the Initiative.

(1) Definitions: "Body-gripping trap" includes Coni-bear-type traps.

(2) Buying or selling of game: Notwithstanding the provisions of WAC 232-12-071, it is unlawful to knowingly offer to or knowingly buy, sell, barter, or otherwise exchange the raw fur of a mammal, or the mammal itself, if the mammal has been trapped in this state with a body gripping trap.

(3) Special permits: Notwithstanding the provisions of WAC 232-12-124, 232-12-141, and 232-28-515, it is unlawful to trap animals using body-gripping traps except persons may make application to use Conibear-type traps in water, non-strangling foot snares, and padded leghold traps for the purposes provided in the Initiative provided they are in possession of a special permit issued by the director. Applicants must apply on a department form for the special permit, and provide the following information:

(a) Applicant's name, address and phone number, if applicable;

(b) Location and description of animal problem, including species and number, if known;

(c) Nonlethal methods used and results, or why nonlethal methods could not be used; and

(d) Trapping method to be used and who will do the trapping.

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 01-05-112
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed February 21, 2001, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-055.

Title of Rule: Dealer license fees.

Purpose: Change dealer fees.

Statutory Authority for Adoption: RCW 77.32.050.

Statute Being Implemented: RCW 77.32.050.

Summary: Change charter boat stamp temporary fishing license dealer fee.

Reasons Supporting Proposal: Increase dealer compensation.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, 902-2930; Implementation: Jim Lux, 1111 Washington Street, Olympia, 902-4444; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, 902-2927.

Name of Proponent: Washington State Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The temporary fishing license is currently issued both as a license document with a two dollar dealer fee and as a charter boat stamp temporary license with a fifty cent fee. This proposal raises the charter boat stamp temporary license dealer fee to one dollar.

Proposal Changes the Following Existing Rules: Changes dealer fee for charter boat stamp temporary fishing license.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of Reporting, Record-keeping and Other Compliance Measures Required by Proposed Rule: None.

2. Professional Services Required by the Rule: None.

3. Costs of Compliance, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None.

4. Will Compliance Cost Businesses to Lose Sales or Revenue? No.

5. Comparison of Cost for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rule: No costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses: No costs.

7. Description of How the Agency Will Involve Small Businesses in Rule Development: The rule proposal is at the request of the charter boat companies.

8. List of Industries Required to Comply with the Rule: License dealers issuing charter boat stamp temporary licenses.

A copy of the statement may be obtained by writing to Evan Jacoby, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98504-1091, phone (360) 902-2930, fax (360) 902-2942.

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

Hearing Location: Ramada Inn, Spokane International Airport, Spokane, Washington, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 16, 2001, TDD (360) 902-2207, or (360) 902-2226.

Submit Written Comments to: Evan Jacoby, 600 Capitol Way North, Olympia, WA 98501, fax (360) 902-2942, by April 5, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-80, filed 5/24/00, effective 6/24/00)

WAC 220-55-115 Recreational license dealer's fees.

License dealers may charge a license issuance fee as follows:

(1) Two dollars for the issuance of any of the following fishing licenses:

- (a) A combination license.
- (b) A saltwater license.
- (c) A freshwater license.
- (d) A temporary fishing license.
- (e) A family fishing weekend license.

(2) Two dollars for the issuance of any of the following hunting licenses:

- (a) A big game combination license.
- (b) A small game license.
- (c) A three-consecutive day small game license.

(3) Two dollars for the issuance of a fish and wildlife lands vehicle use permit when issued separately from an annual freshwater, saltwater or combination fishing license, or separately from an annual small game hunting license, big game combination license, or trapping license.

(4) One dollar for the issuance of a personal use shellfish and seaweed license, and for a temporary license when issued as a charter stamp.

(5) Notwithstanding the provisions of this section, if any two or more licenses are issued at the same time, or the fish and wildlife lands vehicle use permit is issued with any recreational license, the license issuance fee for the document is two dollars.

PROPOSED

- (6) Fifty cents for the issuance of any of the following:
- (a) A deer, elk, bear, cougar, mountain goat, mountain sheep, moose, or turkey transport tag.
 - (b) ~~((A temporary fishing license when issued as a charter stamp.~~
 - (e)) A state of Washington migratory bird stamp.
 - ~~((d))~~ (c) A Western Washington pheasant permit.
 - ~~((e))~~ (d) An application for a special permit hunt.

WSR 01-05-113
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed February 21, 2001, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-01-189.

Title of Rule: Medical aid rules, updates for WAC 296-135, 296-23-220, and 296-23-230.

Purpose: Update department payment rates allowed to health care providers (RBRVS and anesthesiology rates and PT/OT payment caps) in light of current year's conversion factor and cost of living adjustments.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

Summary: (1) Change conversion factor used to calculate reimbursement levels for services payable through the resource based relative value scale (RBRVS) fee schedule; (2) change conversion factor used to calculate reimbursement for anesthesia services; and (3) increase the physical and occupational therapy daily maximum rates.

Reasons Supporting Proposal: Update provider reimbursement rates.

Name of Agency Personnel Responsible for Drafting: Tom Davis, Tumwater, Washington, (360) 902-6687; Implementation and Enforcement: Doug Connell, Assistant Director, Tumwater, Washington, (360) 902-4209.

Name of Proponent: [Department of Labor and Industries], governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The changes increase reimbursement to affected health care providers. The purpose and anticipated effect of these proposed changes are to:

(1) Change (increase) the conversion factor used to calculate maximum reimbursement levels for services reimbursed under the resource based relative value scale (RBRVS) fee schedule. The proposed increase adjusts the conversion factor to accommodate changes in the service codes and relative value units which are used to calculate reimbursement levels and grants an 8.79% cost of living increase to RBRVS providers.

(2) Change (increase) the conversion factor used to calculate maximum reimbursement for anesthesia services. The

proposed increase resulted from rebasing the conversion factor using newer anesthesia base values.

(3) Apply a 8.87% cost of living increase to the maximum daily rate for physical and occupational therapy services.

Proposal Changes the Following Existing Rules: In WAC 296-20-135(2): Increase the RBRVS conversion factor from \$47.07 to \$49.60.

In WAC 296-20-135(3): Increase the anesthesia conversion factor from \$2.60 to \$2.70.

In WAC 296-23-220 and 296-23-230: Increase the maximum daily rate for physical and occupational therapy services from \$91.00 to \$99.00.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

RCW 34.05.328 does not apply to this rule adoption. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 [(5)](b)(vi).

Hearing Location: Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA, on March 29, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Tom Davis by March 22, 2001, TDD 1-800-833-6388.

Submit Written Comments to: Tom Davis, fax (360) 902-4249, by April 6, 2001.

Date of Intended Adoption: April 24, 2001.

February 21, 2001

Gary L. Moore

Director

AMENDATORY SECTION (Amending WSR 00-09-077, filed 4/18/00, effective 7/1/00)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of ~~((~~\$47.07~~))~~ \$49.60. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of ~~((~~\$2.60~~))~~ \$2.70 per minute, which is equivalent to \$39.00 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 00-09-077, filed 4/18/00, effective 7/1/00)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist or a physical therapist assistant serving under the direction of a licensed physical therapist. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$91.00)~~) \$99.00 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diaphuse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 00-09-077, filed 4/18/00, effective 7/1/00)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$91.00)~~) \$99.00 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major

treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 01-05-117

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 21, 2001, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 97-11-086.

Title of Rule: Suitable work, availability, and job search requirements for unemployment insurance claimants with disabilities.

Purpose: The proposed rules will clarify the department's policies regarding eligibility for unemployment benefits of disabled claimants who are unable to work full-time or who leave work due to a disabling condition.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010.

Statute Being Implemented: RCW 50.20.100.

Summary: The proposed rules define the circumstances under which less than full-time work is suitable for claimants with disabilities. They clarify that claimants who leave work because of a disabling condition will not be found unavailable for work if they notified the employer about the disability. Pregnancy-related disabilities will be treated the same as other disabilities. For benefit charge purposes, a leave of absence due to a disability will be considered a separation not attributable to the employer.

Reasons Supporting Proposal: These rules are proposed as a settlement agreement in the case of Gachen and Booser, representatives of a class, vs. ESD.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; Implementation and Enforcement: Annette Copeland, 212 Maple Park, Olympia, (360) 902-9303.

Name of Proponent: Employment Security Department, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules provide that an individual who can only work part-time because of a disability would be allowed to look for part-time work and still receive unemployment benefits. The department can request verification from a physician of the disability and any resulting restrictions on the individual's availability for full-time work. If an individual can not perform his or her job any longer because of a disability, he or she must have informed the employer about the disability, and the employer not have offered other

suitable work, for the individual to be eligible for benefits. Individuals who leave work because of a disability and apply for unemployment benefits will be given a written "directive" by the department telling them their job search requirements. They will not be required to do more than individuals who are not disabled. A disability resulting from pregnancy will be treated the same as other medical disabilities. And a leave of absence from work due to a disability will be considered a separation entitling the employer to request relief of benefit charges.

The purpose of both rules is to clarify the department's policies regarding benefits for claimants with disabilities, and to ensure that these policies are in compliance with state and federal law. We anticipate the effect of these rules will be greater consistency in decision-making within the department.

Proposal Changes the Following Existing Rules: WAC 192-16-021 is repealed.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department estimates that these rules will apply to approximately fifty individuals per year. The law already provides that when an individual voluntarily leaves work due to illness or disability, the employer may request relief of benefit charges. The proposed rules will treat a leave of absence due to illness or disability as a separation from work, permitting the employer to request relief of charges if an individual is found eligible for unemployment benefits.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The proposed regulations constitute "significant legislative" rules because (a) they establish or alter the qualifications or standards for determining an individual's eligibility for unemployment benefits, and (b) they make significant amendments to a policy or regulatory program.

Hearing Location: Employment Security Department, Public Affairs Conference Room, 2nd Floor, 212 Maple Park, Olympia, WA, on March 28, 2001, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Karen LaFreniere by March 27, 2001, TDD (360) 902-9589, or (360) 902-9582.

Submit Written Comments to: Barney Hilliard, Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98504-9046, fax (360) 438-3226, by March 27, 2001.

Date of Intended Adoption: April 9, 2001.

February 21, 2001

Paul Trause

Acting Commissioner

NEW SECTION

WAC 192-150-060 Leaving work due to disability.

(1) If you leave work because of a disability as defined in WAC 192-16-013 and, prior to the date you leave work or begin a leave of absence your employer does not offer you other suitable work within the company or business, you will not be found unavailable for work for not having requested alternative work with your employer.

- (2) The provisions of subsection (1) apply only when:
 - (a) You notified your employer about your disabling condition; and
 - (b) Your disability and resulting work restrictions are supported by a physician's statement, or by the terms of a collective bargaining agreement or your individual employment agreement.
 - (3) If requested by the department or your employer, the statement from your physician shall describe:
 - (a) The restrictions on the tasks or work-related functions you can perform;
 - (b) The restrictions on the number of hours you can work, if any; and
 - (c) The expected duration of the disability and resulting work restrictions.
- (3) This section also applies if you are on a voluntary leave of absence from work because of a pregnancy-related disability.

NEW SECTION

WAC 192-180-012 Requirements of individuals who leave work due to illness or disability. If you leave work because of your illness or disability:

- (1) You must meet the job search requirements described in RCW 50.20.240; and
- (2) The department will provide you with a directive that lists the job search requirements you must meet to maintain your eligibility for benefits. These job search requirements will not be more stringent than those imposed on claimants who are not disabled.

NEW SECTION

WAC 192-320-075 Disability leaves of absence. A leave of absence from employment will be considered a job separation if the leave of absence meets the conditions set forth in WAC 192-150-060. The employer may apply for relief of benefit charges under WAC 192-320-070 even if, under state or federal disability law, the employer is required to hold the job for the individual.

CHAPTER 192-170

AVAILABILITY TO ACCEPT WORK

NEW SECTION

WAC 192-170-050 Suitable work factors—RCW 50.20.100. (1) **Physical fitness.** (a) In addition to those factors listed in RCW 50.20.100 and RCW 50.20.110, the department will consider whether you have a disability that prevents you from performing the essential functions of the job without a substantial risk to your health or safety.

- (b) The department may determine in individual circumstances that less than full-time work is suitable if:
 - (i) You have a disability as defined in WAC 192-16-013;
 - (ii) The disability prevents you from working the number of hours that are customary to the occupation;

- (iii) You are actively seeking work for the occupation(s) and hours you have the ability to perform; and
- (iv) The restriction on the number of hours you can work, the essential functions you can perform, and the occupations you are seeking does not substantially limit your employment prospects within your general area.
- (c) Disabilities resulting from pregnancy will be treated the same as other disabilities, except that the department will also consider the risk to your pregnancy when deciding whether work is suitable.
- (d) The department will require verification from a physician of your disability and the risk to your health and safety of performing certain tasks or engaging in certain occupations, including any restrictions placed on your availability for full-time work.

(2) **Definitions.** For the purposes of this chapter:

- (a) "General area" means an individual labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation.
- (b) "Physician" means a person licensed to practice one or more of the following professions: Medicine and surgery (including, but not limited to, psychiatry); osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-16-021	Interpretive regulations— Suitable work factors—RCW 50.20.100
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WSR 01-05-118

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 21, 2001, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-07-141.

Title of Rule: Adopting new chapter 192-270 WAC, Training benefits for dislocated workers, and adopting rules in chapter 192-150 WAC related to separations from employment.

Purpose: The rules implement HB 3077 passed by the 2000 legislature. This legislation authorized the payment of additional unemployment benefits to certain dislocated workers, changed the definition of good cause for voluntarily leaving work as provided in RCW 50.20.050, and increased the requalification requirements for individuals who have left work voluntarily, been discharged from work for misconduct, or refused an offer of suitable work, and been denied unemployment benefits as a result.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.22.150.

PROPOSED

Statute Being Implemented: RCW 50.22.150, 50.20.050.

Summary: The rules clarify provisions of RCW 50.20.050 relating to good cause for voluntarily leaving work, and requirements for requalifying when benefits have been denied. Chapter 192-270 WAC establishes guidelines for determining eligibility for the additional unemployment benefits for dislocated workers established by HB 3077. The rules define terms, clarify eligibility requirements, and establish policies and procedures related to the approval and funding of training plans.

Reasons Supporting Proposal: Rules are necessary to clarify several provisions of the legislation, and to ensure that it is implemented consistently statewide.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, 212 Maple Park, Olympia, WA, (360) 902-9665; Implementation and Enforcement: Annette Copeland, 212 Maple Park, Olympia, WA, (360) 902-9303.

Name of Proponent: Employment Security Department, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Sections are added to chapter 192-150 WAC to clarify amendments to RCW 50.20.050 contained in HB 3077. These rules are intended to clarify how the department will determine whether an individual had good cause for voluntarily leaving work because of a bona fide job offer, or because of an employer-initiated mandatory transfer. A rule is also adopted specifying how an individual may requalify after benefits have been denied for leaving work voluntarily, being discharged for misconduct, or refusing an offer of suitable work or a job referral. These rules will provide for consistent application of the law to claimants in these circumstances.

A new chapter is adopted to describe the circumstances under which individuals may receive the additional unemployment benefits authorized by HB 3077. The rules define terms, clarify who is eligible to receive the additional unemployment benefits, describe what an individual must do to apply for the benefits and the criteria the department will use to approve an individual's training plan. The rules also define how funding priority will be determined, which is necessary because the funding is subject to biennial limits established by the legislature. These rules are intended to provide department staff, dislocated workers, employers, and other interested parties with clear guidelines as to how eligibility for the additional training benefits will be determined. It is anticipated that these rules will provide for consistent application of the law in determining eligibility for training and funding of the training plans.

Proposal Changes the Following Existing Rules: Two existing rules are repealed.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose costs on business in general or small business in particular. Any costs to business resulting from the payment of additional unemployment benefits to certain dislocated workers are imposed by HB 3077, the legislation authorizing these benefits.

Section 201, chapter 403, Laws of 1995, applies to this rule adoption. The rules establish policies and procedures related to an individual's eligibility for unemployment benefits. Violation of the rules could result in the denial of benefits.

Hearing Location: Public Affairs Conference Room, 2nd Floor, Employment Security Department, 212 Maple Park, Olympia, WA, on March 28, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Karen LaFreniere by March 27, 2001, TDD (360) 902-9589, or (360) 902-9582.

Submit Written Comments to: Barney Hilliard, Agency Rules Coordinator, P.O. Box 9046, Olympia, WA 98507-9046, fax (360) 438-3225, by March 27, 2001.

Date of Intended Adoption: April 9, 2001.

February 16, 2001

Paul Trause

Acting Commissioner

NEW SECTION

WAC 192-150-050 Leaving work to accept bona fide job offer—RCW 50.20.050 (2)(a). If you leave work to accept a bona fide offer of employment, you will have good cause within the meaning of RCW 50.20.050(1) if you satisfactorily demonstrate that:

- (1) Prior to leaving work, you received a definite offer of employment; and
- (2) You had a reasonable basis for believing that the person making the offer had the authority to do so; and
- (3) A specific starting date and the terms and conditions of the employment were mutually agreed upon; and
- (4) You continued in your previous employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job; and
- (5) The new job is in employment covered by Title 50 RCW or the comparable laws of another state.

NEW SECTION

WAC 192-150-065 What constitutes an employer-initiated mandatory transfer under RCW 50.20.050 (2)(c)? If your spouse's employer requires your spouse to relocate to another labor market area to retain a current job or to accept another job with that employer, the relocation will be considered an employer-initiated mandatory transfer. Examples of employer-initiated mandatory transfers include, but are not limited to:

- (a) A plant closure where employees must move to another labor market area to continue employment with that employer;
- (b) A change in job responsibilities, such as a promotion, with that same employer where the employer requires a move to another labor market area; and
- (c) A restructuring of business operations by the employer requiring employees to move to another labor market area if they want to continue doing the same job.

NEW SECTION

WAC 192-150-085 How to qualify after benefits have been denied. Benefits may be denied under RCW 50.20.050(1) for voluntarily leaving work, RCW 50.20.060 for being discharged for misconduct, and RCW 50.20.080 for refusing an offer of suitable work or job referral. The denial of benefits will continue indefinitely until you show that:

(1) At least seven calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits;

(2) You have obtained bona fide work and earned wages of at least seven times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state.

Chapter 192-270

Training Benefits for Dislocated Workers

NEW SECTION

WAC 192-270-005 Definitions. The definitions below apply to this chapter and RCW 50.22.150:

(1) "Labor market" means the geographic area in which workers in your particular occupation or with your particular set of skills have customarily found work. For the purpose of determining whether you are a dislocated worker, "labor market" is based on your place of residence at the time you separated from employment. You will not be eligible for training benefits if, following your separation from work, you move from a labor market area where your skills are in demand to an area where they are declining.

(2) "NAICS" means the North American industry classification system code.

(3) "Plurality of wages" means the largest proportion of wages earned within a particular occupation or skill set. These wages must be earned in:

(a) Your base year, and

(b) At least two of the four twelve-month periods preceding your base year.

(4) "SIC" means the standard industrial classification code. (5) "Skill set" means the work-related knowledge and abilities needed to produce a particular product or provide a particular service.

(6) "Training benefits" means the additional benefits paid under RCW 50.22.150 to eligible dislocated workers enrolled in and making satisfactory progress in a training program approved by the commissioner.

(7) "Wages" means remuneration earned in employment as defined in Title 50 RCW or the comparable laws of another state. This means that only wages in covered employment can be considered in determining whether you have sufficient tenure in an occupation or in work with a particular skill set.

NEW SECTION

WAC 192-270-010 Employment separations. You must have been terminated or received a notice of termina-

tion from your employer to be eligible for training benefits. Training benefits are not available if you left work voluntarily as provided in RCW 50.20.050, regardless of whether you had good cause for leaving, or if you are disqualified from benefits for work-related misconduct under RCW 50.20.060, and have not requalified for benefits.

When determining whether your separation from employment makes you eligible for training benefits, the department will look at the last job you held for a period of at least seven weeks that was in employment covered by Title 50 RCW or the comparable laws of another state.

NEW SECTION

WAC 192-270-015 Unlikely to return to employment. Except as provided in RCW 50.22.150(3), you are unlikely to return to employment if:

(1) You have:

(a) Become unemployed due to a permanent plant closure;

(b) Received a federal WARN act notice; or

(c) Received a notice of indefinite layoff as a result of a permanent reduction of operations at your place of employment; and

(2) Suitable work for individuals with your skills is in diminishing demand within your labor market.

NEW SECTION

WAC 192-270-020 Employment in the aerospace industry. (1) Employment in the following SIC codes is considered employment in the aerospace industry:

- 3721 Aircraft
- 3724 Aircraft engines and engine parts
- 3728 Aircraft parts and auxiliary equipment

(2) Employment in the following NAICS code is considered employment in the aerospace industry:

- 336411 Aircraft manufacturing

NEW SECTION

WAC 192-270-025 Employment in the forest products industry. RCW 50.22.150 (2)(b), the department has determined that employment in industries assigned the following SIC or NAICS codes is considered employment in the forest products industry:

(a) SIC codes:

- 24 Lumber and wood products, except furniture
- 26 Paper and allied products
- 08 Forestry
- 2861 Gum and wood chemicals
- 3553 Woodworking machinery
- 3554 Paper industry machinery manufacturing
- 5031 Lumber, plywood, millwork and wood panels

(b) NAICS codes:

- 321 Wood product manufacturing
- 322 Paper manufacturing

PROPOSED

- 113110 Timber tract operations
- 113210 Forest nurseries and gathering of forest products
- 113310 Logging
- 115310 Support activities for forestry
- 325191 Gum and wood chemical manufacturing
- 333210 Sawmill and woodworking machinery manufacturing
- 333291 Paper industry machinery manufacturing
- 337110 Wood kitchen cabinet and countertop manufacturing
- 421310 Lumber, plywood, millwork and wood panel wholesalers

(2) The department further determines that employment reported in industries assigned the following SIC or NAICS codes may be employment in the forest products industry. The department may review the specific nature of the employer's business to determine whether it represents employment in the forest products industry:

(a) SIC codes:

- 2823 Cellulosic manmade fibers
- 3425 Saw blades and handsaws
- 4212 Local trucking without storage (log trucking; trucking timber)
- 4449 Water transportation of freight, NEC (log rafting and towing)
- 5113 Industrial and personal service paper

(b) NAICS codes:

- 325221 Cellulosic organic fiber manufacturing
- 332213 Saw blade and handsaw manufacturing
- 337215 Showcase, partition, shelving and locker manufacturing
- 422130 Industrial and personal service paper wholesalers

(3) Other employment may be considered to be employment in the forest products industry if it involves:

- (a) The planting and/or cultivation of trees for eventual harvest for lumber or paper manufacturing;
- (b) The harvest of logs for lumber or pulp production;
- (c) Hauling or shipping logs;
- (d) Hauling or shipping lumber or paper products from point of manufacture;
- (e) Scaling logs;
- (f) Repair of logging trucks or equipment;
- (g) Manufacture of wood processing, logging or forestry equipment, including but not limited to logging trucks, log splitters, draglines, or chippers;
- (i) Sale, rental or leasing of wood processing or logging equipment; or
- (j) Other activities clearly involved in the forest products industry, even if performed for an employer whose primary business is not in the forest products industry.

NEW SECTION

WAC 192-270-030 Employment in the fishing industry. Employment reported in industries assigned SIC code

0912, Finfish (commercial fishing), or NAICS code 114111, Fishing (finfish), is considered to be employment in the fishing industry.

NEW SECTION

WAC 192-270-035 Timeframes. Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010).

(1) **Submitting a training plan.** You have 60 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 65 calendar days from the date your application for benefits is filed, which represents 60 days plus five days for the booklet to reach you by mail.

(2) **Enrollment in training.** You must be enrolled in training within 90 calendar days, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(3) If you return to work, and subsequently become unemployed, the timeframes described in subsections (1) and (2) begin with the date you file your additional claim for benefits.

NEW SECTION

WAC 192-270-040 Enrollment in training. To receive training benefits, you must be enrolled in an approved training program on a full-time basis as determined by the educational institution. You are enrolled in training if:

- (1) You have preregistered for classes or are on a waiting list; and
- (2) You have a starting date of training; and
- (3) The starting date is not more than one quarter or term away.

NEW SECTION

WAC 192-270-045 Requirements for applying for training benefits. The following information must be included in your application for training benefits:

- (1) Your name and Social Security account number;
- (2) The name of the educational institution;
- (3) The address of the educational institution;
- (4) The department of the educational institution, if applicable;
- (5) The name of the training program;
- (6) A description of the training program, including remedial requirements if necessary;
- (7) Your enrollment date or your place on the waiting list and expected enrollment date;
- (8) The duration of the training program, including the dates you plan to begin and complete training;
- (9) The occupation(s) trained for;

(10) A verification of your enrollment provided by the educational institution;

(11) A release of information form authorizing the educational institution to release grades, attendance, and other measures of program progress to the department; and

(12) Your signature.

NEW SECTION

WAC 192-270-050 Criteria for approving training plans. (1) The department will consider the following factors when reviewing your application for training benefits:

(a) Whether you have a current benefit year as required by RCW 50.22.010(9);

(b) Whether suitable employment is available in your labor market;

(c) Your plan for completion of the training including, but not limited to, what financial resources you intend to use to fund the complete training plan when training benefits run out;

(d) Whether you have the qualifications and aptitudes to successfully complete the training;

(e) Whether the training relates to a high demand occupation, meaning that the number of job openings in the labor market for the occupation or with that skill set exceeds the supply of qualified workers;

(f) Whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your employment prospects would be if training were not approved; and

(g) Effective July 1, 2001, whether the educational institution meets the performance criteria established by the workforce training and education coordinating board. Until June 30, 2001, a vocational training program at an educational institution is presumed to meet the performance criteria if it is a:

(i) Public community or technical college;

(ii) Public university;

(iii) Registered apprenticeship program;

(iv) Private vocational school licensed by the workforce training and education board, the higher education coordinating board, the department of licensing, or a comparable agency in another state;

(v) Private college or university that is eligible to receive federal funds under Title IV of the Higher Education Act of 1965; or

(vi) Private provider of vocational training services currently authorized by a private industry council in accordance with P.L. 97-300, Section 107, Selection of Service Providers.

(2) Academic training may be approved if it meets the criteria of subsection (1) and it meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(3) The department may approve educational training that has been identified as necessary by the training facility as a prerequisite to a vocational training program that meets the criteria of subsection (1).

(4) In the case of individuals with physical or sensory disabilities, or in other unusual circumstances, a written deci-

sion of the commissioner may waive any of the requirements of this section on an individual basis.

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

NEW SECTION

WAC 192-270-055 Funding—Waiting lists. Payment of training benefits is contingent upon the availability of funding. Training will not be approved under RCW 50.22.150 unless the department has determined that funds are available to support your training plan.

(1) The amount of funds obligated will be the amount necessary to complete your training plan or the maximum amount authorized by RCW 50.22.150 (5)(a), whichever is less.

(2) If you have been denied training benefits due to lack of funds, the department will consider whether you are eligible for commissioner approved training under WAC 192-200-020.

(3) Funds will be obligated in the following order:

(a) First, otherwise eligible dislocated workers who are enrolled in training approved by the department as of February 13, 2000;

(b) Second, other eligible dislocated workers on a first-come, first-served basis, determined by the date the completed training application is received by the department.

(4) Once all available funds have been obligated, individuals who have been denied training benefits due solely to the lack of funds will be placed on a waiting list. Priority on the waiting list will be determined by the date the claimant's completed training application was received by the department. As additional funds become available, this date will be used when obligating funds to claimants on the waiting list. In the event two or more claimants on the waiting list have the same date, priority will be given to that person who is closest to exhausting regular unemployment benefits.

(5) An individual's name may be removed from the waiting list, upon written notice, when the department determines it is appropriate. Examples include, but are not limited to:

(a) Written correspondence to the claimant from the department is returned by the U.S. postal service for lack of a current address, and the claimant has not filed a change of address with the department;

(b) The claimant fails to respond to written correspondence from the department by the date indicated in the correspondence;

(c) The claimant is not enrolled in or making satisfactory progress in full-time training; or

(d) Implementation of the approved training program would result in benefits being paid more than two years beyond the end of the claimant's benefit year.

NEW SECTION

WAC 192-270-060 Occupation in high demand outside labor market. A training plan may be approved in an occupation not in demand in your local labor market if:

- (1) The occupation is in high demand in another labor market; and
- (2) You are willing and able to relocate to that labor market when the training is completed; and
- (3) There is not a current demand for workers with your present skills in that labor market. The demand for workers in that labor market must be at wages comparable to those paid in your current labor market, based on any differences in the cost of living between the two areas.

NEW SECTION

WAC 192-270-065 Certification of satisfactory progress. (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in full-time training must be signed by the registrar or an equivalent person designated by your educational institution.

- (2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:
 - (a) Your grade point average does not fall below 2.0 for more than one quarter;
 - (b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and
 - (c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

NEW SECTION

WAC 192-270-070 Modifying a training plan. (1) You must notify the department prior to making a significant modification to your approved training plan. A significant modification is one that impacts any of the approval criteria listed in WAC 192-270-050 and includes, but is not limited to, changes in:

- (a) Your course of study or major;
- (b) The educational institution;
- (c) The projected start or end dates for the training; or
- (d) Your enrolled credit hours.

(2) The department must determine your continued eligibility for training benefits any time you make a significant modification to your training plan, using the criteria listed in WAC 192-270-050 (1)(b)-(g). Approval of a modification that increases the projected cost of the training is subject to the availability of funding. The department will conditionally pay benefits on a modified training plan until the modification is approved or denied.

(3) In general, you may make a significant modification to your plan one time. Subsequent modifications will not be approved except in unusual individual circumstances. However, this restriction does not apply while you are enrolled in educational courses that are a prerequisite to vocational training.

(4) If you modified your training plan without approval by the department, and that modification is subsequently disapproved, you are ineligible for training benefits for at least five years.

(5) Any benefits paid for a modified training plan that is not approved by the department constitute an overpayment and shall be subject to recovery under RCW 50.20.190.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|--|
| WAC 192-16-011 | Interpretative regulations—
Leaving work to accept bona fide job offer—RCW 50.20.050 (2)(a) |
| WAC 192-16-017 | Interpretative regulations—
Satisfying disqualifications under RCW 50.20.050 (1) and (4), 50.20.060 and 50.20.080 |

**WSR 01-05-120
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**
[Filed February 21, 2001, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-01-022.

Title of Rule: Salmon license buy-back.

Purpose: Establish and conduct a Puget Sound salmon license buy-back.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

Summary: Reduce number of purse seine, Puget Sound gill net and reef net licenses to reduce fishing effort.

Reasons Supporting Proposal: Overcapitalization of the Puget Sound net fishery.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, 902-2930; Implementation: Jim Lux, 1111 Washington Street, Olympia, 902-2444; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, 902-2927.

Name of Proponent: Washington State Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: State and federal funding are available for a Puget Sound salmon license buy-back program. This program will concentrate on the net licenses that have not been reduced in the last two buy-backs. The program will work on a fixed-sum purchase amount, with priority in application date for gill and reef nets, and priority in fishing activity for purse seines. There will be a three phase approach as funds become

PROPOSED

available. Successful applicants will not be allowed to reenter the fishery unless they already have multiple licenses. The program will benefit those fishers who have lost or will lose fishing opportunity as a result of an agreement between the United States and Canada on division of Fraser River sockeye stocks as well as reduced opportunity on other stocks because of Endangered Species Act listings and less salmon harvest available.

Proposal Changes the Following Existing Rules: Modifies coastal harbor salmon buy-back rules to apply concept to Puget Sound.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of Reporting, Record-keeping and Other Compliance Measures Required by Proposed Rule: None.
2. Professional Services Required by the Rule: None.
3. Costs of Compliance, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None, as compliance is not required with this voluntary program.
4. Will Compliance Cost Businesses to Lose Sales or Revenue? No.
5. Comparison of Costs for the 10% of Businesses that are the Largest Businesses Required to Comply with the Proposed Rule: There is no required compliance.
6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses: The department has created a simplified application form. No catch data need be supplied.
7. Description of How the Agency will Involve Small Businesses in Rule Development: The program was developed in concert with industry. Representatives of the net fishery groups have met with department personnel to fashion the cost of license purchase, operation of the program relative to funding, and ranking of offers.
8. List of Industries Required to Comply with the Rule: No compliance requirement. Puget Sound salmon net fishers may participate.

A copy of the statement may be obtained by writing to Evan Jacoby, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98504-1091, phone (360) 902-2930, fax (360) 902-2942.

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

Hearing Location: Ramada Inn, Spokane International Airport, Spokane, Washington, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 16, 2001, TDD (360) 902-2207, or (360) 902-2226.

Submit Written Comments to: Evan Jacoby, 600 Capitol Way North, Olympia, WA 98501, fax (360) 902-2942, by April 5, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001
Evan Jacoby
Rules Coordinator

AMENDATORY SECTION (Amending Order 00-148, filed 8/16/00, effective 9/16/00)

WAC 220-95-013 ((2000-Coastal)) 2001-2002 Puget Sound salmon license buy-back program established—Fund allocation—Expiration. (1) The legislature ~~((has))~~ and the federal government have allocated funds and anticipate allocating additional funds to buy back salmon licenses from commercial license holders. The department hereby designates ~~(((\$923,400))~~ \$33,834,689 of these funds as the ~~((2000-coastal))~~ 2001-2002 Puget Sound salmon license buy-back program (program). The licenses eligible to participate in the program are ~~((salmon charter, salmon delivery, salmon troll, Grays Harbor))~~ purse seine, Puget Sound salmon gill net, and ((Willapa Harbor salmon gill)) reef net.

(2) The goal of the program is to provide economic relief to Washington commercial salmon fishers, and to reduce the number of Washington commercial salmon licenses. To accomplish this, the department is proposing a ~~((two-step))~~ three-step process, ((first-an-open)) all three steps of which are purchase of licenses for a fixed sum ((Phase One), then; if any funds remain available, an income-based purchase plan (Phase Two)).

(3) The department will allocate the ~~(((\$923,400))~~ funds available for ~~((coastal salmon fishery licenses))~~ the program as follows:

~~((a))~~ Program administration—\$23,400.

~~((b))~~ Salmon charter—\$300,000.

~~((c))~~ Salmon troll and salmon delivery—\$300,000.

~~((d))~~ Willapa-Columbia River and Grays Harbor Columbia River gill net—\$300,000. (a) Spring, 2001: \$25,959,689 available.

(i) Program administration - \$750,689.

(ii) Purse seine - 166 licenses at \$82,200 - \$13,645,200.

(iii) Gill net - 430 licenses at \$24,100 - \$10,363,000.

(iv) Reef net - 19 licenses at \$63,200 - \$1,200,800.

(b) Fall, 2001: \$2,500,000 if appropriated in state biennial budget.

(i) Program administration - \$176,600.

(ii) Purse seine - 15 licenses at \$82,200 - \$1,233,000.

(iii) Gill net - 40 licenses at \$24,100 - \$964,000.

(iv) Reef net - 2 licenses at \$63,200 - \$126,400.

(c) Spring 2002 - \$5,375,000 if appropriated in federal fiscal year 2002 budget.

(i) Program administration - \$158,400.

(ii) Purse seine - 34 licenses at \$82,200 - \$2,794,800.

(iii) Gill net - 90 licenses at \$24,100 - \$2,169,000.

(iv) Reef net - 4 licenses at \$63,200 - \$252,800.

Program administration funds that will not be used will be reallocated to license purchases.

(4) The program expires upon the distribution of all available funds.

AMENDATORY SECTION (Amending Order 00-148, filed 8/16/00, effective 9/16/00)

WAC 220-95-018 2001-2002 Puget Sound salmon license buy-back program eligibility. Only persons ~~((meeting the following criteria are eligible to participate in the program.~~

~~(1) For phase one applicants, the person) who possessed or ((was) were eligible to possess in ((1999) 2000 a salmon ((troll or delivery license, a Grays Harbor salmon gill net license, a Willapa Harbor salmon gill net license or a salmon charter)) gill net—Puget Sound license, a salmon purse seine license, or a salmon reef net license issued pursuant to RCW ((75.28.095)) 77.65.160, and is eligible to possess the same license in ((2000)) 2001.~~

~~((2) For phase two applicants:~~

~~(a) The person possessed or was eligible to possess in 1999 one of the Washington state salmon fishing licenses listed in subsection (1) of this section, is eligible to possess the same license in 2000, and had income derived under the license from 1986 through 1991;~~

~~(b) The person had a salmon income loss greater than \$0, computed as follows:~~

~~The salmon income loss under the program is the difference between the highest gross income derived from Washington state and offshore salmon fishing activity (including incidental catch provided that some salmon are shown on the fish receiving ticket documenting the catch) during any calendar year 1986 through 1991 (the base year), less the sum of the least amount of gross income derived from the same salmon fishing activity during any calendar year from 1992 through 1999 (the comparison year), multiplied by 2.5. For purposes of calculating income, the license holder must and may only use income from salmon fisheries in the coastal waters of Washington, the waters of Grays Harbor, Willapa Bay, and the Columbia River. Income that was used in calculating uninsured loss in the 1995 salmon disaster relief license buy-back program, salmon decline impact in the 1996 Washington salmon license buy-out program or salmon income loss in the 1998 salmon license buy-back program may not be used to calculate salmon income loss in the 2000 coastal salmon license buy-back program if the license offered in the 1995, 1996, or 1998 program was purchased and retired.))~~

AMENDATORY SECTION (Amending Order 00-148, filed 8/16/00, effective 9/16/00)

WAC 220-95-022 2001-2002 Puget Sound salmon license program application. (1) A person may make only one offer per license ((per phase)) under the program.

~~(2) ((Income used in the calculation of offers that are accepted may not be used in the calculation of any other offer.~~

~~(3) Phase one applications:~~

~~(a) Phase one)) Applications must be submitted to the department's licensing division on a department offer form. A completed offer form must contain the following information:~~

~~The applicant's name, Social Security number, mailing address during the offer period, telephone number (if applicable), and the license type and license number being offered((;~~

~~(b) The offer amounts for phase one are:~~

~~(i) Salmon troll and salmon delivery: \$7,500.~~

~~(ii) Grays Harbor Columbia and Willapa Bay Columbia gill net: \$12,500.~~

~~(iii) Salmon charter: \$1,000 per angler permit not to exceed \$10,000, and including all angler permits currently on the license or all angler permits on the license as of December 31, 1999, whichever is the lesser number)).~~

~~((e) Phase one)) (3) Applications for all phases will be accepted through 5:00 p.m., ((September 1, 2000. Any amounts remaining in the gear category from phase one will be used in phase two, unless the department deems that there are insufficient funds remaining to conduct a phase two plan.~~

~~(4) Phase two applications:~~

~~(a) Phase two applications must be made on department forms and must be received by the department's licensing division by 5:00 p.m., October 6, 2000.~~

~~(b) The licensee may offer the license for any amount up to the salmon income loss incurred under the license or \$75,000, whichever is the lesser amount.~~

~~(c) An offer is not made unless a complete offer is received by the department. In order for an offer to be complete, the following must be received:~~

~~(i) A complete offer sheet, showing:~~

~~(A) The applicant's name, Social Security number, mailing address during the offer period and telephone number (if applicable);~~

~~(B) The license type and license number that is being offered;~~

~~(C) The offer amount;~~

~~(D) The base year income (1986-1991);~~

~~(E) The comparison year income (1992-1999); and~~

~~(F) The offer ratio, defined as the offer amount divided by the salmon income loss.~~

~~(ii) Salmon income supporting documents other than salmon charter are defined as official state fish receiving tickets documenting landings under a Washington license, or computer-generated landing lists that have been certified by the department or the Pacific States Marine Fisheries Commission to be true and correct copies of Washington or Columbia River landings. All landings count in calculation of base and comparison year incomes.~~

~~(iii) For salmon charter license fishing activity, acceptable supporting documents are trip tickets identifying the species targeted, the number of anglers, and the date of the trip or, if such tickets are unavailable, the department will accept a letter of endorsement from a charterboat association or charterboat booking office indicating salmon fishing was a major component of earnings, and, if such a letter is provided, will review the total income of the applicant for the base and comparison years.~~

~~Note: Commercial salmon licensee applicants who submitted complete offers in the 1998 Washington salmon license buy-out program need not resubmit supporting documents for offers based on the same base and comparison years if all landings are from Washington state. Such persons must submit a new offer sheet to participate in the 2000 program, but the offer amount may differ from the 1998 offer amount, provided it does not exceed the 2000 program limits.~~

~~(iv) Records disclosure authorization that allows the department to receive copies of the applicant's Internal Revenue Service returns for the base and comparison years and to receive landing information from the Pacific States Marine Fisheries Commission.~~

~~(v) A signed statement certifying that all information provided is true and correct)) May 11, 2001. Only those applications received by this deadline will be eligible for the Phase 1 buyback. Applications received after this date will be ranked for Phase 2 or Phase 3 as detailed under the procedures for ranking offers.~~

AMENDATORY SECTION (Amending Order 98-206, filed 10/1/98, effective 11/1/98)

WAC 220-95-027 Ranking (~~(of)~~) and acceptance of salmon purse seine license offers. ((Phase two offers will be ranked by the offer ratio, beginning with the lowest ratio.)) (1) All Puget Sound purse seine licenses will be ranked based upon participation in the Puget Sound summer and fall salmon fisheries.

(2) Purse seine rankings will be based upon a point system (0-10) for landings in the months of July and August (summer fisheries) and/or the months of September, October, and November (fall fisheries) between 1994 and 1998. One point will be assigned for a verified landing during each of these periods or a maximum of ten points possible.

(3) Points will be assigned only if the current license owner and buy-back applicant also landed salmon on that same license some time during the 1994-1998 qualifying period.

(4) Example: A current license owner makes a landing on the license in August and October of each year from 1994 to 1998. The owner is assigned the maximum ten points possible. If landings were only made in August 1994 and October 1998, then the owner would be assigned two points.

(5) Landings will be documented on official Washington state fish-receiving tickets or computer-generated landing lists certified by the department to be true and correct copies of Washington.

(6) In the event that two or more applicants have the same number of points, a random draw shall be conducted to rank the applicants among themselves before placing them into the overall rank order.

(7) The ranking will continue until all applicants have been rank-ordered. The order of ranking will apply to all phases of the buyback.

(8) Persons selected based upon the rank order and the available funds will be notified by the department that a license offer has been accepted by registered mail to the address provided on the offer form. The enclosed acknowledgment sent with the acceptance letter must be signed and returned to the department within ten days of the department's mailing date. Any acknowledgment received after the ten-day period is void and the acceptance will be withdrawn. Final rankings of all licenses will be available upon request to applicants when all appeals have been settled.

(9) Persons not selected in Phase 1 will be sent an acceptance by mail to the address provided on the offer form that their ranking will continue to apply for Phase 2 and Phase 3 when they should occur.

(10) Persons who apply after 5:00 p.m. on May 11, 2001, will be ranked at the bottom of the ranked list in the order that the applications were received. They are not eligible to par-

ticipate in Phase 1. Applications received on a single day will be ranked by random draw.

(11) Persons who wish to appeal their ranking must appeal within ten days of the mailing date of the registered letter of acceptance. Any appeal received after the ten-day period is void and the ranking will stand. Appeals will be referred to an adjudicative proceeding for resolution.

(12) The department will tender the amount of the offer upon receipt of a valid acknowledgment and upon resolution of all appeals that affect the ranking of licenses to be purchased.

AMENDATORY SECTION (Amending Order 00-148, filed 8/16/00, effective 9/16/00)

WAC 220-95-032 (~~(Offer)~~) Ranking and acceptance(~~(Acknowledgment—Retirement of licenses)~~) of salmon gill net—Puget Sound and salmon reef net license offers. ((1) Phase one. The department will accept applications for phase one until 5:00 p.m. September 1, 2000. Applicants will not be prioritized on the basis of the date the application was received by the department. Phase one applicants may apply in person at the department licensing office in Olympia, by FAX to the license office at (360) 902-2925, or by mail to Fish and Wildlife Licensing, 600 Capitol Way North, Olympia, Washington 98501-1091. If there are insufficient funds to process all applications received, a random drawing will be made to determine which applications will be accepted to participate in the program.

(2) Phase two. The department will accept applications for phase two in rank order, beginning with the lowest offer ratio. In the event of a tie between identical offer ratios, the lowest offer amount will be given preference.

(3) The department will notify license holders that it has accepted a license offer by sending an acceptance and acknowledgment to the license holder by registered mail to the address provided on the offer form or offer sheet. The acknowledgment must be signed and returned to the department within ten days of the date of the mailing of the acceptance. Any acknowledgment received after the 10-day period is void and the acceptance is withdrawn.

(4) The department will tender the amount of the offer upon receipt of a valid acknowledgment. Upon tendering the offer amount, the department will retire the license and any angler permits that formed the basis of the offer amount.

(5) Persons who sell a license in phase two of the program cannot purchase or operate a commercial license listed in RCW 75.28.110 or 75.28.113 or a salmon charter license listed in RCW 75.28.095 for ten years, beginning January 1, 2001, except that persons may operate such a license if the license was owned or operated by that person in 1999.) (1) The purchase of Puget Sound gill net and reef net licenses will be based upon a random drawing of all applicants for a specific license type.

(2) The random drawing will continue until all applicants who offered to sell at the department's offered price have been rank-ordered. The order of ranking will apply to all phases of the buyback.

(3) Persons selected will be notified by the department that a license offer has been accepted by registered mail to the address provided on the offer form. The enclosed acknowledgment sent with the acceptance letter must be signed and returned to the department within ten days of the department's mailing date. Any acknowledgment received after the ten-day period is void and the acceptance will be withdrawn. Final rankings of all licenses will be available upon request to applicants when all appeals have been settled.

(4) Persons not selected in Phase 1 will be sent an acceptance by mail to the address provided on the offer form that their ranking will continue to apply for a Phase 2 and Phase 3 buyback when they should occur.

(5) Persons who apply after 5:00 p.m. on May 11, 2001, will be ranked at the bottom of the ranked list in the order that the applications were received. Applications received on a single day will be ranked by random draw.

(6) Persons who wish to appeal their ranking must appeal within ten days of the mailing date of the registered letter of acceptance. Any appeal received after the ten-day period is void and the ranking will stand. Appeals will be referred to an adjudicative proceeding resolution.

(7) The department will tender the amount of the offer upon receipt of a valid acknowledgment and upon resolution of all appeals that affect the ranking of licenses to be purchased.

NEW SECTION

WAC 220-95-034 2001-2002 Puget Sound salmon license program—Retirement of licenses. Persons who sell a license in any phase of the 2001-2002 Puget Sound salmon license program cannot purchase or operate a salmon gill net—Puget Sound license, a salmon purse seine license or a salmon reef net license issued pursuant to RCW 77.65.160 through January 1, 2013, except that persons may operate such a license if the license was owned or operated by that person in 2000.

WSR 01-05-132

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed February 21, 2001, 11:51 a.m.]

Original Notice.

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

Title of Rule: The addition of one position to the Strawberry Commission in District 3, chapter 16-555 WAC.

Purpose: To create a new position on the board of the Strawberry Commission representing District 3 (representing Clark, Cowlitz, Lewis, Pacific, Skamania, Wahkiakum, Grays Harbor, Mason and Thurston counties).

Statutory Authority for Adoption: Chapter 15.65 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

Summary: The Strawberry Commission has requested the director to amend the strawberry marketing order by

increasing District 3 representation from one position to two positions on the board.

Reasons Supporting Proposal: District 3 produces more strawberries than District 1 and almost as much as District 2 which are both represented by two positions.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Deborah Anderson, 1111 Washington Street S.W. [S.E.], Olympia, WA 98504, (360) 902-1809.

Name of Proponent: Washington Strawberry Commission.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed amendment creates a new position on the board of the Strawberry Commission representing District 3 (representing Clark, Cowlitz, Lewis, Pacific, Skamania, Wahkiakum, Grays Harbor, Mason and Thurston counties). According to the commission, District 3 produced more strawberries than District 1 and almost as much as District 2 which are both represented by two positions. In 1999 District 1 had nineteen growers who produced 7,226,483 pounds of strawberries; District 2 had seventeen growers producing 1,040,003 pounds of strawberries; and District 3 had twenty four growers producing 3,675,026 pounds of strawberries.

Proposal Changes the Following Existing Rules: Position 7 has been added to District 3 of the Strawberry Commission in chapter 16-555 WAC increasing membership on the board to a total of seven affected producer members.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The amendment will be voted on in a referendum of the strawberry producers and proposal places no requirements on the strawberry producers.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency under section 201.

Hearing Location: Natural Resources Building, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504, on April 11, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Lou Jones by April 2, 2001, TDD (360) 902-1996, or (360) 902-1806.

Submit Written Comments to: Deborah Anderson, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, or e-mail adminregs@agr.wa.gov, fax (360) 902-2092, by June 22, 2001.

Date of Intended Adoption: June 22, 2001.

February 21, 2001

William E. Brookreson
Deputy Director

AMENDATORY SECTION (Amending WSR 00-10-024, filed 4/24/00, effective 5/25/00)

WAC 16-555-020 Strawberry commodity board. (1) **Administration.** The provisions of this marketing order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) Board membership.

(a) The board shall consist of ~~((seven))~~ eight members. ~~((Six))~~ seven members shall be affected producers elected as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the department and the public.

(b) For the purpose of nomination and election of producer members of the board, the affected area shall be the state of Washington, and shall be divided into four representative districts as follows:

(i) District I shall have two board members, being Positions 1 and 2, and shall include the counties of Island, San Juan, Skagit, and Whatcom.

(ii) District II shall have two board members, being Positions 3 and 4, and shall include the counties of King, Clallam, Jefferson, Kitsap, Pierce, and Snohomish.

(iii) District III shall have ~~((one))~~ two board members, being Position 5 and Position 7, and shall include the counties of Clark, Cowlitz, Lewis, Pacific, Skamania, Wahkiakum, Grays Harbor, Mason, and Thurston.

(iv) District IV shall have one board member, being Position 6, and shall include the remaining counties in the state of Washington.

(3) **Board membership qualifications.** The affected producer members of the board shall be practical producers of strawberries and shall be citizens and residents of the state of Washington, over the age of twenty-five years, each of whom is and has been actually engaged in producing strawberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his/her income therefrom. Producer-handlers shall be considered to be acting only as producers for purpose of election and membership on a commodity board. The qualifications of members of the board as herein set forth must continue during the terms of office.

(4) Term of office.

(a) The term of office, for members of the board shall be three years, and one-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through ~~((six))~~ seven and the member appointed by the director, position ~~((seven))~~ eight.

(c) The term of office for the initial board members shall be as follows:

Position one - shall terminate on August 31, 1986;

Positions three and five - shall terminate on August 31, 1987;

Positions two and four - shall terminate on August 31, 1988.

(d) The term of office for the initial board member in Position 6, shall terminate on August 31, 1995.

(e) The term of office for the initial board member in Position 7 shall terminate on August 31, 2004.

(5) **Nomination and election of board members.** Each year the director shall call for a nomination meeting. Such meeting shall be held at least thirty days in advance of the date set by the director for the election of board members. Notice of every such meeting shall be published in a newspa-

per of general circulation within the production area not less than ten days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers according to the list maintained by the director pursuant to RCW 15.65.200 of the act. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting. Any qualified affected producer may be nominated orally for membership on the board at such nomination meeting. Nominations may also be made within five days after any such meeting by written petition filed with the director, signed by not less than five affected producers. At the inception of this marketing order, nominations may be made at the issuance hearing.

When only one nominee is nominated for any position on the board, the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected.

(6) Election of board members.

(a) Members of the board shall be elected by secret mail ballot within the month of May under the supervision of the director. Affected producer members of the board shall be elected by a majority of the votes cast by the affected producers. Each affected producer shall be entitled to one vote.

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) Notice of every election for board membership shall be published in a newspaper of general circulation within the production area not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears on the list of such affected producers maintained by the director in accordance with RCW 15.65.200. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications. Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

(7) **Vacancies prior to election.** In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, together with travel expenses at the rates allowed state employees.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce, and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel as the board determines necessary and proper to carry

out the purpose of the marketing order and effectuate the declared policies of the act.

(d) To pay from moneys collected as assessments, contributions, or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the marketing order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited with the director in marketing order to defray the costs of formulating the marketing order.

(f) To establish a "strawberry board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, shall be deposited each day or as often as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each calendar year. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each calendar year.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the marketing order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or the marketing order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of

federal and state marketing regulations, licenses, agreements, or orders.

(o) To authorize the members of the board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030(1) or any agricultural chemical which is of use or potential use in producing strawberries, and may authorize the expenditure of commission funds for this purpose.

(p) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) Procedures for board.

(a) The board shall hold regular meetings, at least semi-annually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act).

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by regular news services.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice of any special meeting may be waived by a waiver thereof by each member of the board.

WSR 01-05-134
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed February 21, 2001, 11:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-272 2000-2001, 2001-2002, and 2002-2003 Black bear and cougar hunting seasons and regulations and 232-28-300 Mandatory report of hunting activity.

Purpose: To adopt WAC 232-28-299 Mandatory report of hunting activity and amend WAC 232-28-272 2000-2001, 2001-2002, and 2002-2003 Black bear and cougar hunting seasons and regulations.

Statutory Authority for Adoption: RCW 77.12.040 and 77.32.070.

Statute Being Implemented: RCW 77.12.040 and 77.32.070.

Summary: This will change the current system of requiring successful deer, elk, and turkey hunters; and all black bear and cougar hunters to report each year. The proposed change will require deer, elk, black bear, and turkey hunters to report their hunting activity each year. The reporting requirement for cougar will be dropped with a mandatory carcass check and tagging system retained.

Reasons Supporting Proposal: To significantly improve harvest estimates for monitoring impacts of hunting and to

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determine population trends. Under the current reporting system and using a 10% sample of hunters, harvest estimates are only accurate at regional or statewide levels. With a mandatory reporting requirement, harvest estimates in most cases will be accurate at the game management unit level.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects:

- The proposed rule will require all deer, elk, black bear, and turkey hunters to report their hunting activity each year using a toll free telephone system or over the Internet.
- Hunters who report harvest within ten days of kill and unsuccessful hunters who report by January 31 will be entered into a drawing for special permit hunts.
- Hunters will not be allowed to purchase a license in 2002 until they report their activity from 2001.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-215, filed 10/12/00, effective 11/12/00)

WAC 232-28-272 2000-2001, 2001-2002 and 2002-2003 Black bear and cougar hunting seasons and regulations.

Black Bear Seasons:

Hunt Name	2000 Season	Hunt Area
General Eastern	Aug. 1 - Nov. 5	GMUs 121-142, 203-382, 578, 588
Northeastern	Sept. 5 - Nov. 5	GMUs 101-117
Blue Mt.	Sept. 5 - Nov. 5	GMUs 145-154, 162-186
General Western	Aug. 1 - Nov. 12	GMUs 407, 410, 454, 466, 490-520, 524-574, 601-684
North Cascades	Aug. 1 - Nov. 30	GMUs 418-450, 460
West Side PLWMA's	July 15 - Nov. 12	PLWMA's 401, 600
Long Island	Sept. 1 - Nov. 12	Long Island

Hunt Name	2001 Season	Hunt Area
General Eastern	Aug. 1 - Nov. 4	GMUs 121-142, 203-382, 578, 588
Northeastern	Sept. 4 - Nov. 4	GMUs 101-117
Blue Mt.	Sept. 4 - Nov. 4	GMUs 145-154, 162-186
General Western	Aug. 1 - Nov. 11	GMUs 407, 410, 454, 466, 490-520, 524-574, 601-684
North Cascades	Aug. 1 - Nov. 30	GMUs 418-450, 460
West Side PLWMA's	July 15 - Nov. 11	PLWMA's 401, 600
Long Island	Sept. 1 - Nov. 11	Long Island

Hunt Name	2002 Season	Hunt Area
General Eastern	Aug. 1 - Nov. 3	GMUs 121-142, 203-382, 578, 588
Northeastern	Sept. 3 - Nov. 3	GMUs 101-117
Blue Mt.	Sept. 3 - Nov. 3	GMUs 145-154, 162-186
General Western	Aug. 1 - Nov. 10	GMUs 407, 410, 454, 466, 490-520, 524-574, 601-684
North Cascades	Aug. 1 - Nov. 30	GMUs 418-450, 460
West Side PLWMA's	July 15 - Nov. 10	PLWMA's 401, 600
Long Island	Sept. 1 - Nov. 10	Long Island

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.

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A second black bear transport tag must be purchased to take a second bear.

Bag Limit: Two (2) black bear per annual hunting season only one of which may be taken in Eastern Washington.

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.))~~

Submitting Bear Teeth: Successful bear hunters must submit the black bear premolar tooth located behind the canine tooth of the upper jaw.

Cougar Season:

General Statewide Season:

Aug. 1, 2000 - Mar. 15, 2001;
Aug. 1, 2001 - Mar. 15, 2002; and
Aug. 1, 2002 - Mar. 15, 2003.

License Required: A valid big game hunting license which includes cougar as a species option is required to hunt cougar.

Bag Limit: Two (2) cougar per license year excluding public safety cougar removals. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens. Individuals selected for a public safety cougar removal permit may take one (1) cougar and must take the first legal cougar available.

Tag Information:

(1) One cougar transport tag is included with a big game license that has cougar as a species option. A second cougar transport tag must be purchased to take a second cougar.

(2) Individuals selected for a public safety cougar removal must possess a valid big game license and cougar transport tag prior to issuance of the permit. Individuals may participate in multiple public safety cougar removals, but must purchase a cougar transport tag for each cougar removed. Purchases in excess of two (2) cougar transport tags must be made at department offices.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting cougar. The use of hounds to hunt cougar is prohibited except during a public safety cougar removal.

~~((Harvest Report Cards: All hunters that purchase a big game license which includes cougar as a species option are required to fill out and return their cougar harvest report card. Successful hunters must complete the report card and return within 10 days after taking an animal. Unsuccessful hunters~~

~~are required to complete and return their report card within 10 days after the close of the cougar season.))~~

Cougar Pelt Sealing: Any person who takes a cougar must notify the department within 72 hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar must be sealed by an authorized department employee within five days of the notification of kill. Any person who takes a cougar must present the cougar skull, in such a manner that teeth and biological samples can be extracted, to an authorized department employee at the time of sealing.

Public safety cougar removals:

The commission authorizes the director to issue public safety cougar removal permits consistent with this rule. Prior to issuing public safety cougar removal permits, the department shall use other practical alternatives to address a public safety need, including livestock or pet depredations. Other practical alternatives may include, but are not limited to, general cougar hunting seasons, general public information, educational programs, information to recreational hunters, cougar depredation/kill permits, and department capture and relocation/euthanasia of specific cougars.

Public safety cougar removals: Criteria.

(1) The commission determines that when the above practical alternatives have been utilized within a game management unit, four or more confirmed human-cougar safety incidents or livestock/pet depredations per year and seven or more confirmed cougar sightings or nuisance activities per year therein demonstrate that the practical alternatives have been inadequate to address the public safety need. The director then is authorized by the commission to remove one or more cougar, with the aid of dogs, in a selected area of that game management unit or nearby geographic area suitable for the use of dogs. The commission authorizes the director to remove one cougar per one hundred twenty square kilometers of complaint area in preferred cougar habitat, and one cougar per four hundred thirty square kilometers of complaint area in marginal cougar habitat.

(2) Public safety cougar removal(s) will be conducted between December 16, 2000, and March 15, 2001, in selected areas of game management units designated by the director to address a public safety need presented by one or more cougar, not to exceed removal of more than seventy-four cougar during the 2000-2001 removal period unless otherwise authorized by the commission.

Public safety cougar removals: Permit issuance procedure.

(1) To participate in a public safety cougar removal, individuals must request that his/her name be placed on a list of available participants (participant list) by mailing their request to Washington Department of Fish and Wildlife, Enforcement Program - Public Safety Cougar Removal, 600 Capitol Way North, Olympia, WA 98501-1091. The request must include the individual's name, address, phone number, and region applying for (see page 4 of 2000 Big Game Hunting Seasons and Rules Pamphlet for region map). Individuals may apply for multiple regions. An individual's request to be

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placed on a participant list for the 2000-2001 removal must be postmarked no later than November 15, 2000, or received at Washington department of fish and wildlife's (department) Olympia office no later than 5:00 p.m. on November 15, 2000.

(2) To be eligible for a public safety cougar removal permit (permit), participants must have at their disposal dogs capable of detecting and tracking cougar. The permit holder must use dogs while participating in a public safety cougar removal.

(3) Individuals eligible for participation in a public safety cougar removal will be randomly selected from the participant list. The department will issue a permit to the person whose name is selected from the participant list. Individuals selected will be notified by telephone or mail. Individuals selected must contact the department's enforcement program in Olympia and accept the public safety cougar removal permit within 15 days of being notified. Failure to contact the department will result in forfeit of the permit and the individual will be placed on the participant list for later selections. Permits may not be sold or reassigned.

(4) No more than four (4) total individuals may participate per public safety cougar removal, including the permit holder(s). Only the permit holder, whose name appears on the permit, may take a cougar.

(5) Permit holders shall notify the department's enforcement program in Olympia at least 24 hours prior to exercising a public safety cougar removal permit. The department reserves the right to accompany permit holders while participating in a public safety cougar removal.

(6) Permit holders must complete the department's public safety cougar removal education course prior to participating in a public safety cougar removal.

Definitions:

As used in this section and in the context of public safety cougar removals, the following definitions apply:

(1) "Confirmed" means qualified department staff is led to believe a cougar(s) was at the scene of the incident by interview of the complainant or observation of evidence at the scene.

(2) "Human-cougar safety incident" means aggressive or unusual behavior by a cougar which presents an actual or perceived threat to an individual.

(3) "Livestock or pet depredation" means incidents where livestock and/or pets are killed and/or injured by cougar.

(4) "Marginal cougar habitat" means those areas usually dominated by urban/suburban, developed lands with relatively high human densities.

(5) "Nuisance activity" means incidents associated with property disturbance, property damage, or livestock/pet harassment.

(6) "Preferred cougar habitat" means those areas usually dominated by rural, undeveloped lands with relatively low human densities.

(7) "Public safety need" means there exists a reasonable threat to human safety or property by one or more cougar, as indicated by the level of confirmed human-cougar safety

incidents or livestock/pet depredations, and confirmed cougar sightings or nuisance activities.

(8) "Removal" means the act of killing one or more cougar with the aid of dogs.

(9) "Sighting" means a direct observation of one or more cougar, in urban or rural settings, near individuals or residences; typically more than chance observations.

NEW SECTION

WAC 232-28-299 Mandatory report of hunting activity (1) All hunters purchasing a hunting license must report their hunting activity for deer, elk, bear, or turkey.

a) Hunters must report hunting activity, for each tag acquired, by January 31.

b) Reports must be made using the Department's designated automated telephone hunter reporting system (toll free) or Internet hunter reporting system.

c) Any hunter not reporting, for each tag acquired, by January 31 will be in non-compliance of reporting requirements.

d) Compliance will be credited for each species for which a transport tag is acquired.

(2) As an incentive for prompt reporting, all successful hunters who report harvest within 10 days of killing an animal and unsuccessful hunters who report by midnight January 10 will be entered into a raffle drawing for special deer and elk permits.

a) There will be two (2) any elk permits for western Washington and two (2) for eastern Washington for use in any area open to general or permit hunting seasons EXCEPT Private Lands Wildlife Management Areas and GMUs 157 and 485.

b) There will be five (5) statewide any deer permits, for use in any area open to general or permit hunting seasons EXCEPT Private Lands Wildlife Management Areas and GMUs 157 and 485.

c) Open Season: The deer or elk incentive permit hunter may use archery equipment during archery seasons, muzzle-loader equipment during muzzleloader seasons, and any legal weapon at other times if there are no firearm restrictions.

d) The dates for the hunts will be September 1 to December 31.

e) Hunters awarded the special incentive permit will be required to send the appropriate license fee to the Department of Fish and Wildlife headquarters in Olympia. The Department will issue the license and transport tag and send it to the incentive permit winner.

(3) Beginning with license year 2002 and there after, hunters who have not reported hunting activity for the tags acquired the previous year will be required to complete a hunting report for those species before a new license for that species will be issued. There is no penalty for hunters not purchasing a hunting license the previous year.

WSR 01-05-135
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed February 21, 2001, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-12-001 Definition of terms, 232-12-071 Buying or selling game unlawful, 232-12-141 Wild animal trapping, and 232-28-515 Trapping seasons and regulations.

Purpose: To amend WAC 232-12-001 Definition of terms, 232-12-071 Buying or selling game unlawful, 232-12-141 Wild animal trapping, and 232-28-515 Trapping seasons and regulations.

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: Proposed amendments incorporate changes in state law associated with passage of Initiative 713. These changes essentially make an emergency rule adopted on December 7, 2000, permanent with some added refinement.

Reasons Supporting Proposal: Ensure compliance with and implementation of state law.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Proposed rule changes include three new definitions (two directly from the initiative and one that explicitly defines a padded foot-hold trap; the padded trap definition was not included in emergency rule), prohibition on sale of animals or furs taken with body-gripping traps, and prohibition on use of body-gripping traps except under special permit.

The purpose is to make WACs consistent with new state law.

Because an emergency rule is already in place, there should not be additional effects beyond those brought on by the initiative.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-134, filed 7/31/00, effective 8/31/00)

WAC 232-12-001 Definition of terms Definitions used in rules of the commission are defined in RCW 77.08.010. In addition, unless otherwise provided:

(1) A "valid" license, permit, tag, stamp or catch record card means a license, permit, tag, stamp, or catch record card that was issued to the bearer for the current season and is required to hunt, fish or possess wildlife and has not been altered except as provided by rule of the commission.

(2) "Falconry" means possession, control, or use of a raptor for the purpose of hunting and free flight training.

(3) "Anadromous game fish" means:

(a) Steelhead trout, *Oncorhynchus mykiss*, defined as any searun rainbow trout over twenty inches in length

(b) Searun cutthroat, *Oncorhynchus clarkii*

(c) Searun Dolly Varden, *Salvelinus malma*

(4) "Handgun" means any pistol, revolver or short fire-arm with a barrel length of less than sixteen inches and does not have a shoulder stock.

(5) "Body-gripping trap" means a trap that grips an animal's body or body part. Body-gripping trap includes, but is not limited to, steel-jawed leghold traps, padded-jaw leghold traps, Conibear traps, neck snares, and nonstrangling foot snares. Cage and box traps, suitcase-type live beaver traps, and common rat and mouse traps are not considered body-gripping traps.

(6) "Raw fur" means a pelt that has not been processed for purposes of retail sale.

(7) "Padded foot-hold trap" means a trap designed and set to grip the foot of a wild animal, both jaws of which are covered with rubber pads having a minimum thickness of one-eighth inch.

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.

AMENDATORY SECTION (Amending Order 177, filed 1/28/82)

WAC 232-12-071 Buying or selling game unlawful. Unless prohibited by federal regulations, nonedible parts of wild animals, game birds or game fish lawfully taken may be offered for sale, sold, purchased or traded, **except,**

It is unlawful to knowingly offer for sale, sell, purchase or trade the following unless authorized by a written permit

issued by the director: (~~cougar, mountain sheep, mountain goat, velvet antlers of deer or elk or the gall bladder, claws and teeth of bear, except those claws and teeth permanently attached to a full bear skin or mounted bear, unless the offer for sale, sale, purchase or trade is authorized by a written permit issued by the director.~~)

(1) nonedible parts of cougar, bighorn sheep, or mountain goat

(2) velvet antlers of deer or elk

(3) gall bladder, claws, and teeth of bear, except those claws and teeth permanently attached to a full bear skin or mounted bear.

(4) the raw fur of a wild animal, or the wild animal itself, if the wild animal itself has been trapped in this state with a body-gripping trap.

AMENDATORY SECTION (Amending Order 00-197, filed 9/27/00, effective 10/28/00)

WAC 232-12-141 Wild animal trapping (1) The trapping season authorizes the taking of furbearing animals for their hides and pelts only. Furbearers may not be taken from the wild and held alive for sale or personal use without a special permit pursuant to WAC 232-12-064.

(2) Any wildlife trapped for which the season is not open shall be released unharmed. Any wildlife that cannot be released unharmed must be left in the trap, and the department of fish and wildlife must be notified immediately.

(3) Lawfully trapped wild animals must be lethally dispatched or immediately released. A firearm may be used to dispatch trapped animals.

(4) It is unlawful to trap for wild animals:

(a) (~~By any means other than padded foot hold traps having a minimum rubber pad thickness of one eighth inch, unpadded foot hold traps, cage (live) traps, kill traps and snares.~~) with body-gripping traps, EXCEPT as provided for in subsection (b).

~~((b) With an unpadded foot hold trap, unless the trap has jaws with a minimum jaw face width of one fourth inch, or the trap is set so that it completely submerges and drowns any trapped animal, except that unpadded foot hold traps not meeting the one fourth inch jaw face requirement may be used on nondrowning sets on private property with landowner permission for the purpose of protecting livestock, domestic animals, private property, or public safety.~~

~~(c) With a steel trap having a jaw spread exceeding seven and one half inches, except that a kill trap having a jaw spread exceeding seven and one half inches is lawful when set beneath the water surface.~~

~~(d) On dry land, with a nondrowning set with a No. 3 size or larger unpadded foot hold trap if it does not have jaw spacing of at least three sixteenth of one inch when the trap is sprung.~~

~~(e) With a steel trap with teeth or serrated edges.)~~

(b) Conibear-type traps in water, non-strangling foot snares, and padded foot-hold traps may be used for the following purposes with a permit issued by the Director:

(i) To protect public health and safety, in consultation with the Department of Social and Health Services or the United States Department of Health.

(ii) To abate a threat of or damages caused to private property, domestic animals, livestock or timber, that cannot be reasonably abated by nonlethal control tools, if such tools can be reasonably applied. Any person requesting a damage control permit must apply in writing, stating the threat or damages, the nonlethal control methods attempted or why they cannot be applied, and agree to use the above traps for no more than thirty days under the permit granted.

(iii) To protect threatened or endangered species, if such traps are used by Department employees or agents.

(iv) To conduct wildlife research, EXCEPT that Conibear-type traps are prohibited for this purpose.

~~((f))~~ (c) Unless kill traps~~(, including foot hold drowning sets,)~~ are checked and animals removed within seventy-two hours.

~~((g))~~ (d) Unless animals captured in restraining traps (any nonkilling set) are removed within twenty-four hours of capture.

~~((h) With a neck or body snare attached to a spring pole or any spring pole type of device.)~~

~~((i))~~ (e) Using game birds, game fish or game animals for bait, except nonedible parts of game birds, game fish or game animals may be used as bait.

~~((j))~~ (f) Within thirty feet of any exposed meat bait or nonedible game parts which are visible to flying raptors.

(5) Game bird feathers may be used as an attractor.

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.

AMENDATORY SECTION (Amending Order 00-197, filed 9/27/00, effective 10/28/00)

WAC 232-28-515 Trapping seasons and regulations.
Trapping Regulations

To be issued your first Washington State trapping license an individual must pass the Washington State trapper education exam.

A trapping license will only be issued to a trapper that has returned the mandatory trapper report of catch postmarked on or before April 10 of the previous year. A trapper that fails to submit a report of catch must wait one year before purchasing another trapping license. False reports will be considered the same as failure to return the catch report.

It is unlawful to: Trap for wild animals before October 1, and after March 15, in western Washington, except that owners of, or persons legally controlling a property (or their designee) may trap unclassified wild animals that are causing damage or depredating on said property.

It is unlawful to: Place traps or establish drowning wires and weights prior to 7:00 a.m. on the opening date of the trapping season. All opening and closing season dates are inclusive.

Trapping Seasons:

General Western Washington Trapping Seasons (Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kit-

sap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom counties):

SPECIES	OPENING DATE	CLOSING DATE
Bobcat, Red Fox, and Weasel	November 18, 2000	February 15, 2001
	November 17, 2001	February 15, 2002
	November 16, 2002	February 15, 2003
Marten, Mink, Muskrat, and Raccoon	November 18, 2000	January 31, 2001
	November 17, 2001	January 31, 2002
	November 16, 2002	January 31, 2003
Beaver and River Otter	December 9, 2000	February 15, 2001
	December 8, 2001	February 15, 2002
	December 14, 2002	February 15, 2003

Exceptions to General Western Washington Trapping Seasons:

Game Management Unit 522 (Loo-wit) (Cowlitz and Skamania counties) is closed to all trapping.

Island County

The red fox season is closed.

Lewis County

Green River drainage, above and including Miners Creek drainage, is closed to all trapping except for bobcat and coyote.

Skagit and Whatcom counties

Ross Lake National Recreation Area is closed to all trapping. Red fox season is closed, except within the boundaries of Mount Baker-Snoqualmie and Okanogan National Forests.

Skamania County

The following areas are closed to all trapping, except for bobcat and coyote: Muddy River drainage, above and including Bean Creek drainage; Pine Creek drainage above USFS Road 83; and Green River drainage, above and including Miners Creek drainage.

General Eastern Washington Trapping Seasons (Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties):

SPECIES	OPENING DATE	CLOSING DATE
Badger, Beaver, Bobcat, Mink, Muskrat, Raccoon, Red Fox, and Weasel	November 11, 2000	February 28, 2001
	November 10, 2001	February 28, 2002
	November 9, 2002	February 28, 2003
Marten	December 15, 2000	January 31, 2001
	December 15, 2001	January 31, 2002
	December 15, 2002	January 31, 2003
River Otter (Season Bag Limit is 6 River Otter in Eastern Washington)	November 11, 2000	February 28, 2001
	November 10, 2001	February 28, 2002
	November 9, 2002	February 28, 2003

Exceptions to General Eastern Washington Trapping Seasons:

River otter trapping season is closed in all Eastern Washington counties, except that it is open in Chelan, Ferry, Klickitat, Kittitas, Okanogan, Pend Oreille, Spokane, Stevens, and Yakima counties, as well as in the Snake and Walla Walla River drainages.

Chelan County

Beaver season is closed in Swakane and Mudd Creek drainages.

Kittitas County

Beaver season is closed in the following drainages: North fork of Tarpiscan Creek and Umtanum Creek.

Urban Trapping Areas: Special Regulations and Trap Restrictions

The following described areas are closed to the taking of classified furbearing animals, and coyote, opossum, nutria, and skunk, by the use of body-gripping or ((foot hold,)) kill((-or snare)) traps ((except muskrat and mink may be taken with a number one and one-half foot hold drowning set or a 110 instant kill trap during lawful trapping seasons as established by the fish and wildlife commission. In these areas all traps or devices, not capable of killing the animal must be checked and the animal removed within 24 hours.)) except by permit under WAC 232-12-141.

Thurston County, within the established city limits (including county islands) of Lacey, Olympia, and Tumwater.

Within Snohomish, King, and Pierce counties: Beginning at the confluence of Snohomish River and Puget Sound; east up Snohomish River to Interstate 5 (I-5); south on I-5 to Interstate 405 (I-405); south on I-405 to I-5; south on I-5 to Pioneer Way; east on Pioneer Way to Waller Road; south on Waller Road to SR 512; west on SR 512 to Highway 7; south on Highway 7 and Highway 507 to Pierce County line; north on Pierce County line to Puget Sound; north along coast to mouth of Snohomish River and point of beginning.

**WSR 01-05-136
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**
[Filed February 21, 2001, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-02203 Game management units (GMUs)—Special game areas—Boundary descriptions—Region three and 232-28-02205 Game management units (GMUs)—Special game areas—Boundary descriptions—Region five.

Purpose: To amend WAC 232-28-02203 Game management units (GMUs)—Special game areas—Boundary descriptions—Region three and 232-28-02205 Game man-

PROPOSED

agement units (GMUs)—Special game areas—Boundary descriptions—Region five.

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: These changes are minor edits to boundary descriptions.

Reasons Supporting Proposal: To clarify and correct unit descriptions.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The minor changes in the boundary descriptions should help hunters find the hunt areas.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 01-04 [00-254], filed 1/31/01)

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~~) Cape Horn; south along the top of Cape Horn and West Bar Cliffs (cliffs overlooking West Bar) to WDFW Road 14.14; east along Road 14.14 to WDFW Road 14.17; south along Road 14.17 to WDFW Road 14 rear gate; south on Road 14 to Tekison Creek; southeast along Tekison Creek to the Columbia River; south along Columbia River to Vantage and Interstate 90 (I-90); west along I-90 to East Highline Canal; north on East Highline Canal to the Colockum Pass Road (Road 10); north on the Colockum Pass Road to North Fork Tarpiscan Road (Rd 10.10); east on North Fork Tarpiscan Road to ((North Fork)) Tarpiscan Road 14; south on Tarpiscan Road approximately 100 feet to Tarpiscan Creek; east on ((North Fork Tarpiscan Creek and)) Tarpiscan Creek to the Columbia River and the point of beginning.

GMU 330-West Bar (Kittitas County): Beginning on the Columbia River at Cape Horn; south along the top of Cape Horn and West Bar Cliffs (cliffs overlooking West Bar) to WDFW Road 14.14; east along Road 14.14 to WDFW Road 14.17; south along Road 14.17 to WDFW Road 14 near the gate; south on road 14 to Tekison Creek; southeast along Tekison Creek to the Columbia River; north and west along the Columbia River to Cape Horn 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 Yakima River; northwest along the Yakima 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.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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.

AMENDATORY SECTION (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

WAC 232-28-02205 Game management units (GMUs)—Special game areas—Boundary descriptions—Region five

GMU 501-LINCOLN (Lewis, Thurston, Pacific and Grays Harbor counties): Beginning at the intersection of Interstate 5 and State Highway 6; west on State Highway 6 to

the Stevens Road; northwest on Stevens Road to Elk Creek Road (Doty); west on Elk Creek Road to the 7000 Road; west on the 7000 Road to the 7400 Road; west on the 7400 Road, ~~((to the))~~ 7050 Road, 7000 Road, and the 7800 Road; north on the 7800 Road to the 7800 F Road; east on the 7800 F Road to the 720 Road; northeast on the 720 Road to Garrard Creek Road; northeast on the Garrard Creek Road to Oakville and U.S. Highway 12; east on U.S. Highway 12 to Interstate 5; south on Interstate 5 to State Highway 6 and point of beginning.

GMU 504-STELLA (Cowlitz County): Beginning at the mouth of the Cowlitz River at the Columbia River; west down the Columbia to the mouth of Germany Creek; north up Germany Creek to State Highway 4; east on Highway 4 to Germany Creek Road; north on Germany Creek Road to International Paper 1000 Road; north on International Paper 1000 to the International Paper 1050 Road; east on International Paper 1050 Road to the 2200 Road; east and south to the 2000 Road; south on the 2000 Road to the Delameter Road (Woodside Road); east on Delameter Road to State Highway 411; north on Highway 411 to ~~((Interstate 5; south on Interstate 5 to Ostrander Creek; west on Ostrander Creek to Cowlitz River;))~~ PH10 Road; east along the PH10 Road to the bridge over the Cowlitz River; south down the Cowlitz River to the Columbia River and point of beginning.

GMU 505-MOSSYROCK (Lewis County): Beginning on Interstate 5 and the Cowlitz River; northeast up the Cowlitz River to Mayfield Lake and the U.S. Highway 12 bridge; east on U.S. Highway 12 to Winston Creek Road; south and east to Longbell Road and Perkins Road; northeast on Perkins Road to Green Mountain Road; east on Green Mountain Road to the outlet of Swofford Pond; east along the outlet to Riffe Lake; east along the south shore to the Cowlitz River and up the Cowlitz River to the USFS 23 Road (Cispus Road) Bridge; south and east to the ~~((C-Line))~~ Cline Road; east on the Cline Road ((east)) to the Bennet Road; east to U.S. Highway 12; west on Highway 12 to State Highway 7 (Morton); north on State Highway 7 to State Highway 508; west on Highway 508 to Centralia/Alpha Road; west and north on Centralia/Alpha Road to Salzer Valley Road; west to Summa Street and Kresky Road; north on Kresky Road to Tower Street; on Tower Street to State Highway 507; west on Highway 507 Cherry, Alder and Mellen Streets to Interstate 5; south on Interstate 5 to the Cowlitz River and point of beginning.

GMU 506-WILLAPA HILLS (Wahkiakum, Pacific and Lewis counties): Beginning at Pe Ell and the Muller Road; south on the Muller Road to the 1000 Road; south on the 1000 Road to the 1800 Road; south on the 1800 Road to the 500 Road; southeast on the 500 Road to State Highway 407 (Elochoman Valley Road); south on the Elochoman Valley Road (old SR 407) to the Elochoman River; downstream along the Elochoman River to the Foster Road; north on Foster Road to Risk Road; west and north along Risk Road to SR 4; west on SR 4 to Skamokawa Creek; downstream along Skamokawa Creek to the confluence with the Columbia River; west along Columbia River to the mouth of the Deep River; north along the Deep River to State Highway 4; north-

west on State Highway 4 to the Salmon Creek Road; north on the Salmon Creek Road to the Bonneville Powerline Road; north on the Bonneville Powerline Road to State Highway 6; east on State Highway 6 to the Town of Pe Ell and the point of beginning.

GMU 510-STORMKING (Lewis County): Beginning on U.S. Highway 12 at the Silver Creek Bridge; north up Silver Creek to Silverbrook Road; east to USFS 47 Road; north on USFS 47 Road to USFS 85 Road; west and north on USFS 85 Road to ~~((Silver Creek; southwest on Silver Creek to Lynx Creek; north on Lynx Creek and its northernmost tributary to USFS 85 Road; northwest on the USFS 85 Road to Catt Creek; north on Catt Creek to))~~ the Nisqually River; west down the Nisqually River to State Highway 7; south on Highway 7 to U.S. Highway 12 (Morton); east on U.S. Highway 12 to Silver Creek and point of beginning.

GMU 513-SOUTH RAINIER (Lewis County): Beginning on U.S. Highway 12 at the Silver Creek bridge; north up Silver Creek to Silverbrook Road; east to USFS 47 Road; north on USFS 47 Road to USFS 85 Road; west and north on USFS 85 Road to ~~((Silver Creek; southwest on Silver Creek to Lynx Creek; north on Lynx Creek and its northernmost tributary to USFS 85 Road; north on USFS 85 Road to Catt Creek; north-west down Catt Creek))~~ USFS 52 Road; west and north on USFS 52 Road to the Nisqually River; east up the Nisqually River to the southern boundary of Mt. Rainier National Park; east along the south park boundary to the Pacific Crest Trail; south along the Pacific Crest Trail to U.S. Highway 12; west on U.S. Highway 12 to the Silver Creek bridge and point of beginning.

GMU 516-PACKWOOD (Lewis and Skamania counties): Beginning at the mouth of Cispus River; east up the Cispus River to the USFS 56 Road (Midway G.S. Road); east on the USFS 56 Road to the USFS 5603 Road; east on the USFS 5603 Road to the Yakama Indian Reservation Boundary and the Cascade Crest; north along the reservation boundary to Cispus Pass and the Pacific Crest Trail; north along the Pacific Crest Trail to the U.S. Highway 12 (White Pass); northwest and southwest on U.S. Highway 12 to USFS 1270 Road (Section 31, T14N, R10E); north on USFS 1270 Road to the Cowlitz River; southwest down the Cowlitz River to the mouth of Smith Creek; south up Smith Creek to U.S. Highway 12; southwest down U.S. Highway 12 to Bennet Road; west on the Bennet Road to the ~~((C-Line))~~ Cline Road; west on Cline Road to the USFS 23 Road (Cispus Road); west and north to the Cowlitz River; west down the Cowlitz River to the mouth of the Cispus River and point of beginning.

GMU 520-WINSTON (Cowlitz, Lewis and Skamania counties): Beginning at the intersection of Interstate 5 and the Cowlitz River; south down the Cowlitz River to the Toutle River; east up the Toutle River to the North Fork Toutle River; up the North Fork Toutle River to the Green River; east up the Green River to USFS 2612 Road; east on USFS 2612 Road to USFS 26 Road (Ryan Lake Road); north on USFS 26 Road to the Cispus River; west down the Cispus to the Cowlitz River; west down the Cowlitz River to Riffe

Lake; west along the south shore to the Swofford Pond outlet; west along the outlet to Green Mountain Road; west on Green Mountain Road to Perkins Road; southwest and northwest on Perkins Road and Longbell Road to Winston Creek Road; northwest on Winston Creek Road to U.S. Highway 12; west on U.S. Highway 12 to the Mayfield Lake bridge; southwest down Mayfield Lake and the Cowlitz River to Interstate 5 and point of beginning.

GMU 522-LOO-WIT (Cowlitz and Skamania counties): Beginning on the North Fork Toutle River at the mouth of Hoffstadt Creek; southeast up the North Fork Toutle River to Deer Creek, up Deer Creek to Deer Creek Springs; up Deer Creek Springs to the Weyerhaeuser 3001 Road; southeast along the 3001, 3000, and 3090 Roads to the headwaters of the South Fork Castle Creek; due south to the South Fork Toutle River; east along South Fork Toutle to its headwaters and Mount St. Helens crater edge; east along the crater edge to the headwaters of Ape Canyon; down Ape Canyon Creek to the USFS Smith Creek Trail; north up USFS Smith Creek Trail to USFS 99 Road; north along USFS 99 Road to USFS 26 Road; north to Strawberry Lake Creek; west down Strawberry Lake Creek to the Green River; across the Green River to Grizzly Creek; up Grizzly Creek to Grizzly Lake; west up the western inlet to its headwaters; west to the headwaters of Coldwater Creek; west down Coldwater Creek to Coldwater Lake; southwest along the northwest shore to the outlet of Coldwater Lake; downstream on the outlet from Coldwater Lake to State Route 504 Bridge at mile post 45; west down State Route 504 to Hoffstadt Creek Bridge; down Hoffstadt Creek to the North Fork Toutle River and point of beginning.

GMU 524-MARGARET (Cowlitz, Skamania and Lewis counties): Beginning on the North Fork Toutle River at the mouth of the Green River; southeast up the North Fork Toutle River to the mouth of Hoffstadt Creek; up Hoffstadt Creek to the State Route 504 Bridge over Hoffstadt Creek; east on State Route 504 to mile post 45 (the bridge over the outlet to Coldwater Lake); up the outlet of Coldwater Lake to Coldwater Lake; northeast along the shoreline of Coldwater Lake to Coldwater Creek; up Coldwater Creek to its headwaters and east to the headwaters of Grizzly Lake; east down the west inlet creek to Grizzly Lake; down Grizzly Creek to the Green River and the mouth of Strawberry Lake Creek; up Strawberry Lake Creek to the USFS 26 Road (Ryan Lake Road); north on the USFS 26 Road to the USFS 2612 Road; west on USFS 2612 Road to the Green River; down the Green River to its mouth and point of beginning.

GMU 530-RYDERWOOD (Cowlitz, Lewis and Wahkiakum counties): Beginning south of the Town of Doty on State Highway 6; east on State Highway 6 to Chehalis and Interstate 5; south on Interstate 5 to the Cowlitz River; south along the Cowlitz River to Castle Rock and the PH 10 Road (Four Corners); west on the PH 10 Road to State Highway 411; south on State Highway 411 to Delameter Road (Woodside Drive); southwest on Delameter Road to the 2000 Road; west on the 2000 Road to the 2200 Road; north and west on the 2200 Road to the International Paper 1050 Road; west on the International Paper 1050 Road to the International Paper

1000 Road; south on the International Paper 1000 Road to the Germany Creek Road; south on the Germany Creek Road to State Highway 4; west on State Highway 4 to Germany Creek; south along Germany Creek to its mouth at the Columbia River; west along the Columbia River and the Cathlamet Channel to the Puget Island Bridge on State Highway 409; north on State Highway 409 to State Highway 4; west on State Highway 4 to State Highway 407 (Elochoman Valley Road); northwest on State Highway 407 (Elochoman Valley Road) to the 500 Road; west on the 500 Road to the 1800 Road; north on the 1800 Road to the (~~International Paper~~) Weyerhaeuser 1000 Road; north on the (~~International Paper~~) Weyerhaeuser 1000 Road to the Muller Road; north on Muller Road to Pe Ell and State Highway 6; north on State Highway 6 to south of Doty and the point of beginning.

GMU 550-COWEEMAN (Cowlitz County): Beginning where the Toutle River flows into Cowlitz River; east along the Toutle River to the South Fork Toutle River; up the South Fork Toutle to the 4950 Road; south and east on the 4950 Road to the 235 Road; south on the 235, 200, 245, 134, 133, 130 and 1680 Roads to the 1600 Road; southeast along the 1600 and 1400 Roads to the Kalama/Coweeman Summit; south along the 1420 Road to the 1426 Road; southwest along the 1426 Road to the 1428 Road; southwest along 1428 Road to 1429 Road; southwest along 1429 Road to 6400 Road; southwest down the 6400 Road to the 6000 Road; east to the 6450 Road; southeast approximately one mile on the 6450 Road to the 6452 Road; southeast on 6452 Road to Dubois Road; to State Highway 503; west on State Highway 503 to Cape Horn Creek; down Cape Horn Creek to Merwin Reservoir and the Lewis River; down the Lewis River to the Natural Gas Pipeline right of way; north up the Natural Gas Pipeline right of way to Ostrander Creek; west down Ostrander Creek to ((I-5)) the Cowlitz River; north on ((I-5)) the Cowlitz River to the Toutle River and point of beginning.

GMU 554-YALE (Cowlitz County): Beginning on State Highway 503 at its crossing of Cape Horn Creek; east on State Highway 503 to 6690 Road (Rock Creek Road); northeast on the 6690 and 6696 Roads to West Fork Speelyai Creek; down Speelyai Creek to State Highway 503; northeast on State Highway 503 to Dog Creek; down Dog Creek to Yale Reservoir; south and west down Yale Reservoir, Lewis River, and Merwin Reservoir to Cape Horn Creek; up Cape Horn Creek to State Highway 503 and point of beginning.

GMU 556-TOUTLE (Cowlitz County): Beginning on State Highway 503 (Lewis River Road) and USFS 81 Road (Merrill Lake Road) intersection; north on USFS 81 Road to Weyerhaeuser 7200 Road; northeast on the 7200 Road to the 7400 Road; northwest on the 7400 Road to the 5500 Road; east and north on the 5500 and 5670 Roads to the South Fork Toutle River; east up the South Fork Toutle River to a point due south of the headwaters of the South Fork Castle Creek (Section 1, T8N, R4E); north along the posted Loo-wit boundary to end of the Weyerhaeuser 3092 Road; west on the 3092 Road to 3090 Road; northwest on the 3090, 3000 and 3001 Roads; west on the 3001 Road to Deer Creek Springs; down Deer Creek Springs to Deer Creek, downstream on Deer Creek to the North Fork Toutle River; down the North

Fork Toutle River to the South Fork Toutle River; southeast up the South Fork Toutle River to the 4950 Road; south on the 4950, 235, 200, 245, 243A, 134, 133, 130, and 1680 Roads to the 1600 Road; southeast on the 1600 and 1400 Roads to the Kalama/Coweeman Summit; south on the 1420 Road to the 1426 Road; southwest along the 1426 Road to the 1428 Road; southwest along 1428 Road to 1429 Road to 6400 Road; southwest on the 6400 Road to the 6000 Road; east up the 6000 Road to the 6450 Road; southwest on the 6450 Road approximately one mile to the 6452 Road; southeast on 6452 Road to Dubois Road to State Highway 503; east on State Highway 503 to the 6690 Road (Rock Creek Road); northeast on the 6690 and 6696 Roads to the West Fork Speelyai Creek; down Speelyai Creek to State Highway 503; northeast on State Highway 503 to USFS 81 Road and point of beginning.

GMU 558-MARBLE (Cowlitz and Skamania counties): Beginning on State Highway 503 (Lewis River Road) and USFS 81 Road intersection; north on USFS 81 Road to Weyerhaeuser 7200 Road; northeast on the 7200 Road to the 7400 Road; northwest on the 7400 Road to the 5500 Road; east and north on the 5500 and 5670 Roads to the South Fork Toutle River; east up the South Fork Toutle River to Mount St. Helens crater and along crater to headwaters of Ape Canyon; east down Ape Canyon Creek to USFS Smith Creek Trail; north up USFS Smith Creek Trail to USFS 99 Road; northeast on USFS 99 Road to USFS 25 Road; south on USFS 25 Road to the Muddy River; south down the Muddy River to the North Fork Lewis River; west down the North Fork Lewis River, Swift Reservoir to Yale Reservoir and Dog Creek; north up Dog Creek to State Highway 503; southwest to USFS 81 Road and point of beginning.

GMU 560-LEWIS RIVER (Skamania, Klickitat, Yakima and Lewis counties): Beginning at Trout Lake, north to the USFS 80 Road; north to USFS 17 Road (Mt. Adams Recreational Road); northeast to USFS 82 Road; northeast on the USFS 82 Road to the Yakama Indian Reservation Boundary (Section 16, T7N, R11E); north along reservation boundary (Cascade Crest) to USFS 5603 Road; west to the USFS 56 Road; west to the Cispus River; northwest down the Cispus River to the USFS 26 Road (Ryan Lake Road); west and south on the USFS 26 Road to USFS 99 Road; northeast to the USFS 25 Road; south to Muddy River; south down the Muddy River to the North Fork Lewis River; west to the USFS 90 Road bridge (Eagle Cliff); east on USFS 90 Road to USFS 51 Road; southeast to USFS 30 Road; northeast on the USFS 30 Road to USFS 24 Road; southeast to the State Highway 141; northeast on State Highway 141 to Trout Lake and point of beginning.

GMU 564-BATTLE GROUND (Clark and Skamania counties): Beginning where Ostrander Creek flows into the Cowlitz River; east up Ostrander Creek approximately 1/2 mile to the Northwest Natural Gas Pipeline right of way; south on the Northwest Natural Gas Pipeline right of way to the Lewis River; northeast along the Lewis River (Cowlitz-Clark County line) to the Merwin Dam; east along the south shoreline of Lake Merwin and Lewis River to State Route

503; south and west on State Route 503 to N.E. Amboy Road; south on N.E. Amboy Road to N.E. Yacolt Road; east on Yacolt Road to Railroad Avenue; southeast to Sunset Falls Road; east to Dole Valley Road; south on the Dole Valley Road to Rock Creek Road; southeast and south on the DNR 1000 Road to DNR 1500 Road; east on DNR 1500 Road to N.E. 412th Avenue; south on N.E. 412th Avenue to Skye Road; east and south on the Skye Road to Washougal River Road; south on Washougal River Road to State Highway 140; southeast on State Highway 140 to Cape Horn Road; south on Cape Horn Road to the Columbia River; west down the Columbia River (including islands in Washington) to the Cowlitz River; north along the Cowlitz River to Ostrander Creek and the point of beginning.

GMU 568-WASHOUGAL (Clark and Skamania counties): Beginning on the Lewis River at State Route 503; east on Lewis River (Cowlitz-Clark County line) to Canyon Creek; southeast along Canyon Creek to N.E. Healy Road; east on N.E. Healy Road to USFS Road 54; east on USFS Road 54 to USFS Road 37; northwest on USFS Road 37 to USFS Road 53; south on USFS Road 53 to USFS Road 4205 (Gumboat Road); south on USFS Road 4205 to USFS Road 42 (Green Fork Road); southwest on USFS Road 42 to USFS Road 41 (Sunset Hemlock Road) at Sunset Falls; east on USFS Road 41 to USFS Road 406 at Lookout Mountain; southeast on USFS Road 406 to the boundary of the Gifford Pinchot National Forest; due east on the National Forest Boundary to Rock Creek; southeast along Rock Creek to Stevenson and the Columbia River; west down the Columbia River (including the islands in Washington) to the Cape Horn Road; north on the Cape Horn Road to Canyon Creek Road; west on Canyon Creek Road to the Washougal River Road; east on the Washougal River Road to the Skye Road; northwest on the Skye Road to N.E. 412th Avenue; northwest on DNR 1500 Road to DNR 1000 Road; north and west on DNR 1000 Road to Dole Valley Road; north on the Dole Valley Road to Sunset Falls Road; northwest to Railroad Avenue through Yacolt; northwest on N.E. Cedar Creek Road to State Route 503; northeast along State Route 503 to the Lewis River and the point of beginning.

GMU 572-SIOUXON (Skamania and Clark counties): Beginning at the Yale Dam and Yale Lake; north along Yale Lake (Cowlitz-Clark County line) to the North Fork Lewis River and Lewis River (old river bed); northeast along the Lewis River to the Swift Creek Reservoir; east along the Swift Creek Reservoir to Eagle Cliff Bridge and USFS Road 90; east on USFS Road 90 to USFS 51 Road (Curly Creek Road); southeast on USFS Road 51 to USFS Road 30; north on USFS Road 30 to USFS Road 24 (Twin Butte Road); south on USFS Road 24 to USFS Road 60 (Carson Guler Road); southwest on USFS Road 60 to USFS Road 65 (Panther Creek Road); southwest on USFS Road 65 to the Wind River Highway; northwest on the Wind River Highway to Stabler; west on Hemlock Road to USFS Road 41 (Sunset-Hemlock Road); west on the USFS Road 41 to Sunset Falls and USFS Road 42 (Green Fork Road); northeast on USFS Road 42 to USFS Road 4205 (Gumboat Road); north on USFS Road 4205 to USFS Road 53; northwest on USFS

Road 53 to USFS Road 54 (N.E. Healy Road); west on USFS Road 54 to Canyon Creek; north along Canyon Creek to the Lewis River; northeast along the Lewis River to the Yale Dam and the point of beginning.

GMU 574-WIND RIVER (Skamania County): Beginning at Little Lookout Mountain on USFS Road 41 (Sunset-Mowich Butte); east on USFS Road 41 to Stabler; east on the Hemlock Road to the Wind River Road; southeast on the Wind River Road to Old State Road; east on Old State Road to USFS Road 65 (Panther Creek Road); north on USFS Road 65 to USFS Road 60; northeast on USFS Road 60 to State Highway 141; continue east on State Highway 141 to USFS Road 86; south on USFS Road 86 to USFS Road 1840; south on USFS Road 1840 to USFS Road 18 (Oklahoma Road); south on USFS Road 18 to Willard and the Little White Salmon River; south on the Little White Salmon River to the Columbia River; west along the Columbia River to the mouth of Rock Creek; northwest along Rock Creek through Stevenson to the south boundary of Gifford Pinchot National Forest; on the south boundary of Gifford Pinchot National Forest due west to USFS Road 4100-406; northwest on USFS Road 4100-406 to USFS Road 41 and the point of beginning.

GMU 578-WEST KLICKITAT (Klickitat, Yakima, and Skamania counties): Beginning on the Columbia River at the mouth of the Little White Salmon River; up the Little White Salmon River to Willard; north on USFS 18 Road (Oklahoma Road) to USFS 1840 Road; north on USFS 1840 Road to USFS Road 86; north on USFS Road 86 to State Highway 141; northeast on State Highway 141 to Trout Lake and Mt. Adams Recreational Area Road; north on Mt. Adams Recreational Area Road to USFS 82 Road; northeast on USFS 82 Road to the Yakama Indian Reservation Boundary (Section 16, T7N, R11E); south along the reservation boundary to King Mountain and the southwest corner of the reservation (Section 27, T7N, R11E); east along reservation boundary (approximately one mile) to the end of King Mountain Road; north along the reservation boundary to Section 2 T7N, R11E; east along the reservation boundary to the northeastern corner of Section 4, T7N, R12E; southeast along the reservation boundary to Summit Creek Boundary Road; south to the Glenwood/Goldendale Road; northwest on the Glenwood/Goldendale Road to the Lakeside Road; south on the Lakeside Road to Fisher Hill Road (P-2000); south on Fisher Hill Road to the Fisher Hill Bridge; south down the Klickitat River to the Columbia River; west down the Columbia River to the mouth of the Little White Salmon River and point of beginning.

GMU 588-GRAYBACK (Klickitat County): Beginning at U.S. Highway 97 bridge across Columbia River (Maryhill); west down the Columbia River to Lyle and the mouth of the Klickitat River; up the Klickitat River to the Fisher Hill Bridge; north along the Fisher Hill Road (P-2000) to the Lakeside Road; north and northwest on the Lakeside Road to Glenwood/Goldendale Road; east and southeast on the Glenwood/Goldendale Road to the Summit Creek Primary Road; northeast to the Yakama Indian Reservation Boundary; east along the southern boundary of the reservation to U.S. High-

way 97 (Satus Pass Highway); south on U.S. Highway 97 to Maryhill and point of beginning.

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.

WSR 01-05-137
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 21, 2001, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-273 2001 Moose, bighorn sheep, and mountain goat seasons and permit quotas.

Purpose: To amend WAC 232-28-273

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: The amendment makes permit level changes for moose, bighorn sheep, and mountain goats. In addition, a goat unit has been added.

Reasons Supporting Proposal: **Moose** - winter surveys, hunter report cards, and harvest statistics indicate increasing and expanding moose populations in Selkirk (GMU 113), Mt. Spokane (GMU 124), Hangman (GMU 127, 130), and 49 Degrees North (GMU 117) units. In Selkirk, hunter success and kill-per-unit-effort remains high. In Mt. Spokane and Hangman, moose dispersing into suburban/urban areas continues to be problematic. In 49 Degrees North, winter surveys yielded 131 moose.

Bighorn sheep - each bighorn sheep population was surveyed in 2000. Survey results indicate bighorn abundance is increasing in Selah Butte (Unit 4), Umtanum (Unit 5), Cleman Mtn. (Unit 7), and Quilomene (Unit 13). A wildfire occurred last summer at Mt. Hull and several sheep either perished or dispersed. Therefore, the department recommends eliminating sheep hunting until the population recovers.

Mountain goat - each mountain goat unit that was hunted in 2000 was surveyed in 2000. In addition, the north shore of Lake Chelan was surveyed (annually since 1982) by Chelan PUD Fish and Wildlife personnel. Survey results indicated goat populations are stable to increasing in 5 of 11 units open to hunting. However, the number of goats observed, percent kids in the population, and goat seen/hunter day are below the desired level in the remaining 6 units and decreased permit levels are recommended. Since 1992, in the Lake Chelan population, an average of 65 goats are observed during annual surveys. As such, 2 permits are recommended.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule provides limited entry permit seasons for moose, bighorn sheep, and mountain goat. The purpose of the proposed changes is to maximize recreational hunter opportunity when consistent with the biological status of the species. The anticipated effects of the changes are increased hunter opportunity for moose and bighorn sheep and decreased opportunity for mountain goat.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-50, filed 5/23/00, effective 6/23/00)

WAC 232-28-273 ((2000)) 2001 Moose, bighorn sheep, and mountain goat seasons and permit quotas.

((2000)) 2001 Moose Permit Hunts

Who May Apply: Anyone may apply; EXCEPT those who drew a moose permit previously in Washington State. Only one moose permit will be issued during an individual's lifetime (waived for Mt. Spokane youth hunt).

Bag Limit: One moose of either sex, EXCEPT antlerless only for the Mt. Spokane B Hunt and the Mt. Spokane Youth Hunt.

Hunt Name	Permit Season	Permit Hunt Boundary Description	Special Restrictions	((2000)) 2001 Permits
Kettle River	Oct. 1-Nov. 30	GMU 101, 105	Any Legal Weapon	1
Selkirk Mtns.	Oct. 1-Nov. 30	GMU 113	Any Legal Weapon	((15)) 18
Mt. Spokane A	Oct. 1-Nov. 30	GMU 124	Any Legal Weapon	((5)) 15
Mt. Spokane B	Oct. 1-Nov. 30	GMU 124	Any Legal Weapon	15
Mt. Spokane Youth Only*	Oct. 1-Nov. 30	GMU 124	Any Legal Weapon	((5)) 10
49 Degrees North	Oct. 1-Nov. 30	GMU 117	Any Legal Weapon	((18)) 22
Three Forks	Oct. 1-Nov. 30	GMU 109	Any Legal Weapon	6
Hangman	Oct. 1-Nov. 30	GMU 127, 130	Any Legal Weapon	((2)) 5

*Applicants must be eligible to purchase a youth moose permit application. Youth hunters must be accompanied by an adult during the hunt.

~~((2000))~~ 2001 Mountain Sheep (Bighorn) Permit Hunts

Who May Apply: Anyone may apply; EXCEPT those who drew a bighorn permit previously in Washington State. Only one bighorn sheep permit will be issued during an individual's lifetime.

Bag Limit: One bighorn ram.

Hunt Name	Permit Season	Permit Hunt Boundary Description	Special Restrictions	((2000)) 2001 Permits
Selah Butte	Sept. 15-Oct. 10	Sheep Unit 4	Any Legal Weapon	((2)) 4
Umtanum	Sept. 15-Oct. 10	Sheep Unit 5	Any Legal Weapon	((+)) 4
Cleman Mountain	Sept. 15-Oct. 10	Sheep Unit 7	Any Legal Weapon	((5)) 6
Mt. Hull	Sept. 15-Oct. 10	Sheep Unit 10	Any Legal Weapon	((+)) 0
Lincoln Cliffs	Sept. 15-Oct. 10	Sheep Unit 12	Any Legal Weapon	1
Quilomene	Sept. 15-Oct. 10	Sheep Unit 13	Any Legal Weapon	((3)) 6
Swakane	Sept. 15-Oct. 10	Sheep Unit 14	Any Legal Weapon	1

Mountain (Bighorn) Sheep Units:

Sheep Unit 4 Selah Butte: Permit Area: That part of Yakima and Kittitas counties between Ellensburg and Yakima east of the Yakima River and north of Selah Creek, west of Interstate 82 and south of Interstate 90.

Sheep Unit 5 Umtanum: Permit Area: Those portions of Yakima and Kittitas counties west of the Yakima River, north of Wenas Creek, and east of USFS Road 1701 to Manastash Lake and its drainage; south and east along the South Fork Manastash Creek to Manastash Creek and the Yakima River.

Sheep Unit 7 Cleman Mountain: Permit Area: That part of Yakima County south of Wenas Creek and east of USFS Road 1701, north of Highway 410 and Highway 12 and west of the Yakima River.

Sheep Unit 10 Mt. Hull: Permit Area: That part of Okanogan County within the following described boundary: Beginning at Oroville; then south along U.S. Highway 97 to the Swanson's Mill Road (old Mt. Hull Road) near Lake Andrews; then east to the Dry Gulch Road; then north to the Oroville-Toroda Creek Road (Molson Grade Road); then west to Oroville and the point of beginning.

Sheep Unit 12 Lincoln Cliffs: Permit Area: That part of Lincoln County north of Highway 2.

Sheep Unit 13 Quilomene: Permit Area: GMU 329.

Sheep Unit 14 Swakane: Permit Area: GMU 250.

~~((2000))~~ 2001 Mountain Goat Permit Hunts

Who May Apply: Anyone may apply; except those who drew a mountain goat permit in Washington state after 1998. Starting in 1999, only one mountain goat permit will be issued during an individual's lifetime.

Bag Limit: One (1) adult goat of either sex with horns four (4) inches or longer. WDFW urges hunters to refrain from shooting nannies with kids. Permit hunters may start hunting Sept. 1 with archery equipment.

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Hunt Name	Permit Season	Permit Hunt Boundary Description	Special Restrictions	(2000) 2001 Permits
<u>Chelan North</u>	<u>Sept. 15-Oct. 31</u>	<u>Goat Unit 2-1</u>	<u>Any Legal Weapon</u>	<u>2</u>
Methow	Sept. 15-Oct. 31	Goat Unit 2-2	Any Legal Weapon	((5)) 4
Naches Pass	Sept. 15-Oct. 31	Goat Unit 3-6	Any Legal Weapon	3
Bumping River	Sept. 15-Oct. 31	Goat Unit 3-7	Any Legal Weapon	2
Tieton River	Sept. 15-Oct. 31	Goat Unit 3-9	Any Legal Weapon	3
Blazed Ridge	Sept. 15-Oct. 31	Goat Unit 3-10	Any Legal Weapon	((6)) 2
Kachess Ridge	Sept. 15-Oct. 31	Goat Unit 3-11	Any Legal Weapon	1
Jack Mountain	Sept. 15-Oct. 31	Goat Unit 4-9	Any Legal Weapon	((+)) 0
Corral Pass	Sept. 15-Oct. 31	Goat Unit 4-38	Any Legal Weapon	2
Tatoosh	Sept. 15-Oct. 31	Goat Unit 5-2	Any Legal Weapon	((5)) 3
Smith Creek	Sept. 15-Oct. 31	Goat Unit 5-3	Any Legal Weapon	((3)) 1
Goat Rocks	Sept. 15-Oct. 31	Goat Unit 5-4	Any Legal Weapon	((7)) 3

Mountain Goat Units:

Goat Unit 2-1 Chelan N. (Chelan County): Permit Area: Beginning at the mouth of Fish Creek on Lake Chelan (Moore Point); then northeast up Fish Creek and USFS trail 1259 to the Sawtooth crest near Deephole Spring; then southeast along the Sawtooth crest, which separates Chelan and Okanogan County, to Horsethief Basin and the headwaters of Safety Harbor Creek; then south along Safety Harbor Creek to Lake Chelan, then northwest along the north shore of Lake Chelan to the mouth of Fish Creek at Moore Point and the point of beginning.

Goat Unit 2-2 Methow Area: Permit Area: Okanogan County within the following described boundary: Beginning at the Town of Twisp, westerly along the Twisp River Road (County Road 4440) to Roads End; west up the Twisp Pass Trail 432 to Twisp Pass and the Okanogan County line; northerly along the Okanogan County line through Washington Pass to Harts Pass; southeast down Harts Pass (Road 5400) to Lost River; then along the Lost River-Mazama Road to Mazama; then southwest to State Highway 20; then southeasterly along State Highway 20 to Twisp and the point of beginning.

Goat Unit 3-6 Naches Pass: Permit Area: Yakima and Kittitas counties within the following described boundary: Beginning at Chinook Pass; then north along the Pacific Crest Trail to Naches Pass; then east to USFS Road 19 and continuing to State Highway 410; then west along State Highway 410 to Chinook Pass and point of beginning.

Goat Unit 3-7 Bumping River: Permit Area: Yakima County within the following described boundary: Beginning at White Pass and the Pacific Crest Trail; then north to Forest Trail 980; then north to USFS Road 18; then north to State Highway 410; then east to State Highway 12; then west along State Highway 12 and back to point of beginning; EXCEPT Timberwolf Mountain, which is closed.

Goat Unit 3-9 Tieton River: Permit Area: Yakima County within the following described boundary: Beginning at

White Pass and Pacific Crest Trail; then south to the Yakama Indian Reservation Boundary; then east to USFS Jeep Trail 1137; then west to USFS Road 1070-578 Spur; then west to Road 1000; then north to USFS Road 12; then north to State Highway 12; then west on State Highway 12 to point of beginning.

Goat Unit 3-10 Blazed Ridge: Permit Area: Kittitas and Yakima counties within the following described boundary: Beginning at the mouth of Cabin Creek on the Yakima River; then west along Cabin Creek to the headwaters near Snowshoe Butte; then south along the Cascade Crest separating the Green and Yakima river drainage to Pyramid Peak; then southeast along the North Fork, Little Naches, and Naches River to the Yakima River; then north along the Yakima River to the mouth of Cabin Creek and point of beginning.

Goat Unit 3-11 Kachess Ridge: Permit Area: Kittitas County within the following described boundary: Beginning at the mouth of the Kachess River on the Yakima River; then north along the Kachess River and Kachess Lake to USFS Road 4600; then east on USFS Road 4600 to the Cle Elum River; then south along the Cle Elum River and Lake Cle Elum to the Yakima River; then northwest along the Yakima River to the mouth of the Kachess River and point of beginning.

Goat Unit 4-9 Jack Mountain: Permit Area: Whatcom County within the following described boundary: Beginning at the confluence of Ruby Creek and Crater Creek; then north up Crater Creek to the ridge line between Jerry Lakes and a pinnacle of Jack Mountain (7,292 ft. elevation); continue due north to Devil's Creek; then west down Devil's Creek to Ross Lake; then south along the east shoreline of Ross Lake to Ruby Arm; then easterly up Ruby Arm and Ruby Creek to the confluence of Crater Creek and the point of beginning.

Goat Unit 4-38 Corral Pass: Permit Area: Pierce County within the following described boundary: Beginning where Goat Creek intersects the Corral Pass Road; then southeast up Goat Creek to the Cascade Crest; then north along the Crest to USFS Trail 1188; then northwest along said trail to USFS

Trail 1176; then north along said trail to Corral Pass; then west along Corral Pass Road to its intersection with Goat Creek and the point of beginning.

Goat Unit 5-2 Tatoosh: Permit Area: Lewis County within the following described boundary: Beginning at the junction of the southern Mount Rainier National Park Boundary and State Highway 123; then south along State Highway 123 to U.S. Highway 12; then southwest along said highway to Skate Creek Road (USFS Road 52); then northwest along said road to the junction of Morse Creek Road (old road to Longmire Campground); then north along said road to the Mount Rainier National Park Boundary; then east along the southern park boundary to the point of beginning.

Goat Unit 5-3 Smith Creek: Permit area: Lewis County within the following described boundary: Beginning at the Town of Randle; then east along U.S. Highway 12 to USFS Road 21; then southeast along USFS Road 21 to USFS Road 22; then northeast and northwest along USFS Road 22 to USFS Road 23; then east and northwest on USFS Road 23 to USFS Road 25; then north along USFS Road 25 to Randle and point of beginning.

Goat Unit 5-4 Goat Rocks: Permit Area: Lewis County south of the White Pass Highway (U.S. Highway 12) and east of the Johnson Creek Road (USFS Road 1302).

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.

WSR 01-05-138
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 21, 2001, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-12-068 Nontoxic shot requirements.

Purpose: To amend WAC 232-12-068 Nontoxic shot requirements.

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: This amendment clarifies existing language, adds another type of nontoxic shot to the list of approved shot, and adds more areas where nontoxic shot use is required.

Reasons Supporting Proposal: Lead shot is currently used for target shooting and hunting of game birds (other than waterfowl, coot, and snipe) and game animals in areas used by waterfowl and other wildlife. Elimination of lead shot will result in healthier wildlife populations for specific problem areas on WDFW lands and WDFW-operated pheasant release sites, where lead deposition poses potential hazards to wildlife.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This amendment reduces mortalities caused by lead shot poisoning and increases the health of wildlife populations.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-50, filed 5/23/00, effective 6/23/00)

WAC 232-12-068 Nontoxic shot requirements. It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot when hunting for waterfowl, coot, or snipe. Nontoxic shot includes steel shot, bismuth-tin shot (~~(((nominally)))~~ 97 parts bismuth: 3 parts tin with <1 percent residual lead), tungsten-iron shot (~~(((nominally)))~~ 40 parts tungsten: 60 parts iron with <1 percent residual lead), tungsten-polymer shot (~~(((nominally)))~~ 95.5 parts tungsten: 4.5 parts (~~polymer~~) nylon 6 or 11 with <1 percent residual lead), tungsten-matrix shot (~~(((nominally)))~~ 95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead), ~~(((ø)))~~ tin shot (99.9 percent tin with <1 percent residual lead), or tungsten-nickel-iron shot (50% tungsten: 35% nickel: 15% iron with <1 percent residual lead).

It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot (~~(((when hunting for game birds or game animals)))~~) in the following areas:

Bridgeport Bar segment of the Well's Wildlife Area
(~~(((Chehalis River pheasant release site)))~~)

Cowlitz Wildlife Area

~~((Dungeness Recreation Area~~

~~Hunter Farms pheasant release site))~~

Lake Terrell Wildlife Area (including Tennant Lake and other segments)

~~((Raymond Airport pheasant release site))~~

Shillapoo Wildlife Area

Skagit Wildlife Area (all segments)

Snoqualmie Wildlife Area (all segments)

Sunnyside Wildlife Area

~~((Two Rivers and Wallula Units of the U.S. Fish and Wildlife Service's McNary National Wildlife Refuge))~~

The Driscoll Island, Hegdahl, and Kline Parcel segments of the Sinlahekin Wildlife Area

Vancouver Lake Wildlife Area

It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot when hunting for game birds or game animals in the following areas:

Chehalis River pheasant release site

Dungeness Recreation Area

Hunter Farms pheasant release site

Raymond Airport pheasant release site

Two Rivers and Wallula Units of the U.S. Fish and Wildlife Service's McNary National Wildlife Refuge

Whidbey Island Seaplane Base pheasant release site

dates and quotas for 2001 and expand antlerless seasons in several game management units.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

PROPOSED

WSR 01-05-139

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed February 21, 2001, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-278 2000-2002 Deer general seasons and 2001 special permits.

Purpose: To amend WAC 232-28-278 2000-2002 Deer general seasons and 2001 special permits.

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: Amendments are proposed to deer seasons and permits.

Reasons Supporting Proposal: Establish recreational opportunity for deer hunters.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These amendments update the special permit season

AMENDATORY SECTION (Amending Order 00-50, filed 5/23/00, effective 6/23/00)

WAC 232-28-278 2000-2002 Deer general seasons and ~~((2000))~~ 2001 special permits.

Bag Limit: One (1) deer per hunter during the ~~((2000))~~ 2001 hunting season. The Fish and Wildlife Commission may authorize two doe permits for damage areas. Any multiple doe permits will be identified by special permit.

Hunting Method: Hunters must select one of the hunting methods (modern firearm, archery, muzzleloader).

Any Buck Deer Seasons: Open only to the taking of male deer with visible antlers (buck fawns illegal).

Branched Antler Restrictions: APPLIES TO ALL HUNTERS DURING ANY OPEN SEASON! Buck deer taken in these GMUs must meet minimum antler point requirements. Minimum antler point requirements are antler points on one side only. Antler points include eye guards but all antler points must be at least one inch long. The following GMUs have 2 or 3 point minimum requirements on buck deer taken.

2 Point GMUs: 437, 558, 574, 578, 588, 636, 654, and 681.

3 Point GMUs: All Mule Deer in 100, 200, and 300 series GMUs; Whitetail Deer in GMUs 127, 130, 133, 136, 139, 142, 145, 149, 154, 162, 163, 166, 169, 172, 175, 178, 181, and 186.

Permit Only Units: The following GMUs are closed during general seasons: 290 (Desert), 329 (Quilomene), 342 (Umtanum), 371 (Alkali), and 485 (Green River).

GMUs Closed to Deer Hunting: 157 (Mill Creek Watershed) and 522 (Loo-wit).

Blacktail Deer: Any member of blacktail/mule deer (species *Odocoileus hemionus*) found west of a line drawn from the Canadian border south on the Pacific Crest Trail and along the Yakama Indian Reservation boundary in Yakima County to Klickitat County and in Klickitat County west of Highway 97.

Mule Deer: Any member of blacktail/mule deer (species *Odocoileus hemionus*) found east of a line drawn from the Canadian border south on the Pacific Crest Trail and along the Yakama Indian Reservation boundary in Yakima County to Klickitat County and in Klickitat County east of Highway 97.

Whitetail Deer: Means any whitetail deer (member of the species *Odocoileus virginianus*) except the Columbian Whitetail Deer (species *Odocoileus virginianus leucurus*).

~~((Harvest Report Card: Successful hunters must fill out and return a Game Harvest Report Card within 10 days after taking a deer.))~~

Modern Firearm Deer Seasons

License Required: A valid big game hunting license which includes a deer species option.

Tag Required: Valid modern firearm deer tag on his/her person for the area hunted.

Hunting Method: Modern firearm deer tag hunters may use rifle, handgun, shotgun, bow or muzzleloader, but only during modern firearm seasons.

Hunt Season	2000 Dates	2001 Dates	2002 Dates	Game Management Units (GMUs)	Legal Deer
HIGH BUCK HUNTS					
	Sept. 15-25	Sept. 15-25	Sept. 15-25	Alpine Lakes, Glacier Peak, Pasayten and Olympic Peninsula Wilderness Areas and Lake Chelan Recreation Area and that part of the Henry Jackson Wilderness Area west of the Pacific Crest Trail	3 pt. min.
GENERAL SEASON HUNTS					
Western Washington Blacktail Deer	Oct. 14-31	Oct. 13-31	Oct. 12-31	407, 418, 426, 448 through 466, 490, 501 through 520, 524 through 556, 560, 568, 572, 601 through 633, 638 through 673, 684	Any buck
				410, 564	Any deer
				437, 558, 574, 578, 588, 636, 654, 681	2 pt. min.
Eastern Washington Whitetail Deer	Oct. 14-27	Oct. 13-26	Oct. 12-25	101 through 124, 203 through 382 except closed in GMUs 290, 329, 342, 371 and PLWMA 201	Any whitetail buck
				127 through 154, 162 through 186	Whitetail, 3 pt. min.
Mule Deer	Oct. 14-22	Oct. 13-21	Oct. 12-20	All 100, 200, and 300 series GMUs except closed in GMUs 157, 290, 329, 342, and that part of 371 east of Interstate Highway 82, and PLWMA 201	3 pt. min., except any deer in that part of GMU 381 west of Highway 395 and SR17
LATE BUCK HUNTS					
Western Washington Blacktail Deer	Nov. 16-19	Nov. 15-18	Nov. 14-17	All 400, 500, and 600 GMUs except closed in GMUs 418, 426, 437, 448, 450, 460, 485, 522, 574, 578, and 588	Any buck except 2 pt. min. in GMUs 558, 636, 654, 681 and any deer in GMUs 410 and 564
Eastern Washington Whitetail Deer	Nov. 6-19	Nov. 5-19	Nov. 4-19	105 through 124	Any whitetail buck
	Nov. 11-19	Nov. 10-18	Nov. 9-17	127 through 142	Whitetail-3 pt. min.
HUNTERS 65 AND OVER, DISABLED, OR YOUTH SEASONS					
Eastern Washington Whitetail Deer	Oct. 14-27	Oct. 13-26	Oct. 12-25	101 through 124	Any whitetail deer
	Oct. 14-22	Oct. 13-21	Oct. 12-20	127 through 142	Whitetail-3 pt. min. or antlerless
Eastern Washington Mule Deer		Oct. 13-21	Oct. 12-20	127, 142	Any mule deer

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Hunt Season	2000 Dates	2001 Dates	2002 Dates	Game Management Units (GMUs)	Legal Deer
DISABLED HUNTERS					
Eastern Washington Whitetail Deer	Oct. 14-22	Oct. 13-21	Oct. 12-20	145 through 154, 162 through 186	Whitetail-3 pt. min. or antlerless
ADVANCED HUNTER EDUCATION (AHE) GRADUATE SEASON					
Eastern Washington Whitetail Deer	Dec. 9-15	Dec. 9-15	Dec. 9-15	GMUs 127-142	Antlerless only

Archery Deer Seasons

License Required: A valid big game hunting license which includes a deer species option.

Tag Required: Valid archery deer tag on his/her person for the area hunted.

Special Notes: Archery tag holders can only hunt during archery seasons with archery equipment.

Hunt Area	2000 Dates	2001 Dates	2002 Dates	Game Management Units (GMUs)	Legal Deer
Early Archery Deer Seasons					
Western Washington Blacktail Deer	Sept. 1-30	Sept. 1-30	Sept. 1-30	407 through 426, 448 through 466, 490 through 520, 524 through 556, 560 through 572, 601 through 633, 638 through 673, 684 and Long Island. Bangor Submarine Base within GMU 627 is open for archers with disabilities by permit from the Navy. For information on this hunt call Tom Jones at (360) 396-5097. Special Restrictions: Must be a U.S. Citizen and hunting is open on weekends only.	Any Deer, except buck only in GMUs 506, 530, 550, 568, 672, 673
				437, 558, 574, 578, 588, 636, 654, 681	2 pt. min. or antlerless
				Alpine Lakes, Glacier Peak, and Olympic Peninsula Wilderness Areas	3 pt. min. or antlerless
Eastern Washington Mule Deer	Sept. 1-30	Sept. 1-30	Sept. 1-30	101 through 127, 204 through 247, 249 through 251, 260, 262, 328, 334 through 340, 346 through 368, 372	3 pt. min.
	Sept. 1-15	Sept. 1-15	Sept. 1-15	130 through 154, 162 through 178, 181, 186, 248, 254, 266, 269, 272, 278, 284, 381, 382	3 pt. min., except any deer in GMU 381
	Sept. 16-30	Sept. 16-30	Sept. 16-30	130 through 154, 162 through 178, 248, 254, 266, 269, 272, 278, 284, 381, 382	3 pt. min. or antlerless, except any deer in GMU 381
Eastern Washington Whitetail Deer	Sept. 1-30	Sept. 1-30	Sept. 1-30	101 through 124, 204 through 284	Any deer
	Sept. 1-30	Sept. 1-30	Sept. 1-30	127 through 154, 162 through 186	3 pt. min. or antlerless
Late Archery Deer Seasons					
Western Washington Blacktail Deer	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	588	2 pt. min. or antlerless
	Nov. 22-Dec. 15	Nov. 21-Dec. 15	Nov. 20-Dec. 15	558, 636, 681	2 pt. min. or antlerless
				460, 466, 506 through 520, 524, 530, 556, 560, 572, 601, 607 through 618, 638, 648, 673, and Long Island	Any deer, except buck only in GMUs 506, 530, and 673
Nov. 22-Dec. 31	Nov. 21-Dec. 31	Nov. 20-Dec. 31	407, 410, 454, 505, 603, 624, 627, 642, 652, 660 through 672	Any deer, except buck only in GMU 672	
			437	2 pt. min. or antlerless	

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Hunt Area	2000 Dates	2001 Dates	2002 Dates	Game Management Units (GMUs)	Legal Deer
Eastern Washington Mule Deer	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	145, 178	3 pt. min. or antlerless
	Nov. 22-Dec. 15	Nov. 21-Dec. 15	Nov. 20-Dec. 15	127	3 pt. min. or antlerless
				209, 215, 233, 243, 250, 346, 352, ((that part of GMU 360 north of USFS Roads 324, 325 to the intersection of Carmack Canyon; then northeast down Carmack Canyon bottom to the Naches River and north to State Highway 410, GMUs)) 364, 368	3 pt. min.
				272	3 pt. min. or antlerless
Eastern Washington Whitetail Deer	Nov. 10-Dec. 15	Nov. 10-Dec. 15	Nov. 10-Dec. 15	101	Any Whitetail
	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	209, 215, 233, 272	Any Whitetail
145, 178				3 pt. min. or antlerless	
Eastern Washington Whitetail Deer	Nov. 22-Dec. 15	Nov. 21-Dec. 15	Nov. 20-Dec. 15	105, 117, 121, 124	Any Whitetail
				127	3 pt. min. or antlerless

Muzzleloader Deer Seasons

License Required: A valid big game hunting license which includes a deer species option.

Tag Required: Valid muzzleloader deer tag on his/her person for the area hunted.

Hunting Method: Muzzleloader only.

Special Notes: Muzzleloader tag holders can only hunt during muzzleloader seasons and must hunt with muzzleloader equipment.

Hunt Area	2000 Dates	2001 Dates	2002 Dates	Game Management Units	Legal Deer
High Buck Hunts	Sept. 15-25	Sept. 15-25	Sept. 15-25	Alpine Lakes, Glacier Peak, Pasayten and Olympic Peninsula Wilderness Areas, Lake Chelan Recreation Area and that part of the Henry Jackson Wilderness Area west of the Pacific Crest Trail.	3 pt. min.
Early Muzzleloader Deer Seasons					
Western Washington Blacktail Deer	Oct. 7-11	Oct. 6-10	Oct. 5-9	407, 418, 426, 448, 501, 504, 505, 513, 520, 530, 554, 568, 603, 612, 624, 627, 638, 642, 660, 663, 672, 673, 684	Any buck
				410, 454, 564, 652, 666	Any deer
				437, 578	2 pt. min.
Eastern Washington Whitetail Deer	Oct. 7-11	Oct. 6-10	Oct. 5-9	209, 239, 243, 244, 245, 246, 250, 251, 284, 381	Whitetail, any buck
				433, 142, 145, 149	Whitetail, 3 pt. min.
				109, 117, 124	Whitetail, any deer
Eastern Washington Mule Deer	Oct. 7-11	Oct. 6-10	Oct. 5-9	109, 117, 133, 142, 145, 149, 209, 239, 243, 244, 245, 246, 250, 251, 284, 336, 352, 360, 382	Mule deer, 3 pt. min.
Late Muzzleloader Deer Seasons					
Western Washington Blacktail Deer	Nov. 22-Dec. 15	Nov. 21-Dec. 15	Nov. 20-Dec. 15	410, 501, 504, 564, 666, 684, and Muzzleloader Area 926	Any deer
				654	2 pt. min.
	550, 602, 633, 651	Any buck			
	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	578	2 pt. min.
Eastern Washington Whitetail Deer	Nov. 22-Dec. 15	((Nov. 21-Dec. 15)) Nov. 21-Dec. 8	((Nov. 20-Dec. 15)) Nov. 20-Dec. 8	113	Whitetail, any ((buck)) deer

Hunt Area	2000 Dates	2001 Dates	2002 Dates	Game Management Units	Legal Deer
	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	130, 139, 172, 181 , 284	Whitetail, 3 pt. min. or antlerless
Eastern Washington Mule Deer	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	130, 284, 381	Mule deer, 3 pt. min. or antlerless
	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	382	3 pt. min.

Firearm Restricted Deer Hunts Open To All Deer Hunters

License Required: Hunting license.

Tag Required: Valid modern firearm, archery or muzzleloader deer tag on his/her person for the area hunted.

Hunting Method: Must use weapon in compliance with tag. Firearm restrictions apply in some GMUs. In firearm restriction areas, modern firearm hunters may hunt with a muzzleloader equipped with a scope.

Firearm Restricted Hunts Open To All Deer Hunters					
Hunting license and deer tag required. Must use hunting method in compliance with tag. Check firearm restrictions. Archery, shotgun, muzzleloader or revolver type handgun only. Hunter orange required.					
Hunt Area	2000 Dates	2001 Dates	2002 Dates	Game Management Units (GMUs)	Legal Deer
Western Washington Blacktail Deer	Oct. 14-31	Oct. 13-31	Oct. 12-31	410, Vashon and Maury Islands	Any deer
	Nov. 22-Dec. 31	Nov. 21-Dec. 31	Nov. 20-Dec. 31	564	Any deer
	Sept. 1-Dec. 31	Sept. 1-Dec. 31	Sept. 1-Dec. 31	Indian Island. Restricted Access.*	Any deer

*Archery only except for one day persons of disability hunt. Archers must qualify during the June to August period to hunt. For information call Bill Kalina at (360) 396-5353.

Special Deer Permit Hunting Seasons

(Open to Permit Holders Only)

Hunters must purchase a deer hunting license prior to purchase of a permit application.

Hunt Name	((2000)) 2001 Permit Season	Special Restrictions	Boundary Description	((2000)) 2001 Permits
Modern Firearm Deer Permit Hunts (Only modern firearm and muzzleloader deer tag holders may apply)				
Hunters may hunt only with weapon in compliance with tag.				
Sherman	Oct. ((14-27)) <u>13-26</u>	Whitetail, Antlerless	GMU 101	((100)) <u>200</u>
Kelly Hill	Oct. ((14-27)) <u>13-26</u>	Whitetail, Antlerless	GMU 105	((100)) <u>200</u>
Threeforks	Oct. ((14-27)) <u>13-26</u>	Whitetail, Antlerless	GMU 109	((300)) <u>400</u>
Selkirk	Oct. ((14-27)) <u>13-26</u>	Whitetail, Antlerless	GMU 113	((25)) <u>50</u>
49 Degrees North	Oct. ((14-27)) <u>13-26</u>	Whitetail, Antlerless	GMU 117	((100)) <u>200</u>
Huckleberry	Oct. ((14-27)) <u>13-26</u>	Whitetail, Antlerless	GMU 121	((250)) <u>500</u>
Mt. Spokane	Oct. ((14-27)) <u>13-26</u>	Whitetail, Antlerless	GMU 124	((800)) <u>1000</u>
Mica Peak	Oct. ((14-22)) <u>13-21</u>	Whitetail, Antlerless	GMU 127	160
Cheney	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 130	150
Roosevelt	Nov. ((6-15)) <u>5-15</u>	Antlerless	GMU 133	450
Harrington	Nov. ((6-15)) <u>5-15</u>	Antlerless	GMU 136	125
Stephoe	Nov. ((6-15)) <u>5-15</u>	Whitetail, Antlerless	GMU 139	((200)) <u>250</u>

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Hunt Name	((2000)) 2001 Permit Season	Special Restrictions	Boundary Description	((2000)) 2001 Permits
Almota	Nov. ((6-15)) <u>5-15</u>	Antlerless	GMU 142	((225)) <u>250</u>
Mayview	Nov. ((6-15)) <u>5-15</u>	Antlerless	GMU 145	500
Prescott A	Nov. ((6-15)) <u>5-15</u>	Antlerless	GMU 149	400
Prescott B	Nov. ((6-15)) <u>5-15</u>	Antlerless	That portion of GMU 149 north of Hwy 261	((150)) <u>175</u>
Blue Creek	Nov. ((6-15)) <u>5-15</u>	Whitetail, Antlerless	GMU 154	200
Dayton	Nov. ((6-15)) <u>5-15</u>	Whitetail, Antlerless	GMU 162	250
Marengo A	Nov. ((6-15)) <u>5-15</u>	Whitetail, Antlerless	GMU 163	((150)) <u>200</u>
Marengo B	Nov. ((6-15)) <u>5-15</u>	Antlerless	GMU 163	((50)) <u>75</u>
Peola	Nov. ((6-15)) <u>5-15</u>	Antlerless	GMU 178	((125)) <u>150</u>
Blue Mtns. Foothills A	Nov. ((6-24)) <u>5-20</u>	Whitetail, 3 Pt. Min. or Antlerless	GMUs 149, 154, 162-166	100
Blue Mtns. Foothills B	Nov. ((6-24)) <u>5-20</u>	Whitetail, 3 Pt. Min. or Antlerless	GMUs 145, 172-181	50
East Okanogan	Nov. 1-15	Any Whitetail	GMU 204	100
West Okanogan	Nov. 1-15	Any Whitetail	GMUs 209, 218-242	100
Sinlahekin	Nov. 1-15	Any Whitetail	GMU 215	50
Chewuch	Nov. 1-15	Any Buck	GMU 218	15
Pearygin	Nov. 1-15	Any Buck	GMU 224	15
Gardner	Nov. 1-15	Any Buck	GMU 231	15
Pogue	Nov. 1-15	Any Buck	GMU 233	15
Chiliwist	Nov. 1-15	Any Buck	GMU 239	5
Alta	Nov. 1-15	Any Buck	GMU 242	15
Manson	Nov. 1-15	Any Buck	GMU 243	((5)) <u>15</u>
Chiwawa	Nov. 1-15	Any Buck	GMU 245	((5)) <u>15</u>
<u>Slide Ridge</u>	<u>Nov. 1-15</u>	<u>Any Buck</u>	<u>GMU 246</u>	<u>15</u>
Entiat	Nov. 1-15	Any Buck	GMU 247	((5)) <u>15</u>
Big Bend A	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 248	50
<u>Big Bend C</u>	<u>Nov. 1-15</u>	<u>Antlerless</u>	<u>GMU 248</u>	<u>50</u>
Swakane	Nov. 1-15	Any Buck	GMU 250	((5)) <u>15</u>
Mission	Nov. 1-15	Any Buck	GMU 251	((5)) <u>15</u>
<u>St. Andrews</u>	<u>Oct. 13-21</u>	<u>Antlerless</u>	<u>GMU 254</u>	<u>50</u>
<u>Withrow</u>	<u>Oct. 13-21</u>	<u>Antlerless</u>	<u>GMU 262</u>	<u>50</u>
<u>Foster Creek</u>	<u>Oct. 13-21</u>	<u>Antlerless</u>	<u>GMU 260</u>	<u>100</u>
Badger	Nov. 1-15	Antlerless	GMU 266	75
Beezeley East	Oct. ((14-22)) <u>13-21</u>	Antlerless	That part of GMU 272 in Grant County	((300)) <u>200</u>

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Hunt Name	((2000)) 2001 Permit Season	Special Restrictions	Boundary Description	((2000)) 2001 Permits
Kahlotus	Oct. ((14-22)) <u>13-21</u>	Antlerless	GMU 284	100
Desert A	Nov. 1-15	Any Deer	GMU 290	15
Desert B	Nov. ((18-26)) <u>19-25</u>	Antlerless	GMU 290	50
Quilomene A	Nov. 8-23	Any Buck	GMU 329	((110)) <u>92</u>
Umtanum A	Nov. 8-23	Any Buck	GMU 342	((100)) <u>95</u>
Alkali A	Nov. 8-23	Any Buck	GMU 371	((60)) <u>89</u>
Alkali B	Nov. 8-23	Antlerless	GMU 371	((25)) <u>35</u>
East Klickitat	Oct. ((14-22)) <u>13-21</u>	3 Pt. Min. or Antlerless	GMU 382	50
<u>Snoqualmie</u>	<u>Nov. 1-11</u>	<u>Any Buck</u>	<u>GMU 460</u>	<u>500</u>
Green River A	Oct. 7-13	Any Buck	GMU 485	10
Lincoln	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 501	((80)) <u>60</u>
Stella	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 504.*	((75)) <u>55</u>
Mossyrock	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 505	((150)) <u>115</u>
Stormking	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 510	((75)) <u>55</u>
South Rainier	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 513	((75)) <u>55</u>
Packwood	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 516	((100)) <u>75</u>
Winston	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 520	((100)) <u>75</u>
Yale	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 554.*	((50)) <u>35</u>
Marble	Oct. ((14-31)) <u>13-31</u>	2 Pt. Min. or Antlerless	GMU 558	((75)) <u>55</u>
Lewis River	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 560	((100)) <u>75</u>
Siouxon	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 572	((100)) <u>75</u>
Wind River A	Oct. ((14-31)) <u>13-31</u>	2 Pt. Min. or Antlerless	GMU 574	40
Wind River B	Nov. ((16-19)) <u>15-18</u>	2 Pt. Min.	GMU 574	25
West Klickitat A	Oct. ((14-31)) <u>13-31</u>	2 Pt. Min. or Antlerless	GMU 578	50
West Klickitat B	Nov. ((16-19)) <u>15-18</u>	2 Pt. Min	GMU 578	35
Grayback A	Oct. ((14-31)) <u>13-31</u>	2 Pt. Min. or Antlerless	GMU 588	((125)) <u>200</u>
Grayback B	Nov. ((16-19)) <u>15-18</u>	2 Pt. Min	GMU 588	50
Pysh*.**	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 603	((50)) <u>40</u>
Olympic	Oct. ((14-31)) <u>13-31</u>	Any Deer	GMU 621	((40)) <u>30</u>

Hunt Name	((2000)) 2001 Permit Season	Special Restrictions	Boundary Description	((2000)) 2001 Permits
Coyle	Oct. ((14-31)) 13-31	Any Deer	GMU 624	30
Kitsap	Oct. ((14-31)) 13-31	Any Deer	GMU 627	20
Mason Lake	Oct. ((14-31)) 13-31	Any Deer	GMU 633	((70)) 5
Skokomish	Oct. ((14-31)) 13-31	2 Pt. Min. or Antlerless	GMU 636	80
Wynoochee <u>A</u>	Oct. ((14-31)) 13-31	Any Deer	GMU 648	((100)) 110
<u>Wynoochee B</u>	Nov. 1-11	<u>Any Buck</u>	<u>GMU 648</u>	10
Satsop <u>A</u>	Oct. ((14-31)) 13-31	Any Deer	GMU 651	150
<u>Satsop B</u>	Nov. 1-11	<u>Any Buck</u>	<u>GMU 651</u>	10
North River	Oct. ((14-31)) 13-31	Any Deer	GMU 658	((60)) 100
Minot Peak	Oct. ((14-31)) 13-31	Any Deer	GMU 660	100
Capitol Peak <u>A</u>	Oct. ((14-31)) 13-31	Any Deer	GMU 663	((120)) 140
<u>Capitol Peak B</u>	Nov. 1-11	<u>Any Buck</u>	<u>GMU 663</u>	10
Deschutes	Oct. ((14-31)) 13-31	Any Deer	GMU 666	80
Skookumchuck A	Oct. ((14-31)) 13-31	Any Deer	GMU 667	200
<u>Skookumchuck B</u>	Nov. 1-11	<u>Any Buck</u>	<u>GMU 667</u>	10

*Firearm Restriction Areas - Muzzleloader or archery equipment only.

.*Permit not valid on Merrill and Ring Tree Farm.

Muzzleloader Only Deer Permit Hunts (Only muzzleloader tag holders may apply.)

Green Bluff	Dec. ((9-31)) 8-31	Whitetail, Antlerless	That portion of GMU 124 east of Hwy 2	((75)) 90
Blue Mtns. Foothills C	((Nov. 22-Dec. 8)) Nov. 21-Dec. 8	Whitetail, 3 Pt. Min. or Antlerless	GMUs 149-154, 162-166	60
((Blue Mtns. Foothills D))	((Nov. 22-Dec. 8))	((Whitetail, 3 Pt. Min. or Antlerless))	((GMUs 172-175, 181))	((50))
<u>Wannacut</u>	Oct. 1-10	<u>Mule Deer, Antlerless</u>	<u>GMU 209</u>	20
Moses Coulee	Dec. 1-31	Antlerless	GMU 269	50
Desert C	Oct. ((23-29)) 22- 28	Any Deer	GMU 290	3
Quilomene B	Oct. 1-10	Any Buck	GMU 329	15
Umtanum B	Oct. 1-10	Any Buck	GMU 342	((40)) 8
Alkali C	Sept. 30-Oct. 6	Any Buck	GMU 371	((40)) 15
Alkali D	Sept. 30-Oct. 6	Antlerless	GMU 371	((5)) 15
Mason Lake	Oct. ((7-13)) 6-10	Antlerless	GMU 633	30
Satsop	Oct. ((7-13)) 6-10	Any Deer	GMU 651	50

Archery Only Deer Permit Hunts (Only archery deer tag holders may apply.)

<u>Sinlahekin B</u>	Nov. 21-Dec. 7	<u>Mule Deer, Antlerless</u>	<u>GMU 215</u>	70
<u>Pogue B</u>	Nov. 21-Dec. 7	<u>Mule Deer, Antlerless</u>	<u>233</u>	70

Desert D	((Sept. 16-Oct. 6)) <u>Sept. 16-Oct. 5</u>	Any Deer	GMU 290	((35)) <u>45</u>
Quilomene C	((Nov. 24-Dec. 8)) <u>Nov. 21-Dec. 8</u>	Any ((Buck)) <u>Deer</u>	GMU 329	((90)) <u>146</u>
Umtanum C	((Nov. 24-Dec. 8)) <u>Nov. 21-Dec. 8</u>	Any ((Buck)) <u>Deer</u>	GMU 342	((75)) <u>55</u>
Alkali E	((Nov. 24-Dec. 8)) <u>Nov. 21-Dec. 8</u>	Any Deer	GMU 371	((35)) <u>138</u>

Special Deer Permit Hunts for Hunters 65 or older.

((Walla Walla))	((Oct. 14-22))	((3-Pt. Min. or Antlerless))	((GMUs 149, 163))	((100))
<u>Blue Mtn. Foothills D</u>	<u>Oct. 13-21</u>	<u>3 Pt. Min. or Antlerless</u>	<u>GMUs 145-149, 163, 178, 181</u>	<u>150</u>

Special Youth Deer Permit Hunts (Must be eligible for the youth hunting license and accompanied by an adult during the hunt.)

Blue Mtns. Foothills E	((Oct. 14-22)) <u>Oct. 13-21</u>	((3-Pt. Min. or Antlerless)) <u>Any Deer</u>	GMUs 149, 154, 162-166	((150)) <u>100</u>
Blue Mtns. Foothills F	((Oct. 14-22)) <u>Oct. 13-21</u>	((3-Pt. Min. or Antlerless)) <u>Any Deer</u>	GMUs 145, 172-181	75
<u>East Okanogan B</u>	<u>Oct. 13-21</u>	<u>Whitetail, Antlerless</u>	<u>GMU 204</u>	<u>50</u>
<u>West Okanogan B</u>	<u>Oct. 13-21</u>	<u>Whitetail, Antlerless</u>	<u>GMUs 209, 218-242</u>	<u>50</u>
<u>Sinlahekin C</u>	<u>Oct. 13-21</u>	<u>Whitetail, Antlerless</u>	<u>GMU 215</u>	<u>25</u>
<u>Chewuch B</u>	<u>Oct. 13-21</u>	<u>Any Mule Deer</u>	<u>GMU 218</u>	<u>140</u>
<u>Pearrygin B</u>	<u>Oct. 13-21</u>	<u>Any Mule Deer</u>	<u>GMU 224</u>	<u>140</u>
<u>Gardner B</u>	<u>Oct. 13-21</u>	<u>Any Mule Deer</u>	<u>GMU 231</u>	<u>140</u>
<u>Chiliwist B</u>	<u>Oct. 13-21</u>	<u>Any Mule Deer</u>	<u>GMU 239</u>	<u>140</u>
<u>Alta B</u>	<u>Oct. 13-21</u>	<u>Any Mule Deer</u>	<u>GMU 242</u>	<u>140</u>
Big Bend B	((Oct. 14-22)) <u>Oct. 13-21</u>	((Antlerless)) <u>Any Deer</u>	GMU 248	((25)) <u>50</u>
<u>Mission</u>	<u>Oct. 13-21</u>	<u>Any Deer</u>	<u>GMU 251</u>	<u>50</u>
<u>Foster Creek</u>	<u>Oct. 13-21</u>	<u>Any Deer</u>	<u>GMU 260</u>	<u>50</u>
<u>Moses Coulee B</u>	<u>Nov. 15-30</u>	<u>Antlerless</u>	<u>GMU 269</u>	<u>50</u>
<u>Quilomene</u>	<u>Oct. 13-21</u>	<u>Antlerless</u>	<u>GMU 328</u>	<u>75</u>
<u>Umtanum</u>	<u>Oct. 13-21</u>	<u>Antlerless</u>	<u>GMU 342</u>	<u>75</u>
Toutle	((Oct. 14-31)) <u>Oct. 13-31</u>	Any Deer	GMU 556	100
Wind River	((Oct. 14-31)) <u>Oct. 13-31</u>	2-Pt. Min. or Antlerless	GMU 574	75
Satsop	Oct. 10-31	Any Deer	GMU 651	10
Skookumchuck D	((Oct. 10-31)) <u>Oct. 6-31</u>	Any Deer	GMU 667	60

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.

WSR 01-05-140
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 21, 2001, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-258 Washington auction permit hunts, 232-28-260 Special hunting seasons, 232-28-290 Washington raffle hunts, 232-28-291 Special hunting seasons, 232-28-292 Washington auction hunts, and 232-28-293 PLWMA raffle hunts.

Purpose: To repeal WAC 232-28-258 Washington auction permit hunts and 232-28-260 Special hunting seasons and replace it with WAC 232-28-290, 232-28-291, 232-28-292, and 232-28-293.

Statutory Authority for Adoption: RCW 77.12.040 and 77.32.530.

Statute Being Implemented: RCW 77.12.040 and 77.32.530.

Summary: Repeal WAC 232-28-260 and replace with WAC 232-28-290 Washington raffle hunts, 232-28-291 Special hunting seasons, 232-28-292 Washington auction hunts, and 232-28-293 PLWMA raffle hunts.

The transition to four WACs includes only minor content changes, including:

- Deleting 501 (c)(3) requirement for conservation organizations to participate in auctions and raffles.
- Increasing group size for special hunting season permit applications for deer (12), elk (12), and turkey (4).
- License and tag fees associated with auction and raffle permits will be deducted from auction and raffle revenue, respectively.

Reasons Supporting Proposal: Currently, WAC 232-28-260 contains four distinct topics, making the WAC difficult to understand and cumbersome for amendments.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The four new rules describe special hunting seasons and auction and raffle opportunities in Washington.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

NEW SECTION

WAC 232-28-290 Washington raffle hunts 1. The Commission, in consultation with the director, may authorize hunts for big game animals and wild turkey through raffle.

2. When a raffle hunt is adopted by the Commission the director may conduct the raffle or may award a contract to a nonprofit wildlife conservation organization (hereafter referred to as "organization") to market and conduct the raffle drawing. The department of Fish and Wildlife shall solicit bids consistent with established state competitive bid rules.

3. There is no limit on the number of raffle tickets a person may purchase.

4. The organization interested in conducting a raffle for an authorized hunt shall submit a proposal outlining its experience and plan to conduct a raffle. The proposal shall include:

- a. Name of the organization, articles of incorporation, and contact person.
- b. The date, time, and place of the proposed raffle drawing.
- c. The approximate number of raffle tickets expected to be sold.
- d. Past experience in conducting raffles.
- e. Marketing strategies to be used.
- f. Portion of revenue proposed to be retained by the organization.

5. The director will select an organization to conduct a raffle.

a. Revenue potential to the department will be a primary criterion in applicant selection.

b. The department shall enter into a contract with the organization identifying specific terms of the contract.

c. The director may authorize the organization to sell raffle tickets for the department and retain a portion of the revenue from the tickets sold.

6. The following are rules for raffles conducted by a director authorized nonprofit wildlife conservation organization.

a. The organization shall notify the public about the raffle hunt opportunity and offer raffle tickets for sale.

b. The public must be informed of the date, time, and place of the raffle and hold the drawing as specified.

c. The drawing must be accessible to the public.

PROPOSED

d. Raffle ticket sales must be completed prior to the public drawing. An accounting must be made of raffle tickets and funds received. A representative of the department will monitor the drawing.

e. One winner and two alternates shall be drawn at the drawing.

f. The organization shall notify the department of the name, address, and telephone number of the raffle winner and two alternates immediately (but no later than two business days) after the drawing.

g. The department's share of the raffle revenue shall be delivered to the department within 10 (ten) business days of the drawing.

7. The following are rules for raffles conducted by the department.

a. The department shall notify the public about the raffle hunt opportunity and offer raffle tickets for sale.

b. The department shall inform the public of date and place of the raffle, and hold the drawing as specified.

c. Raffle ticket sales must be complete prior to the drawing.

d. One winner and two alternates shall be drawn at the drawing.

8. The department will notify the winner and two alternates by telephone and by certified mail. The department will obtain enough information from the winner to issue the appropriate hunting license and transport tag(s).

9. If the winner cannot contact the Department within 15 business days of the drawing, the first alternate will be contacted and offered the raffle hunt. If the first alternate cannot be contacted within 10 business days after the winner disqualification deadline, the second alternate will be contacted and offered the raffle hunt. If the second alternate cannot be contacted within 10 business days after the first alternate disqualification deadline, the raffle hunt will not be offered by the department.

10. There shall be no refunds for any raffle ticket purchases.

11. The deer raffle winner may purchase an additional deer hunting license and transport tag and the elk raffle winner may purchase an additional elk hunting license and transport tag if desired. A hunter may obtain only one hunting license for mountain sheep, mountain goat, or moose annually. Even if previously drawn for a mountain goat, bighorn sheep, or moose hunt a hunter may participate in a raffle hunt. Turkey raffle winners may purchase up to three (3) additional turkey licenses and transport tags.

12. Hunting licenses or transport tags obtained pursuant to a raffle may not be resold or reassigned.

13. All revenue to the department from a raffle shall be used for the management and benefit of that species, except the hunting license and transport tag fees for the appropriate species shall be deducted from the raffle revenue.

NEW SECTION

WAC 232-28-291 Special hunting season permits The commission may establish special hunting seasons limited to species and/or weapon type.

1. Deer, elk, cougar, or black bear special hunting season permit applications:

A. To apply for special hunting season permits for deer, elk, cougar, or black bear applicants must have a valid Washington big game hunting license and a valid transport tag for the appropriate species. To apply for a particular hunt, each applicant for deer or elk must have the proper transport tag as identified in the special deer or elk permit regulations.

B. No refunds or exchanges for deer, elk, cougar, or black bear hunting licenses or transport tags will be made for persons applying for special hunting season permits after the permit drawing has been held.

C. A holder of a deer, elk, cougar, or black bear special hunting season permit may hunt only with a weapon in compliance with the special hunting season.

2. Mountain goat, moose, and bighorn sheep special hunting season permit applications:

A. Persons who have previously drawn and accepted a special hunting season permit for Washington mountain goat, bighorn sheep, or moose are ineligible to apply for a special hunting season permit for that species. This lifetime permit holder restriction does not apply to mountain goat permits acquired before 1999, raffle or auction hunt authorizations, or youth-only moose hunts.

B. Successful applicants under this section must purchase the appropriate hunting license within fifteen days of notification by the department. Failure to purchase forfeits the permit to an alternate applicant.

C. No refunds for mountain goat, moose, or bighorn sheep hunting licenses will be made for persons successfully drawing and purchasing special hunting season permits.

3. Wild turkey special hunting season permit applications

A. To apply for wild turkey special hunting season permits, each applicant must have a valid small game hunting license.

B. No refunds for small game hunting licenses will be made, regardless of success in the drawing for wild turkey special hunting season permits.

C. Wild turkey special hunting season permit holders must have a valid turkey transport tag in possession to hunt turkeys in the special hunting season.

4. Special hunting season permit applications:

A. Group applications will be accepted for any species with a group size larger than one. Maximum group sizes are determined for each species. If a group application is drawn, all hunters in the group will receive a special hunting season permit and each hunter in the group can take an animal.

i. Maximum group size for deer is 12.

ii. Maximum group size for elk is 12.

iii. Maximum group size for bear is 2.

iv. Maximum group size for cougar is 2.

v. Maximum group size for mountain goat is 2.

vi. Maximum group size for bighorn sheep is 1.

vii. Maximum group size for turkey is 4.

viii. Maximum group size for moose is 1.

B. An applicant may purchase only one application for a special hunting season permit for each species.

C. Permits will be drawn by computer selection using a weighted point selection system.

D. Incomplete applications will not be accepted.

E. If an applicant makes a mistake, applies for the wrong hunt, and is successfully drawn, the special hunting season permit can be returned to the Department of Fish and Wildlife Olympia headquarters before the opening day of the special hunting season or the opening day of the general hunting season, whichever comes first. The applicant's points will be restored to the level prior to the permit drawing.

F. Anyone may apply for a special hunting season permit for deer, elk, bear, cougar, and wild turkey.

5. In addition to requirements for special hunting season permit applications, following are application requirements for:

A. Special hunting seasons for Persons of Disability: Only applicants with a Washington disabled hunter permit are eligible to apply for any special hunting season permits for persons of disability.

B. Special hunting seasons for Youth: Only persons who are eligible to lawfully purchase a youth hunting license are eligible to apply for special hunting season permits for youth.

C. Special hunting seasons for Hunters Age 65 and Older: Only applicants sixty-five years of age or older on or before March 31 of the current license year will be eligible to apply for special hunting season permits for hunters age 65 and older.

D. Special hunting seasons for Advanced Hunter Education Graduates: Only persons who hold a valid certificate from the Washington Department of Fish and Wildlife Advanced Hunter Education (AHE) program are eligible to apply for special hunting season permits for AHE hunters.

6. 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 special hunting permit drawing for deer or elk special hunting season permits.

A. Only ten bonus points can be awarded for 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.

NEW SECTION

WAC 232-28-292 Washington auction hunts 1. The Commission, in consultation with the director, may authorize hunts for big game animals and wild turkeys through auction.

2. When an auction hunt is adopted by the Commission, the director shall solicit nonprofit wildlife conservation organizations (hereafter referred to as "organizations") to bid to market and conduct a public auction for the special auction hunt. The department of fish and wildlife shall solicit bids consistent with established state competitive bid rules.

3. The organization interested in conducting an auction for an authorized hunt shall submit a proposal outlining its experience and plan to conduct a public auction. The proposal shall include:

a. Name of the organization, articles of incorporation, and contact person.

b. The date, time, and place of the proposed public auction.

c. The approximate number of people expected to attend the auction.

d. Past experience in conducting auctions.

e. Marketing strategies to be used.

f. Portion of revenue proposed to be retained by the organization.

4. The director will select an organization to conduct an auction.

a. Revenue potential to the department will be a primary criterion in applicant selection.

b. The department shall enter into a contract with the organization identifying specific terms of the contract.

5. The organization shall notify the public about the auction hunt opportunities.

a. The public must be informed of the date, time, and place of the auction and hold the auction as specified.

b. The auction must be accessible to the public.

c. Anyone may bid on an auction permit.

d. The organization shall award the hunt to the highest qualified bidder who will then become the auction hunt hunter.

e. The organization shall notify the department of the name and address of the successful bidder within ten days of the auction.

f. The department's share of the auction revenue shall be delivered to the department within 30 days of the auction.

6. All revenue to the department from an auction shall be used for the management and benefit of that species. Except, that the hunting license fees for the appropriate species shall be considered part of the auction price and be deducted from the auction revenue. A hunting license and transport tag will be mailed to the successful bidder.

7. The deer auction winner may purchase an additional deer hunting license and transport tag, and the elk auction winner may purchase an additional elk hunting license and transport tag. A hunter may obtain only one hunting license for mountain sheep, mountain goat, or moose annually.

8. Hunting licenses or transport tags obtained pursuant to an auction may not be resold or reassigned.

9. The auction hunt hunter shall comply with all applicable hunting rules and regulations.

NEW SECTION

WAC 232-28-293 PLWMA raffle hunts The commission, in consultation with the director and by agreement with a Private Lands Wildlife Management Area (PLWMA), may authorize hunts for big game animals through raffle.

1. the PLWMA manager will conduct the raffle drawing. Raffle tickets will be sold for not more than \$25.00 each.

2. Any person may purchase PLWMA raffle tickets in addition to WDFW raffle tickets and participate in auctions and special hunting season permit drawings.

3. The PLWMA raffle winners must possess the appropriate hunting license and transport tag prior to participating in the PLWMA raffle hunt.

4. The PLWMA deer or elk raffle hunt winners may purchase an additional deer or elk hunting license and obtain a second transport tag if desired.

5. If an additional deer or elk hunting license and transport tag are acquired by a raffle winner, the additional transport tag can only be used on the PLWMA during the raffle hunt.

6. The additional deer or elk hunting license and transport tag must be issued by the Olympia department headquarters licensing division.

7. Hunting licenses or transport tags obtained pursuant to a raffle may not be resold or reassigned.

8. The PLWMA manager conducting an authorized raffle will provide an annual report to the Department of Fish and Wildlife prior to December 31 of the raffle. The report will include information on how the event was administered, where and when it occurred, who the winners were, the cost of tickets, and the number tickets sold.

9. Anyone may participate in PLWMA raffles.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 232-28-258 Washington auction hunts
- WAC 232-28-260 Special hunting seasons

**WSR 01-05-141
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed February 21, 2001, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-276 2000-2001, 2001-02, 2002-03 Official hunting hours and small game seasons.

Purpose: To amend WAC 232-28-276 2000-01, 2001-02, and 2002-03 Official hunting hours and small game seasons

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: Amendments are proposed to small game seasons.

Reasons Supporting Proposal: Limiting most pheasant hunters at the Dungeness Recreation Area release site to "odd" or "even" weekend mornings maximizes recreational opportunity while helping ensure orderly and safe utilization of resources. Increases in fall turkey permits and permit areas maximize recreational opportunity while maintaining populations and helping address damage issues. Expansion of falconry seasons increases recreation opportunity and reduces situations in which falconers might accidentally take upland birds and forest grouse during August. Explicitly closing all mountain quail hunting in eastern Washington ensures maximum protection for a game species at low popu-

lation level. Other changes update the WAC to match currently recognized scientific classification of wild animals and birds, and incorporate modernization of the agency's harvest reporting system (elimination of physical report cards). The housekeeping changes increase credibility and clarify regulations.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Proposed changes will require pheasant hunters at Dungeness Recreation Area to choose to hunt either odd or even days during weekend mornings. The limitation only applies during 8:00-10:00 a.m., and does not apply to youth hunters, hunters ≥65 years old, or those hunting with three-day option permits. The purpose is to reduce hunter crowding at popular times. The effect will be to more evenly distribute hunters and increase their satisfaction.

Proposed changes would increase hunting opportunity for wild turkey during fall season by a total of 42%, by increasing permits on two permit areas and creating two additional permit areas. The purpose is to maximize recreational opportunity and help address damage concerns while maintaining populations. The effect will be increased permits (from 405 to 575), yielding greater hunting opportunity and small to moderate increases in turkey harvest.

The proposal will allow a longer season for falconers to pursue upland birds and forest grouse and eliminate the period where upland game seasons did not overlap. Further, possession limits are established that mirror limits allowed for migratory birds. Lastly, falconry mountain quail season in eastern Washington is explicitly closed. Purposes of changes are to afford falconers greater latitude while hunting in August, provide consistent regulations, and eliminate a potential loop-hole regarding take of mountain quail in eastern Washington. Anticipated effects include modest increases in recreation days for falconers.

September Canada goose seasons are extended in southwest Washington to control resident dark breasted Canada geese, which are complicating management in the November-January season (classed as dusky).

Other proposed changes will update the WAC to incorporate current scientific nomenclature for animals, clarify meaning of existing language, and reflect changes in harvest reporting associated with technological advances. The purpose of these changes is to reduce customer confusion and make regulations as simple and consistent as possible, while retaining a scientific approach and credibility. Anticipated effects include increased customer satisfaction and enhanced credibility.

Proposal Changes the Following Existing Rules: See above.

PROPOSED

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001
Evan Jacoby
Rules Coordinator

AMENDATORY SECTION (Amending Order 00-50, filed 5/23/00, effective 6/23/00)

WAC 232-28-276 2000-01, 2001-02, and 2002-03 Official hunting hours and small game seasons

2000-01 OFFICIAL HUNTING HOURS
FOR MIGRATORY GAME BIRDS, UPLAND BIRDS, AND WILD TURKEYS.*
September 1, 2000 to January 31, 2001

Dates (Inclusive)	Western Washington			Eastern Washington		
	A.M.	to	P.M.	A.M.	to	P.M.
Daylight Savings Time						
Fri. Sept. 1 - Sun. Sept. 3	6:00		7:50	5:45		7:35
Mon. Sept. 4 - Sun. Sept. 10	6:05		7:40	5:55		7:25
Mon. Sept. 11 - Sun. Sept. 17	6:15		7:25	6:05		7:10
Mon. Sept. 18 - Sun. Sept. 24	6:25		7:10	6:10		7:00
Mon. Sept. 25 - Sun. Oct. 1	6:35		6:55	6:20		6:45
Mon. Oct. 2 - Sun. Oct. 8	6:45		6:40	6:30		6:30
Mon. Oct. 9 - Sun. Oct. 15	6:55		6:25	6:40		6:15
Mon. Oct. 16 - Sun. Oct. 22	7:05		6:15	6:50		6:00
Mon. Oct. 23 - Sat. Oct. 28	7:10		6:05	7:00		5:50
Pacific Standard Time						
Mon. Oct. 30 - Sun. Nov. 5	6:20		5:00	6:05		4:45
Mon. Nov. 6 - Sun. Nov. 12	6:25		4:50	6:10		4:40
Mon. Nov. 13 - Sun. Nov. 19	6:35		4:40	6:25		4:30
Mon. Nov. 20 - Sun. Nov. 26	6:45		4:30	6:35		4:20
Mon. Nov. 27 - Sun. Dec. 3	6:55		4:25	6:45		4:15
Mon. Dec. 4 - Sun. Dec. 10	7:05		4:20	6:55		4:10
Mon. Dec. 11 - Sun. Dec. 17	7:15		4:20	7:00		4:05
Mon. Dec. 18 - Sun. Dec. 24	7:20		4:20	7:10		4:05
Mon. Dec. 25 - Sun. Dec. 31	7:25		4:25	7:15		4:10
Mon. Jan. 1 - Sun. Jan. 7	7:30		4:30	7:15		4:20
Mon. Jan. 8 - Sun. Jan. 14	7:30		4:30	7:15		4:20
Mon. Jan. 15 - Sun. Jan. 21	7:25		4:40	7:15		4:30
Mon. Jan. 22 - Sun. Jan. 28	7:20		4:50	7:10		4:40
Mon. Jan. 29 - Wed. Jan. 31	7:15		5:00	7:00		4:50

* These are lawful hunting hours (one-half hour before sunrise to sunset) for migratory game birds (duck, goose, coot, snipe, mourning dove, and band-tailed pigeon); upland birds (pheasant, quail, partridge); and turkey during established seasons.

Exceptions:

- 1) Western Washington - Pheasant and quail hunting hours are 8:00 a.m. to 4:00 p.m. in all areas.

PROPOSED

- 2) Clark (except areas south of the Washougal River), Cowlitz, Grays Harbor (~~except areas north of U.S. Highway 12 and west of U.S. Highway 101~~), Pacific, and Wahkiakum counties - Goose hunting hours are 8:00 a.m. to 4:00 p.m., except one-half hour before sunrise to sunset during the September goose season and 7:00 a.m. to 4:00 p.m. during the late goose season.
- 3) Hunting hours for falconry seasons (except migratory game bird seasons) are exempt from these hunting hours, except on designated pheasant release sites.

2001-02 OFFICIAL HUNTING HOURS
FOR MIGRATORY GAME BIRDS, UPLAND BIRDS, AND WILD TURKEYS.*
September 1, 2001 to January 31, 2002

Dates (Inclusive)				Western Washington from			Eastern Washington from		
				A.M.	to	P.M.	A.M.	to	P.M.
Daylight Savings Time									
Sat.	Sept. 1	-	Sun.	Sept. 2	6:00	7:50	5:45		7:40
Mon.	Sept. 3	-	Sun.	Sept. 9	6:05	7:40	5:50		7:30
Mon.	Sept. 10	-	Sun.	Sept. 16	6:15	7:25	6:00		7:15
Mon.	Sept. 17	-	Sun.	Sept. 23	6:20	7:10	6:10		7:00
Mon.	Sept. 24	-	Sun.	Sept. 30	6:30	6:55	6:20		6:45
Mon.	Oct. 1	-	Sun.	Oct. 7	6:40	6:45	6:30		6:30
Mon.	Oct. 8	-	Sun.	Oct. 14	6:50	6:30	6:40		6:15
Mon.	Oct. 15	-	Sun.	Oct. 21	7:00	6:15	6:50		6:05
Mon.	Oct. 22	-	Sat.	Oct. 27	7:10	6:05	7:00		5:50
Pacific Standard Time									
			Sun.	Oct. 28	6:15	5:00	6:05		4:45
Mon.	Oct. 29	-	Sun.	Nov. 4	6:20	4:50	6:10		4:40
Mon.	Nov. 5	-	Sun.	Nov. 11	6:35	4:40	6:20		4:30
Mon.	Nov. 12	-	Sun.	Nov. 18	6:45	4:35	6:30		4:20
Mon.	Nov. 19	-	Sun.	Nov. 25	6:55	4:25	6:45		4:15
Mon.	Nov. 26	-	Sun.	Dec. 2	7:05	4:20	6:50		4:10
Mon.	Dec. 3	-	Sun.	Dec. 9	7:10	4:20	7:00		4:05
Mon.	Dec. 10	-	Sun.	Dec. 16	7:20	4:20	7:05		4:05
Mon.	Dec. 17	-	Sun.	Dec. 23	7:25	4:20	7:10		4:05
Mon.	Dec. 24	-	Sun.	Dec. 30	7:25	4:25	7:15		4:10
Mon.	Dec. 31	-	Sun.	Jan. 6	7:25	4:30	7:15		4:20
Mon.	Jan. 7	-	Sun.	Jan. 13	7:25	4:40	7:15		4:25
Mon.	Jan. 14	-	Sun.	Jan. 20	7:20	4:45	7:10		4:35
Mon.	Jan. 21	-	Sun.	Jan. 27	7:15	4:55	7:05		4:45
Mon.	Jan. 28	-	Thur.	Jan. 31	7:10	5:05	7:00		4:55

* These are lawful hunting hours (one-half hour before sunrise to sunset) for migratory game birds (duck, goose, coot, snipe, mourning dove, and band-tailed pigeon); upland birds (pheasant, quail, partridge); and turkey during established seasons.

Exceptions:

- 1) Western Washington - Pheasant and quail hunting hours are 8:00 a.m. to 4:00 p.m. in all areas.
- 2) Clark (except areas south of the Washougal River), Cowlitz, Grays Harbor (~~except areas north of U.S. Highway 12 and west of U.S. Highway 101~~), Pacific, and Wahkiakum counties - Goose hunting hours are 8:00 a.m. to 4:00 p.m., except one-half hour before sunrise to sunset during the September goose season and 7:00 a.m. to 4:00 p.m. during the late goose season.
- 3) Hunting hours for falconry seasons (except migratory game bird seasons) are exempt from these hunting hours, except on designated pheasant release sites.

PROPOSED

2002-2003 OFFICIAL HUNTING HOURS
FOR MIGRATORY GAME BIRDS, UPLAND BIRDS, AND WILD TURKEYS.*
September 1, 2002 to January 31, 2003

Dates (Inclusive)	Western Washington			Eastern Washington			
	from			from			
	A.M.	to	P.M.	A.M.	to	P.M.	
Daylight Savings Time							
	Sun.	Sept. 1	6:00	7:50	5:45	7:40	
Mon.	Sept. 2	- Sun.	Sept. 8	6:00	7:45	5:45	7:30
Mon.	Sept. 9	- Sun.	Sept. 15	6:10	7:30	6:00	7:15
Mon.	Sept. 16	- Sun.	Sept. 22	6:20	7:15	6:10	7:00
Mon.	Sept. 23	- Sun.	Sept. 29	6:30	7:00	6:20	6:45
Mon.	Sept. 30	- Sun.	Oct. 6	6:40	6:45	6:30	6:35
Mon.	Oct. 7	- Sun.	Oct. 13	6:50	6:30	6:40	6:20
Mon.	Oct. 14	- Sun.	Oct. 20	7:00	6:20	6:50	6:05
Mon.	Oct. 21	- Sat.	Oct. 26	7:10	6:05	7:00	5:55
Pacific Standard Time							
	Sun.	Oct. 27	6:15	5:00	6:00	4:50	
Mon.	Oct. 28	- Sun.	Nov. 3	6:20	4:55	6:10	4:50
Mon.	Nov. 4	- Sun.	Nov. 10	6:30	4:45	6:20	4:30
Mon.	Nov. 11	- Sun.	Nov. 17	6:40	4:35	6:30	4:20
Mon.	Nov. 18	- Sun.	Nov. 24	6:50	4:25	6:40	4:15
Mon.	Nov. 25	- Sun.	Dec. 1	7:00	4:20	6:50	4:10
Mon.	Dec. 2	- Sun.	Dec. 8	7:10	4:20	7:00	4:10
Mon.	Dec. 9	- Sun.	Dec. 15	7:15	4:20	7:05	4:10
Mon.	Dec. 16	- Sun.	Dec. 22	7:20	4:20	7:10	4:10
Mon.	Dec. 23	- Sun.	Dec. 29	7:25	4:25	7:10	4:15
Mon.	Dec. 30	- Sun.	Jan. 5	7:25	4:30	7:15	4:15
Mon.	Jan. 6	- Sun.	Jan. 12	7:25	4:35	7:15	4:25
Mon.	Jan. 13	- Sun.	Jan. 19	7:20	4:45	7:10	4:35
Mon.	Jan. 20	- Sun.	Jan. 26	7:15	4:55	7:05	4:45
Mon.	Jan. 27	- Fri.	Jan. 31	7:10	5:05	7:00	4:55

* These are lawful hunting hours (one-half hour before sunrise to sunset) for migratory game birds (duck, goose, coot, snipe, mourning dove, and band-tailed pigeon); upland birds (pheasant, quail, partridge); and turkey during established seasons.

Exceptions:

- 1) Western Washington - Pheasant and quail hunting hours are 8:00 a.m. to 4:00 p.m. in all areas.
- 2) Clark (except areas south of the Washougal River), Cowlitz, Grays Harbor ((~~except areas north of U.S. Highway 12 and west of U.S. Highway 104~~)), Pacific, and Wahkiakum counties - Goose hunting hours are 8:00 a.m. to 4:00 p.m., except one-half hour before sunrise to sunset during the September goose season and 7:00 a.m. to 4:00 p.m. during the late goose season.
- 3) Hunting hours for falconry seasons (except migratory game bird seasons) are exempt from these hunting hours, except on designated pheasant release sites.

2000-01 OFFICIAL HUNTING HOURS
FOR GAME ANIMALS AND FOREST GROUSE.*
September 1, 2000 to January 31, 2001

Dates (Inclusive)	Western Washington			Eastern Washington			
	from			from			
	A.M.	to	P.M.	A.M.	to	P.M.	
Daylight Savings Time							
Fri.	Sept. 1	- Sun.	Sept. 3	6:00	8:20	5:45	8:05
Mon.	Sept. 4	- Sun.	Sept. 10	6:05	8:10	5:55	7:55

PROPOSED

2000-01 OFFICIAL HUNTING HOURS
FOR GAME ANIMALS AND FOREST GROUSE.*
September 1, 2000 to January 31, 2001

Dates (Inclusive)					Western Washington			Eastern Washington		
					A.M.	to	P.M.	A.M.	to	P.M.
Mon. Sept. 11	-	Sun. Sept. 17		6:15		7:55	6:05		7:40	
Mon. Sept. 18	-	Sun. Sept. 24		6:25		7:40	6:10		7:30	
Mon. Sept. 25	-	Sun. Oct. 1		6:35		7:25	6:20		7:15	
Mon. Oct. 2	-	Sun. Oct. 8		6:45		7:10	6:30		7:00	
Mon. Oct. 9	-	Sun. Oct. 15		6:55		6:55	6:40		6:45	
Mon. Oct. 16	-	Sun. Oct. 22		7:05		6:45	6:50		6:30	
Mon. Oct. 23	-	Sat. Oct. 28		7:10		6:35	7:00		6:20	
Pacific Standard Time										
		Sun. Oct. 29		6:20		5:30	6:05		5:15	
Mon. Oct. 30	-	Sun. Nov. 5		6:25		5:20	6:10		5:10	
Mon. Nov. 6	-	Sun. Nov. 12		6:35		5:10	6:25		5:00	
Mon. Nov. 13	-	Sun. Nov. 19		6:45		5:00	6:35		4:50	
Mon. Nov. 20	-	Sun. Nov. 26		6:55		4:55	6:45		4:45	
Mon. Nov. 27	-	Sun. Dec. 3		7:05		4:50	6:55		4:40	
Mon. Dec. 4	-	Sun. Dec. 10		7:15		4:50	7:00		4:35	
Mon. Dec. 11	-	Sun. Dec. 17		7:20		4:50	7:10		4:35	
Mon. Dec. 18	-	Sun. Dec. 24		7:25		4:50	7:10		4:40	
Mon. Dec. 25	-	Sun. Dec. 31		7:25		4:55	7:15		4:40	
Mon. Jan. 1	-	Sun. Jan. 7		7:30		5:00	7:15		4:50	
Mon. Jan. 8	-	Sun. Jan. 14		7:25		5:10	7:15		5:00	
Mon. Jan. 15	-	Sun. Jan. 21		7:20		5:20	7:10		5:10	
Mon. Jan. 22	-	Sun. Jan. 28		7:15		5:30	7:00		5:20	
Mon. Jan. 29	-	Wed. Jan. 31		7:10		5:35	6:55		5:20	

* These are lawful hunting hours (one-half hour before sunrise to one-half hour after sunset) for game animals and forest grouse (ruffed, blue, spruce) during established seasons.

Exceptions:

- 1) Bobcat and raccoon are exempt from hunting hour restrictions during established bobcat and raccoon seasons except when that area is open to modern firearm hunting of deer or elk, hunting hours shall be one-half hour before sunrise to one-half hour after sunset.
- 2) Hunting hours for falconry seasons (except migratory game bird seasons) are exempt from these hunting hours, except on designated pheasant release sites.

2001-2002 OFFICIAL HUNTING HOURS
FOR GAME ANIMALS AND FOREST GROUSE.*
September 1, 2001 to January 31, 2002

Dates (Inclusive)					Western Washington			Eastern Washington		
					A.M.	to	P.M.	A.M.	to	P.M.
Daylight Savings Time										
Sat. Sept. 1	-	Sun. Sept. 2		6:00		8:20	5:45		8:10	
Mon. Sept. 3	-	Sun. Sept. 9		6:05		8:10	5:50		8:00	
Mon. Sept. 10	-	Sun. Sept. 16		6:15		7:55	6:00		7:45	
Mon. Sept. 17	-	Sun. Sept. 23		6:20		7:40	6:10		7:30	
Mon. Sept. 24	-	Sun. Sept. 30		6:30		7:25	6:20		7:15	
Mon. Oct. 1	-	Sun. Oct. 7		6:40		7:15	6:30		7:00	
Mon. Oct. 8	-	Sun. Oct. 14		6:50		7:00	6:40		6:45	

PROPOSED

2001-2002 OFFICIAL HUNTING HOURS
FOR GAME ANIMALS AND FOREST GROUSE.*
September 1, 2001 to January 31, 2002

Dates (Inclusive)					Western Washington		Eastern Washington		
					from	to	from	to	P.M.
					A.M.		A.M.		P.M.
Mon.	Oct. 15	-	Sun.	Oct. 21	7:00	6:45	6:50		6:35
Mon.	Oct. 22	-	Sat.	Oct. 27	7:10	6:35	7:00		6:20
Pacific Standard Time									
			Sun.	Oct. 28	6:15	5:30	6:05		5:15
Mon.	Oct. 29	-	Sun.	Nov. 4	6:20	5:20	6:10		5:10
Mon.	Nov. 5	-	Sun.	Nov. 11	6:35	5:10	6:20		5:00
Mon.	Nov. 12	-	Sun.	Nov. 18	6:45	5:05	6:30		4:50
Mon.	Nov. 19	-	Sun.	Nov. 25	6:55	4:55	6:45		4:45
Mon.	Nov. 26	-	Sun.	Dec. 2	7:05	4:50	6:50		4:40
Mon.	Dec. 3	-	Sun.	Dec. 9	7:10	4:50	7:00		4:35
Mon.	Dec. 10	-	Sun.	Dec. 16	7:20	4:50	7:05		4:35
Mon.	Dec. 17	-	Sun.	Dec. 23	7:25	4:50	7:10		4:35
Mon.	Dec. 24	-	Sun.	Dec. 30	7:25	4:55	7:15		4:40
Mon.	Dec. 31	-	Sun.	Jan. 6	7:25	5:00	7:15		4:50
Mon.	Jan. 7	-	Sun.	Jan. 13	7:25	5:10	7:15		4:55
Mon.	Jan. 14	-	Sun.	Jan. 20	7:20	5:15	7:10		5:05
Mon.	Jan. 21	-	Sun.	Jan. 27	7:15	5:25	7:05		5:15
Mon.	Jan. 28	-	Thur.	Jan. 31	7:10	5:35	7:00		5:25

* These are lawful hunting hours (one-half hour before sunrise to one-half hour after sunset) for game animals and forest grouse (ruffed, blue, spruce) during established seasons.

Exceptions:

- 1) Bobcat and raccoon are exempt from hunting hour restrictions during established bobcat and raccoon seasons except when that area is open to modern firearm hunting of deer or elk, hunting hours shall be one-half hour before sunrise to one-half hour after sunset.
- 2) Hunting hours for falconry seasons (except migratory game bird seasons) are exempt from these hunting hours, except on designated pheasant release sites.

2002-2003 OFFICIAL HUNTING HOURS
FOR GAME ANIMALS AND FOREST GROUSE.*
September 1, 2002 to January 31, 2003

Dates (Inclusive)					Western Washington		Eastern Washington		
					from	to	from	to	P.M.
					A.M.		A.M.		P.M.
Daylight Savings Time									
			Sun.	Sept. 1	6:00	8:20	5:45		8:10
Mon.	Sept. 2	-	Sun.	Sept. 8	6:00	8:15	5:45		8:00
Mon.	Sept. 9	-	Sun.	Sept. 15	6:10	8:00	6:00		7:45
Mon.	Sept. 16	-	Sun.	Sept. 22	6:20	7:45	6:10		7:30
Mon.	Sept. 23	-	Sun.	Sept. 29	6:30	7:30	6:20		7:15
Mon.	Sept. 30	-	Sun.	Oct. 6	6:40	7:15	6:30		7:05
Mon.	Oct. 7	-	Sun.	Oct. 13	6:50	7:00	6:40		6:50
Mon.	Oct. 14	-	Sun.	Oct. 20	7:00	6:50	6:50		6:35
Mon.	Oct. 21	-	Sat.	Oct. 26	7:10	6:35	7:00		6:25
Pacific Standard Time									
			Sun.	Oct. 27	6:15	5:30	6:00		5:20
Mon.	Oct. 28	-	Sun.	Nov. 3	6:20	5:25	6:10		5:20

PROPOSED

2002-2003 OFFICIAL HUNTING HOURS
FOR GAME ANIMALS AND FOREST GROUSE.*
September 1, 2002 to January 31, 2003

Dates (Inclusive)					Western Washington			Eastern Washington		
					A.M.	to	P.M.	A.M.	to	P.M.
Mon. Nov. 4	-	Sun. Nov. 10		6:30		5:15	6:20		5:00	
Mon. Nov. 11	-	Sun. Nov. 17		6:40		5:05	6:30		4:50	
Mon. Nov. 18	-	Sun. Nov. 24		6:50		4:55	6:40		4:45	
Mon. Nov. 25	-	Sun. Dec. 1		7:00		4:50	6:50		4:40	
Mon. Dec. 2	-	Sun. Dec. 8		7:10		4:50	7:00		4:40	
Mon. Dec. 9	-	Sun. Dec. 15		7:15		4:50	7:05		4:40	
Mon. Dec. 16	-	Sun. Dec. 22		7:20		4:50	7:10		4:40	
Mon. Dec. 23	-	Sun. Dec. 29		7:25		4:55	7:10		4:45	
Mon. Dec. 30	-	Sun. Jan. 5		7:25		5:00	7:15		4:45	
Mon. Jan. 6	-	Sun. Jan. 12		7:25		5:05	7:15		4:55	
Mon. Jan. 13	-	Sun. Jan. 19		7:20		5:15	7:10		5:05	
Mon. Jan. 20	-	Sun. Jan. 26		7:15		5:25	7:05		5:15	
Mon. Jan. 27	-	Fri. Jan. 31		7:10		5:35	7:00		5:25	

* These are lawful hunting hours (one-half hour before sunrise to one-half hour after sunset) for game animals and forest grouse (ruffed, blue, spruce) during established seasons.

Exceptions:

- 1) Bobcat and raccoon are exempt from hunting hour restrictions during established bobcat and raccoon seasons except when that area is open to modern firearm hunting of deer or elk, hunting hours shall be one-half hour before sunrise to one-half hour after sunset.
- 2) Hunting hours for falconry seasons (except migratory game bird seasons) are exempt from these hunting hours, except on designated pheasant release sites.

Hound Hunting During Deer and Elk Hunting Seasons

It is unlawful to hunt any wildlife at night or wild animals with dogs (hounds) during the months of September, October, or November in any area open to a center-fire rifle deer or elk season. The use of hounds to hunt black bear, cougar, and bobcat is prohibited year around.

BOBCAT

Bag and Possession Limits: No Limit

OPEN SEASON: State-wide

Sept. 5, 2000-Mar. 15, 2001; Sept. 4, 2001-Mar. 15, 2002; Sept. 3, 2002-Mar. 15, 2003.

RACCOON

Bag and Possession Limits: No Limit

OPEN SEASON: State-wide, except CLOSED on Long Island within Willapa National Wildlife Refuge.

Sept. 5, 2000-Mar. 15, 2001; Sept. 4, 2001-Mar. 15, 2002; Sept. 3, 2002-Mar. 15, 2003.

FOX

Bag and Possession Limits: No Limit

OPEN SEASON: State-wide, except CLOSED within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National Forests and GMUs 407 and 410.

Sept. 5, 2000-Mar. 15, 2001; Sept. 4, 2001-Mar. 15, 2002; Sept. 3, 2002-Mar. 15, 2003.

COYOTE

Bag and Possession Limits: No Limit

OPEN SEASON: State-wide, year around except CLOSED from September 15 to November 30 in the Pasayten Wilderness, GMUs 426 and 450, and those portions of GMUs 218, 245, and 448 within the external boundaries of the Mount Baker-Snoqualmie, Okanogan, and Wenatchee National Forests. However, coyote may only be killed and/or pursued with hounds during the following period: Sept. 5, 2000-Mar. 15, 2001; Sept. 4, 2001-Mar. 15, 2002; Sept. 3, 2002-Mar. 15, 2003; except coyote may be hunted year around with hounds in Grant, Adams, Benton, and Franklin counties.

FOREST GROUSE (BLUE, RUFFED, AND SPRUCE)

Bag and Possession Limits: Three (3) grouse per day, with a total of nine (9) grouse in possession at any time; straight or mixed bag.

State-wide: Sept. 1-Dec. 31, 2000; Sept. 1-Dec. 31, 2001; Sept. 1-Dec. 31, 2002.

PTARMIGAN, SAGE, AND SHARP-TAILED GROUSE

Season closed state-wide.

Upland Birds

Eastern Washington

PROPOSED

Ring-necked Pheasant

Bag and Possession Limits: Three (3) cock pheasants per day, with a total of fifteen (15) cock pheasants in possession at any time.

Youth Season: Sept. 23 and 24, 2000; Sept. 22 and 23, 2001; Sept. 21 and 22, 2002. Open only to youth hunters accompanied by an adult at least 18 years old.

Regular Season: Oct. 7-Dec. 31, 2000; Oct. 6-Dec. 31, 2001; Oct. 5-Dec. 31, 2002.

Chukar ((Partridge))

Bag and Possession Limits: Six (6) chukar per day, with a total of eighteen (18) chukar in possession at any time.

Regular Season: Oct. 1, 2000-Jan. 15, 2001; Oct. 1, 2001-Jan. 21, 2002; Oct. 1, 2002-Jan. 20, 2003.

Gray (Hungarian) Partridge

Bag and Possession Limits: Six (6) gray partridges per day, with a total of eighteen (18) gray partridges in possession at any time.

Regular Season: Oct. 1, 2000-Jan. 15, 2001; Oct. 1, 2001-Jan. 21, 2002; Oct. 1, 2002-Jan. 20, 2003.

Mountain Quail

Season closed throughout Eastern Washington.

~~((Valley and Bobwhite Quail))~~ California (valley) Quail and Bobwhite

Bag and Possession Limits: Ten (10) quail per day, with a total of thirty (30) quail in possession at any time, straight or mixed bag.

Youth Season: Sept. 23 and 24, 2000; Sept. 22 and 23, 2001; Sept. 21 and 22, 2002. Open only to youth hunters accompanied by an adult at least 18 years old.

Regular Season: Oct. 7, 2000-Jan. 15, 2001; Oct. 6, 2001-Jan. 21, 2002; Oct. 5, 2002-Jan. 20, 2003.

Yakama Indian Reservation: The 2000-01, 2001-02, 2002-03 Upland bird seasons within the Yakama Indian Reservation shall be the same as the season established by the Yakama Indian Nation.

Western WashingtonRing-necked Pheasant

Bag and Possession Limits: Two (2) pheasants of either sex per day, with a total of fifteen (15) pheasants in possession at any time.

Youth Season: Sept. 23 and 24, 2000; Sept. 22 and 23, 2001; Sept. 21 and 22, 2002. Open only to youth hunters accompanied by an adult at least 18 years old.

Hunters 65 years of age or older: Sept. 25-29, 2000; Sept. 24-28, 2001; Sept. 23-27, 2002.

Regular Season: Sept. 30-Nov. 30, 2000; Sept. 29-Nov. 30, 2001; Sept. 28-Nov. 30, 2002. 8 a.m. to 4 p.m.; except

Dungeness Recreation site (Clallam County) starting Oct. 7, 2000; Oct. 6, 2001; Oct. 5, 2002.

A Western Washington Pheasant Permit is required to hunt pheasant in Western Washington, in addition to a current small game hunting license. Pheasant kills must be recorded. Upon taking a pheasant, the holder of a Western Washington Pheasant Permit must immediately enter on the corresponding space the date and location of kill.

There are three options available:

- (1) Full Season Option: Allows the harvest of eight (8) pheasants.
- (2) Youth Option: Allows the harvest of eight (8) pheasants by youth hunters.
- (3) 3-Day Option: Allows the harvest of four (4) pheasants during three consecutive days.

Every person possessing a Western Washington Pheasant Permit must by December 31, return the permit to the Department of Fish and Wildlife. The number of permits purchased per year is not limited.

A hunter shall select one valid option at the time they purchase their Western Washington Pheasant Permit. It is unlawful to purchase an additional permit until the eight pheasant allowed on the current permit are taken.

Special Restriction: Western Washington pheasant hunters must choose to hunt on either odd-numbered or even-numbered weekend days from 8:00 - 10:00 a.m. at all units of Lake Terrell, Tennant Lake, Snoqualmie, Skagit, Skookumchuck, Dungeness Recreation Area, and Scatter Creek Wildlife Areas, and must indicate their choice on the Western Washington Pheasant Permit by choosing "odd" or "even." Hunters ~~((that))~~ who select the three day option, hunters 65 years of age or older, and youth hunters may hunt during either weekend day morning. Youth hunters must be accompanied by an adult at least 18 years old ~~((Adults))~~ who must have an appropriately marked pheasant permit if hunting.

Mountain Quail

Bag and Possession Limits: Two (2) mountain quail per day, with a total of four (4) mountain quail in possession at any time.

Oct. 7-Nov. 30, 2000; Oct. 6-Nov. 30, 2001; Oct. 5-Nov. 30, 2002.

~~((Valley and Bobwhite Quail))~~ California (valley) Quail and Bobwhite

Bag and Possession Limits: Ten (10) ~~((valley))~~ California (valley) quail or bobwhite ~~((quail))~~ per day, with a total of thirty (30) ~~((valley))~~ California (valley) quail or bobwhite ~~((quail))~~ in possession at any time, straight or mixed bag.

Oct. 7-Nov. 30, 2000; Oct. 6-Nov. 30, 2001; Oct. 5-Nov. 30, 2002.

WILD TURKEY

Spring Season

Gobblers and Turkeys with Visible Beards Only.

State-wide: April 15-May 15, 2001; April 15-May 15, 2002; April 15-May 15, 2003.

Fall Season

Either Sex

Permit Only - Asotin, Columbia, Garfield, Klickitat, Skamania, Stevens, and Walla Walla counties, and GMU 133: Oct. 1-5, 2000; Oct. 1-5, 2001; Oct. 1-5, 2002.

Permit Area	Number of Permits
Asotin, Columbia, Garfield, and Walla Walla counties	50
Klickitat and Skamania counties	75
Stevens County	(250) 300
GMU 133	(30) 75
<u>Ferry County</u>	<u>50</u>
<u>Pend Oreille County</u>	<u>25</u>

OFFICIAL HUNTING HOURS/BAG LIMITS:

Bag and Possession Limit: One (1) wild turkey per day, only two (2) may be killed in Eastern Washington per year, except only one (1) may be killed in Chelan, Kittitas, or Yakima counties; and one per year in Western Washington, except two (~~(turkeys)~~) (2) may be killed in Klickitat County. The season limit is three (3) birds per year.

Hunting Hours: One-half hour before sunrise to sunset during spring and fall seasons.

SPECIAL REGULATIONS:

1. Turkey season is open for shotgun and bow-and-arrow hunting only.
2. A turkey tag is required for hunting turkey.
3. Each successful hunter must (~~(complete and return a game harvest report card)~~) report harvest to the Department of Fish and Wildlife within ten days after taking a turkey.
4. It is unlawful to use dogs to hunt turkeys.
5. It is unlawful to bait game birds.

BIRD DOG TRAINING SEASON

Wild upland game birds may be pursued during the dog training season, but may not be killed except during established hunting seasons. Captive raised game birds may be released and killed during dog training if proof of lawful acquisition (invoices) are in possession and the birds are appropriately marked (WAC 232-12-271) (WAC 232-12-044).

Aug: 1, 2000-Mar. 31, 2001; Aug. 1, 2001-Mar. 31, 2002; Aug. 1, 2002-Mar. 31, 2003, except from Sept. 15-Nov. 30, dog training is only allowed from 8:00 a.m. to 4:00 p.m. on designated Western Washington pheasant release sites.

Dog training may be conducted year around on posted portions of: Region One - Espanola (T 24 N, R 40 E, E 1/2 of Sec. 16); Region Three - South L.T. Murray Wildlife Area; Region Four - Fort Lewis Military Base, Skagit Wildlife

Area, Lake Terrell Wildlife Area, and Snoqualmie Wildlife Area; Region Five - Shillapoo/Vancouver Lake Wildlife Area; Region Six - Scatter Creek Wildlife Area.

HIP REQUIREMENTS:

All hunters age 16 and over of migratory game birds (duck, goose, coot, snipe, mourning dove) are required to complete a Harvest Information Program (HIP) survey (~~(form)~~) at a license dealer, and possess a Washington Migratory Bird Validation (~~(Stamp)~~) as evidence of compliance with this requirement when hunting migratory game birds. Youth hunters are required to complete a HIP survey (~~(form)~~), and possess a free Washington Youth Migratory Bird (~~(Authorization)~~) validation as evidence of compliance with this requirement when hunting migratory game birds.

CANADA GOOSE SEPTEMBER SEASON

Bag and Possession Limits: Western Washington, except Cowlitz and Wahkiakum counties and that part of Clark County north of the Washougal River. Goose Management Areas 1 and 3: Five (5) Canada geese per day with a total of ten (10) in possession at any time. Remainder of the state: Three (3) Canada geese per day with a total of six (6) in possession at any time.

State-wide: Sept. 9-14, 2000; Sept. 8-13, 2001; Sept. 7-12, 2002. EXCEPT Pacific and Grays Harbor counties: Sept. 1-15, 2001; Sept. 1-15, 2002.

BAND-TAILED PIGEON

Closed season state-wide.

MOURNING DOVE

Bag and Possession Limits: Ten (10) mourning doves per day with a total of twenty (20) mourning doves in possession at any time.

State-wide: Sept. 1-15, 2000; Sept. 1-15, 2001; Sept. 1-15, 2002.

COTTONTAIL AND SNOWSHOE HARE (OR WASHINGTON HARE)

Bag and Possession Limits: Five (5) (~~(rabbits)~~) cottontails or snowshoe hares per day, with a total of fifteen (15) in possession at any time, straight or mixed bag.

State-wide: Sept. 1, 2000-Mar. 15, 2001; Sept. 1, 2001-Mar. 15, 2002; Sept. 1, 2002-Mar. 15, 2003.

JACKRABBIT

Closed season state-wide.

CROWS

Bag and Possession Limits: No Limit

State-wide: Oct. 1, 2000-Jan. 31, 2001; Oct. 1, 2001-Jan. 31, 2002; Oct. 1, 2002-Jan. 31, 2003.

FALCONRY SEASONS

Upland Game Bird and Forest Grouse - Falconry

PROPOSED

Daily Bag: Two (2) pheasants (either sex), six (6) partridge, five (5) California (valley) quail or bobwhite, two (2) mountain quail (in western Washington only), and three (3) forest grouse (blue, ruffed, spruce) per day.
Possession limit is twice the daily bag limit.

State-wide: Sept. 1, 2000-Mar. 15, 2001; (~~Sept.~~) Aug. 1, 2001-Mar. 15, 2002; (~~Sept.~~) Aug. 1, 2002-Mar. 15, 2003.

Mourning Dove - Falconry

Daily Bag: Three (3) mourning doves per day straight bag or mixed bag with snipe, coots, ducks, and geese during established seasons.

Possession limit is twice the daily bag limit.

State-wide: Sept. 1-15 and Oct. 1-Dec. 31, 2000; Sept. 1-15 and Oct. 1-Dec. 31, 2001; Sept. 1-15 and Oct. 1-Dec. 31, 2002.

Cottontail and Snowshoe Hare - Falconry

Daily Bag: Five (5) (~~rabbits~~) cottontails or snowshoe hares per day, straight or mixed bag.

Possession limit is twice the daily bag limit.

State-wide: Aug. 1, 2000-Mar. 15, 2001; Aug. 1, 2001-Mar. 15, 2002; Aug. 1, 2002-Mar. 15, 2003; for cottontail and snowshoe hare (or Washington hare).

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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 01-05-142
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 21, 2001, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-248 Special closures and firearm restriction areas.

Purpose: To amend WAC 232-28-248 Special closures and firearm restriction areas.

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: Proposed amendments will allow wild turkey hunting during spring seasons on Little Pend Oreille National Wildlife Refuge. The refuge is currently closed to hunting during spring because of historical use of the area for USAF training. The refuge manager and USAF have agreed to allow wild turkey hunting during spring seasons established by the commission. Wild turkey populations in the area are expanding and the proposed change provides regulations equivalent to other public ownership in the county. Timing of the commission meeting precludes making the rule effective for the 2001 spring season (the proposed amendment would impact the 2002 season and beyond). An emergency rule is proposed to allow hunting on the refuge during the 2001 spring turkey season.

Additional changes include more areas in the firearm restriction zones.

Reasons Supporting Proposal: Provide maximum recreational opportunity while maintaining populations, considering federal regulations and promoting safety.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and **Enforcement:** Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Proposed changes would open Little Pend Oreille National Wildlife Refuge to turkey hunting during state established seasons (April 15 - May 15) beginning in 2002.

The purpose is to provide hunting opportunity on an area previously closed to hunting while maintaining populations.

Effects will include opening additional lands for hunting, thereby helping to maximize recreation and disperse hunters over a larger area.

Additional changes add more areas to the firearm restriction zones to provide safety.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby
Rules Coordinator

AMENDATORY SECTION (Amending Order 00-50, filed 5/23/00, effective 6/23/00)

WAC 232-28-248 Special closures and firearm restriction areas

RESTRICTED AND PROHIBITED HUNTING AREAS.

These areas are closed by Fish and Wildlife Commission action. Other areas may be closed to hunting by local, state or federal regulations.

IT IS ILLEGAL TO HUNT EXCEPT WHERE PROVIDED IN THE FOLLOWING AREAS:

1. Little Pend Oreille National Wildlife Refuge: The southern part of the Little Pend Oreille National Wildlife Refuge in Stevens County is closed to hunting and discharge of firearms except during the ~~((period of Oct. 1-Dec. 31))~~ periods of April 15-May 15 and October 1-December 31. This closure is south of a boundary beginning at the west project boundary in Section 3, Township 34 N, R 40 EWM, then easterly along Road 1.0 (Bear Creek Road) to the intersection with Road 2.0 (Blacktail Mountain Road) in Section 2, then easterly along Road 2.0 to the easterly boundary in Section 8, Township 34 N, R 42 EWM.
The Little Pend Oreille National Wildlife Refuge north of the preceding boundary is open to all legally established hunting seasons ~~((during))~~ from April 15 to May 15 and September through December.
2. Parker Lake: All lands south of Ruby Creek Road (USFS Road 2489), north of Tacoma Creek Road (USFS Road 2389) and west of Bonneville Power Administration power lines are designated as "CLOSED AREA" to the hunting of wild animals and wild birds year round. Both the Little Pend Oreille (1) and Parker Lake (2) closures were established to provide a protected area for the Air Force Military Survival Training Program.
3. Columbia River and all the islands in the river, and the Benton County shoreline below the high water mark, and any peninsula originating on the Benton County shoreline, between Vernita Bridge (Highway 24) downstream to the old Hanford townsite powerline crossing (wooden towers) in Section 24, T 13 N, R 27 E, is designated as a "CLOSED AREA" to the hunting of wild animals and wild birds.
4. Green River (GMU 485): Except for special permit hunters, who may also take a black bear and/or cougar with the appropriate license/tag options, all lands within GMU 485 are designated as a "CLOSED AREA" to the hunting of big game by Department of Fish and Wildlife regulated hunters throughout the year. During the general westside elk season and general and late deer seasons, all lands within GMU 485 are also designated as a "CLOSED AREA" to the hunting of all wild animals (including wild birds). The City of Tacoma enforces trespass within GMU 485 on lands owned or controlled by the City during all times of the year.
5. McNeil Island: McNeil Island (part of GMU 652) is closed to the hunting of all wild animals (including wild birds) year around.
6. Loo-wit (GMU 522): Closed to hunting and trapping within GMU 522 (Loo-wit).
7. The Voice of America Dungeness Recreation Area County Park in Clallam County is closed to all hunting except Wednesdays, weekends, and holidays, from the first weekend in October to the end of January.

BIG GAME CLOSURES

1. Clark, Cowlitz, Pacific, and Wahkiakum counties are closed to Columbian Whitetail Deer hunting.
2. Cathlamet: Beginning in the town of Skamokawa; then east along SR 4 to the Risk Road; then south and east along the Risk Road to Foster Road; then south along the Foster Road to the Elochoman River; then upstream along the Elochoman River to the Elochoman Valley Road (old SR 407); then west along the Elochoman Valley Road to SR 4; then east along SR 4 to SR 409; then south along SR 409 to the Cathlamet Channel of the Columbia River; then east along the north shore of the Cathlamet Channel to Cape Horn; then south in the Columbia River to the state line; then west along the state line to a point directly south of the mouth of Skamokawa Creek; then north on Skamokawa Creek to SR 4 and the point of beginning. This area is closed to all deer and elk hunting, to protect the Columbian White-tail Deer.
3. Willapa National Wildlife Refuge: Except for Long Island, Willapa National Wildlife Refuge is closed to all big game hunting.
4. Walla Walla Mill Creek Watershed (GMU 157): All lands in the Mill Creek Watershed are designated as a "CLOSED AREA" to the hunting of all wild animals (including wild birds) except for holders of special elk permits during the established open season. This area is closed to motorized vehicles. Entry is allowed only by Forest Service permit for the duration of the hunt. Any entry into the Mill Creek Watershed at other times is prohibited.
5. Westport: Closed to hunting of all big game animals on that part of Westport Peninsula lying north of State Highway 105 from the west end of the Elk River Bridge and the Schafer Island Road to the ocean beach.

FIREARM RESTRICTION AREAS

The firearm restriction areas listed below have been established by the Fish and Wildlife Commission. Centerfire and rimfire rifles are not legal for hunting in these areas.

In firearm restriction areas, hunters may hunt only during the season allowed by their tag. Archery tag holders may hunt during archery seasons with archery equipment. Muzzleloaders may hunt during muzzleloader seasons with muzzleloader equipment except in the GMU 652 restriction area outlined for King County. Modern firearm tag holders may hunt during modern firearm seasons with bows and arrows, muzzleloaders or revolver-type handguns meeting the equipment restrictions or legal shotguns firing slugs or buckshot.

COUNTY	AREA
Clallam	That portion of GMU 624 (Coyle) located within Clallam County.
Clark	GMU 564 (Battleground)
Cowlitz	GMU 554 (Yale) GMU 504 (Stella) <u>That portion of GMU 564 (Battle-ground) in Cowlitz County.</u>

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COUNTY	AREA	COUNTY	AREA
Franklin, Grant and Adams	Those parts of GMUs 278 and 381 west of SR 17 and US Highway 395.		
Grays Harbor	That portion of GMU 658 (North River) beginning at Bay City; then west along Highway 105 to Twin Harbors State Park; then south along Highway 105 to Grayland Grocery; then east on Cranberry Road to Turkey Road; then east and north on Turkey Road to Bayview Logging Road; then north and east along Bayview Logging Road to Mallard Slough; then east and south along the Bayview Road to Andrews Creek; then north along main channel of Andrews Creek to Grays Harbor; then north and west along the main navigation channel to Bay City and point of beginning. The South Elma restriction applies only during elk seasons: That portion of GMU 660 (Minot Peak) described as follows: Beginning at Highway 12 and Wakefield Road Junction (South Elma); south on Wakefield Road, across the Chehalis River to the South Bank Road; then southeast on South Bank Road to the Delezene Road; then south on the Delezene Road to a point 1 mile from the South Bank Road; southeast along a line 1 mile southwest of the South Bank Road to the Oakville-Brooklyn Road; then east on the Oakville-Brooklyn Road to Oakville and Highway 12; then northwest on Highway 12 to Wakefield Road to Elma and the point of beginning.	Kitsap	The following portion of GMU 652 (Puyallup): Beginning at the intersection of State Highway 410 and the southeast Mud Mountain Dam Road near the King/Pierce County line north of Buckley; then east along the southeast Mud Mountain Road to 284th Avenue Southeast; then north along 284th Avenue Southeast to State Highway 410; then west along Highway 410 to the point of the beginning. (This restriction includes high power rifles and muzzleloaders.)
		Kittitas	East of State Highway 16 originating at the Tacoma Narrows Bridge to Gorst, and east of Highway 3 to Newbury Hill Road, north of Newbury Hill Road and the Bremerton-Seabeck Highway to Big Beef Creek Bridge; all of Bainbridge Island, and Bangor Military Reservation.
		Mason	GMU 334 (Ellensburg) Closed to high power rifles during deer and elk seasons.
		Pacific	GMU 633 (Mason Lake) south of Hammersley Inlet; and all of Harstene Island.
		Pierce	GMU 684 (Long Beach) west of Sand Ridge Road. The portion of GMU 658 (North River) south and west of State Highway 105 and Airport Road between Raymond and North River Bridge. GMU 652 (Anderson and Ketron islands) limited to archery, shotgun, and muzzleloader. McNeil Island closed to hunting. See GMU 484 restriction area outlined for King County.
Island	That portion of GMU 410 (Island) located on Camano and Whidbey islands.		GMU 627 (Kitsap) south of Highway 302 on the Longbranch Peninsula is a firearm restriction area.
Jefferson	Indian and Marrowstone islands.	Snohomish	West of Highway 9.
King	The area west of Highway 203 (Monroe-Fall City, Fall City-Preston Road) to Interstate 90 (I-90), I-90 to Highway 18, Highway 18 to Interstate 5 (I-5), I-5 to the Pierce-King County line; Vashon and Maury islands.	Skagit	Guemes Island and March Point north of State Highway 20.
		Thurston	GMU 666 (Deschutes) north of U.S. Highway 101 and Interstate 5 between Oyster Bay and the mouth of the Nisqually River.
		Whatcom	Area west of I-5 and north of Bellingham city limits including Lummi Island and Point Roberts.

PROPOSED

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.

WSR 01-05-143
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 21, 2001, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-02220 Game management units (GMUs)—Special game areas—Boundary descriptions—Elk area descriptions and 232-28-02240 Game management units (GMUs)—Special game areas—Boundary descriptions—Muzzleloader area descriptions.

Purpose: To amend WAC 232-28-02220 Game management units (GMUs)—Boundary descriptions—Elk area descriptions and 232-28-02240 Game management units (GMUs)—Boundary descriptions—Muzzleloader area descriptions

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: Enlarging and adding elk unit areas.

Reasons Supporting Proposal: To manage elk populations.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Britnell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These changes will help to manage elk populations in the Malaga area and hunter crowding issues in the West Bar elk area.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Britnell, 600 Capitol Way North,

Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

WAC 232-28-02220 Game management units (GMUs)—Special game areas—Boundary descriptions—Elk area descriptions

Elk Area No. 029 Toledo (Lewis and Cowlitz counties): Beginning at the Cowlitz River and State Highway 505 junction; east along State Highway 505 to Eden Road; east along Eden Road to the Evans Road; east along the Evans Road to the Weyerhaeuser 1800 Road; south along Weyerhaeuser 1800 Road to the Weyerhaeuser 1900 Road; south along the Weyerhaeuser 1900 Road to the North Fork Toutle River to Alder Creek to the Weyerhaeuser 2400 Road; west along the Weyerhaeuser 2400 Road to the Weyerhaeuser 4400 Road to Johnson Creek and the South Fork Toutle River to State Highway 504; east on Highway 504 to State Highway 505; north along Highway 505 to the Weyerhaeuser 1500 Road to Salmon Creek; west along Salmon Creek to the Cowlitz River; north along the Cowlitz River to the junction of State Highway 505 and point of beginning.

Elk Area No. 031 Shushuskin (Kittitas County): Beginning at Umtanum Road and the Yakima River; west along Umtanum Road to Manastash Road; west on Manastash Road to Cove Road; south and west on Cove Road to Hanson Road and Umtanum Creek; east (downstream) along Umtanum Creek to the Yakima River; north (upstream) along the Yakima River to the point of beginning.

Elk Area No. 032 Malaga (Kittitas and Chelan counties): ((Beginning at the power line on the Columbia River (approximately 3/4 mile downstream from Colockum Creek); west and south along the Powerline Road to the intersection with the North Fork Tarpiscan Creek Road (Section 9, T20N, R21E); north and west along North Fork of Tarpiscan Creek Road to Colockum Pass Road (Section 9, T20N, R21E); south and west on Colockum Pass Road to section line between Sections 8 and 9 as well as Sections 4 and 5 (T20N, R21E) and Sections 32 and 33 (T21N, R21E); to Mose Carr Road; west and north on Mose Carr Road to Jump Off Road; south and west on Jump Off Road to Shaller Road; north and west on Shaller Road to Upper Basin Loop Road; north and west on Upper Basin Loop Road to Wheeler Ridge Road; north on Wheeler Ridge Road to the Basin Loop Road (pavement) in Section 10 (T21N, R20E); north on the Basin Loop Road to Wenatchee Heights Road; west on Wenatchee Heights Road to Squilchuck Road; south on Squilchuck Road to Beehive Road (USFS Road 9712); northwest on Beehive Road to USFS Road 7100 near Beehive Reservoir; north and west on USFS Road 7100 to Peavine Canyon Road (USFS Road 7101); north and east on Peavine Canyon Road to Num-

ber Two Canyon Road; north on Number Two Canyon Road to Crawford Street in Wenatchee; east on Crawford Street to the Columbia River; south and east along the Columbia River to the powerline south of Colockum Creek and point of beginning-)) Beginning at the Mouth of Davies Canyon on the Columbia River; west along Davies Canyon to the cliffs above (north of) the North Fork Tarpiscan Creek; west and north along the cliffs to the Bonneville Power Line; south-west along the powerline to the North Fork Tarpiscan Road in Section 9, Township 20N, Range 21E; north and west along North Fork Tarpiscan Road to Colockum Pass Road (Section 9, Township 20N, Range 21E); south and west on Colockum Pass Road to section line between Sections 8 & 9; north along the section line between Sections 8 and 9 as well as Sections 4 & 5 (T20N, R21E) & Sections 32 & 33 (T21N, R21E) to Moses Carr Road; west and north on Moses Carr Road to Jump Off Road; south and west on Jump Off Road to Shaller Road; north and west on Shaller Road to Upper Basin Loop Road; north and West on Upper Basin Loop Road to Wheeler Ridge Road; north on Wheeler Ridge Road to the Basin Loop Road (pavement) in Section 10 (T21N, R20E); north on Basin Loop Road to Wenatchee Heights Road; west on Wenatchee Heights Road to Squilchuck Road; south on Squilchuck Road to Beehive Road (USFS Rd 9712); north-west on Beehive Road to USFS Rd 7100 near Beehive Reservoir; north and west on USFS Rd 7100 to Peavine Canyon Road (USFS Rd 7101); north and east on Peavine Canyon Road to Number Two Canyon Road; north on Number Two Canyon Road to Crawford Street in Wenatchee; east on Crawford Street to the Columbia River; south and east along the Columbia River to Davies Canyon and point of beginning. (Naneum Green Dot, Washington Gazetteer, Wenatchee National Forest)

Elk Area No. 033 Peshastin (Chelan County): Beginning at Crawford Street and the Columbia River in Wenatchee; west on Crawford Street and Number Two Canyon Road to USFS 7101 Road (Peavine Canyon); west on USFS 7101 Road to Mission Creek Road; north on Mission Creek Road to USFS 7104 Road (Sand Creek Road); west on USFS 7104 Road (Sand Creek Road) to Camas Creek; west up Camas Creek to where Camas Creek crosses USFS 7200 Road, T22N, R18E, Section 4; north along USFS 7200 Road to U.S. Highway 97; north on U.S. Highway 97 to USFS 7300 Road (Mountain Home Road); north on the USFS 7300 Road to the Wenatchee River at Leavenworth; down the Wenatchee River and Columbia River to the point of beginning.

Elk Area No. 036 Riverbottom (Kittitas County): Beginning at the junction of Umtanum Road and State Route 821; south on State Route 821 and the Yakima River to Umtanum Creek; west up Umtanum Creek to Umtanum Road; north on Umtanum Road to State Route 821 and the point of beginning.

Elk Area No. 037 West Bar (Kittitas County): Beginning on the Columbia River at Cape Horn; south along the top of Cape Horn and West Bar Cliffs (cliffs overlooking West Bar) to WDFW Road 14.14; east on Road 14.14 to Road 14.17; south on Road 14.17 to WDFW Road 14 near the gate; south on road 14 to Tekison Creek; southeast on Tekison Creek to

Columbia River; north and west along Columbia River to Cape Horn and the point of beginning.

Elk Area No. 041 Skagit (Skagit County): Begin at the intersection of CP 190 Road and CP 132 Road (Section 28, T36N, R5E); east along the CP 132 Road to the CP 130 Road; east and south along CP 130 Road to CP 110 Road, west, south and east along CP 110 Road to Childs Creek; south down Childs Creek to State Route 20; east on State Route 20 to Grandy Creek; south down Grandy Creek to the Skagit River; south on a line to South Skagit Hwy; west on South Skagit Hwy to State Route 9; north on State Route 9 to State Route 20; east on State Route 20 to Helmick Road; north on Helmick Road to CP 190 Road to CP 132 Road and the point of beginning. (WA Atlas & Gazetteer & Mt. Baker-Snoqualmie National Forest Map)

Elk Area No. 050 Curtis (Lewis County): Beginning at the Boistfort Road, State Highway 6 intersection; west to the Mauerman Road; west and southwest on the Mauerman Road to the Pe Ell/McDonald Road; south and east on the Pe Ell/McDonald Road to the Lost Valley Road; south and southeast on the Lost Valley Road to the Boistfort Road; east and north along the Boistfort Road to State Highway 6 and point of beginning.

Elk Area No. 052 Mossyrock (Lewis County): Beginning at the intersection of Winston Creek Road and State Highway 12; east on State Highway 12 to the Cowlitz River; east on the Cowlitz River to Riffe Lake; southeast along the south shore of Riffe Lake to Swofford Pond outlet creek; south on Swofford Pond outlet creek to Green Mountain Road; west on Green Mountain Road to Perkins Road; west on Perkins Road to Longbell Road; south on Longbell Road to Winston Creek Road; north on Winston Creek Road to State Highway 12 and the point of beginning. (All lands owned and managed by the Cowlitz Wildlife Area are excluded from this Elk Area.)

Elk Area No. 053 Randle (Lewis County): Beginning at the town of Randle and the intersection of U.S. Highway 12 and State Route 131 (Forest Service 23 and 25 Roads); south on State Route 131 to Forest Service 25 Road; south on Forest Service 25 Road to the Cispus River; west along the Cispus River to the Champion 300 line bridge; south and west on the Champion 300 line to the Champion Haul Road; north along the Champion Haul Road to Kosmos Road; north on Kosmos Road to U.S. Highway 12; east on U.S. Highway 12 to Randle and point of beginning. (All lands owned and managed by the Cowlitz Wildlife Area are excluded from this Elk Area.)

Elk Area No. 054 Boistfort (Lewis County): Beginning at the Town of Vader; west along State Highway 506 to the Wildwood Road; north along the Wildwood Road to the Abernathy 500 line gate (Section 20, T11N, R3W, Willamette Meridian); northwest along the 500, 540, and 560 lines to the Weyerhaeuser 813 line; northwest along the 813, 812, 5000J, 5000 and 4000 lines to the Pe Ell/McDonald Road (Section 15, T12N, R4W); west along the Pe Ell/McDonald Road to the Lost Valley Road; northeast along

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the Lost Valley Road to the Boistfort Road; north along the Boistfort Road to the King Road; east along the King Road to the town of Winlock and State Highway 603; south along Highway 505 to the Winlock/Vader Road; south along said road to the Town of Vader and the point of beginning.

Elk Area No. 055 East Valley (Wahkiakum County): Within one mile on either side of the line beginning at Wilson Creek Park on East Valley Road; west on East Valley Road to the junction with Middle Valley Road (4.5 miles); north along Middle Valley Road to the junction of Oat Field Road (2.5 miles).

Elk Area No. 057 Carlton (Lewis County): That part of 513 (South Rainier) lying east of Highway 123 and north of Highway 12.

Elk Area No. 058 West Goat Rocks (Lewis County): Goat Rocks Wilderness west of the Pacific Crest Trail.

Elk Area No. 059 Mt. Adams Wilderness (Skamania and Yakima counties): The Mt. Adams Wilderness.

Elk Area No. 062 South Bank (Grays Harbor County): That portion of GMU 660 (Minot Peak) described as follows: Beginning at Highway 12 and Wakefield Road Junction (South Elma); south on Wakefield Road, across the Chehalis River to the South Bank Road; southeast on the South Bank Road to Delezene Road; south on the Delezene Road to a point one mile from the South Bank Road; southeast along a line one mile southwest of the South Bank Road to the Oakville-Brooklyn Road; east on the Oakville-Brooklyn Road to Oakville and Highway 12; northwest on Highway 12 to Wakefield Road to Elma and the point of beginning.

Elk Area No. 064 Quinault Valley (Grays Harbor and Jefferson counties): That portion of GMU 638 (Quinault) beginning at the junction of Wright Canyon Road and South Shore Road; north to the shoreline of Lake Quinault; north along Lake Quinault to the Olympic National Park (ONP) boundary; east along ONP boundary to its intersection with the South Shore Road and U.S. Forest Service boundary; west along the U.S. Forest Service boundary to the Wright Canyon Road Junction with the South Shore Road and point of beginning.

Elk Area No. 066 Chehalis Valley (Grays Harbor County): That portion of GMU 660 (Minot Peak) beginning at Highway 12 and Highway 107 junction near Montesano; east and south on Highway 12 to Oakville; south on Oakville-Brooklyn Road to a point one mile west of South Bank Road; northwest along a line one mile southwest of South Bank Road to Delezene Road; north along Delezene Road to South Bank Road; northwest along South Bank Road to Wakefield Road; north on Wakefield Road to Chehalis River; west on Chehalis River to Highway 107 bridge; north on Highway 107 to Highway 12 and the point of beginning.

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 spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

AMENDATORY SECTION (Amending Order 00-05, filed 1/24/00, effective 2/24/00)

WAC 232-28-02240 Game management units (GMUs)—Special game areas—Boundary descriptions—Muzzleloader area descriptions.

Muzzleloader Area No. 911 Fairview (Kittitas County): Begin at U.S. Highway 97 and First Creek Road; east on First Creek Road to ~~((Upper Green Canyon Road and Reeceer Creek; north on Reeceer Creek))~~ USFS 3507; south on USFS 3507 to (USFS 35 Road) to USFS 3517 Road; east on USFS 3517 Road to Lillard Hill Road and Wilson Creek Road; south on Wilson Creek Road to the BPA Powerlines (T19N; R19E; Section 19); east along the BPA Powerlines to the Colockum Pass Road (T19N; R20E; Section 16); south on Colockum Pass Road to the BPA Powerlines (T18N; R20E; Section 6); east along the BPA Powerlines to the Parke Creek Road; ~~((south))~~ north on Parke Creek Road to ~~((Christiansen))~~ Whiskey Jim Road; ~~((west))~~ east on ~~((Christiansen))~~ Whiskey Jim Road to ~~((Fox Road; north on Fox Road to Lyons Road; west on Lyons Road to Venture Road; north on Venture Road to Brick Mill Road; west on Brick Mill Road to Look Road; north on Look Road to Hungry Junction Road; west on Hungry Junction Road to U.S. Highway 97; north on U.S. Highway 97 to First Creek Road and point of beginning-))~~ Beacon Ridge Road; south on Beacon Ridge Road to Vantage Highway; east on Vantage Highway to Interstate 90 (I-90); west on I-90 to Highway 97 and the point of beginning.

Muzzleloader Area No. 925 Ritzville (Adams County): Beginning at the junction of Interstate 90 and S.R. 261 near the Town of Ritzville; south along S.R. 261 to S.R. 26; east on S.R. 26 to the Whitman County line; north along the Adams, Whitman County line to where it intersects the Lincoln, Adams County line; north along the Adams, Lincoln County line to Interstate 90; west along Interstate 90 to point of beginning.

Muzzleloader Area No. 926 Guemes (Skagit County): That part of GMU 407 (North Sound) on Guemes Island.

Muzzleloader Area No. 941 Skagit River (Skagit County): Beginning at the intersection of State Route 9 and State Route 20; east on State Route 20 to Grandy Creek; south down Grandy Creek to the Skagit River; south on a line to South Skagit Highway; west on South Skagit Highway to State Route 9; north on State Route 9 to point of beginning.

Muzzleloader Area No. 944 Clemen (Yakima County): That portion of GMU 342 beginning at the junction of Highway 410 and USFS Road 1701 (Big Bald Mountain Road); north to USFS Road 1712; east on USFS Road 1712 (Clemen Ridge Road) to the east edge of Meyster Canyon; along the

east side of Meyster Canyon to the elk fence; west along the elk fence to Waterworks Canyon and Highway 410 and to point of beginning.

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.

WSR 01-05-144
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 21, 2001, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-12-004 Classification of wild birds, 232-12-007 Classification of wild animals, 232-12-027 Game farm license provisions, and 232-12-271 Criteria for planting aquatic plants and releasing wildlife.

Purpose: To amend WAC 232-12-004 Classification of wild birds, 232-12-007 Classification of wild animals, 232-12-027 Game farm license provisions and 232-12-271 Criteria for planting aquatic plants and releasing wildlife.

Statutory Authority for Adoption: RCW 77.12.040 and 77.12.020.

Statute Being Implemented: RCW 77.12.040 and 77.12.020.

Summary: Proposed amendments will update nomenclature and correct spelling of animals names based on recognized authorities for ornithology (American Ornithologists' Union) and mammalogy (National Museum of Natural History, Smithsonian Institution). Proposed amendments do not change intent of implementation of existing WACs.

Reasons Supporting Proposal: Update WACs to match currently recognized scientific classification of wild animals and birds. Increase credibility through use of appropriate, current nomenclature.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Proposed rule changes are strictly housekeeping in nature, updating current nomenclature and correcting spelling of animals names in four different WACs.

The purposes is to make WACs consistent with recognized scientific classification and nomenclature.

Because the proposed changes are designed only to clarify existing rules, effects will likely be minor, but should include reduction of confusion among customers and increased credibility of WDFW and the commission.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

PROPOSED

AMENDATORY SECTION (Amending Order 491, filed 5/2/91, effective 6/2/91)

WAC 232-12-004 Classification of wild birds (1)
 Game birds include:

Common Name	Scientific Name
migratory waterfowl	Anatidae
<u>wild</u> turkey	<i>Meleagris gallopavo</i>
blue grouse	<i>Dendragapus obscurus</i>
spruce grouse	((<i>Dendragapus</i>)) <u>Falcipennis canadensis</u>
ruffed grouse	<i>Bonasa umbellus</i>
"Forest grouse" means blue, spruce, or ruffed grouse	
sharp-tailed grouse	<i>Tympanuchus phasianellus</i>
((sage grouse)) <u>greater sage-grouse</u>	((<i>Centrocercus</i>)) <u>Centrocercus urophasianus</u>
white-tailed ptarmigan	<i>Lagopus leucurus</i>
California quail	<i>Callipepla ((californicus)) californica</i>
mountain quail	<i>Oreortyx pictus</i>
<u>northern</u> bobwhite ((quail))	<i>Colinus virginianus</i>
scaled quail	<i>Callipepla squamata</i>
chukar	<i>Alectoris chukar</i>
ring-necked pheasant	<i>Phasianus colchicus</i>
Gray (Hungarian) partridge	<i>Perdix perdix</i>
"Upland bird" means quail, chukar, pheasant, or partridge	
<u>American</u> coot	<i>Fulica americana</i>
common snipe	((<i>Capella</i>)) <u>Gallinago gallinago</u>

Common Name	Scientific Name
band-tailed pigeon	<i>Columba fasciata</i>
mourning dove	((<i>Zenaidura</i>)) <i>Zenaida macroura</i>

(2) Predatory birds include:

Common Name	Scientific Name
<u>black-billed magpie</u>	<i>Pica</i> ((<i>ptea</i>)) <i>hudsonia</i>
<u>American crow</u>	<i>Corvus brachyrhynchos</i>
<u>European starling</u>	<i>Sturnus vulgaris</i>
((House)) <u>house</u> (English) sparrow	<i>Passer domesticus</i>

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.

AMENDATORY SECTION (Amending Order 614, filed 10/14/93, effective 11/14/93)

WAC 232-12-007 Classification of wild animals (1)
Game animals include:

Common Name	Scientific Name
eastern cottontail	<i>Sylvilagus floridanus</i>
Nuttall's cottontail	<i>Sylvilagus nuttallii</i>
snowshoe hare	<i>Lepus americanus</i>
white-tailed jackrabbit	<i>Lepus townsendii</i>
black-tailed jackrabbit	<i>Lepus californicus</i>
fox	<i>Vulpes vulpes</i>
black bear	<i>Ursus americanus</i>
raccoon	<i>Procyon lotor</i>
cougar	((<i>Felis</i>)) <i>Puma concolor</i>
bobcat	<i>Lynx rufus</i>
Roosevelt and Rocky Mountain elk	<i>Cervus elaphus</i>
mule deer and black-tailed deer	<i>Odocoileus hemionus</i>
white-tailed deer	<i>Odocoileus virginianus</i>
moose	<i>Alces alces</i>
pronghorn	<i>Antilocapra americana</i>
mountain goat	<i>Oreamnos americanus</i>
California and Rocky Mountain bighorn sheep	<i>Ovis canadensis</i>
bullfrog	<i>Rana catesbeiana</i>

(2) Furbearing animals are game animals and include:

Common Name	Scientific Name
beaver	<i>Castor canadensis</i>
muskrat	<i>Ondatra zibethicus</i>
fox	<i>Vulpes vulpes</i>
raccoon	<i>Procyon lotor</i>

Common Name	Scientific Name
marten	<i>Martes americana</i>
short-tailed weasel or ermine	<i>Mustela erminea</i>
long-tailed weasel	<i>Mustela frenata</i>
mink	<i>Mustela vison</i>
badger	<i>Taxidea taxus</i>
river otter	<i>Lutra canadensis</i>
bobcat	<i>Lynx rufus</i>

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.

AMENDATORY SECTION (Amending Order 520, filed 11/22/91, effective 12/23/91)

WAC 232-12-027 Game farm license provisions. It is unlawful to operate a game farm without a current, valid Washington state game farm license.

(1) Game farms licensed prior to January 1, 1992, may continue to possess, propagate, sell and transfer wildlife they lawfully possess on January 1, 1992, by virtue of their license issued by the department. Transfers of wildlife other than those species listed under 2 are restricted to licensed game farms authorized by written license to possess said wildlife.

(2) Game farms licensed on or after January 1, 1992, may purchase, possess, propagate, sell or transfer the following wildlife:

(a) Game birds - pheasant, of the genus *Phasianus*; gray partridge of the genus *Perdix*; chukar ((partridge)) of the genus *Alectoris*; quail of the genus ((*Lophortyx*)), *Colinus*, *Callipepla*, and *Oreortyx*; waterfowl of the family *Anatidae*.

(3) Application for a game farm license shall be made on a form provided by the department.

(4) The director or designee of the director may issue, with conditions or restrictions, a game farm license, if the applicant meets the requirements of subsection (1) or (2) above and complies with the following criteria:

(a) The applicant is the owner or tenant of or has a possessory interest in the lands, waters, and riparian rights shown in the application.

(b) The rearing and holding facilities are adequate and structurally sound to prevent the egress of game farm wildlife.

(c) Operating conditions are clean and humane.

(d) No hazards to state wildlife exist from the operation.

(e) The license covers only the immediate premises and areas described on the application where wildlife will be held.

(5) Holders of a game farm license must make annual reports no later than the 15th of January to the director on forms to be furnished by the department.

(6) A licensed game farm must be inspected annually. All costs will be paid by the licensee. The inspection must occur during the months of June, July, or August. An inspection form will be provided by the department and must be completed and signed by a licensed veterinarian or an agent

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authorized by the department. The inspection form must accompany the annual report and be submitted to the director no later than the 15th day of January.

(7) A game farm license is not required for captive-bred mink, *Mustela vison*, and captive-bred silver fox, *Vulpes fulva*, lawfully acquired from a licensed breeder or fur farm and held for fur farming purposes.

AMENDATORY SECTION (Amending Order 521, filed 11/22/91, effective 12/23/91)

WAC 232-12-271 Criteria for planting aquatic plants and releasing wildlife (1) Release by persons other than the director. It is unlawful for persons other than the director to plant aquatic plants or release any species, subspecies, or hybrids of animals which do not already exist in the wild in Washington. If such species, subspecies, or hybrid does already exist in the wild in Washington, it may be released within its established range by persons other than the director, but only after obtaining a permit from the director.

(a) Application for a permit must be made on a form provided by the department. It must be submitted at least thirty days prior to acquisition of the wildlife or aquatic plants intended for release or planting, and must provide all information indicated.

(b) Permits will only be issued if the director determines there will be no adverse impact on the wildlife or wildlife habitat of the state.

(c) Each permit shall require that at least thirty days prior to planting or release of wildlife or aquatic plants they must be made available for inspection by the director. It shall be the responsibility of the applicant to show that the wildlife will not pose a disease threat. If the director is not satisfied that the wildlife or aquatic plants do not pose a disease threat, they shall not be released or planted in the state. Director approval for release or planting may be withdrawn for cause.

(d) Each permit shall require that an applicant intending to release wildlife in the state shall report immediately to the director the outbreak of any disease among the wildlife intended to be released. If the director determines that such outbreak presents a threat to the wildlife of the state, the director may immediately order such action as necessary including quarantine or destruction of stock, sterilization of enclosures and facilities, cessation of activities, and disposal of wildlife in a manner satisfactory to the director.

(e) Each permit shall require that wildlife to be released shall not be branded, tattooed, tagged, fin clipped or otherwise marked for identification without approval of the director or as required in WAC 232-12-044.

(f) Legally acquired pheasant of the genus (~~(Phasianus)~~) *Phasianus*; gray partridge of the genus (~~(Perdix)~~) *Perdix*; chukar (~~(partridge)~~) of the genus (~~(Alectoris)~~) *Alectoris*; quail of the genus (~~(Lophortyx)~~) (~~(Callipepla)~~) *Callipepla*(;) and (~~(Colinus)~~) *Colinus*; and (~~(mallard ducks of the species)~~) *mallards* (~~(Anas platyrhynchos)~~) (*Anas platyrhynchos*) may be released without a permit for purposes of dog training, and hunting pursuant to WAC 232-12-044. Game birds released for these purposes must be purchased from facilities that have

been inspected by a certified veterinarian within the past twelve months.

(2) Release by the director. The director may plant aquatic plants or release animal species, subspecies, or hybrids which have been planted or released previously in Washington if they do not pose a disease threat and if planting or release will not cause adverse impact on the wildlife or wildlife habitat of the state. Before releasing any species, subspecies, or hybrid of animal not already existing in the wild in Washington, the director shall report to the commission on the planned release, stating the basis for determining that the planned release fulfills the criteria set forth herein. The director may release nonnative species, subspecies, or hybrids not previously released in Washington only if the director in his or her sole discretion has determined that:

(a) There is no reasonable expectation of adverse impact on the wildlife or wildlife habitat of the state and there is an adequate plan for evaluating such impact following the release;

(b) The commission has classified the species, subspecies, or hybrids to be released pursuant to RCW 77.12.020;

(c) Suitable habitat is available;

(d) The nonnative species, subspecies, or hybrids to be released are free of exotic pathogens;

(e) The release serves the public interest.

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.

WSR 01-05-145
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed February 21, 2001, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-28-279 2000-2002 Elk general seasons and 2000-2001 special permits.

Purpose: To amend WAC 232-28-279 2000-02 Elk general seasons and 2001 special permits.

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: Amendments are proposed to elk seasons and permits.

Reasons Supporting Proposal: Establish recreational opportunity for elk hunters and address agricultural damage caused by elk.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These amendments update the special permit season dates and quotas for 2001.

- Adjusted bull permit levels for archers, muzzleloaders, and modern firearm hunters based on increased number of modern firearm license sales.
- Increase in disabled hunter and advanced hunter education graduate permits in western Washington.
- Increase in antlerless.

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-50, filed 5/23/00, effective 6/23/00)

WAC 232-28-279 2000-2002 Elk general seasons and (~~2000-2001~~) 2001-2002 special permits.

Bag Limit: One (1) elk per hunter during the 2000 hunting season.

Hunting Method: Elk hunters must select only one of the hunting methods (modern firearm, archery, or muzzleloader).

Elk Tag Areas: Elk hunters must choose either Eastern or Western Washington to hunt in and buy the appropriate tag for that area. The Northwest, Blue Mountains, Colockum, and Yakima elk tags are all valid for the Eastern Washington Tag Area.

Any Bull Elk Seasons: Open only to the taking of male elk with visible antlers (bull calves are illegal).

Spike Bull Restrictions: Bull elk taken in these GMUs must have at least one antler that is a spike above the ears (does not branch above ears). An animal with branched antlers on both sides is illegal but an animal with a spike on one side is legal in spike only units.

Spike Only GMUs: 145-154, 162-186, 249-251, 328, 329, and 335-371.

3 Point Restriction: Legal bull elk taken must have at least 3 antler points on one side only. Antler points may include eye guards, but antler points on the lower half of the main beam must be at least four (4) inches long measured from antler tip to nearest edge of beam; all other antler points must be at least one (1) inch long. Antler restrictions apply to all hunters during any open season.

3 Point GMUs: All of Western Washington except for GMUs 454, 564, 568, 574, 578, and 588 and Muzzleloader Area 941.

GMUs Closed to Elk Hunting: 418 (Nooksack), and 437 (Sauk) except for ML Elk Area 941, 485 (Green River), 490 (Cedar River), 522 (Loo-wit) and 636 (Skokomish).

Special Permits: Only hunters with elk tag prefix identified in the Special Elk Permits tables may apply for special bull or antlerless permits. Please see permit table for tag eligibility. Hunters drawn for a special permit may hunt only with a weapon in compliance with their tag and during the dates listed for the hunt.

Harvest Report Card: Successful hunters must fill out and return a Game Harvest Report Card within 10 days after taking an elk.

Elk Tag Areas

Eastern Washington: All 100, 200, and 300 GMUs except permit only in GMUs 127 and 130 for modern firearm hunters and permit only for all hunters in GMU 157. Modern firearm restrictions in GMU 334.

EA - Eastern Washington Archery Tag

EF - Eastern Washington Modern Firearm General Elk Tag

EM - Eastern Washington Muzzleloader Tag

Western Washington: All 400, 500, and 600 GMUs except closed in GMUs 418, 437 (except for Muzzleloader Area 941), 485, 490, 522, 636 and modern firearm restrictions in portions of GMU 660. GMU 554 is open only for early archery and muzzleloader seasons. Elk Area 064 in GMU 638 (Quinalt) is open to AHE hunters only. Elk hunting by permit only in GMUs 524, 556, 621, and PLWMA 600 (Pysht).

WA - Western Washington Archery Tag

WF - Western Washington Modern Firearm General Elk Tag

WM - Western Washington Muzzleloader Tag

Modern Firearm Elk Seasons

License Required: A valid big game hunting license with an elk tag option.

Tag Required: Valid modern firearm elk tag as listed below on his/her person for the area hunted.

Hunting Method: May use rifle, bow and arrow, or muzzleloader, but only during modern firearm seasons.

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Hunt Area	Elk Area	Game Management Units (GMUs)	2000 Dates	2001 Dates	2002 Dates	Legal Elk
Eastern Washington	EF	109 through 117, 124 east of Hwy 395	Oct. 28-Nov. 5	Oct. 27-Nov. 4	Oct. 26-Nov. 3	Any bull
		157				Permit only
		145 through 154, 162 through 186, 249, that part of GMU 250 south of Hwy 2, 251, 328, 329, 335 through 368	Oct. 28-Nov. 5	Oct. 27-Nov. 4	Oct. 26-Nov. 3	Spike bull
		372, 382	Sept. 1-Oct. 13	((Sept. 1-Oct. 12)) Sept. 1-15	((Sept. 1-Oct. 11)) Sept. 1-15	Antlerless
			Oct. 28-Nov. 5	((Oct. 27-Nov. 4)) Oct. 1-5	((Oct. 26-Nov. 3)) Oct. 1-5	((Any elk)) Antlerless
			Dec. 9-13	((Dec. 8-12)) Oct. 27-Nov. 4	((Dec. 7-11)) Oct. 26-Nov. 3	((Antlerless)) Any elk
		-101, 105, 121, 124 west of Hwy 395, 127-142	Oct. 28-Nov. 5	Oct. 27-Nov. 4	((Oct. 26-Nov. 4)) Oct. 26-Nov. 3	Any elk
Western Washington	WF	407, 448, 460, 466, 504 through 520, 530, 550, 558, 560, 572, 601 through 618, 624 through 633, 638 through 684. Except AHE hunters only in Elk Area 064 in GMU 638, and Elk Area 066 in GMU 660.	Nov. 4-12	Nov. 3-11	Nov. 2-10	3 pt. min.
		501	Nov. 4-12	Nov. 3-11	Nov. 2-10	3 pt. min. or antlerless
		564, 568, 574 through 588	Nov. 4-12	Nov. 3-11	Nov. 2-10	Any elk
		454	Nov. 4-12	Nov. 3-11	Nov. 2-10	Any bull
		524, 556, 621, PLWMA 600	Nov. 4-12	Nov. 3-11	Nov. 2-10	Permit only

Archery Elk Seasons

License Required: A valid big game hunting license with an elk tag option.

Tag Required: Valid archery elk tag as listed below on his/her person for the area hunted.

Hunting Method: Bow and arrow only.

Special Notes: Archery tag holders can hunt only during archery seasons. Archery elk hunters may apply for special bull permits. Please see permit table for tag eligibility for all elk permits.

Hunt Area	Elk Tag	Game Management Units (GMUs)	2000 Dates	2001 Dates	2002 Dates	Legal Elk
Early Archery Elk Seasons						
Eastern Washington	EA	101 through 109, 121 through 142, 243, 247, 249, 250, 334	Sept. 1-14	Sept. 1-14	Sept. 1-14	Any elk
		145 through 154, 162 through 186	Sept. 1-14	Sept. 1-14	Sept. 1-14	Spike bull
		328, 329, 330, 335, 336, 340, 352, 356, 364	Sept. 1-14	Sept. 1-14	Sept. 1-14	Spike bull or antlerless
		113-117	Sept. 1-14	Sept. 1-14	Sept. 1-14	Any bull
Western Washington	WA	454, 564, 568, 574, 578, 588	Sept. 1-14	Sept. 1-14	Sept. 1-14	Any elk
		407, 448, 501 through 506, 520, 530, 550, 554, 558, 560, 572, ((652,)) 654, 660, 663, 667 through 673, 684 and Long Island	Sept. 1-14	Sept. 1-14	Sept. 1-14	3 pt. min. or antlerless

Hunt Area	Elk Tag	Game Management Units (GMUs)	2000 Dates	2001 Dates	2002 Dates	Legal Elk
		460, 466, 510, 513, 516, 601, 602, 603, 612 through 618, 624 through 633, 638 through 651, 652, 653, 658, 666, 681. AHE hunters only in Elk Area 064 in GMU 638, and Elk Area 066 in GMU 660. Permit only in PLWMA 600 in GMU 603.	Sept. 1-14	Sept. 1-14	Sept. 1-14	3 pt. min.
Late Archery Elk Seasons						
Eastern Washington	EA	101, 105, 121 through 127	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	Any elk
		117	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	Any bull
		372		Nov. 21-Dec. 8	Nov. 20-Dec. 8	Any elk
		178	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	Antlerless only
		328, 335, 336, 346, 352, 364, 368 ((and that part of GMU 360 north of USFS Roads 324, 325, to the intersection of Carmack Canyon then east down Carmack Canyon bottom to Naches River and north to State Hwy 410))	Nov. 22-Dec. 8	Nov. 21-Dec. 8	Nov. 20-Dec. 8	Spike bull or antlerless
		<u>That part of GMUs 352 and 360 south of Upper Nile Loop Road Bridge and north of Lower Nile Loop Road Bridge (near Woodshed Restaurant) and north and east of Nile elk fence.</u>		Nov. 22-Jan. 31, 2002		Antlerless only
Western Washington	WA	407, 505, ((652)) 666, 667, 672, 681 and Long Island. In GMU 681 closed between US Highway 101 and the Columbia River from Astoria-Megler toll bridge to the Wallacut River.	Nov. 22-Dec. 15	Nov. 21-Dec. 15	Nov. 20-Dec. 15	3 pt. min. or antlerless
		454, 564, 588	Nov. 22-Dec. 15	Nov. 21-Dec. 15	Nov. 20-Dec. 15	Any elk
		506, 520, 530, 603, 612, 615, 638, 648, and 652 except closed in PLWMA 600 in GMU 603. AHE hunters only in Elk Area 064 in GMU 638 and Elk Area 066 in GMU 660.	Nov. 22-Dec. 15	Nov. 21-Dec. 15	Nov. 20-Dec. 15	3 pt. min.

PROPOSED

Muzzleloader Elk Seasons

License Required: A valid big game hunting license with an elk tag option.

Tag Required: Valid muzzleloader elk tag as listed below on his/her person for the area hunted.

Hunting Method: Muzzleloader only.

Special Notes: Muzzleloader tag holders can only hunt during the muzzleloader seasons and must hunt with muzzleloader equipment. Only hunters with tags identified in the Special Elk Permits tables may apply for special elk permits.

Hunt Area	Elk Tag	Game Management Units (GMUs)	2000 Dates	2001 Dates	2002 Dates	Legal Elk
Early Muzzleloader Elk Seasons						
Eastern Washington	EM	109, 247	Oct. 7-13	Oct. 6-12	Oct. 5-11	Any bull
		127 through 142	Oct. 7-13	Oct. 6-12	Oct. 5-11	Any elk
		172, 245, 250, 251, 342, 356, 368	Oct. 7-13	Oct. 6-12	Oct. 5-11	Spike bull
		ML 911	Aug. 19-Sept. 10	((Aug. 18-Sept. 9)) Aug. 15-Sept. 15	((Aug. 17-Sept. 8)) Aug. 15-Sept. 15	Spike bull or antlerless

PROPOSED

Hunt Area	Elk Tag	Game Management Units (GMUs)	2000 Dates	2001 Dates	2002 Dates	Legal Elk
		That part of GMU 368 east of the following boundary: Jump Off Road and the power lines to South Fork Cowiche Creek, west along South Fork Cowiche Creek to Road A 5500, east on A 5500 Road and south on A 5000 Road to North Fork Ahtanum Creek Road, south and west on North Fork Ahtanum Creek Road to A 2000, A 2000 to A 2400 Road, A 2400 Road to A 1000 Road and South Fork of Ahtanum Creek.	Oct. 7-13	Oct. 6-12	Oct. 5-11	Antlerless
Western Washington	WM	454, 564, 568, 684	Oct. 7-13	Oct. 6-12	Oct. 5-11	Any elk
		460, 501, 504, 513, 530, 554, 602, 603, 607, 652, 654, 660	Oct. 7-13	Oct. 6-12	Oct. 5-11	3 pt. min.
		501	Oct. 7-13	Oct. 6-12	Oct. 5-11	3 pt. min. or antlerless
Late Muzzleloader Elk Seasons						
Eastern Washington	EM	130 through 142	Nov. 22- Dec. 8	Nov. 21- Dec. 8	Nov. 20- Dec. 8	Any elk
		346	Nov. 11-15	Nov. 10-14	Nov. 9-13	Spike bull or antlerless
		ML Area 944	Nov. 22- Dec. 8	((Nov. 21- Dec. 8))	((Nov. 20- Dec. 8))	Spike bull or antlerless
		<u>ML Area 911</u>		<u>Dec. 1-31</u>	<u>Dec. 1-31</u>	<u>Spike bull or antlerless</u>
		That part of GMU 368 east of the following boundary: Jump Off Road and the power lines to South Fork Cowiche Creek, west along South Fork Cowiche Creek to Road A 5500, east on A 5500 Road and south on A 5000 Road to North Fork Ahtanum Creek Road, south and west on North Fork Ahtanum Creek Road to A 2000, A 2000 to A 2400 Road, A 2400 Road to A 1000 Road and South Fork of Ahtanum Creek.	Nov. 11-15	Nov. 10-14	Nov. 9-13	Spike bull or antlerless
Western Washington	WM	501, 505	Nov. 22- Dec. 8	Nov. 21- Dec. 8	Nov. 20- Dec. 8	3 pt. min. or antlerless
		454, 564, 568, 684	Nov. 22- Dec. 15	Nov. 21- Dec. 15	Nov. 20- Dec. 15	Any elk
		574, 578	Nov. 22- Dec. 8	Nov. 21- Dec. 8	Nov. 20- Dec. 8	Any elk
		504, 550, 601, 652	Nov. 22- Dec. 15	Nov. 21- Dec. 15	Nov. 20- Dec. 15	3 pt. min.

Special Elk Hunts Open to Specified Tag Holders

License Required: A valid big game hunting license with an elk tag option.

Tag Required: Proper elk tags are listed with each GMU below.

Hunting Method: Hunters must use method listed on their tag, except in Firearm Restriction Areas, where some types of weapons are banned from use. See elk tag required, dates, and legal elk in table below. In firearm restriction areas modern firearm hunters may hunt with a muzzleloader equipped with a scope.

Hunt Area	Elk Tag	Game Management Units	2000 Dates	2001 Dates	2002 Dates	Legal Elk
Eastern Washington	EA, EM, EF	127 through 142, Advanced Hunter Education Graduates only.	Dec. 9-31	Dec. 9-31	Dec. 9-31	Any elk
		Grant, Adams, Douglas, Franklin, Okanogan, and Benton (south of the Yakima River), and Chelan County (north of Hwy 2, except closed within 1/2 mile of the Columbia River in Douglas and Grant counties)	Oct. 28-Nov. 15	Oct. 27-Nov. 15	Oct. 26-Nov. 15	Any elk
	EM	ML Area 911, Advanced Hunter Education Graduates only.	Nov. 25-Dec. 3	((Nov. 24-Dec. 2)) Nov. 24-30	((Nov. 23-Dec. 1)) Nov. 23-30	Spike bull or antlerless
Western Washington	WF	568, 574, 578, 588	Nov. 4-12	Nov. 3-11	Nov. 2-10	Any elk
	WF, WA, WM	564 (archery and muzzleloader methods only, modern firearm elk tag holders may hunt, but must use archery, muzzleloader or revolver type handgun equipment)	Nov. 4-12	Nov. 3-11	Nov. 2-10	Any elk
	((WM))	((Muzzleloader Area 941 (muzzleloader only)))	((11/1/2000-1/31/2001))	((11/1/2001-1/31/2002))	((11/1/2002-1/31/2003))	((Any elk))
	((WA))	((Muzzleloader Area 941 (archery only)))	((Oct. 1-31))	((Oct. 1-31))	((Oct. 1-31))	((Any elk))

PROPOSED

Special Elk Permit Hunting Seasons

(Open to Permit Holders Only)

Permit hunters may hunt only with a weapon in compliance with their tag. Applicants must have purchased the proper tag for these hunts (see elk tag prefix required to apply for each hunt).

Hunt Name	((2000)) 2001 Permit Season	Special Restrictions	Elk Tag Prefix	Boundary Description	((2000)) 2001 Permits
Modern Firearm Bull Permit Hunts					
Blue Creek A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	GMU 154	4
Watershed*	((Oct. 28-Nov. 5)) <u>Oct. 27-Nov. 4</u>	3 Pt. Min. or Antlerless	EA, EF, EM	GMU 157	40
Dayton A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	<u>Part of GMU 162 and 163***</u>	((9)) <u>6</u>
Tucannon A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	Part of GMU 166**	2
Wenaha A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	GMU 169	5
Mountain View A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	GMU 172	((7)) <u>8</u>
Couse A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	GMU 181	1
Grande Ronde A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	GMU 186	1
<u>West Bar A</u>	<u>Oct. 22-27</u>	<u>Spike Bull</u>	<u>EF</u>	<u>GMU 330</u>	<u>10</u>
<u>West Bar B</u>	<u>Oct. 28-Nov. 4</u>	<u>Spike Bull</u>	<u>EF</u>	<u>GMU 330</u>	<u>10</u>
Peaches Ridge A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	GMUs 336, 346	((53)) <u>69</u>
Observatory A	((Oct. 23-Nov. 5)) <u>Oct. 22-Nov. 4</u>	Any Bull	EF	GMUs 340, 342	((36)) <u>46</u>

Hunt Name	((2000)) 2001 Permit Season	Special Restrictions	Elk Tag Prefix	Boundary Description	((2000)) 2001 Permits
Goose Prairie A	((Oct. 23-Nov. 5)) Oct. 22-Nov. 4	Any Bull	EF	GMUs 352, 356	((418)) 206
Bethel A	((Oct. 23-Nov. 5)) Oct. 22-Nov. 4	Any Bull	EF	GMU 360	((86)) 135
Rimrock A	((Oct. 23-Nov. 5)) Oct. 22-Nov. 4	Any Bull	EF	GMU 364	((88)) 108
Cowiche A	((Oct. 23-Nov. 5)) Oct. 22-Nov. 4	Any Bull	EF	GMU 368	((24)) 28
Margaret A	Nov. ((4-12)) 3-11	3 Pt. Min.	WF	GMU 524	((40)) 19
Toutle A	Nov. ((4-12)) 3-11	3 Pt. Min.	WF	GMU 556	((85)) 90
Olympic A	Nov. ((4-12)) 3-11	3 Pt. Min.	WF	GMU 621****	((14)) 13

*Permit season is open for archery and muzzleloader, but hunt is the same as modern firearm and all hunters must wear hunter orange.

**~~((The))~~ That part of GMU 166 west of the Tucannon River.

***That part of GMUs 162 and 163 excluding National Forest lands and Rainwater Wildlife Area.

****That part of GMU 621 north and west of Jimmy Come Lately Creek and Grey Wolf River and south of the BPA power lines.

Modern Firearm Elk Permit Hunts (Only modern firearm and muzzleloader elk tag holders may apply.)

Three Forks	((Oct. 23-Nov. 5)) Oct. 22-Nov. 4	Any Elk	EF or EM	GMU 109	((20)) 15
49 Degrees North	Oct. 27-Nov. 4	Any Elk	EF or EM	GMU 117	15
Mount Spokane	((Oct. 23-Nov. 5)) Oct. 22-Nov. 4	Any Elk	EF or EM	124 (E. of SR 395)	50
Blue Creek E	Oct. 22-Nov. 4	Antlerless	EF or EM	GMUs 149, 154	50
Payton	Oct. 22-Nov. 4	Antlerless	EF or EM	GMUs 162, 163****	75
Shushuskin	Dec. 1-31	Antlerless	EF or EM	Elk Area 031	((48)) 50
Malaga A**	Sept. 1-Oct. 1	Antlerless	EF or EM	Elk Area 032	((63)) 65
Malaga B	((Nov. 11-Dec. 31)) Nov. 10-Dec. 31	Antlerless	EF or EM	Elk Area 032	37
West Bar C	Oct. 22-Nov. 4	Antlerless	EF or EM	GMU 330	10
Taneum	((Nov. 1-5)) Oct. 31-Nov. 4	Antlerless	EF or EM	GMU 336	((156)) 200
Manastash	((Nov. 1-5)) Oct. 31-Nov. 4	Antlerless	EF or EM	GMU 340	((270)) 400
Umtanum A	((Nov. 1-5)) Oct. 31-Nov. 4	Antlerless	EF or EM	GMU 342	((333)) 440
Little Naches A	((Nov. 1-5)) Oct. 31-Nov. 4	Antlerless	EF or EM	GMU 346	((250)) 270
Little Naches B	Oct. 1-10	Any Bull	EF or EM	GMU 346	((48)) 25
Nile	((Nov. 1-5)) Oct. 31-Nov. 4	Antlerless	EF or EM	GMU 352	((100)) 250
Bumping	((Nov. 1-5)) Oct. 31-Nov. 4	Antlerless	EF or EM	GMU 356	((330)) 500
Bethel B	((Nov. 1-5)) Oct. 31-Nov. 4	Antlerless	EF or EM	GMU 360	((420)) 250
Rimrock B	((Nov. 1-5)) Oct. 31-Nov. 4	Antlerless	EF or EM	GMU 364	((280)) 255

Cowiche B	((Nov. 1-5)) <u>Oct. 31-Nov. 4</u>	Antlerless	EF or EM	GMU 368	((180)) <u>160</u>
Alkali A	((Oct. 28-Nov. 5)) <u>Oct. 27-Nov. 4</u>	Any Elk	EF or EM	GMU 371	((100)) <u>106</u>
Willapa Hills	Nov. 8-12	Antlerless	WF or WM	GMU 506	50
<u>Raymond C</u>	<u>Dec. 1-31</u>	<u>Antlerless</u>	<u>WF or WM</u>	<u>Part of GMUs 506 and 673*****</u>	<u>10</u>
<u>Raymond D</u>	<u>Jan. 1-31</u>	<u>Antlerless</u>	<u>WF or WM</u>	<u>Part of GMUs 506 and 673*****</u>	<u>10</u>
Winston	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 520	15
Margaret B	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 524	10
Ryderwood	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 530	40
Coweman	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 550	20
Toutle B	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 556	30
Marble	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 558	60
Carlton	Oct. 1-10	3-Pt. Min.	WF or WM	Elk Area 057	5
West Goat Rocks	Oct. 1-10	3-Pt. Min.	WF or WM	Elk Area 058	5
Mt. Adams	Oct. 1-10	3-Pt. Min.	WF or WM	Elk Area 059	5
Lewis River	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 560	75
Siouxon	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 572	50
Dungeness A	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	Part of GMU 621*	9
Dungeness B	Nov. ((8-12)) <u>7-11</u>	3 Pt. Min	WF or WM	Part of GMU 621*	4
<u>Satsop</u>	<u>Dec. 1-15</u>	<u>Antlerless</u>	<u>WF or WM</u>	<u>GMU 651</u>	<u>15</u>
Puyallup A	Jan. 15-23	Antlerless	WF or WM	GMU 652	25
Mashel A	Dec. ((16-22)) <u>15-23</u>	Antlerless	WF or WM	Part of GMU 654***	((20)) <u>25</u>
<u>Minot</u>	<u>Oct. 20-31</u>	<u>Antlerless</u>	<u>WF or WM</u>	<u>Part of GMU 660*****</u>	<u>30</u>
Deschutes A	Jan. 15-23	Antlerless	WF or WM	GMU 666	10
Williams Creek	Nov. ((8-12)) <u>7-11</u>	Antlerless	WF or WM	GMU 673	40

*That part of GMU 621 north and west of Jimmy Come Lately Creek and the Gray Wolf River.

**Damage hunt.

***That part of GMU 654 south of the Puyallup River.

****That part of GMUs 162 and 163 excluding National Forest lands and Rainwater Wildlife Area.

Muzzleloader Bull Permit Hunts (Only muzzleloader elk tag holders may apply.)

Note-Fire Closures may limit access during early October seasons

Blue Creek B	((Oct. 1-13)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 154	1
Dayton B	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 162	((2)) <u>1</u>
Tucannon B	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 166	1
Wenaha C	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 169	1
Mountain View B	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 172	2
Couse B	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 181	1

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Grande Ronde B	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 186	1
Peaches Ridge B	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMUs 336, 346	9
Observatory B	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMUs 340, 342	9
Goose Prairie B	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMUs 352, 356	((18)) <u>26</u>
Bethel C	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 360	((14)) <u>18</u>
Rimrock C	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 364	((12)) <u>14</u>
Cowiche C	((Oct. 1-10)) <u>Oct. 1-12</u>	Any Bull	EM	GMU 368	((4)) <u>6</u>
Margaret C	((Oct. 1-10)) <u>Oct. 1-12</u>	3 Pt. Min.	WM	GMU 524	((2)) <u>3</u>
Toutle C	((Oct. 1-10)) <u>Oct. 1-12</u>	3 Pt. Min.	WM	GMU 556	((17)) <u>16</u>
Olympic B	((Oct. 1-10)) <u>Oct. 1-12</u>	3 Pt. Min.	WM	GMU 621	2
Dungeness C	((Oct. 1-10)) <u>Oct. 1-12</u>	3 Pt. Min.	WM	Part of GMU 621*	1

*That part of GMU 621 north and west of Jimmy Come Lately Creek and the Gray Wolf River and south of the BPA power lines.

Muzzleloader Permit Hunts (Only muzzleloader elk tag holders may apply.)

Blue Creek C*	((12/1/00-1/31/01)) <u>12/1/01-1/31/02</u>	Antlerless	EM	GMU 154	((50)) <u>60</u>
Columbia A	Dec. 1-31	Antlerless	EM	Part of GMU 162**, 163	((30)) <u>40</u>
Columbia B	Jan. 1-31, ((2001)) <u>2002</u>	Antlerless	EM	Part of GMU 162**, 163	((30)) <u>40</u>
Couse C*	Dec. 1-31	Antlerless	EM	GMU 181	25
Couse D*	Jan. 1-31, ((2001)) <u>2002</u>	Antlerless	EM	GMU 181	25
<u>West Bar C</u>	<u>Oct. 1-12</u>	<u>Spike Bull</u>	<u>EM</u>	<u>GMU 330</u>	<u>10</u>
Umtanum B	Oct. ((7-13)) <u>6-12</u>	Antlerless	EM	GMU 342	((250)) <u>350</u>
((Cowiche D))	((Oct. 7-13))	((Antlerless))	((EM))	((GMU 368))	((100))
<u>Cleman</u>	<u>Dec. 9-31</u>	<u>Antlerless</u>	<u>EM</u>	<u>ML Area 944</u>	<u>75</u>
Alkali B	Oct. ((7-13)) <u>6-12</u>	Any Elk	EM	GMU 371	((100)) <u>43</u>
Stella A*	Nov. 26-Dec. 15	Antlerless	WM	GMU 504	100
Stella B*	Jan. 1-16, ((2001)) <u>2002</u>	Antlerless	WM	GMU 504	25
Toledo A*	Jan. 1-16, ((2001)) <u>2002</u>	Antlerless	WM	Elk Area 029	((75)) <u>30</u>
Malaga ((C*)) <u>D*</u>	Oct. ((7-29)) <u>6-25</u>	Antlerless	EM	Elk Area 032	75
Mossyrock A*	Jan. 1-16, 2001	Antlerless	WM	Elk Area 052	10
Randle A*	Jan. 1-16, 2001	Antlerless	WM	Elk Area 053	15
Boistfort*	Jan. 1-16, 2001	Antlerless	WM	Elk Area 054	20
Yale*	Nov. 26-Dec. 15	3 Pt. Min. or Antlerless	WM	GMU 554	75

<u>Satsop</u>	<u>Oct. 6-14</u>	<u>Antlerless</u>	<u>WM</u>	<u>GMU 651</u>	<u>10</u>
North River*	Nov. 26-Dec. 15	Antlerless	WM	GMU 658	20
Minot Peak	Oct. ((7-13)) <u>6-14</u>	Antlerless	WM	GMU 660****	30
<u>Raymond A</u>	<u>Oct. 1-31</u>	<u>Antlerless</u>	<u>WM</u>	<u>Part of GMUs 506 and 673***</u>	<u>10</u>

*Damage hunt.

**That part of GMU 162 east of North Touchet Rd, outside National Forest.

****That part of GMU 660 (~~((north of the River-Brooklyn Road))~~ east of Melbourne A line, F-line, Vesta Creek Road, and North River Brooklyn Road.

Archery Bull Permit Hunts (Only archery elk tag holders may apply.)

Note-Fire closures may limit access during September seasons.

Blue Creek D	Sept. 1-14	Any Bull	EA	GMU 154	2
Dayton C	Sept. 1-14	Any Bull	EA	GMU 162	((7))
					<u>4</u>
Tucannon C	Sept. 1-14	Any Bull	EA	GMU 166	((3))
					<u>1</u>
Wenaha D	Sept. 1-14	Any Bull	EA	GMU 169	((3))
					<u>2</u>
Mountain View C	Sept. 1-14	Any Bull	EA	GMU 172	((8))
					<u>5</u>
Couse F	Sept. 1-14	Any Bull	EA	GMU 181	1
Grande Ronde C	Sept. 1-14	Any Bull	EA	GMU 186	1
Peaches Ridge C	Sept. 1-14	Any Bull	EA	GMUs 336, 346	((54))
					<u>53</u>
Observatory C	Sept. 1-14	Any Bull	EA	GMUs 340, 342	((34))
					<u>28</u>
Goose Prairie C	Sept. 1-14	Any Bull	EA	GMUs 352, 356	((170))
					<u>138</u>
Bethel D	Sept. 1-14	Any Bull	EA	GMU 360	((78))
					<u>87</u>
Rimrock D	Sept. 1-14	Any Bull	EA	GMU 364	((65))
					<u>56</u>
Cowiche D	Sept. 1-14	Any Bull	EA	GMU 368	22
Alkali	Sept. 1-14	Any Elk	EA	GMU 371	((50))
					<u>43</u>
Margaret D	Sept. 1-14	3 Pt. Min.	WA	GMU 524	6
Toutle D	Sept. 1-14	3 Pt. Min.	WA	GMU 556	((64))
					<u>42</u>
Olympic C	Sept. 1-14	3 Pt. Min.	WA	GMU 621	((4)) <u>3</u>
<u>Quinault</u>	<u>Nov. 21-Dec. 15</u>	<u>Antlerless</u>	<u>WA</u>	<u>That part of GMU 638 in the Quinault drainage</u>	<u>20</u>
Mashel B	Jan. ((15-23)) <u>12-21</u>	Antlerless	WA	Part of GMU 654**	((25))
					<u>40</u>
Raymond A	Dec. 1-31	Antlerless	WA	Part of GMUs 506 and 673***	10
Raymond B	((Jan. 1-31, 2001)) <u>Nov. 16-30</u>	Antlerless	WA	Part of GMUs 506 and 673***	10
Dungeness D	Sept. 1-14	3 Pt. Min.	WA	Part of GMU 621*	1
<u>Satsop</u>	<u>Sept. 1-14</u>	<u>3 Pt. Min. or Antlerless</u>	<u>WA</u>	<u>GMU 651</u>	<u>15</u>

PROPOSED

<u>Puy-muck</u>	<u>Jan. 12-21, 2002</u>	<u>Antlerless</u>	<u>WA</u>	<u>GMU 652, excluding areas bounded by Highways 167, 410, and 164.</u>	<u>35</u>
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*That part of GMU 621 north and west of Jimmy Come Lately Creek and the Gray Wolf River.

**That part of GMU 654 south of the Puyallup River.

***That part of GMUs 506 and 673 within 1 mile of SR 6 between the east end of Elk Prairie Rd and the Mallis Landing Rd.

Advanced Hunter Education (AHE) Graduate Special Elk Permit Hunts (only AHE graduates may apply).

Toledo B	Jan. 17-31, ((2001)) <u>2002</u>	Antlerless	Any Elk Tag	Elk Area 029	((50)) <u>20</u>
Mossyrock B	Jan. 17-31, ((2001)) <u>2002</u>	Antlerless	Any Elk Tag	Elk Area 052	10
Randle B	Jan. 17-31, ((2001)) <u>2002</u>	Antlerless	Any Elk Tag	Elk Area 053	15
Quinault Ridge	Oct. 1-10	3-Pt. Min or Antlerless	Any Elk Tag	GMU 638	5
South Bank A	((Jan. 1-30, 2001)) <u>2002</u>	Antlerless	Any Elk Tag	Elk Area 062*	10
<u>Chehalis Valley A</u>	<u>Sept. 15-30</u>	<u>Antlerless</u>	<u>Any Elk Tag</u>	<u>Elk Area 066</u>	<u>10</u>
<u>Chehalis Valley B</u>	<u>Oct. 1-31</u>	<u>Antlerless</u>	<u>Any Elk Tag</u>	<u>Elk Area 066</u>	<u>10</u>
<u>Chehalis Valley C</u>	<u>Nov. 15-30</u>	<u>Antlerless</u>	<u>Any Elk Tag</u>	<u>Elk Area 066</u>	<u>10</u>
<u>Chehalis Valley E</u>	<u>Jan. 1-31, 2002</u>	<u>Antlerless</u>	<u>Any Elk Tag</u>	<u>Elk Area 066</u>	<u>10</u>
<u>Chehalis Valley F</u>	<u>Feb. 1-28, 2002</u>	<u>Antlerless</u>	<u>Any Elk Tag</u>	<u>Elk Area 066</u>	<u>10</u>

*Firearm Restriction Area - Hunters may use only muzzleloader equipment.

Persons of Disability Only - Special Elk Permit Hunts

Observatory D	Oct. 24-Nov. 7	Any Elk	EF or EM	GMUs 340, 342	((3)) <u>5</u>
Little Naches C	Oct. 1-10	Any Elk	EF, EM, EA	GMU 346	((3)) <u>5</u>
Little Naches D	Oct. 30-Nov. 7	Antlerless	EF, EM, EA	GMU 346	((4)) <u>10</u>
Centralia Mine A	Oct. ((28-29)) <u>27-28</u>	Antlerless	Any Elk Tag	Portion of GMU 667*	4
Centralia Mine B	Nov. ((4-5)) <u>3-4</u>	Antlerless Only	Any Elk Tag	Portion of GMU 667*	4
South Bank B	Dec. 10-20	Antlerless	Any Elk Tag	Elk Area 062***	3
North Shore A	Oct. 1-31	Antlerless	Any Elk Tag	Part of GMU 658**	5
North Shore B	Dec. 1-31	Antlerless	Any Elk Tag	Part of GMU 658**	5
North Shore C	Jan. 1-31, ((2001)) <u>2002</u>	Antlerless	Any Elk Tag	Part of GMU 658**	5
<u>Skookumchuck</u>	<u>Nov. 17-25</u>	<u>Antlerless</u>	<u>Any Elk Tag</u>	<u>GMU 667</u>	<u>4</u>
<u>Skookumchuck</u>	<u>Dec. 6-16</u>	<u>Antlerless</u>	<u>Any Elk Tag</u>	<u>GMU 667</u>	<u>4</u>
<u>Chehalis Valley D</u>	<u>Dec. 1-31</u>	<u>Antlerless</u>	<u>Any Elk Tag</u>	<u>GMU 667</u>	<u>15</u>

*Portion of GMU 667 within Centralia Mine.

**That part of GMU 658 south and west of SR 105 between Raymond and North River Bridge.

***Firearm Restriction Area - Hunters may use only muzzleloader equipment.

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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

PROPOSED

WSR 01-05-146
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 21, 2001, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-081.

Title of Rule: WAC 232-12-131 Permits for special hunting and trapping seasons, 232-28-274 2000 Big game and wild turkey auction permits and raffles, 232-28-280 1999 Deer general seasons and 1999 special permits, and 232-28-281 1999-2000 Elk general seasons and 1999-2000 special permits.

Purpose: To repeal WAC 232-12-131 Permits for special hunting and trapping seasons, 232-28-274 2000 Big game and wild turkey auction permits and raffles, 232-28-280 1999 Deer general seasons and 1999 special permits, and 232-28-281 1999-2000 Elk general seasons and 1999-2000 special permits.

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: These WACs need to be repealed because the information contained in them is obsolete.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Assistant Director, Wildlife Program, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Assistant Director, Enforcement, Olympia, (360) 902-2932.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Proposal Changes the Following Existing Rules: See above.

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

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This rule is not related to the hydraulics code.

Hearing Location: Ramada Inn, International Airport, 8909 Airport Road, Spokane, WA 99219, (509) 838-5211, on April 6-7, 2001, at 8:00 a.m.

Assistance for Persons with Disabilities: Contact Debbie Nelson by March 30, 2001, TDD (360) 902-2207, or (360) 902-2267.

Submit Written Comments to: Washington Department of Fish and Wildlife, Dave Brittell, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by March 30, 2001.

Date of Intended Adoption: April 6, 2001.

February 21, 2001

Evan Jacoby

Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-12-131	Permits for special hunting and trapping seasons
WAC 232-28-274	2000 Big game and wild turkey auction permits and raffles
WAC 232-28-280	1999 Deer general seasons and 1999 special permits
WAC 232-28-281	1999-2000 Elk general seasons and 1999-2000 special permits

PROPOSED

WSR 01-03-089
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 (Division of Child Support)
 [Filed January 17, 2001, 3:18 p.m.]

Date of Adoption: January 17, 2001.

Purpose: The Division of Child Support is repealing chapters 388-11, 388-13, and 388-14 WAC; rewriting and revising rules for clarity; and putting all DCS rules into one chapter, chapter 388-14A WAC. There are no policy changes in this rule making, but the rules have been rewritten under the Governor's Executive Order 97-02 on regulatory improvement. Below is a cross-reference guide showing where in chapter 388-14A WAC you can find the issues addressed by chapters 388-11, 388-13, and 388-14 WAC.

DIVISION OF CHILD SUPPORT RULES
CROSS-REFERENCE GUIDE

All division of child support rules are now contained in chapter 388-14A of the WAC. This guide shows the disposition of rules formerly contained in chapters 388-11, 388-13, and 388-14 WAC.

If you have any questions about Division of Child Support rules, contact the DCS Rules Coordinator, Nancy Koptur. You can call her at (360) 664-5065 or 1-800-457-6202, or send e-mail to nkoptur@dshs.wa.gov. You can also visit our web site at www.wa.gov/dshs/esarules/dcs.htm to find out what is new with DCS rules.

Former WAC Section	New 388-14A WAC Section(s)	Repealed and not replaced
388-11-011	-1020	
388-11-015	-3375	
388-11-045	-3350	
388-11-048	-8300	
388-11-065	-3370	
388-11-067	-6500	
388-11-100	-6300	
388-11-120	-3700	
388-11-135	-3130	
388-11-140	-3800, -3925	
388-11-143	-3900 through -3907	
388-11-145		
388-11-150	-3600	
388-11-155	-3810	
388-11-170	-4000, -4030	
388-11-180	-6000	
388-11-205	-3200, -3205, -3400	
388-11-210	-3110, -3850, -6300	
388-11-215	-3125, -4100 through -4130	

Former WAC Section	New 388-14A WAC Section(s)	Repealed and not replaced
388-11-220	-8300	
388-11-280	-4200	
388-11-285	-3115	
388-11-290	-3120	
388-11-295	-3125	
388-11-300	-3275	
388-11-305	-7200	
388-11-310	-3500	
388-11-315	-3850 through -3875	
388-11-320	-4600	
388-11-325	-4605	
388-11-330	-4610	
388-11-335	-4615	
388-11-340	-4620	
388-11-400	-3130 through -3140	
388-11-410		X
388-11-415		X
388-11-420		X
388-11-425	-3131 through -3140	
388-11-430	-3600	
388-13-010		
388-13-020		
388-13-030	-5510	
388-13-040	-5515	
388-13-050	-5530	
388-13-060	-5520	
388-13-070	-5525	
388-13-085	-5535	
388-13-090	-5505(9)	
388-13-100	-5540	
388-13-110	-5515, -5525	
388-13-120	-6000	
388-14-010	-1000	
388-14-020	-1020	
388-14-030	-2105 through -2160	
388-14-035	-2110, -2115	
388-14-040	-2125	
388-14-045	-2115	
388-14-050	-2120	
388-14-100		X
388-14-200	-2030, -2035, -2036	
388-14-201	-2040	
388-14-202	-2041, -2075	
388-14-203		X
388-14-205	-1025, -1030, -2000, -2005	

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Former WAC Section	New 388-14A WAC Section(s)	Repealed and not replaced
388-14-210	-1000, -3375	
388-14-220	-8500	
388-14-250	-5000	
388-14-260	-7100, -7200	
388-14-270	-5000 through -5100	
388-14-271	-5050	
388-14-272	-5300	
388-14-273	-5000, -5001	
388-14-274	-5100	
388-14-276	-5200	
388-14-300	-2000	
388-14-310	-2000, -2010, -2015	
388-14-350	-1035	
388-14-360	-1050	
388-14-365	-1055	
388-14-370	-1060	
388-14-376	-4300 through -4304	
388-14-385	-6400	
388-14-386	-6405	
388-14-387	-6410	
388-14-388	-6415	
388-14-390	-6200	
388-14-395	-8120	
388-14-410	-2160	
388-14-415	-3310	
388-14-420	-2080	
388-14-421	-2085	
388-14-422	-2090	
388-14-423	-2095	
388-14-424	-2097	
388-14-427	-4040	
388-14-435	-3304	
388-14-440	-3315	
388-14-445		X
388-14-450	-5400	
388-14-460	-4100	
388-14-480	-4120	
388-14-490	-8200	
388-14-495	-7100	
388-14-500	-6100	
388-14-510	-4500	
388-14-520	-4505	
388-14-530	-4510	
388-14-540	-4515	
388-14-550	-4520	

Former WAC Section	New 388-14A WAC Section(s)	Repealed and not replaced
388-14-560	-4525	
388-14-570	-4530	

PART A - GENERAL INFORMATION ABOUT THE DIVISION OF CHILD SUPPORT, WAC 388-14A-1000 The DSHS division of child support is the Title IV-D child support enforcement agency for the state of Washington, 388-14A-1005 What is Washington's state plan under Title IV-D?, 388-14A-1010 What are the other names that the division of child support has used?, 388-14A-1015 What laws regulate the actions of the division of child support?, 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-1025 What are the responsibilities of the division of child support?, 388-14A-1030 What kinds of services can the division of child support provide?, 388-14A-1035 What kinds of locate services does the division of child support provide?, 388-14A-1036 Who can request DCS locate services?, 388-14A-1040 What must a request for locate services contain?, 388-14A-1045 What happens when I request locate services from the division of child support?, 388-14A-1050 The division of child support cooperates with other states and Indian tribes for support enforcement purposes, 388-14A-1055 Can the division of child support collect support owed or assigned to another state?, 388-14A-1060 The division of child support cooperates with courts and law enforcement.

PART B - BASIC RULES FOR CHILD SUPPORT CASES, WAC 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2005 When does an application for public assistance automatically become an application for support enforcement services?, 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?, 388-14A-2015 Does DCS accept an application for services from someone who is not a resident of Washington state?, 388-14A-2020 Can the division of child support deny my application for support enforcement services?, 388-14A-2025 What services does the division of child support provide for a nonassistance support enforcement case?, 388-14A-2030 Do I assign my rights to support when I apply for child support enforcement services?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-2037 What are permanently assigned arrears?, 388-14A-2038 What are temporarily assigned arrears?, 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?, 388-14A-2041 What happens if I don't cooperate with DCS?, 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children?, 388-14A-2050 Who decides if I have good cause not to cooperate?, 388-14A-2060 Are there different kinds of good cause for not cooperating with DCS?, 388-14A-2065 Does the division of child support provide support enforcement services if the CSO decides I have "Good Cause Level A"?, 388-14A-2070 Does the division of child support provide support enforcement services if the CSO determines I have "Good Cause

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Level B"? 388-14A-2075 What happens if the division of child support determines that I am not cooperating?, 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed?, 388-14A-2085 Under what circumstances may DCS deny a request to close a support enforcement case?, 388-14A-2090 Who is mailed notice of DCS' intent to close a case?, 388-14A-2095 What if I don't agree with the case closure notice?, 388-14A-2097 What happens to payments that come in after a case is closed?, 388-14A-2099 When does DCS file a satisfaction of judgment with the superior court?, 388-14A-2105 Does the division of child support keep information about me confidential?, 388-14A-2110 how do I find out the address of my children, or of the other parent of my children?, 388-14A-2115 What are the requirements for making an address disclosure request?, 388-14A-2120, What happens at a hearing on an objection to disclosure of my address?, 388-14A-2125 How do I give DCS permission to give my address to the other parent without going through the notice procedures of 388-14A-2115?, 388-14A-2150 How much does it cost to get copies of DCS records?, 388-14A-2155 Can I appeal a denial of public disclosure by the division of child support?, 388-14A-2160 If my information is confidential, can DCS report me to a credit bureau?

PART C - HOW THE DIVISION OF CHILD SUPPORT DECIDES HOW MUCH CHILD SUPPORT SOMEONE SHOULD PAY, (NOTE: The rules for establishing administrative support orders have been filed and are effective as of November 6, 2000. They are found in WAC 388-14A-3100, 388-14A-3102, 388-14A-3105, 388-14A-3110, 388-14A-3115, 388-14A-3120, 388-14A-3125, 388-14A-3130, 388-14A-3131, 388-14A-3132, 388-14A-3133, 388-14A-3135, 388-14A-3140, 388-14A-3200, and 388-14A-3205.

The rules for establishing temporary administrative support orders were effective May 19, 2000: They are found in WAC 388-14A-3850, 388-14A-3855, 388-14A-3860, 388-14A-3865, 388-14A-3870, and 388-14A-3875).

WAC 388-14A-3275 The division of child support may amend an administrative notice at any time before a final administrative order is entered, 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else?, 388-14A-3304 The division of child support serves a notice of support debt when it is enforcing a foreign court order or administrative order for support, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3315 When DCS serves a notice of support debt or notice of support owed, we notify the custodial parent and/or the payee under the order, 388-14A-3320 What happens at a hearing on a notice of support debt or notice of support owed?, 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?, 388-14A-3370 What legal defenses are available to a noncustodial parent when DCS seeks to enforce a support obligation?, 388-14A-3375 What kinds of credits does the division of child support give when establishing or enforcing an

administrative support order?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-3500 A person must show good cause for filing a late request for hearing, 388-14A-3600 The parties may resolve any child support case by entering a consent order or an agreed settlement, 388-14A-3700 When is it appropriate to vacate a default order?, 388-14A-3800 Once a support order is entered, can it be changed?, 388-14A-3810 Once a child support order is entered how long does the support obligation last?, 388-14A-3900 Does DCS review my support order to see if it should be modified?, 388-14A-3901 Under what circumstances does DCS review a support order for modification?, 388-14A-3902 How does DCS notify me that my order is eligible for review for modification?, 388-14A-3903 How does DCS decide whether to petition for modification of a support order?, 388-14A-3904 How do I find out the results of DCS' review for modification?, 388-14A-3905 What if I don't agree with DCS' findings after review?, 388-14A-3906 Are there times when DCS does not review an order which would otherwise qualify for review?, 388-14A-3907 DCS uses the Washington state child support schedule for reviewing orders for modification, 388-14A-3925 Who can ask to modify an administrative support order?

PART D - HOW WE ENFORCE CHILD SUPPORT OBLIGATIONS, WAC 388-14A-4000 When may the division of child support take collection action against a noncustodial parent?, 388-14A-4010 Can I make the division of child support stop collection action against me?, 388-14A-4020 What collection tools does the division of child support use?, 388-14A-4030 How can the division of child support collect child support from my wages or other income source?, 388-14A-4040 DCS can serve some collection actions by electronic service, 388-14A-4100 Can the division of child support make me provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do?, 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS serves a notice of enrollment to enforce an obligation to provide health insurance coverage, 388-14A-4130 What must an employer or union who receives a notice of enrollment do?, 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children?, 388-14A-4300 What can I do if I think I'm paying more than the custodial parent is spending for daycare or other special expenses for my child?, 388-14A-4301 Can I file a petition for reimbursement if I do not receive full support enforcement services?, 388-14A-4302 Who participates in a hearing on petition for reimbursement?, 388-14A-4303 What happens at a hearing on petition for reimbursement?, 388-14A-4304 What happens if the judge determines that I have paid too much for daycare and special expenses?, 388-14A-4500 What is the division of child support's license suspension program?, 388-14A-4505 The notice of noncompliance and intent to suspend licenses, 388-14A-4510 Who is subject to the DCS license suspension program?, 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?, 388-14A-4520 Signing a repayment agreement may avoid certification for noncompli-

ance, 388-14A-4525 How to obtain a release of certification for noncompliance, 388-14A-4530 Administrative hearings regarding license suspension are limited in scope, 388-14A-4600 What is the division of child support's DCS most wanted Internet site?, 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted Internet site?, 388-14A-4610 How does a noncustodial parent avoid being posted on the DCS most wanted Internet site?, 388-14A-4615 When does DCS remove a noncustodial parent from the DCS most wanted Internet site?, 388-14A-4620 What information does the division of child support post to the DCS most wanted Internet site?

PART E - DISTRIBUTION OF CHILD SUPPORT PAYMENTS, WAC 388-14A-5000 How does the division of child support distribute support payments?, 388-14A-5001 What procedures does DCS follow to distribute support payments?, 388-14A-5002 How does DCS distribute support money in a nonassistance case?, 388-14A-5003 How does DCS distribute support money in an assistance case?, 388-14A-5004 How does DCS distribute support money in a former assistance case?, 388-14A-5005 How does DCS distribute intercepted federal income tax refunds?, 388-14A-5006 How does DCS distribute support money when the paying parent has more than one case?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-5008 Can the noncustodial parent prepay support?, 388-14A-5050 When does DCS send a notice of intent to distribute support money?, 388-14A-5100 What kind of distribution notice does the division of child support send?, 388-14A-5200 What is a "total versus total" notice?, 388-14A-5300 How does the division of child support recover a support payment which has already been distributed?, 388-14A-5400 How does the division of child support tell the custodial parent when DCS adjusts the amount of debt owed on the case?, 388-14A-5500 How does the division of child support collect support debts owed by someone other than a noncustodial parent?, 388-14A-5505 DCS uses a notice of retained support to claim a debt owed to DCS, 388-14A-5510 How does DCS serve a notice of retained support?, 388-14A-5515 What happens if I don't respond to a notice of retained support or request a hearing?, 388-14A-5520 What happens if I make a timely objection to a notice of retained support?, 388-14A-5525 What happens at the hearing on a notice of retained support?, 388-14A-5530 Can I request a late hearing on a notice of retained support?, 388-14A-5535 How does DCS collect a debt established on a notice of retained support?, 388-14A-5540 Can I just acknowledge that I owe money to the division of child support?

PART F - HEARINGS AND CONFERENCE BOARDS, WAC 388-14A-6000 Which statutes and regulations govern the division of child support's hearing process?, 388-14A-6100 The division of child support accepts oral requests for hearing or conference board, 388-14-6200 What are my hearing rights when the division of child support takes collection action against my bank account?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation, 388-14A-6400 The division of child support's grievance and dispute resolution method is

called a conference board, 388-14A-6405 How to apply for a conference board, 388-14A-6410 Explanation of the conference board process, 388-14A-6415 Scope of authority of conference board chair defined, 388-14A-6500 Can I use equitable estoppel as a defense in a hearing with the division of child support?

PART G - INTERSTATE ISSUES, WAC 388-14A-7100 An order from another state may be registered in Washington for enforcement or modification, 388-14A-7200 DCS can serve notices in another state under the Uniform Interstate Family Support Act.

PART H - MISCELLANEOUS PROVISIONS, WAC 388-14A-8100 Are there special rules for setting child support for children in foster care?, 388-14A-8105 Does the cost of care affect how much child support I pay when my child is in foster care?, 388-14A-8110 What happens to the money if current support is higher than the cost of care?, 388-14A-8120 Are there special rules for collection in foster care cases?, 388-14A-8200 All Washington employers must report new hires to the Washington state support registry, 388-14A-8300 Who pays for genetic testing when paternity is an issue?, 388-14A-8400 Does the division of child support have the right to approve my child support order before the court enters it?, and 388-14A-8500 Can the division of child support issue subpoenas?

Citation of Existing Rules Affected by this Order: Repealing chapters 388-11, 388-13, and 388-14 WAC.

Statutory Authority for Adoption: RCW 74.08.090 is the general rule-making authority.

STATUTORY AUTHORITY

The general rule-making authority for the DSHS Division of Child Support is found in RCW 74.08.090. Certain sections of chapter 388-14A WAC have additional, specific statutory authority as indicated below.

Adopted under notice filed as WSR 00-21-113 on October 18 [November 1], 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 141, Amended 0, Repealed 101.

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 141, Amended 0, Repealed 101.

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

January 17, 2001

Charles Hunter, Director
Administrative Services Division

PART A - GENERAL INFORMATION ABOUT THE DIVISION OF CHILD SUPPORT

NEW SECTION

WAC 388-14A-1000 The DSHS division of child support is the Title IV-D child support enforcement agency for the state of Washington. (1) The division of child support (DCS) is the part of the department of social and health services that provides child support enforcement services for the state of Washington under Title IV-D of the federal Social Security Act. DCS acts as the Washington state support registry (WSSR) under chapter 26.23 R.W.

(2) If your support order requires you to make payments to DCS or to WSSR, send payments to: WSSR, PO Box 45868, Olympia WA 98504-5868.

(3) If you want to call DCS, you can call 1-800-442-KIDS, or call the local DCS field office.

(4) If you want to write to DCS, you can write to P.O. Box 9162, Olympia WA 98507-9162 or to the local DCS field office.

(5) DCS is responsible for the state-wide administration of wage withholding under Title IV-D.

(6) DCS is the agency referred to in federal law as "the Title IV-D agency," and performs all duties assigned to the Title IV-D agency.

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

NEW SECTION

WAC 388-14A-1005 What is Washington's state plan under Title IV-D? (1) The division of child support (DCS), on behalf of the department of social and health services of the state of Washington, has established the following provisions as the state plan (the "plan") for its child support enforcement program. This plan is authorized by Title IV-D of the Social Security Act and chapters 74.20 and 74.20A R.W. This plan covers the entire state of Washington.

(2) DCS is the organization within the state of Washington that administers the plan.

(3) DCS enters into contracts for child support enforcement and related services with:

- (a) Other state agencies;
- (b) Indian tribes, county prosecutors and court clerks in the state of Washington;
- (c) Other states or foreign countries for action under the Uniform Interstate Family Support Act (UIFSA) and other laws to enforce or collect child support, locate noncustodial parents, or establish paternity. These contracts may include procedures for:
 - (i) Making referrals;
 - (ii) Assigning debts;
 - (iii) Reporting actions and activities; and
 - (iv) Coordinating activities under and ensuring compliance with UIFSA.
- (d) Private parties;

(e) The secretary of the Department of Health and Human Services to refer and certify cases:

- (i) To the federal parent locator service (FPLS);
- (ii) To the secretary of the treasury for action to collect support debts; and
- (iii) For action in the United States district courts to enforce support debts.

(4) DCS manages the Title IV-D plan for the state of Washington and:

- (a) Oversees all activities under the plan to ensure that the program meets the standards for an efficient and effective program;
- (b) Evaluates the quality and scope of services provided under the plan;
- (c) Ensures that federal and state requirements for records management, accounting and fiscal control are met;
- (d) Provides all services under the plan in appropriate cases, including action to locate parents, to establish paternity, and to establish, enforce and collect child support; and
- (e) Assures that referrals and other communications with the Title IV-A agency (which operates the public assistance programs) and the Title IV-E agency (which operates the foster care program) meet the requirements of the Title IV-D and Title IV-A state plans.

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

NEW SECTION

WAC 388-14A-1010 What are the other names that the division of child support has used? (1) The division of child support (DCS) has been known by many names including:

- (a) The office of support enforcement (OSE);
 - (b) The support enforcement division (SED);
 - (c) The state's Title IV-D agency; and
 - (d) The Washington State Support Registry (WSSR).
- (2) Some statutes and forms use one of these other names, but they all mean the division of child support.

NEW SECTION

WAC 388-14A-1015 What laws regulate the actions of the division of child support? (1) The following are the primary state and federal laws which apply to the division of child support (DCS):

- (a) Title IV-D of the Social Security Act sets out the federal requirements for a state's support enforcement program.
 - (b) Title 45 of the Code of Federal Regulations contains the federal regulations regarding support enforcement programs.
 - (c) Chapter 26.23 RCW establishes the Washington state support enforcement program.
- (2) Most state statutes governing DCS are found in Title 26 RCW and chapters 74.20 and 74.20A RCW.
- (3) The Washington Administrative Code (WAC) contains the state regulations regarding the Washington state support enforcement program.

NEW SECTION

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state. In Washington, this is DCS.

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or "public assistance" means cash assistance under the temporary assistance for needy families (TANF) program, the aid for families with dependent children (AFDC) program, federally-funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and "recipient" means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Birth costs" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent

and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or "current and future support" means the amount of child support which is owed for each month.

"Custodial parent" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

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

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the united states armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is:

(a) A full-time student; and

(b) Reasonably expected to complete secondary school or the equivalent level of vocational or technical training before the end of the month in which the child turns nineteen.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs":

- (1) For the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, means medical, dental and optometrical expenses; and,
- (2) For the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical,

dental and optometrical costs stated as a fixed dollar amount by a support order.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/Me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical support" means either or both:

- (1) Health care costs stated as a fixed dollar amount in a support order; and
- (2) Health insurance coverage for a dependent child.

"Noncustodial parent" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. Also called the NCP. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or "PSO" means a case on which the division of child support's activities are limited to

recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrearages" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

(1) Delinquent support;

(2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including health care costs, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;

(3) A debt under RCW 74.20A.100 or 74.20A.270; or

(4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, medical support, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, health care costs, birth costs, and child care or special child rearing expenses.

"Temporarily assigned arrearages" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for car-

rying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"**Title IV-D case**" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"**Title IV-D plan**" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"**Title IV-E**" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"**Title IV-E case**" means a foster care case

"**Tribunal**" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"**Unreimbursed assistance**" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"**We**" means the division of child support, part of the department of social and health services of the state of Washington.

"**WSSR**" is the Washington State Support Registry.

"**You**" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

NEW SECTION

WAC 388-14A-1025 What are the responsibilities of the division of child support? (1) The division of child support (DCS) provides support enforcement services when:

(a) The department of social and health services pays public assistance or provides foster care services;

(b) A former recipient of public assistance is eligible for services, as provided in WAC 388-14A-2000 (2)(c);

(c) A custodial parent (CP) or noncustodial parent (NCP) requests nonassistance support enforcement services under RCW 74.20.040 and WAC 388-14A-2000;

(d) A support order or wage assignment order under chapter 26.18 RCW directs the NCP to make support payments through the Washington state support registry (WSSR);

(e) A support order under which there is a current support obligation for dependent children is submitted to the WSSR;

(f) A former custodial parent (CP) requests services to collect a support debt accrued under a court or administrative support order while the child(ren) resided with the CP;

(g) A child support enforcement agency in another state or foreign country requests support enforcement services; or

(h) A child support agency of an Indian tribe requests support enforcement services.

(2) DCS takes action under chapters 26.23 and 74.20A RCW to establish, enforce and collect child support obligations. DCS refers cases to the county prosecuting attorney or attorney general's office when judicial action is required.

(3) DCS does not take action on cases where the community services office (CSO) has granted the CP good cause not to cooperate under WAC 388-422-0020, when the CSO grants "level A good cause." If the CSO grants "level B good

cause," DCS proceeds to establish and/or enforce support obligations but does not require the CP to cooperate with DCS. WAC 388-14A-2065 and 388-14A-2070 describe the way DCS handles cases with good cause issues.

(4) DCS establishes, maintains, retains and disposes of case records in accordance with the department's records management and retention policies and procedures adopted under chapter 40.14 RCW.

(5) DCS establishes, maintains, and monitors support payment records.

(6) DCS receives, accounts for and distributes child support payments required under court or administrative orders for support.

(7) DCS files a satisfaction of judgment when we determine that a support obligation is either paid in full or no longer legally enforceable. WAC 388-14A-2099 describes the procedures for filing a satisfaction of judgment. WAC 388-14A-2099(4) describes how DCS determines a support obligation is satisfied or no longer legally enforceable.

NEW SECTION

WAC 388-14A-1030 What kinds of services can the division of child support provide? The services provided by the division of child support include, but are not limited to the following:

(1) Receiving payments and distributing the payments (see WAC 388-14A-5000);

(2) Establishing or modifying administrative child support orders (see WAC 388-14A-3100);

(3) Enforcing and modifying court orders for child support or maintenance (see WAC 388-14A-3305 and 388-14A-3310);

(4) Referral to the prosecuting attorney for establishment of paternity;

(5) Providing locate services as provided in WAC 388-14A-1035;

(6) Referral for welfare to work services in conjunction with other parts of DSHS, the employment security department (ESD) and private contractors;

(7) Cooperation with the IV-D agencies of other states and Indian tribes (see WAC 388-14A-1060); and

(8) Providing any other services allowed by the state plan and applicable state and federal law.

NEW SECTION

WAC 388-14A-1035 What kinds of locate services does the division of child support provide? The division of child support (DCS) maintains a service to locate noncustodial parents, using:

(1) All sources of information and available records in Washington or other states; and

(2) The federal parent locator service (FPLS) maintained by the federal Department of Health and Human Services.

NEW SECTION

WAC 388-14A-1036 Who can request DCS locate services? DCS provides locate services for:

- (1) Persons receiving public assistance for the benefit of dependent children;
- (2) Any agency or attorney of another state seeking to collect support obligations under an agreement entered into with DCS;
- (3) A court which has the authority to issue an order against a noncustodial parent (NCP) for the support and maintenance of a child;
- (4) The custodial parent (CP), legal guardian, attorney or agent of a child who does not receive public assistance, and has not applied for full support enforcement services;
- (5) The IV-D agency of another state;
- (6) The child support agency of an Indian tribe; and
- (7) Those persons authorized by 45 C.F.R. 303.15 to use the FPLS in connection with parental kidnaping or child custody cases.

NEW SECTION

WAC 388-14A-1040 What must a request for locate services contain? A request or referral asking the division of child support (DCS) to provide locate services must contain the following information:

- (1) The name of the noncustodial parent (NCP);
- (2) The NCP's Social Security Number, if known;
- (3) Whether NCP is now or has been a member of the armed services;
- (4) Whether NCP is now receiving or has received any federal benefits;
- (5) A request for a referral to the federal parent locator service (FPLS);
- (6) A statement that the request is being made to locate a person only for one of the following purposes:
 - (a) Establishing paternity,
 - (b) Securing support, or
 - (c) In connection with parental kidnaping or child custody cases.
- (7) A statement acknowledging that any information obtained from the FPLS must be kept confidential.

NEW SECTION

WAC 388-14A-1045 What happens when I request locate services from the division of child support? (1) The division of child support (DCS) makes diligent and reasonable efforts to locate the noncustodial parent (NCP), including referral to the federal parent locator service (FPLS).

- (2) A request for locate services is not an application for full support enforcement services.
- (3) If DCS is successful in locating the NCP, the case does not automatically convert to a full support enforcement services case, but you may apply for full services.
- (4) If DCS is unsuccessful in locating the NCP using local and state resources, DCS closes the case as provided in 388-14A-2080(12).

NEW SECTION

WAC 388-14A-1050 The division of child support cooperates with other states and Indian tribes for support

enforcement purposes. The division of child support (DCS) cooperates with the IV-D agencies of other states and of Indian tribes, according to rules and policies set by the Secretary of the Department of Health and Human Services and/or the federal Office of Child Support Enforcement (OCSE). Areas of cooperation include:

- (1) Establishing paternity;
- (2) Locating a noncustodial parent (NCP) who resides in Washington;
- (3) Enforcing the support obligation of an NCP who resides in Washington but whose support order was entered by another state; and
- (4) Any other functions required under a Title IV-D plan.

NEW SECTION

WAC 388-14A-1055 Can the division of child support collect support owed or assigned to another state? (1) The division of child support (DCS) may, at the request of another state, collect child support which has been assigned to that state under 42 U.S.C. 602 (a)(26)(A).

- (2) DCS uses the remedies in chapters 26.23, 74.20 and 74.20A RCW to collect support on behalf of another state or IV-D agency.

NEW SECTION

WAC 388-14A-1060 The division of child support cooperates with courts and law enforcement. (1) The division of child support (DCS) is authorized to enter into cooperative arrangements and written agreements including financial arrangements with the appropriate courts and law enforcement officials (including Indian tribes) to assist DCS in administering the state plan for support enforcement.

- (2) These cooperative arrangements include the investigation and prosecution of fraud related to paternity and child support.
- (3) DCS shares the federal funds it receives under 42 U.S.C. 655 according to the cooperative and financial agreements.
- (4) Any support payments that are made by a noncustodial parent (NCP) after DCS refers a case to a court or law enforcement official must be submitted to the Washington state support registry.

PART B - BASIC RULES FOR CHILD SUPPORT CASES

NEW SECTION

WAC 388-14A-2000 Who can receive child support enforcement services from the division of child support?

- (1) The division of child support (DCS) provides payment processing and records maintenance services (called "payment services only") to parties to a court order who are not receiving a public assistance grant when:
 - (a) A Washington superior court order, tribal court order, administrative order, or wage assignment order under chapter

26.18 RCW directs payments through DCS or through the Washington state support registry (WSSR);

(b) The custodial parent (CP) of a dependent child or a noncustodial parent (NCP) requests payment services only, provided that:

(i) An NCP's request for payment services only may not cause a reduction of service from the level of service provided under section (2) of this section; and

(ii) The support obligation is set by a Washington state superior court order, tribal court order, administrative order or wage assignment order, directing payment to DCS or to WSSR.

(2) DCS provides full support enforcement services under Title IV-D of the social security act to custodial parents or noncustodial parents who are not receiving a public assistance grant when:

(a) The custodial parent or former physical custodian of a child requests support enforcement services;

(b) A NCP submits a support order for inclusion in or a support payment to the WSSR, together with an application for support enforcement services;

(c) A public assistance recipient stops receiving a cash grant under the temporary assistance for needy families program;

(d) The department provides Medicaid-only benefits to a CP on behalf of a dependent child, unless the recipient of the Medicaid-only benefits declines support enforcement services not related to paternity establishment, medical support establishment or medical support enforcement; or

(e) A man requests paternity establishment services alleging he is the father of a dependent child.

(3) DCS provides payment processing, records maintenance, paternity establishment, medical support establishment, and medical support enforcement services when a recipient of Medicaid-only benefits declines support enforcement services in writing.

NEW SECTION

WAC 388-14A-2005 When does an application for public assistance automatically become an application for support enforcement services? (1) When a custodial parent (CP) or physical custodian (also called the CP) applies for or receives cash assistance on behalf of a minor child, the family authorizes the division of child support (DCS) to provide support enforcement services to the family.

(2) These services continue until the support enforcement case is closed under WAC 388-14A-2080.

(3) The CP's public assistance application is an assignment of support rights.

(4) WAC 388-14A-2036 describes the assignment of support rights.

(5) If the community services office grants the CP good cause not to cooperate under WAC 388-422-0020, DCS does not provide services. See WAC 388-14A-2065.

NEW SECTION

WAC 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?

(1) If you are not receiving public assistance, you can apply for support enforcement services. Your case is called a non-assistance case. A nonassistance case receives the same level of services as a case that was opened because of the payment of public assistance.

(2) Generally, the person applying for nonassistance support enforcement services is the custodial parent or former custodial parent of a child. However, the noncustodial parent may apply for services as well, as provided in WAC 388-14A-2000 (2)(b) and (e).

(3) A person wishing to apply for nonassistance support enforcement services must submit a written application for support enforcement services except as provided in WAC 388-14A-2000 (2)(c); and

(a) Have or have had physical custody of the child for whom support is sought, or for whom a support debt has accrued, or be the person with whom the child resided the majority of the time for which support is sought; or

(b) Be the noncustodial parent.

(4) The applicant must:

(a) Give consent for the division of child support (DCS) to take an assignment of earnings from the noncustodial parent (NCP) if the parents are still married;

(b) Agree to send to DCS any support payments received directly from the NCP within eight days of receipt;

(c) Agree to direct a payor or forwarding agent to make payments to the Washington state support registry (WSSR);

(d) Agree not to hire an attorney or collection agency, or apply to any other state's IV-D agency to collect the same support obligation or support debt, without notifying DCS;

(e) Complete, sign, date and submit to DCS the application form and any other required documents;

(f) Supply copies of divorce and dissolution decrees, support orders and modification orders, and any related documents affecting a support obligation;

(g) Provide a statement of the amount of support debt owed by the NCP; and

(h) Include or attach a list, by date, of the support payments received from the NCP during the time period for which the CP seeks support.

(5) If someone other than the CP has legal custody of the child under a court order, the CP must affirm that:

(a) The CP has not wrongfully deprived the legal custodian of custody; and

(b) The person with legal custody has not been excused from making support payments by a court or administrative tribunal.

NEW SECTION

WAC 388-14A-2015 Does DCS accept an application from someone who is not a resident of Washington state?

(1) If you are not a resident of the state of Washington but you are applying for services, you must swear or affirm that there is not an open IV-D case in another state.

(2) The division of child support (DCS) may decline the application for nonassistance support enforcement services if:

- (a) DCS already has an open case for you which was opened at the request of another state; or
- (b) Neither the custodial parent nor the noncustodial parent reside, work, or own any assets in the state of Washington.

NEW SECTION

WAC 388-14A-2020 Can the division of child support deny my application for support enforcement services? (1) The division of child support (DCS) may deny an application which is incomplete, contains unclear or inconsistent statements, is not supported by necessary documents, or requests services DCS cannot or does not provide.

(2) DCS may deny an application from a non-resident as provided in WAC 388-14A-2015(2).

(3) When DCS denies an application, DCS sends the applicant a written notice of denial by regular mail. The notice advises the applicant:

- (a) Of the reasons for the denial; and
- (b) That the applicant may request an administrative hearing to contest the denial.

NEW SECTION

WAC 388-14A-2025 What services does the division of child support provide for a nonassistance support enforcement case? (1) The division of child support (DCS) provides full support enforcement services for every IV-D case.

(2) Some cases do not receive full support enforcement services. Nonassistance cases where DCS provides payment processing services are called payment services only (PSO) cases.

(3) In a PSO case, DCS provides only records maintenance and payment processing services if the payee under a support order does not submit an application for support enforcement services and the:

- (a) Order directs support payments to DCS or to the Washington state support registry (WSSR); and
- (b) The clerk of the court submitted the order under RCW 26.23.050.

(4) DCS continues to provide services without an application after a:

- (a) Public assistance recipient stops receiving cash assistance; or
- (b) Recipient of Medicaid-only benefits becomes ineligible for Medicaid-only benefits, unless the recipient declines support enforcement services or requests additional services.

(5) If you receive services as a former recipient of assistance, as described in subsection (4), you must cooperate with DCS in the same way as when you received a grant.

NEW SECTION

WAC 388-14A-2030 Do I assign my rights to support when I apply for child support enforcement services? (1) A custodial parent applying for or receiving cash assistance on behalf of a minor child assigns the family's rights to support as provided in WAC 388-14A-2035, below.

(2) A person applying for nonassistance support enforcement services does not assign support rights, but agrees to cooperate with the division of child support as provided in WAC 388-14A-2010(3).

NEW SECTION

WAC 388-14A-2035 Do I assign my rights to support when I receive public assistance? (1) When you receive public assistance you assign your rights to support to the state. This section applies to all applicants and recipients of cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

(2) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in subsection (3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(3) Amounts assigned under this section may not exceed the lesser of the total amount of assistance paid to the family or the total amount of the assigned support obligation.

NEW SECTION

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(2) While your family receives assistance, all support collected is retained by the state to reimburse the total amount of assistance which has been paid to your family.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assign to the state all rights to support which accrued before the application date and which will accrue prior to the date your family terminates from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

- (i) You permanently assign to the state all rights to support which accrue while your family receives assistance; and
- (ii) You temporarily assign to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminates from assistance, whichever date is later. After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.

(c) For assistance applications dated on or after October 1, 2000:

- (i) You permanently assign to the state all rights to support which accrue while the family receives assistance; and
- (ii) You temporarily assign to the state all rights to support which accrued before the application date, until the date your family terminates from assistance. After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.

NEW SECTION

WAC 388-14A-2037 What are permanently assigned arrears? Permanently assigned arrears accrue only under the following conditions:

- (1) For those periods prior to the family receiving assistance, for assistance applications dated on or before September 30, 1997; and
- (2) For those periods while a family receives assistance, for assistance applications dated at any time.

NEW SECTION

WAC 388-14A-2038 What are temporarily assigned arrears? Temporarily assigned arrears are:

- (1) Not permanently assigned to the state;
- (2) Collected and retained by the state up to the amount of unreimbursed assistance, if these arrears are collected by federal income tax refund offset at any time; and
- (3) Collected and kept by the state, up to the cumulative amount of unreimbursed assistance:
 - (a) Until October 1, 2000 or until the date the family terminates from assistance, whichever date is later; or
 - (b) Only while the family receives assistance, for assistance periods beginning October 1, 2000 or later.

NEW SECTION

WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support? (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate under WAC 388-422-0020. For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at issue, the custodial parent (CP) of a child who receives assistance must cooperate whether or not the parent receives assistance.

(2) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:

- (a) Identify and locate the responsible parent;
- (b) Establish the paternity of the child(ren) on assistance in the CP's care; and

(c) Establish or collect support payments or resources such as property due the CP or the child(ren).

(3) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW 74.20A.320. If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

NEW SECTION

WAC 388-14A-2041 What happens if I don't cooperate with DCS? (1) There may be penalties, called sanctions, for not cooperating with the division of child support (DCS). These sanctions and the noncooperation process are described in WAC 388-14A-2075. You may be sanctioned if:

- (a) You do not go to scheduled interviews and answer questions;
- (b) There is credible evidence showing that you could have given the information but did not;
- (c) You have been giving inconsistent or false information without a good reason; or
- (d) You refuse to sign or honor a repayment agreement under WAC 388-14A-2040(3).

(2) You must be given the opportunity to swear you do not have the information.

(3) You cannot be sanctioned because you provided information on a possible parent who was then excluded by genetic testing. In this event you must continue to cooperate in naming other possible parents and taking part in any resulting genetic testing.

(4) You may not be able to help DCS if you do not know, do not possess, or cannot reasonably obtain the requested information. To avoid a sanction, you must, under penalty of perjury, swear or attest to your lack of information in an interview held by DCS or its representative.

(5) If you fear that cooperation may cause harm to you or your children, you may claim good cause not to cooperate.

NEW SECTION

WAC 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children? (1) If a custodial parent (CP) receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP may be excused from the cooperation requirements. You can claim good cause not to cooperate under WAC 388-422-0020. Go to the community services office (CSO) to claim good cause.

(2) If a CP who is not receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP should tell the division of child support (DCS) that family violence is an issue in the case, so that DCS may take appropriate action.

NEW SECTION

WAC 388-14A-2050 Who decides if I have good cause not to cooperate? (1) The community services office (CSO) decides whether you have good cause not to cooperate with the division of child support (DCS).

(2) When you make a claim of good cause not to cooperate, DCS does not take any action on the case while the CSO is reviewing your good cause claim.

NEW SECTION

WAC 388-14A-2060 Are there different kinds of good cause for not cooperating with DCS? (1) For custodial parents receiving public assistance, there are two kinds of good cause granted by the community services office (CSO):

(a) When the CSO determines that support establishment or enforcement cannot proceed at all because of a risk of danger to the custodial parent (CP) or children, this is called good cause level A.

(b) When the CSO determines that support establishment or enforcement can proceed without input from the CP, but that good cause exists for the CP not to cooperate with DCS, this is called good cause level B.

(2) See WAC 388-422-0020 for how the CSO grants good cause.

NEW SECTION

WAC 388-14A-2065 Does the division of child support provide support enforcement services if the CSO decides I have "good cause level A"? If the community services office (CSO) grants you good cause level A:

(1) The division of child support (DCS) closes the case and does not take any action to establish or enforce support for the children covered by the good cause finding.

(2) If the noncustodial parent (NCP) applies for paternity establishment or support enforcement services, DCS denies the NCP's application for services.

NEW SECTION

WAC 388-14A-2070 Does the division of child support provide support enforcement services if the CSO determines I have "good cause level B"? If the community services office (CSO) grants you good cause level B, the division of child support provides support enforcement services without requiring the custodial parent (CP) to provide information or cooperate with DCS in any way.

NEW SECTION

WAC 388-14A-2075 What happens if the division of child support determines that I am not cooperating? (1) When the division of child support (DCS) or its representatives believe you are not cooperating as defined in WAC 388-14A-2040, DCS sends a notice to you and to the community service office (CSO) stating the noncooperation and explaining the following:

(a) How the noncooperation was determined, including what actions were required;

(b) What actions you must take to resume cooperation;

(c) That this notice was sent to the CSO;

(d) That you may contact the CSO immediately if you disagree with the notice, need help in order to cooperate, or believe the actions required are unreasonable; and

(e) That the CSO may sanction you by either reducing or terminating the grant.

(2) The CSO sends a notice of planned action to you as provided by WAC 388-245-1700 or any subsequent amendment.

(3) Either the notice of alleged noncooperation or the CSO's notice of planned action may serve as the basis for a sanction.

(4) If the noncooperation was due to missing an interview without reasonable excuse, you will be considered to be cooperating when you appear for a rescheduled interview and either provide information or attest to the lack of information. DCS or its representative must reschedule the interview within seven business days from the date you contact them to reschedule an interview.

(5) If the noncooperation was due to not taking a required action, cooperation resumes when you take that action.

(6) There is no hearing right for a notice of noncooperation, but you can request a hearing on the sanction imposed by the CSO.

NEW SECTION

WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed? Once the division of child support (DCS) starts providing support enforcement services under RCW 26.23.045 and chapter 74.20 RCW, the case must remain open, unless DCS determines that:

(1) There is no current support order, and the support debt owed by the noncustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;

(2) The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;

(3) The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:

(a) Institutionalized in a psychiatric facility;

(b) Incarcerated without possibility of parole; or

(c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.

(4) The applicant, agency or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;

(5) DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;

(6) DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;

(7) DCS is unable to contact the applicant, agency or recipient of services for at least sixty days;

(8) DCS documents failure to cooperate by the custodial parent (CP) or the initiating jurisdiction, and that cooperation is essential for the next step in enforcement;

(9) DCS cannot obtain a paternity order because:

(a) The putative father is dead;

(b) Genetic testing has excluded all putative fathers;

(c) The child is at least eighteen years old;

(d) DCS, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or

(e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.

(10) DCS, a court of competent jurisdiction or an administrative hearing determines that the recipient of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);

(11) DCS, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the CP;

(12) DCS has provided locate-only services in response to a request for state parent locator services (SPLS);

(13) The NCP is a citizen and resident of a foreign country, and:

(a) NCP has no assets which can be reached by DCS; and

(b) The country where NCP resides does not provide reciprocity in child support matters.

(14) The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or

(15) Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation.

NEW SECTION

WAC 388-14A-2085 Under what circumstances may DCS deny a request to close a support enforcement case?

(1) The division of child support (DCS) may deny a request to close a support enforcement case when:

(a) There is a current assignment of support or medical rights on behalf of the children in the case;

(b) There is accrued debt under a support order which has been assigned to the state;

(c) Support or medical rights on behalf of the children have previously been assigned to the state;

(d) The person who requests closure is not the recipient of support enforcement services; or

(e) A superior court order requires payments to the Washington state support registry (WSSR).

(2) If there is no current assignment of support or medical rights, DCS may close the portion of the case which is owed to the custodial parent (CP), but if there is accrued debt under a support order which has been assigned to the state, DCS keeps that portion of the case open.

(3) If a superior court order specifies that the noncustodial parent (NCP) must make payments to the WSSR, but the CP does not want support enforcement services, DCS keeps the case open as a payment services only (PSO) case, which means that:

(a) DCS provides payment processing and records maintenance, and

(b) DCS does not provide enforcement services.

NEW SECTION

WAC 388-14A-2090 Who is mailed notice of DCS' intent to close a case? (1) Sixty days before closing a case the division of child support (DCS) sends a notice of intent to close, advising the parties why DCS is closing the case.

(a) DCS does not send a notice when closing a case under WAC 388-14A-2080 (11) or (12).

(b) DCS does not provide sixty days' prior notice when closing a case under WAC 388-14A-2080(4).

(2) DCS mails a notice by regular mail to the last known address of the custodial parent (CP) and the noncustodial parent.

(3) In an interstate case, DCS mails the notice to the CP by regular mail in care of the other state's child support agency.

(4) If DCS is closing an interstate case because of noncooperation by the initiating jurisdiction, DCS also mails the notice to the other state's child support agency.

NEW SECTION

WAC 388-14A-2095 What if I don't agree with the case closure notice? (1) Only the person who applied for support enforcement services, also known as the recipient of services, may request a hearing to challenge closure of a case.

(2) If the recipient of services requests a hearing, the other party may participate in the hearing.

(3) The closure of a child support case does not stop the custodial parent or noncustodial parent from filing an application for support enforcement services in the future, but the reason for closure may affect whether the division of child support will open a new case.

NEW SECTION

WAC 388-14A-2097 What happens to payments that come in after a case is closed? After support enforcement services are terminated, DCS returns support money to the noncustodial parent except if the case remains open as a payment services only (PSO) case as described in WAC 388-14A-2000(1).

NEW SECTION

WAC 388-14A-2099 When does DCS file a satisfaction of judgment with the superior court? (1) When the division of child support (DCS) determines that a support obligation, established by order of a superior court of this state, has been satisfied or is no longer legally enforceable, DCS sends a notice of its intent to file a satisfaction of judgment.

PERMANENT

ment to the last known address of the payee under the order and to the noncustodial parent (NCP).

(2) DCS includes the following provisions in the notice:

(a) A statement of the facts DCS relied on in making the determination; and

(b) A statement that the payee has twenty days from the date of the notice, to:

(i) Object and request a conference board under WAC 388-14A-6400; or

(ii) Initiate an action to obtain a judgment from the court that entered the order.

(3) If the conference board or the court determines the support obligation or a support debt still exists, DCS withdraws the notice and makes reasonable efforts to enforce and collect the remaining support debt. If the conference board or court determines that a debt does not exist, DCS files a satisfaction of judgment with the clerk of superior court in which the order was entered.

(4) DCS determines that a support obligation is satisfied or is no longer legally enforceable when the obligation to pay current and future support terminates under the order, and:

(a) The NCP has made all payments owed under the support order;

(b) The support debt is no longer enforceable due to the operation of the statute of limitations;

(c) DCS determines the NCP has a valid defense to payment of the debt under Washington law; or

(d) Under RCW 74.20A.220, DCS determines the debt is uncollectible, grants a total or partial charge-off, or accepts an offer to compromise a disputed debt.

NEW SECTION

WAC 388-14A-2105 Does the division of child support keep information about me confidential? (1) Under RCW 26.23.120, all information and records, concerning persons who owe a support obligation or for whom the division of child support (DCS) provides support enforcement services, are private and confidential. DCS discloses information and records only as follows:

(a) DCS discloses information and records only to:

(i) A person or entity listed and for the specific purpose or purposes stated in federal law;

(ii) The person who is the subject of the information or records, unless the information or records are exempt under RCW 42.17.310;

(iii) Local, state, and federal government agencies for support enforcement and related purposes;

(iv) A party to a judicial proceeding or a hearing under chapter 34.05 RCW, if the administrative law judge (ALJ) enters an order to disclose. The ALJ must base the order on a written finding that the need for the information outweighs any reason for maintaining privacy and confidentiality;

(v) A party under contract, including a federally recognized Indian tribe, if disclosure will allow the party to assist in the program's management or operation;

(vi) A person or entity, including a federally recognized Indian tribe, when necessary to the administration of the program or the performance of functions and duties in state and

federal law. DCS may publish information about a responsible parent for locate and enforcement purposes;

(vii) A person, representative, or entity if the person who is the subject of the information and records consents, in writing, to disclosure;

(viii) The office of administrative hearings or the office of appeals for administration of the hearing process under chapter 34.05 RCW. The ALJ or review judge must not include the address of either party in an administrative order, or disclose a party's address to the other party. The review judge and the ALJ must:

(A) State in support orders that the address is known by the Washington state support registry; and

(B) Inform the parties they may obtain the address by submitting a request for disclosure to DCS under this section.

(b) The last known address of, or employment information about, a party to a court or administrative order for, or a proceeding involving, child support may be given to another party to the order. The party receiving the information may only use the information to establish, enforce, or modify a support order. Disclosure of address information is subject to the provisions of WAC 388-14A-2110;

(c) The last known address of natural or adoptive children may be given to a parent having a court order granting that parent visitation rights with, legal custody of or residential time with the parent's natural or adoptive children. The parent may only use this information to enforce the terms of the court order. Disclosure of this information is subject to the provisions of WAC 388-14A-2110;

(d) DCS may disclose the Social Security Number of a dependent child to the noncustodial parent (NCP) to enable the NCP to claim the dependency exemption as authorized by the Internal Revenue Service;

(e) Financial records of an individual obtained from a financial institution may be disclosed only for the purpose of, and to the extent necessary, to establish, modify, or enforce a child support obligation of that individual.

(2) Except as provided elsewhere in chapter 388-14A WAC, chapter 388-01 WAC governs the process of requesting and disclosing information and records.

(3) DCS must take timely action on requests for disclosure. DCS must respond in writing within five working days of receipt of the request.

(4) If a child is receiving foster care services, you must contact your local community services office for disclosure of the child's address information.

(5) The rules of confidentiality and penalties for misuse of information and reports that apply to a IV-D agency employee, also apply to a person who receives information under this section.

(6) Nothing in these rules:

(a) Prevents DCS from disclosing information and records when such disclosure is necessary to the performance of its duties and functions as provided by state and federal law;

(b) Requires DCS to disclose information and records obtained from a confidential source.

NEW SECTION

WAC 388-14A-2110 How do I find out the address of my children, or of the other parent of my children? (1) A request for disclosure of a parent or child's address must be submitted in writing or in person, with satisfactory evidence of identity, at any office of the division of child support (DCS);

(2) If the request is made by your attorney, DCS may waive the provisions regarding submission in person with satisfactory evidence of identity;

(3) If you are unable to appear at a DCS office in person, DCS may waive the provision requiring submission in person if you submit a notarized request for disclosure;

(4) The person seeking disclosure must attach the following to a request for disclosure of an address:

(a) A copy of the superior court order on which the request is based. DCS waives this provision if DCS has a true copy of the order on file;

(b) A sworn statement by the individual that the order has not been modified; and

(c) A statement explaining the purpose of the request and how the requestor intends to use the information.

NEW SECTION

WAC 388-14A-2115 What are the requirements for making an address disclosure request? (1) The following provisions apply to a request for disclosure of the address of a party to the order or a dependent child under chapter 388-14A WAC. The division of child support (DCS) does not release the address if:

(a) The department has determined, under WAC 388-422-0021, that the custodial parent (CP) has good cause for refusing to cooperate;

(b) The order, on which the request is based, restricts or limits the address requesting party's right to contact or visit the other party or the child by imposing conditions to protect the party or the child from harm;

(c) An order has been entered finding that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of the information; or

(d) DCS has information which gives DCS reason to believe that release of the address may result in physical or emotional harm to the other party or to the children.

(2) Whenever DCS denies a request for disclosure under subsection (1) of this section, DCS notifies the nonrequesting party that disclosure of the address was requested and was denied.

(3) Prior to disclosing the address of a party or a child, DCS mails a notice to the last known address of the party whose address is sought, except as provided under subsection (4) of this section. The notice advises the party that:

(a) A request for disclosure has been made;

(b) DCS will disclose the address after thirty days from the date of the notice, unless:

(i) DCS receives a copy of an order which:

(A) Enjoins disclosure of the address;

(B) Restricts the address requesting party's right to contact or visit the other party or a child by imposing conditions

to protect the party or the child from harm, including, but not limited to, temporary orders for protection under chapter 26.50 RCW; or

(C) States that the health, safety, or liberty of a party or child would be unreasonably put at risk by disclosure of address or other identifying information.

(ii) The party requests an administrative hearing which ultimately results in a decision that release of the address is reasonably anticipated to result in harm to a party or a dependent child;

(iii) In any hearing under this section, either party may participate in the proceeding by telephone, from any prearranged location. The administrative law judge (ALJ) must not disclose the location and phone number.

(4) DCS is not required to mail a notice prior to disclosure if:

(a) The requesting party presents a facially valid warrant or a judicial finding that:

(i) The other party will likely flee to avoid service of process; or

(ii) The other party will likely flee and that:

(A) A court of competent jurisdiction of this state or another state has entered an order giving legal and physical custody of a child whose address is requested to the requesting party; and

(B) The custody order has not been altered, changed, modified, superseded, or dismissed; and

(C) A child was taken or enticed from the address requesting party's physical custody without that party's consent; and

(D) The address requesting party has not subsequently assented to being deprived of physical custody of the children; and

(E) The address requesting party is making reasonable efforts to regain physical custody of the child.

(b) The records of DCS contain a written authorization for address release under WAC 388-14A-2125.

NEW SECTION

WAC 388-14A-2120 What happens at a hearing on an objection to disclosure of my address? (1) In any administrative hearing requested under WAC 388-14A-2115 (3)(b)(ii):

(a) The parent requesting address disclosure and the other party to the order or action are independent parties in the hearing;

(b) Either party may participate by telephone, provided the party:

(i) States in the request for hearing that participation will be by telephone; or

(ii) Advises the office of administrative hearings (OAH) at least five calendar days prior to the scheduled hearing that participation will be by telephone; and

(iii) Provides OAH with a telephone number where the party can be reached for the hearing, at least five calendar days before the scheduled hearing.

(c) The administrative law judge (ALJ) must not disclose the location or phone number from which the party is appearing;

(d) The initial burden of proof is on the party requesting address disclosure, to show that the address request is for a purpose for which chapter 388-14A WAC specifically permits disclosure;

(e) If the party requesting address disclosure:

(i) Fails to meet this burden, the ALJ enters an order denying the address request;

(ii) Establishes that the address was requested for a purpose for which disclosure is permitted, the other party must then show that it is reasonable to anticipate that physical or emotional harm to the party or a child will result from release of the address. The party objecting to address release:

(A) May show reasonable fear of harm by any form of evidence admissible under chapter 34.05 RCW; and

(B) Is not required to provide supporting evidence required by WAC 388-422-0020, to establish a reasonable fear of harm.

(f) If either party fails to appear, the ALJ enters an order on default:

(i) If the party objecting to disclosure fails to appear, the order requires DCS to release the address unless the record contains documentary evidence which provides the basis for a finding that physical or emotional harm will likely result from release of the address;

(ii) If the address requesting party fails to appear, the default order denies the request for address information.

(g) OAH arranges the attendance of the parties by telephone or other procedure showing due regard for the safety of the parties and the children;

(h) DCS issues a final response to the disclosure request within five working days of the exhaustion of administrative remedies.

(2) If the custodial parent (CP) requests a hearing under this section in response to a department initiated review of the support order for modification, both parties to the support order are independent parties in the address disclosure hearing.

NEW SECTION

WAC 388-14A-2125 How do I give DCS permission to give my address to the other parent without going through the notice procedures of WAC 388-14A-2115? (1) Any party to a support order may authorize the division of child support (DCS) to release his or her address to the other party with no prior notice.

(2) An authorization to release an address must be:

(a) In writing;

(b) Notarized; and

(c) Effective for any period designated by the party up to three years or until DCS is notified in writing that the party has revoked the authorization, whichever is sooner.

NEW SECTION

WAC 388-14A-2150 How much does it cost to get copies of DCS records? (1) WAC 388-01-030 authorizes the division of child support (DCS) to charge copying and postage costs for responses to public disclosure.

(2) DCS charges fifteen cents per page for copies.

(3) DCS may waive copy fees in appropriate circumstances.

NEW SECTION

WAC 388-14A-2155 Can I appeal a denial of public disclosure by the division of child support? (1) If the division of child support (DCS) denies a request for public disclosure, you may file an appeal with DCS Public Disclosure Appeals, P.O. Box 9162, Olympia WA 98507-9162.

(2) If DCS denies your appeal, you may pursue the other options listed in WAC 388-01-080.

NEW SECTION

WAC 388-14A-2160 If my information is confidential, can DCS report me to a credit bureau? (1) When a consumer reporting agency, as defined by 45 C.F.R. 303.105(a), requests information regarding the amount of overdue support owed by a noncustodial parent (NCP), the division of child support (DCS) provides this information if the amount of the support debt exceeds one thousand dollars.

(2) Before releasing information to the consumer reporting agency, DCS sends a written notice concerning the proposed release of the information to the NCP's last known address.

(3) The notice gives the NCP ten days from the date of the notice to request a conference board to contest the accuracy of the information. If the NCP requests a conference board, DCS does not release the information until a conference board decision has been issued.

PART C - HOW THE DIVISION OF CHILD SUPPORT DECIDES HOW MUCH CHILD SUPPORT SOMEONE SHOULD PAY

NEW SECTION

WAC 388-14A-3275 The division of child support may amend an administrative notice at any time before a final administrative order is entered. (1) The division of child support (DCS) may orally amend a notice issued under this chapter at the hearing to conform to the evidence. When DCS amends a notice at the hearing:

(a) The administrative law judge (ALJ) may grant a continuance when necessary to give the parties additional time to present evidence and argument as to the amendment; and

(b) DCS must put the terms of the amendment in writing and provide a copy, in person or by regular mail to the last known address of the parties, and to the ALJ within a reasonable time after amending the notice.

(2) The amended notice does not generate a new hearing right.

(3) When DCS has obtained reliable information that the income basis of the notice is inaccurate, DCS amends a notice issued under WAC 388-14A-3115, 388-14A-3120, or 388-14A-3125 prior to seeking a default order for failure to

appear. An amendment under this subsection must be made according to the terms of subsection (1) above.

(4) Subsection (3) of this section does not apply:

(a) To cases in which no one has requested a hearing; or

(b) After the ALJ has closed the hearing record.

(5) If DCS has amended the notice under this section and either the noncustodial parent or the custodial parent fail to appear at a rescheduled hearing date, the ALJ must enter a default order on the terms of the amended notice.

NEW SECTION

WAC 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else? (1) If a support order requires the noncustodial parent (NCP) to pay support to anywhere other than the Washington state support registry (WSSR), the division of child support (DCS) may serve a notice on the NCP telling the NCP to make all future payments to the WSSR.

(2) DCS may serve a notice of support debt on a noncustodial parent (NCP) as provided in RCW 74.20A.040. See WAC 388-14A-3305.

(3) DCS may serve a notice of support owed on an NCP as provided in RCW 26.23.110. See WAC 388-14A-3310.

(4) When DCS serves a notice of support debt or a notice of support owed, DCS sends a notice to the payee under the order. See WAC 388-14A-3315.

NEW SECTION

WAC 388-14A-3304 The division of child support serves a notice of support debt when it is enforcing a foreign court order or administrative order for support. (1) The division of child support (DCS) may serve a notice of support debt on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a foreign court order or foreign administrative order for support.

(2) DCS serves a notice of support debt like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt except as provided in WAC 388-14A-3375.

(5) A notice of support debt becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request; or

(b) Obtains a stay from the superior court.

(6) A notice of support debt served in another state becomes final according to WAC 388-14A-7200.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3320 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection (9) of this section, DCS must:

(a) Stay enforcement of the notice of support debt except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection (8) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt must fully and fairly inform the NCP of the rights and responsibilities in this section.

NEW SECTION

WAC 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order. (1) The division of child support (DCS) may serve a notice of support owed on a noncustodial parent (NCP) under RCW 26.23.110 to establish a fixed dollar amount of monthly support and accrued support debt:

(a) If a support obligation under a court order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of the court order.

(2) The notice of support owed includes day care costs and medical support if the court order provides for such costs.

(3) DCS serves a notice of support owed on an NCP like a summons in a civil action or by certified mail, return receipt requested.

(4) Following service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(5) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support;

(b) Any other information not contained in the order that was used to calculate monthly support and the support debt; and

(c) Notice of the right to request a review of the order once yearly or on the date, if any, given in the order for an annual review.

(6) The NCP must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(7) A notice of support owed becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under subsection (9) of this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

(8) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(9) A hearing on a notice of support owed is only for interpreting the court order for support and any modifying orders and not for changing or deferring the support provisions of the order. The hearing is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the court order to begin or modify the support obligation was met.

(10) If the NCP requested the hearing, he or she has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

(11) A notice of support owed or an initial or review decision issued under subsection (9) of this section must inform the parties of the right to request a review of the order once yearly or on the date, if any, given in the order for an annual review.

(12) If an NCP requests a late hearing, the NCP must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.

(13) A notice of support owed fully and fairly informs the NCP of the rights and responsibilities in this section.

(14) For the purposes of this section, WAC 388-14A-3315 and WAC 388-14A-3320, the term "payee" includes "physical custodian" or "custodial parent."

NEW SECTION

WAC 388-14A-3315 When DCS serves a notice of support debt or notice of support owed, we notify the custodial parent and/or the payee under the order. (1) The division of child support (DCS) sends a notice to a payee under a court order or foreign administrative order for support when DCS receives proof of service on the noncustodial parent (NCP) of:

(a) A notice of support owed under WAC 388-14A-3305; or

(b) A notice of support debt under WAC 388-14A-3310.

(2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the NCP.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC 388-14A-3105 or a notice of support debt under WAC 388-14A-3310 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(5) The effective date of a hearing request is the date DCS receives the request.

NEW SECTION

WAC 388-14A-3320 What happens at a hearing on a notice of support debt or notice of support owed? (1) A hearing on a notice of support debt or a notice of support owed is for the limited purpose of determining the support debt through the date of the hearing under the order.

(2) The office of administrative hearings (OAH) sends a notice of hearing on a notice of support debt to the noncustodial parent (NCP), to the division of child support (DCS), and to the payee. The NCP and the payee each may participate in the hearing as an independent party.

(3) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an initial decision based on the evidence presented or continues the hearing.

(a) An initial decision issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the payee appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

(4) If the payee requests a late hearing on a notice of support owed or a notice of support debt, the payee must show good cause for filing the late hearing request.

NEW SECTION

WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish? (1) When no public assistance is being paid to the custodial parent (CP) and the children, the division of child support (DCS) starts the claim for support as of the date DCS receives the application for nonassistance services.

(2) When another state or an Indian tribe is paying public assistance to the CP and children, DCS starts the claim for support as of the date specified by the other state or tribe.

(3) For the notice and finding of parental responsibility, WAC 388-14A-3120(9) limits the back support obligation.

(4) When the state of Washington is paying public assistance to the CP and/or the children, the following rules apply:

(a) For support obligations owed for months on or after September 1, 1979, DCS must exercise reasonable efforts to locate the noncustodial parent (NCP);

(b) DCS serves a notice and finding of financial or parental responsibility within sixty days of the date the state assumes responsibility for the support of a dependent child on whose behalf support is sought;

(c) If DCS does not serve the notice within sixty days, DCS loses the right to reimbursement of public assistance payments made after the sixtieth day and before the notice is served;

(d) DCS does not lose the right to reimbursement of public assistance payments for any period of time:

(i) During which DCS exercised reasonable efforts to locate the NCP; or

(ii) For sixty days after the date on which DCS received an acknowledgment of paternity for the child for whom the state has assumed responsibility, and paternity has not been established.

(5) The limitation in subsection (4) does not apply to:

(a) Cases in which the physical custodian is claiming good cause for not cooperating with the department; and

(b) Cases where parentage is an issue and:

(i) Has not been established by superior court order; or

(ii) Is not the subject of a presumption under RCW 26.26.040 (1)(a) or (e).

(6) DCS considers a prorated share of each monthly public assistance payment as paid on each day of the month.

NEW SECTION

WAC 388-14A-3370 What legal defenses are available to a noncustodial parent when DCS seeks to enforce a support obligation? (1) A noncustodial parent (NCP) who objects to a notice and finding of financial, parental, or medical responsibility has the burden of establishing defenses to liability. Defenses include, but are not limited to:

(a) Proof of payment;

(b) The existence of a superior court or administrative order that sets the NCP's support obligation or specifically relieves the NCP of a support obligation for the child(ren) named in the notice;

(c) The party is not a responsible parent as defined by RCW 74.20A.020(7);

(d) The amount requested in the notice is inconsistent with the Washington state child support schedule, Chapter 26.19 RCW;

(e) Equitable estoppel, subject to WAC 388-14A-6500; or

(f) Any other matter constituting an avoidance or affirmative defense.

(2) A dependent child's or a custodial parent's ineligibility to receive public assistance is not a defense to the assessment of a support obligation.

(3) An NCP may be excused from providing support for a dependent child receiving public assistance under chapter 74.12 RCW if the NCP is the legal custodian of the child and has been wrongfully deprived of physical custody of the child. The NCP may be excused only for any period during which the NCP was wrongfully deprived of custody. The NCP must establish that:

(a) A court of competent jurisdiction of any state has entered an order giving legal and physical custody of the child to the NCP;

(b) The custody order has not been modified, superseded, or dismissed;

(c) The child was taken or enticed from the NCP's physical custody and the NCP has not subsequently assented to deprivation. Proof of enticement requires more than a showing that the child is allowed to live without certain restrictions the NCP would impose; and

(d) Within a reasonable time after deprivation, the NCP exerted and continues to exert reasonable efforts to regain physical custody of the child.

NEW SECTION

WAC 388-14A-3375 What kinds of credits does the division of child support give when establishing or enforcing an administrative support order? (1) After the noncustodial parent (NCP) has been advised of the requirement to make payments to the Washington state support registry (WSSR) by service of a support establishment notice, or by entry of a support order requiring payments to WSSR, the NCP may obtain credit against the support obligation only:

(a) By cash, check, electronic funds transfer, or money order payments through WSSR or payment of health insurance premiums; or

(b) As provided under subsections (3) and (6) of this section.

(2) The division of child support (DCS) allows credit against a NCP's support debt for family needs provided directly to a custodial parent (CP), a child, or provided through a vendor or third party only when the:

(a) Items are provided before service of the notice on the NCP;

(b) NCP proves the items provided were intended to satisfy the NCP's support obligation; and

(c) Items are food, clothing, shelter, or medical attendance directly related to the care, support, and maintenance of a child.

(3) After service of the notice, an NCP may obtain credit against the parent's current support obligation only when the NCP proves that the payments were made and:

(a) DCS determines there:

(i) Is no prejudice to:

(A) The CP, a child, or other person; or

(B) An agency entitled to receive the support payments.

(ii) Are special circumstances of an equitable nature justifying credit for payments.

(b) A court of competent jurisdiction determines credit should be granted after a hearing where all interested parties were given an opportunity to be heard.

(4) DCS does not allow credit for shelter payments made before service of the notice in an amount more than the greater of the:

(a) Shelter allocation in the public assistance standards for the period when payments were made; or

(b) One-half of the actual shelter payment.

(5) DCS does not allow credit for shelter payments made after service of the notice.

(6) DCS applies credits for dependent benefits allowed under RCW 26.19.190 as required by WAC 388-14A-4200.

NEW SECTION

WAC 388-14A-3400 Are there limitations on how much of my income is available for child support? (1) There are two kinds of limitations based on your income when we set your child support obligation:

(a) The monthly support amount cannot exceed forty-five percent of your monthly net income, unless there are special circumstances as provided in chapter 26.19 RCW; and

(b) The monthly support amount cannot reduce your net monthly income below the one person need standard (WAC 388-478-0015), unless there are special circumstances as provided in chapter 26.19 RCW.

(2) RCW 74.20A.090 limits the amount that can be withheld from your wages for child support to fifty percent of your net monthly earnings.

NEW SECTION

WAC 388-14A-3500 A person must show good cause for filing a late request for hearing. (1) A person with a right to a hearing under this chapter may file a request for a late hearing after the period for requesting a timely hearing has passed. The effective date of a hearing request is the date the division of child support (DCS) receives the request.

(2) Filing a request for a late hearing does not stop:

(a) Collection and enforcement under chapters 26.18, 26.23, or 74.20A RCW;

(b) The effect of any qualified domestic relations order;

(c) Certification of the support debt to the Internal Revenue Service for an income tax refund offset; or

(d) Distribution upon receipt of moneys collected.

(3)(a) A person who files a late hearing request must show good cause for not filing a timely hearing request unless good cause is not required by the rule governing the notice that is objected to.

(b) If the administrative law judge (ALJ) finds good cause for filing a late hearing request, the ALJ:

(i) Issues a decision on the merits of the objection to the notice; and

(ii) Considers whether to order a stay of collection activities until such time as an initial decision or a temporary order under WAC 388-14A-3850(ff) is issued. Upon request, the ALJ must, based on the evidence presented at hearing, issue an order under WAC 388-14A-3850(ff), setting or denying temporary support pending the initial decision.

(c) If the ALJ does not find good cause for filing a late hearing request, the ALJ may issue a decision on modification of the current and future support obligation, if applicable, without a showing of a change of circumstances.

(4) If the ALJ finds good cause for filing a late hearing request, the division of child support (DCS) does not refund any excess amounts collected before the finding of good cause. The ALJ may issue a decision which gives credit against future support in the amount of the excess collections, so long as this does not:

(a) Create hardship to the children for whom support is sought; and

(b) Offset an overpayment of the obligation to the custodial parent (CP) against a debt owed to the department; or

(c) Offset an overpayment of the obligation to the department against a debt owed to the CP.

NEW SECTION

WAC 388-14A-3600 The parties may resolve any child support case by entering a consent order or an agreed settlement. (1) The division of child support (DCS) may enter a consent order or agreed settlement to finalize any dispute in which a party requests a hearing. DCS attempts to settle matters through agreement when possible.

(a) An agreed settlement is signed only by the parties (DCS, the custodial parent and the noncustodial parent).

(b) A consent order must be signed by the parties and by an administrative law judge (ALJ). The ALJ approves a consent order without requiring testimony or a hearing, unless entry of the order would be unlawful.

(2) An agreed settlement or consent order is final and enforceable on:

(a) The date the last party signs the agreed settlement, if all parties signed the agreed settlement;

(b) The date the ALJ signs the consent order; or

(c) If the ALJ defaults one of the parties to the proceeding, the latest of the following dates:

(i) The date the ALJ signed the consent order;

(ii) The date the last party signed the agreed settlement;

or

(iii) The date the order of default is final.

(3) A party to a consent order or an agreed settlement may:

(a) Not petition for review of the settlement or order under WAC 388-02-0560;

(b) Petition for modification under WAC 388-14A-3925; and

(c) Petition to vacate the settlement or consent order under WAC 388-14A-3700. However, the ALJ may only vacate a settlement or consent order after making a finding of fraud by a party, or on any other basis that would result in manifest injustice.

(4) If a hearing has been scheduled, DCS files a copy of the agreed settlement or consent order with the office of administrative hearings (OAH), and OAH issues an order dismissing the hearing. There are no hearing rights on the order dismissing the hearing.

NEW SECTION

WAC 388-14A-3700 When is it appropriate to vacate a default order? (1) If a party fails to appear at a hearing, the administrative law judge (ALJ) must, upon a showing of valid service, enter an initial decision and default order or proceed in the absence of the defaulting party as provided in WAC 388-14A-3131, 388-14A-3132, or 388-14A-3140.

(2) The ALJ must state in the decision that the:

(a) Support debt and the current support obligation stated in the notice are assessed, determined, and subject to collection action;

(b) Health insurance provisions of the notice are subject to direct enforcement action; and,

(c) Relief sought in the notice served by the division of child support is granted.

(3) Decisions and orders on default become final twenty-one days from the date of mailing under WAC 388-08-464 or chapter 388-02 WAC.

(4) Any party against whom the ALJ has entered an initial decision and order on default may petition the secretary or the secretary's designee for vacation of the default order, subject to the provisions, including time limits, of civil rule 60.

(5) DCS must:

(a) Request that the office of administrative hearings (OAH) schedule a hearing to determine whether or not the petitioner has good cause for vacating the default order; and

(b) Give any other parties to the hearing notice of the time and date of the hearing. OAH must send the notice to the last known address of the party.

(6) If, in a hearing under this section, the ALJ finds that the petitioner has good cause for vacating the default order, the ALJ:

(a) Must conduct a hearing on the merits of the petitioner's objection to the notice that was the basis for the hearing at which the petitioner failed to appear; and

(b) May stay any further collection to the extent provided for under the regulations authorizing the notice the parent originally objected to.

(7) The ALJ must apply civil rule 60 to determine whether the petitioner has good cause. Before vacating an order of default at the request of the NCP or CP, the ALJ must consider the prejudice to the non-DCS party that did appear for hearing.

NEW SECTION

WAC 388-14A-3800 Once a support order is entered, can it be changed? (1) Only the court that entered the order can modify a support order entered by a superior court or tribal court. If the order specifically states how the amount of support may be adjusted, the division of child support (DCS) may bring an administrative action under RCW 26.23.110 and WAC 388-14A-3310.

(2) As provided in WAC 388-14A-3925, DCS may review any support order to determine whether DCS should petition to modify the support provisions of the order.

(3) Either DCS, the CP or the NCP may petition to modify an administrative order under WAC 388-14A-3925.

(4) Under appropriate circumstances, an administrative support order may be vacated. See WAC 388-14A-3700.

NEW SECTION

WAC 388-14A-3810 Once a child support order is entered how long does the support obligation last? (1) A noncustodial parent's obligation to pay support under an administrative order continues until:

(a) A superior or tribal court order supersedes the order;

(b) The order is modified under WAC 388-14A-3925;

(c) The child reaches eighteen years of age;

(d) The child is emancipated;

(e) The child marries;

(f) The child becomes a member of the United States armed forces;

(g) The child or the responsible parent die;

(h) A responsible stepparent's marriage is dissolved; or

(i) A superior court order terminates the responsible parent's liability as provided under RCW 26.16.205.

(2) As an exception to the above rule, a noncustodial parent's obligation to pay support under an administrative order continues and/or may be established for a dependent child who is:

(a) Under nineteen years of age; and

(b) A full-time student reasonably expected to complete a program of secondary school or the equivalent level of vocational or technical training before the end of the month in which the student becomes nineteen years of age.

(3) A noncustodial parent's obligation to pay support under an administrative order may be temporarily suspended when the:

(a) Noncustodial parent (NCP) resides with the child for whom support is sought for purposes other than visitation;

(b) NCP reconciles with the child and the custodial parent; or

(c) Child returns to the residence of the NCP from a foster care placement, for purposes other than visitation.

(4) When the NCP's obligation to pay current support on a case is suspended under subsection (3) of this section, the division of child support (DCS) informs the NCP that the obligation is suspended, in writing, sent by regular mail to the NCP's last known address.

(5) If circumstances causing an NCP's support obligation to be temporarily suspended change, the support obligation

resumes. DCS sends the NCP a notice that the obligation to make current support payments has resumed.

NEW SECTION

WAC 388-14A-3900 Does DCS review my support order to see if it should be modified? (1) When the division of child support (DCS) is providing support enforcement services under Title IV-D of the Social Security Act, DCS must:

(a) Review a superior court or administrative order for child support to determine whether DCS will petition to modify the child support provisions of the order; or

(b) Evaluate an interstate case to determine whether to refer the case to another state or an Indian tribe for review of the support order for modification.

(2) Recipients of payment services only under WAC 388-14A-2000(1) are not eligible for a review of their support order under this section until they have submitted an application for support enforcement services.

NEW SECTION

WAC 388-14A-3901 Under what circumstances does DCS review a support order for modification? (1) DCS reviews orders for child support under WAC 388-14A-3900 when:

(a) DCS has enough locate information to obtain personal service on both parties to the order; and

(b) The department is paying public assistance or has determined that the children are eligible for medical assistance, and thirty-five months have passed since:

- (i) DCS last reviewed the order under this section;
- (ii) The order was last modified; or
- (iii) The order was entered.

(c) A party to the order, or another state's IV-D agency submits a request for review to DCS and thirty-five months have passed since:

- (i) DCS or another state's IV-D agency last reviewed the order under this section;
- (ii) The order was last modified; or
- (iii) The order was entered.

(2) DCS may refer a request for review to another state's IV-D agency for action.

NEW SECTION

WAC 388-14A-3902 How does DCS notify me that my order is eligible for review for modification? (1) The division of child support (DCS) must:

(a) Notify recipients of support enforcement services, that the review and modification process is available; and

(b) Send notice of a pending review by regular mail to the last known address of the parties to the order thirty days before the review. The notice explains the parties':

- (i) Rights in the review and modification process; and
- (ii) Responsibility to submit:

(A) Completed Washington state child support schedule worksheets; and

(B) Income verification as required by the Washington state child support schedule, chapter 26.19 RCW.

(2) During the thirty days before conducting the review, DCS uses all appropriate procedures to obtain up to date income and asset information.

NEW SECTION

WAC 388-14A-3903 How does DCS decide whether to petition for modification of a support order? (1) The division of child support (DCS) petitions to modify a support order when DCS finds during the review that each of the following conditions are present:

(a) The proposed change in child support based on the Washington state child support schedule:

- (i) Is at least twenty-five percent above or below the current support obligation;
- (ii) Is at least one hundred dollars per month above or below the current support obligation; and
- (iii) Is at least a two thousand four hundred dollar change over the remaining life of the support order; or
- (iv) Will provide enough income to:

(A) Make the family ineligible for public assistance if the noncustodial parent (NCP) pays the full amount due under the proposed order; or

(B) Allow a family, otherwise eligible for public assistance, to remain off of assistance.

(b) The case meets the legal requirements for modification under RCW 26.09.170, 74.20A.059, or WAC 388-14A-3925.

(2) DCS may petition to modify the order without regard to subsection (1)(a) of this section when:

(a) The order does not require the NCP to provide health insurance coverage for the children; and

(b) Health insurance coverage is available through the NCP's employer or union at a reasonable cost; or

(c) Both parties agree to an order modifying the support amount.

NEW SECTION

WAC 388-14A-3904 How do I find out the results of DCS' review for modification? After reviewing a case under WAC 388-14A-3903, the division of child support (DCS) notifies the parties of:

(1) The findings of the review by regular mail at the parties' last known address;

(2) The parties' right to challenge the review findings; and

(3) The appropriate forum and procedure for challenging the review findings.

NEW SECTION

WAC 388-14A-3905 What if I don't agree with DCS' findings after review? (1) Except as provided under subsection (3) of this section, a party to the review process may contest DCS's review findings by requesting a modification conference within thirty days of the date of the notice of review findings.

(2) The modification conference is conducted by:

(a) DCS when the review findings indicate that the case is not appropriate for DCS to petition for modification under WAC 388-14A-3903;

(b) The county prosecutor, or the attorney general's office when DCS has referred the case to the prosecutor or attorney general's office as a result of a review conducted under this section.

(3) When DCS has petitioned for modification of:

(a) A superior court order, the prosecutor or attorney general's office may, in their discretion, allow the parties to contest the review findings in the modification proceeding, rather than a modification conference. The modification proceeding is the sole means to contest the review findings.

(b) An administrative order, the parties may contest the review findings in the modification proceeding. In this case, the modification proceeding is the sole means to contest the review findings.

(4) In a modification conference, DCS the prosecutor, or the attorney general's office:

(a) Review all available income and asset information to determine if the review findings are correct; and

(b) Advise the parties of the results of the modification conference.

(5) A modification conference is not an adjudicative proceeding under the administrative procedure act, chapter 34.05 RCW.

(6) This section does not limit the right of any party to petition for a modification of the support order independent from the review and modification process.

(7) The CP's refusal to accept a proposed agreed order modifying support does not constitute noncooperation for the purpose of WAC 388-14A-2075.

NEW SECTION

WAC 388-14A-3906 Are there times when DCS does not review an order which would otherwise qualify for review? The division of child support (DCS) does not review an order under this section when the community services office (CSO) has notified DCS that the custodial parent (CP) has claimed good cause under WAC 388-422-0020, unless the CP requests the review.

NEW SECTION

WAC 388-14A-3907 DCS uses the Washington state child support schedule for reviewing orders for modification. (1) DCS applies the Washington state child support schedule when reviewing support orders under this section. All deviations available under chapter 26.19 RCW are available in the review and modification process under this section.

(2) For the purpose of this section and WAC 388-14A-3900 through 388-14A-3906, the term "party" means a party to a superior court order, or a noncustodial parent or a custodial parent entitled to petition for modification under RCW 74.20A.059.

NEW SECTION

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may request a hearing to prospectively modify the NCP's obligation under a support establishment notice. The request must be in writing and must state:

(a) Any circumstances that have changed; and

(b) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) DCS serves a copy of the request for modification and notice of hearing on all other parties:

(a) By first class mail, if the parties have been advised in a court or administrative order of the requirement to keep DCS advised of their addresses; or

(b) By certified mail, return receipt requested or personal service if the support order does not require the parties to tell DCS their address.

(4) DCS, the administrative law judge (ALJ), or the department review judge:

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21.580.

(5) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

(6) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

(7) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

(b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

(8) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

PART D - HOW WE ENFORCE CHILD SUPPORT OBLIGATIONS

NEW SECTION

WAC 388-14A-4000 When may the division of child support take collection action against a noncustodial parent? (1) Chapters 26.18, 26.23, 74.20 and 74.20A RCW authorize the division of child support (DCS) to take actions enforcing and collecting support obligations.

(2) DCS may take collection action against the noncustodial parent's income and assets to collect a support debt even

if the NCP is making payments under a support order, unless DCS agrees in writing to limit collection action.

(3) If the NCP fails to make the total support payment under an administrative order when it is due:

(a) The entire support debt becomes due in full; and

(b) The portion of the administrative order requiring periodic payments on the support debt is automatically vacated without modifying the order.

NEW SECTION

WAC 388-14A-4010 Can I make the division of child support stop collection action against me? (1) Once a non-custodial parent (NCP) fails to make payments when due, an administrative law judge may not stop collection action by DCS.

(2) The NCP may contest collection action by:

(a) Filing an action in superior court under RCW 74.20A.200 or other applicable statutes; or

(b) Requesting a conference board under WAC 388-14A-6400.

NEW SECTION

WAC 388-14A-4020 What collection tools does the division of child support use? The division of child support (DCS) uses any remedies available under state and federal law to enforce support obligations. These include, but are not limited to:

(1) Payroll deduction notice under RCW 26.23.060;

(2) Order to withhold and deliver under RCW 74.20A.080;

(3) Wage assignment;

(4) License suspension (see WAC 388-14A-4500);

(5) The DCS most wanted Internet site (see WAC 388-14A-4600);

(6) Federal income tax offset;

(7) Asset seizure;

(8) Liens;

(9) Medical insurance enrollment; and

(10) Contempt referral.

NEW SECTION

WAC 388-14A-4030 How can the division of child support collect child support from my wages or other income source? (1) The division of child support (DCS) uses a payroll deduction, order to withhold and deliver or wage assignment to collect support when the noncustodial parent (NCP) has a source of income.

(2) When an NCP does not have an identifiable employer or source of income, DCS uses any or all of the collection remedies available under chapters 26.23, 74.20 and 74.20A RCW.

(3) If the NCP's source of income is an Indian tribe or tribal enterprise, DCS may seek collection remedies through tribal court.

NEW SECTION

WAC 388-14A-4040 DCS can serve some collection actions by electronic service. (1) An employer, or any other person, firm, corporation or political subdivision, or any department of the state or federal government may agree with the division of child support (DCS) to accept electronic data transmission (EDT) as service of the following documents:

(a) Notice of payroll deduction under RCW 26.23.060;

(b) Order to withhold and deliver under RCW 74.20A.080;

(c) Assignment of earnings under RCW 74.20A.240;

(d) Releases of any of these collection documents; and

(e) Amendments in the amount to be withheld under any of these collection documents.

(2) Agreements for service by EDT must be in writing. The employer, person, firm, corporation, political subdivision or department must agree to accept EDT as:

(a) Personal service of the withholding documents; and

(b) A written document for the purposes of chapters 26.23 and 74.20A RCW.

(3) DCS provides the party accepting EDT with copies of the current forms listed in subsection (2) above, as well as any updates to those forms. If DCS fails to provide an updated form, this does not excuse noncompliance with withholding documents served under the EDT agreement.

(4) An agreement to accept service by EDT does not alter the rights, duties and responsibilities related to income withholding action under chapters 26.23, 74.20 or 74.20A.

NEW SECTION

WAC 388-14A-4100 Can the division of child support make me provide health insurance for my children?

(1) If a child support order requires the noncustodial parent (NCP) to provide health insurance for the children, the division of child support (DCS) attempts to enforce that requirement according to the terms of the order.

(2) Unless the support order specifies differently, an NCP is obligated to provide health insurance for dependent children if coverage is:

(a) Available or becomes available through the NCP's employment or union; and

(b) Available at a cost of not greater than twenty-five per cent of the NCP's basic support obligation.

(3) DCS serves a notice of intent to enforce a health insurance obligation if the support order:

(a) Requires the NCP either to provide health insurance coverage or prove that coverage is not available; and

(b) Does not inform the NCP that failure to provide health insurance or prove it is not available may result in enforcement of the order without notice to the NCP.

(4) DCS serves the notice of intent to enforce a health insurance obligation on the NCP by certified mail, return receipt requested, or by personal service.

(5) The notice advises the NCP that the NCP must submit proof of coverage, proof that coverage is not available, or proof that the NCP has applied for coverage, within twenty days of the date:

(a) Of service of the notice; or

(b) When health insurance coverage becomes available through the NCP's employer or union.

NEW SECTION

WAC 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do? (1) Once an administrative support order is entered requiring health insurance, the noncustodial parent (NCP) must take the following actions within twenty days:

- (a) Provide health insurance coverage;
- (b) Provide proof of coverage to the division of child support (DCS), such as:
 - (i) The name of the insurer providing the health insurance coverage;
 - (ii) The names of the beneficiaries covered;
 - (iii) The policy number;
 - (iv) That coverage is current; and
 - (v) The name and address of the NCP's employer.
- (2) If health insurance coverage is not immediately available, the NCP must provide for coverage during the next open enrollment period and then submit proof of coverage as outlined in (1)(b) above.
- (3) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for medical insurance.
- (4) A child's enrollment in Indian health services satisfies the requirements of this section.

NEW SECTION

WAC 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance? (1) Some support orders reduce the noncustodial parent's support obligation based on health insurance premiums paid by the NCP.

- (2) An NCP is entitled to the reduction for premiums paid only if:
 - (a) NCP submits proof of coverage as provided in WAC 388-14A-4110 (1)(b); and
 - (b) NCP actually pays the required premium.
- (3) If the NCP fails to submit proof or pay the premium, the division of child support (DCS) collects the NCP's adjusted basic support obligation without a reduction for health insurance premium payments.

NEW SECTION

WAC 388-14A-4120 DCS serves a notice of enrollment to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) serves a notice of enrollment to enforce a noncustodial parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

- (2) DCS serves the notice of enrollment on the NCP's employer or union in the same manner as a summons in a civil action, or by certified mail, return receipt requested.
- (3) DCS serves the notice of enrollment without notice to the NCP when:

(a) A court or administrative order requires the NCP to provide insurance coverage for a dependent child;

(b) The NCP fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the NCP's employer or union.

(4) The notice of enrollment advises the employer or union that:

(a) The NCP is required to provide health insurance coverage for the children named in the notice;

(b) The employer or union is required to enroll the children in a health insurance plan offered by the employer or union if insurance the children can use is or will become available as provided in subsection (d) below;

(c) The employer or union must answer the notice of enrollment by completing the answer form and returning it to DCS within thirty-five days;

(d) The answer must confirm that the employer or union:

- (i) Has enrolled the children in a health insurance plan which provides accessible coverage;
- (ii) Will enroll the children in a health insurance plan providing accessible coverage during the next open enrollment period; or
- (iii) Cannot enroll the children in a plan which provides accessible coverage, stating the specific reasons why coverage cannot be provided.

(e) The employer or union must provide:

- (i) Information about the health insurance plan and policy as requested in the notice; and
- (ii) Any necessary claim forms or membership cards as soon as they are available.

(f) The employer or union must withhold premiums from the NCP's net earnings if the NCP is required to pay part or all of the premiums for coverage under the health insurance plan.

(g) Noncompliance with the notice of enrollment subjects the employer or union to a fine of up to one thousand dollars under RCW 74.20A.270.

(5) DCS may take action under RCW 74.20A.270 to impose fines if the employer or union fails to comply with the terms of the notice of enrollment. For each failure to comply, DCS may assess a fine of:

- (a) Two hundred dollars for the first month in which the employer or union fails to comply;
- (b) Three hundred dollars for the second month of non-compliance; and
- (c) Five hundred dollars for the third month of non-compliance.

(d) The maximum fine based on a single notice of enrollment is one thousand dollars.

(e) DCS may take action under RCW 74.20A.270 to impose fines if the employer or union fails to comply with the terms of the notice of enrollment. For each failure to comply, DCS may assess a fine of:

- (a) Two hundred dollars for the first month in which the employer or union fails to comply;
- (b) Three hundred dollars for the second month of non-compliance; and
- (c) Five hundred dollars for the third month of non-compliance.

(d) The maximum fine based on a single notice of enrollment is one thousand dollars.

NEW SECTION

WAC 388-14A-4130 What must an employer or union who receives a notice of enrollment do? (1) An employer or union who receives a notice of enrollment from the division of child support (DCS) must answer the notice

within thirty-five days of receipt, as provided in WAC 388-14A-4120(4).

(2) The employer or union must enroll the children named in the notice in a health insurance plan which the employer or union offers to the noncustodial parent (NCP) and which provides coverage accessible to the children, unless the NCP's current support obligation:

(a) Equals or exceeds fifty percent of the NCP's net earnings; or

(b) Plus the amount of the insurance premium for the children named in the notice exceeds fifty percent of the NCP's net earnings.

(3) Except for the limitation in subsection (2) above, the employer or union must enroll the children named in the notice in a health insurance plan which the employer or union offers to the noncustodial parent (NCP) and which provides coverage accessible to the children:

(a) Upon receipt of the notice of enrollment, even if the plan prevents immediate enrollment; or

(b) When accessible coverage becomes available, if coverage is not available at the time of the notice.

(4) If the employer or union offers more than one health insurance plan which could cover the children named in the notice, the employer or union must enroll the children in:

(a) The NCP's plan, unless accessible coverage is not available to the children under that plan; or

(b) The least expensive plan which provides accessible coverage for the children.

(5) The notice of enrollment remains in effect until:

(a) DCS withdraws the notice; or

(b) Health insurance coverage is no longer available through the employer or union.

(6) If coverage for the children is terminated, the employer or union must notify DCS within thirty days of the date coverage ends.

NEW SECTION

WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children? (1) When the department of labor and industries or a self-insurer pays compensation under chapter 51.32 RCW on behalf of or on account of the child or children of a noncustodial parent (NCP), the division of child support (DCS) treats the amount of compensation the department or self-insurer pays on behalf of the child or children as if the NCP paid the compensation toward the NCP's child support obligations.

(2) When the social security administration pays social security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of an NCP who is a disabled person, a retired person, or a deceased person, DCS treats the amount of benefits paid for the child or children as if the NCP paid the benefits toward the NCP's child support obligation for the period for which benefits are paid.

(3) Under no circumstances does the NCP have a right to reimbursement of any compensation paid under subsection (1) or (2) of this section.

(4) The NCP gets credit only for payments made to the custodial parent or the state. The NCP does not get credit for dependent payments made to the NCP.

NEW SECTION

WAC 388-14A-4300 What can I do if I think I'm paying more than the custodial parent is spending for day-care or other special expenses for my child? (1) A noncustodial parent (NCP) who has paid child support under a court or administrative order and believes that daycare or special child rearing expenses were not actually incurred in the amount of the order may file an application for an administrative hearing to determine if an overpayment of at least twenty per cent has occurred and how the overpayment should be reimbursed.

(a) A petition for reimbursement may cover a twelve-month period; and

(b) The twelve-month period may be:

(i) A calendar year; or

(ii) The twelve-month period following the anniversary date of the support order; or

(iii) The twelve-month period following an adjudication under this section.

(c) Twelve-month periods under this section may not overlap.

(2) The application must be in writing and at a minimum state:

(a) The twelve-month time period to be considered;

(b) The date of the order requiring the payment of day-care or special child rearing expenses;

(c) The amounts required by the court or administrative order for day care or special child rearing expenses for that time period;

(d) The amounts actually paid by the NCP for that time period;

(e) The total amount of day care or special child rearing expenses which the NCP claims the custodial parent (CP) actually incurred for that time period;

(f) The NCP's proportionate share of the expenses actually incurred; and

(g) The amount of reimbursement for overpayment to which the NCP claims to be entitled for that time period.

(3) The effective date of a hearing request is the date DCS receives the written request.

(4) WAC 388-14A-4300 through 388-14A-4304 apply only to amounts paid during the twelve-month period ending May 31, 1996 or later.

NEW SECTION

WAC 388-14A-4301 Can I file a petition for reimbursement if I do not receive full support enforcement services? The division of child support (DCS) considers a petition for reimbursement or an application for hearing under WAC 388-14A-4300 to be an application for full support enforcement services if there is not already an open support enforcement case.

NEW SECTION

WAC 388-14A-4302 Who participates in a hearing on petition for reimbursement? (1) The division of child support (DCS) sends notice of a hearing under this subsection to the noncustodial (NCP) and to the custodial parent (CP).

(2) The NCP and the CP participate in the hearing as independent parties with the same procedural rights.

NEW SECTION

WAC 388-14A-4303 What happens at a hearing on petition for reimbursement? (1) The noncustodial parent (NCP) has the burden of proving the amounts actually paid by the NCP under the order.

(2) The custodial parent (CP) has the burden of proving the amounts actually incurred for day care and special child rearing expenses.

(3) The CP is not required to provide the address of the day care provider unless the administrative law judge (ALJ) finds that the information may be disclosed under the standards set forth in WAC 388-14A-2105 for the disclosure of the address of the CP.

(4) If the NCP fails to appear for the hearing, upon proof of service of the notice of hearing the ALJ issues an order of default against the NCP and dismisses the petition for reimbursement.

(5) If the CP fails to appear for the hearing, upon proof of service of the notice of hearing the ALJ issues an order of default against the CP and holds a hearing on the merits of the petition for reimbursement.

(6) A hearing under this subsection is for the limited purpose of determining whether the amount paid by the NCP exceeds the NCP's proportionate share of the amount actually incurred for day care and special child rearing expenses.

(a) If the ALJ determines that the overpayment amounts to twenty percent or more of the NCP's share of annual day care and special child rearing expenses, the ALJ enters an order stating:

(i) The twelve-month time period in question;

(ii) The amount of the overpayment; and

(iii) The method by which the overpayment shall be reimbursed by the CP.

(b) If the ALJ determines that the overpayment amounts to less than twenty percent of the NCP's share of annual day care and child rearing expenses, the ALJ enters an order stating:

(i) Whether the NCP has overpaid or underpaid the day care and special child rearing expenses;

(ii) If an overpayment has occurred, by what percentage of the annual proportionate share; and

(iii) That reimbursement under this section is denied for that twelve-month period.

NEW SECTION

WAC 388-14A-4304 What happens if the judge determines that I have paid too much for daycare and special expenses? (1) If at a hearing under WAC 388-14A-4303, the administrative law judge (ALJ) decides that the cus-

todial parent (CP) has not incurred costs in the amount paid by the noncustodial parent (NCP), any ordered overpayment reimbursement may be applied as an offset to any nonassistance child support arrears owed by the NCP on that case only. If there is no nonassistance debt owed on the case, the reimbursement must be in the form of a credit against the NCP's future child support obligation:

(a) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(b) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order; or

(c) With the consent of the CP, in the form of a direct reimbursement by the CP to the NCP.

(2) The NCP may not pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments unless:

(a) Specifically agreed to by the CP; and

(b) Specifically agreed to in writing by DCS for periods when the CP or the dependent child receives public assistance.

NEW SECTION

WAC 388-14A-4500 What is the division of child support's license suspension program? (1) RCW 74.20A.320 provides that, in some circumstances, the division of child support (DCS) may certify for license suspension a noncustodial parent (NCP) who is not in compliance with a child support order. The statute calls the NCP the responsible parent.

(a) "Certify" means to establish that the NCP is not in compliance with a child support order and to ask the department of licensing and other state licensing entities to take appropriate action against licenses held by the NCP.

(b) "Responsible parent" is defined in 388-14A-1020. The responsible parent is also called the "noncustodial parent."

(2) "Noncompliance with a child support order" is defined in RCW 74.20A.020(18) and in WAC 388-14A-4510.

(3) When DCS certifies the NCP, the department of licensing or other licensing entities take action to deny, suspend, or refuse to renew the NCP's license, according to the terms of RCW 74.20A.320 (8) and (12).

(4) This section and sections WAC 388-14A-4505 through 388-14A-4530 cover the DCS license suspension program.

(5) DCS may certify an NCP who is not in compliance with a child support order to the department of licensing or any appropriate licensing entity. In determining which licensing entity receives the certification, DCS shall consider:

(a) The number and kind of licenses held by the parent; and

(b) The effect that suspension of a particular license will have in motivating the parent to pay support or to contact DCS to make appropriate arrangements for other relief.

(6) DCS may certify a parent to any licensing agency through which it believes the parent has obtained a license. DCS may certify a parent to as many licensing agencies as DCS feels necessary to accomplish the goals of the license suspension program.

NEW SECTION

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses. (1) Before certifying a noncustodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) DCS must serve the notice by certified mail, return receipt requested. If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

(3) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.

(4) The notice must contain the information required by RCW 74.20A.320(2), telling the NCP that:

(a) The NCP may request an administrative hearing, but that the hearing is limited in scope (see WAC 388-14A-4530);

(b) DCS will certify the NCP unless the NCP makes a request for hearing within twenty days of the date of service of the notice;

(c) The NCP may avoid certification by agreeing to make timely payments of current support and agreeing to a reasonable payment schedule on the support debt;

(d) Certification by DCS will result in suspension or nonrenewal of the NCP's license by the licensing entity until DCS issues a release stating that the NCP is in compliance with the child support order;

(e) Suspension of a license may affect the NCP's insurance coverage, depending on the terms of any policy;

(f) Filing a petition to modify the support obligation may stay (or put a hold on) the certification process; and

(g) Even after certification, the NCP may obtain a release from certification by complying with the support order.

NEW SECTION

WAC 388-14A-4510 Who is subject to the DCS license suspension program? (1) The division of child support (DCS) may certify a noncustodial parent (NCP) who is not in compliance with a child support order when:

(a) The NCP is required to pay child support under a court order or administrative order;

(b) The NCP is at least six months in arrears; and

(c) The NCP is not:

(i) In jail or prison, except if the NCP has other resources available;

(ii) A recipient of temporary assistance for needy families (TANF), Supplemental Security Income (SSI) or other exempt public assistance program; or

(iii) A WorkFirst participant who does not receive a cash grant.

(d) The NCP is not currently making payments to the Washington state support registry under a wage withholding action issued by DCS.

(2) "Noncompliance with a child support order" for the purposes of the license suspension program means a NCP has:

(a) Accumulated a support debt, also called an arrearage or arrears, totaling more than six months of child support payments;

(b) Failed to make payments under a written agreement with DCS towards a support debt in an amount that is more than six months' worth of payments; or

(c) Failed to make payments required by a superior court order or administrative order towards a support debt in an amount that is more than six months' worth of payments.

(3) There is no minimum dollar amount for the six months of arrears. The following are examples of when a NCP is at least six months in arrears:

(a) The child support order requires monthly payments of five hundred dollars. The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears;

(b) The child support order requires monthly payments of one hundred dollars. The NCP has paid for the last few months, but owes a back debt of over six hundred dollars. This NCP is at least six months in arrears;

(c) The NCP owes a support debt according to a superior court judgment, which requires payments of one hundred dollars per month. The NCP has not made payment for eight months. This NCP is at least six months in arrears; or

(d) The child support order required monthly payments of two hundred dollars, but the child is over eighteen so no current support is owed. However, the NCP has a debt of over twelve hundred dollars. This NCP is at least six months in arrears.

(4) For the purposes of the license suspension program, a NCP is in compliance with the child support order when the amount owed in arrears is less than six months' worth of support.

NEW SECTION

WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support? (1) DCS stays certification action if the noncustodial parent (NCP) takes the following action within twenty days of service of the notice:

(a) Requests an administrative hearing under WAC 388-14A-4530; or

(b) Contacts DCS to negotiate a reasonable payment schedule on the arrears and agrees to make timely payments of current support.

(i) The stay for negotiation may last a maximum of thirty calendar days after the NCP contacts DCS; and

(ii) If no payment schedule has been agreed to in writing after thirty calendar days have passed, DCS may proceed with certification of noncompliance;

(iii) A reasonable payment schedule is described in WAC 388-14A-4520, below; and

(iv) The NCP may request a conference board review under WAC 388-14A-6400 if the NCP feels that DCS has not negotiated in good faith.

(2) If the NCP files a court or administrative action to modify the child support obligation, DCS stays the certification action.

(3) The stay for modification action may not exceed six months unless DCS finds good cause to extend the stay.

(4) The NCP must notify DCS that a modification proceeding is pending and must provide a copy of the motion or request for modification to DCS.

Current support	=	\$-0-
Adjusted net income	=	\$3,100
Arrears payment = 8% of ANI (\$3,100)	=	\$248

(6) The NCP must document any factors which make the NCP eligible for an arrears payment less than the amount shown in the table in subsection (4). Such factors include, but are not limited to:

- (a) Special needs children, or
- (b) Uninsured medical expenses.

(7) The custodial parent and/or DCS must document any factors which make the NCP eligible for an arrears payment higher than the amount shown in the table in subsection (4). Such factors include, but are not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

NEW SECTION

WAC 388-14A-4520 Signing a repayment agreement may avoid certification for noncompliance. (1) If a noncustodial parent (NCP) signs a repayment agreement, DCS stays the certification action. The NCP must agree to pay current support in a timely manner and make regular payments on the support debt.

(2) The repayment agreement must state that if the NCP fails to make payments under the terms of the agreement, DCS may resume certification action.

(3) In setting the repayment amount, DCS must take into account the financial situation of the NCP and the needs of all children who rely on the NCP for support. The NCP must supply sufficient financial information to allow DCS to analyze and document the NCP's financial situation and requirements, including normal living expenses and emergencies.

(4) A reasonable monthly arrears payment is defined as a percentage of the NCP's "adjusted net income," which is the NCP's net monthly income minus any current support obligation. The following table sets forth the suggested monthly payments on arrears:

Monthly adjusted net income (ANI)	Monthly arrears payment=Percentage of ANI
\$1,000 or less	2%
\$1,001 to \$1,200	3%
\$1,201 to \$1,500	4%
\$1,501 to \$1,900	5%
\$1,901 to \$2,400	6%
\$2,401 to \$3,000	7%
\$3,001 or more	8%

(5) Examples of how to calculate the arrears payment are as follows:

(a) Monthly net income	=	\$1,500
Current support	=	\$300
Adjusted net income	=	\$1,200
Arrears payment = 3% of ANI (\$1,200)	=	\$36
(b) Monthly net income	=	\$3,100

NEW SECTION

WAC 388-14A-4525 How to obtain a release of certification for noncompliance. (1) After DCS has certified a noncustodial parent (NCP) to a licensing entity, the NCP may obtain a release from DCS by taking the following actions:

- (a) Paying the support debt in full; or
- (b) Signing a repayment agreement under WAC 388-14A-4520 and paying the first installment due under the agreement.

(2) DCS must provide a copy of the release to any licensing entity to which DCS has certified the NCP.

(3) The NCP must comply with any requirements of the licensing entity to get the license reinstated or reissued.

NEW SECTION

WAC 388-14A-4530 Administrative hearings regarding license suspension are limited in scope. (1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

- (a) Whether the person named in the child support order is the noncustodial parent (NCP);
- (b) Whether the NCP is required to pay child support under a child support order; and
- (c) Whether the NCP is at least six months in arrears.

(2) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

(3) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.

NEW SECTION

WAC 388-14A-4600 What is the division of child support's DCS most wanted Internet site? (1) The division

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of child support (DCS) maintains the DCS most wanted Internet site in an effort to:

(a) Locate noncustodial parents in order to establish or enforce a child support obligation; and

(b) Collect unpaid child support from noncustodial parents who have a support obligation.

(2) Anyone who has information concerning a noncustodial parent (NCP) is encouraged to provide that information to DCS.

NEW SECTION

WAC 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted Internet site? (1) If the child's custodial parent (CP) requests DCS to post the NCP to the DCS most wanted Internet site (also called the "site"), the CP must:

(a) Give written permission to DCS to post the NCP on the site; and

(b) Provide a photograph of the NCP.

(2) Only the NCP's photograph appears on the site. If the CP submits a group photograph, DCS edits out everyone except the NCP.

(3) DCS may post an NCP to the site when:

(a) The NCP:

(i) Has made no payments in at least six months (intercepted IRS refunds are not considered to be payments for purposes of this section); and

(ii) Owes at least ten thousand dollars in back child support.

(b) DCS has been unable to locate the NCP after trying other means for at least twelve months, and:

(i) There is a valid support order; or

(ii) There is a valid paternity affidavit filed for a child on the case, or

(iii) The NCP is:

(A) The mother of the child(ren) on the case; or

(B) The presumed father under RCW 26.26.040.

NEW SECTION

WAC 388-14A-4610 How does a noncustodial parent avoid being posted on the DCS most wanted Internet site?

(1) DCS mails a letter to the noncustodial parent's last known mailing address by first class mail before posting a noncustodial parent (NCP) on the site. The letter advises the NCP:

(a) Who cannot be located, to provide DCS with a current address and employer information.

(b) Who owes back support, to:

(i) Pay the back support debt in full; or

(ii) Sign a repayment agreement with DCS and make the first payment under that agreement.

(2) If the NCP does not comply within twenty days of the date on the letter, DCS may post the NCP to the site.

(3) If the NCP wishes to dispute the amount of the support debt, the NCP may request a conference board review under WAC 388-14A-6400. Such a request does not stay (stop) DCS from posting the NCP to the site.

(4) If the NCP files a court or administrative action to vacate or modify the support obligation, DCS stays the posting of the NCP to the site for up to six months. If DCS finds good cause, DCS may extend the stay.

(5) If the NCP enters into a repayment agreement, but then misses a payment under the agreement, DCS may post the NCP to the site without further notice to the NCP.

NEW SECTION

WAC 388-14A-4615 When does DCS remove a non-custodial parent from the DCS most wanted Internet site?

(1) DCS must remove the noncustodial parent (NCP) from the site if:

(a) The NCP pays the back support debt in full;

(b) The NCP files a court or administrative action to modify or vacate the support obligation (subject to the limitations in WAC 388-14A-3700);

(c) The NCP enters into a repayment agreement and makes the first payment under that agreement (subject to the limitations in WAC 388-14A-4520);

(d) The CP withdraws permission for the posting.

(2) DCS may remove an NCP from the site even if the NCP has not complied with the requirements of this section.

(3) If an NCP receives a warning letter for locate purposes only, DCS must remove the NCP who provides a current address and employment information.

NEW SECTION

WAC 388-14A-4620 What information does the division of child support post to the DCS most wanted Internet site?

(1) DCS may post to the site any information about the noncustodial parent (NCP) which may aid in locating the NCP or collecting child support from the NCP, such as:

(a) Full name and aliases;

(b) Photograph;

(c) Physical description;

(d) Birth date;

(e) Last known address;

(f) Usual occupation;

(g) Number and ages of children;

(h) Amount of back support owed; and

(i) Ongoing monthly support obligation, if any.

(2) DCS does not post the names or photographs of the CP or the children.

PART E - DISTRIBUTION ISSUES

NEW SECTION

WAC 388-14A-5000 How does the division of child support distribute support payments? (1) Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program and/or a cooperative agreement regarding the delivery of child support services; or

(e) Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information.

(2) If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter 458-65 WAC, the uniform unclaimed property act rules.

(3) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.

(4) DCS changes the distribution rules based on changes in federal statutes and regulations.

NEW SECTION

WAC 388-14A-5001 What procedures does DCS follow to distribute support payments? When distributing support money, the division of child support (DCS) does the following:

(1) Record payments in exact amounts without rounding;

(2) Distributes support money within two days of the date DCS receives the money, unless it is unable to distribute the payment for one or more of the following reasons:

(a) The location of the payee is unknown;

(b) DCS does not have sufficient information to identify the accounts against which or to which it should apply the money;

(c) An action is pending before a court or agency which has jurisdiction over the issue to determine whether support money is owed or how DCS should distribute the money.

(d) DCS receives prepaid support money which it is holding for distribution in future months under subsection (2)(e) of this section;

(e) DCS mails a notice of intent to distribute support money to the custodial parent (CP) under WAC 388-14A-5050;

(f) DCS may hold funds and not issue a check to the family for amounts under one dollar. DCS must give credit for the payment, but may delay disbursement of that amount until a future payment is received which increases the amount of the payment to the family to at least one dollar. This subsection does not apply to disbursements which can be made by electronic funds transfer (EFT), or to refunds of intercepted federal income tax refunds; or

(g) Other circumstances exist which make a proper and timely distribution of the money impossible through no fault or lack of diligence of DCS.

(3) Distribute support money based on the date DCS receives the money, except as provided under WAC 388-14A-5005.

NEW SECTION

WAC 388-14A-5002 How does DCS distribute support money in a nonassistance case? (1) A nonassistance case is one where the family has never received a cash public assistance grant.

(2) The division of child support (DCS) applies support money within each Title IV-D nonassistance case:

(a) First, to satisfy the current support obligation for the month DCS received the money;

(b) Second, to the noncustodial parent's support debts owed to the family;

(c) Third, to prepaid support as provided for under WAC 388-14A-5008.

NEW SECTION

WAC 388-14A-5003 How does DCS distribute money in an assistance case? (1) An assistance case is one where the family is currently receiving a cash public assistance grant.

(2) The division of child support (DCS) applies support money within each Title IV-D assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the money;

(b) Second, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family;

(c) Third, to satisfy support debts which are temporarily assigned to the department to reimburse the cumulative amount of assistance paid to the family;

(d) Fourth, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family;

(e) Fifth, to satisfy support debts which exceed the cumulative amount of unreimbursed assistance which has been paid to the family;

(f) Sixth, to prepaid support as provided for under WAC 388-14A-5008.

NEW SECTION

WAC 388-14A-5004 How does DCS distribute money in a former assistance case? (1) A former assistance case is one where the family is not currently receiving a cash public assistance grant, but has at some time in the past.

(2) The division of child support (DCS) applies support money within each Title IV-D former-assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the money;

(b) Second, to satisfy support debts which accrued after the family's most recent period of assistance;

(c) Third, to satisfy support debts which are temporarily assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family;

(d) Fourth, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family;

(e) Fifth, to satisfy support debts which exceed the cumulative amount of unreimbursed assistance which has been paid to the family; and

(f) Sixth, to prepaid support as provided for under WAC 388-14A-5008.

NEW SECTION

WAC 388-14A-5005 How does DCS distribute intercepted federal income tax refunds? The division of child support (DCS) applies intercepted federal income tax refunds in accordance with 42 U.S.C. Sec. 657, as follows:

(1) First, to support debts which are permanently assigned to the department to reimburse public assistance payments; and

(2) Second, to support debts which are temporarily assigned to the department to reimburse public assistance payments; and

(3) Third, to support debts that are not assigned to the department; and

(4) To support debts only, not to current and future support obligations. DCS must refund any excess to the noncustodial parent (NCP).

NEW SECTION

WAC 388-14A-5006 How does DCS distribute support money when the paying parent has more than one case? Except as provided in WAC 388-14A-005, when the NCP has more than one Title IV-D case, the division of child support (DCS) distributes support money:

(1) First, to the current support obligation on each Title IV-D case, in proportion to the amount of the current support order on each case; and

(2) Second, to the total of the support debts whether owed to the family or to the department for the reimbursement of public assistance on each Title IV-D case, in proportion to the amount of support debt owed by the NCP on each case; and

(3) Third within each Title IV-D case according to WAC 388-14A-5002 or 388-14A-5003.

NEW SECTION

WAC 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case? The division of child support (DCS) applies amounts to a support debt owed for one family or household and distributes the amounts accordingly, rather than make a proportionate distribution between support debts owned to different families, when:

(1) Proportionate distribution is administratively inefficient; or

(2) The collection resulted from the sale or disposition of a specific piece of property against which a court awarded the custodial parent (CP) a judgment lien for child support; or

(3) The collection is the result of a contempt order which provides that DCS must distribute the amounts to a particular case.

NEW SECTION

WAC 388-14A-5008 Can the noncustodial parent prepay support? If the division of child support (DCS) receives or collects support money representing payment on the required support obligation for future months, DCS must:

(1) Apply the support money to future months when the support debt is paid in full;

(2) Distribute the support money on a monthly basis when payments become due in the future; and

(3) Mail a notice to the last known address of the person entitled to receive support money. The notice informs the person that:

(a) DCS received prepaid support money;

(b) DCS intends to distribute the prepaid money as support payments become due in the future; and

(c) The person may request a conference board under WAC 388-14A-6400 to determine if DCS should immediately distribute the prepaid support money.

(d) DCS does not mail the notice referred to in WAC 388-14A-5008 of this section if the prepaid support is equal to or less than one month's support obligation.

NEW SECTION

WAC 388-14A-5050 When does DCS send a notice of intent to distribute support money? (1) The division of child support (DCS) may distribute support money to a custodial parent (CP) who is not the payee under the support order if the CP signs a sworn statement that:

(a) The CP has physical custody of and is caring for the child; and

(b) The CP is not wrongfully depriving the payee of physical custody.

(2) Before DCS begins distributing support money to a CP who is not the payee under the support order, DCS sends the payee under the support order and the noncustodial parent (NCP) a notice of intent to distribute support money and a copy of the sworn statement of the CP to their last known addresses by first class mail. The notice states:

(a) DCS intends to distribute support money collected under the support order to the CP; and

(b) The name of the CP.

(3) DCS distributes support money to the CP when the notice of intent to distribute support money becomes final.

(a) A notice of intent to distribute support money served in the state of Washington becomes final unless the payee under the support order, within twenty days of the date of mailing of the notice, files a request with DCS for a hearing under subsection (4) of this section. The effective date of a hearing request is the date DCS receives the request.

(b) A notice of intent to distribute support money served in another state becomes final according to WAC 388-14A-7200.

(4) A hearing on a notice of intent to distribute support money is for the limited purpose of resolving who is entitled to receive the support money.

(5) A copy of the notice of any hearing scheduled under this section must be mailed to the alleged CP at the CP's last known address. The notice advises the CP of the right to participate in the proceeding as a witness or observer.

(6) The payee under the support order may file a late hearing request on a notice of intent to distribute support money.

(a) The payee under the support order does not need to show good cause for filing a late hearing request.

(b) DCS may not reimburse the payee under the support order for amounts DCS sent to the CP before the administrative order on a late hearing request becomes final.

(7) The payee under the support order must give DCS and the CP notice of any judicial proceeding to contest a notice of intent to distribute support money.

(8) If the support order is a court order, DCS files a copy of the notice of intent to distribute support money or the final administrative order entered on a notice of intent to distribute support money with the clerk of the court where the support order was entered.

NEW SECTION

WAC 388-14A-5100 What kind of distribution notice does the division of child support send? (1) The division of child support (DCS) mails a distribution notice once each month, or more often, to the last known address of a person for whom it received support during the month, except as provided under subsection (6) of this section.

(2) DCS includes the following information in the notice:

(a) The amount of support money DCS received and the date of collection;

(b) A description of how DCS allocated the support money between current support and the support debt; and

(c) The amount DCS claims as reimbursement for public assistance paid, if applicable.

(3) The person to whom a distribution notice is sent may file a request for a hearing under subsection (4) of this section within ninety days of the date of the notice to contest how DCS distributed the support money, and must make specific objections to the distribution notice. The effective date of a hearing request is the date DCS receives the request.

(4) A hearing under this section is for the limited purpose of determining if DCS correctly distributed the support money described in the contested notice.

(5) A person who requests a late hearing must show good cause for being late.

(6) This section does not require DCS to send a notice to a recipient of payment services only.

NEW SECTION

WAC 388-14A-5200 What is a "total versus total" notice? (1) The division of child support (DCS) identifies cases needing a "total versus total" calculation, which compares amounts of public assistance paid to the family with

amounts of support collected and uncollected support debt. DCS performs a total versus total calculation upon the request of the custodial parent (CP) or a DCS field office, usually only after the assistance grant has ended.

(a) The total versus total calculation allocates the uncollected support debt between the state and the CP, based on the amounts of public assistance paid to the family.

(b) The total versus total calculation indicates the amounts of support paid by each noncustodial parent (NCP) and how DCS distributed the support.

(c) DCS may at any time review a case to determine if a total versus total calculation is appropriate.

(2) When DCS completes a total versus total calculation at the request of the CP, DCS mails a total versus total notice to the last known address of the former assistance recipient.

(3) The person to whom DCS sends a total versus total notice may, within ninety days of the date of the notice, file a request for a conference board under WAC388-14A-6400 to contest the distribution of support money and the allocation of uncollected support debt. The person must state specific objections to the total versus total notice. The effective date of a request conference board is the date DCS receives the request.

NEW SECTION

WAC 388-14A-5300 How does the division of child support recover a support payment which has already been distributed? (1) The division of child support (DCS) may serve a notice to recover a support payment on the person who received the payment when DCS:

(a) Distributed the money in error;

(b) Distributed the money based on a check that is later dishonored;

(c) Is required to refund or return the money to the person or entity that made the payment; or

(d) Distributed money under a support order that was later modified so as to create an overpayment.

(2) DCS serves a notice to recover a support payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In the notice, DCS must identify the support payment DCS seeks to recover.

(4) DCS may take action to enforce the notice to recover a support payment without further notice once the notice becomes final.

(a) A notice to recover a support payment becomes final unless the person who received the payment requests a hearing under subsection (5) of this section within twenty days of service of the notice to recover a support payment in Washington. The effective date of a hearing request is the date DCS receives the request.

(b) A notice to recover a support payment may be served in another state to recover a payment disbursed by DCS under RCW 26.21.385. A notice to recover a support payment served in another state becomes final according to WAC 388-14A-7200.

(5) A hearing on a notice to recover a support payment is for the limited purpose of resolving the existence and amount of the debt DCS is entitled to recover.

(6) A person who files a late request for a hearing on a notice to recover a support payment must show good cause for being late.

(7) In nonassistance cases and payment services only cases, DCS may recover a support payment under a final administrative order on a notice to recover a support payment by retaining ten percent of current support and one hundred percent of amounts collected on arrears in addition to any other remedy authorized by law.

(8) If a public assistance recipient receives a support payment directly from a noncustodial parent (NCP) and fails to remit it to DCS as required, DCS recovers the money as retained support under WAC 388-14A-5500.

(9) DCS may enforce the notice to recover a support payment as provided in subsection (7), or may act according to RCW 74.20A.270 as deemed appropriate.

NEW SECTION

WAC 388-14A-5400 How does the division of child support tell the custodial parent when DCS adjusts the amount of debt owed on the case? (1) The division of child support (DCS) mails a debt adjustment notice to the payee under a court order within thirty days of the date DCS reduces the amount of the court-ordered support debt it intends to collect if that reduction was due to:

- (a) A mathematical error in the debt calculation;
- (b) A typographical error in the stated debt;
- (c) Proof that DCS should have suspended the support obligation for all or part of the time period involved in the calculation; or
- (d) Proof the noncustodial parent (NCP) made payments that DCS had not previously credited against the support debt.

(2) The debt adjustment notice must contain the following information:

- (a) The amount of the reduction;
- (b) The reason DCS reduced the support debt, as provided under subsection (1) of this section;
- (c) The name of the NCP and a statement that the NCP may attend and participate as an independent party in any hearing requested by the payee under this section; and
- (d) A statement that DCS continues to provide support enforcement services whether or not the payee objects to the debt adjustment notice.

(3) A debt adjustment notice served in Washington becomes final unless the payee, within twenty days of service of the notice in Washington, files a request with DCS for a hearing under subsection (4) of this section. The effective date of a hearing request is the date DCS receives the request.

(4) A debt adjustment notice served in another state becomes final according to WAC 388-14A-7200.

(5) A hearing under this section is for the limited purpose of determining if DCS correctly reduced the support debt as stated in the notice of debt adjustment.

(6) A payee who requests a late hearing must show good cause for filing a late hearing request if it is filed more than one year after the date of the notice of debt adjustment.

NEW SECTION

WAC 388-14A-5500 How does the division of child support collect support debts owed by someone other than a noncustodial parent? (1) Sections 17 and 18, chapter 171, Laws of 1979 ex. sess. (RCW 74.20.320 and 74.20A.270), provide that a custodian of children or other person who receives support money which money was paid, in whole or in part, toward a support obligation under 42 U.S.C. 602 (a)(26)(A), sections 17 and 22, chapter 171, Laws of 1979 ex. sess., or RCW 74.20A.030 must remit that money to the division of child support (DCS) within eight days of receipt, and is indebted to the department for this amount of money.

(2) By not remitting support money described in subsection (1) of this section, a custodial parent (CP) or other person makes, without the necessity of signing any document, an irrevocable assignment to the department of an equal amount of any support debt not already assigned to the department, but owing to the CP or other person, or an equal amount of any support debt which may accrue in the future. DCS may use the collection procedures of chapter 74.20A RCW to collect this assigned delinquency, to satisfy a debt owed under subsection (1) of this section.

(3) DCS may also make a set-off to pay the debt under subsection (1) of this section from support money in DCS' possession or in the possession of a county clerk or other forwarding agent if that money was paid to satisfy a support delinquency.

(4) DCS may take action alternatively or simultaneously under subsections (1), (2) and (3) of this section but the department may not collect and retain more money than the debt described under subsection (1) of this section, refunding the excess, without deducting fees, to the CP.

(5) DCS must give the CP or other person an account of actions taken under subsections (2) or (3) of this section.

NEW SECTION

WAC 388-14A-5505 DCS uses a notice of retained support to claim a debt owed to DCS. The division of child support (DCS) serves a notice of retained support setting forth:

(1) The amount of support money claimed by the department as property of the department by assignment, subrogation or by operation of law or legal process under chapter 74.20A RCW;

(2) The legal basis for the claim of ownership by the department;

(3) A description of the person, firm, corporation, association, or political subdivision who is or has been in possession of the support moneys together with enough detail to identify the amounts in issue;

(4) A statement that, effective with the date of service of the notice, the department will impound and hold in trust all

money not yet disbursed or spent and all similar money received in the future, pending answer to the notice and any hearing which is requested;

(5) A statement that the notice must be answered, under oath and in writing, within twenty days of the date of service of the notice;

(6) A statement that the answer to the notice must include true answers to the questions in the notice and must either acknowledge the department's right to the money or request an administrative hearing to determine ownership of the money;

(7) A statement that the burden of proof in a hearing on a notice of retained support debt under this section is on the department to establish ownership of the support money claimed;

(8) A statement that, if the person, firm, corporation, association, or political subdivision or officer or agent thereof does not answer or make a request for hearing in a timely manner, the department's claim will be assessed and determined and subject to collection action as a support debt according to chapter 74.20A RCW; and

(9) A statement that the department may collect a support debt, as assessed and determined, and that the property of the debtor, without further advance notice or hearing, is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver to satisfy the debt. The department may not take collection action against a recipient of public assistance during the period of time the recipient remains on assistance except as provided in RCW 74.20A.270 and WAC 388-14A-2040.

NEW SECTION

WAC 388-14A-5510 How does DCS serve a notice of retained support? The division of child support (DCS) serves the notice of retained support on the person, firm, corporation, association, or political subdivision or any officer or agent thereof in the manner prescribed for the service of a summons in a civil action, or by certified mail, return receipt requested. The receipt is *prima facie* evidence of service.

NEW SECTION

WAC 388-14A-5515 What happens if I don't respond to a notice of retained support or request a hearing? (1) After service of a notice of retained support under WAC 388-14A-5510, if the person, firm, corporation, association, or political subdivision or any officer or agent thereof fails to answer in a timely manner, the claim of the department is final and subject to collection action as a support debt according to chapter 74.20A RCW.

(2) To be timely, a hearing request or response must be received by the division of child support within twenty days of service of the notice.

NEW SECTION

WAC 388-14A-5520 What happens if I make a timely objection to a notice of retained support? (1) Any debtor who objects to all or any part of a notice of retained

support may, within twenty days from the date of service of the notice, file an application for an administrative hearing. An objection under this section is the same thing as a general denial of liability to the department.

(2) The notice of retained support does not become final until there is a final administrative order.

(3) If the objection is timely, the department serves the notice of hearing on the appellant or the appellant's representative by certified mail or another method showing proof of receipt.

(4) The department must notify the appellant that it is the appellant's responsibility to notify the department of the appellant's mailing address at the time the application is filed and also of any change of address after filing the application. Mailing by certified mail, return receipt requested, to the last address provided by the appellant constitutes service under chapters 74.20A and 34.05 RCW.

NEW SECTION

WAC 388-14A-5525 What happens at the hearing on a notice of retained support? (1) An administrative hearing on a notice of retained support is limited to the determination of the ownership of the amounts claimed in the notice or the reasonableness of a repayment agreement offered to a public assistance recipient for recovering child support under RCW 74.20A.270 and WAC 388-14A-5505.

(2) The department has the burden of proof to establish ownership of the support money claimed, including but not limited to amounts not yet disbursed or spent.

(3) The administrative law judge (ALJ) must allow the division of child support (DCS) to orally amend the notice of retained support at the hearing to conform to the evidence. The ALJ may grant a continuance, if necessary, to allow the debtor additional time to present evidence or argument in response to the amendment.

(4) The ALJ serves a copy of the initial decision on DCS and the debtor or the debtor's representative by certified mail to the last address provided by each party or by another method showing proof of receipt.

(5) If the debtor fails to appear at the hearing, the ALJ, upon a showing of valid service, enters an initial decision and order declaring that the amount of the support money claimed in the notice, is subject to collection action under chapter 74.20A RCW.

NEW SECTION

WAC 388-14A-5530 Can I request a late hearing on a notice of retained support? (1) Within one year from the date the division of child support (DCS) serves a notice of retained support, the person, firm, corporation, association, political subdivision or any officer or agent thereof may petition DCS for a hearing, upon a showing of any of the grounds listed in RCW 4.72.010 or CR 60.

(2) A copy of the objection must be served by certified mail, return receipt requested, or by service in the manner of a summons in a civil action on the district field office of DCS.

(3) The filing of the petition does not stay any collection action that DCS has taken, but the debtor may petition the

secretary or the secretary's designee for an order staying collection action pending final decision of the secretary or the secretary's designee or the courts on an appeal made under chapter 34.05 RCW.

(4) Any money held or taken by collection action before any such stay and any support money claimed by the department, including amounts to be received in the future, to which the department may have a claim, must be held in trust pending the final decision and appeal, if any, to be disbursed in accordance with the final decision.

(5) If someone files a petition for a hearing, the department serves the notice of hearing on the appellant, the appellant's attorney, or other designated representative by certified mail or other method showing proof of receipt.

(6) The department notifies the appellant that the appellant must notify the department of the appellant's mailing address at the time the petition is filed and also of any change of address after filing the petition. Mailing by certified mail, return receipt requested, to the last address provided by the appellant constitutes service under chapters 74.20A and 34.05 RCW.

NEW SECTION

WAC 388-14A-5535 How does DCS collect a debt established on a notice of retained support? The division of child support (DCS) may take action under chapter 74.20A RCW to collect debts determined under WAC 388-14A-5505.

NEW SECTION

WAC 388-14A-5540 Can I just acknowledge that I owe money to the division of child support? If you answer the notice of retained support acknowledging that the department owns the support payments in question, the division of child support (DCS) may take collection action under chapter 74.20A RCW if you fail to pay the debt within twenty-one days of the date DCS receives the answer.

PART F - HEARINGS AND CONFERENCE BOARDS

NEW SECTION

WAC 388-14A-6000 Which statutes and regulations govern the division of child support's hearing process? (1) Hearings under this chapter are governed by:

(a) The Administrative Procedure Act, chapter 34.05 RCW, RCW 74.20A.055; and

(b) Chapter 388-02 WAC.

(2) If any provision in this chapter conflicts with or is inconsistent with chapter 388-02 WAC, the provision in this chapter governs.

NEW SECTION

WAC 388-14A-6100 The division of child support accepts oral requests for hearing or conference board. (1) Except for the instances listed in subsection (8), the division of child support (DCS) accepts either a written or an oral

request for hearing or conference board, even though other sections of this chapter or the relevant statutes may provide that objections and hearing requests should be in writing.

(2) The subject matter of the objection determines whether the matter is set as a conference board or hearing, unless there is a specific request for an administrative hearing under chapter 34.05 RCW.

(3) DCS processes oral and written requests for hearing in the same manner.

(4) An oral request for hearing is complete if it contains enough information to identify the person making the request, the DCS action, and the case or cases involved in the hearing request.

(5) The effective date of an oral request for hearing is the date that someone makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) When making an oral request, you do not need to specify whether you want a hearing under chapter 34.05 RCW or a conference board under WAC 388-14A-6400.

(7) You can make an oral request for hearing or conference board on behalf of another person, if you have written authorization to act on their behalf. The effective date of an oral request for hearing or conference board made on behalf of another person is the date that DCS receives the written authorization.

(8) There are two types of hearing requests which must be in writing:

(a) A petition for prospective modification under WAC 388-14A-3925; and

(b) A petition for reimbursement for day care expenses under WAC 388-14A-4300.

NEW SECTION

WAC 388-14A-6200 What are my hearing rights when the division of child support takes collection action against my bank account? (1) If the division of child support (DCS) takes collection action against a bank account, safe deposit box, or other property held by a bank, credit union or savings and loan, the noncustodial parent (NCP) or the joint owner of record of the bank account, safe deposit box or other property may contest the action in a hearing.

(2) The effective date of a hearing request or objection is the date DCS receives the request.

(3) The NCP or the joint owner must file the objection within twenty days of the date DCS mailed a copy of the order to withhold and deliver to the NCP's last known address.

(4) The NCP or joint owner of record must state in the objection the facts supporting the allegation by the NCP or the joint owner that the funds or property, or a portion of the funds or property, are exempt from satisfaction of the NCP's child support obligation.

(5) If either the NCP or the joint owner of record objects to the collection action, DCS schedules a hearing solely for the purpose of determining whether or not one of the following exemptions applies to the funds in the bank account, or to

the other property attached by the order to withhold and deliver:

(a) Pursuant to RCW 26.16.200 and 74.20A.120, the property or funds in the community bank account, joint bank account, or safe deposit box, or a portion of the property or funds which can be identified as the earnings of the NCP's spouse who does not owe a support obligation to the NCP's child or children, are exempt from satisfaction of the child support obligation of the NCP.

(b) The funds in a bank account, or a portion of those funds which can be identified as AFDC, TANF, SSI benefits, or other kinds of funds which are legally exempt from collection action; or

(c) The funds or property attached by the order to withhold and deliver which can be identified as being solely owned by the joint owner of record of the bank account or safe deposit box who does not owe a child support obligation to the child or children of the NCP, are exempt from satisfaction of the NCP's child support obligation.

(6) The person challenging the collection action has the burden of tracing the funds and proving the property or funds in the bank account, or property in a safe deposit box, are exempt from satisfaction of the NCP's child support obligation.

(7) DCS holds money or property withheld as a result of collection action taken against a bank account or safe deposit box and delivered to DCS at the time of an objection, pending the final administrative order or during any appeal to the courts.

(8) If the final decision of the department or courts on appeal is that DCS has caused money or property that is exempt from satisfaction of the NCP's child support obligation to be withheld by the bank or delivered to the department, DCS must:

(a) Promptly release the order to withhold and deliver; or

(b) Refund the proportionate share of the funds having been identified as being exempt. The department is not liable for any interest accrued on any money withheld under RCW 74.20A.080.

NEW SECTION

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the administrative law judge (ALJ) must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);

(c) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(d) If requested by a party, the NCP's share of any special child-rearing expenses;

(e) The NCP's obligation to provide medical support under RCW 26.18.170;

(f) The NCP's accrued debt and order payments toward the debt; and

(g) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(2) The ALJ must allow the division of child support (DCS) to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(3) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

NEW SECTION

WAC 388-14A-6400 The division of child support's grievance and dispute resolution method is called a conference board. (1) The division of child support (DCS) provides conference boards for the resolution of complaints and problems regarding DCS cases, and for granting exceptional or extraordinary relief. A conference board is an informal review of case actions and of the circumstances of the parties and children related to a child support case.

(a) The term conference board can mean either of the following, depending on the context:

(i) The process itself, including the review and any meeting convened; or

(ii) The DCS staff who make up the panel which convenes the hearing and makes factual and legal determinations.

(b) A conference board chair is an attorney employed by DCS in the conference board unit. In accordance with section WAC 388-14A-6415, the conference board chair reviews a case, and:

(i) Issues a decision without a hearing, or

(ii) Sets a hearing to take statements from interested parties before reaching a decision.

(2) A person who disagrees with any DCS action related to establishing, enforcing or modifying a support order may ask for a conference board.

(3) DCS uses the conference board process to:

(a) Help resolve complaints and problems over agency actions;

(b) Determine when hardship in the paying parent's household, as defined in RCW 74.20A.160, justifies the release of collection action or the refund of a support payment;

(c) Set a repayment rate on a support debt; and

(d) Determine when it is appropriate to write off support debts owed to the department based on:

(i) Hardship to the paying parent or that parent's household;

(ii) Settlement by compromise of disputed claims;

(iii) Probable costs of collection in excess of the support debt; or

(iv) An error or legal defect that reduces the possibility of collection.

(4) A conference board is not a formal hearing under the administrative procedure act, chapter 34.05 RCW.

(5) A conference board does not replace any formal hearing right created by chapters 388-14A WAC, or by chapters 26.23, 74.20 or 74.20A RCW.

(6) This section and WAC 388-14A-6405 through 388-14A-6415 govern the conference board process in DCS cases.

NEW SECTION

WAC 388-14A-6405 How to apply for a conference board. (1) A person may request a conference board, orally or in writing, at any division of child support (DCS) office.

(2) Oral requests for conference boards are governed by WAC 388-14A-6100.

(3) DCS may start conference board proceedings in appropriate circumstances.

NEW SECTION

WAC 388-14A-6410 Explanation of the conference board process. (1) An applicant for a conference board must make reasonable efforts to resolve the dispute with division of child support (DCS) staff before the conference board can act in the case.

(2) A conference board chair reviews each application to determine appropriate action:

(a) If there are questions of both law and fact or if the dispute involves only facts, the chair may schedule a conference board hearing to gather evidence;

(b) If the factual dispute would not provide a basis on which the conference board could grant relief, even if all facts were resolved in favor of the applicant, the chair may issue a decision without a hearing; or

(c) If the dispute can be resolved as a matter of law without relying upon disputed facts, the conference board chair may issue a decision without scheduling a hearing.

(3) If the conference board chair schedules a hearing, the conference board is made up of the conference board chair and staff from the DCS field office which handles the child support case, if needed.

(a) At the hearing, the conference board makes determinations of relevant disputed facts. Decisions on factual issues are made by a majority of the conference board.

(b) Decisions on issues of law are made by the conference board chair alone.

(c) The DCS worker regularly assigned to a case may not be part of a conference board dealing with that case.

(4) The conference board chair prepares a decision, if necessary, and provides that decision to the parties to the conference board, and to the DCS staff responsible for the case.

(5) The director of DCS, or a person designated by the director, may review conference board decisions, and may alter, amend, vacate or remand decisions that are inconsistent with Washington law or DCS policy, or are grossly unfair.

NEW SECTION

WAC 388-14A-6415 Scope of authority of conference board chair defined. The conference board chair has the authority to:

(1) Subpoena witnesses and documents, administer oaths and take testimony;

(2) Grant relief by setting payment plans, writing off debt owed to the department, or refunding collected money;

(3) Adjust support debts based on evidence gathered during the conference board process;

(4) Direct distribution of collected support; and

(5) Take any action consistent with Washington law and DCS policy to resolve disputes, grant relief or address issues of equity.

NEW SECTION

WAC 388-14A-6500 Can I use equitable estoppel as a defense in a hearing with the division of child support?

(1) Equitable estoppel is available in adjudicative proceedings conducted under this chapter.

(2) When a party raises, or the facts indicate, a claim that equitable estoppel applies to a party to the proceeding, the administrative law judge (ALJ) must:

(a) Consider equitable estoppel according to the precedents set by reported Washington state appellate case law, where not contrary to public policy; and

(b) Enter findings of fact and conclusions of law sufficient to determine if the elements of equitable estoppel are met and apply.

(3) The party asserting, or benefitting from, equitable estoppel must prove each element of that defense by clear, cogent and convincing evidence.

(4) The ALJ must consider on the record whether a continuance is necessary to allow the parties to prepare to argue equitable estoppel when:

(a) A party raises equitable estoppel; or

(b) The facts presented require consideration of equitable estoppel.

(5) When the ALJ orders a continuance under subsection (4) of this section, the ALJ enters an initial decision and order for current support if:

(a) Current support is an issue in the proceeding; and

(b) The claim for current support is unaffected by the equitable estoppel defense.

(6) The defense of equitable estoppel is not available to a party when the:

(a) Party raises the defense against the department's claim for reimbursement of public assistance; and

(b) Act or representation forming the basis for an estoppel claim:

(i) Was made by a current or former public assistance recipient;

(ii) Was made on or after the effective date of the assignment of support rights; and

(iii) Purported to waive, satisfy, or discharge a support obligation assigned to the department.

PART G - INTERSTATE ISSUES**NEW SECTION**

WAC 388-14A-7100 An order from another state may be registered in Washington for enforcement or modification. (1) A support enforcement agency, or a party to a child support order or an income-withholding order for support issued by a tribunal of another state, may register the order in this state for enforcement pursuant to chapter 26.21 RCW.

(a) The order may be registered with the superior court pursuant to RCW 26.21.490 or it may be registered with the administrative tribunal according to subsection (2) of this section, at the option of the division of child support (DCS). Either method of registration is valid.

(b) A support order or income-withholding order issued in another state is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state.

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after the date of receipt by certified or registered mail or personal service of the notice given to a nonregistering party within the state and within sixty days after the date of receipt by certified or registered mail or personal service of the notice on a nonregistering party outside of the state;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(iv) Of the amount of any alleged arrearages.

(b) The notice must be:

(i) Served by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A hearing under this section is for the limited purpose of determining if the nonregistering party can prove one or more of the defenses listed in RCW 26.21.540(1).

(a) If the contesting party presents evidence establishing a full or partial defense under RCW 26.21.540(1), the presiding officer may:

(i) Stay enforcement of the registered order;

(ii) Continue the proceeding to allow the parties to gather additional relevant evidence; or

(iii) Issue other appropriate orders.

(b) DCS may enforce an uncontested portion of the registered order by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under RCW 26.21.540(1) to the validity or enforcement of the order, the presiding officer must issue an order confirming the registered order.

(d) The custodial parent (CP) or payee of the order may participate as a party to any hearing under this section.

(4) Confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. Confirmation may occur:

(a) By operation of law upon failure to contest registration; or

(b) By order of the administrative law judge (ALJ).

(5) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state may register the order in this state according to RCW 26.21.560 through 26.21.580.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21.580 are met.

(6) Interpretation of the registered order is governed by RCW 26.21.510.

NEW SECTION

WAC 388-14A-7200 DCS can serve notices in other states under the Uniform Interstate Family Support Act.

(1) Except as specified in WAC 388-14A-3105, where grounds for personal jurisdiction exist under RCW 26.21.075 or other Washington law, the division of child support (DCS) may serve the following legal actions in another state by certified mail, return receipt requested or by personal service, under chapter 26.21 RCW:

(a) A notice and finding of financial responsibility under WAC 388-14A-3115; and

(b) A notice and finding of parental responsibility under WAC 388-14A-3120;

(c) A notice of paternity test costs under WAC 388-14A-8300; or

(d) An affidavit of birth costs under WAC 388-14A-3555.

(2) A notice and finding of financial responsibility, a notice of paternity test costs, or an affidavit of birth costs becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18,

26.23, and 74.20A RCW unless the noncustodial parent (NCP), within sixty days of service in another state:

(a) Contacts DCS and signs an agreed settlement or consent order; or

(b) Files a written request for a hearing under:

(i) WAC 388-14A-3115 for a notice and finding of financial responsibility;

(ii) WAC 388-14A-3555 for an affidavit of birth costs; or

(iii) WAC 388-14A-8300 for a notice of paternity test costs.

(3) The effective date of a hearing request is the date DCS receives the hearing request.

(4) A notice and finding of parental responsibility becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within sixty days of service in another state:

(a) Contacts DCS and signs an agreed settlement or consent order;

(b) Files a written request for a hearing under WAC 388-14A-3120 with DCS; or

(c) Files a written request for paternity testing under WAC 388-14A-8300 to determine if he is the natural father of the dependent child named in the notice and cooperates in the testing. A request for a hearing or paternity testing is filed on the date the request is received by DCS.

(5) If the results of paternity tests requested under subsection (4) of this section do not exclude the NCP as the natural father of the dependent child, the notice and finding of parental responsibility becomes final and subject to immediate wage withholding without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within sixty days of service of the paternity test costs in another state:

(a) Contacts DCS and signs an agreed settlement or consent order; or

(b) Files a written request for a hearing under WAC 388-14A-3120.

(6) Administrative law judges and parties must conduct administrative hearings on notices served in another state under this section under the special rules of evidence and procedure in chapter 26.21 RCW and according to chapter 34.05 RCW.

PART H - MISCELLANEOUS

NEW SECTION

WAC 388-14A-8100 Are there special rules for setting child support for children in foster care? (1) Child support obligations for children in foster care are set under chapter 26.19 RCW, just like any other support obligation.

(2) The division of child support does not establish or enforce support obligations for children in foster care who have been certified as eligible for DDD services.

NEW SECTION

WAC 388-14A-8105 Does the cost of care affect how much child support I pay when my child is in foster care?

(1) Child support obligations for children in foster care are set according to chapter 26.19 RCW, without regard to how much the department is expending in foster care funds.

(2) The administrative law judge or review judge may not limit the noncustodial parent's support obligation to the amount the department expends each month for foster care.

NEW SECTION

WAC 388-14A-8110 What happens to the money if current support is higher than the cost of care? (1) When the division of child support (DCS) collects child support from the parent(s) of a child in foster care, DCS sends the amounts collected to the division of child and family services (DCFS), which administers foster care funds.

(2) DCFS and its Office of accounting services (OAS) apply child support payments collected by DCS.

(3) DCFS and/or OAS deposits in a trust account for the child any child support payments which they don't use to reimburse foster care expenses.

(2) DCFS and its Office of accounting services (OAS) apply child support payments collected by DCS.

(3) DCFS and/or OAS deposits in a trust account for the child any child support payments which they don't use to reimburse foster care expenses.

NEW SECTION

WAC 388-14A-8120 Are there special rules for collection in foster care cases? (1) Whenever the department provides residential care ("foster care") for a dependent child or children, the noncustodial parent (NCP) or parents (NCPs) satisfy their obligation to support the child or children by paying to the department the amount specified in a court order or administrative order, if a support order exists.

(2) The division of child support (DCS) takes action under the provisions of chapters 74.20 and 74.20A RCW and this chapter to enforce and collect support obligations owed for children receiving foster care services.

(3) If, during a month when a child is in foster care, the NCP is the "head of household" with other dependent children in the home, DCS does not collect and retain a support payment if:

(a) The household's income is below the need standard for temporary assistance for needy families (TANF) (see WAC 388-478-0015); or

(b) Collection of support would reduce the household's income below the need standard.

(4) The NCP's support obligation for the child or children in foster care continues to accrue during any month DCS is prevented from collecting and retaining support payments under this section.

(5) If the department has collected support payments from the head of household during the months which qualify under section (3), the NCP may request a conference board in accordance with WAC 388-14A-6400.

(6) The NCP must prove at the conference board that the income of the household was below or was reduced below the need standard during the months DCS collected payments.

(7) If the conference board determines that DCS has collected support payments from the head of household that the

department is not entitled to retain according to this section, DCS must promptly refund, without interest, any support payments, or the portion of a payment which reduced the income of the household below the need standard.

(8) This section does not apply to payments collected prior to August 23, 1983.

NEW SECTION

WAC 388-14A-8200 All Washington employers must report new hires to the Washington state support registry. (1) RCW 26.23.040 requires all employers doing business in the state of Washington to comply with the employer reporting requirements regarding new hires.

(2) The minimum information that an employer must report is the employee's name, date of birth, social security number and date of hire.

(3) An employer who submits a copy of the employee's completed W-4 form complies with the filing requirements of RCW 26.23.040(3).

(4) An employer may choose to voluntarily report the other statutory elements.

NEW SECTION

WAC 388-14A-8300 Who pays for genetic testing when paternity is an issue? (1) As provided in WAC 388-14A-3120(14), the noncustodial parent (NCP) and/or the mother of the child may request genetic testing, also called paternity tests, after the service of a notice and finding of parental responsibility.

(2) After receiving a request for paternity tests, the division of child support (DCS) must:

(a) Arrange and pay for the genetic testing, except as provided in subsection (6) of this section, with a laboratory under contract with the department; and

(b) Notify the NCP and the mother of the time and place to appear to give blood samples.

(3) After DCS receives the test results, DCS must:

(a) Mail a notice of the test results to the:

(i) NCP's last known address by certified mail, return receipt requested; and

(ii) Mother's and/or custodial parent's last known address by first class mail.

(b) Notify the NCP:

(i) Of the costs of the tests;

(ii) That an administrative order entered as a result of the notice and finding of parental responsibility will include the cost of the tests; and

(iii) That DCS may take collection action to collect the genetic testing costs twenty days after the date the NCP receives notice in Washington, or within the time specified in WAC 388-14A-7200, of the test results if the NCP fails to:

(A) Request either a hearing on the issue of reimbursement to DCS for genetic testing costs under WAC 388-14A-3120 or the initiation of a parentage action in superior court; or

(B) Negotiate an agreed settlement.

(iv) If the notice was served in another state, DCS may take collection action according to WAC 388-14A-7200.

(4) When the genetic tests do not exclude the NCP from being the father, the NCP must reimburse the department for the costs of the tests.

(5) When the paternity tests exclude the NCP from being the father, DCS must:

(a) File a copy of the results with the state center for health statistics;

(b) Withdraw the notice and finding of parental responsibility; and

(c) Request the dismissal of any pending action based on the notice and finding of parental responsibility.

(6) RCW 74.20A.056 does not require DCS to arrange or pay for genetic testing when:

(a) Such tests were previously conducted; or

(b) A court order establishing paternity has been entered.

NEW SECTION

WAC 388-14A-8400 Does the division of child support have the right to approve my child support order before the court enters it? (1) If the department is providing or has provided cash assistance to the family, parties to a court order must give the division of child support (DCS) twenty calendar days prior notice of the entry of any final order and five days prior notice of the entry of any temporary order in any proceeding involving child support or maintenance, because the department has a financial interest based on an assignment of support rights under RCW 74.20.330 or the state has a subrogated interest under RCW 74.20A.030.

(2) Either party may serve notice on DCS, by personal service on, or mailing by any form of mail requiring a return receipt to, the office of the attorney general.

(3) If you don't give sufficient notice before entering the support order, DCS may ask the prosecuting attorney or attorney general to vacate the terms of the support order.

(4) DCS or the department are not entitled to terms for a party's failure to serve the department within the time requirements for this section, unless the department proves that the party knew that the department had an assignment of support rights or a subrogated interest and that the failure to serve the department was intentional.

NEW SECTION

WAC 388-14A-8500 Can the division of child support issue subpoenas? (1) The division of child support (DCS) issues subpoenas requiring the production of documents or records, or appearance of witnesses, under RCW 34.05.588 and 74.04.290.

(2) Compliance with DCS subpoenas is enforced under RCW 34.05.588 and 74.20A.350.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-11-011

Definitions.

PERMANENT

WAC 388-11-015	Credits allowed—Debt satisfaction.	WAC 388-11-335	When does DCS remove a noncustodial parent from the DCS most wanted internet site?
WAC 388-11-045	Service requirements—Tolling.		
WAC 388-11-048	Request for paternity tests—Liability for costs.	WAC 388-11-340	What information does the division of child support post to the DCS most wanted internet site?
WAC 388-11-065	Defenses to liability.		
WAC 388-11-067	Equitable estoppel.		
WAC 388-11-100	Duty of the administrative law judge.	<u>REPEALER</u>	
WAC 388-11-120	Default—Vacate.	The following sections of the Washington Administrative Code are repealed:	
WAC 388-11-135	Service.	WAC 388-13-010	Debt, assignment, recoupment, set-off.
WAC 388-11-140	Modification.	WAC 388-13-020	Notice of support debt.
WAC 388-11-143	Department review of support orders.	WAC 388-13-030	Service of notice of support debt.
WAC 388-11-145	Notice to parties.	WAC 388-13-040	Failure to make answer or request for hearing.
WAC 388-11-150	Consent order and agreed settlement.	WAC 388-13-050	Petition for hearing after twenty days—Stay.
WAC 388-11-155	Duration of obligation.	WAC 388-13-060	Timely application for hearing.
WAC 388-11-170	Collection of debts determined.	WAC 388-13-070	Hearing—Initial decision.
WAC 388-11-180	Procedural reference.	WAC 388-13-085	Collection action.
WAC 388-11-205	Assessing support.	WAC 388-13-090	Limitation on proceeding.
WAC 388-11-210	Administrative orders.	WAC 388-13-100	Acknowledgment of debt.
WAC 388-11-215	Health insurance.	WAC 388-13-110	Default.
WAC 388-11-220	Liability for birth costs.	WAC 388-13-120	Procedural reference.
WAC 388-11-280	Credit for dependent benefits.	<u>REPEALER</u>	
WAC 388-11-300	Amending notices.	The following sections of the Washington Administrative Code are repealed:	
WAC 388-11-305	Uniform Interstate Family Support Act—Notices served in another state.	WAC 388-14-010	Office of support enforcement as the Title IV-D agency.
WAC 388-11-310	Request for late hearing—Good cause.	WAC 388-14-020	Definitions.
WAC 388-11-320	What is the division of child support's DCS most wanted internet site?	WAC 388-14-030	Confidentiality.
WAC 388-11-325	Whose picture can go on the division of child support's DCS most wanted internet site?	WAC 388-14-035	Requests for address disclosure—Form of request.
WAC 388-11-330	How does a noncustodial parent avoid being posted on the DCS most wanted internet site?	WAC 388-14-040	Authorization for address release.
		WAC 388-14-045	Requests for address disclosure—Notice of request—Standards for nonrelease.
		WAC 388-14-050	Requests for address disclosure—Hearings.

WAC 388-14-100	Absent parent's responsibility—Liability.	WAC 388-14-386	How to apply for a conference board.
WAC 388-14-200	Families accepting assistance must assign certain support rights to the state.	WAC 388-14-387	Explanation of the conference board process.
WAC 388-14-201	Cooperation with division of child support.	WAC 388-14-388	Scope of authority of conference board chair defined.
WAC 388-14-202	Effects of noncooperation.	WAC 388-14-390	Hearing when collection action is initiated against a bank account—Exemptions—Burden of proof.
WAC 388-14-203	Medical assistance only—Assignment of support rights—Cooperation.	WAC 388-14-395	Limitation on collection of support payments from head of household—Request for conference board—Burden of proof.
WAC 388-14-205	Responsibilities of the office.	WAC 388-14-410	Release of information to consumer reporting agency.
WAC 388-14-210	Support payments to office of support enforcement.	WAC 388-14-415	Notice of support owed.
WAC 388-14-220	Subpoena power.	WAC 388-14-420	Once a support enforcement case is opened, under what circumstances can it be closed?
WAC 388-14-250	Payments to the family.	WAC 388-14-421	Under what circumstances may DCS deny a request to close a support enforcement case?
WAC 388-14-260	Interstate cases.	WAC 388-14-422	Who is mailed notice of DCS' intent to close a case?
WAC 388-14-270	Distribution of support payments.	WAC 388-14-423	What if I don't agree with the case closure notice?
WAC 388-14-271	Notice of intent to distribute support money.	WAC 388-14-424	What happens to payments that come in after a case is closed?
WAC 388-14-272	Notice to recover a support payment.	WAC 388-14-427	Payroll deduction notice—Order to withhold and deliver—Wage assignments—Agreements for electronic service.
WAC 388-14-273	Payment distribution payment services only cases.	WAC 388-14-435	Notice of support debt.
WAC 388-14-274	Distribution notice.	WAC 388-14-440	Notice to payee.
WAC 388-14-276	Total versus total notice.	WAC 388-14-450	Debt adjustment notice.
WAC 388-14-300	Nonassistance support enforcement services—Persons eligible for services.	WAC 388-14-460	Notice of intent to enforce—Health insurance coverage.
WAC 388-14-310	Nonassistance support enforcement application.	WAC 388-14-480	Notice of enrollment—Health insurance coverage—Issuance and termination.
WAC 388-14-350	Location of absent parents.	WAC 388-14-490	All Washington employers must report new hires to the Washington state support registry.
WAC 388-14-360	Cooperation with other states.		
WAC 388-14-365	Reassignment by state administering an approved plan.		
WAC 388-14-370	Cooperative arrangements with courts and law enforcement officials.		
WAC 388-14-376	Recovery of excess daycare and special child rearing expense payments.		
WAC 388-14-385	The division of child support's grievance and dispute resolution method is called a conference board.		

- WAC 388-14-495 Registering an order from another state for enforcement or modification.
- WAC 388-14-496 Uniform Interstate Family Support Act—Notices served in another state.
- WAC 388-14-500 The division of child support will accept oral requests for hearing or conference board.
- WAC 388-14-510 What is the division of child support's license suspension program?
- WAC 388-14-520 The notice of noncompliance and intent to suspend licenses.
- WAC 388-14-530 Who is subject to the DCS license suspension program?
- WAC 388-14-540 How do I avoid having my license suspended for failure to pay child support?
- WAC 388-14-550 Signing a repayment agreement will avoid certification for noncompliance.
- WAC 388-14-560 How to obtain a release of certification for noncompliance.
- WAC 388-14-570 Administrative hearings regarding license suspension are limited in scope.

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: An earlier date is requested to reduce hunger in the affected areas by allowing ABAWDs to apply and receive food benefits through this WAC change.

Effective Date of Rule: March 1, 2001.

February 7, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 00-04-006, filed 1/20/00, effective 3/1/00)

WAC 388-444-0075 What are the disqualification periods for quitting a job without good cause? (1) If you are an applicant who quits a job without good cause sixty days before applying for food assistance, the department will deny your application. The penalty period in subsection (3) of this section begins from the date of application.

(2) If you are already receiving food assistance and you quit your job without good cause, the department must send you a letter notifying you that you are going to be disqualified from food assistance. The disqualification in subsection (3) of this section begins the first of the month following the notice of adverse action.

(3) You are disqualified for the following minimum periods of time and until the conditions in subsection (4) of this section are met:

- (a) For the first quit, one month;
- (b) For the second quit, three months; and
- (c) For the third or subsequent quit, six months.

(4) You may re-establish eligibility after the disqualification, if otherwise eligible by:

- (a) Getting a new job;
- (b) In nonexempt areas, participating in the FS E&T program;
- (c) Participating in Workfare as provided in WAC 388-444-0040;

(d) In an exempt area, serving the penalty period.

(5) The department can end the disqualification period if you become exempt from the work registration requirements as provided in WAC 388-444-0015 unless you are applying for or receiving unemployment compensation (UC), or participating in an employment and training program under TANF.

WSR 01-05-006

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 7, 2001, 4:45 p.m., effective March 1, 2001]

Date of Adoption: February 7, 2001.

Purpose: This WAC adds a new line in subsection (4) and will allow clients in exempt areas to serve the disqualification period, and if they do not find employment, be allowed to reapply for food assistance after they have served the disqualification period.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0075.

Statutory Authority for Adoption: RCW 74.04.050 and 74.04.510.

Adopted under notice filed as WSR 00-24-038 on November 29, 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

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(6) If you are disqualified and move from the assistance unit and join another assistance unit, you continue to be treated as an ineligible member of the new assistance unit for the remainder of the disqualification period.

(7) If you are disqualified and move to a FS E&T exempt area, you must serve the remainder of the disqualification period.

WSR 01-05-008
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed February 8, 2001, 8:34 a.m.]

Date of Adoption: January 11, 2001.

Purpose: Amends WAC 136-170-030 Terms of CRAB/county contract.

Citation of Existing Rules Affected by this Order: Amending Title 136 WAC.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Adopted under notice filed as WSR 00-22-098 on November 1, 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 6, 2001

Jay P. Weber

Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-170-030 Terms of CRAB/county contract.

(1) For projects for which RATA funds are allocated before July 1, 1995, the CRAB/county contract shall include, but not be limited to, the following provisions:

(a) The contract shall be valid and binding (and the county shall be entitled to receive RATA funds) only if such contract is signed and returned to the county road administration board within forty-five calendar days of its mailing by the county road administration board.

(b) The county certifies that it is in compliance with the provisions of chapter 136-150 WAC.

(c) The project will be constructed in accordance with the scope, design and project limits as described in the final prospectus and in accordance with the plans and specifications approved by the county engineer.

(d) The county will notify the county road administration board when a construction contract has been awarded and/or when construction has commenced, and when the project has been completed.

(e) The county road administration board will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the county road administration board office, subject to the availability of RATA funds apportioned to the region or subject to a minimum regional balance determined by the CRABoard for the purposes of cash flow; provided however, that if insufficient RATA funds are available or the legislature fails to appropriate sufficient RATA funds, payment of vouchers may be delayed or denied.

(f) The county will reimburse the RATA in the event a project postaudit reveals ineligible expenditure of RATA funds.

(2) For projects for which RATA funds are allocated on or after July 1, 1995, the CRAB/county contract shall include, but not be limited to, the following provisions:

(a) The contract shall be valid and binding, and the county shall be entitled to receive RATA funding in accordance with the vouchering/payment process as described in chapter 136-180 WAC, only if the contract is properly signed and returned to the county road administration board within forty-five calendar days of its mailing by the county road administration board.

(b) The county certifies that it is in compliance with the provisions of chapter 136-150 WAC.

(c) The project will be constructed in accordance with the scope, design and project limits as described in the final prospectus and in accordance with the plans and specifications approved by the county engineer.

(d) The county will notify the county road administration board when a construction contract has been awarded and/or when construction has commenced, and when the project has been completed.

(e) The county road administration board will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the county road administration board office, subject to the availability of RATA funds apportioned to the region; or subject to a minimum regional balance determined by the CRABoard for the purposes of cash flow; provided however, that if insufficient RATA funds are available or the legislature fails to appropriate sufficient RATA funds, payment of vouchers may be delayed or denied.

(f) The county will reimburse the RATA in the event a project postaudit reveals ineligible expenditures of RATA funds.

(g) The county may be required to reimburse the RATA in the event of early termination in accordance with the provisions of chapter 136-167 WAC.

(h) The county agrees to amend the contract in cases where:

(i) Additional RATA funds have been requested and approved under chapter 136-165 WAC;

(ii) Other relief from the original scope, design or project limits has been approved by the county road administration board under chapter 136-165 WAC; or

(iii) A project has been terminated without full RATA reimbursement under WAC 136-167-030(2).

(i) The county agrees to provide periodic project development progress reports as requested by the county road administration board.

WSR 01-05-009
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed February 8, 2001, 8:37 a.m.]

Date of Adoption: January 11, 2001.

Purpose: Amends WAC 136-130-030 Project prioritization in Puget Sound region, 136-130-050 Project prioritization in northeast region, 136-130-060 Project prioritization in southeast region, 136-130-070 Project prioritization in southwest region, 136-161-020 RAP program cycle—General, 136-161-030 RAP program cycle—Preliminary prospectus, 136-161-040 RAP program cycle—Field review by CRAB, 136-161-050 RAP program cycle—Final prospectus, 136-161-070 RAP program cycle—Selection and approval, 136-163-050 Limitations and conditions—Emergency and emergent project, 136-210-030 Deviations from design standards, 136-210-040 Report of assistant secretary for highways and local programs, and 136-210-050 Project approval with deviation.

Citation of Existing Rules Affected by this Order: Amending sections in Title 136 WAC.

Statutory Authority for Adoption: Chapter 36.79 RCW.

Adopted under notice filed as WSR 00-24-096 on December 5, 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 6, 2001

Jay P. Weber

Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-130-030 Project prioritization in Puget Sound region (PSR). Each county in the PSR may submit projects requesting RATA funds not to exceed 80% of the forecasted regional (~~(allocation total)~~) apportionment. Each project shall be rated in accordance with the PSR RAP rating procedures. The PSR (~~(biennial apportionment)~~) funding period shall (~~(have)~~) allot a minimum of 25% of the forecasted regional (~~(allocation committed)~~) apportionment to projects on roads classified as major collectors (07) or minor collectors (08). PSR RAP rating points shall be assigned on the basis of twenty points for traffic volume, twenty-five points for accident history, fifteen points for structural condition, twenty-five points for geometric condition, and fifteen points for special use and need. Prioritization of PSR projects shall be on the basis of total PSR RAP rating points shown on the project worksheet and the prospectus form of the project application.

AMENDATORY SECTION (Amending WSR 99-16-038, filed 7/29/99, effective 8/29/99)

WAC 136-130-050 Project prioritization in northeast region (NER). Each county in the NER may submit projects requesting RATA funds not to exceed twenty-five percent of the forecasted NER biennial apportionment. Each project shall be rated in accordance with the NER RAP rating procedures. The NER biennial apportionment shall be divided into the following categories at the percentages shown, provided sufficient projects are submitted for prioritization in each category:

- Category 1 - Ten percent for bridge projects where RATA funds are used as a match for federal bridge replacement funds;
- Category 2 - Forty-five percent for reconstruction of rural collectors; and
- Category 3 - Forty-five percent for resurfacing, restoration, rehabilitation (3R) type projects on rural collectors.

In the event that no projects or an insufficient number of projects are submitted in any of the above categories to utilize the RATA funds set aside for the category, all remaining funds in that category or categories shall be divided among the remaining categories as the county road administration board deems appropriate. The intent is to divide all available funds into categories having a sufficient number of submitted projects to fully utilize the funds available at each allocation during the biennium.

Bridge projects may be submitted requesting RATA funds under one of the following conditions:

(1) Bridges must be approved for federal bridge replacement funding and RATA funds shall be used only as a match for such federal funding. Bridges will be ranked for RATA funding using the WSDOT priority list and may be added to the NER Category 1 priority array at any time during the biennium upon approval of the Bridge for Federal Bridge replacement funding.

(2) A stand-alone bridge project may be submitted as an ordinary RAP project provided that its priority rating has been computed by the bridge rating method in the NER RAP rating procedures. Such projects shall not be considered for funding from the bridge reserve described above.

(3) A RAP project may include a bridge when the cost of the bridge does not exceed twenty percent of the total project cost.

NER RAP rating points for reconstruction projects, 3R projects or non-federal bridge replacement projects shall be assigned on the basis of one hundred points for a condition rating and fifty points for a service rating. The priority rating equals the sum of two and one half times the product of the service rating to the 1.25 power and the common logarithm of the number obtained by dividing one hundred by the condition rating. A total of ten points representing local significance may be added to one project included in each county's biennial submittal. A total of up to ten points representing missing links definition may also be added to one project included in each county's biennial submittal. Prioritization of NER projects shall be on the basis of total NER RAP rating points shown on the appropriate project worksheet and the prospectus form of the project application.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-130-060 Project prioritization in southeast region (SER). Each county in the SER may submit projects requesting RATA funds not to exceed twice the per county limit of the forecasted SER biennial apportionment which is listed as follows:

Asotin County	ten percent
Benton County	fourteen percent
Columbia County	eleven percent
Franklin County	thirteen percent
Garfield County	ten percent
Kittitas County	thirteen percent
Klickitat County	fourteen percent
Walla Walla County	fourteen percent
Yakima County	twenty percent

Each project shall be rated in accordance with the SER RAP rating procedures. Ten percent of the forecasted SER biennial apportionment shall be reserved for bridge projects. Federally funded bridges for which counties are seeking matching funds shall receive first consideration for these funds, ranked against each other according to the WSDOT priority array. Bridges receiving federal funding may be added to this list at any time during the biennium. Stand-

alone bridges may compete for funds in this reserve that remain after all bridges seeking match for federal funds have been funded. These bridges will be rated against each other according to their total points assigned from the RAP Rating Worksheets for the SER. Whatever part of the bridge reserve that is not allocated to bridge projects shall be available for allocation to other RAP projects.

SER RAP rating points shall be assigned on the basis of forty-five points for structural condition, thirty points for geometrics, twenty-two points for traffic volume, five points for traffic accidents. A total of twenty points representing local significance may be added to one project in each county's biennial submittal. Prioritization of SER projects shall be on the basis of total SER RAP rating points shown on the project worksheet and the prospectus form of the project application.

AMENDATORY SECTION (Amending WSR 99-24-057, filed 11/29/99, effective 12/30/99)

WAC 136-130-070 Project prioritization in southwest region (SWR). Each county in the SWR may submit projects requesting RATA funds not to exceed thirty percent of the forecasted SWR biennial apportionment. No bridge replacement projects will be funded. Each project shall be rated in accordance with the SWR RAP rating procedures. SWR RAP rating points shall be assigned on the basis of fifty road condition points, consisting of twenty-five points for structural condition and twenty-five points for surface condition, fifty points for geometrics, ten points for traffic volume and ten points for traffic accidents, except that portland cement concrete surfaces and asphalt surfaces with cement concrete bases shall have fifty points for road surface condition and no points for structural condition and except that gravel roads shall have thirty-five points maximum for surface condition, and fifteen points maximum for roadbed width in geometrics and no other geometric points. Prioritization of SWR projects shall be on the basis of total SWR RAP rating points shown on the project worksheets and the prospectus form of the project application.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-161-020 RAP program cycle—General. The RAP biennial program cycle consists of the following basic steps:

(1) The CRABoard establishes a funding period if it determines that sufficient future RATA funds are available to provide for new RAP projects. This determination takes place during the CRABoard's regularly scheduled fall meeting in odd-numbered years.

(2) Each county prepares and submits a preliminary prospectus to the county road administration board;

~~((2))~~ (3) County road administration board staff conducts a field review of each preliminary prospectus and provides to each submitting county an evaluation and scoring of all priority elements which are based on a visual examination, using that region's priority rating process;

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~~((3))~~ (4) Each county prepares and submits a final prospectus to the county road administration board;

~~((4))~~ (5) For each final prospectus submitted, county road administration board staff computes the total priority rating score and assembles all projects into rank-ordered arrays by region; and

~~((5))~~ (6) The county road administration board reviews the rank-ordered arrays in each region and, based upon the RATA funds projected to be ~~((available))~~ allocable for the next project program period (see WAC 136-161-070), selects and approves specific projects for RATA funding.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-161-030 RAP program cycle—Preliminary prospectus. By March 1st of each even-numbered year prior to a funding period, each eligible county shall, for each project for which it seeks RATA funds estimated to be available in the next project program period, submit a preliminary prospectus to the county road administration board. The format and content of the preliminary prospectus shall be prescribed by the county road administration board. Each preliminary prospectus shall be signed by the county engineer. The number of preliminary prospectuses submitted and the total amount of RATA funds requested by each eligible county shall be sufficient to assure that, based upon such prospectuses, each county will be able to compete up to its county limit within its region.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-161-040 RAP program cycle—Field review by county road administration board. After all preliminary prospectuses are received, the county road administration board will schedule and conduct an on-site field review of each project. During the field review, conducted jointly with the county engineer or his/her designee (unless waived by the county engineer), the assigned county road administration board staff person will review the overall project scope with the county representative and, using that region's priority rating process, determine the rating score of all priority elements which are based on a visual examination. To ensure both uniformity and professional judgment in the visual ratings, the assigned county road administration board staff person shall be a licensed professional civil engineer in the state of Washington, and the same person shall review and rate all projects within a region. All field reviews will be completed, and the visual rating scores returned to each submitting county, by July 1st of each even-numbered year prior to a funding period.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-161-050 RAP program cycle—Final prospectus. By September 1st of each even-numbered year prior to a funding period, each eligible county shall submit a final prospectus for each project for which it seeks RATA funds.

Each final prospectus shall be submitted on forms provided by the county road administration board and shall include a vicinity map, a typical cross-section (existing and proposed), and, if a design deviation is required, an evaluation and determination by the county engineer. If a project is for the improvement of a road which continues into an adjacent county and the project terminus is within one thousand feet of the county line, the prospectus shall include a statement signed by the county engineer of the adjacent county certifying that the adjacent county will cooperate with the applicant county to the extent necessary to achieve a mutually acceptable design. All final prospectuses shall indicate that the construction of the project shall begin not later than six years from the date of project approval by the county road administration board. All final prospectuses shall come from the pool of preliminary prospectuses submitted and field reviewed as specified in WAC 136-161-030 and 136-161-040.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-161-070 RAP program cycle—Selection and approval of projects for RATA funding. (1) At its last regular meeting before the beginning of each biennium, the county road administration board will select projects and allocate anticipated RATA funds to projects in each region. The preliminary priority arrays as developed in WAC 136-161-060 will be updated to exclude any county which is ineligible under chapter 136-150 WAC, and projects will be selected from these arrays. Selections will be made in each region in declining priority rank order, provided that:

(a) No county shall be allocated RATA funds in excess of its regional county limit as specified in WAC 136-161-080; and

(b) Any projects which were partially funded in the prior biennium shall, unless otherwise requested by the county, be fully funded before new projects are selected. Ties in total rating points will be broken by the county road administration board in favor of the county having the lesser total amount of previously allocated RATA funds.

(2) The statewide net amount of RATA funds available for allocation to projects in the ~~((project program))~~ funding period will be based on the most recent state fuel tax revenue forecast prepared quarterly by the department of transportation, less estimated administrative costs, and less any amounts set aside for emergent projects as described in WAC 136-163-020. The total amount of RATA funds available for allocation to projects in a region (i.e., "forecasted regional apportionment amount") will be based on the regional apportionment percentages of the statewide net amount as determined in chapter 136-100 WAC.

(3) For the ~~((biennium))~~ funding period beginning July 1, 1995, the project program period will be the next four state fiscal years (1996, 1997, 1998 and 1999, beginning July 1, 1995, and ending June 30, 1999). For the ~~((biennium))~~ funding period beginning July 1, 1997, the project program period will begin July 1, 1999 and end June 30, 2001. ~~((For each biennium thereafter, the project program period will be two years in length, beginning and ending two years later than the preceding project program period.))~~

(4) The RATA amounts allocated to projects in the first year of the biennium are limited to no more than ninety percent of the net amount estimated to be ~~((available))~~ allocable to each region for the project program period, with the remaining ~~((ten percent))~~ percentage allocated at such time as deemed appropriate by the county road administration board.

(5) Acceptance of the RATA allocation for a project by the full execution of a CRAB/county contract as described in chapter 136-170 WAC constitutes agreement to complete the project in compliance with the scope, design and project limits in the final prospectus. All material changes to the scope, design or project limits must be approved by the county road administration board prior to commencement of construction.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-163-050 Limitations and conditions—Emergency and emergent projects. All projects for which RATA funding is being requested under this chapter are subject to the following:

- (1) The requesting county has the sole burden of making a clear and conclusive showing that the project is either emergent or emergency as described in WAC 136-163-020 through 136-163-040;
- (2) The requesting county shall clearly demonstrate that the need for the project was unable to be anticipated at the time the current six-year transportation program was developed; and
- (3) The requesting county agrees to a reduction in the next ~~((biennium's))~~ funding period's maximum RATA eligibility to the county equal to the RATA that may be provided; however, should that region not have a maximum RATA eligibility for each county, the requesting county agrees to withdraw, amend or delay an existing approved project or portion thereof in an amount equal to the RATA that may be provided for the project.

AMENDATORY SECTION (Amending WSR 98-09-070, filed 4/20/98, effective 5/21/98)

WAC 136-210-030 Deviations from design standards. Deviation from the specified design standards may be requested by the county engineer in responsible charge of the project when circumstances exist which would make application of adopted standards exceedingly difficult. Whenever a deviation request is to be made on a project, it shall be so noted on the project application submitted in accordance with WAC 136-161-050. Request for deviation shall be made to the WSDOT assistant secretary for ~~((transaid))~~ highways and local programs.

AMENDATORY SECTION (Amending WSR 96-17-013, filed 8/12/96, effective 9/12/96)

WAC 136-210-040 Report of assistant secretary for ~~((transaid))~~ highways and local programs. Whenever the CRABoard meets to approve RAP projects the assistant secretary for ~~((transaid))~~ highways and local programs shall provide a written report on his action in response to deviation

requests, if any, made on individual projects. Failure of the assistant secretary for ~~((transaid))~~ highways and local programs to report in response to a deviation request within thirty days of receipt of such request shall be considered as approval.

AMENDATORY SECTION (Amending WSR 96-17-013, filed 8/12/96, effective 9/12/96)

WAC 136-210-050 Project approval with deviation. After having received the report of the assistant secretary for ~~((transaid))~~ highways and local programs in response to deviation requests, the CRABoard shall proceed with RAP project approval in accordance with WAC 136-161-050. Proposed projects for which the deviation request has been denied shall not be approved.

WSR 01-05-018

PERMANENT RULES

GAMBLING COMMISSION

[Order 398—Filed February 9, 2001, 3:56 p.m.]

Date of Adoption: February 9, 2001.

Purpose: During meetings with the bingo net return task force, new marketing schemes for pull-tabs were discussed as a way to promote business for the bingo halls. This rules package sets forth two new marketing schemes for pull-tabs series.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 00-13-029 on June 13, 2000, with a publication date of July 5, 2000. Supplemental notice filed December 20, 2000, under WSR 01-01-143 with a published date of January 3, 2001.

Changes Other than Editing from Proposed to Adopted Version: The commission chose not to adopt two of the rules (WAC 230-02-260 and 230-20-036) that were filed with the supplemental notice.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 2, 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 9, 2001
Susan Arland
Rules Coordinator

PERMANENT

NEW SECTION

WAC 230-30-033 Event pull-tab series—Definitions—Restrictions. Charitable or nonprofit bingo operators may use event pull-tab series under the following definitions and restrictions.

Definitions.

(1) The following definitions apply to this section:

(a) "Event pull-tab series" means a pull-tab series that includes a predetermined number of pull-tabs which allow a player to advance to an event round;

(b) "Event round" means a secondary element of chance where the prizes are determined based on pull-tabs which match specific winning numbers drawn in a bingo game. The winning numbers must fall within numbers 1 through 75.

Manufacturing restrictions.

(2) The following manufacturing restrictions apply to this section:

(a) An event pull-tab series shall be manufactured meeting all standards of construction included in WAC 230-30-103;

(b) An event pull-tab series may include instant winning prizes in addition to event round prizes;

(c) The flare shall clearly set out the following:

(i) All prizes available, in accordance with WAC 230-30-106;

(ii) The number of chances available to advance to the event round;

(iii) How the event round winner is to be determined; and

(iv) The number of winning pull-tabs at the instant winner level, and the number of winning pull-tabs at the event round level.

Operational restrictions.

(3)(a) The event pull-tab series must be played in a charitable or nonprofit bingo hall and must be played and completed within one bingo session;

(b) Prior to putting an event pull-tab series into play, the operator must fully disclose, in plain view, when the event round (which involves the second element of chance) will take place;

(c) Event pull-tab series must be available for purchase until immediately prior to the event round, unless the game has been completely sold out;

(d) A licensed manager must be present at all times an event pull-tab series is in play, including sales of tickets and selection of winners;

(e) The following are prohibited for use with event pull-tab series:

(i) Substitute flares;

(ii) Bonus pull-tab series; and

(iii) Carry-over jackpots.

NEW SECTION

WAC 230-30-034 Seal card pull-tab series—Definitions—Restrictions. Operators may use seal card pull-tab series under the following definitions and restrictions:

Definitions.

(1) The following definitions apply to this section:

(a) "Seal card pull-tab series" means a pull-tab series that includes a predetermined number of pull-tabs which allow a player to advance to the seal card round; and

(b) "Seal card round" means a secondary element of chance where the prizes are determined based on the number or symbol concealed by a seal located on the flare and associated with the name of a player that has advanced to the seal card round.

Manufacturing restrictions.

(2) The following manufacturing restrictions apply to this section:

(a) A seal card pull-tab series, including any seals on the flare, shall be manufactured meeting all standards of construction included in WAC 230-30-103;

(b) The flare may include up to two seals. The second seal may be offered as an additional prize, but may not be offered as an alternative to the original seal prize;

(c) The seal card pull-tab series shall include forms to be attached to the pull-tabs that list each seal card round participant with adequate information for contacting winners of the seal card round;

(d) The flare shall clearly set out the following:

(i) All prizes available, in accordance with WAC 230-30-106;

(ii) The number of chances available to advance to the seal card round, and how the seal card round winner is to be determined; and

(iii) The number of winning tabs at the instant winner level, and the number of winning tabs at the seal card round level.

(e) If perforated windows are used for the seal on the flare, the numbers or symbols must be covered by a means which prevents detection of the winning number or symbol prior to opening.

Operating restrictions.

(3) The following operational restrictions apply to this section:

(a) Seal card pull-tabs series must be played in the following manner:

(i) Seal card round prizes shall be awarded for all seal card pull-tab series that are placed out for play. The seal card pull-tab series must be played out before it is pulled from play unless the operator elects to award the seal card round prizes without all tickets being purchased. The operator shall contact the seal card round winner within two business days. The seal card round winner shall be given two weeks after being contacted to redeem their prize. If the seal card round winner does not redeem their prize within two weeks, an alternate winner may be selected. The method of selecting an

alternate winner must be established and fully disclosed prior to placing a game out for play; and

(ii) When a player receives a ticket that allows them to enter the seal card round, they must enter their name or allow the operator to enter their name on the flare based on the line indicated by the number or symbol on the pull-tab. The player must then turn in their ticket to the operator. The information to locate the winner shall be recorded at the time their name is entered on the flare. This information shall be maintained with the records of the game and be kept during the maintenance period of the game. All seal card pull-tab series must be maintained on premises and be available for public inspection for a period of two weeks after they are pulled from play. If a seal card round winner is not located within that time frame, the maintenance time shall be extended until a winner is designated for the game.

(b) Substitute flares, bonus pull-tab series and carry-over jackpots are prohibited from use with seal card pull-tab series.

**WSR 01-05-019
PERMANENT RULES
GAMBLING COMMISSION**

[Order 399—Filed February 9, 2001, 3:58 p.m.]

Date of Adoption: February 9, 2001.

Purpose: In December 1999, the commission adopted fee increases for licensees under WSR 99-24-099. In November 2000, I-722 passed by a public vote, however, it has been challenged and is currently under review. Because of this, there is a cloud of uncertainty regarding the proper amount licensing fees should be set at; therefore, this filing is being made to readopt the licensing fee amounts established in December 1999.

Citation of Existing Rules Affected by this Order: Amending WAC 230-04-202, 230-04-203, and 230-04-204.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 01-02-040 on December 28 [27], 2000, with a publication date of January 17, 2001.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 3, 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 9, 2001

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 377, filed 11/30/99, effective 12/31/99)

WAC 230-04-202 Fees—Bona fide charitable/non-profit organizations. Bona fide charitable and nonprofit organizations shall submit the following fees to the commission when applying for gambling licenses, permits, miscellaneous changes, inspection services, or when assessed the cost of special investigation procedures by the commission:

LICENSE TYPE	DEFINITION	FEE
1. AMUSEMENT GAMES		
	(Fee based on annual gross gambling receipts)	
* Class A	Premises only	\$ 53
Class B	Up to \$ 10,000	\$ 53
Class C	Up to \$ 25,000	\$ 285
Class D	Up to \$ 50,000	\$ 457
Class E	Over \$ 50,000	\$ 797

* Allows a charitable or nonprofit organization to enter into a contract with Class "B" or above commercial amusement game licensee to locate and operate amusement games on their premises.

2. BINGO GROUP		(Fee based on annual gross gambling receipts)		VARIANCE *
Class A	Up to \$ 15,000	\$ 1,000		\$ 53
Class B	Up to \$ 50,000	\$ 1,000		\$ 166
Class C	Up to \$ 100,000	\$ 2,000		\$ 339
Class D	Up to \$ 250,000	\$ 4,000		\$ 915
Class E	Up to \$ 500,000	\$ 8,000		\$ 1,541
Class F	Up to \$ 1,000,000	\$ 15,000		\$ 3,095
Class G	Up to \$ 1,500,000	\$ 23,000		\$ 4,467
Class H	Up to \$ 2,000,000	\$ 30,000		\$ 5,967
Class I	Up to \$ 2,500,000	\$ 38,000		\$ 7,455
Class J	Up to \$ 3,000,000	\$ 45,000		\$ 8,945
Class K	Up to \$ 3,500,000	\$ 53,000		\$ 10,034
Class L	Up to \$ 4,000,000	\$ 60,000		\$ 11,470
Class M and above	Over \$ 4,000,000	Not applicable		12,906

* A licensee will be allowed a one-time variance for each license class without having to upgrade or pay the penalties set forth in WAC 230-04-260: Provided, That a licensee utilizing the variance shall be required to upgrade to the higher license class upon renewal.

3. CARD GAMES		
Class A	General (Fee to play charged)	\$571
Class B	Limited card games - hearts, rummy, ((mahjongg)) pitch, pinochle, and cribbage (Fee to play charged)	\$ 166
Class C	Tournament only - no more than ten consecutive days per tournament	\$ 53
Class D	General (No fee to play charged)	\$ 53

PERMANENT

4. FUND-RAISING EVENT

Class A	One event - not more than 24 consecutive hours	\$ 339
Class B	One event - not more than 72 consecutive hours	\$ 571
Class C	Additional participant in joint event (not lead organization)	\$ 166
Class D	Fund-Raising Event Equipment Distributor - rents or leases, equipment for fund-raising event or recreational gaming activity for no more than ten times per year*	\$ 226
Class E	Fund-Raising Event Equipment Distributor - rents or leases equipment for fund-raising event or recreational gaming activity more than ten times per year.	\$ 571

* Charitable and nonprofit organizations licensed to conduct fund-raising events may rent their equipment up to four occasions during the term of the license without getting licensed as a distributor.

5. PUNCH BOARDS/PULL-TABS

(Fee based on annual gross gambling receipts) VARIANCE*

Class A	Up to \$ 50,000	\$ 5,000	\$ 544
Class B	Up to \$ 100,000	\$ 5,000	\$ 971
Class C	Up to \$ 200,000	\$ 10,000	\$ 1,832
Class D	Up to \$ 300,000	\$ 10,000	\$ 2,663
Class E	Up to \$ 400,000	\$ 10,000	\$ 3,440
Class F	Up to \$ 500,000	\$ 10,000	\$ 4,153
Class G	Up to \$ 600,000	\$ 10,000	\$ 4,812
Class H	Up to \$ 700,000	\$ 10,000	\$ 5,416
Class I	Up to \$ 800,000	\$ 10,000	\$ 5,967
Class J	Up to \$ 1,000,000	\$ 20,000	\$ 6,765
Class K	Up to \$ 1,250,000	\$ 25,000	\$ 7,509
Class L	Up to \$ 1,500,000	\$ 25,000	\$ 8,201
Class M	Up to \$ 1,750,000	\$ 25,000	\$ 8,771
Class N	Up to \$ 2,000,000	\$ 25,000	\$ 9,290
Class O	Over \$ 2,000,000	Non-applicable	\$ 10,208

* A licensee will be allowed a one-time variance for each license class without having to upgrade or pay the penalties set forth in WAC 230-04-260: Provided, That a licensee utilizing the variance shall be required to upgrade to the higher license class upon renewal.

6. RAFFLES

(Fee based on annual gross gambling receipts)

Class A	Up to \$ 5,000	\$ 53
Class B	Up to \$ 10,000	\$ 166
Class C	Up to \$ 25,000	\$ 339
Class D	Up to \$ 50,000	\$ 571
Class E	Up to \$ 75,000	\$ 915
Class F	Over \$ 75,000	\$ 1,370

7. COMBINATION LICENSE

CLASS A	Allows gross gambling receipts of up to \$ 25,000 from bingo, \$ 7,500 from raffles, and \$ 7,500 from amusement games, not to exceed \$ 30,000 combined gross gambling receipts from all such activities. Allows general card games where no fee to play is charged.	\$ 103
CLASS B	Allows gross gambling receipts of up to \$ 60,000 from bingo, \$ 15,000 from raffles, and \$ 15,000 from amusement games, not to exceed \$ 75,000 combined gross gambling receipts from all such activities. Allows general card games where no fee to play is charged.	\$ 268
CLASS C	Allows gross gambling receipts of up to \$ 125,000 from bingo, \$ 30,000 from raffles, and \$ 30,000 from amusement games, not to exceed \$ 150,000 combined gross gambling receipts from all such activities. Allows general card games where no fee to play is charged.	\$ 619

8. SEPARATE PREMISES

BINGO	Per occasion (see WAC 230-04-300)	\$ 26
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9. PERMITS

AGRICULTURAL FAIR-BINGO	(See WAC 230-04-191)	\$ 26
RECREATIONAL GAMING ACTIVITY (RGA)	(See WAC 230-25-330 and 230-02-505)	\$ 53

10. CHANGES

NAME	(See WAC 230-04-310)	\$ 26
LOCATION	(See WAC 230-04-320)	\$ 26
FRE	(Date or time) (See WAC 230-04-325)	\$ 26
LICENSE CLASS	(See WAC 230-04-260)	\$ 26
DUPLICATE	(See WAC 230-04-290)	\$ 26
LICENSE		

11. SPECIAL FEES

INVESTIGATION	(See WAC 230-04-240)	As required
REPLACEMENT	(See WAC 230-08-017)	\$ 26
IDENTIFICATION STAMPS		
EXCEEDING LICENSE	(See WAC 230-04-260)	As required

PERMANENT

11. SPECIAL FEES		
CLASS		
REVIEW, INSPECTION AND/OR EVALUATION OF EQUIPMENT, PARAPHERNALIA, SERVICES, OR SCHEMES	(See WAC 230-12-315)	As required
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12. SIX-MONTH PAYMENT PLAN	(See WAC 230-04-190)	\$ 26

READOPTED SECTION (Readopting Order 385, filed 7/14/00, effective 1/1/01)

WAC 230-04-203 Fees—Commercial stimulant and other business organizations. All persons seeking to operate gambling activities shall submit the following fees to the commission when applying for gambling licenses, permits, miscellaneous changes, inspection services, or when assessed the cost of special investigation procedures by the commission:

LICENSE TYPE	DEFINITION	FEE
1. CARD GAMES		
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage (Fee to play charged)	\$ 166
Class C	Tournament only, no more than ten consecutive days per tournament.	
C-5	Up to five tables	\$ 166
C-10	Up to ten tables	\$ 300
C-15	Up to fifteen tables	\$ 500
Class D	General - Up to five tables (No fee to play charged)	\$ 53
Class E	*General (Fee to play charged)	
E-1	One table only	\$ 398
E-2	Up to two tables	\$ 685
E-3	Up to three tables	\$ 1,142
E-4	Up to four tables	\$ 2,287
E-5	Up to five tables	\$ 3,440
Additional tables up to a maximum of fifteen may be authorized for an additional per table fee of \$ 1000.		
*In addition to the above initial license fee, the commission will assess all applicants/licensees the actual costs that exceed the license fee for conducting the initial investigation and inspection, any follow-up reviews or investigations involved in the approval of activities and schemes.		
Class F	Enhanced cardroom activities endorsement - Includes alternative fee collections (per hand; pot rake) and use of player-supported jackpot schemes.	
	Annual license fee	\$ 1,500
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2. CARD GAMES - HOUSE-BANKED		
	All tables within a card room operating any house-banked card game shall be licensed under this license class.	
	*Annual license fee	\$ 6,000

LICENSE TYPE	DEFINITION	FEE
	Per table fee (up to fifteen tables)	\$ 1,500
*The commission will assess all applicants the actual costs for conducting the initial license investigation and premises inspection. Any post licensing follow-up reviews, inspections, internal control evaluations or subsequent phases of operation shall also be charged actual costs. Licensees will be evaluated and charged for these additional authorizations/phases on an individual case by case basis.		
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3. COMMERCIAL AMUSEMENT GAMES	(Fee based on annual gross gambling receipts)	
* Class A	Premises only	** \$ 285/\$ 130
Class B	Up to \$ 50,000	\$ 398
Class C	Up to \$ 100,000	\$ 1,024
Class D	Up to \$ 250,000	\$ 2,287
Class E	Up to \$ 500,000	\$ 4,012
Class F	Up to \$ 1,000,000	\$ 6,883
Class G	Over \$ 1,000,000	\$ 8,610
* Allows a business that is qualified under WAC 230-04-138 (1)(f), (g), (h), (i), or (j) to enter into a contract with a class "B" or above commercial amusement game licensee to locate and operate amusement games upon their premises.		
** Provides for a fee reduction of \$ 155 when: Renewing an annual license; applying for an additional license(s) at the same premises; and/or applying for multiple licenses at the same premises.		
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4. PUNCH BOARDS/PULL-TABS	(Fee based on annual gross gambling receipts)	
		VARIANCE*
Class A	Up to \$ 50,000	\$ 5,000 \$ 544
Class B	Up to \$ 100,000	\$ 5,000 \$ 971
Class C	Up to \$ 200,000	\$ 10,000 \$ 1,832
Class D	Up to \$ 300,000	\$ 10,000 \$ 2,663
Class E	Up to \$ 400,000	\$ 10,000 \$ 3,440
Class F	Up to \$ 500,000	\$ 10,000 \$ 4,153
Class G	Up to \$ 600,000	\$ 10,000 \$ 4,812
Class H	Up to \$ 700,000	\$ 10,000 \$ 5,416
Class I	Up to \$ 800,000	\$ 10,000 \$ 5,967
Class J	Up to \$ 1,000,000	\$ 20,000 \$ 6,765
Class K	Up to \$ 1,250,000	\$ 25,000 \$ 7,509
Class L	Up to \$ 1,500,000	\$ 25,000 \$ 8,201
Class M	Up to \$ 1,750,000	\$ 25,000 \$ 8,771
Class N	Up to \$ 2,000,000	\$ 25,000 \$ 9,290
Class O	Over \$ 2,000,000	Nonapplicable \$ 10,208
* A licensee will be allowed a one-time variance for each license class without having to upgrade or pay the penalties set forth in WAC 230-04-260: Provided, That a licensee utilizing the variance shall be required to upgrade to the higher license class upon renewal.		
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5. PUNCH BOARD AND PULL-TAB SERVICE BUSINESS	(See WAC 230-04-133) *Initial application fee	\$ 206
	Additional associate	\$ 129
	Renewal	\$ 51
*Includes up to two associates.		
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6. DISTRIBUTOR	(Fee based on annual gross sales of gambling related supplies and equipment)	

PERMANENT

LICENSE TYPE	DEFINITION	FEE
(a) Class A	Nonpunch board/pull-tab only	\$ 571
Class B	Up to \$ 250,000	\$ 1,142
Class C	Up to \$ 500,000	\$ 1,715
Class D	Up to \$ 1,000,000	\$ 2,287
Class E	Up to \$ 2,500,000	\$ 2,977
Class F	Over \$ 2,500,000	\$ 3,667
<p>In addition to the annual fee, the commission will assess all applicants the actual costs incurred in conducting the investigation and inspection necessary for initial certification.</p>		
(b) FUND-RAISING EVENT EQUIPMENT DISTRIBUTOR		
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$ 226
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$ 571
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7. GAMBLING SERVICE SUPPLIER		
	(See WAC 230-04-119)	\$ 594
<p>In addition to the annual fee, the commission will assess all applicants the actual costs incurred in conducting the investigation and inspection necessary for initial certification.</p> <p>An annual fee of \$ 129 shall be charged for each new contract initiated by the gambling service supplier.</p>		
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8. LINKED BINGO PRIZE PROVIDER		
	(See WAC 230-04-126)	\$ 3,815
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9. MANUFACTURER	(Fee based on annual gross sales of gambling related supplies and equipment)	
Class A	Pull-tab dispensing devices only	\$ 571
Class B	Up to \$ 250,000	\$ 1,142
Class C	Up to \$ 500,000	\$ 1,715
Class D	Up to \$ 1,000,000	\$ 2,287
Class E	Up to \$ 2,500,000	\$ 2,977
Class F	Over \$ 2,500,000	\$ 3,667
<p>In addition to the annual fee, the commission will assess all applicants the actual costs incurred in conducting the investigation and inspection necessary for initial certification, quality control inspection for additional activities or product lines, compliance suitability evaluations, and renewal of licenses when travel cost is incurred to complete the investigation.</p>		
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10. PERMITS		
AGRICULTURAL FAIR/ SPECIAL PROPERTY BINGO		
Class A	One location and event only (See WAC 230-04-191)	\$ 26
Class B	Annual permit for specified different events and locations (See WAC 230-04-193)	\$ 166
RECREATIONAL GAMING ACTIVITY (RGA)	(See WAC 230-02-505 and 230-25-330)	\$ 53
MANUFACTURER'S SPECIAL SALES PERMIT	(See WAC 230-04-115)	*\$ 200

LICENSE TYPE	DEFINITION	FEE
<p>*The two hundred dollar fee is nonrefundable, whether the sales permit is approved or not. In addition, an applicant may be assessed additional fees incurred to process and determine suitability.</p>		
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11. CHANGES		
NAME	(See WAC 230-04-310)	\$ 26
LOCATION	(See WAC 230-04-320)	\$ 26
BUSINESS CLASSIFICATION	(Same owners) (See WAC 230-04-340)	\$ 53
LICENSE CLASS	(See WAC 230-04-260) New class fee, less previous fee paid, plus	\$ 26
DUPLICATE LICENSE	(See WAC 230-04-290)	\$ 26
OWNERSHIP OF STOCK	(See WAC 230-04-340)	\$ 53
LICENSE TRANSFERS	(See WAC 230-04-125, 230-04-340, and 230-04-350)	\$ 53
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12. SPECIAL FEES		
INVESTIGATION	(See WAC 230-04-240)	As required
IDENTIFICATION AND INSPECTION SERVICES STAMPS	(See WAC 230-08-017)	As required
QUALITY CONTROL INSPECTION FEES	(See WAC 230-30-030)	As required
REPLACEMENT OF IDENTIFICATION STAMPS	(See WAC 230-30-017)	\$ 26
EXCEEDING LICENSE CLASS	(See WAC 230-04-260)	As required
REVIEW, INSPECTION AND/ OR EVALUATION OF EQUIPMENT, PARAPHERNALIA, SERVICES, OR SCHEMES	(See WAC 230-12-315)	As required
SPECIAL SALES PERMITS	(See WAC 230-04-115)	As required
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13. SIX-MONTH PAYMENT PLAN	(See WAC 230-04-190)	\$ 26

READOPTED SECTION (Readopting Order 377, filed 11/30/99, effective 12/31/99)

WAC 230-04-204 Fees—Individuals. Individuals shall submit the following fees to the commission when applying for gambling licenses, permits, miscellaneous changes, or when assessed the cost of special investigation procedures by the commission:

PERMANENT

LICENSE TYPE	DEFINITION	FEE
1. CHARITABLE OR NON-PROFIT GAMBLING MANAGER	Original	\$ 166
	Renewal	\$ 80
	Change of Employer	\$ 80
2. LINKED BINGO PRIZE PROVIDER REPRESENTATIVE	Original	\$ 226
	Renewal	\$ 139
3. COMMERCIAL GAMBLING MANAGER	Original	\$ 166
	Renewal	\$ 80
	Change of Employer	\$ 80
4. DISTRIBUTOR'S OR GAMBLING SERVICES SUPPLIER REPRESENTATIVE	Original	\$ 226
	Renewal	\$ 139
5. MANUFACTURER'S REPRESENTATIVE	Original	\$ 226
	Renewal	\$ 139
6. PUBLIC CARD ROOM EMPLOYEE	CLASS A - Performs duties as defined in WAC 230-02-415 in a class E card room.	
CLASS B - Performs duties as defined in WAC 230-02-415 in enhanced and house-banked card rooms.	Original	\$ 166
	Renewal	\$ 80
	Original, in-state	\$ 224
	Original, out-of-state	\$ 279
	Renewal	\$ 139
7. OTHER FEES	Transfer/Additional Employee/Conversion/ Emergency Waiver Request	\$ 55
CHANGE OF NAME	(See WAC 230-04-310)	\$ 26
DUPLICATE LICENSE	(See WAC 230-04-290)	\$ 26
OUT-OF-STATE RECORDS INQUIRY	(See WAC 230-04-240)	As required

**WSR 01-05-020
PERMANENT RULES
GAMBLING COMMISSION**

[Order 397—Filed February 9, 2001, 4:01 p.m.]

Date of Adoption: February 9, 2001.

Purpose: This rules package simplifies the requirements bingo operators must follow for returning bingo money to their organization's stated purpose.

Citation of Existing Rules Affected by this Order: Repealing WAC 230-02-362, 230-02-364, 230-02-366,

230-02-530, 230-02-535, 230-02-540, 230-20-058, 230-20-060 and 230-20-062; and amending WAC 230-04-260, 230-20-059, 230-30-052, and 230-50-010.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 00-20-086 on October 3, 2000, with a publication date of October 18, 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 4, Repealed 9.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 9.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 4, Repealed 9; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: April 1, 2001.

February 9, 2001
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-14-013, filed 6/20/97, effective 7/21/97)

WAC 230-04-260 Effect of exceeding license class income limit—Procedures—Penalties. During any annual license period, a licensee shall not exceed the gross gambling receipts limits set forth on the license, except as authorized by this section. The following procedures, limitations, and penalties apply to licensees that exceed limits for any license.

((What must I do when it appears I will exceed the gross gambling receipts limits of my license?)) **Anticipating gambling receipts limit will be exceeded.**

(1) Each licensee shall monitor the level of gross gambling receipts received from each gambling activity. When a projection of year-to-date receipts, as applied to the remaining period of the license, indicates that it is reasonably likely that a license will be exceeded, the licensee shall immediately comply with the following:

(a) Apply for a license that authorizes the anticipated level of gross gambling receipts; and

(b) Submit the basic fee required for the new license, less the amount originally submitted for the previous license, plus a change of classification fee required by WAC 230-04-202 or ((WAC)) 230-04-203(, and, if applicable,

~~(c) Organizations whose bingo licenses were previously limited pursuant to WAC 230-20-062 shall include with their application, evidence of the ability to maintain net return requirements set forth in WAC 230-20-059, table 1, at or above the minimum level for the class of license sought. Achieving net return at or above the minimum level for the license class sought, for at least the six consecutive months~~

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immediately preceding the month in which the application for a license upgrade is submitted, shall be prima facie evidence of the ability to operate at the new license class level. A bingo licensee that is unable to demonstrate the ability to achieve net return requirements for at least six consecutive months preceding the application for upgrade may petition the director for a variance in accordance with the criteria set forth in WAC 230-20-060.

If the licensee's petition for a variance is denied, the licensee may petition the commission for review of the director's decision, in accordance with the criteria set forth in WAC 230-20-062).

((If I upgrade my license during my normal annual license period, when will my license expire?))

(2) Any license upgrade issued by the commission shall be valid only for the remainder of the original term of the license.

((What are the penalties for failing to voluntarily apply for a license upgrade when my license has not previously been limited?)) **Penalty for failing to apply for license upgrade.**

(3) Any licensee that fails to comply with the requirements set forth in ~~((paragraph))~~ subsection (1) ~~((above))~~ of this section and exceeds the license class limit within a present or previous license year, may be assessed an exceeding class fee not to exceed ~~((50%))~~ fifty percent of the difference between the fees for the present license class and the new license class or ~~(((\$1,000))~~ one thousand dollars, whichever is less. Upon written notice by the commission assessing an exceeding class fee, a licensee shall remit the proper fee plus all upgrade fees within ~~((20))~~ twenty days. Failure to remit such fees may result in a summary suspension of all licenses held by the licensee pending a hearing for the suspension or revocation of such licenses.

((What are the penalties for failing to voluntarily apply for a license upgrade when my license has been previously limited?))

(4) In addition to the penalties set forth in paragraph (3) of this section, any organization that has had its bingo license limited under the restrictions set forth in WAC 230-20-062 and which exceeds its annual gross receipts limits for its assigned class of license, shall have its gambling license summarily suspended.

Can I request a refund of license fees when I do not achieve the level of gross gambling receipts for which I was authorized?)) **Partial refund of license fees when gambling receipts limit is not achieved.**

~~((5))~~ (4) A licensee shall be allowed to apply for a partial refund of its license fee when its annual gross gambling receipts are less than the minimum for the class of license issued. The amount of refund shall be the difference between fees actually paid to operate during the period and those fees that would normally apply to the level of gross gambling receipts actually received during the period. Such request shall be made after the end of any annual license period and prior to the end of the next annual license period.

ALTERNATIVE #5

AMENDATORY SECTION (Amending Order 303, filed 11/21/96, effective 12/22/96)

WAC 230-20-059 Minimum ~~((net return required))~~ cash flow requirements for bingo games—~~((Prize and expense limitations—Maximum gross gambling receipts))~~ Contributions to stated purpose—Sanctions. Bingo shall be conducted only as a social pastime or for fund-raising to support the stated purpose(s) of a charitable or non-profit organization. Organizations licensed to conduct bingo games shall comply with the following procedures and limitations:

Contributions.

(1) ~~((Gross gambling receipts from the sale of bingo cards shall not exceed the limits by class of license for the organization's license year as set out in WAC 230-04-202 or as restricted by the commission under WAC 230-20-062;~~

~~((2))~~ To ensure that organizations licensed to conduct bingo games meet the intent of RCW 9.46.010 and ~~((retain))~~ provide funds adequate to promote charitable and nonprofit programs, such organizations shall not allow their bingo operation to award prizes or pay expenses to conduct bingo games that are excessive and all capital expenditures for the bingo operation that exceed six thousand dollars shall be specifically approved by the governing board. ~~((Organizations that fail to retain at least the minimum net return for their class of license, as set forth in Table 1 of this section and as adjusted by the director, may be deemed to have paid excessive prizes or unnecessary expenses from the operation of bingo games. As a result, the commission may restrict the organization's gross gambling receipts, prizes, and/or expenses from bingo games or the organization may be subject to other enforcement actions recommended by the director.~~

(3) This rule will apply to organizations with measurement periods beginning on or after January 1, 1996.

Table 1

License Class	Annual Gross Gambling Receipts	Maximum Prize Payout Limits*	Annual Minimum Net Return
A	Up to \$ 15,000	No Limits	No Limits***
B	\$15,000- 50,000	No Limits	No Limits****

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License Class	Annual Gross Gambling Receipts	Maximum Prize Payout Limits*	Annual Minimum Net Return
C	50,001- 100,000	No Limits	No Limits****
D	100,001- 250,000	No Limits	No Limits****
E	250,001- 500,000	Max of 85.0%	At least 2.0%
F	500,001- 1,000,000	Max of 84.0%	At least 4.0%
G	1,000,001- 1,500,000	Max of 82.0%	At least 6.0%
H	1,500,001- 2,000,000	Max of 80.0%	At least 8.0%
I	2,000,001- 2,500,000	Max of 78.0%	At least 10.0%
J	2,500,001- 3,000,000	Max of 76.0%	At least 12.0%
K	3,000,001- 3,500,000	Max of 74.0%	At least 14.0%
L	3,500,001- 4,000,000	Max of 72.0%	At least 15.0%
M	4,000,001- 4,500,000	Max of 72.0%	At least 16.0%
N	4,500,001- 5,000,000	Max of 72.0%	At least 16.0%
O	5,000,001- 5,500,000	Max of 72.0%	At least 16.0%
P	5,500,001- 6,000,000	Max of 72.0%	At least 16.0%
Q	Over 6,000,000	Max of 72.0%	At least 16.0%

* = Applies only to licensees restricted by WAC 230-20-062.

** = Combined net income from punch boards/pull tabs, bingo, amusement games, raffles (when conducted in conjunction with the bingo game), and sales of food, drink, or other retail items, if applicable, plus local gambling taxes, as a percent of bingo gross gambling receipts.

*** = When a licensee is required to upgrade its license class in the last quarter of its annual license period, compliance with net return requirements will be measured at the lower license class.

**** = Combined net return must be equal to or greater than zero if wages or rent is paid to operate the activity. Local gambling taxes are not considered an expense for computing net return.

NOTE 1: The minimum net return requirements set forth in this table may be adjusted by the director.

NOTE 2: Net income requirements for charitable or nonprofit organizations that operate pull tabs, but do not operate bingo, are detailed in WAC 230-30-052.)

An organization licensed to conduct bingo games shall ensure that the adjusted cash flow from the bingo operation available for its charitable and nonprofit programs is at least the following amount during each calendar quarter:

(a) For gross receipts above \$375,000 up to \$625,000 - 3% of gross receipts over \$375,000;

(b) For gross receipts above \$625,000 up to \$875,000 - \$7,500 plus 4% of gross receipts over \$625,000;

(c) For gross receipts above \$875,000 up to \$1,125,000 - \$17,500 plus 5% of gross receipts over \$875,000; and

(d) For gross receipts above \$1,125,000 - \$30,000 plus 6% of gross receipts over \$1,125,000.

Failure to meet the requirements of this subsection for any single calendar quarter shall not result in sanctions against the licensee.

Definitions.

(2) The following definitions shall apply to this section:

(a) "Gross receipts" shall mean the combined gross gambling receipts from bingo, pull-tab and punch board activities.

(b) "Adjusted cash flow from the bingo operation" shall mean the combined gross income of the bingo operation less all prizes and expenses, whether paid or accrued. For the purposes of computing expenses, depreciation or amortization, shall not be considered an expense of the bingo operation.

(c) "Bingo operation" shall mean bingo games and all associated activities conducted in conjunction with bingo games at the same location including punch boards, pull-tabs, raffles, snack bar, retail sales activities and rental of the bingo premises.

Sanctions for failing to maintain a positive adjusted cash flow.

(3) If a bingo licensee does not maintain a positive adjusted cash flow from the bingo operation during any two consecutive calendar quarters measured independently, it shall be deemed to be operating primarily for gambling purposes. In this event, the director shall summarily suspend the organization's bingo license.

Sanctions for failing to meet adjusted cash flow requirements.

(4)(a) If a bingo licensee fails to meet the adjusted cash flow requirements of subsection (1) of this section when averaged over a period of any two consecutive calendar quarters, the licensee shall:

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(i) Develop a plan to gain compliance;

(ii) Take immediate steps to reduce expenses and prizes paid and to increase income from all activities conducted in conjunction with the bingo game; and

(iii) Report the plan and action taken to commission staff no later than sixty days after the end of the period. Such report shall be in writing and signed by the president or chief operating officer.

(b) If a bingo licensee fails to meet the adjusted cash flow requirements of subsection (1) of this section when averaged over a period of any four consecutive calendar quarters, administrative action shall be taken to revoke the organization's bingo license: Provided, That adjusted cash flow requirements shall be adjusted for any variance granted under subsection (5) of this section.

Petitions for variance.

(5) A bingo licensee may petition the commission for a variance in the following circumstances:

(a) A licensee who fails to meet the adjusted cash flow requirements of subsection (1) of this section when averaged over a period of any four consecutive calendar quarters, but is within ten percent of those requirements, may petition the commission for a one-time variance based on their plans to gain compliance over the next four quarters.

(b) A licensee with long-term, legally binding financial obligations for its bingo facility as of the effective date of this rule, may petition the commission for a variance for a period of no more than two years based on their plans to gain compliance within the two years. This variance shall be in the form of a reduction to the dollar amount of adjusted cash flow required by subsection (1) of this section.

AMENDATORY SECTION (Amending Order 358, filed 7/15/98, effective 1/1/99)

WAC 230-30-052 Punch boards and pull-tabs operated by charitable or nonprofit organizations—Net income required. Charitable or nonprofit organizations operating punch boards and pull-tabs and which do not operate bingo games at any level shall not pay excessive expenses. To ensure that licensees meet the intent of RCW 9.46.010 and to prevent the payment of excessive expenses, net income, as a percentage of gross gambling receipts from punch boards and pull-tabs, shall not be less than zero when measured over the annual license period: Provided, That the limits set out in ~~((Table 1. of))~~ WAC 230-20-059 shall apply to organizations operating punch boards and pull-tabs in conjunction with a bingo game.

AMENDATORY SECTION (Amending Order 383, filed 4/14/00, effective 5/15/00)

WAC 230-50-010 Adjudicative proceedings—Hearings. (1) Adjudicative proceedings shall be commenced for any and all matters wherein the commission is causing administrative charges to be brought against any applicant, licensee or permittee within the limitations to chapter 34.05 RCW as applicable.

(2) The commission shall afford an applicant for a license an opportunity for an adjudicative proceeding prior to denying such application, and shall afford a licensee the opportunity for an adjudicative proceeding prior to suspending or revoking a license.

(3) The commission will afford a person applying to the commission for approval of a pull-tab dispensing device under WAC 230-30-095 an opportunity for an adjudicative proceeding prior to denying approval of such device.

(4) No hearing will be conducted with respect to any adjudicative proceeding unless an application for an adjudicative proceeding and request for hearing is timely filed by the applicant or licensee with the commission in compliance with WAC 230-50-210. The application must be made upon a form to be obtained from the commission, or facsimile thereof, and must be received within 20 days following service upon the party affected by the commission or the director of a notice of administrative charges and opportunity for an adjudicative proceeding. Said document shall contain the maximum penalty that may be assessed should an application not be filed by the party affected. An application for an adjudicative proceeding and request for hearing shall accompany all notices of administrative charges.

(5) If an application for an adjudicative proceeding is not timely filed, then the party affected shall have waived the right to a hearing on the allegations set forth in the notice of administrative charges. The party shall be deemed to be in default pursuant to RCW 34.05.440 and the commission and director may take action against the party not to exceed the maximum penalty as stated in the notice of administrative charges and opportunity for an adjudicative proceeding, which action shall be final.

(6) The procedures of RCW 34.05.485, brief adjudicative proceedings, shall be used for the following purposes:

(a) All hearings in which the penalty sought by the commission is for a suspension of seven days or less;

(b) Hearings held pursuant to WAC 230-50-015 (stay of summary suspension);

(c) Hearings held pursuant to WAC 230-04-400(3) (failure to pay required gambling taxes);

(d) Hearings held pursuant to WAC 230-04-190 (10)(c) (two part payment plan: Failure to make second payment);

(e) Hearings in which the parties have stipulated to facts or the parties have stipulated to charges, and the hearing is limited to a determination of whether facts constitute violations as charged and/or determination of appropriate penalty to be imposed;

(f) Denial of an application to operate at a higher bingo license class when the licensee has been restricted by WAC 230-20-062;

~~(g) ((Petitions for a variance to bingo net return requirements authorized by WAC 230-20-060;~~

~~(h))~~ Hearings held pursuant to WAC 230-20-059 (failure for charitable or nonprofit organizations to contribute required funds to their stated purpose or maintain a positive adjusted cash flow;

(h) Hearings held pursuant to WAC 230-08-255 (failure for charitable or nonprofit organizations to make significant progress);

- (l) Denial or revocation of extended card room hours pursuant to WAC 230-40-400;
- ~~((h))~~ (i) Denial of request for Phase II pursuant to WAC 230-40-810;
- ~~((g))~~ (k) Repeal of an approved card game pursuant to WAC 230-40-010; or
- ~~((f))~~ (l) Where the parties have stipulated to the use of brief adjudicative proceedings.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 230-02-362 Primary market area defined.
- WAC 230-02-364 Secondary market area defined.
- WAC 230-02-366 Impact market area defined.
- WAC 230-02-530 Circumstances outside the control of the licensee—Defined.
- WAC 230-02-535 Permanent interruption of customer flow—Defined.
- WAC 230-02-540 Temporary interruption of customer flow—Defined.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 230-20-058 Temporary moratorium for complying with net return requirements.
- WAC 230-20-060 Petitioning the director for a variance from net return requirements.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 230-20-062 Minimum net return from bingo games—Sanctions.

**WSR 01-05-021
PERMANENT RULES
GAMBLING COMMISSION**

[Order 400—Filed February 9, 2001, 4:02 p.m.]

Date of Adoption: February 9, 2001.

Purpose: Under current rules, both a card room operator and card room employee (CRE) are required to notify the commission when the CRE begins working, transfers to another card room, begins working for an additional card

room or is terminated. The notification process is being simplified and automated. Now only the employer will notify the commission of changes in CREs, rather than both the card room operator and CRE. Furthermore, currently, a CRE must wait fifteen days from when they submit their application to when they may begin working. Due to a new automated system the waiting period will be reduced from fifteen days to ten days.

Citation of Existing Rules Affected by this Order: Amending WAC 230-04-140 and 230-04-142.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 00-23-126 on November 22, 2000, with a publication date of 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 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, 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 9, 2001

Susan Arland

Rules Coordinator

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AMENDATORY SECTION (Amending Order 91, filed 8/14/79)

WAC 230-04-142 Notification to the commission upon beginning, terminating, or changing employment—Public card room employees. A licensed public card room operator shall notify the commission in writing when a card room employee has begun work in the card room or has terminated employment for any reason.

~~((The notification shall include the full name, sex and birthdate of the employee, and among other things, the date the employee began to work for the card room operator, with an acknowledgement that he or she has done so with the operator's knowledge and consent, or the date employment terminated. The report))~~ (1) The notification shall be submitted on a form provided by the commission.

(2) Each notification shall be ((made immediately and must)) completed on or before the card room employee's first day of work or when the employer determines the card room employee will no longer be working, as applicable, and shall reach the ((commission's Olympia)) administrative office of the commission in Lacey, not later than 5 p.m. on the ((tenth)) seventh business day following the employee's first day of work or last day of work, as applicable. ((If the tenth day falls

~~on a Saturday, Sunday or state holiday, it shall be due upon the next following business day.~~

~~This rule shall not apply to persons operating a public card room under a Class B or Class D license only.)~~

~~(3) The fee for transferring, adding, or converting from Class III shall be set forth in WAC 230-04-204 and will be paid by the card room employee at the time of license renewal.~~

~~(4) This rule shall not apply to persons operating a public card room under a Class B or Class D license only.~~

AMENDATORY SECTION (Amending Order 383, filed 4/14/00, effective 5/15/00)

WAC 230-04-140 Licensing of public card room employees—Procedures—Exceptions. Except as provided for in this section, no person shall act as a public card room employee in a Class E, F, or house-banked card room unless such person has received a license from the commission ~~(and)~~. Public card room operators shall not employ any unlicensed person to perform duties for which a license is required and shall take all measures to prevent an unlicensed person from doing so. The following procedures and exceptions apply to ~~((public))~~ card room employee licenses:

Applicants working prior to licensure.

(1) Individuals may perform card room duties prior to receiving ~~((an))~~ a card room employee license if:

(a) They have properly submitted a completed card room employee application to the commission and met all the requirements set forth in this subsection. For purposes of this section, an application shall be deemed complete when all requested data has been entered on the form, all questions are fully and truthfully answered, all attachments are included and the application is accompanied by the required fees. An application shall be deemed received when delivered to the commission's headquarters office during normal business hours or deposited in the U.S. mail properly addressed to the commission;

(b) ~~((The))~~ Commission staff has performed basic criminal background procedures prior to any duties being performed. To assure adequate time for such investigation, applicants shall not be allowed to perform card room duties until at least ~~((fifteen))~~ ten days has elapsed from the date of application or notification by the commission that the card room employee may begin to work: Provided, That commission staff may waive the ~~((fifteen))~~ ten-day waiting period. Such a waiver shall only be granted if:

(i) An employer can demonstrate an urgent and unexpected need for such employee;

(ii) The failure to grant such waiver would result in business closure or weaken the control structure of the activity;

(iii) The circumstances causing the need for a waiver were beyond the control of the licensee;

(iv) Commission staff is able to complete expedited review procedures; and

(v) The fee for such waiver is paid per WAC 230-04-204; and

(c) They are not restricted by subsection (2) of this section.

Applicants not allowed to work prior to licensure.

(2) An individual shall not be allowed to work prior to receiving ~~((an employee))~~ a card room employee license if:

(a) The commission has previously revoked a license or denied an application by that individual; or

(b) They have been convicted of, or forfeited bond upon a charge of, or pleaded guilty to certain offenses set forth in RCW 9.46.075, 9.46.158, and WAC 230-04-400; or

(c) The applicant:

(i) Has administrative or criminal charges pending;

(ii) Is awaiting results of an administrative hearing, criminal trial or appeal;

(iii) Is serving a period of probation or otherwise under court supervision; or

(iv) Is subject to an arrest warrant.

Unqualified card room employees - suspension of duties.

(3) Once the commission notifies a card room operator that an employee is not qualified to work without a license, the operator shall immediately suspend the applicant employee from all card room related duties.

Fees for applicants working prior to licensure.

(4) If an applicant elects to perform the duties of a card room employee prior to receiving a license as authorized under the provisions of this section, the commission shall retain the entire application fee regardless of the disposition of the application.

Owners not required to be licensed as a card room employee.

(5) A sole owner, partner, major officer and/or owner of a substantial interest in a corporation or member of a limited liability company licensed to operate a public card room shall not be required to be additionally licensed as a ~~((public))~~ card room employee to perform duties in connection with the card room.

Employer shall sign application.

(6) The operator of a public card room or partner or officer of the entity operating the card room for which the applicant will work shall sign the application of each such ~~((public))~~ card room employee acknowledging that the applicant will be working for that operator with the operator's knowledge and consent.

License shall be valid for one year.

(7) A card room employee license shall be valid for a period not to exceed one year from the date a license is issued or the date of the application if the applicant works prior to receiving a license.

Employer shall maintain copies of all licenses.

(8) A licensed operator shall maintain a photocopy of each card room employee's license, or application if a license

has not been issued, on the licensed premises at all times. Such photocopy shall be available for inspection by commission staff or other law enforcement personnel upon request.

Working for an additional employer or changing employers - fees.

(9) A card room employee may work for an additional employer or change employers ~~((by submitting a transfer or change of employer application. Such application))~~ after all requirements of WAC 230-04-142 have been met. The required notification forms, as set forth in WAC 230-04-142, shall be maintained by the employing organization as required by subsection (8) of this section. The fee for changing employers shall be as set forth in WAC 230-04-204.

Class III employees working as a card room employee - fees.

(10) A certified Class III gaming employee may ~~((apply for a license conversion to))~~ work as a card room employee ~~((by submitting a transfer or change of employer application))~~ after all requirements of WAC 230-04-142 have been met. The fee for a conversion shall be as set forth in WAC 230-04-204.

**WSR 01-05-022
PERMANENT RULES
DEPARTMENT OF REVENUE**

[Filed February 9, 2001, 4:06 p.m.]

Date of Adoption: February 9, 2001.

Purpose: This rule discusses the interest and penalties that are imposed by law when a taxpayer fails to timely pay a tax liability. It also discusses the circumstances under which the law allows the Department of Revenue to waive interest or penalties. This rule has been revised to incorporate provisions of chapter 229, Laws of 2000. This legislation removed the provisions of RCW 82.32.090 that provided a rebuttable presumption of a tax deficiency and intent to avoid and evade tax if the Washington State Patrol found that a person registered or licensed certain property (e.g., a motor vehicle) in another state to avoid the payment of taxes (e.g., use tax).

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-228 Returns, remittances, penalties, extensions, interest, stay of collection.

Statutory Authority for Adoption: RCW 82.32.300.

Adopted under notice filed as WSR 00-23-035 on November 8, 2000.

Changes Other than Editing from Proposed to Adopted Version: Subsection (5) has been revised to more clearly explain the conditions under which the late payment of a tax return penalty does not apply if a previously unregistered taxpayer voluntarily registers prior to contact with the department.

Subsection (5) of the proposed rule filed as WSR 00-23-035 has been revised as follows:

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a five percent penalty if the tax due on a return to be

filed by a taxpayer is not paid by the due date ~~((, a five percent penalty will apply;)). A ten percent penalty ((will apply)) is imposed if the tax due is not paid on or before the last day of the month following the due date(;;), and a twenty percent penalty ((will apply)) is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars. ((RCW 82.32.090(1)).~~

(i)) The department may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. If the tax return is accepted without payment and payment is not made by the due date, the late penalties will apply.

~~((ii) The late payment of return penalty is imposed if a person engages in a taxable business activity in Washington without voluntarily registering with the department. The department will consider a person to have voluntarily registered if, prior to contact by the department, that person contacts any other agency or entity participating in the unified business identifier (UBI) program and properly completes and submits a master application for the purpose of obtaining a UBI number, unless the person has:))~~

(i) Unregistered taxpayer. Except as noted below, the late payment of return penalty does not apply to those tax-reporting periods during which a person is unregistered if the person voluntarily registers prior to being contacted by the department. "Voluntarily registers" means properly completing and submitting a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number. For example, the department will consider a person properly completing and submitting a master application to the department of labor and industries for the purpose of obtaining a UBI number to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed master application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

The late payment of return penalty will apply, even if the person has voluntarily registered as explained above, if the person:

(A) Collected retail sales tax from customers and failed to ~~((pay))~~ remit it to the department; or

(B) Engaged in ~~((fraud))~~ evasion or misrepresentation with respect to reporting ~~((their))~~ tax liabilities or other tax requirements; or

(C) Engaged in taxable business activities during a period of time in which ~~((their))~~ the person's previously open tax reporting account has been closed ~~((and the person has failed to reopen the account and report their tax liability prior to being contacted by the department; or~~

~~((D) Engaged in unreported taxable business activities after their tax registration account was placed in an active-nonreporting status and the person has failed to notify the department that they no longer qualify for that status prior to being contacted by the department)).~~

(ii) Active-nonreporting status taxpayer. The active-nonreporting status allows ((taxpayers)) persons, under certain conditions, to engage in business activities subject to the Revenue Act without having to file combined excise tax returns with the department. Persons placed on an active-nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions for active-nonreporting status. One of the conditions ((for qualifying for the active-nonreporting status is that the taxpayer may not incur a tax liability)) is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if any tax due from unreported business activities while on active-nonreporting status is not paid by the due dates used for taxpayers that are on an annual reporting basis. Refer to WAC 458-20-101 for more information regarding the active-nonreporting status.

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 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 1, Amended 0, Repealed 0.

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

February 9, 2001

Russell W. Brubaker

Assistant Director

Legislation and Policy Division

AMENDATORY SECTION (Amending WSR 00-04-028, filed 1/24/00, effective 2/24/00)

WAC 458-20-228 Returns, remittances, penalties, extensions, interest, stay of collection. (1) **Introduction.** This rule discusses the responsibility of taxpayers to timely pay their tax liabilities, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to correctly or timely pay a tax liability. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

Washington's tax system is based largely on voluntary compliance. Taxpayer's have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has instituted a taxpayer services program to provide taxpayers with accurate tax-reporting assis-

tance and instructions. The department staffs local district offices, maintains a toll-free question and information phone line (1-800-647-7706), provides information and forms on the Internet (<http://dor.wa.gov>), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and rules discussing important tax issues and changes.

(2) **Returns.** A "return" is defined as any document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW 82.32.090(8).

(a) Returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be made upon forms, copies of forms, or by other means, provided or accepted by the department. The department provides tax returns upon request or when a taxpayer opens an active tax reporting account. Tax returns are generally mailed to all registered taxpayers prior to the due date of the tax. However, it remains the responsibility of the taxpayers to timely request a return if one is not received, or to otherwise insure that their return is filed in a timely manner.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Consumers that are not required to register with the department and obtain a tax registration endorsement (see subsection (2)(a)) may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. Use tax returns are available from the department at any of the local district offices, by fax, or through the Internet. The interest and penalty provisions of this rule may apply to delinquent use tax liabilities, and unregistered consumers should refer to WAC 458-20-178 (Use tax) for an explanation of their tax reporting responsibilities.

(3) **Method of payment.** Payment may be made by cash, check, cashier's check, money order, and in certain cases by electronic funds transfers, or other electronic means approved by the department.

(a) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(b) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(c) The law requires that certain taxpayers pay their taxes through electronic funds transfers. The department notifies taxpayers who are required to pay their taxes in this manner, and can explain how to set up the electronic funds transfer process. (See WAC 458-20-22802 on electronic funds transfers.)

(4) **Due dates.** RCW 82.32.045 provides that payment of the taxes due with the combined excise tax return must be made monthly and within twenty-five days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency are due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) The postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 82.32-080. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

Refer to WAC 458-20-22802 (Electronic funds transfer) for more information regarding the electronic funds transfer process, due dates, and requirements.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this rule. Penalties apply as follows.

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a five percent penalty if the tax due on a return to be filed by a taxpayer is not paid by the due date (, a five percent penalty will apply;)). A ten percent penalty ((will apply)) is imposed if the tax due is not paid on or before the last day of the month following the due date(;;), and a twenty percent penalty ((will apply)) is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars. ((RCW 82.32.090(1)).

(i) The department may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. If the tax return is accepted without payment and payment is not made by the due date, the late penalties will apply.

~~((ii) The late payment of return penalty is imposed if a person engages in a taxable business activity in Washington without voluntarily registering with the department. The department will consider a person to have voluntarily regis-~~

~~tered if, prior to contact by the department, that person contacts any other agency or entity participating in the unified business identifier (UBI) program and properly completes and submits a master application for the purpose of obtaining a UBI number, unless the person has:))~~

(i) **Unregistered taxpayer.** Except as noted below, the late payment of return penalty does not apply to those tax-reporting periods during which a person is unregistered if the person voluntarily registers prior to being contacted by the department. "Voluntarily registers" means properly completing and submitting a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number. For example, the department will consider a person properly completing and submitting a master application to the department of labor and industries for the purpose of obtaining a UBI number to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed master application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

The late payment of return penalty will apply, even if the person has voluntarily registered as explained above, if the person:

(A) Collected retail sales tax from customers and failed to ((pay)) remit it to the department; or

(B) Engaged in ((fraud)) evasion or misrepresentation with respect to reporting ((their)) tax liabilities or other tax requirements; or

(C) Engaged in taxable business activities during a period of time in which ((their)) the persons's previously open tax reporting account has been closed ((and the person has failed to reopen the account and report their tax liability prior to being contacted by the department; or

~~(D) Engaged in unreported taxable business activities after their tax registration account was placed in an active-nonreporting status and the person has failed to notify the department that they no longer qualify for that status prior to being contacted by the department)).~~

(ii) **Active-nonreporting status taxpayer.** The active-nonreporting status allows ((taxpayers)) persons, under certain conditions, to engage in business activities subject to the Revenue Act without having to file combined excise tax returns with the department. Persons placed on an active-nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions for active-nonreporting status. One of the conditions ((for qualifying for the active-nonreporting status is that the taxpayer may not incur a tax liability)) is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if any tax due from unreported business activities while on active-nonreporting status is not paid by the due dates used for taxpayers that are on an annual reporting basis. Refer to WAC 458-20-101 for more information regarding the active-nonreporting status.

(b) **Late payment of an assessment.** An additional penalty of ten percent of the tax due will be added to any taxes

assessed by the department if payment of the taxes assessed is not received by the due date specified in the notice, or any extension of that due date. The minimum for this penalty is five dollars. RCW 82.32.090(2).

(c) **Issuance of a warrant.** If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of five percent of the amount of the tax due, but not less than ten dollars. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

(d) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090(4).

(i) The taxpayer will be considered to have disregarded specific written instruction when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(e) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax found to be due shall be added. RCW 82.32.090(5). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. ~~((With the exception of the circumstances under which the law provides for a rebuttable presumption (see (e)(iii) of this subsection).))~~ The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax

liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department of revenue; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

~~((iii) Effective July 25, 1999, RCW 82.32.090(5) provides a rebuttable presumption of a tax deficiency and intent to avoid and evade tax in limited circumstances. Chapter 277, Laws of 1999. This rebuttable presumption applies if the Washington state patrol finds that a person has registered or licensed a motor vehicle, an aircraft, a watercraft, a trailer, or a camper in another state to avoid the payment of taxes imposed by chapter 82.48 RCW (Aircraft excise tax), chapter 82.49 RCW (Watercraft excise tax), or chapter 82.12 RCW (Use tax).~~

~~The rebuttable presumption is limited to situations where a person receives a written notice from the state patrol advising them that a penalty is due pursuant to RCW 46.16.010 (2)(a), 47.68.255, 82.48.020, 82.49.010, or 88.02.118, and either:~~

~~(A) Timely makes a written application to the state patrol for a review of the assessed penalty, and the state patrol finds that the person failed to properly register or license a motor vehicle, an aircraft, a watercraft, a trailer, or a camper; or~~

~~(B) Fails to timely make a written application to the state patrol for a review of the assessed penalty.)~~

(f) **Misuse of resale certificates.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax, and who is not entitled to use the certificate for the purchase, will be assessed a penalty of fifty percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of a resale certificate, refer to WAC 458-20-102 (Resale certificates).

(g) **Failure to remit sales tax to seller.** The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

(h) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to

chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed two hundred and fifty dollars. RCW 82.32.070 (1)(b).

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances (~~(of a particular delinquent tax liability)~~), the law may impose (~~(multiple penalties)~~) more than one type of penalty on the same tax liability. (~~(The law does provide a limited number of restrictions on imposing multiple)~~) However, those penalties(-) are subject to the following restrictions:

(a) The aggregate of the penalties imposed for the late payment of a return, the late payment of an assessment, and issuance of a warrant (see subsection (5)(a) through (c) of this rule) may be applied against the same tax, but may not exceed a total of thirty-five percent of the tax due, or twenty dollars, whichever is greater. This thirty-five percent penalty limitation does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(6).

(b) The department may impose either the evasion penalty (subsection (5)(e)) or the penalty for disregarding specific written instructions (subsection (5)(d)), but may not impose both penalties on the same tax.

RCW 82.32.090(7). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)(f)) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050. Interest applies to taxes only. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For tax liabilities arising before January 1, 1992, interest will be added at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment, or December 31, 1998, whichever comes first. Any interest accrued on these liabilities after December 31, 1998, will be added at the annual variable interest rates described in subsection (7)(e). RCW 82.32.050.

(b) For tax liabilities arising after December 31, 1991, and before January 1, 1998, interest will be added at the annual variable interest rates described in subsection (7)(e), from the last day of the year in which the deficiency is incurred until the date of payment.

(c) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to

accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described in subsection (7)(e). RCW 82.32.050.

(d) The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2000. The assessment includes periods from January 1, 1997, through September 30, 1999.

(i) For calendar year 1997 tax, interest begins January 1, 1998, (from the last day of the year). When the assessment is issued the interest is computed through June 30, 2000, (the due date of the assessment).

(ii) For calendar year 1998 tax, interest begins February 1, 1999, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iii) For the 1999 tax period ending with September 30, 1999, interest begins November 1, 1999, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iv) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(e) The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the immediately preceding calendar year as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(f) If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer. RCW 82.32.080.

(a) In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Termination, dissolution, or abandonment of corporate business—Personal liability of person in control of collected sales tax funds), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of five hundred dollars, retail sales tax of four hundred dollars for YEAR 1, six hundred dollars retail sales tax for YEAR 2, two thousand dollars of other taxes for YEAR 1, and seven thousand dollars of other taxes for YEAR 2. The order of application of

any payments will be first against the five hundred dollars of total interest and penalties, second against the four hundred dollars retail sales tax in YEAR 1, third against the two thousand dollars of other taxes in YEAR 1, fourth against the six hundred dollars retail sales tax of YEAR 2, and finally against the seven thousand dollars of other taxes in YEAR 2.

(9) **Waiver or cancellation of penalties.** RCW 82.32.105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. Refer to WAC 458-20-102 (Resale certificates) for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of resale certificates found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered. Any petition for correction of assessment submitted to the department's appeals division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Appeals, small claims and settlements). Refund requests must be made within the statutory period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's

immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See subsection (9)(a)(iii)(E).

(G) The taxpayer, prior to the time for filing the return, made timely application to the Olympia or district office for proper forms and the forms were not furnished in sufficient time to permit the completed return to be paid before its due date. In this circumstance, the taxpayer kept track of pending due dates and reasonably fulfilled its responsibility by timely requesting replacement returns from the department.

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in subsection (9)(a)(ii)(G), above;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(ii);

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in subsection (9)(a)(ii)(F), above); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) above) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105(1) and subsection (9)(a) of this rule) or after a twenty-four month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.105(2).

If a taxpayer has obtained a tax registration endorsement with the department and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see subsection (9)(a)). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a twenty-four month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a twenty-four month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same twenty-four month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous twenty-four month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The twenty-four month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's January 1999 return has had the original due date of March 1st extended to April 30th. The return and payment are received after the April 30th extended due date. A penalty waiver is requested. Since the delinquent return represented the month of January, 1999, the twenty-four months which will be reviewed begin on January 1, 1997, and end with December 31, 1998, (the twenty-four months prior to January, 1999). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the twenty-four month period under review.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see subsection (11)(a) of this rule). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see subsection (11)(b) of this rule). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may

extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection. Effective January 1, 1997, the interest rates prescribed by RCW 82.32.190 and 82.32.200 changed from nine percent and twelve percent per annum, respectively, to the same predetermined annual variable rates as are described in subsection (7)(e), above.

(12) **Extensions.** The department, for good cause, may extend the due date for filing any return. Any permanent extension more than ten days beyond the due date, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

WSR 01-05-024

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 97-09A—Filed February 12, 2001, 3:08 p.m., multiple effective dates]

Date of Adoption: February 12, 2001.

Purpose: Implement changes recommended by the Model Toxics Control Act Policy Advisory Committee in its December 1996 report to the legislature and ecology; comply with other laws and the governor's executive order on regulatory reform.

Citation of Existing Rules Affected by this Order: Amending chapters 173-340, 173-321, and 173-322 WAC.

Statutory Authority for Adoption: Chapter 70.105D RCW.

Adopted under notice filed as WSR 00-16-135 on August 2, 2000.

Changes Other than Editing from Proposed to Adopted Version: There are a number of changes, other than editing, from the August 2000 proposed rule amendment to the February 2001 adopted version for chapter 173-340 WAC. The changes are:

- Clarified the meaning and use of the definitions for "natural attenuation," "free product," "nonaqueous phase liquid" in WAC 173-340-200 and other parts of the rule.
- Revised WAC 173-340-330(7) regarding the removal of municipal solid waste landfill sites from the hazardous sites list.

- Clarified the description of remediation levels in WAC 173-340-355.
- Clarified language in WAC 173-340-390 regarding the development, applicability and application of model remedies.
- Clarified the meaning of "engineered controls" as used in WAC 173-340-440.
- Added clarifying language to WAC 173-340-700 and other sections regarding the procedures for conducting terrestrial ecological evaluations.
- Added clarifying language to WAC 173-340-700 regarding the use of conceptual site models.
- Clarified the process for developing reference doses/reference concentrations as described in WAC 173-340-708.
- Added language to WAC 173-340-708 clarifying ecology's authority to modify the default exposure parameters when necessary to establish a more stringent cleanup level to protect human health and the environment.
- Added language to WAC 173-340-720 clarifying that Method A cleanup levels for potable ground water must be protective of surface water beneficial uses.
- Added clarifying language to WAC 173-340-720 regarding the applicability of institutional controls.
- Clarified the meaning of "mixing zones" as used in WAC 173-340-730.
- Revised the language in WAC 173-340-740 and 173-340-745 regarding when a soil to vapor pathway must be evaluated.
- Revised the language in WAC 173-340-750 regarding the conditional point of compliance requirement for ambient air.
- Revised the ground water cleanup level concentration for mineral oil found in Table 720-1.
- Clarified the meaning of the phrase "gasoline mixtures without benzene" as used in Table 740-1 and 745-1.
- Revised the physical/chemical values for petroleum fractions found in Table 747-4.
- Revised the testing requirements for petroleum releases found in Table 830-1.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 15, Amended 31, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 30, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 15, Amended 61, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 15, Amended 61, Repealed 0; Pilot Rule Making: New 6, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing except for chapter 173-340 WAC which will be effective on August 15, 2001.

February 12, 2001
Tom Fitzsimmons
Director

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-100 Purpose. This chapter is promulgated under the Model Toxics Control Act. It establishes administrative processes and standards to identify, investigate, and clean up facilities where hazardous substances have come to be located. It defines the role of the department and encourages public involvement in decision making at these facilities.

The goal of this chapter is to implement ~~((the policy declared by))~~ chapter 70.105D RCW. This chapter provides a workable process to accomplish effective and expeditious cleanups in a manner that protects human health and the environment. This chapter is primarily intended to address releases of hazardous substances caused by past activities although its provisions may be applied to potential and ongoing releases of hazardous substances from current activities.

Note: All materials incorporated by reference in this chapter are available for inspection at the Department of Ecology's Toxics Cleanup Program, 300 Desmond Drive, Lacey, Washington, 98503.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-120 Overview. (1) Purpose. This section provides an overview of the cleanup process that typically will occur at a site where a release of a hazardous substance has been discovered with an emphasis on sites being cleaned up under order or consent decree. If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

(2) Site discovery. Site discovery includes:

(a) Release reporting. ~~((A reporting program is established to help identify potential hazardous waste sites.))~~ An owner((s and)) or operator((s)) who knows of or discovers a release of a hazardous substance due to past activities must report the release to the department ~~((within ninety days of discovery, under))~~ as described in WAC 173-340-300. Most current releases of hazardous substances must be reported to the department under the state's hazardous waste, underground storage tank, or water quality laws. The term "hazardous substance" includes a broad range of substances as defined by chapter 70.105D RCW.

(b) Initial investigation. Within ninety days of learning of a hazardous substance release, the department will conduct an initial investigation of the site under WAC 173-340-310. For sites that may need further remedial action, the department will send an early notice letter ~~((will be sent))~~ to the owner ~~((and)), operator, and other potentially liable persons known to the department,~~ informing them of the department's decision.

(3) Site priorities. ~~((Priorities))~~ Sites are prioritized for further remedial action ~~((are set))~~ by the following process:

(a) Site hazard assessment. Based on the results of the initial investigation, a site hazard assessment will be performed if necessary, ~~((under))~~ as described in WAC 173-340-320. The purpose of the site hazard assessment is to gather information to confirm whether a release has occurred and to enable the department to evaluate the relative potential hazard posed by the release. If the department decides that no further action is required, it will notify the public of that decision through the Site Register.

(b) Hazardous sites list. The department will maintain a list of sites ~~((that require))~~ known as the "hazardous sites list" where further remedial action is required. ~~((Sites will be listed))~~ The department will add sites to this list after the completion of a site hazard assessment. Sites placed on the list will be ranked using the department's hazard ranking method. The department ~~((may))~~ will remove a site from the hazardous sites list if the ~~((cleanup action at the site has achieved the cleanup standards and all remedial actions except confirmational monitoring have been completed. See))~~ site meets the requirements for removal described in WAC 173-340-330.

(c) Biennial program report. Every even-numbered year, the department will prepare a biennial program report for the legislature. The hazard ranking, along with other factors, will be used in this report to identify the projects and expenditures recommended for appropriation. See WAC 173-340-340.

(4) Detailed site investigations and cleanup decisions. The following steps will be taken to ensure that the proper method of cleanup is chosen for the site.

(a) Remedial investigation ~~((and feasibility study))~~. A ~~((state))~~ remedial investigation ~~((feasibility study))~~ will be performed at ranked sites under WAC 173-340-350. The ~~((state))~~ purpose of the remedial investigation ~~((feasibility study))~~ is to collect data and information necessary to define ~~((s))~~ the extent of ~~((the problems at the site and evaluates alternative cleanup actions))~~ contamination and to characterize the site.

(b) ~~((Selection of cleanup action.))~~ Feasibility study. A feasibility study will be conducted at ranked sites under WAC 173-340-350. The purpose of the feasibility study is to develop and evaluate alternative cleanup actions. The department will evaluate the remedial investigation/feasibility study, establish cleanup levels and the point or points at which they must be complied with in accordance with the procedures provided for in WAC 173-340-700 through 173-340-760 and select a cleanup action that ~~((will))~~ protects human health and the environment and ~~((meet the other))~~ is based on the remedy selection criteria and requirements ~~((ef))~~ in WAC ~~((173-340-360))~~ 173-340-350 through 173-340-390. ~~((At some sites, restrictions on the use of the land and resources.))~~ WAC 173-340-440 sets forth the circumstances in which institutional controls ~~((y))~~ will be required to ~~((insure))~~ ensure continued protection of human health and the environment. ~~((See WAC 173-340-440.))~~

(c) Cleanup action plan. The cleanup action will be set forth in a draft cleanup action plan that addresses cleanup requirements for hazardous substances at the site. After pub-

lic comment on the draft plan, a final cleanup action plan will be issued by the department. ~~((See WAC 173-340-700 for additional overview discussion of these requirements.))~~

(5) Site cleanup. Once the appropriate cleanup action has been selected for the site, the actual cleanup will be performed.

(a) Cleanup actions. WAC 173-340-400 describes the design and construction requirements for implementing the cleanup action plan.

(b) Compliance monitoring and review. The cleanup action must include compliance monitoring under WAC 173-340-410 and in some cases periodic review under WAC 173-340-420 to ensure the long-term effectiveness of the cleanup action.

(6) Interim actions. Under certain conditions it may be appropriate to take early actions at a site ~~((prior to))~~ before completing the process described in subsections (2) through (5) of this section. WAC 173-340-430 describes when it is appropriate to take these early or interim actions and the requirements for such actions.

(7) Leaking underground storage tanks. Underground storage tank (UST) owners and underground storage tank operators regulated under chapter 90.76 RCW are required to perform specific actions in addition to what other site owners and operators would do under this chapter. ~~((Such additional actions include reporting of a confirmed release within twenty four hours, follow up investigation, free product removal and immediate assessment of the threat to human health and the environment at the site. A written report describing the site and the actions taken must be submitted within ninety days of release confirmation. Depending on the results of these actions, additional remedial actions may be required.))~~ WAC 173-340-450 describes ~~((these and other))~~ the requirements for leaking underground storage tanks.

(8) Procedures for conducting remedial actions.

(a) Remedial action agreements. The department has authority to take remedial actions or to order persons to conduct remedial actions under WAC 173-340-510 and 173-340-540. However, the department encourages agreements for investigations and cleanups in appropriate cases. These agreements can be agreed orders or consent ~~((degrees))~~ decrees reached under the procedures of WAC 173-340-520 and 173-340-530.

(b) Independent remedial actions. Persons may ~~((decide to perform))~~ conduct investigations and cleanups without department approval under this chapter. The department will use the appropriate requirements ~~((contained herein in its evaluation of))~~ in this chapter when evaluating the adequacy of any independent remedial action ~~((s performed))~~. Except as limited by WAC 173-340-515(2), nothing in this chapter prohibits persons from ((performing)) conducting such actions before the department is ready to act at the site; however, all interim and cleanup actions must be reported to the department under WAC ((173-340-300)) 173-340-515. Furthermore, independent remedial actions are ((done)) conducted at the potentially liable person's own risk and the department may take or require additional remedial actions at these sites at any time. (See WAC ((173-340-510)) 173-340-515 and 173-340-545.)

~~((e))~~ (9) Public participation. At sites where the department is conducting the cleanup or overseeing the cleanup under an order or decree, the public will receive notice and an opportunity to comment on most of the steps in the cleanup process. At many sites, a public participation plan will be prepared to provide opportunities for more extensive public involvement in the cleanup process.

These and other requirements are described in WAC 173-340-600.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-130 Administrative principles. (1)

Introduction. The department shall conduct or require remedial actions consistent with the provisions of this section ~~((as typically defined by the subsequent sections))~~.

(2) Information sharing. It is the policy of the department to make ~~((available))~~ information about releases or threatened releases ~~((with property))~~ available to owners, operators or other persons with potential liability for a site in order to encourage them to conduct prompt remedial action. It is also the policy of the department to make the same information available to interested members of the general public so they can follow the progress of site cleanup in the state.

(3) Information exchange.

~~((a) Technical assistance.))~~ All persons are encouraged to contact the department and seek assistance on the general administrative and technical requirements of this chapter. Through its technical consultation program described in WAC 173-340-515, the department may also provide informal advice and assistance to ((potentially liable)) persons conducting or proposing remedial actions at a specific site at any time ((during the development of a remedial action)). Unless the department is providing formal guidance for the implementation of an order or decree, any comments by the department or its agents are advisory and not commitments or approvals binding on the department. A person may not represent this advice as an approval of a remedial action. If the person requesting the advice is seeking binding commitments or approvals, then an order or consent decree shall be used. ((The department advises persons requiring site specific legal or technical assistance to hire an attorney or engineering consultant with the appropriate environmental expertise.

(b) Response to requests. If the department believes that responding to a request for technical assistance would involve substantial time or resources or would not be in the public interest, the department may decline to provide the requested assistance. The department shall inform the requester of its response. The department may require one or more of the following before devoting time to the request:

(i) A proposed schedule;

(ii) Payment, in advance, for its costs in responding to the request;

(iii) Other assurances that the requester is serious about carrying out the provisions of this chapter; or

(iv) Other information.))

(4) Scope of public participation. The department seeks to encourage public participation in all steps of the cleanup process. The department shall encourage a level of participa-

tion appropriate to the conditions at a facility and the level of the public's interest in the site.

(5) Scope of information. It is the department's intention that adequate information ~~((will))~~ be gathered at a site to enable decisions on appropriate actions. It is also the department's intention that decisions be made and cleanups proceed expeditiously once adequate information is obtained. Studies can be performed and submittals made at varying levels of detail appropriate to the conditions at the site. ~~((For example, the department might decide that a study of a small site with minimal ground water impacts need not include as detailed an analysis of the ground water flow system as for a study of a geologically more complex site.))~~ Also, steps in the cleanup process may be combined to facilitate quicker cleanups, where appropriate. Flexibility in the scope of investigations and in combining steps may be particularly appropriate for routine cleanup actions. Once ~~((the department has))~~ adequate information ~~((it will make cleanup))~~ has been obtained, decisions shall be made within the framework provided in this chapter and in site-specific orders or decrees.

(6) ~~((Combining steps. Several steps in the cleanup process may be combined into fewer steps, when appropriate. For example, the department and a potentially liable person may agree that conditions at a site are such that the remedial investigation/feasibility study and remedial design and implementation steps could be combined into a single step.~~

~~(7) Routine cleanup actions. Flexibility in the scope of investigations and in combining steps may be particularly appropriate for routine cleanup actions. For example, the department may decide to approve a routine cleanup action based upon a single investigation that includes a site hazard assessment and a simplified state remedial investigation/feasibility study and engineering design plan.~~

~~(a) A cleanup action may be considered routine if the following criteria are met:~~

- ~~(i) It involves an obvious and limited choice among cleanup methods;~~
- ~~(ii) It uses a cleanup method that is reliable and has proven capable of accomplishing cleanup standards;~~
- ~~(iii) Cleanup standards for each hazardous substance addressed by the cleanup are obvious and undisputed, and allow an adequate margin of safety for protection of human health and the environment;~~
- ~~(iv) The department has experience with similar actions; and~~
- ~~(v) The action does not require an environmental impact statement.~~

~~(b) Routine cleanup actions consist of or are comparable to one or more of the following remedial actions:~~

- ~~(i) Cleanup of above ground structures;~~
 - ~~(ii) Cleanup of below ground structures;~~
 - ~~(iii) Cleanup of contaminated soils where the action would restore the site to cleanup levels; or~~
 - ~~(iv) Cleanup of solid wastes, including containers.~~
- ~~(c) Cleanup of ground water will not normally be considered a routine cleanup action.~~

~~(d) A routine cleanup action may be conducted under any of the procedures described in WAC 173-340-510. However, the department will attempt to ensure that all routine cleanup action decisions are consistent with this chapter.~~

~~(8))~~ Preparation of documents. Except for the initial investigation, any of the studies, reports, or plans used in the cleanup process can be prepared by either the department or the potentially liable person. The department retains all authority to review and verify the documents submitted and to make decisions based on the documents and other relevant information.

~~((9))~~ (7) Inter-agency coordination.

(a) If the department is conducting remedial actions or requiring remedial actions under an order or decree, the department shall ensure appropriate local, state, and federal agencies and tribal ((organizations)) governments are kept informed and, as appropriate, involved in the development and implementation of remedial actions. The department may require a potentially liable person to undertake this responsibility. If the potentially liable person demonstrates that they are unable to obtain adequate involvement to allow the remedial action to proceed by a particular government agency or tribe, the department shall request the involvement of the agency or tribe.

(b) The nature and degree of coordination and consultation shall be commensurate with the other agencies' and tribes' interests and needs at the site. Interested agencies and tribes shall also be included in the mailing list for public notices under WAC 173-340-600. To facilitate coordination, it is important ~~((for the))~~ that agencies and tribes ~~((to))~~ provide specific comments, including the identification of additional information needed or mitigating measures that are necessary or desirable to satisfy their concerns.

(c) In order to provide for expeditious cleanup actions, all federal, state, ~~((and))~~ local agencies, and tribes are encouraged to coordinate when providing notices, holding meetings and hearings, and preparing documents. Whenever reasonable, the department shall coordinate and combine its activities with other agencies and tribes to minimize the duplication of notices, hearings and preparation of documents, unless otherwise prohibited.

~~((10))~~ (8) State Environmental Policy Act. See chapter 197-11 WAC for the State Environmental Policy Act requirements pertaining to the implementation of the Model Toxics Control Act.

(9) Appeals. Unless otherwise indicated all department decisions made under this chapter are remedial decisions and may be appealed only as provided for in RCW 70.105D.060.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-140 Deadlines. (1) Purpose. It is the department's intent to move sites through the cleanup process as expeditiously as possible. However, the department is limited by the amount of personnel and funds it can expend in any given fiscal year. This section is intended to establish reasonable deadlines for remedying releases within these constraints. The ~~((procedure))~~ department's process for ranking and setting site priorities is described in WAC 173-340-330 and 173-340-340, respectively.

(2) Initial investigation. Within ninety days of learning of a release or threatened release of a hazardous substance,

the department shall complete an initial investigation under WAC 173-340-310.

(3) Further investigation. At least twice a year, the department ~~((with))~~ shall determine which sites with completed initial investigations are a high priority for further investigation. At that time, the department ~~((with))~~ shall schedule high priority sites for further investigations to ~~((commence))~~ begin within six months. This determination will be based on the best professional judgment of ~~((department))~~ departmental staff. Sites may be scheduled for further investigation at any time if the department determines that the site warrants expedited action.

(4) Site assessment and ranking. For high priority sites, the department shall complete the site hazard assessment and hazard ranking ~~((on high priority sites))~~ within one hundred eighty days of the scheduled start date. These sites ~~((with))~~ shall be identified in the department's *Site Register*. Sites not designated as a high priority ~~((with))~~ shall be scheduled for future investigations and listed in the biennial report to the legislature (WAC 173-340-340). The department ~~((with))~~ shall conduct at least thirty-five site hazard assessments each fiscal year until the number of sites needing site hazard assessments are reduced below this number.

(5) Site investigation. Within thirty days of ranking, the department shall designate which sites are a high priority for a ~~((state))~~ remedial investigation/feasibility study and which sites are a lower priority where further action can be delayed. The department shall review these lower priority sites and provide an opportunity for public comment as part of the biennial report to the legislature (WAC 173-340-340).

(6) Remedial investigation/feasibility study. For all sites designated as a high priority, the ~~((state))~~ remedial investigation/feasibility study shall be completed under WAC 173-340-350 within eighteen months of signing the order or decree. The department may extend the deadline up to twelve months if the circumstances at the site merit a longer time frame. The department shall provide the public an opportunity to comment on any extension. The department shall initiate a ~~((state))~~ remedial investigation/feasibility study on at least ten sites per fiscal year.

(7) Cleanup action. The department shall select the cleanup action under WAC 173-340-360 and file a consent decree or issue an order for cleanup action for all designated high priority sites within six months of the completion of the ~~((state))~~ remedial investigation/feasibility study. The department may extend the deadline for up to four months for consent decree and order discussions. The department shall provide the public with an opportunity to comment on any deadline extension.

(8) Site schedules. The department ~~((with))~~ shall publish site schedules for designated high priority sites in the *Site Register* ~~((under))~~ according to WAC 173-340-600(6).

AMENDATORY SECTION (Amending Order 94-37, filed 1/26/96, effective 2/26/96)

WAC 173-340-200 Definitions. For the purpose of this chapter, the following definitions ~~((shall))~~ apply:

~~("Act" means the same as the "Model Toxics Control Act" and "chapter 70.105D RCW.")~~

"Acute toxicity" means the ability of a hazardous substance to cause injury or death to an organism as a result of a short-term exposure to a hazardous substance.

"Agreed order" means an order issued by the department under WAC 173-340-530 with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070 (2)(d)(xi).

"Aliphatic hydrocarbons" or "aliphatics" means organic compounds that are characterized by a straight, branched, or cyclic (non-benzene ring) arrangement of carbon atoms and that do not contain halogens (such as chlorine). See also "aromatic hydrocarbons."

"All practicable methods of treatment" means all technologies and/or methods currently available and demonstrated to work under similar site circumstances or through pilot studies, and applicable to the site at reasonable cost. These include "all known available and reasonable methods of treatment" (AKART) for discharges or potential discharges to waters of the state, and "best available control technologies" for releases of hazardous substances into the air resulting from cleanup actions.

"Applicable state and federal laws" means all legally applicable requirements and those requirements that the department determines, based on the criteria in WAC 173-340-710(3), are relevant and appropriate requirements.

"Area background" means the concentrations of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.

"Aromatic hydrocarbons" or "aromatics" means organic compounds that are characterized by one or more benzene rings, with or without aliphatic hydrocarbon substitutions of hydrogen atoms on the rings, and that do not contain halogens (such as chlorine). See also "aliphatic hydrocarbons."

"Averaging time" means the time over which the exposure is averaged. For noncarcinogens, the averaging time typically equals the exposure duration. For carcinogens, the averaging time equals the life expectancy of a person.

"Bioconcentration factor" means the ratio of the concentration of a hazardous substance in the tissue of an aquatic organism divided by the hazardous substance concentration in the ambient water in which the organism resides.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen ~~((with apply))~~ applies to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance ~~((which))~~ that causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogen Risk Assessment as set forth in 51 FR 33992 et seq. ~~((as~~

~~presently published or as subsequently amended or republished.))~~

"Carcinogenic potency factor" or "CPF" means the upper 95th percentile confidence limit of the slope of the dose-response curve and is expressed in units of (mg/kg-day)-1. When derived from human epidemiological data, the carcinogenic potency factor may be a maximum likelihood estimate.

"Chronic reference dose" means an estimate (with an uncertainty spanning an order of magnitude or more) of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of adverse effects during a lifetime.

"Chronic toxicity" means the ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

"Cleanup" means the implementation of a cleanup action or interim action.

"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC ((173-340-360)) 173-340-350 through 173-340-390.

"Cleanup action alternative" means one or more treatment technology, containment action, removal action, engineered control, institutional control or other type of remedial action ("cleanup action components") that, individually or, in combination, achieves a cleanup action at a site.

"Cleanup action plan" means the document prepared by the department under WAC ((173-340-360 which)) 173-340-380 that selects the cleanup action and specifies cleanup standards and other requirements for the cleanup action.

"Cleanup level" means the concentration of a hazardous substance in soil, water, air, or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

~~("Cleanup process" means the process for identifying, investigating, and cleaning up hazardous waste sites under chapter 70.105D RCW.))~~

"Cleanup standards" means the standards ((promulgated)) adopted under RCW 70.105D.030 (2)(d). Establishing cleanup standards requires specification of the following:

Hazardous substance concentrations that protect human health and the environment ("cleanup levels");

The location on the site where those cleanup levels must be attained ("points of compliance"); and

Additional regulatory requirements that apply to a cleanup action because of the type of action and/or the location of the site. These requirements are specified in applicable state and federal laws and are generally established ((following)) in conjunction with the selection of a specific cleanup action.

~~("Closure site assessment" means a site assessment required for closure of an underground storage tank pursuant to rules adopted under chapter 90.76 RCW.))~~ "Cohen's method" means the maximum likelihood estimate of the mean and standard deviation accounting for data below the method detection limit or practical quantitation limit using the method described in the following publications:

• Cohen, A.C., 1959. "Simplified estimators for the normal distribution when samples are singly censored or truncated." *Technometrics*. Volume 1, pages 217-237.

• Cohen, A.C., 1961. "Tables for maximum likelihood estimates: Singly truncated and singly censored samples." *Technometrics*. Volume 3, pages 535-541.

"Compliance monitoring" means a remedial action that consists of monitoring as described in WAC 173-340-410.

"Conceptual site model" means a conceptual understanding of a site that identifies potential or suspected sources of hazardous substances, types and concentrations of hazardous substances, potentially contaminated media, and actual and potential exposure pathways and receptors. This model is typically initially developed during the scoping of the remedial investigation and further refined as additional information is collected on the site. It is a tool used to assist in making decisions at a site.

"Conducting land use planning under chapter 36.70A RCW" as used in the definition of "industrial properties," means having adopted a comprehensive plan and development regulations for the site under chapter 36.70A RCW.

"Containment" means a container, vessel, barrier, or structure, whether natural or constructed, ((which)) that confines a hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

"Contaminant" means any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

"Curie" means the measure of radioactivity defined as that quantity of radioactive material which decays at the rate of 3.70×10^{10} transformations per second. This decay rate is nearly equivalent to that exhibited by 1 gram of radium in equilibrium with its disintegration products.

"Day" means calendar day; however, any document due on the weekend or a holiday may be submitted on the first working day after the weekend or holiday.

"Decree" means consent decree under WAC 173-340-520. "Consent decree" is synonymous with decree.

"Degradation by-products" or "decomposition by-products" means the secondary product of biological or chemical processes that break down chemicals into other chemicals. The decomposition by-products may be more or less toxic than the parent compound.

"Department" means the department of ecology.

"Developmental reference dose" means an estimate (with an uncertainty of an order of magnitude or more) of an exposure level for the human population, including sensitive subgroups, that is likely to be without an appreciable risk of developmental effects.

"Direct contact" means exposure to hazardous substances through ingestion and/or dermal contact.

"Director" means the director of ecology or the director's designee.

"Drinking water fraction" means the fraction of drinking water that is obtained or has the potential to be obtained from the site.

"Engineered controls" means containment and/or treatment systems that are designed and constructed to prevent or limit the movement of, or the exposure to, hazardous sub-

stances. Examples of engineered controls include a layer of clean soil, asphalt or concrete paving or other materials placed over contaminated soils to limit contact with contamination; a ground water flow barrier such as a bentonite slurry trench; ground water gradient control systems such as French drains or pump and treat systems; and vapor control systems.

"Environment" means any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington or under the jurisdiction of the state of Washington.

"Equivalent carbon number" or "EC" means a value assigned to a fraction of a petroleum mixture, empirically derived from the boiling point of the fraction normalized to the boiling point of n-alkanes or the retention time of n-alkanes in a boiling point gas chromatography column.

"Exposure" means subjection of an organism to the action, influence, or effect of a hazardous substance (chemical agent) or physical agent. (~~Exposure is quantified as the amount of the agent available at the exchange boundaries (e.g., skin, lungs, gut) and available for absorption.~~)

"Exposure duration" means the period of exposure to a hazardous substance.

"Exposure frequency" means the portion of the exposure duration that an individual is exposed to a hazardous substance, expressed as a fraction. For example, if a person is exposed 260 days (five days per week for 52 weeks) over a year (365 days), the exposure frequency would be equal to: $(5 \times 52)/365 = 0.7$.

"Exposure parameters" means those parameters used to derive an estimate of the exposure to a hazardous substance.

"Exposure pathway" means the path a hazardous substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from a site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the exposure point differs from the source of the hazardous substance, the exposure pathway also includes a transport/exposure medium.

"Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Federal cleanup law" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq. (~~as presently promulgated or as subsequently amended or repromulgated.~~)

"Fish diet fraction" means the percentage of the total fish and/or shellfish in an individual's diet that is obtained or has the potential to be obtained from the site.

"Food crop" means any domestic plant (~~which~~) that is produced for the purpose of, or may be used in whole or in

part for, consumption by people or livestock. This shall include nursery, root, or seedstock to be used for the production of food crops.

"Free product" means a (~~hazardous substance that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water)~~) nonaqueous phase liquid that is present in the soil, bedrock, ground water or surface water as a distinct separate layer. Under the right conditions, if sufficient free product is present, free product is capable of migrating independent of the direction of flow of the ground water or surface water.

"Gastrointestinal absorption fraction" means the fraction of a substance transported across the gastrointestinal lining and taken up systemically into the body.

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

"Hazard index" means the sum of two or more hazard quotients for multiple hazardous substances and/or multiple exposure pathways.

"Hazardous sites list" means the list of hazardous waste sites maintained under WAC 173-340-330.

"Hazardous substance" means any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste as designated by rule under chapter 70.105 RCW; any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule under chapter 70.105 RCW; any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C., Sec. 9601(14); petroleum or petroleum products; and any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

"Hazardous waste site" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

"Hazard quotient" or "HQ" means the ratio of the dose of a single hazardous substance over a specified time period to a reference dose for that hazardous substance derived for a similar exposure period.

"Health effects assessment summary tables" or "HEAST" means a data base developed by the United States Environmental Protection Agency that provides a summary of information on the toxicity of hazardous substances.

"Henry's law constant" means the ratio of a hazardous substance's concentration in the air to its concentration in water. Henry's law constant can vary significantly with temperature for some hazardous substances. The dimensionless form of this constant is used in the default equations in this chapter.

"Highest beneficial use" means the beneficial use of a resource generally requiring the highest quality in the resource. For example, for many hazardous substances, providing protection for the beneficial use of drinking water will

generally also provide protection for a great variety of other existing and future beneficial uses of ground water.

"Independent remedial actions" means remedial actions conducted without department oversight or approval and not under an order, agreed order, or consent decree.

"Indicator hazardous substances" means the subset of hazardous substances present at a site selected under WAC 173-340-708 for monitoring and analysis during any phase of remedial action for the purpose of characterizing the site or establishing cleanup requirements for that site.

"Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

- Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW (Growth Management Act); or
- For counties not planning under chapter 36.70A RCW (Growth Management Act) and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

See WAC 173-340-745 for additional criteria to determine if a land use not specifically listed in this definition would meet the requirement of "traditional industrial use" and for evaluating if a land use zoning category meets the requirement of being "zoned for industrial use."

"Inhalation absorption fraction" means the percent of a hazardous substance (expressed as a fraction) that is absorbed through the respiratory system.

"Inhalation correction factor" means a multiplier that is used to adjust exposure estimates based on ingestion of drinking water to take into account exposure to hazardous substances (~~(which)~~) that are volatilized and inhaled during use of the water.

"Initial investigation" means a remedial action that consists of an investigation under WAC 173-340-310 ~~((to determine that a release or threatened release may have occurred that warrants further action under this chapter))~~.

"Institutional controls" means ~~((a))~~ measures undertaken to limit or prohibit activities that may interfere with the integrity of an interim action or a cleanup action or result in exposure to hazardous substances at the site. For examples of institutional controls see WAC 173-340-440(1).

"Integrated risk information system" or "IRIS" means a data base developed by the United States Environmental Protection Agency ~~((which))~~ that provides a summary of information on hazard identification and dose-response assessment for specific hazardous substances.

"Interim action" means a remedial action conducted under WAC 173-340-430 ~~((that partially addresses the cleanup of a site))~~.

"Interspecies scaling factor" means the conversion factor used to take into account differences between animals and humans.

"Land's method" means the method for calculating an upper confidence limit for the mean of a lognormal distribution, described in the following publications:

• Land, C.E., 1971. "Confidence intervals for linear functions of the normal mean and variance." *Annals of Mathematics and Statistics*. Volume 42, pages 1187-1205.

• Land, C.E., 1975. "Tables of confidence limits for linear functions of the normal mean and variance." In: *Selected Tables in Mathematical Statistics, Volume III*, pages 385-419. American Mathematical Society, Providence, Rhode Island.

"Legally applicable requirements" means those cleanup standards, standards of control, and other human health and environmental protection requirements, criteria, or limitations ~~((promulgated))~~ adopted under state or federal law that specifically address a hazardous substance, cleanup action, location, or other circumstances at the site.

"Lowest observed adverse effect level" or "LOAEL" means the lowest concentration of a hazardous substance at which there is a statistically or biologically significant increase in the frequency or severity of an adverse effect between ~~((a))~~ an exposed population and a control group.

"Mail" means delivery through the United States Postal Service or an equivalent method of delivery or transmittal, including private mail carriers, or personal delivery.

"Maximum contaminant level" or "MCL" means the maximum concentration of a contaminant established by either the Washington state board of health or the United States Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in chapter 248-54 WAC or 40 C.F.R. 141 ~~((as presently promulgated or subsequently amended or repromulgated))~~.

"Maximum contaminant level goal" or "MCLG" means the maximum concentration of a contaminant established by either the Washington state board of health or the United States Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in chapter 248-54 WAC or 40 C.F.R. 141 ~~((as presently promulgated or subsequently amended or repromulgated))~~ for which no known or anticipated adverse effects on human health occur, including an adequate margin of safety.

"Method detection limit" or "MDL" means the minimum concentration of a compound that can be measured and reported with ninety-nine percent (99%) confidence that the value is greater than zero.

"Millirem" or "mrem" means the measure of the dose of any radiation to body tissue in terms of its estimated biological effect relative to a dose received from an exposure to one roentgen (R) of x-rays. One millirem equals 0.001 rem.

"Mixed funding" means any funding provided to potentially liable persons from the state toxics control account under WAC 173-340-560.

"Model Toxics Control Act" or "act" means ~~((the act approved by the voters at the November 1988 general election, also known as Initiative 97 (-)))~~ chapter 70.105D RCW ~~((a))~~, first passed by the voters in the November 1988 general election as Initiative 97 and as since amended by the legislature.

"Natural attenuation" means a variety of physical, chemical or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentration of hazardous substances in the environment. These in situ processes include: Natural biodegradation; dispersion; dilution; sorption; volatilization; and, chemical or biological stabilization, transformation, or destruction of hazardous substances. See WAC 173-340-370(7) for a description of the expected role of natural attenuation in site cleanup. A cleanup action that includes natural attenuation and conforms to the expectation in WAC 173-340-370(7) can be considered an active remedial measure.

"Natural background" means the concentration of hazardous substance consistently present in the environment ((which)) that has not been influenced by localized human activities. For example, several metals and radionuclides naturally occur in the bedrock, sediments, and soils of Washington state due solely to the geologic processes that formed these materials and the concentration of these ((metals)) hazardous substances would be considered natural background. Also, low concentrations of some particularly persistent organic compounds such as polychlorinated biphenyls (PCBs) can be found in surficial soils and sediment throughout much of the state due to global ((use)) distribution of these hazardous substances. These low concentrations would be considered natural background. Similarly, concentrations of various radionuclides ((which)) that are present at low concentrations throughout the state due to global distribution of fallout from bomb testing and nuclear accidents would be considered natural background.

"Natural biodegradation" means in-situ biological processes such as aerobic respiration, anaerobic respiration, and co-metabolism, that occur without human intervention and that break down hazardous substances into other compounds or elements. The process is typically a multiple step process and may or may not result in organic compounds being completely broken down or mineralized to carbon dioxide and water.

"Natural person" means any unincorporated individual or group of individuals. The term "individual" is synonymous with "natural person."

"Nonaqueous phase liquid" or "NAPL" means a hazardous substance that is present in the soil, bedrock, ground water or surface water as a liquid not dissolved in water. The term includes both light nonaqueous phase liquid (LNAPL) and dense nonaqueous phase liquid (DNAPL).

"No observed adverse effect level" or "NOAEL" means the exposure level at which there are no statistically or biologically significant increases in frequency or severity of adverse effects between the exposed population and its appropriate control; some effects may be produced at this level, but they are not considered to be adverse, nor precursors to specific adverse effects.

"Nonpotable" means not a current or potential source of drinking water. See WAC 173-340-720 and 173-340-730 for criteria for determining if ground water or surface water is a current or potential source of drinking water.

"Null hypothesis" means an assumption about hazardous substance concentrations at a site when evaluating compliance with cleanup levels established under this chapter. The

null hypothesis is that the site is contaminated at concentrations ((which)) that exceed cleanup levels. This shall not apply to cleanup levels based on background concentrations where other appropriate statistical methods supported by a power analysis would be more appropriate to use.

"Oral RFD conversion factor" means the conversion factor used to adjust an oral reference dose (which is typically based on an administered dose) to a dermal reference dose (which is based on an absorbed dose).

"Order" means an enforcement order issued under WAC 173-340-540 or an agreed order issued under WAC 173-340-530.

~~"Owner or operator" means any person ((with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment. The term does not include:~~

~~An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility; or~~

~~A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility)) that meets the definition of this term in RCW 70.105D.020(12).~~

"PAHs (carcinogenic)" or "cPAHs" means those polycyclic aromatic hydrocarbons substances, PAHs ((substances)), identified as A (known human) or B (probable human) carcinogens by the United States Environmental Protection Agency. These include benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene.

"Permanent solution" or "permanent cleanup action" means a cleanup action in which cleanup standards of WAC 173-340-700 through 173-340-760 can be met without further action being required at the site being cleaned up or any other site involved with the cleanup action, other than the approved disposal of any residue from the treatment of hazardous substances.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

"Picocurie" or "pCi" means 10⁻¹² curie.

"Point of compliance" means the point or points where cleanup levels established in accordance with WAC 173-340-720 through 173-340-760 shall be attained. This term includes both standard and conditional points of compliance. A conditional point of compliance for particular media is only available as provided in WAC 173-340-720 through 173-340-760.

"Polychlorinated biphenyls" or "PCB mixtures" means those aromatic compounds containing two benzene nuclei with two or more substituted chlorine atoms. For the purposes of this chapter, PCB includes those congeners which

are identified using the appropriate analytical methods as specified in WAC 173-340-830.

"Polycyclic aromatic hydrocarbons" or "PAH" means those hydrocarbon molecules composed of two or more fused benzene rings. For the purpose of this chapter, PAH includes those compounds which are identified and quantified using the appropriate analytical methods as specified in WAC 173-340-830. The specific compounds generally included are acenaphthene, acenaphthylene, fluorene, naphthalene, anthracene, fluoranthene, phenanthrene, benzo[a]anthracene, benzo[b]fluoranthene, benzo[k]fluoranthene, pyrene, chrysene, benzo[a]pyrene, dibenzo[a,h]anthracene, indeno[1,2,3-cd]pyrene, and benzo[ghi]perylene.

"Potentially liable person" means any person (~~whom~~) who the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

"Practicable" means (~~except when used in the phrase "permanent to the maximum extent practicable" which is defined in WAC 173-340-360(5))~~) capable of being designed, constructed and implemented in a reliable and effective manner including consideration of cost. When considering cost under this analysis, an alternative shall not be considered practicable if the incremental costs of the alternative (~~is substantial and~~) are disproportionate to the incremental degree of (~~protection~~) benefits provided by the alternative over other lower cost alternatives.

"Practical quantitation limit" or "PQL" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions, using department approved methods.

"Probabilistic risk assessment" means a mathematical technique for assessing the variability and uncertainty in risk calculations. This is done by using distributions for model input parameters, rather than point values, where sufficient data exists to justify the distribution. These distributions are then used to compute various simulations using tools such as Monte Carlo analysis to examine the probability that a given outcome will result (such as a level of risk being exceeded). When using probabilistic techniques under this chapter for human health risk assessment, distributions shall not be used to represent dose response relationships (reference dose, reference concentration, cancer potency factor).

"Public notice" means, at a minimum, adequate notice mailed to all persons who have made a timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

"Public participation plan" means a plan prepared under WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

"Rad" means that quantity of ionizing radiation that results in the absorption of 100 ergs of energy per gram of irradiated material, regardless of the source of radiation.

"Radionuclide" means a type of atom (~~which~~) that spontaneously undergoes radioactive decay. Radionuclides are hazardous substances under the act.

~~("Recovery by products" means any hazardous substance, water, sludge or other materials collected in the free product removal process in response to a release from an underground storage tank.)~~

"Reasonable maximum exposure" means the highest exposure that can be reasonably expected to occur for a human or other living organisms at a site under current and potential future site use.

"Reference dose" or "RFD" means a benchmark dose, derived from the NOAEL or LOAEL for a hazardous substance by consistent application of uncertainty factors used to estimate acceptable daily intake doses and an additional modifying factor, which is based on professional judgment when considering all available data about a substance, expressed in units of milligrams per kilogram body weight per day. This includes chronic reference doses, subchronic reference doses, and developmental reference doses.

~~("Regional office" means one of the regional offices of the department of ecology.)~~

"Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

"Relevant and appropriate requirements" means those cleanup standards, standards of control, and other human health and environmental requirements, criteria, or limitations established under state and federal law that, while not legally applicable to the hazardous substance, cleanup action, location, or other circumstance at a site, the department determines address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site. The criteria specified in WAC 173-340-710(3) shall be used to determine if a requirement is relevant and appropriate.

"Rem" means the unit of radiation dose equivalent that is the dosage in rads multiplied by a factor representing the different biological effects of various types of radiation.

"Remedial investigation/feasibility study" means a remedial action that consists of activities conducted under WAC 173-340-350 to collect, develop, and evaluate sufficient information regarding a site to select a cleanup action under WAC 173-340-360 through 173-340-390.

"Remediation level (REL)" means a concentration (or other method of identification) of a hazardous substance in soil, water, air, or sediment above which a particular cleanup action component will be required as part of a cleanup action at a site. Other methods of identification include physical appearance or location. A cleanup action selected in accordance with WAC 173-340-350 through 173-340-390 that includes remediation levels constitutes a cleanup action which is protective of human health and the environment. See WAC 173-340-355 for a description of the purpose of remediation levels and the requirements and procedures for developing a cleanup action alternative that includes remediation levels.

"Remedy" or "remedial action" means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with

respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

"Restoration time frame" means the period of time needed to achieve the required cleanup levels at the points of compliance established for the site.

"Risk" means the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

"Routine cleanup action" means a remedial action ~~((that consists of a cleanup action meeting the requirements in WAC 173-340-130(7)))~~ meeting all of the following criteria:

- Cleanup standards for each hazardous substance addressed by the cleanup are obvious and undisputed, and allow for an adequate margin of safety for protection of human health and the environment;

- It involves an obvious and limited choice among cleanup action alternatives and uses an alternative that is reliable, has proven capable of accomplishing cleanup standards, and with which the department has experience;

- The cleanup action does not require preparation of an environmental impact statement; and

- The site qualifies under WAC 173-340-7491 for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or if the site qualifies for a simplified ecological evaluation, the evaluation is ended under WAC 173-340-7492(2) or the values in Table 749-2 are used.

Routine cleanup actions consist of, or are comparable to, one or more of the following remedial actions:

- Cleanup of above-ground structures;

- Cleanup of below-ground structures;

- Cleanup of contaminated soils where the action would restore the site to cleanup levels; or

- Cleanup of solid wastes, including containers.

"Safety and health plan" means a plan prepared under WAC 173-340-810.

~~((("Sample mean" means the arithmetic mean or the average of a set of measurements. The arithmetic mean is defined as the sum of all measurements divided by the number of measurements.))~~

"Sampling and analysis plan" means a plan prepared under WAC 173-340-820.

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

"Schools" means preschools, elementary schools, middle schools, high schools, and similar facilities, both public and private, used primarily for the instruction of minors.

"Science advisory board" means the advisory board established by the department under RCW 70.105D.030(4).

"Secondary maximum contaminant level" means the maximum concentration of a secondary contaminant in water established by the United States Environmental Protection Agency under the Federal Safe Drinking Water Act (42 U.S.C. 300f et seq.) and published in 40 C.F.R. 143 ~~((as presently promulgated or as subsequently amended or repromulgated))~~.

"Sensitive environment" means an area of particular environmental value, where a release could pose a greater threat than in other areas including: Wetlands; critical habitat

for endangered or threatened species; national or state wild-life refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

"Site" means the same as "facility."

~~((("Site characterization report" means a written report describing the site and nature of a release from an underground storage tank, as described in WAC 173-340-450 (4)(b).))~~

~~("Site check" means the investigation conducted pursuant to rules adopted under chapter 90.76 RCW in order to confirm a release from an underground storage tank.)~~

"Site hazard assessment" means a remedial action that consists of an investigation performed under WAC 173-340-320.

~~((("Site register" means the public information document described in WAC 173-340-600.))~~

"Soil" means a mixture of organic and inorganic solids, air, water, and biota ~~((which))~~ that exists on the earth's surface above bedrock, including materials of anthropogenic sources such as slag, sludge, etc.

~~((("State remedial investigation/feasibility study" means a remedial action that consists of activities performed under WAC 173-340-350 to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup plan under WAC 173-340-360.~~

~~("Status report" means a written or verbal report on the status of the interim actions taken in response to a release from an underground storage tank, as described in WAC 173-340-450 (4)(b).))~~ "Soil biota" means invertebrate multicellular animals that live in the soil or in close contact with the soil.

"Subchronic reference dose" means an estimate (with an uncertainty of an order of magnitude or more) of a daily exposure level for the human population, including sensitive subgroups, that is likely to be without appreciable risk of adverse effects during a portion of a lifetime.

"Surface water" means lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

"Technically possible" means capable of being designed, constructed and implemented in a reliable and effective manner, regardless of cost.

"Terrestrial ecological receptors" means plants and animals that live primarily or entirely on land.

"Threatened or endangered species" means species listed as threatened or endangered under the federal Endangered Species Act 16 U.S.C. Section 1533, or classified as threatened or endangered by the state fish and wildlife commission under WAC 232-12-011(1) and 232-12-014.

"Total excess cancer risk" means the upper bound on the estimated excess cancer risk associated with exposure to multiple hazardous substances and multiple exposure pathways.

"Total petroleum hydrocarbons" or "TPH" means any fraction of crude oil that is contained in plant condensate, crankcase motor oil, gasoline, aviation fuels, kerosene, diesel motor fuel, benzol, fuel oil, and other products derived from the refining of crude oil. For the purposes of this chapter, TPH will generally mean those fractions of the above prod-

ucts that are ~~((quantified by EPA Methods 8015 or 418.1))~~ the total of all hydrocarbons quantified by analytical methods NWTPH-Gx; NWTPH-Dx; volatile petroleum hydrocarbons (VPH) for volatile aliphatic and volatile aromatic petroleum fractions; and extractable petroleum hydrocarbons (EPH) for nonvolatile aliphatic and nonvolatile aromatic petroleum fractions, as appropriate, or other test methods approved by the department.

"Type I error" means the error made when it is concluded that an area of a site is below cleanup levels when it actually exceeds cleanup levels. This is the rejection of a true null hypothesis.

"Underground storage tank" or "UST" means an underground storage tank and connected underground piping as defined in the rules adopted under chapter 90.76 RCW.

~~("Underground storage tank operator" means any underground storage tank operator as defined in the rules adopted under chapter 90.76 RCW.~~

~~"Underground storage tank owner" means any underground storage tank owner as defined in the rules adopted under chapter 90.76 RCW.~~

~~"Underground storage tank release" means a confirmed release from an underground storage tank pursuant to the rules adopted under chapter 90.76 RCW.)~~

"Unrestricted site use conditions" means restrictions on the use of the site or natural resources affected by releases of hazardous substances from the site are not required to ensure continued protection of human health and the environment.

"Upper bound on the estimated excess cancer risk of one in one hundred thousand" means the upper ~~((95th))~~ ninety-fifth percent confidence limit on the estimated risk of one additional cancer above the background cancer rate per one hundred thousand individuals.

"Upper bound on the estimated excess cancer risk of one in one million" means the upper ~~((95th))~~ ninety-fifth percent confidence limit on the estimated risk of one additional cancer above the background cancer rate per one million individuals.

"Volatile organic compound" means those carbon-based compounds listed in EPA methods 502.2, 524.2, 551, 601, 602, 603, 624, ((8010, 8015, 8020, 8030, 8240, 502.1, 502.2, 503.1, 524.1, 524.2)) 1624C, 1666, 1671, 8011, 8015B, 8021B, 8031, 8032A, 8033, 8260B, and those with similar vapor pressures or boiling points. See WAC 173-340-830(3) for references describing these methods. For petroleum, volatile means aliphatic and aromatic constituents up to and including EC12, plus naphthalene, 1-methylnaphthalene and 2-methylnaphthalene.

"Wastewater facility" means all structures and equipment required to collect, transport, treat, reclaim, or dispose of domestic, industrial, or combined domestic/industrial wastewaters.

"Wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this classification, wetlands must have one or more of the following attributes at least periodically, the land supports predominantly hydrophytes; the substrate is predominantly undrained hydric soil; and the substrate is nonsoil

and saturated with water or covered by shallow water at some time during the growing season each year.

"Wildlife" means any nonhuman vertebrate animal other than fish.

"Zoned for (a specified) use" means the use is allowed as a permitted or conditional use under the local jurisdiction's land use zoning ordinances. A land use that is inconsistent with the current zoning but allowed to continue as a nonconforming use or through a comparable designation is not considered to be zoned for that use.

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

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-210 Usage. For the purposes of this chapter, the following shall apply:

(1) Unless the context clearly requires otherwise the use of the singular shall include the plural and conversely.

(2) The terms "applicable," "appropriate," "relevant," "unless otherwise directed by the department" and similar terms implying discretion mean as determined by the department, with the burden of proof on other persons to demonstrate that the requirements are or are not necessary.

(3) "Approved" means for department conducted or ordered remedial actions, or for potentially liable person conducted cleanups agreed to by the department in an agreed order or decree governing remedial actions at the site.

(4) "Conduct" means to perform or undertake whether directly or through an agent or contractor, unless this chapter expressly provides otherwise.

(5) "Include" means included but not limited to.

(6) "May" or "should" means the provision is optional and permissive, and does not impose a requirement.

(7) "Shall," "must," or "will" means the provision is mandatory.

(8) "Threat" means threat or potential threat.

(9) "Under" means pursuant to, subject to, required by, established by, in accordance with, and similar expressions of legislative or administrative authorization or direction.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-300 Site discovery and reporting. (1) Purpose. As part of a program to identify hazardous waste sites, this section sets forth the requirements for reporting a release of a hazardous substance due to past activities, whether discovered before or after the effective date of this regulation. It also sets forth the requirements for reporting independent ~~((cleanup))~~ remedial actions. The department may take any other actions it deems appropriate to identify potential hazardous waste sites consistent with chapter 70.105D RCW.

(2) Release report.

(a) Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human

health or the environment shall report such information to the department (~~(by June 1, 1990, or for discovery of releases after this date,)~~) within ninety days of discovery. Releases from underground storage tanks (~~(as described in the rules adopted under chapter 90.76 RCW must)~~) shall be reported by the owner or operator of the underground storage tank within twenty-four hours of release confirmation, in accordance with WAC 173-340-450. To the extent known, the report shall include:

(i) The identification and location of the hazardous substance(;;);

(ii) Circumstances of the release and the discovery(;;); and

(iii) Any remedial actions planned, completed, or underway. All other persons are encouraged to report such information to the department.

(b) Persons should use best professional judgment in deciding whether a release of a hazardous substance may be a threat or potential threat to human health or the environment. The following, which is not an exhaustive list, are examples of situations that generally should be reported under this section:

(i) Contamination in a water supply well.

(ii) Contaminated seeps, sediment or surface water.

(iii) Vapors in a building, utility vault or other structure that appear to be entering the structure from nearby contaminated soil or ground water.

(iv) Free product such as petroleum product or other organic liquids on the surface of the ground or in the ground water.

(v) Any contaminated soil or unpermitted disposal of waste materials that would be classified as a hazardous waste under federal or state law.

(vi) Any abandoned containers such as drums or tanks, above ground or buried, still containing more than trace residuals of hazardous substances.

(vii) Sites where unpermitted industrial waste disposal has occurred.

(viii) Sites where hazardous substances have leaked or been dumped on the ground.

(ix) Leaking underground petroleum storage tanks not already reported under WAC 173-340-450.

(3) Exemptions. The following releases are exempt from these notification requirements:

(a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;

(b) Lawful and nonnegligent use of hazardous substances by a natural person for personal or domestic purposes;

(c) A release in accordance with a permit that authorizes the release;

(d) A release previously reported to the department in fulfillment of a reporting requirement in this chapter or in another law or regulation;

(e) A release previously reported to the United States Environmental Protection Agency under CERCLA, Section 103(c) (42 U.S.C. Sec. 9603(c));

(f) Except for releases under subsection (2)(b)(iii) of this section, a release to the air;

(g) Releases discovered in public water systems regulated by the department of health; or

(h) A release to a permitted wastewater facility.

An exemption from ~~((these))~~ the notification requirements in this section does not imply a release from liability ~~((in future actions by the department))~~ under this chapter.

(4) Report of independent remedial actions.

~~((a) Report. Any person who conducts an independent interim action or cleanup action shall submit a written report to the department within ninety days of the completion of the action. For the purposes of this section, the department will consider an interim action or cleanup action complete if no remedial action other than compliance monitoring has occurred at the site for ninety days. This is not intended to preclude earlier reporting of such actions. See WAC 173-340-450 for additional requirements for reporting independent interim actions for releases from underground storage tanks.~~

(b) Contents. The report shall include the information in subsection (2) of this section if not already reported, and results of all site investigations, cleanup actions and compliance monitoring planned or underway. The department may require additional reports on the work performed.

(c) Combined reports. If the independent interim action or cleanup action is completed within ninety days of discovery, a single written report may be submitted on both the release and the action taken. The reports shall contain the information specified in subsections (2) and (4) of this section and shall be submitted within ninety days of completion of the interim action or cleanup action.

(d) Notification. The department shall publish a notice of all reports on independent interim actions and cleanup actions received under this section in the site register. See WAC 173-340-515 for additional reporting requirements for independent remedial actions. See WAC 173-340-450 for reporting requirements for independent remedial actions for releases from underground storage tanks.

(5) Department response. Within ninety days of ~~((receipt of))~~ receiving information under this section, the department shall ~~((respond))~~ conduct an initial investigation in accordance with WAC 173-340-310. ~~((Receipt of information regarding an independent interim action or cleanup action under subsection (3) or (4) of this section shall not obligate the department to take any action beyond that prescribed in WAC 173-340-310 and subsection (4)(d) of this section. Neither submission of information on independent interim action and cleanup actions nor any response by the department shall release the person submitting the report or any other person from liability. The department reserves all rights to pursue any subsequent action it deems appropriate.))~~ For sites on the hazardous sites list, the department shall, as resources permit, review reports that document independent cleanup actions. The review shall include an evaluation of whether the site qualifies for removal from the hazardous sites list or whether further remedial action is required.

(6) Other obligations. Nothing in this section shall eliminate any obligations to comply with reporting requirements that may exist in a permit or under other laws.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-310 Initial investigation. (1) Purpose. An initial investigation is an inspection of a suspected site by the department and documentation of conditions observed during that site inspection. The purpose of the initial investigation is to determine whether ~~((or not))~~ a release or threatened release of a hazardous substance may have occurred that warrants further action under this chapter.

~~((a))~~ (2) Applicability and timing. Whenever the department receives information and has a reasonable basis to believe that there may be a release or a threatened release of a hazardous substance that may pose a threat to human health or the environment, the department shall conduct an initial investigation within ninety days.

~~((b))~~ (3) Exemptions. The department shall not be required to conduct an initial investigation when:

~~((a))~~ (a) The circumstances associated with the release or threatened release are known to the department and have previously been or currently are being evaluated by the department or other government agency; ~~((or~~

~~((i))~~ (b) The release is permitted; or

(c) The release is exempt from reporting under WAC 173-340-300(3).

~~((2))~~ Contents. The initial investigation shall include at a minimum: A site visit and documentation of conditions observed.

~~(3))~~ (4) Department deferral to others. The department may rely on another government agency or a contractor to the department to conduct an initial investigation on its behalf, provided the department determines such an agency or contractor is not suspected to have contributed to the release or threatened release of a hazardous substance and that no conflict of interest exists.

~~((4))~~ (5) Department decision. Based on the information obtained about the site, the department shall within thirty days of completion of the initial investigation make one or more of the following decisions:

(a) A site hazard assessment is required;

(b) Emergency remedial action is required;

(c) Interim action is required; or

(d) The site requires no further action under this chapter at this time because either:

(i) There has been no release or threatened release of a hazardous substance; or

(ii) A release or threatened release of a hazardous substance has occurred, but in the department's judgment, does not pose a threat to human health or the environment; or

(iii) Action under another authority is appropriate.

A decision for a particular follow-up action does not preclude the department from requiring some other action in the future based on reevaluation of the site or additional information.

~~((5))~~ Early notice letter.

~~((a))~~ (6) Notification.

(a) Sites requiring an emergency remedial action or interim action. If the department determines that an emergency remedial action or interim action is required, then notification of the threat to the potentially affected vicinity may

be required by the department. The method and nature of the notification shall be determined on a case-by-case basis using the methods specified in WAC 173-340-600. Such notification shall be the responsibility of the site owner or operator if required in writing by the department.

(b) Sites requiring further remedial action. For sites requiring further remedial action under chapter 70.105D RCW, the department ~~((with))~~ shall notify the owner, operator, and any potentially liable person known to the department of its decision. This notification shall be a letter ("Early Notice Letter") mailed to the person which includes:

(i) The basis for the department's decision;

(ii) Information on the cleanup process provided for in this chapter;

(iii) A statement that it is the department's policy to work cooperatively with persons to accomplish prompt and effective cleanups;

(iv) A person or office of the department to contact regarding the contents of the letter; and

(v) A statement that the letter is not a determination of liability and that cooperating with the department in planning or conducting a remedial action is not an admission of guilt or liability.

(c) Sites not requiring further remedial action. For sites requiring no further remedial action under chapter 70.105D RCW, if requested by the owner or operator, the department shall notify the owner or operator of the department's conclusion. This notification shall be in writing and may be combined with the ~~((notice))~~ determination of status letter in WAC 173-340-500.

~~((b))~~ The notification shall be a letter mailed to the person which includes:

~~((i))~~ The basis for the department's decision;

~~((ii))~~ Information on the cleanup process provided for in this chapter;

~~((iii))~~ A statement that it is the department's policy to work cooperatively with persons to accomplish prompt and effective cleanups;

~~((iv))~~ A person or office of the department to contact regarding the contents of the letter; and

~~((v))~~ A statement that the letter is not a determination of liability and that cooperating with the department in planning or conducting a remedial action is not an admission of guilt or liability.)

(7) Reservation of rights. Nothing in this section shall preclude the department from taking or requiring appropriate remedial action at any time.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-320 Site hazard assessment. (1) Purpose. The purpose of the site hazard assessment is to provide sufficient sampling data and other information for the department to:

(a) Confirm or rule out that a release or threatened release of a hazardous substance has occurred;

~~((a))~~ (b) Identify the hazardous substance and provide some information regarding the extent and concentration of the substance;

(c) Identify site characteristics that could result in the hazardous substance entering and moving through the environment;

(d) Evaluate the potential for the threat to human health and the environment; and

(e) Determine the hazard ranking of the site under WAC 173-340-330, if appropriate.

(2) Timing. (~~Unless otherwise directed by the department~~) Generally, a site hazard assessment shall be completed before proceeding to any subsequent phase of remedial action, other than an emergency or interim action.

(3) Administrative options. The site hazard assessment may be conducted under any of the procedures described in WAC 173-340-510. The department may rely on another government agency or a contractor to the department to conduct a site hazard assessment on its behalf, provided the department determines such an agency or contractor is not suspected to have contributed to the release or threatened release of a hazardous substance and that no conflict of interest exists.

(4) Scope and content. A site hazard assessment is an early study to provide preliminary data regarding the relative potential hazard of the site. A site hazard assessment is not intended to be a detailed site characterization(;;); however, it shall include sufficient sampling, site observations, maps, and other information needed to meet the purposes specified in subsection (1) of this section. To fulfill this requirement, a site hazard assessment shall include, as appropriate, the following information:

(a) Identification of hazardous substances, including what was released and is threatened to be released and/or, if known, what products of decomposition, recombination, or chemical reaction are currently present on site, and an estimate of their quantities and concentrations;

(b) Evidence confirming a release or threatened release of hazardous substances to the environment;

(c) Description of facilities containing releases, if any, and their condition;

(d) Identification of the location of all areas where a hazardous substance is known or suspected to be, indicated on a site map;

(e) Consideration of surface water run-on and run-off and the hazardous substances leaching potential;

(f) Preliminary characterization of the subsurface and ground water actually or potentially affected by the release, including vertical depth to ground water and distance to nearby wells, bodies of surface water, and drinking water intakes;

(g) Preliminary evaluation of receptors, including: Human population, food crops, recreation areas, parks, sensitive environments, irrigated areas, and aquatic resources currently or potentially affected by ground water, air, or surface water containing the release of hazardous substances at the site, including distances to these receptors; and

(h) Any other physical factors which may be significant in estimating the potential or current exposure to sensitive biota.

(5) Guidance. The department shall make available guidance for how to conduct a site hazard assessment to meet the

requirements of this section. Persons are encouraged to contact the department to obtain a copy of the latest guidance.

(6) Department decision. Based on the results of the site hazard assessment and other available information about the site, the department shall either determine the site warrants no further action using the criteria in WAC 173-340-310 (5)(d) or proceed with ranking and placing the site on the hazardous sites list under WAC 173-340-330.

(7) Notification. The department shall make available the results of the site hazard assessment to the site's owner and operator and any person who has received a potentially liable person status letter under WAC 173-340-500 regarding the site. If the department finds after a site hazard assessment that the site requires no further action, it shall publish this decision in the *Site Register*.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-330 Hazard ranking and the hazardous sites list. (1) Purpose. The department shall maintain a list of sites where remedial action has been determined by the department to be necessary. This list, called the hazardous sites list, shall fulfill the department's responsibilities under RCW 70.105D.030 (2)(b) and (3). From this list, the department shall select those sites where action is anticipated and include those in the biennial program report(~~(-See))~~ under WAC 173-340-340.(;))

(2) Hazard ranking.

(a) The department shall give a hazard ranking to sites placed on the list ((shall be given a hazard ranking)). The purpose of hazard ranking is to estimate, based on the information compiled during the site hazard assessment, the relative potential risk posed by the site to human health and the environment. This assessment considers air, ground water, and surface water migration pathways, human and nonhuman exposure targets, properties of the substances present, and the interaction of these variables.

~~((a))~~ (b) The department shall evaluate each site on a consistent basis using the procedure described in the "Washington Ranking Method Scoring Manual," ((and all revisions and additions thereto)) publication number 90-14, dated April 1992. The sediment component of a site shall be scored using the procedures described in "Sediment Ranking System," publication number 97-106, dated January 1990, and "Status Report: Technical Basis for SEDRANK Modifications," publication number 97-107, dated June 1991. The ranking procedure and major amendments to the manual shall be reviewed by the science advisory board established under chapter 70.105D RCW. Information obtained in the site hazard assessment, plus any additional data specified in ((the manual)) these publications, shall be included in the hazard ranking evaluation.

~~((b))~~ (3) Site Register. The department shall periodically provide notification of the results of hazard ranking in the *Site Register* (~~established under WAC 173-340-600~~). The department shall make available hazard ranking results for each site to the site owner and operator and any poten-

tially liable person known to the department (~~(prior to publishing)~~) before publication in the *Site Register*.

~~((e))~~ (4) Reranking. The department may at its discretion re-rank a site if, (~~(prior to)~~) before the initiation of state action at the site, the department receives additional information within the scope of the evaluation criteria which indicates that a significant change in rank may result.

~~((3))~~ (5) Listing.

~~((a))~~ Sites shall be ranked and placed on the hazardous sites list if, after the completion of a site hazard assessment, the department (~~(has determined)~~) determines that further action is required at the site. The list shall be updated at least once per year. Placement of a site on the hazardous sites list does not, by itself, imply that persons associated with the site are liable under chapter 70.105D RCW.

~~((b))~~ (6) Site status. The hazardous sites list shall (~~(also)~~) reflect the current status of remedial action at each site. The department may change a site's status to reflect current conditions. The status for each site shall be identified as one of the following:

~~((i))~~ (a) Sites awaiting further remedial action;

~~((ii))~~ (b) Sites with remedial action in progress;

~~((iii))~~ (c) Sites where a cleanup action has been conducted but confirmational monitoring is underway;

~~((iv))~~ (d) Sites with independent remedial actions; or

~~((v))~~ (e) Other categories established by the department.

~~((4))~~ (7) Removing sites from the list.

(a) The department may remove a site from the list only after it has determined that:

(i) For sites where the selected cleanup action does not include containment, all remedial actions except confirmational monitoring have been completed and compliance with the cleanup standards has been achieved at the site; (~~((e))~~)

(ii) The listing was erroneous; or

(iii) For sites where the selected cleanup action includes containment, if all of the following conditions have been met:

(A) All construction and operation of remedial actions have been adequately completed and:

(I) Only passive maintenance activities such as monitoring, inspections and periodic repairs remain; or

(II) For municipal solid waste landfills only, a closure plan meeting the substantive requirements in chapter 173-351 WAC has been approved by the department as part of a remedial action under this chapter and the only remaining active maintenance activities are methane gas control, the operation of leachate collection and treatment systems, and/or surface water diversion;

(B) Sufficient confirmational monitoring has been done to demonstrate that the remedy has effectively contained the hazardous substances of concern at the site;

(C) All required performance monitoring has been completed;

(D) Any required institutional controls are in place and have been demonstrated to be effective in protecting public health and the environment from exposure to hazardous substances and protecting the integrity of the cleanup action;

(E) Written documentation is present in the department files that describes what hazardous substances have been left

on site, where they are located, and the long term monitoring and maintenance obligations at the site;

(F) When required under WAC 173-340-440, financial assurances are in place; and

(G) For sites with releases to ground water, it has been demonstrated the site meets ground water cleanup levels at the designated point of compliance.

(b) A site owner, operator, or potentially liable person may request that a site be removed from the list by submitting a petition to the department. The petition shall include thorough documentation of all investigations performed, all cleanup actions taken, and (~~((e))~~) adequate compliance monitoring to demonstrate to the department's satisfaction that one of the conditions in (a) of this subsection has been met. The department may require payment of costs incurred, including an advance deposit, for review and verification of the work performed. The department shall review such petitions; however, the timing of the review shall be at its discretion and as resources may allow.

~~((e))~~ (8) Record of sites. The department (~~((with))~~) shall maintain a record of sites that have been removed from the list under (~~((e)(i) of this)~~) subsection (7) of this section. The record shall identify which sites have institutional controls under WAC 173-340-440 and which sites are subject to periodic review under WAC 173-340-420. This record will be made available to the public upon request.

~~((5))~~ (9) Relisting of sites. The department may relist a site (~~((which))~~) that has previously been removed if it determines that the site requires further remedial action.

~~((6))~~ (10) Notice. The department shall provide public notice and an opportunity to comment when the department proposes to remove a site from the list. Additions to the list, changes in site status, and removal from the list shall be published in the *Site Register*.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-340 Biennial program report. (1) Timing. Before November 1 of each even-numbered year, the department shall prepare a biennial program report for the legislature containing its plan for conducting remedial actions for the following two fiscal years. This report shall identify the projects and expenditures recommended for appropriation from both the state and local toxics control accounts. In determining which sites the department shall consider for planned action, emphasis shall be given to sites posing the highest risk to human health and the environment, as indicated by a site's hazard ranking. The department may also consider other factors in setting site priorities. After legislative action and any revisions, this report shall become the department's biennial program plan.

(2) Public notice. The department shall provide public notice and a hearing on the proposed plan. For purposes of this subsection only, public notice shall consist of mailings to all persons who have made a timely request and to the appropriate news media, and publication in the state register. Notice shall also be provided in the *Site Register*. The public comment period on the proposed plan shall run for at least

thirty days from the date of the publication in the *Site Register*.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-350 (~~(State)~~) **Remedial investigation and feasibility study.** (1) Purpose. The purpose of a (~~(state)~~) remedial investigation/feasibility study is to collect, develop, and evaluate sufficient information regarding a site to (~~(enable the selection of)~~) select a cleanup action under WAC (~~(173-340-360)) 173-340-360 through 173-340-390.~~

(2) Timing. Unless otherwise directed by the department, a (~~(state)~~) remedial investigation/feasibility study shall be completed before selecting a cleanup action under WAC (~~(173-340-360)) 173-340-360 through 173-340-390~~, except for an emergency or interim action.

(3) Administrative options. A (~~(state)~~) remedial investigation/feasibility study may be conducted under any of the procedures described in WAC 173-340-510 and 173-340-515.

(4) Submittal requirements. For a remedial action conducted by the department or under a decree or order, a report shall be prepared at the completion of the remedial investigation/feasibility study. Additionally, the department may require reports to be submitted for discrete elements of the remedial investigation/feasibility study. Reports prepared under this section and under an order or decree shall be submitted to the department for review and approval. See also subsection (7)(c)(iv) of this section for information on the sampling and analysis plan and the safety and health plan. See WAC 173-340-515(4) for submittal requirements for independent remedial actions.

(5) Public participation. Public participation will be accomplished in a manner consistent with WAC 173-340-600.

~~((5))~~ (6) Scope. The scope of a (~~(state)~~) remedial investigation/feasibility study (~~(will depend)~~) varies from site to site, depending on the informational and analytical needs of the specific facility. This requires that the process remain flexible (, with the scope of the state remedial investigation/feasibility study varying from site to site) and be streamlined when possible to avoid the collection and evaluation of unnecessary information so that the cleanup can proceed in a timely manner. Where information required in subsections (7)(c) and (8)(c) of this section is available in other documents for the site, that information may be incorporated by reference to avoid unnecessary duplication. However, in all cases sufficient information must be collected, developed, and evaluated to enable the selection of a cleanup action under WAC 173-340-360 through 173-340-390. In addition, for facilities on the federal national priorities list, (~~(the state)~~) a remedial investigation/feasibility study shall comply with federal requirements.

~~((6) Contents))~~ (7) Procedures for conducting a remedial investigation.

(a) Purpose. The purpose of the remedial investigation is to collect data necessary to adequately characterize the site for the purpose of developing and evaluating cleanup action

alternatives. Site characterization may be conducted in one or more phases to focus sampling efforts and increase the efficiency of the remedial investigation. Site characterization activities may be integrated with the development and evaluation of alternatives in the feasibility study, as appropriate.

(b) Scoping activities. To focus the collection of data and to assist the department in making the preliminary evaluation required under the State Environmental Policy Act (see WAC 197-11-256), the following scoping activities may be taken before conducting a remedial investigation:

(i) Assemble and evaluate existing data on the site, including the results of any interim or emergency actions, initial investigations, site hazard assessments, and other site inspections;

(ii) Develop a preliminary conceptual site model as defined in WAC 173-340-200;

(iii) Begin to identify likely cleanup levels for the site;

(iv) Begin to identify likely cleanup action components that may address the releases at the site;

(v) Consider the type, quality and quantity of data necessary to support selection of a cleanup action; and

(vi) Begin to identify likely applicable state and federal laws under WAC 173-340-710.

(c) Content. A (~~(state)~~) remedial investigation (~~(feasibility study))~~) shall include the following information as appropriate:

~~((a))~~ (i) General facility information. General information, including: Project title; name, address, and phone number of project coordinator; legal description of the facility location; dimensions of the facility; present owner and operator; chronological listing of past owners and operators and operational history; and other pertinent information.

~~((b))~~ (ii) Site conditions map. An existing site conditions map (~~(which)) that illustrates relevant current site features such as (:) property boundaries (:), proposed facility boundaries (:), surface topography (:), surface and subsurface structures (:), utility lines (:), well locations (:), and other pertinent information.~~

~~((e))~~ (iii) Field investigations. Sufficient investigations to characterize the distribution of hazardous substances present at the site, and threat to human health and the environment. Where applicable to the site, these investigations (~~(will need to)) shall address the following:~~

~~((+))~~ (A) Surface water and sediments. Investigations of surface water and sediments to characterize significant hydrologic features such as: Surface drainage patterns and quantities, areas of erosion and sediment deposition, surface waters, floodplains, and actual or potential hazardous substance migration routes towards and within these features. Sufficient surface water and sediment sampling shall be performed to adequately characterize the areal and vertical distribution and concentrations of hazardous substances. Properties of surface and subsurface sediments (~~(which)) that are likely to influence the type and rate of hazardous substance migration, or are likely to affect the ability to implement alternative cleanup actions shall be characterized.~~

~~((+))~~ (B) Soils. Investigations to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the soil due to the (~~(facility)) release. Properties of surface and subsurface soils (which) that are~~

likely to influence the type and rate of hazardous substance migration, or which are likely to affect the ability to implement alternative cleanup actions shall be characterized.

~~((iii))~~ (C) Geology and ground water system characteristics. Investigations of site geology and hydrogeology to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the ground water and those features which affect the fate and transport of these hazardous substances. This shall include, as appropriate, the description, physical properties and distribution of bedrock and unconsolidated materials; ground water flow rate and gradient for affected and potentially affected ground waters; ground water divides; areas of ground water recharge and discharge; location of public and private production wells; and ground water quality data.

~~((iv))~~ (D) Air. An evaluation of air quality impacts, including sampling, where appropriate, and information regarding local and regional climatological characteristics which are likely to affect the hazardous substance migration such as ~~((:))~~ seasonal patterns of rainfall~~((:))~~, the magnitude and frequency of significant storm events~~((:))~~, temperature extremes~~((:))~~, prevailing wind direction~~((:))~~, variations in barometric pressure, and wind velocity.

~~((v))~~ (E) Land use. Information regarding present and proposed land and resource uses and zoning for the site and potentially affected areas and information characterizing human and ecological populations that are reasonably likely to be exposed or potentially exposed to the ~~((hazardous substance released from the facility and present and proposed land uses and zoning for the site and potentially affected areas))~~ release based on such use.

~~((vi) Natural resources and ecology.)~~ (F) Natural resources and ecological receptors.

(I) Information to determine the impact or potential impact of the hazardous substance from the facility on ((the)) natural resources and ((ecology of the area such as: Sensitive environment, plant and animal species, and other environmental)) ecological receptors, including any information needed to conduct a terrestrial ecological evaluation, under WAC 173-340-7492 or 173-340-7493, or to establish an exclusion under WAC 173-340-7491.

~~((vii))~~ (II) Where appropriate, a terrestrial ecological evaluation may be conducted so as to avoid duplicative studies of soil contamination that will be remediated to address other concerns, such as protection of human health. This may be accomplished by evaluating residual threats to the environment after cleanup action alternatives for human health protection have been developed. If this approach is used, the remedial investigation may be phased. Examples of sites where this approach may not be appropriate include: A site contaminated with a hazardous substance that is primarily an ecological concern and will not obviously be addressed by the cleanup action for the protection of human health, such as zinc; or a site where the development of a human health based remedy is expected to be a lengthy process, and postponing the terrestrial ecological evaluation would cause further harm to the environment.

(III) If it is determined that a simplified or site-specific terrestrial ecological evaluation is not required under WAC

173-340-7491, the basis for this determination shall be included in the remedial investigation report.

(G) Hazardous substance sources. A description of and sufficient sampling to define the location, quantity, areal and vertical extent, concentration within and sources of ~~((waste disposal areas))~~ releases. Where relevant, information on the physical and chemical characteristics, and the biological effects of hazardous substances shall be provided.

~~((viii))~~ (H) Regulatory classifications. Regulatory designations classifying affected air, surface water and ground water, if any.

~~((d) Risk assessment. A risk assessment characterizing the current and potential threats to human health and the environment that may be posed by hazardous substances. This assessment may not be required when the department determines that proposed cleanup standards are obvious and undisputed and allow an adequate margin of safety for protection of human health and the environment.~~

~~((e) Cleanup action alternatives. An evaluation of alternative cleanup actions that protect human health and the environment by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route, shall be required. The number and types of alternatives to be evaluated shall take into account the characteristics and complexity of the facility. A phased approach for evaluation of alternatives may be required for certain facilities, including an initial screening of alternatives to reduce the number of potential remedies for the final detailed evaluation. The final evaluation of cleanup action alternatives that pass the initial screening shall be evaluated for compliance with the requirements in WAC 173-340-360.~~

~~((f) Work plans. A sampling and analysis plan, and a safety and health plan shall be prepared as part of state remedial investigation/feasibility study activities. These plans shall conform to the requirements specified in this chapter.~~

~~((g))~~ (iv) Workplans. A safety and health plan and a sampling and analysis plan shall be prepared as part of the remedial investigation/feasibility study. These plans shall conform to the requirements specified in WAC 173-340-810 and 173-340-820.

(v) Other information. Other information may be required by the department.

(8) Procedures for conducting a feasibility study.

(a) Purpose. The purpose of the feasibility study is to develop and evaluate cleanup action alternatives to enable a cleanup action to be selected for the site. If concentrations of hazardous substances do not exceed the cleanup level at a standard point of compliance, no further action is necessary.

(b) Screening of alternatives. An initial screening of alternatives to reduce the number of alternatives for the final detailed evaluation may be appropriate. The person conducting the feasibility study may initially propose cleanup action alternatives or components to be screened from detailed evaluation. The department shall make the final determination of which alternatives must be evaluated in the feasibility study. The following cleanup action alternatives or components may be eliminated from the feasibility study:

(i) Alternatives that, based on a preliminary analysis, the department determines so clearly do not meet the minimum requirements specified in WAC 173-340-360 that a more

detailed analysis is unnecessary. This includes those alternatives for which costs are clearly disproportionate under WAC 173-340-360 (3)(e); and

(ii) Alternatives or components that are not technically possible at the site.

(c) Content. A feasibility study shall include the following information as appropriate.

(i) General requirements.

(A) The feasibility study shall include cleanup action alternatives that protect human health and the environment (including, as appropriate, aquatic and terrestrial ecological receptors) by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route.

(B) A reasonable number and type of alternatives shall be evaluated, taking into account the characteristics and complexity of the facility, including current site conditions and physical constraints.

(C) Each alternative may consist of one or more cleanup action components, including, but not limited to, components that reuse or recycle the hazardous substances, destroy or detoxify the hazardous substances, immobilize or solidify the hazardous substances, provide for on-site or off-site disposal of the hazardous substances in an engineered, lined and monitored facility, on-site isolation or containment of the hazardous substances with attendant engineering controls, and institutional controls and monitoring.

(D) Alternatives may, as appropriate, include remediation levels to define when particular cleanup action components will be used. Alternatives may also include different remediation levels for the same component. For example, alternatives that excavate and treat soils at varying concentrations may be appropriate to evaluate. See WAC 173-340-355 for detailed information on establishing potential remediation levels to be evaluated in the feasibility study.

(E) If necessary, evaluate the residual threats that would accompany each alternative and determine if remedies that are protective of human health will also be protective of ecological receptors. See subsection (7)(c)(iii)(F) of this section.

(F) The feasibility study shall include alternatives with the standard point of compliance for each environmental media containing hazardous substances, unless those alternatives have been eliminated under (b) of this subsection, and may include, as appropriate, alternatives with conditional points of compliance.

(G) Each alternative shall be evaluated on the basis of the requirements and the criteria specified in WAC 173-340-360.

(H) A preferred cleanup action may be identified in the feasibility study, where appropriate.

(I) Other information may be required by the department.

(ii) Permanent alternatives.

(A) Except as provided in (c)(ii)(B) of this subsection, the feasibility study shall include at least one permanent cleanup action alternative, as defined in WAC 173-340-200, to serve as a baseline against which other alternatives shall be evaluated for the purpose of determining whether the cleanup action selected is permanent to the maximum extent practica-

ble. The most practicable permanent cleanup action alternative shall be included.

(B) The feasibility study does not need to include a permanent cleanup action alternative under any of the following circumstances:

(I) Where a model remedy is the selected cleanup action;

(II) Where a permanent cleanup action alternative is not technically possible; or

(III) Where the cost of the most practicable permanent cleanup action alternative is so clearly disproportionate that a more detailed analysis is not necessary, as determined through the screening process in (b)(i) of this subsection.

(9) Additional requirements.

(a) Cleanup levels. Unless otherwise specified under this chapter, cleanup levels shall be established for hazardous substances in each medium and for each pathway where a release has occurred, using WAC 173-340-700 through 173-340-760. These are typically initially established during the scoping of the remedial investigation and may be further refined during the remedial investigation and/or feasibility study.

(b) Compliance with other laws. The department may require that a remedial investigation/feasibility study include additional information or analyses to comply with the State Environmental Policy Act or other applicable laws. This includes information necessary to make a threshold determination (see WAC 197-11-335(1)), or information necessary to integrate the remedial investigation/feasibility study with an environmental impact statement (see WAC 197-11-262).

(c) Treatability studies. The department may require treatability studies as necessary to provide sufficient information to develop and evaluate cleanup action alternatives for a site.

~~((h) Any information needed to fulfill the applicable requirements of the State Environmental Policy Act.~~

~~((i)) (d) Other information ((as)). Other information may be required by the department.~~

~~((7) In appropriate cases the department may allow departure from the requirements of subsection (6) of this section and will allow information to be incorporated by reference to avoid unnecessary duplication.~~

~~(8) Report. A report shall be prepared at the completion of the remedial investigation/feasibility study. Additionally, the department may require reports to be submitted following discrete elements of the remedial investigation/feasibility study. Reports prepared under this section and under an order or decree shall be submitted to the department for review and approval.))~~

NEW SECTION

WAC 173-340-355 Development of cleanup action alternatives that include remediation levels. (1) Purpose. A cleanup action selected for a site will often involve a combination of cleanup action components, such as treatment of some soil contamination and containment of the remainder. Remediation levels are used to identify the concentrations (or other methods of identification) of hazardous substances at which different cleanup action components will be used. (See the definition of remediation level in WAC 173-340-

200.) Remediation levels may be used at sites where a combination of cleanup actions components are used to achieve cleanup levels at the point of compliance (see the examples in subsection (3)(a) and (c) of this section). Remediation levels may also be used at sites where the cleanup action involves the containment of soils as provided under WAC 173-340-740 (6)(f) and at sites conducting interim actions (see the examples in subsection (3)(b) and (d) of this section).

(2) Relationship to cleanup levels and cleanup standards. Remediation levels are not the same as cleanup levels. A cleanup level defines the concentration of hazardous substances above which a contaminated medium (e.g., soil) must be remediated in some manner (e.g., treatment, containment, institutional controls). A remediation level, on the other hand, defines the concentration (or other method of identification) of a hazardous substance in a particular medium above or below which a particular cleanup action component (e.g., soil treatment or containment) will be used. Remediation levels, by definition, exceed cleanup levels.

Cleanup levels must be established for every site. Remediation levels, on the other hand, may not be necessary at a site. Whether remediation levels are necessary depends on the cleanup action selected. For example, remediation levels would not be necessary if the selected cleanup action removes for off-site disposal all soil that exceeds the cleanup level at the applicable points of compliance.

A cleanup action that uses remediation levels must meet each of the minimum requirements specified in WAC 173-340-360, including the requirement that all cleanup actions must comply with cleanup standards. Compliance with cleanup standards requires, in part, that cleanup levels are met at the applicable points of compliance. If the remedial action does not comply with cleanup standards, the remedial action is an interim action, not a cleanup action. Where a cleanup action involves containment of soils with hazardous substance concentrations exceeding cleanup levels at the point of compliance, the cleanup action may be determined to comply with cleanup standards, provided the requirements specified in WAC 173-340-740 (6)(f) are met.

(3) Examples. The following examples of cleanup actions that use remediation levels are for illustrative purposes only. All cleanup action alternatives in a feasibility study, including those with proposed remediation levels, must be evaluated to determine whether they meet each of the minimum requirements specified in WAC 173-340-360 (see WAC 173-340-360 (2)(h)). This evaluation requires, in part, a determination that a more permanent cleanup action is not practicable, based on the disproportionate cost analysis in WAC 173-340-360 (3)(e).

(a) Example of a site meeting soil cleanup levels at the point of compliance. Assume that the soil cleanup level at a site is 20 ppm. Further assume that the cleanup action alternative determined to comply with the minimum requirements in WAC 173-340-360 and selected for the site consists of soil treatment and removal and a remediation level of 100 ppm to define when those two components are used. Under the cleanup standard, any soil that exceeds the 20 ppm cleanup level at the applicable point of compliance must be remediated in some manner. Under the selected cleanup action, any soil that exceeds the 100 ppm remediation level must be

removed and treated. Any soil that does not exceed the 100 ppm remediation level, but exceeds the 20 ppm cleanup level, must be removed and landfilled. The cleanup action may be determined to comply with the cleanup standard because the cleanup level is met at the applicable point of compliance.

(b) Example of a site not meeting soil cleanup levels at the point of compliance. Assume that the soil cleanup level at a site is 20 ppm. Further assume that the cleanup action alternative determined to comply with the minimum requirements in WAC 173-340-360 and selected for the site consists of soil treatment and containment and a remediation level of 100 ppm to define when those two components are used. Under the cleanup standard, any soil that exceeds the 20 ppm cleanup level at the applicable point of compliance must be remediated in some manner. Under the selected cleanup action, any soil that exceeds the 100 ppm remediation level must be treated. Any soil that does not exceed the 100 ppm remediation level, but exceeds the 20 ppm cleanup level, must be contained. Residual contamination above the cleanup level will remain at the site. However, assuming the cleanup action meets the requirements specified in WAC 173-340-740 (6)(f) for soil containment actions, the cleanup action may be determined to comply with cleanup standards.

(c) Example of site meeting ground water cleanup levels at the point of compliance. Assume that the ground water cleanup level at a site is 500 ug/l and that a conditional point of compliance is established at the property boundary. Further assume that the cleanup action alternative determined to comply with the minimum requirements in WAC 173-340-360 and selected for the site consists of: Removing the source of the ground water contamination (e.g., removal of a leaking tank and associated soil contamination above the water table); extracting free product and any ground water exceeding a concentration of 2,000 ug/l; and utilizing natural attenuation to restore the ground water to 500 ug/l before it arrives at the property boundary. The ground water concentration of 2,000 ug/l constitutes a remediation level because it defines the concentration of a hazardous substance at which different cleanup action components are used. As long as the ground water meets the 500 ug/l cleanup level at the conditional point of compliance (the property boundary), the cleanup action may be determined to comply with cleanup standards.

(d) Example of a site not meeting ground water cleanup levels at the point of compliance. Assume that the ground water cleanup level at a site is 5 ug/l and that a conditional point of compliance is established at the property boundary. Further assume that the remedial action selected for the site consists of: Vapor extraction of the soil to nondetectable concentrations (to prevent further ground water contamination); extraction and treatment of ground water with concentrations in excess of 100 ug/l; and installation of an air stripping system to treat ground water at a water supply well beyond the property boundary to less than 5 ug/l. Further assume that the ground water cleanup level will not be met at the conditional point of compliance (the property boundary). The ground water concentration of 100 ug/l constitutes a remediation level because it defines the concentration of a hazardous substance at which different cleanup action components are used. However, in this example, the remedial

action does not constitute a cleanup action because it does not comply with cleanup standards, one of the minimum requirements for cleanup actions in WAC 173-340-360. Consequently, the remedial action is considered an interim action until the cleanup level is attained at the conditional point of compliance (the property boundary).

(4) General requirements. Potential remediation levels may be developed as part of the cleanup action alternatives to be considered during the feasibility study (see WAC 173-340-350 (8)(c)(i)(D)). These potential remediation levels may be defined as either a concentration or other method of identification of a hazardous substance. Other methods of identification include physical appearance or location (e.g., all of the green sludge will be removed from the northern area of the site). Quantitative or qualitative methods may be used to develop these potential remediation levels. These methods may include a human health risk assessment or an ecological risk assessment. These methods may also consider fate and transport issues. These methods may be simple or complex, as appropriate to the site. Where a quantitative risk assessment is used, see WAC 173-340-357. All cleanup action alternatives in a feasibility study, including those with proposed remediation levels, must still be evaluated to determine whether they meet each of the minimum requirements specified in WAC 173-340-360 (see WAC 173-340-360 (2)(h)).

NEW SECTION

WAC 173-340-357 Quantitative risk assessment of cleanup action alternatives. (1) Purpose. A quantitative site-specific risk assessment may be conducted to help determine whether cleanup action alternatives, including those using a remediation level, engineered control and/or institutional control, are protective of human health and the environment. If a quantitative site-specific risk assessment is used, then other considerations may also be needed in evaluating the protectiveness of the overall cleanup action. Methods other than a quantitative site-specific risk assessment may also be used to determine if a cleanup action alternative is protective of human health and the environment.

(2) Relationship to selection of cleanup actions. Selecting a cleanup action requires a determination that each of the requirements specified in WAC 173-340-360 is met, including the requirement that the cleanup action is protective of human health and the environment. A quantitative risk assessment conducted under this section may be used to help determine whether a particular cleanup action alternative meets this requirement. A determination that a cleanup action alternative evaluated is protective of human health and the environment does not mean that the other minimum requirements specified in WAC 173-340-360 have been met.

(3) Protection of human health. A quantitative site-specific human health risk assessment may be conducted to help determine whether cleanup action alternatives, including those using a remediation level, engineered control and/or institutional control, are protective of human health. For the purpose of this assessment, the default assumptions in the standard Method B and C equations in WAC 173-340-720 through 173-340-750 may be modified as provided for under modified Method B and C. In addition to those modifica-

tions, adjustments to the reasonable maximum exposure scenario or default exposure assumptions may also be made. See WAC 173-340-708 (3)(d) and (10)(b). References to Method C in this subsection apply to a medium only if the particular medium the remediation level is being established for qualifies for a Method C cleanup level under WAC 173-340-706.

(a) Reasonable maximum exposure. Standard reasonable maximum exposures and corresponding Method B and C equations in WAC 173-340-720 through 173-340-750 may be modified as provided under WAC 173-340-708 (3)(d). For example, land uses other than residential and industrial may be used as the basis for an alternative reasonable maximum exposure scenario for the purpose of assessing the protectiveness of a cleanup action alternative that uses a remediation level, engineered control, and/or institutional control.

(b) Exposure parameters. Exposure parameters for the standard Method B and C equations in WAC 173-340-720 through 173-340-750 may be modified as provided in WAC 173-340-708(10).

(c) Acceptable risk level. The acceptable risk level for remediation levels shall be the same as that used for the cleanup level.

(d) Soil to ground water pathway. The methods specified in WAC 173-340-747 to develop soil concentrations that are protective of ground water beneficial uses may also be used during remedy selection to help assess the protectiveness to human health of a cleanup action alternative that uses a remediation level, engineered control, and/or institutional control.

(e) Burden of proof, new science, and quality of information. Any modification of the default assumptions in the standard Method B and C equations, including modification of the standard reasonable maximum exposures and exposure parameters, or any modification of default assumptions or methods specified in WAC 173-340-747 requires compliance with WAC 173-340-702 (14), (15) and (16).

(f) Commercial gas station scenario.

(i) At active commercial gas stations, where there are retail sales of gasoline and/or diesel, Equations 740-3 and 740-5 may be used with the exposure frequency reduced to 0.25 to demonstrate when a cap is protective of the soil ingestion and dermal pathways. This scenario is intended to be a conservative estimate of a child trespasser scenario at a commercial gas station where contaminated soil has been excavated and stockpiled or soil is otherwise accessible. Sites using remediation levels must also use institutional controls to prevent uses that could result in a higher level of exposure and assess the protectiveness for other exposure pathways (e.g., soil vapors and soil to ground water).

(ii) Equations 740-3 and 740-5 may also be modified on a site-specific basis as described in WAC 173-340-740(3)(c).

(4) Protection of the environment. A quantitative site-specific ecological risk assessment may be conducted to help determine whether cleanup action alternatives, including those using a remediation level, engineered control and/or institutional control, are protective of the environment.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-360 Selection of cleanup actions. (1)

Purpose.

~~((a) This section describes the requirements for selecting cleanup actions. It specifies the criteria for approving cleanup actions, the order of preference for cleanup technologies, policies for permanent solutions, the application of these criteria to particular situations, and the process for making these decisions. This section is intended to be used in conjunction with the cleanup standards defined in WAC 173-340-700 through 173-340-760 and the administrative principles for the overall cleanup process (WAC 173-340-130).~~

~~(b) Because cleanup actions will often involve the use of several cleanup technologies or methods at a single site, the overall cleanup action shall meet the requirements of this section:~~

~~(2) Threshold requirements:~~

~~All cleanup actions conducted under this chapter shall protect human health and the environment; shall comply with cleanup standards (see WAC 173-340-700 through 173-340-760); shall comply with applicable state and federal laws (see WAC 173-340-710); and shall provide for compliance monitoring (see WAC 173-340-410).~~

~~(3) Other requirements. In addition, the cleanup action conducted shall:~~

~~(a) Use permanent solutions to the maximum extent practicable (see WAC 173-340-360 (4), (5), (7), and (8));~~

~~(b) Provide for a reasonable restoration time frame (see WAC 173-340-360(6)); and~~

~~(c) Consider public concerns raised during public comment on the draft cleanup action plan (see WAC 173-340-360 (10) through (13)).~~

~~(4) Cleanup technologies:~~

~~(a) Cleanup of hazardous waste sites shall be conducted using technologies which minimize the amount of untreated hazardous substances remaining at a site. Toward that end, the following technologies for addressing specific hazardous substances or pathways shall be considered in order of descending preference:~~

~~(i) Reuse or recycling;~~

~~(ii) Destruction or detoxification;~~

~~(iii) Separation or volume reduction followed by reuse, recycling, destruction, or detoxification of the residual hazardous substance;~~

~~(iv) Immobilization of hazardous substances;~~

~~(v) On-site or off-site disposal at an engineered facility designed to minimize the future release of hazardous substances and in accordance with applicable state and federal laws;~~

~~(vi) Isolation or containment with attendant engineering controls; and~~

~~(vii) Institutional controls and monitoring.~~

~~(b) A combination of technologies from more than one of the categories under (a) of this subsection may be used at a specific site. For example, the source of the hazardous substance may be recovered and recycled or destroyed, while containment is used to stop the migration of hazardous substances that have reached the ground water.~~

~~(e) Since cleanup actions will often involve a combination of technologies, cleanup action alternatives shall maximize the use of higher preference technologies.~~

~~(d) Ecology does not expect that one type of technology will be used for all sites. The adoption of the technology preferences in this subsection is designed to make it more difficult to select a cleanup action with a low preference without careful explanation of why technologies above it have not been used. As noted in subsection (9) of this section, ecology expects that lower options will be appropriate for some sites.~~

~~(5) Permanent solutions:~~

~~(a) When selecting a cleanup action, preference shall be given to permanent solutions to the maximum extent practicable.~~

~~(b) A permanent solution is one in which cleanup standards can be met without further action being required at the original site or any other site involved with the cleanup action, other than the approved disposal of any residue from preferred treatment technologies under subsection (4)(a)(i) through (iii) of this section.~~

~~(c) In general, technologies which reuse, recycle, destroy, or detoxify hazardous substances will result in permanent solutions if residual hazardous substance concentrations are below cleanup levels established under WAC 173-340-700 through 173-340-760. Containment of hazardous substances and/or institutional controls alone are not permanent solutions. Other technologies, such as immobilization of hazardous substances, may provide permanent solutions under some conditions.~~

~~(d) Ecology recognizes that permanent solutions may not be practicable for all sites. A determination that a cleanup action satisfies the requirement to use permanent solutions to the maximum extent practicable is based upon consideration of a number of factors. The following criteria shall be used to determine whether a cleanup action is "permanent to the maximum extent practicable":~~

~~(i) Overall protectiveness of human health and the environment including the degree to which existing risks are reduced, time required to reduce risk at the facility and attain cleanup standards, on-site and off-site risks resulting from implementing the alternative, the degree the cleanup action may perform to a higher level than specific standards in WAC 173-340-700 through 173-340-760, and improvement of the overall environmental quality;~~

~~(ii) Long-term effectiveness including degree of certainty that the alternative will be successful, long-term reliability, magnitude of residual risk, and effectiveness of controls required to manage treatment residues or remaining wastes;~~

~~(iii) Short-term effectiveness including protection of human health and the environment during construction and implementation of the alternative, and the degree of risk to human health and the environment prior to attainment of cleanup standards;~~

~~(iv) Permanent reduction of toxicity, mobility and volume of the hazardous substance including adequacy of the alternative in destroying the hazardous substances, reduction or elimination of hazardous substance releases and sources of releases, degree of irreversibility of waste treatment process;~~

and the characteristics and quantity of treatment residuals generated;

(v) Ability to be implemented including consideration of whether the alternative is technically possible, availability of necessary off-site facilities, services and materials, administrative and regulatory requirements, scheduling, size, complexity, monitoring requirements, access for construction, operations and monitoring, and integration with existing facility operations and other current or potential remedial actions;

(vi) Cleanup costs. A cleanup action shall not be considered practicable if the incremental cost of the cleanup action is substantial and disproportionate to the incremental degree of protection it would achieve over a lower preference cleanup action. When selecting from among two or more cleanup action alternatives which have an equivalent level of preference under subsection (4) of this section, preference may be given to the least cost alternative. In performing this evaluation, the top three preferences in subsection (4) of this section shall be considered equivalent unless there are overriding public concerns or technical uncertainties;

(vii) The degree to which community concerns are addressed.

(e) To ensure a bias toward permanent solutions, cleanup actions conducted under this chapter including consideration of prior actions at the site shall comply with the following requirements:

(i) The cleanup action shall prevent or minimize present and future releases and migration of hazardous substances in the environment;

(ii) The cleanup action shall provide for a net reduction in the amount of a hazardous substance being released from the source area;

(iii) The cleanup action shall not rely primarily on dilution and dispersion of the hazardous substance if active remedial measures are technically possible;

(iv) A cleanup action relying primarily on institutional controls and monitoring shall not be used where it is technically possible to implement a cleanup action alternative that utilizes a higher preference cleanup technology for all or a portion of the site; and

(v) A cleanup action involving off-site transport and disposal of hazardous substances without treatment shall not be used if a treatment technology or method exists which will attain cleanup standards and is practicable.

(6) Restoration time frame:

(a) The cleanup action selected shall provide for a reasonable restoration time frame. The factors to be considered when establishing a reasonable restoration time frame shall include:

(i) Potential risks posed by the site to human health and the environment;

(ii) Practicability of achieving a shorter restoration time frame;

(iii) Current use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;

(iv) Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;

(v) Availability of alternative water supplies;

(vi) Likely effectiveness and reliability of institutional controls;

(vii) Ability to control and monitor migration of hazardous substances from the site;

(viii) Toxicity of the hazardous substances at the site; and

(ix) Natural processes which reduce concentrations of hazardous substances and have been documented to occur at the site or under similar site conditions.

(b) A longer period of time may be used for the restoration time frame for a site to achieve cleanup levels at the point of compliance if higher preference cleanup technologies in accordance with subsections (4) and (5) of this section are selected instead of on-site or off-site disposal, isolation, or containment options:

(e) When area background concentrations would result in recontamination of the site to levels which exceed cleanup levels, that portion of the cleanup action which addresses cleanup below area background concentrations may be delayed until the off-site sources of hazardous substances are controlled. In these cases the remedial action shall be considered an interim action until cleanup levels are attained.

(d) Where cleanup levels determined under method C in WAC 173-340-707 are below technically possible concentrations, concentrations that are technically possible to achieve shall be met within a reasonable time frame considering the factors in (a) of this subsection. In these cases the remedial action shall be considered an interim action until cleanup levels are attained.

(e) Extending the restoration time frame shall not be used as a substitute for active cleanup actions, when such actions are practicable:

(7) Ground water restoration:

(a) Ground water treatment to achieve the levels in WAC 173-340-720 throughout the ground water at and beyond the point of compliance shall be required where such treatment is practicable or where such treatment is not practicable, but deemed by the department to be in the public interest.

(b) When ground water treatment to achieve the cleanup levels at or beyond the point of compliance within an existing ground water plume is not practicable the following measures shall be taken:

(i) Treatment shall be used to reduce the levels to the maximum extent practicable;

(ii) Ground water containment, including barriers or hydraulic control through ground water pumping or both, shall be implemented to the maximum extent practicable to avoid lateral and vertical expansion of the ground water volume affected by the hazardous substance;

(iii) Source control measures shall be implemented to prevent or minimize additional releases to the ground water;

(iv) Adequate ground water monitoring to demonstrate control and containment of the hazardous substance shall be conducted;

(v) The potentially liable person shall provide an alternative water supply or treatment for persons with water supplies rendered unusable by the release; and

(vi) The practicability of achieving ground water cleanup levels by treating the ground water affected by the

release shall be reevaluated during the periodic review under WAC 173-340-420.

(c) Appropriate restrictions on the use of ground water shall be placed under WAC 173-340-440 until cleanup levels established under WAC 173-340-720 are achieved.

(d) The integrity and continued operation of any treatment or containment system shall be assured in accordance with WAC 173-340-440.

(8) Containment actions:

(a) A cleanup action which relies primarily on on-site disposal, isolation, or containment of hazardous substances shall not be conducted if it is practicable to reuse, destroy, or detoxify those substances in a manner that remaining concentrations are below cleanup levels established under WAC 173-340-700 through 173-340-760.

(b) Long term monitoring (WAC 173-340-410) and institutional controls (WAC 173-340-440) shall be required if on-site disposal, isolation, or containment is the selected cleanup action for a site or a portion of a site. Such measures shall be required until residual hazardous substance concentrations no longer exceed site cleanup levels established under WAC 173-340-700 through 173-340-760.

(c) If the proposed cleanup action involves on-site containment, the draft cleanup action plan shall specify the types, levels, and amounts of hazardous substances remaining on-site and the measures that will be utilized to prevent migration and contact with those substances.

(9) Expectations. Ecology has the following expectations for cleanup actions conducted under this chapter. The department recognizes that there may be sites where these expectations are not appropriate:

(a) Ecology expects that treatment technologies will be used wherever practicable. Use of treatment technologies should be emphasized at sites containing liquid wastes, areas contaminated with high concentrations of hazardous substances, highly mobile materials, and/or discrete areas of hazardous substances which lend themselves to treatment;

(b) To minimize the need for long term management of contaminated materials, ecology expects that hazardous substances will be totally destroyed, detoxified, and/or removed to concentrations below cleanup levels throughout sites containing small volumes of hazardous substances;

(c) Ecology recognizes the need to use engineering controls, such as containment, for sites or portions of sites that contain large volumes of materials with relatively low levels of hazardous substances where treatment is impracticable;

(d) Ecology expects institutional controls, such as water use restrictions and deed restrictions, will be used to supplement engineering controls in order to prevent or limit exposure to hazardous substances and protect the integrity of the cleanup action;

(e) Ecology expects that cleanup actions will return useable ground waters to their beneficial uses wherever practicable, within a reasonable time frame. When restoration of ground water to beneficial uses is not practicable, ecology expects to require measures to minimize/prevent further migration, minimize ongoing releases, prevent exposure to contaminated water, and other appropriate measures (see WAC 173-340-360(7));

(f) In order to minimize the potential for migration of hazardous substances, ecology expects that active measures will be taken to prevent precipitation and subsequent runoff from coming into contact with contaminated soils and waste materials. When such measures are impracticable, such as during active cleanup, ecology expects that site runoff will be contained and treated prior to release from the site;

(g) Ecology expects that when hazardous substances remain on site at concentrations which exceed cleanup levels, those hazardous substances will be consolidated to the maximum extent practicable where needed to minimize the potential for direct contact and migration of hazardous substances;

(h) Ecology expects that, for facilities adjacent to a surface water body, active measures will be taken to prevent/minimize releases to surface water via surface runoff and ground water discharges. Ecology expects that dilution will not be the sole method for demonstrating compliance with cleanup standards; and

(i) Ecology expects that cleanup actions conducted under this chapter will not result in a significantly greater overall threat to human health and the environment than other alternatives.

(10) Draft cleanup action plan. The department shall issue a draft cleanup action plan for cleanup actions conducted by the department or conducted by a potentially liable person under an order or decree. The level of detail in the draft cleanup action plan shall be commensurate with the complexity of the site and proposed cleanup action.

(a) The draft cleanup action plan shall include the following:

(i) A general description of the proposed cleanup action including compliance monitoring;

(ii) A brief summary of other alternative cleanup actions evaluated in the state remedial investigation/feasibility study or comparable documents;

(iii) Site cleanup levels and points of compliance for each hazardous substance and for each media of concern;

(iv) The schedule for implementation of the cleanup action plan including, if known, restoration time frame;

(v) Required institutional controls and site use restrictions, if any, for the proposed cleanup action;

(vi) Justification for selecting a cleanup action that uses cleanup technologies that have a lower preference than higher representative cleanup technologies listed in subsection (4)(a) of this section;

(vii) Applicable state and federal laws for the proposed cleanup action, when these are known at this step in the cleanup process (this does not preclude subsequent identification of applicable state and federal laws);

(viii) A preliminary determination by the department that the proposed cleanup action will comply with subsections (2) and (3) of this section; and

(ix) Where the cleanup action involves on-site containment, specification of the types, levels, and amounts of hazardous substances remaining on-site and the measures that will be utilized to prevent migration and contact with those substances.

(b) For routine actions the department may use an order or decree to fulfill the requirements of a cleanup action plan;

provided that the information in (a) of this subsection is included therein. The scope of detail for the required information shall be commensurate with the complexity of the site and proposed cleanup action.

(11) ~~Public participation.~~ The department will provide public notice and opportunity for comment on the draft cleanup plan as described in WAC 173-340-600.

(12) ~~Final plan.~~ Upon completion of the public comment period the department, after review and consideration of the comments received, shall issue a final cleanup action plan and publish its availability in the site register and by other appropriate methods. If the department determines, following the implementation of the preferred alternative, that the cleanup levels established in the cleanup action plan cannot be achieved, the department shall issue public notice of this determination.

(13) ~~Federal cleanup sites.~~ A record of decision or order or consent decree prepared under the Federal Cleanup Law that provides for a cleanup action may be used by the department to meet the requirements of this section provided:

(a) ~~The cleanup action meets the requirements in subsections (2) and (3) of this section;~~

(b) ~~The state has concurred with the cleanup action; and~~

(c) ~~An opportunity was provided for the public to comment on the cleanup action.)~~ This section describes the minimum requirements and procedures for selecting cleanup actions. This section is intended to be used in conjunction with the administrative principles for the overall cleanup process in WAC 173-340-130; the requirements and procedures in WAC 173-340-350 through 173-340-357 and WAC 173-340-370 through 173-340-390; and the cleanup standards defined in WAC 173-340-700 through 173-340-760.

(2) Minimum requirements for cleanup actions. All cleanup actions shall meet the following requirements. Because cleanup actions will often involve the use of several cleanup action components at a single site, the overall cleanup action shall meet the requirements of this section. The department recognizes that some of the requirements contain flexibility and will require the use of professional judgment in determining how to apply them at particular sites.

(a) Threshold requirements. The cleanup action shall:

(i) Protect human health and the environment;

(ii) Comply with cleanup standards (see WAC 173-340-700 through 173-340-760);

(iii) Comply with applicable state and federal laws (see WAC 173-340-710); and

(iv) Provide for compliance monitoring (see WAC 173-340-410 and 173-340-720 through 173-340-760).

(b) Other requirements. When selecting from cleanup action alternatives that fulfill the threshold requirements, the selected action shall:

(i) Use permanent solutions to the maximum extent practicable (see subsection (3) of this section);

(ii) Provide for a reasonable restoration time frame (see subsection (4) of this section); and

(iii) Consider public concerns (see WAC 173-340-600).

(c) Ground water cleanup actions.

(i) Permanent ground water cleanup actions. A permanent cleanup action shall be used to achieve the cleanup lev-

els for ground water in WAC 173-340-720 at the standard point(s) of compliance (see WAC 173-340-720(8)) where a permanent cleanup action is practicable or determined by the department to be in the public interest.

(ii) Nonpermanent ground water cleanup actions. Where a permanent cleanup action is not required under (c)(i) of this subsection, the following measures shall be taken:

(A) Treatment or removal of the source of the release shall be conducted for liquid wastes, areas contaminated with high concentrations of hazardous substances, highly mobile hazardous substances, or hazardous substances that cannot be reliably contained. This includes removal free product consisting of petroleum and other light nonaqueous phase liquid (LNAPL) from the ground water using normally accepted engineering practices. Source containment may be appropriate when the free product consists of a dense nonaqueous phase liquid (DNAPL) that cannot be recovered after reasonable efforts have been made.

(B) Ground water containment, including barriers or hydraulic control through ground water pumping, or both, shall be implemented to the maximum extent practicable to avoid lateral and vertical expansion of the ground water volume affected by the hazardous substance.

(d) Cleanup actions for soils at current or potential future residential areas and for soils at schools and child care centers. For current or potential future residential areas and for schools and child care centers, soils with hazardous substance concentrations that exceed soil cleanup levels must be treated, removed, or contained. Property qualifies as a current or potential residential area if:

(i) The property is currently used for residential use; or

(ii) The property has a potential to serve as a future residential area based on the consideration of zoning, statutory and regulatory restrictions, comprehensive plans, historical use, adjacent land uses, and other relevant factors.

(e) Institutional controls.

(i) Cleanup actions shall use institutional controls and financial assurances when required under WAC 173-340-440.

(ii) Cleanup actions that use institutional controls shall meet each of the minimum requirements specified in this section, just as any other cleanup action. Institutional controls should demonstrably reduce risks to ensure a protective remedy. This demonstration should be based on a quantitative scientific analysis where appropriate.

(iii) In addition to meeting each of the minimum requirements specified in this section, cleanup actions shall not rely primarily on institutional controls and monitoring where it is technically possible to implement a more permanent cleanup action for all or a portion of the site.

(f) Releases and migration. Cleanup actions shall prevent or minimize present and future releases and migration of hazardous substances in the environment.

(g) Dilution and dispersion. Cleanup actions shall not rely primarily on dilution and dispersion unless the incremental costs of any active remedial measures over the costs of dilution and dispersion grossly exceed the incremental degree of benefits of active remedial measures over the benefits of dilution and dispersion.

(h) Remediation levels. Cleanup actions that use remediation levels shall meet each of the minimum requirements specified in this section, just as any other cleanup action.

(i) Selection of a cleanup action alternative that uses remediation levels requires, in part, a determination that a more permanent cleanup action is not practicable, based on the disproportionate cost analysis (see subsections (2)(b)(i) and (3) of this section).

(ii) Selection of a cleanup action alternative that uses remediation levels also requires a determination that the alternative meets each of the other minimum requirements specified in this section, including a determination that the alternative is protective of human health and the environment.

(3) Determining whether a cleanup action uses permanent solutions to the maximum extent practicable.

(a) Purpose. This subsection describes the requirements and procedures for determining whether a cleanup action uses permanent solutions to the maximum extent practicable, as required under subsection (2)(b)(i) of this section. A determination that a cleanup action meets this one requirement does not mean that the other minimum requirements specified in subsection (2) of this section have been met. To select a cleanup action for a site, a cleanup action must meet each of the minimum requirements specified in subsection (2) of this section.

(b) General requirements. When selecting a cleanup action, preference shall be given to permanent solutions to the maximum extent practicable. To determine whether a cleanup action uses permanent solutions to the maximum extent practicable, the disproportionate cost analysis specified in (e) of this subsection shall be used. The analysis shall compare the costs and benefits of the cleanup action alternatives evaluated in the feasibility study. The costs and benefits to be compared are the evaluation criteria identified in (f) of this subsection.

(c) Permanent cleanup action defined. A permanent cleanup action or permanent solution is defined in WAC 173-340-200.

(d) Selection of a permanent cleanup action. A disproportionate cost analysis shall not be required if the department and the potentially liable persons agree to a permanent cleanup action that will be identified by the department as the proposed cleanup action in the draft cleanup action plan.

(e) Disproportionate cost analysis.

(i) Test. Costs are disproportionate to benefits if the incremental costs of the alternative over that of a lower cost alternative exceed the incremental degree of benefits achieved by the alternative over that of the other lower cost alternative.

(ii) Procedure.

(A) The alternatives evaluated in the feasibility study shall be ranked from most to least permanent, based on the evaluation of the alternatives under (f) of this subsection and the definition of permanent solution in (c) of this subsection.

(B) The most practicable permanent solution evaluated in the feasibility study shall be the baseline cleanup action alternative against which cleanup action alternatives are compared. If no permanent solution has been evaluated in the feasibility study, the cleanup action alternative evaluated in

the feasibility study that provides the greatest degree of permanence shall be the baseline cleanup action alternative.

(C) The comparison of benefits and costs may be quantitative, but will often be qualitative and require the use of best professional judgment. In particular, the department has the discretion to favor or disfavor qualitative benefits and use that information in selecting a cleanup action. Where two or more alternatives are equal in benefits, the department shall select the less costly alternative provided the requirements of subsection (2) of this section are met.

(f) Evaluation criteria. The following criteria shall be used to evaluate and compare each cleanup action alternative when conducting a disproportionate cost analysis under (e) of this subsection to determine whether a cleanup action is permanent to the maximum extent practicable.

(i) Protectiveness. Overall protectiveness of human health and the environment, including the degree to which existing risks are reduced, time required to reduce risk at the facility and attain cleanup standards, on-site and off-site risks resulting from implementing the alternative, and improvement of the overall environmental quality.

(ii) Permanence. The degree to which the alternative permanently reduces the toxicity, mobility or volume of hazardous substances, including the adequacy of the alternative in destroying the hazardous substances, the reduction or elimination of hazardous substance releases and sources of releases, the degree of irreversibility of waste treatment process, and the characteristics and quantity of treatment residuals generated.

(iii) Cost. The cost to implement the alternative, including the cost of construction, the net present value of any long-term costs, and agency oversight costs that are cost recoverable. Long-term costs include operation and maintenance costs, monitoring costs, equipment replacement costs, and the cost of maintaining institutional controls. Cost estimates for treatment technologies shall describe pretreatment, analytical, labor, and waste management costs. The design life of the cleanup action shall be estimated and the cost of replacement or repair of major elements shall be included in the cost estimate.

(iv) Effectiveness over the long term. Long-term effectiveness includes the degree of certainty that the alternative will be successful, the reliability of the alternative during the period of time hazardous substances are expected to remain on-site at concentrations that exceed cleanup levels, the magnitude of residual risk with the alternative in place, and the effectiveness of controls required to manage treatment residues or remaining wastes. The following types of cleanup action components may be used as a guide, in descending order, when assessing the relative degree of long-term effectiveness: Reuse or recycling; destruction or detoxification; immobilization or solidification; on-site or off-site disposal in an engineered, lined and monitored facility; on-site isolation or containment with attendant engineering controls; and institutional controls and monitoring.

(v) Management of short-term risks. The risk to human health and the environment associated with the alternative during construction and implementation, and the effectiveness of measures that will be taken to manage such risks.

(vi) Technical and administrative implementability. Ability to be implemented including consideration of whether the alternative is technically possible, availability of necessary off-site facilities, services and materials, administrative and regulatory requirements, scheduling, size, complexity, monitoring requirements, access for construction operations and monitoring, and integration with existing facility operations and other current or potential remedial actions.

(vii) Consideration of public concerns. Whether the community has concerns regarding the alternative and, if so, the extent to which the alternative addresses those concerns. This process includes concerns from individuals, community groups, local governments, tribes, federal and state agencies, or any other organization that may have an interest in or knowledge of the site.

(4) Determining whether a cleanup action provides for a reasonable restoration time frame.

(a) Purpose. This subsection describes the requirements and procedures for determining whether a cleanup action provides for a reasonable restoration time frame, as required under subsection (2)(b)(ii) of this section. A determination that a cleanup action meets this one requirement does not mean that the other minimum requirements specified in subsection (2) of this section have been met. To select a cleanup action for a site, a cleanup action must meet each of the minimum requirements specified in subsection (2) of this section.

(b) Factors. To determine whether a cleanup action provides for a reasonable restoration time frame, the factors to be considered include the following:

(i) Potential risks posed by the site to human health and the environment;

(ii) Practicability of achieving a shorter restoration time frame;

(iii) Current use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;

(iv) Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected by releases from the site;

(v) Availability of alternative water supplies;

(vi) Likely effectiveness and reliability of institutional controls;

(vii) Ability to control and monitor migration of hazardous substances from the site;

(viii) Toxicity of the hazardous substances at the site; and

(ix) Natural processes that reduce concentrations of hazardous substances and have been documented to occur at the site or under similar site conditions.

(c) A longer period of time may be used for the restoration time frame for a site to achieve cleanup levels at the point of compliance if the cleanup action selected has a greater degree of long-term effectiveness than on-site or off-site disposal, isolation, or containment options.

(d) When area background concentrations (see WAC 173-340-200 for definition) would result in recontamination of the site to levels that exceed cleanup levels, that portion of the cleanup action which addresses cleanup below area background concentrations may be delayed until the off-site

sources of hazardous substances are controlled. In these cases the remedial action shall be considered an interim action until cleanup levels are attained.

(e) Where cleanup levels determined under Method C in WAC 173-340-706 are below technically possible concentrations, concentrations that are technically possible to achieve shall be met within a reasonable time frame considering the factors in subsection (b) of this section. In these cases the remedial action shall be considered an interim action until cleanup levels are attained.

(f) Extending the restoration time frame shall not be used as a substitute for active remedial measures, when such actions are practicable.

NEW SECTION

WAC 173-340-370 Expectations for cleanup action alternatives. The department has the following expectations for the development of cleanup action alternatives under WAC 173-340-350 and the selection of cleanup actions under WAC 173-340-360. These expectations represent the types of cleanup actions the department considers likely results of the remedy selection process described in WAC 173-340-350 through 173-340-360; however, the department recognizes that there may be some sites where cleanup actions conforming to these expectations are not appropriate. Also, selecting a cleanup action that meets these expectations shall not be used as a substitute for selecting a cleanup action under the remedy selection process described in WAC 173-340-350 through 173-340-360.

(1) The department expects that treatment technologies will be emphasized at sites containing liquid wastes, areas contaminated with high concentrations of hazardous substances, highly mobile materials, and/or discrete areas of hazardous substances that lend themselves to treatment.

(2) To minimize the need for long-term management of contaminated materials, the department expects that all hazardous substances will be destroyed, detoxified, and/or removed to concentrations below cleanup levels throughout sites containing small volumes of hazardous substances.

(3) The department recognizes the need to use engineering controls, such as containment, for sites or portions of sites that contain large volumes of materials with relatively low levels of hazardous substances where treatment is impracticable.

(4) In order to minimize the potential for migration of hazardous substances, the department expects that active measures will be taken to prevent precipitation and subsequent runoff from coming into contact with contaminated soils and waste materials. When such measures are impracticable, such as during active cleanup, the department expects that site runoff will be contained and treated prior to release from the site.

(5) The department expects that when hazardous substances remain on-site at concentrations which exceed cleanup levels, those hazardous substances will be consolidated to the maximum extent practicable where needed to minimize the potential for direct contact and migration of hazardous substances;

(6) The department expects that, for facilities adjacent to a surface water body, active measures will be taken to prevent/minimize releases to surface water via surface runoff and ground water discharges in excess of cleanup levels. The department expects that dilution will not be the sole method for demonstrating compliance with cleanup standards in these instances.

(7) The department expects that natural attenuation of hazardous substances may be appropriate at sites where:

(a) Source control (including removal and/or treatment of hazardous substances) has been conducted to the maximum extent practicable;

(b) Leaving contaminants on-site during the restoration time frame does not pose an unacceptable threat to human health or the environment;

(c) There is evidence that natural biodegradation or chemical degradation is occurring and will continue to occur at a reasonable rate at the site; and

(d) Appropriate monitoring requirements are conducted to ensure that the natural attenuation process is taking place and that human health and the environment are protected.

(8) The department expects that cleanup actions conducted under this chapter will not result in a significantly greater overall threat to human health and the environment than other alternatives.

NEW SECTION

WAC 173-340-380 Cleanup action plan. (1) **Draft cleanup action plan.** The department shall issue a draft cleanup action plan for a cleanup action to be conducted by the department or by a potentially liable person under an order or decree. The level of detail in the draft cleanup action plan shall be commensurate with the complexity of the site and proposed cleanup action.

(a) The draft cleanup action plan shall include the following:

(i) A general description of the proposed cleanup action developed in accordance with WAC 173-340-350 through 173-340-390.

(ii) A summary of the rationale for selecting the proposed alternative.

(iii) A brief summary of other cleanup action alternatives evaluated in the remedial investigation/feasibility study.

(iv) Cleanup standards and, where applicable, remediation levels, for each hazardous substance and for each medium of concern at the site.

(v) The schedule for implementation of the cleanup action plan including, if known, restoration time frame.

(vi) Institutional controls, if any, required as part of the proposed cleanup action.

(vii) Applicable state and federal laws, if any, for the proposed cleanup action, when these are known at this step in the cleanup process (this does not preclude subsequent identification of applicable state and federal laws).

(viii) A preliminary determination by the department that the proposed cleanup action will comply with WAC 173-340-360.

(ix) Where the cleanup action involves on-site containment, specification of the types, levels, and amounts of haz-

ardous substances remaining on site and the measures that will be used to prevent migration and contact with those substances.

(b) For routine actions the department may use an order or decree to fulfill the requirements of a cleanup action plan, provided that the information in (a) of this subsection is included in an order or decree. The scope of detail for the required information shall be commensurate with the complexity of the site and proposed cleanup action.

(2) **Public participation.** The department will provide public notice and opportunity for comment on the draft cleanup plan, as required in WAC 173-340-600(13).

(3) **Final cleanup action plan.** After review and consideration of the comments received during the public comment period, the department shall issue a final cleanup action plan and publish its availability in the *Site Register* and by other appropriate methods. If the department determines, following the implementation of the preferred alternative, that the cleanup standards or, where applicable, remediation levels established in the cleanup action plan cannot be achieved, the department shall issue public notice of this determination.

(4) **Federal cleanup sites.** For federal cleanup sites, a record of decision or order or consent decree prepared under the federal cleanup law may be used by the department to meet the requirements of this section provided:

(a) The cleanup action meets the requirements under WAC 173-340-360;

(b) The state has concurred with the cleanup action; and

(c) An opportunity was provided for the public to comment on the cleanup action.

NEW SECTION

WAC 173-340-390 Model remedies. (1) **Purpose.** The purpose of model remedies is to streamline and accelerate the selection of cleanup actions that protect human health and the environment, with a preference for permanent solutions to the maximum extent practicable.

(2) **Development of model remedies.** The department may, from time to time, identify model remedies for common categories of facilities, types of contamination, types of media, and geographic areas. In identifying a model remedy, the department shall identify the circumstances for which application of the model remedy meets the requirements under WAC 173-340-360. The department shall provide an opportunity for the public to review and comment on any proposed model remedies.

(3) **Applicability and effect of model remedies.** Where a site meets the circumstances identified by the department under subsection (2) of this section, the components of the model remedy may be selected as the cleanup action, or as a portion of the cleanup action. At such sites, it shall not be necessary to conduct a feasibility study under WAC 173-340-350(8) or a disproportionate cost analysis under WAC 173-340-360(3) for those components of a cleanup action to which a model remedy applies.

(4) **Public notice and participation.** Where a model remedy is proposed as the cleanup action or as a portion of the cleanup action, the cleanup action plan is still subject to

the same public notice and participation requirements in this chapter as any other cleanup action.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-400 Implementation of the cleanup action~~(s)~~. ~~((Unless otherwise directed by the department, cleanup actions shall comply with this section except for emergencies or interim actions.))~~

(1) Purpose. Unless otherwise directed by the department, cleanup actions shall comply with this section except for emergencies or interim actions. The purpose of this section is to ensure that the cleanup action is designed, constructed, and operated in a manner ~~((which))~~ that is consistent with:

(a) The cleanup action plan;
 (b) Accepted engineering practices; and
 (c) The requirements ~~((of))~~ specified in WAC 173-340-360 ~~((1) and (2))~~.

(2) Administrative options. A cleanup action may be conducted under any of the procedures described in WAC 173-340-510 and 173-340-515.

(3) Public participation. During cleanup action implementation, public participation shall be accomplished in a manner consistent with the requirements of WAC 173-340-600.

(4) Plans describing the cleanup action. Design, construction, and operation of the cleanup action shall be consistent with the purposes of this section and shall consider relevant information provided by the ~~((state))~~ remedial investigation/feasibility study. For most cleanups, to ensure this is done it will be necessary to prepare the ~~((following))~~ engineering documents described in this section. The scope and level of detail in these documents may vary from site to site depending on the site-specific conditions and nature and complexity of the proposed cleanup action. In ~~((some))~~ many cases, such as routine cleanups and cleanups at leaking underground storage tanks, it ~~((may be))~~ is appropriate to combine the information in these various documents into one report to avoid unnecessary duplication. Where the information is contained in other documents it may be appropriate to incorporate those documents by reference to avoid duplication. Any document prepared in order to implement a cleanup may be used to satisfy these requirements provided they contain the required information. In addition, for facilities on the national priorities list the plans prepared for the cleanup action shall also comply with federal requirements.

(a) Engineering design report. The engineering design report shall include sufficient information for the development and review of construction plans and specifications. It shall document engineering concepts and design criteria used for design of the cleanup action. The following information shall be included in the engineering design report, as appropriate:

(i) Goals of the cleanup action including specific cleanup or performance requirements;

(ii) General information on the facility including a summary of information in the ~~((state))~~ remedial investigation/

feasibility study updated as necessary to reflect the current conditions;

(iii) Identification of who will own, operate, and maintain the cleanup action during and following construction;

(iv) Facility maps showing existing site conditions and proposed location of the cleanup action;

(v) Characteristics, quantity, and location of materials to be treated or otherwise managed, including ground water containing hazardous substances;

(vi) A schedule for final design and construction;

(vii) A description and conceptual plan of the actions, treatment units, facilities, and processes required to implement the cleanup action including flow diagrams;

(viii) Engineering justification for design and operation parameters, including:

(A) Design criteria, assumptions and calculations for all components of the cleanup action;

(B) Expected treatment, destruction, immobilization, or containment efficiencies and documentation on how that degree of effectiveness is determined; and

(C) Demonstration that the cleanup action will achieve compliance with cleanup requirements by citing pilot or treatability test data, results from similar operations, or scientific evidence from the literature;

(ix) Design features for control of hazardous materials spills and accidental discharges (for example, containment structures, leak detection devices, run-on and run-off controls);

(x) Design features to assure long-term safety of workers and local residences (for example, hazardous substances monitoring devices, pressure valves, bypass systems, safety cutoffs);

(xi) A discussion of methods for management or disposal of any treatment residual and other waste materials containing hazardous substances generated as a result of the cleanup action;

(xii) Facility specific characteristics ~~((which))~~ that may affect design, construction, or operation of the selected cleanup action, including:

(A) Relationship of the proposed cleanup action to existing facility operations;

(B) Probability of flooding, probability of seismic activity, temperature extremes, local planning and development issues; and

(C) Soil characteristics and ground water system characteristics;

(xiii) A general description of construction testing ~~((which))~~ that will be used to demonstrate adequate quality control;

(xiv) A general description of compliance monitoring ~~((which))~~ that will be performed during and after construction to meet the requirements of WAC 173-340-410;

(xv) A general description of construction procedures proposed to assure that the safety and health requirements of WAC 173-340-810 are met;

(xvi) Any information not provided in the ~~((state))~~ remedial investigation/feasibility study needed to fulfill the applicable requirements of the State Environmental Policy Act (chapter 43.21C RCW);

(xvii) Any additional information needed to address the applicable state, federal and local requirements including the substantive requirements for any exempted permits; and property access issues which need to be resolved to implement the cleanup action; ~~((and))~~

(xviii) For sites requiring financial assurance and where not already incorporated into the order or decree or other previously submitted document, preliminary cost calculations and financial information describing the basis for the amount and form of financial assurance and, a draft financial assurance document;

(xix) For sites using institutional controls as part of the cleanup action and where not already incorporated into the order or decree or other previously submitted documents, copies of draft restrictive covenants and/or other draft documents establishing these institutional controls; and

(xx) Other information as required by the department.

(b) Construction plans and specifications. Construction plans and specifications shall detail the cleanup actions to be performed. The plans and specifications shall be prepared in conformance with currently accepted engineering practices and techniques and shall include the following information as applicable:

(i) A general description of the work to be performed and a summary of the engineering design criteria from the engineering design report;

(ii) General location map and existing facility conditions map;

(iii) A copy of any permits and approvals;

(iv) Detailed plans ~~((and procedural))~~, procedures and material specifications necessary for construction of the cleanup action;

(v) Specific quality control tests to be performed to document the construction, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods;

(vi) Startup procedures and criteria to demonstrate the cleanup action is prepared for routine operation;

(vii) Additional information to address applicable state, federal, and local requirements including the substantive requirements for any exempted permits;

(viii) A compliance monitoring plan prepared under WAC 173-340-410 describing monitoring to be performed during construction, and a sampling and analysis plan meeting the requirements of WAC 173-340-820;

(ix) Provisions to assure safety and health requirements of WAC 173-340-810 are met; and

(x) Other information as required by the department.

(c) Operation and maintenance plan. An operation and maintenance plan ~~((which))~~ that presents technical guidance and regulatory requirements to assure effective operations under both normal and emergency conditions. The operation and maintenance plan shall include the following elements, as appropriate:

(i) Name and phone number of the responsible individuals;

(ii) Process description and operating principles;

(iii) Design criteria and operating parameters and limits;

(iv) General operating procedures, including startup, normal operations, operation at less than design loading, shutdown, and emergency or contingency procedures;

(v) A discussion of the detailed operation of individual treatment units, including a description of various controls, recommended operating parameters, safety features, and any other relevant information;

(vi) Procedures and sample forms for collection and management of operating and maintenance records;

(vii) Spare part inventory, addresses of suppliers of spare parts, equipment warranties, and appropriate equipment catalogues;

(viii) Equipment maintenance schedules incorporating manufacturers recommendations;

(ix) Contingency procedures for spills, releases, and personnel accidents;

(x) A compliance monitoring plan prepared under WAC 173-340-410 describing monitoring to be performed during operation and maintenance, and a sampling and analysis plan meeting the requirements of WAC 173-340-820;

(xi) Description of procedures which ~~((assure))~~ ensure that the safety and health requirements of WAC 173-340-810 are met, including specification of contaminant action levels and contingency plans, as appropriate;

(xii) Procedures for the maintenance of the facility after completion of the cleanup action, including provisions for removal of unneeded appurtenances, and the maintenance of covers, caps, containment structures, and monitoring devices; and

(xiii) Other information as required by the department.

~~(5) ((In appropriate cases the department may authorize departure from the requirements of subsection (4) of this section, and may allow information to be incorporated by reference to avoid unnecessary duplication.~~

~~(6))~~ Permits. Permits and approvals and any substantive requirements for exempted permits, if required for construction or to otherwise implement the cleanup action, shall be identified and where possible, resolved ~~((prior to))~~ before, or during, the design phase to avoid delays during construction and implementation of the cleanup action.

~~((7))~~ (6) Construction. Construction of the cleanup action shall be conducted in accordance with the construction plans and specifications, and other plans prepared under this section.

(a) Department inspections.

(i) The department may perform site inspections and construction oversight. The department may require that construction activities be halted at a site if construction or any supporting activities ~~((:))~~ are not consistent with approved plans; are not in compliance with environmental regulations or accepted construction procedures; or endanger human health or the environment.

(ii) The department may conduct a formal inspection of the site following construction and an initial operational shake down period to ensure satisfactory completion of the construction. If such an inspection is performed, the construction documentation report and engineer's opinion specified in (b)(ii) of this subsection shall be available ~~((prior to))~~ before the inspection.

(b) Construction documentation.

(i) Except as provided for in (b)(iii) of this subsection, all aspects of construction shall be performed under the ((supervision)) oversight of a professional engineer registered in the state of Washington or a qualified technician under the direct supervision of a professional engineer registered in the state of Washington or as otherwise provided for in RCW 18.43.130. During construction, detailed records shall be kept of all aspects of the work performed including construction techniques and materials used, items installed, and tests and measurements performed.

(ii) As built reports. At the completion of construction the engineer responsible for the ((supervision)) oversight of construction shall prepare as built drawings and a report documenting all aspects of facility construction. The report shall also contain an opinion from the engineer, based on testing results and inspections, as to whether the cleanup action has been constructed in substantial compliance with the plans and specifications and related documents.

(iii) For leaking underground storage tanks, the construction oversight and documentation report may be conducted by an underground storage tank provider certified under chapter 173-360 WAC. Removal of above ground abandoned drums, tanks and similar above ground containers and associated minor soil contamination may be overseen and documented by an experienced environmental professional. In other appropriate cases the department may authorize departure from the requirements of this subsection ((and may allow information to be incorporated by reference to avoid unnecessary duplication)).

(c) Financial assurance and institutional control documentation. As part of the as-built documentation for the site cleanup, where the following information has not already been submitted under an order or decree or as part of another previously submitted document, the following information shall be included in the as-built report:

(i) For sites requiring financial assurance, a copy of the financial assurance document and any procedures for periodic adjustment to the value of the financial assurance mechanism;

(ii) For sites using institutional controls as part of the cleanup action, copies of recorded deed restrictions (with proof of recording) and other documents establishing these institutional controls.

(d) Plan modifications. Changes in the design or construction of the cleanup action performed under an order or decree shall be approved by the department.

~~((8))~~ (7) Opportunity for public comment. If the department determines that any plans prepared under this section represent a substantial change from the cleanup action plan, the department shall provide public notice and opportunity for comment under WAC 173-340-600.

~~((9))~~ (8) Plans and reports. Plans or reports prepared under this section and under an order or decree shall be submitted to the department for review and approval. For independent remedial actions, the plans and reports shall be submitted as required under WAC 173-340-515.

~~((10) Waste management.)~~ (9) Requirements for managing waste generated by site cleanup. Any waste contaminated by a hazardous substance generated during cleanup activities and requiring off-site treatment, storage or disposal,

shall be transported to a facility permitted or approved to handle these wastes.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-410 Compliance monitoring requirements. (1) Purpose. There are three types of compliance monitoring: Protection, performance, and confirmational monitoring. The purposes of these three types of compliance monitoring and evaluation of the data are to:

(a) Protection monitoring. Confirm that human health and the environment are adequately protected during construction and the operation and maintenance period of an interim action or cleanup action as described in the safety and health plan;

(b) Performance monitoring. Confirm that the interim action or cleanup action has attained cleanup standards and, if appropriate, remediation levels or other performance standards such as construction quality control measurements or monitoring necessary to demonstrate compliance with a permit or, where a permit exemption applies, the substantive requirements of other laws;

(c) Confirmational monitoring. Confirm the long-term effectiveness of the interim action or cleanup action once cleanup standards and, if appropriate, remediation levels or other performance standards have been attained.

(2) General requirements. Compliance monitoring shall be required for all cleanup actions, and may be required for interim and emergency actions ~~((performed))~~ conducted under this chapter. Unless otherwise directed by the department, a compliance monitoring plan shall be prepared.

~~((3) Compliance monitoring plans. A compliance monitoring plan shall be prepared for all cleanup actions and may be required for interim and emergency actions unless otherwise directed by the department.)~~ Plans prepared under this section and under an order or decree shall be submitted to the department for review and approval. Protection monitoring may be addressed in the safety and health plan. Performance and confirmational monitoring may be addressed in separate plans ((and) or may be combined with other plans or submittals, such as those in WAC 173-340-400 and 173-340-820.

(3) Contents of a monitoring plan. Compliance monitoring plans may include monitoring for chemical constituents, biological testing, and physical parameters as appropriate for the site. Where the cleanup action includes engineered controls or institutional controls, the monitoring may need to include not only measurements but also documentation of observations on the performance of these controls. Long-term monitoring shall be required if on-site disposal, isolation, or containment is the selected cleanup action for a site or a portion of a site. Such measures shall be required until residual hazardous substance concentrations no longer exceed site cleanup levels established under WAC 173-340-700 through 173-340-760. Compliance monitoring plans shall be specific for the media being tested and shall contain the following elements:

(a) A sampling and analysis plan meeting the requirements of WAC 173-340-820 which shall explain in the state-

ment of objectives how the purposes of (~~WAC 173-340-410(2))~~ subsection (1) of this section are met;

(b) Data analysis and evaluation procedures used, to demonstrate and confirm compliance and justification for these procedures, including:

(i) A description of any statistical method to be employed; or

(ii) If sufficient data is not available (~~(prior to)~~ before writing the plan to propose a reliable statistical method to demonstrate and confirm compliance, a contingency plan proposing one or more reliable statistical methods to demonstrate and confirm compliance, and the conditions under which the methods would be used at the facility; and

(c) Other information as required by the department.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-420 Periodic review. (1) (~~If the department selects or approves a cleanup action that results in hazardous substances remaining at a site at concentrations which exceed method A or method B cleanup levels established under WAC 173-340-700 through 173-340-760 or if conditional points of compliance have been established, the department shall review the cleanup action no less frequently than every five years after the initiation of such cleanup action to assure that human health and the environment are being protected.~~

(2)) Purpose. A periodic review consists of a review by the department of post-cleanup site conditions and monitoring data to assure that human health and the environment are being protected.

(2) Applicability. The department shall conduct periodic reviews of a site whenever the department conducts a cleanup action; whenever the department approves a cleanup action under an order, agreed order or consent decree; or, as resources permit, whenever the department issues a no further action opinion; and one of the following conditions exists, at the site:

(a) Where an institutional control and/or financial assurance is required as part of the cleanup action;

(b) Where the cleanup level is based on a practical quantitation limit as provided for under WAC 173-340-707; and

(c) Where, in the department's judgment, modifications to the default equations or assumptions using site-specific information would significantly increase the concentration of hazardous substances remaining at the site after cleanup or the uncertainty in the ecological evaluation or the reliability of the cleanup action is such that additional review is necessary to assure long-term protection of human health and the environment.

(3) General requirements. If a periodic review is required under subsection (2) of this section, a review shall be conducted by the department at least every five years after the initiation of a cleanup action. The department may require potentially liable persons to submit information required by the department to conduct a periodic review.

(4) Review criteria. When evaluating whether human health and the environment are being protected, the factors the department shall consider (~~shall~~) include:

(a) The effectiveness of ongoing or completed cleanup actions, including the effectiveness of engineered controls and institutional controls in limiting exposure to hazardous substances remaining at the site;

(b) New scientific information for individual hazardous substances or mixtures present at the site;

(c) New applicable state and federal laws for hazardous substances present at the site;

(d) Current and projected site and resource uses;

(e) The availability and practicability of (~~higher preference technologies as defined in WAC 173-340-360(4))~~ more permanent remedies; and

(f) The availability of improved analytical techniques to evaluate compliance with cleanup levels.

(~~(3))~~ (5) Notice and public comment. The department shall publish a notice of all periodic reviews in the *Site Register* and provide an opportunity for public comment. The department shall also notify all potentially liable persons known to the department of the results of the periodic review.

(~~(4))~~ (6) Determination of whether amendment of the cleanup action plan required. When the department determines that substantial changes in the cleanup action are necessary to protect human health and the environment at the site, a revised cleanup action plan shall be prepared. The department shall provide opportunities for public review and comment on the draft cleanup action plan (~~(consistent with the requirements))~~ in accordance with WAC (~~(173-340-360))~~ 173-340-380 and 173-340-600.

(7) Determination of whether future periodic reviews required. In conducting a periodic review under this section, the department shall determine whether additional reviews are necessary, taking into consideration the factors in subsection (4) of this section. Sites with institutional controls shall remain subject to periodic reviews as long as the institutional controls are required under this chapter.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-430 Interim actions. (1) Purpose. (~~The purpose of this section is to describe how certain interim actions can occur prior to the selection and completion of a cleanup action.~~) An interim action is distinguished from a cleanup action in that an interim action only partially addresses the cleanup of a site. (Note: An interim action may constitute the cleanup action for a site if the interim action is subsequently shown to comply with WAC 173-340-350 through 173-340-390.) An interim action is:

(a) (~~A~~) A remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance at a facility; (~~or~~)

(b) (~~A~~) A remedial action that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or

(c) (~~A~~) A remedial action needed to provide for completion of a site hazard assessment, (~~state~~) remedial investigation/feasibility study or design of a cleanup action.

Example. A site is identified where oil-based wood preservative has leaked from a tank and is puddled on the ground

and is floating on the water table. Run-off from adjacent properties passes through the site. Neighborhood children have been seen on the site. In this case, several interim actions would be appropriate ~~((prior to))~~ before fully defining the extent of the distribution of hazardous substances at the site and selecting a cleanup action. These interim actions might consist of removing the tank, fencing the site, rerouting run-off, and removing the product puddled on the ground and floating on the water table. Further studies would then determine what additional soil and ground water cleanup would be needed.

(2) General requirements.

~~((a))~~ Interim actions may:

~~((i))~~ (a) Achieve cleanup standards for a portion of the site; ~~((or~~

~~((ii))~~ (b) Provide a partial cleanup, that is, clean up hazardous substances from all or part of the site, but not achieve cleanup standards; or

~~((iii))~~ (c) Provide a partial cleanup of hazardous substances and not achieve cleanup standards, but provide information on how to achieve cleanup standards for a cleanup. For example, demonstration of an unproven cleanup ~~((method))~~ technology.

~~((b))~~ (3) Relationship to the cleanup action~~((:))~~.

~~((i))~~ (a) If the cleanup action is known, the interim action shall be consistent with the cleanup action.

~~((ii))~~ (b) If the cleanup action is not known, the interim action shall not foreclose reasonable alternatives for the cleanup action. This is not meant to preclude the destruction or removal of hazardous substances.

~~((3))~~ (4) Timing.

(a) Interim actions may occur anytime during the cleanup process. Interim actions shall not be used to delay or supplant the cleanup process. An interim action may be done ~~((prior to))~~ before or in conjunction with a site hazard assessment and hazard ranking. However, sufficient technical information must be available regarding the facility to ensure the interim action is appropriate and warranted.

(b) Interim actions shall be followed by additional remedial actions unless compliance with cleanup standards has been confirmed at the site.

(c) The department shall set appropriate deadlines commensurate with the actions taken for completion of the interim action.

~~((4))~~ (5) Administrative options. ~~((Except as provided in WAC 173-340-530,))~~ Interim cleanup actions may be conducted under any of the procedures described in WAC 173-340-510 and 173-340-515.

~~((5))~~ (6) Public participation. Public participation will be accomplished in a manner consistent with WAC 173-340-600.

~~((6))~~ (7) Submittal requirements. Unless otherwise directed by the department and except for independent remedial actions, emergency remedial actions, and underground storage tank releases being addressed under WAC 173-340-450 ((and emergencies)), a report shall be prepared ~~((prior to))~~ before conducting an interim action. Reports prepared under an order or decree shall be submitted to the department for review and approval. Reports for independent remedial actions shall be submitted as required by WAC 173-340-515.

Reports shall be of a scope and detail commensurate with the work performed and site-specific characteristics, and shall include, as appropriate:

(a) A description of the interim action and how it will meet the criteria identified in subsections (1) ~~((and))~~, (2) and (3) of this section;

(b) Information from the applicable subsections of the remedial investigation/feasibility study of WAC 173-340-350, including at a minimum~~((:))~~;

(i) A description of existing site conditions and a summary of all available data related to the interim action; and

(ii) Alternative interim actions considered and an explanation why the proposed alternative was selected;

(c) Information from the applicable subsections of the design and construction requirements of WAC 173-340-400; and

(d) A compliance monitoring plan meeting the applicable requirements of WAC 173-340-410;

(e) A safety and health plan meeting the requirements of WAC 173-340-810; and

(f) A sampling and analysis plan meeting the requirements of WAC 173-340-820.

~~((7))~~ (8) Construction. Construction of the interim action shall be in conformance with WAC 173-340-400(7).

AMENDATORY SECTION (Amending Order 94-37, filed 1/26/96, effective 2/26/96)

WAC 173-340-440 Institutional controls. (1) Purpose. Institutional controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of an interim action or cleanup action or that may result in exposure to hazardous substances at a site. ~~((Such measures))~~ Institutional controls may include:

(a) Physical measures such as fences;

(b) Use restrictions such as limitations on the use of property or resources; or requirements that cleanup action occur if existing structures or pavement are disturbed or removed;

(c) Maintenance requirements for engineered controls such as the inspection and repair of monitoring wells, treatment systems, caps or ground water barrier systems;

(d) Educational programs such as signs, postings, public notices, health advisories, mailings, and similar measures that educate the public and/or employees about site contamination and ways to limit exposure; and

(e) Financial assurances (see subsection (11) of this section).

(2) Relationship to engineered controls. The term institutional controls refers to nonengineered measures while the term engineered controls means containment and/or treatment systems that are designed and constructed to prevent or limit the movement of, or the exposure to, hazardous substances. See the definition of engineered controls in WAC 173-340-200 for examples of engineered controls.

(3) Applicability. This section applies to remedial actions being conducted at sites under any of the administrative options in WAC 173-340-510 and 173-340-515.

(4) Circumstances required. Institutional controls shall be required to assure both the continued protection of human

health and the environment and the integrity of an interim action or cleanup action in the following circumstances:

(a) ~~((Where a))~~ The cleanup ((action results in residual concentrations of)) level is established using Method A or B and hazardous substances ((which exceed method A or method B cleanup levels, as applicable, established under WAC 173-340-700 through 173-340-760)) remain at the site at concentrations that exceed the applicable cleanup level; ~~((or))~~

(b) ~~((f))~~ The cleanup level is established using Method C;

(c) An industrial soil cleanup level is established under WAC 173-340-745;

(d) A ground water cleanup level that exceeds the potable ground water cleanup level is established using a site-specific risk assessment under WAC 173-340-720 (6)(c) and institutional controls are required under WAC 173-340-720 (6)(c)(iii);

(e) A conditional point((s)) of compliance ((have been)) is established as the basis for measuring compliance at the site; ~~((or~~

~~(e) When the))~~ (f) Any time an institutional control is required under WAC 173-340-7490 through 173-340-7494; ~~or~~

(g) Where the department determines such controls are required to assure the continued protection of human health and the environment or the integrity of the interim or cleanup action.

~~((2))~~ Institutional controls shall not be used as a substitute for cleanup actions that would otherwise be technically possible.

(3) Institutional controls include:

(a) Physical measures, such as fences and signs, to limit activities that may interfere with the cleanup action or result in exposure to hazardous substances at the site; and

(b) Legal and administrative mechanisms to limit site use or activities and/or to ensure that any physical measures are maintained over time. Examples of limits on site use activities include restricting the use of a property for industrial or commercial purposes or other specified land uses, or placing restrictions on activities such as disturbing a cap or using the ground water. Examples of maintenance activities include, inspection and repair of monitoring wells, treatment systems, caps or ground water barrier systems.

~~(4))~~ (5) Minimum requirements. Cleanup actions that use institutional controls shall meet each of the minimum requirements specified in WAC 173-340-360, just as any other cleanup action. Institutional controls should demonstrably reduce risks to ensure a protective remedy. This demonstration should be based on a quantitative, scientific analysis where appropriate.

(6) Requirement for primary reliance. In addition to meeting each of the minimum requirements specified in WAC 173-340-360, cleanup actions shall not rely primarily on institutional controls and monitoring where it is technically possible to implement a more permanent cleanup action for all or a portion of the site.

(7) Periodic review. The department shall review compliance with institutional control requirements as part of periodic reviews under WAC 173-340-420.

(8) Format.

(a) For properties owned by a person who has been named as a potentially liable person or who has not been named as a potentially liable person by the department but meets the criteria in RCW 70.105D.040 for being named a potentially liable person, appropriate institutional controls shall be described in a restrictive covenant on the property. The covenant shall be executed by the property owner and recorded with the register of deeds for the county in which the site is located. This restrictive covenant shall run with the land, and be binding on the owner's successors and assigns.

(b) For properties owned by a local, state, or federal government entity, a restrictive covenant may not be required if that entity demonstrates to the department that:

(i) It does not routinely file with the county recording officer records relating to the type of interest in real property that it has in the site; and

(ii) It will implement an effective alternative system to meet the requirements of subsection (9) of this section.

The department shall require the government entity to implement the alternative system as part of the cleanup action plan. If a government entity meets these criteria, and if it subsequently transfers its ownership in any portion of the property, then the government entity must file a restrictive covenant upon transfer if any of the conditions in subsection (4) of this section still exist.

(c) For properties containing hazardous substances where the owner does not meet the criteria in RCW 70.105D.040 for being a potentially liable person, the department may approve cleanup actions ~~((which))~~ that include restrictive covenants or other legal and/or administrative mechanisms. The use of legal or administrative mechanisms ~~((which))~~ that do not include restrictive covenants is intended to apply to situations where the release has affected properties near the source of the release not owned by a person potentially liable under the act. A potentially liable person must make a good faith effort to obtain a restrictive covenant before using other legal or administrative mechanisms. Examples of such mechanisms include zoning overlays, placing notices in local zoning or building department records or state lands records, public notices and educational mailings.

~~((5))~~ (9) Restrictive covenants. Where required, the restrictive covenant shall:

(a) Prohibit activities on the site that may interfere with a cleanup action, operation and maintenance, monitoring, or other measures necessary to assure the integrity of the cleanup action and continued protection of human health and the environment;

(b) Prohibit activities that may result in the release of a hazardous substance ~~((which))~~ that was contained as a part of the cleanup action;

(c) Require notice to the department of the owner's intent to convey any interest in the site. No conveyance of title, easement, lease, or other interest in the property shall be consummated by the property owner without adequate and complete provision for the continued operation, maintenance and

monitoring of the cleanup action, and for continued compliance with this subsection;

(d) Require the land owner to restrict leases to uses and activities consistent with the restrictive covenant and notify all lessees of the restrictions on the use of the property. This requirement applies only to restrictive covenants imposed after February 1, 1996;

(e) Require the owner to include in any instrument conveying any interest in any portion of the property, notice of the restrictive covenant under this section;

(f) Require notice and approval by the department of any proposal to use the site in a manner ~~((which))~~ that is inconsistent with the restrictive covenant. If the department, after public notice and comment approves the proposed change, the restrictive covenant shall be amended to reflect the change; and

~~((f))~~ (g) Grant the department and its designated representatives the right to enter the property at reasonable times for the purpose of evaluating compliance with the cleanup action plan and other required plans, including the right to take samples, inspect any remedial actions taken at the site, and to inspect records.

~~((6))~~ (10) Local government notification. ~~((Prior to))~~ Before a restrictive covenant being established under this chapter, the department shall notify and seek comment from a city or county department with land use planning authority for real property subject to the restrictive covenant. Once a restrictive covenant has been executed, this same department shall be notified and sent a copy of the restrictive covenant. For independent cleanups ~~((using))~~ reviewed by the department under WAC 173-340-515 that use restrictive covenants, the person conducting the cleanup shall be responsible for these notifications.

~~((7))~~ (11) Financial assurances. The department ~~((may))~~ shall, as appropriate, require ~~((the potentially liable person to provide))~~ financial assurance ~~((s, through a trust fund or equivalent financial))~~ mechanisms ~~((approved by the department, sufficient to cover all costs of operation and maintenance including compliance monitoring and undertaking appropriate corrective measures. It is the department's expectation that such assurances will be required wherever the cleanup action includes containment and in other appropriate circumstances))~~ at sites where the cleanup action selected includes engineered and/or institutional controls. It is presumed that financial assurance mechanisms will be required unless the PLP can demonstrate that sufficient financial resources are available and in place to provide for the long-term effectiveness of engineered and institutional controls adopted. Financial assurances shall be of sufficient amount to cover all costs associated with the operation and maintenance of the cleanup action, including institutional controls, compliance monitoring, and corrective measures.

(a) Mechanisms. Financial assurance mechanisms may include one or more of the following: A trust fund, a surety bond, a letter of credit, financial test, guarantee, standby trust fund, government bond rating test, government financial test, government guarantee, government fund, or financial assurance mechanisms required under another law (for example, requirements for solid waste landfills or treatment, storage,

and disposal facilities) that meets the requirements of this section.

(b) Exemption from requirement. The department shall not require financial assurances if persons conducting the cleanup can demonstrate that requiring financial assurances will result in the PLPs for the site having insufficient funds to conduct the cleanup or being forced into bankruptcy or similar financial hardship.

~~((8))~~ (12) Removal of restrictions. If the ~~((residual hazardous substances remaining at the site are subsequently reduced in concentration such that the method A or method B cleanup levels, as applicable, established under WAC 173-340-700 through 173-340-760 are met without a conditional point of compliance))~~ conditions at the site requiring an institutional control under subsection (4) of this section no longer exist, then the owner may submit a request to the department that the restrictive covenant or other restrictions be eliminated. The restrictive covenant or other restrictions shall be removed, if the department, after public notice and opportunity for comment, concurs.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-450 Releases from underground storage tanks. (1) Purpose. The purpose of this section is to set forth the requirements for addressing releases ~~((which))~~ that may pose a threat to human health or the environment from ~~((USTs defined))~~ an underground storage tank (UST) regulated under chapter 90.76 RCW ~~((and rules adopted therein, including heating oil USTs of greater than 1,100 gallons capacity)).~~

(a) Releases from USTs exempted under chapter 90.76 RCW and rules adopted therein are still subject to all other requirements of this chapter.

(b) Unless the department requires otherwise, UST owners and UST operators regulated under chapter 90.76 RCW shall comply with the requirements in this section after confirmation of an UST release ~~((which))~~ that may pose a threat to human health or the environment.

(2) Initial response. Within twenty-four hours of ~~((the))~~ confirmation of an UST release, the UST owner or the UST operator shall perform the following actions:

(a) Report the UST release to the department and other authorities with jurisdiction, in accordance with rules adopted under chapter 90.76 RCW and any other applicable law;

(b) Remove as much of the hazardous substance from the UST as is possible and necessary to prevent further release to the environment;

(c) Eliminate or reduce any fire, explosion or vapor hazards in such a way as to minimize any release of hazardous substances to surface water and ground water; and

(d) Visually inspect any aboveground releases or exposed belowground releases and prevent the hazardous substance from spreading into surrounding soils, ground water and surface water.

(3) Interim actions.

(a) As soon as possible but no later than twenty days following confirmation of an UST release, the UST owner or the UST operator shall perform the following interim actions:

(i) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product ~~((which))~~ that may have migrated from the UST into structures in the vicinity of the site, such as sewers or basements;

(ii) Reduce the threat to human health and the environment posed by contaminated soils that are excavated or discovered as a result of investigation or cleanup activities. Treatment, storage and disposal of soils must be carried out in compliance with all applicable federal, state and local requirements;

(iii) Test for hazardous substances in the environment where they are most likely to be present. Such testing shall be done in accordance with a sampling and analysis plan prepared under WAC 173-340-820. The sample types, sample locations, and measurement methods shall be based on the nature of the stored substance, type of subsurface soils, depth to ground water and other factors as appropriate for identifying the presence and source of the release. If contaminated soil is found in contact with the ground water or soil contamination appears to extend below the lowest soil sampling depth, then testing shall include the installation of ground water monitoring wells to test for the presence of possible ground water contamination. Information gathered for the site check or closure site assessment conducted ~~((pursuant to))~~ under rules adopted under chapter 90.76 RCW, which sufficiently characterizes the releases at the site, may be substituted for the testing required under this paragraph;

(iv) The testing performed under (a)(iii) of this subsection shall use the analytical methods specified in WAC 173-340-830 and include, at a minimum, the following:

~~(A) ((Benzene, toluene, ethylbenzene, xylene, lead, and total petroleum hydrocarbons where leaded gasoline may be present;~~

~~(B) Benzene, toluene, ethylbenzene, xylene and total petroleum hydrocarbons where unleaded gasoline may be present;~~

~~(C) Total petroleum hydrocarbons and other appropriate indicator hazardous substances where any petroleum product other than gasoline may be present;~~

~~((D))~~ For petroleum product releases, the concentration(s) of hazardous substances potentially present at the site, as appropriate for the type of petroleum product(s) released. The minimum testing requirements are specified in table 830-1.

~~(B)~~ The hazardous substance stored and any likely decomposition by-products where a hazardous substance other than petroleum may be present; and

~~((E))~~ ~~(C)~~ Any other tests required by the department; and

(v) Investigate for the presence of free product.

~~((b))~~ (4) Free product removal. At sites where investigations indicate free product is present, the UST owner or the UST operator shall conduct, as soon as possible after discovery, an interim action to remove the free product while continuing, as necessary, any other actions required under this section. To accomplish this the UST owner or UST operator shall:

~~((f))~~ (a) Conduct free product removal to the maximum extent practicable and in a manner ~~((which))~~ that minimizes the spread of hazardous substances, by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. The objective of free product removal system must be, at a minimum, to stop the free product migration;

~~((g))~~ (b) Properly treat, discharge, or dispose of ~~((recovery by-products))~~ any hazardous substance, water, sludge or any other materials collected in the free product removal process in compliance with all applicable local, state, and federal regulations and permits; and

~~((h))~~ (c) Handle all flammable products safely to prevent fires and explosions.

~~((i))~~ (5) Reporting requirements. The following reports are required to be submitted to the department:

(a) Status report. Within twenty days after an UST release, the UST owner or UST operator shall submit a status report to the department. The status report shall identify if known, the types, amounts, and locations of hazardous substances released, how the release occurred, evidence confirming the release, actions taken under subsections (2) and (3) of this section, any planned remedial actions, and any results of work done up to the time of the report. This report may be provided verbally to the department.

(b) Site characterization reports. Within ninety days after release confirmation, unless directed to do otherwise by the department, the UST owner or UST operator shall submit a report to the department about the site and nature of the release. This report shall be submitted to the department in writing and may be combined with the twenty-day status report, if the information required is available at that time. The site characterization report shall include, at a minimum, the following information:

(i) The information required for the status report under (a) of this subsection;

(ii) A site conditions map indicating approximate boundaries of the property, all areas where hazardous substances are known or suspected to be located, and sampling locations. This map may consist of a sketch of the site at a scale sufficient to illustrate this information;

(iii) Available data regarding surrounding populations, surface and ground water quality, use and approximate location of wells potentially affected by the release, subsurface soil conditions, depth to ground water, direction of ground water flow, proximity to and potential for affecting surface water, locations of sewers and other potential conduits for vapor or free product migration, surrounding land use, and proximity to sensitive environments;

(iv) Results of tests for hazardous substances performed under subsection (3)(a)(iii) and (iv) of this section;

(v) Results of the free product investigation required under subsection (3)(a)(v) of this section;

(vi) Results of all completed site investigations, interim actions and cleanup actions and a description of any remaining investigations, cleanup actions and compliance monitoring ~~((which))~~ that are planned or underway; and

(vii) Information on the free product removal efforts at sites where investigations indicate free product is present. This shall include, at a minimum, the following information:

(A) Name of the person responsible for implementing the free product removal measures;

(B) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes and excavations;

(C) The type of free product recovery system used;

(D) The location of any on-site or off-site discharge during the recovery operation;

(E) The type of treatment applied to, and the effluent quality expected from, any discharge;

(F) The steps taken and planned to obtain necessary permits for any discharge;

(G) Disposition of recovered free product; and

(viii) Any other information required by the department.

~~((5) State))~~ (6) Remedial investigation and feasibility study.

(a) If the initial cleanup actions taken at an UST site do not achieve cleanup levels throughout the site, a remedial investigation and feasibility study may need to be conducted in accordance with WAC 173-340-350. The scope of a ~~((state))~~ remedial investigation and feasibility study ~~((under this chapter))~~ will depend on the informational needs at ~~((a specific site and will vary from site to site to avoid the collection of unnecessary information. For sites with UST releases, a state remedial investigation and feasibility study must at a minimum address the elements in WAC 173-340-350 (6)(a), (b), (c)(ii), (c)(iii), (c)(v) through (c)(vii) and (e). The department may require additional information when needed to select a cleanup action))~~ the site. UST owners and operators shall conduct a ~~((state))~~ remedial investigation and feasibility study for sites where the following conditions exist:

(i) There is evidence that the release has caused hazardous substances to be present in the ground water in excess of the ground water standards ~~((promulgated))~~ adopted under chapter 90.48 RCW or cleanup levels in WAC 173-340-720 (Table 720-1);

(ii) Free product is found; or

(iii) Where otherwise required by the department.

(b) UST owners and UST operators shall submit the information collected for the ~~((state))~~ remedial investigation/feasibility study to the department as soon as practicable. The information may be included with other reports submitted under this section.

~~((6))~~ (c) If the department determines, based on the results of the remedial investigation/feasibility study or other information, that additional remedial action is required, the department may require the UST owner or the UST operator to submit engineering documents as described in WAC 173-340-400.

(7) Cleanup actions. Unless directed to do otherwise by the department, cleanup actions performed by UST owners or UST operators shall comply with the cleanup standards ~~((;))~~ described in WAC 173-340-700 through ~~((173-340-750))~~ 173-340-760 and the requirements for the selection of cleanup actions ~~((;))~~ in WAC ~~((173-340-360))~~ 173-340-350 through 173-340-390.

(8) Independent cleanup actions. In addition to work performed under subsections (2) through (5), and (7) of this section, UST owners or UST operators performing independent cleanup actions shall:

(a) Notify the department of their intention to begin cleanup. This can be included with other reports under this section;

(b) Comply with any conditions imposed by the department to assure adequate protection of human health and the environment; and

(c) Within ninety days of completion of the cleanup action, submit the results of all investigations, interim and cleanup actions and compliance monitoring not previously submitted to the department.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-510 Administrative options for remedial actions. (1) Policy. It is the responsibility of each and every liable person to conduct remedial action so that sites are cleaned up well and expeditiously where a release or threatened release of a hazardous substance requires remedial action. Potentially liable persons are encouraged to initiate discussions and negotiations with the department and the office of the attorney general ~~((which))~~ that may lead to an agreement on the remedial action to be conducted with the state of Washington. The department may provide informal advice and assistance on the development of proposals for remedial action, as provided by WAC ~~((173-340-130))~~ 173-340-515. Any approval by the department or the state of remedial action shall occur by one of the means described in subsections (2) and (3) of this section.

(2) Actions initiated by the potentially liable person. Potentially liable persons may initiate a remedial action, as follows:

(a) A person may initiate negotiations for a consent decree by submitting a letter under WAC 173-340-520(1).

(b) A person may request an agreed order by submitting a letter under WAC 173-340-530.

(3) Action initiated by the department. The department may initiate remedial action by:

(a) Issuing a letter inviting negotiations on a consent decree under WAC 173-340-520(2); or

(b) Requesting an agreed order under WAC 173-340-530; or

(c) Issuing an enforcement order under WAC 173-340-540.

(4) Department remedial action. Nothing in this chapter shall preclude the department from taking appropriate remedial action on its own at any time. Except for emergency actions and initial investigations, reasonable effort will be made to notify potentially liable persons ~~((prior to))~~ before the department ~~((taking))~~ takes remedial actions for which the recovery of public funds can be sought under RCW 70.105D.050(3).

~~((5) Independent remedial action. Nothing in this chapter shall preclude potentially liable persons from taking independent remedial action without oversight or approval from the department at sites not in discussions or negotiations for, or under, an order or decree. A potentially liable person may not take independent remedial actions after commencing discussions or negotiations for an agreed order or consent decree unless:~~

~~(a) Such action does not foreclose or preempt the remedial actions under discussion or negotiations and such action does not foreclose the selection of cleanup action; or~~

~~(b) If the potentially liable person has provided reasonable notice to the department and the department does not object to such action:~~

~~The department will use the appropriate requirements contained herein to evaluate the adequacy of any independent remedial action performed. Persons performing independent remedial actions do so at their own risk and may be required to take additional remedial actions if the department deems such actions necessary. In such circumstances, the department reserves all of its rights to take actions authorized by law.))~~

NEW SECTION

WAC 173-340-515 Independent remedial actions. (1)

Purpose. An independent remedial action is a remedial action conducted without department oversight or approval and not under an order, agreed order or consent decree. This section describes the procedures and requirements for independent remedial actions. See WAC 173-340-545 for additional requirements pertaining to independent remedial actions anticipated to be part of a private right of action.

(2) **Applicability.** Nothing in this chapter shall preclude potentially liable persons from conducting independent remedial actions at sites not in discussions or negotiations for, or under, an order or decree. However, a potentially liable person may not conduct independent remedial actions after commencing discussions or negotiations for an agreed order or consent decree unless:

(a) Such action does not foreclose or preempt the remedial actions under discussion or negotiation and such action does not foreclose the selection of a cleanup action; or

(b) The potentially liable person has provided reasonable notice to the department and the department does not object to such action.

(3) **Standards.**

(a) In reviewing independent remedial actions, the department shall determine whether the remedial actions meet the substantive requirements of this chapter and/or whether further remedial action is necessary at the site. Persons conducting independent remedial actions do so at their own risk, and may be required to take additional remedial actions if the department determines such actions are necessary. In such circumstances, the department reserves all of its rights to take actions authorized by law.

(b) When this chapter requires a consultation with, or an approval or determination by the department, such a consultation, approval or determination is not necessary in order to conduct an independent remedial action. However, independent remedial actions must still meet the substantive requirements of this chapter.

(c) Except for the requirement of a restrictive covenant under WAC 173-340-440, where documents are required under this chapter, the documents prepared need not be the same in title or format; however, the documents must still contain sufficient information to serve the same purpose.

The scope and level of detail in these documents may vary from site to site depending on the site-specific conditions and the complexity of the remedial action.

(4) **Reports to the department.**

(a) Any person who conducts an independent interim action or cleanup action for a release that is required to be reported under WAC 173-340-300 shall submit a written report to the department within ninety days of the completion of the action. For the purposes of this section, the department will consider an interim action or cleanup action complete if no remedial action other than compliance monitoring has occurred at the site for ninety days. This does not preclude earlier reporting of such actions or reporting of site investigations. See WAC 173-340-450 for additional requirements for reporting independent remedial actions for releases from underground storage tanks.

(b) The report shall include the information in WAC 173-340-300(2) if not already reported, and enough information to determine if the independent remedial action meets the substantive requirements of this chapter including, the results of all site investigations, cleanup actions and compliance monitoring planned or under-way. If a restrictive covenant is used, it must be included in the report and it must meet the requirements specified in WAC 173-340-440(9). The department may require additional reports on the work conducted.

(c) If the independent interim action or cleanup action is completed within ninety days of discovery, a single written report may be submitted on both the release and the action taken. The report shall contain the information specified in provision (b) of this subsection and shall be submitted within ninety days of completion of the remedial action.

(d) The department shall publish in the *Site Register* a notice of all reports on independent interim actions and cleanup actions received under this section. If deemed necessary, the department shall also conduct an initial investigation under WAC 173-340-310. Neither submission of information on an independent remedial action nor any response by the department shall release the person submitting the report or any other person from liability. The department reserves all rights to pursue any subsequent action it deems appropriate.

(5) **Technical consultations.** The department may provide informal advice and assistance (technical consultations) on the administrative and technical requirements of this chapter to persons conducting or otherwise interested in an independent remedial action. Such advice or assistance is advisory only and not binding on the department. This advice may include written opinions. These written opinions shall be limited to whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter and/or whether the department believes further remedial action is necessary at the facility. Upon completing the review of an independent remedial action report or proposal that is voluntarily submitted for the department's review and opinion, the department will:

(a) Provide a written opinion regarding the remedial actions performed or proposed at the site;

(b) Provide a written opinion regarding the remedial actions performed at the site and remove the site or a portion of the site from the hazardous sites list if the department has sufficient information to show that the independent remedial actions are appropriate to characterize and address contamination at the site, as provided for in WAC 173-340-330 (4)(b); or

(c) Provide a written opinion describing the deficiencies with the remedial action or proposal for a remedial action at the site.

It is the department's policy, in conducting reviews under this subsection, to promote independent remedial actions by delisting sites or portions of sites whenever petitions and supporting documents show that the actions taken are appropriate to characterize and address the contamination at the site.

(6) **Cost of technical consultations.** For information on the payment of remedial action costs, see WAC 173-340-550(6).

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-520 Consent decrees. (1) Procedures for consent decrees initiated by potentially liable persons. To request a consent decree a person shall submit a letter to the department and office of the attorney general via certified mail, return receipt requested, or by personal delivery.

(a) Request. The letter shall describe, based on available information:

(i) The proposed remedial action, including the schedule for the work;

(ii) Information which demonstrates that the settlement will lead to a more expeditious cleanup, be consistent with cleanup standards if the remedial action is a cleanup action, and be consistent with any previous orders;

(iii) The facility, including location and boundaries;

(iv) The environmental problems to be addressed including a description of the releases at the facility and the potential impact of those releases to human health and the environment;

(v) A summary of the relevant historical use or conditions at the facility;

(vi) The date on which the potentially liable person will be ready to submit a detailed proposal;

(vii) Any special scheduling considerations for implementing the remedial actions;

(viii) Names of other persons who the person has reason to believe may be potentially liable persons at the facility; and

(ix) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include the elements listed in WAC 173-340-600(8).

(b) The letter may include:

(i) A waiver of the procedural requirements of WAC 173-340-500 and acceptance, for purposes of settlement, of potentially liable person status.

(ii) The contents of detailed proposal under ~~((f))~~ (g) of this subsection.

(c) A prospective purchaser consent decree is a particular type of consent decree entered into with a person not currently liable for remedial action at the site who proposes to purchase, redevelop, or reuse the site. RCW 70.105D.040(5) contains specific statutory requirements for this type of decree. In addition to the information in (a) and (b) of this subsection, a request for a prospective purchaser consent decree shall include:

(i) Identification of all persons proposing to enter into the consent decree and information which demonstrates that those persons are not currently liable for remedial action at the site;

(ii) Information which demonstrates that the settlement will yield substantial new resources to facilitate cleanup;

(iii) A general description of the proposed continued use or redevelopment or reuse of the site, including the proposed schedule for purchase, redevelopment, or reuse; and

(iv) Information describing whether and how the proposed settlement will provide a substantial public benefit.

(d) Recognizing that the steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the steps in the process for which the consent decree is requested. For example, a request for a consent decree for a ((state)) remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, if not already done by the department, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.

~~((d))~~ (e) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

~~((e))~~ (f) Response. The department shall respond to the request within sixty days, unless the department needs additional time to determine potentially liable person status under WAC 173-340-500. This determination will be based in part on a preliminary finding by the department that any resulting consent decree would be in accordance with RCW 70.105D.040 (4)(a). The department may:

(i) Request additional information;

(ii) Accept the request and require the person to submit a detailed written proposal by a specified date; or

(iii) Provide written reasons for denying the request.

~~((f))~~ (g) Contents of detailed proposal. The proposal shall contain:

(i) A proposed technical scope of work describing the remedial action to be conducted;

(ii) The data, studies, or any other information upon which the settlement proposal is based;

(iii) A statement describing the potentially liable person's ability to conduct or finance the remedial action as described in the proposed scope of work; ~~(and)~~

(iv) A schedule for proposed negotiations and implementation of the proposed remedial actions; and

(v) Any additional information requested by the department.

(h) In addition to the information in (g) of this subsection, the detailed proposal for a prospective purchaser consent decree shall include the following:

(i) Information showing a legal commitment to purchase, redevelop or reuse the site;

(ii) A detailed description including a plan of the proposed continued use, redevelopment, or reuse of the site, including, if necessary, an updated schedule for purchase, redevelopment or reuse;

(iii) Information which demonstrates that the redevelopment or reuse of the site is not likely to contribute to the existing or threatened releases at the site, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site; and

(iv) If the requestor does not propose to conduct the entire cleanup of the site, available information about potentially liable persons who are expected to conduct the remainder of the cleanup.

~~((g))~~ (i) The department and the office of the attorney general shall determine whether the proposal provides a sufficient basis for negotiations, and shall deliver to the potentially liable person within sixty days following receipt of their proposal a written notice indicating whether or not the proposal is sufficient to proceed with negotiations.

~~((h))~~ (j) Prepayment agreement. Unless otherwise determined by the department, any person who requests a prospective purchaser agreement and receives a notice accepting the request under (f) of this subsection shall enter into a prepayment agreement with the department consistent with WAC 173-340-550(7) before negotiations will begin.

(k) Time limits for negotiations. The department shall set the time period and starting date for negotiations. The department and the office of the attorney general shall then negotiate with those potentially liable persons who have received a notice under ~~((e))~~ (f) of this subsection that their proposal was sufficient to proceed with negotiations. Negotiations may address one or more phases of remedial action. The length of the negotiation period specified by the department shall be no less than that proposed by the potentially liable person provided it does not conflict with the deadlines established under WAC 173-340-140.

~~((h))~~ (l) Enforcement stay. For consent decrees that are not prospective purchaser agreements, unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW, but the duration of such stay shall not exceed one hundred twenty days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances.

The department may ~~((commence with))~~ begin an enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(2) ~~((State-initiated))~~ Procedures for consent decrees initiated by the department. When the department believes that a consent decree will be a more expeditious method to achieve remedial action at a facility, it may initiate the procedures set forth in this subsection by sending a letter to the potentially liable person. The letter shall be sent via certified mail, return receipt requested, or by personal service.

(a) The letters may be delivered with potentially liable person status letters issued under WAC 173-340-500. The period for negotiation shall not commence until the thirty-day comment period required by WAC 173-340-500 has expired or the person expressly waives the procedural requirements of WAC 173-340-500.

(b) Contents of letter. The letter shall:

(i) Inform potentially liable person(s) that the department and the attorney general want to begin negotiations which may lead to a consent decree providing for remedial action;

(ii) Propose a draft consent decree and scope of work;

(iii) Define the negotiation process and schedule which shall not exceed ninety days;

(iv) Reference the department's finding under WAC 173-340-500;

(v) Request a written statement of the potentially liable person's willingness to proceed with the negotiation process defined in the letter; and

(vi) Request the names of other persons whom the person has reason to believe may be potentially liable persons at the facility.

(c) The letter may request the potentially liable person to respond, in writing, to the proposed draft consent decree and scope of work ~~((prior to initiating))~~ before beginning the negotiation phase.

(d) Negotiations. The department and the office of the attorney general shall negotiate with potentially liable persons who have indicated to the department a willingness to proceed with the negotiations. The negotiation time frame shall begin from the date the potentially liable person receives the letter under (a) of this subsection unless modified by the department. Negotiations may address one or more phases of remedial action.

(e) Enforcement stay. Unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW, but the duration of the stay shall not exceed ninety days from the date negotiations begin. The department can withdraw from negotiations if it determines that:

(i) Reasonable progress is not being made toward a consent decree acceptable to the department; or

(ii) The proposal is inappropriate based on new information or changed circumstances. The department may commence with enforcement action after notifying the potentially liable person, in writing, of its intent to withdraw from negotiations.

(f) Deadline extensions. The department may, at its discretion, extend the deadline for negotiations established in (b) of this subsection, provided the extension does not exceed thirty days.

(3) Filing a decree. After satisfying the public comment and hearing requirements, the department shall determine whether the proposed settlement negotiated under subsection (1) or (2) of this section, is more expeditious and consistent with cleanup standards established and in compliance with any order issued by the department relevant to the remedial action. After making the requisite findings, the department shall forward the proposed consent decree with the findings required by RCW 70.105D.040(4), to the office of the attorney general. If agreed to by the office of the attorney general,

the consent decree will be filed by that office with the appropriate superior court or the federal court having jurisdiction over the matter.

AMENDATORY SECTION (Amending Order 94-37, filed 1/26/96, effective 2/26/96)

WAC 173-340-530 Agreed orders. (1) Purpose. Agreed orders may be used for all remedial actions. ~~((Since an agreed order is not a settlement, an agreed order shall not provide for mixed funding, a covenant not to sue, or protection from claims for contribution.))~~ An agreed order means that the potentially liable person agrees to perform remedial actions at the site in accordance with the provisions of the agreed order and that the department will not take additional enforcement action against the potentially liable person to require those remedial actions specified in the agreed order so long as the potentially liable person complies with the provisions of the order. Since an agreed order is not a settlement, an agreed order shall not provide for mixed funding, a covenant not to sue, or protection from claims for contribution. The department may require additional remedial actions should it deem such actions necessary.

(2) ~~((Request.))~~ Procedures for agreed orders initiated by a potentially liable person.

(a) To request an agreed order, a person shall submit a letter to the department based on available information, describing:

(i) The proposed remedial action including a schedule for the work;

(ii) The facility, including location and boundaries;

(iii) The environmental problems to be addressed, including the releases at the facility and the potential impact of those releases to human health and the environment;

(iv) A summary of the relevant historical use or conditions at the facility;

(v) Names of other persons whom the person has reason to believe may be potentially liable persons at the facility; and

(vi) A proposed public participation plan. This proposed plan shall be commensurate with the nature of the proposal and site and shall include, at a minimum, the elements listed in WAC 173-340-600(8).

(b) The letter may include a waiver of the procedural requirements of WAC 173-340-500, and acceptance, for purposes of the agreed order, of potentially liable person status.

(c) Recognizing that the basic steps of the cleanup process may be combined and may vary by site, the information in the request shall be at the level of detail appropriate to the step in the process for which the order is requested. For example, a request for an agreed order for a ~~((state))~~ remedial investigation/feasibility study should generally include the level of information needed for a site hazard assessment, so that the department and the public can evaluate the proposed scope of work and relative priority of the site.

(d) The department may waive part of the letter requirements of (a) of this subsection if the requirements have already been met.

(3) ~~((Response.))~~ Department response to PLP-initiated request. The department shall respond to the request within

sixty days, unless the department needs additional time to determine potentially liable person status under WAC 173-340-500. The department may:

(a) Request additional information;

(b) Proceed with discussions, if the department believes it is in the public interest to do so; or

(c) Provide written reasons for denying the request.

(4) Procedures for agreed orders initiated by the department. When the department believes that an agreed order is an appropriate method to achieve remedial action at a facility, it may initiate the request for an agreed order.

(5) Duration of discussions. Discussions on the agreed order shall not exceed sixty days unless the department decides continued discussions are in the public interest.

(6) Enforcement. Unless an emergency exists, the department will stay any enforcement action under chapter 70.105D RCW; however, the duration of such stay shall not exceed sixty days from the date discussions begin. Furthermore, the department can withdraw from discussions if it determines that:

(a) Reasonable progress is not being made toward an agreed order acceptable to the department; or

(b) The agreed order is inappropriate based on new information or changed circumstances.

The department may ~~((commence with))~~ begin an enforcement action after notifying the potentially liable person in writing of its intent to withdraw from discussions.

~~((5))~~ (7) Focus of discussions. The focus of discussions for the agreed order shall ordinarily be the technical scope of work and work schedule. This subsection is not intended to preclude discussion on any item. It is intended to convey the expectation that the scope of work and work schedule will be the primary topics of discussion in ~~((formulating))~~ developing agreed orders.

~~((6))~~ (8) Public participation.

(a) When issuing an agreed order, the department shall provide appropriate public participation opportunities under WAC 173-340-600. ~~((If the agreed order is for a routine cleanup action and any person requests judicial review, then the applicable consent decree procedures under WAC 173-340-520 will be initiated.~~

~~((7) Revisions.))~~ (b) If the department and the potentially liable person signing the order agree to substantial changes in the order, the department shall provide appropriate additional public notice and opportunity to comment.

NEW SECTION

WAC 173-340-545 Private rights of action. (1) Purpose. A private right of action is a legal claim authorized by RCW 70.105D.080 under which a person may recover costs of remedial action from other persons liable under the act. RCW 70.105D.080 limits recovery of remedial action costs to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. The purpose of this section is to facilitate private rights of action and minimize department staff involvement in these actions by providing guidance to potentially liable persons and the court on what remedial actions the department would consider the substan-

tial equivalent of a department-conducted or department-supervised remedial action. In determining substantial equivalence, the department anticipates the requirements in this section will be evaluated as a whole and that a claim would not be disallowed due to omissions that do not diminish the overall effectiveness of the remedial action.

(2) **Substantial equivalent.** For the purposes of this section, the department considers the following remedial actions to be the substantial equivalent of a department-conducted or department-supervised remedial action.

(a) A remedial action conducted by the department;

(b) A remedial action that has been or is being conducted under an order or decree and the remedial requirements of the order or decree have been satisfied for those portions of the remedial action for which the private right of action is being sought; or

(c) A remedial action that has been conducted as an independent remedial action that includes the following elements:

(i) Information on the site and remedial actions conducted has been reported to the department in accordance with WAC 173-340-300, 173-340-450 and 173-340-515, as applicable;

(ii) The department has not objected to the remedial action being conducted or any such objection has been cured as determined by the court;

(iii) Except for emergency remedial actions, before conducting an interim action or cleanup action, reasonable steps have been taken to provide advance public notice;

(iv) The remedial actions have been conducted substantially equivalent with the technical standards and evaluation criteria described in subsection (4) of this section; and

(v) For facilities where hazardous substances have been disposed of as part of the remedial action, documentation is available indicating where these substances were disposed of and that this disposal was in compliance with applicable state and federal laws. It is not the intent of this provision to require extensive documentation. For example, if the remedial action results in solid wastes being transported off-site for disposal, it would be sufficient to have records indicating the wastes have been disposed of at a permitted solid waste or hazardous waste landfill.

(3) **Public notice requirements.** This subsection shall be used to determine if reasonable steps have been taken to provide advance public notice under subsection (2)(c)(iii) of this section. These public notice procedures apply only to interim actions or cleanup actions conducted as independent remedial actions after December 25, 1993. The notice may be combined with any notices under another law. For interim actions or cleanup actions conducted as independent remedial actions before December 25, 1993, the department recognizes little or no public notification typically occurred because there were no department-specified requirements other than the reporting requirements in this chapter. For these actions, this chapter contains no other specific public notice requirements or guidance, and the court will need to determine such requirements, if any, on a case-by-case basis. For independent remedial actions consisting of site investigations and studies, it is anticipated that public notice would not normally be done since often these early phases of work are

to determine if a release even requires an interim action or cleanup action. For the purposes of this section only, unless the court determines other notice procedures are adequate for the site-specific circumstances, the following constitutes adequate public notice for independent remedial actions and supersedes the requirements in WAC 173-340-600:

(a) Except for emergency remedial actions, written notification has been mailed at least fifteen days before beginning construction of the interim action or cleanup action to the last known address of the following persons:

(i) The department (which shall publish a summary of the notice in the *Site Register*);

(ii) The local jurisdictional health department/district;

(iii) The town, city or county with land use jurisdiction;

(iv) The land owners identified by the tax assessor at the time the action is begun for that portion of the facility where the interim action or cleanup action is being conducted; and

(v) Persons potentially liable under RCW 70.105D.040 known to the person conducting the interim action or cleanup action. In identifying persons potentially liable under RCW 70.105D.040 who are to be noticed under this provision, the person conducting the remedial action need only make a reasonable effort to review information currently readily available. Where the interim action or cleanup action is complex, written notification before beginning detailed design is recommended but not required. For emergency remedial actions, written notice should be provided as soon as practicable;

(b) The written notification includes: A brief statement describing the releases being remedied and the interim actions or cleanup actions expected to be conducted; the schedule for these interim actions or cleanup actions; and, for persons potentially liable under RCW 70.105D.040 known to the person conducting the interim actions or cleanup actions, a statement that they could be held liable for the costs of remedial actions being conducted; and

(c) Posting a sign at the site at a location visible to the general public indicating what interim actions or cleanup actions are being conducted and identifying a person to contact for more information. Except for emergency remedial actions this sign should be posted not later than the beginning of construction of any interim action or cleanup action and should remain posted for the duration of the construction. For emergency remedial actions posting of a sign should be done as soon as practicable;

(4) **Technical standards and evaluation criteria.** This subsection shall be used to determine if the remedial actions have been conducted substantially equivalent with the technical standards and evaluation criteria contained in this chapter. For the purposes of this section, remedial actions shall be deemed to comply with subsection (2)(c)(iv) of this section if they have been conducted substantially equivalent with the technical standards and evaluation criteria contained in the following sections, where applicable. Except for a restrictive covenant under WAC 173-340-440, where documents are required by the following sections, the documents prepared need not be the same in title or format. Other documents can be used in place of the documents specified in these sections as long as sufficient information is included in the record to

serve the same purpose. When using the following sections to determine substantial equivalence it should be recognized that there are often many alternative methods for cleanup of a facility that would comply with these provisions. When this chapter requires a consultation with, or an approval or determination by the department, such a consultation, approval or determination is not necessary for remedial actions to meet the substantial equivalence requirement under this section; however, the remedial action must still be conducted substantially equivalent with the substantive requirements of those provisions. In applying these sections, reference should be made to the other applicable sections of this chapter, with particular attention to WAC 173-340-130 (Administrative principles), WAC 173-340-200 (Definitions), and WAC 173-340-210 (Usage).

(a) WAC 173-340-350 (Remedial investigation/feasibility study);

(b) WAC 173-340-355 (Development of cleanup action alternatives that include remediation levels);

(c) WAC 173-340-357 (Quantitative risk assessment of cleanup action alternatives);

(d) WAC 173-340-360 (Selection of cleanup actions);

(e) WAC 173-340-380 (Cleanup action plan);

(f) WAC 173-340-400 (Cleanup actions);

(g) WAC 173-340-410 (Compliance monitoring requirements);

(h) WAC 173-340-430 (Interim actions);

(i) WAC 173-340-440 (Institutional controls);

(j) WAC 173-340-450 (Releases from underground storage tanks);

(k) WAC 173-340-700 through 173-340-760 (Cleanup standards); and

(l) WAC 173-340-810 through 173-340-850 (General provisions).

AMENDATORY SECTION (Amending WSR 93-24-064, filed 11/24/93, effective 12/25/93)

WAC 173-340-550 Payment of remedial action costs.

(1) Policy. RCW 70.105D.050(3) requires that the state seek to recover the amounts spent by the department for investigative and remedial actions and orders. It is the department's intention to recover those costs which are reasonably attributable to ~~((the))~~ individual sites. Timing of cost recovery for individual sites will be considered on a case-by-case basis, however, the department may demand, and generally requires, payment of costs as they are incurred.

(2) Costs. Each person who is liable under chapter 70.105D RCW is liable for remedial action costs incurred by the department. Remedial action costs are costs reasonably attributable to the site and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments. The department may send its request for payment to all potentially liable persons who are under an order or decree for the remedial action costs at the site. The department shall charge an hourly rate based on direct staff costs plus support costs. It is the department's intention that the resulting hourly rate charged be less than the hourly rate typically charged by a comparably sized consulting firm pro-

viding similar services. The department shall use the following formula for computing hourly rates:

Hourly Rate = DSC + DSC(ASCM) + DSC(PSCM),
where:

DSC = Direct Staff Costs defined in (a) of this subsection(~~(:)~~).

ASCM = Agency Support Cost Multiplier defined in (b) of this subsection(~~(, and)~~).

PSCM = Program Support Cost Multiplier defined in (c) of this subsection.

(a) Costs of direct activities are direct staff costs and other direct costs. Direct staff costs (DSC) are the costs of hours worked directly on a contaminated site, including salaries, retirement plan benefits, Social Security benefits, health care benefits, leave and holiday benefits, and other benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of department staff working on a contaminated site including, for example, costs of: Travel related to the site, printing and publishing of documents about the site, purchase or rental of equipment used for the site, and contracted work for the site.

(b) Agency support costs are the costs of facilities, communications, personnel, fiscal, and other state-wide and agency-wide services. The agency support cost multiplier (ASCM) used shall be the agency indirect rate approved by the agency's federal cognizant agency (which, as of July 1, 1993, was the United States Department of the Interior) for each fiscal year.

(c) Program support costs are the costs of administrative time spent by site managers and other staff who work directly on sites and a portion of the cost of management, clerical, policy, computer, financial, citizen technical advisor, and other support provided by other program staff to site managers and other staff who work directly on sites. Other activities of the toxics cleanup program not included in program support costs include, for example, community relations not related to a specific site, policy development, and a portion of the cost of nonsite management, clerical, policy, computer, financial, and other support staff. The program support cost multiplier (PSCM) used shall be calculated by dividing actual program support costs by the direct staff costs of all hours charged to site related work. This multiplier shall be evaluated at least biennially and any changes published in at least two publications of the *Site Register*. The calculation and source documents used in any revision shall be audited by either the state auditor's office or a private accounting firm. Audit results shall be available for public review. This multiplier shall not exceed 1.0 (one).

(3) Request for payment. When the department requests payment of remedial action costs it shall provide an itemized statement documenting the costs incurred.

(4) Interest charges. A ~~((minimum))~~ charge of twelve percent interest (annual percentage rate, compounded monthly) shall accrue on all remedial action costs not paid within ninety days of the billing date, or within another longer time period designated by the department.

(5) ~~((Private rights of action. The purpose of this subsection is to facilitate private rights of action and minimize department staff involvement in these actions by providing~~

guidance to potentially liable persons and the court on what remedial actions the department would consider the substantial equivalent of a department-conducted or department-supervised remedial action. In determining substantial equivalence, the department anticipates the requirements in this section will be evaluated as a whole and that a claim would not be disallowed due to omissions that do not diminish the overall effectiveness of the remedial action. For the purposes of this section, the department would consider the following remedial actions to be the substantial equivalent of a department-conducted or department-supervised remedial action.

(a) A remedial action conducted by the department;

(b) A remedial action that has been or is being conducted under an order or decree and the remedial requirements of the order or decree have been satisfied for those portions of the remedial action for which the private right of action is being sought; or

(c) A remedial action that has been conducted as an independent remedial action that includes the following elements:

(i) Information on the site and remedial actions conducted has been reported to the department in accordance with WAC 173-340-300 and 173-340-450, as applicable;

(ii) The department has not objected to the remedial action being conducted or any such objection has been cured as determined by the court;

(iii) Except for emergency remedial actions, prior to conducting an interim action or cleanup action, reasonable steps have been taken to provide advance public notice. The notice may be combined with any notices under another law. These public notice procedures apply only to interim actions or cleanup actions conducted as independent remedial actions after the effective date of this section. For interim actions or cleanup actions conducted as independent remedial actions prior to the effective date of this section, the department recognizes little or no public notification typically occurred because there were no department-specified requirements other than the reporting requirements in this chapter. For these actions, this chapter contains no other specific public notice requirements or guidance, and the court will need to determine such requirements, if any, on a case-by-case basis. For independent remedial actions consisting of site investigations and studies, it is anticipated that public notice would not normally be done since often these early phases of work are to determine if a release even requires an interim action or cleanup action. For the purposes of this subsection only, unless the court determines other notice procedures are adequate for the site-specific circumstances, the following constitutes adequate public notice and supersedes the requirements in WAC 173-340-600:

(A) Except for emergency remedial actions, written notification has been mailed at least fifteen days prior to beginning construction of the interim action or cleanup action to the last known address of the following persons: The department which shall publish a summary of the notice in the *Site Register*; the local jurisdictional health department/district; the town, city or county with land use jurisdiction; the land owners identified by the tax assessor at the time the action is commenced for that portion of the facility where the interim action or cleanup action is being conducted; and persons

potentially liable under RCW 70.105D.040 known to the person conducting the interim action or cleanup action. In identifying other potentially liable persons who are to be noticed under this provision, the person doing the remedial action need only make a reasonable effort to review information currently readily available. Where the interim action or cleanup action is complex, notification prior to beginning detailed design is recommended but not required. For emergency remedial actions, written notice should be provided as soon as practicable;

(B) The notice includes: A brief statement describing the releases being remedied and the interim actions or cleanup actions expected to be conducted; the schedule for these interim actions or cleanup actions; and, for persons potentially liable under RCW 70.105D.040 known to the person conducting the interim actions or cleanup actions, a statement that they could be held liable for the costs of remedial actions being conducted; and

(C) Posting a sign at the site at a location visible to the general public indicating what interim actions or cleanup actions are being conducted and identifying a person to contact for more information. Except for emergency remedial actions this sign should be posted not later than the beginning of construction of any interim action or cleanup action and should remain posted for the duration of the construction. For emergency remedial actions posting of a sign should be done as soon as practicable;

(iv) The remedial actions have been conducted substantially equivalent with the technical standards and evaluation criteria contained in the following sections, where applicable. Where documents are required by the following sections, the documents prepared need not be the same in title or format. Other documents can be used in place of the documents specified in these sections as long as sufficient information is included in the record to serve the same purpose. When using these sections to determine substantial equivalence it should be recognized that there are often many alternative methods for cleanup of a facility that would comply with these provisions. In applying these sections, reference should be made to the other applicable sections of this chapter, with particular attention to WAC 173-340-130 (Administrative principles); WAC 173-340-200 (Definitions) and WAC 173-340-210 (Usage):

(A) WAC 173-340-350 (State remedial investigation and feasibility study);

(B) WAC 173-340-360 (Selection of cleanup actions);

(C) WAC 173-340-400 (Cleanup actions);

(D) WAC 173-340-410 (Compliance monitoring requirements);

(E) WAC 173-340-430 (Interim actions);

(F) WAC 173-340-440 (Institutional controls);

(G) WAC 173-340-450 (Releases from underground storage tanks);

(H) WAC 173-340-700 through WAC 173-340-760 (Cleanup standards); and

(I) WAC 173-340-810 through WAC 173-340-850 (General provisions); and

(v) For facilities where hazardous substances have been disposed of as part of the remedial action, documentation is available indicating where these substances were disposed of

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and that this disposal was in compliance with applicable state and federal laws. It is not the intent of this provision to require extensive documentation. For example, if the remedial action results in solid wastes being transported off site for disposal, it would be sufficient to have records indicating the wastes have been disposed of at a permitted solid waste or hazardous waste landfill.

(6)) Natural resource damages. Nothing in this section shall affect the authority of the department and the office of attorney general to recover natural resource damages.

((7)) (6) Independent remedial actions.

(a) ~~(The department has established a mechanism to recover the direct and support costs associated with the review and evaluation of independent remedial action reports submitted under WAC 173-340-300(4). This enables the department to evaluate independent cleanups and facilitates the return of property to productive use. Participation in this program is voluntary, and ecology will recover only the costs of review under the independent remedial action program from those persons requesting the department's review of an independent remedial action report. Ecology shall recover its costs of providing the review of independent remedial action reports, including:~~

(i) Providing a written determination regarding the adequacy of the remedial actions performed at a site;

(ii) Providing a written determination regarding the adequacy of the remedial actions performed at a site and removing sites or portions of sites from the hazardous sites list if the department has sufficient information to show that the independent remedial efforts are appropriate to characterize and address contamination at the site, as provided for in WAC 173-340-330 (4)(b); or

(iii) Providing a written determination describing the deficiencies with the report or remedial action conducted at the site.

(b) The mechanism used to recover ecology's costs shall be evaluated in June 1994, and, if necessary, adjusted. The mechanism used to recover ecology's costs of review shall be evaluated every other year thereafter.

(c) It is the department's policy, in conducting reviews under this subsection, to promote independent remedial actions by delisting sites or portions of sites whenever petitions and supporting documents show that the actions taken are appropriate to characterize and address the contamination at the site.

(8)) The department may collect, from persons requesting a site-specific technical consultation under WAC 173-340-515, the costs incurred by the department in providing such advice and assistance.

(b) For situations where the department has decided to collect its costs, a refundable deposit of a reasonable amount will be required. The department's hourly costs shall be determined based on the method in WAC 173-340-550(2).

(c) The department's Toxics Cleanup Program manager or designee may make a discretionary, nonappealable decision on whether a person is eligible for a waiver of fees based on that person's ability to pay.

(d) The department shall waive collection of its costs, where appropriate, in providing technical assistance in support of an appropriate level of public participation or where

the department's time in responding to the request is de minimis.

(7) Prepayment of costs.

(a) Persons potentially liable under this chapter or seeking a prospective purchaser agreement may request the department's oversight of remedial actions through a prepayment agreement. The purpose of such an agreement is to enable department oversight of remedial actions at lower priority sites. The department shall make a determination that such an agreement is in the public interest. A prepayment agreement requires a person to pay the department's remedial action costs, in advance, allowing the department to increase staff for the unanticipated workload. Agreements may cover one or more facilities. Whether the department can respond favorably to a request for a prepayment agreement will depend, in part, on the department and attorney general receiving authorization for the staffing necessary to implement the agreement. Persons interested in such an agreement are encouraged to contact the department early on to informally discuss the potential for using such an agreement at a facility.

(b) Prepayment agreements do not replace an order or decree but are preliminary to or work in conjunction with such documents. Persons entering into a prepayment agreement shall enter into good faith negotiations on an agreed order or consent decree governing remedial actions at the facility in accordance with the procedures described in WAC 173-340-520(1) or 173-340-530(2). Failure to successfully conclude such negotiations may result in the department withdrawing from the prepayment agreement or initiating enforcement action.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-600 Public notice and participation.

(1) Purpose. Public participation is an integral part of the department's responsibilities under the Model Toxics Control Act. The department's goal is to provide the public with timely information and meaningful opportunities for participation ~~((which))~~ that are commensurate with each site. The department will meet this goal through a public participation program that includes: The early planning and development of a site-specific public participation plan; the provision of public notices; a site register; public meetings or hearings; and the participation of regional citizens' advisory committees.

(2) Other requirements. In addition to the requirements in this section, other sections of this chapter contain specific notice requirements that must also be followed. See WAC 173-340-720 for notice requirements on an off-property conditional point of compliance and cleanup levels for ground water flowing into nearby surface water; WAC 173-340-545 for public notice requirements for private rights of action; WAC 173-340-440 for local government notification requirements for restrictive covenants; and WAC 173-340-310 for public notice requirements for emergency or interim actions required by the department as a result of an initial investigation.

(3) Criteria. In order to promote effective and meaningful public participation, the department may determine that public participation opportunities in addition to those specifically required by chapter 70.105D RCW, or this chapter, are appropriate and should be provided. In making this determination, the department may consider:

(a) Known or potential risks to human health and the environment that could be avoided or reduced by providing information to the public;

(b) Public concerns about the facility;

(c) The need to contact the public in order to gather information about the facility;

(d) The extent to which the public's opportunity to affect subsequent departmental decisions at the facility may be limited or foreclosed in the future;

(e) The need to prevent disclosure of confidential, unverified, or enforcement-sensitive information;

(f) The routine nature of the contemplated remedial action; and

(g) Any other factors as determined by the department.

~~((3))~~ (4) Public notice. Whenever public notice is required by chapter 70.105D RCW, the department shall, at a minimum, provide or require notice as described in this section except as specified for the biennial report in WAC 173-340-340.

(a) Request for notice. Notice shall be mailed to persons who have made a timely request. A request for notice is timely if received ~~((prior to))~~ before or during the public comment period for the current phase of remedial action at the facility. However, the receipt of a request for notice shall not require the department to extend the comment period associated with the notice.

(b) Mail. Notice shall be mailed to persons who reside within the potentially affected vicinity of the proposed action. The potentially affected vicinity shall include all property ~~((adjoining))~~ within and contiguous to the site and any other area that the department determines to be directly affected by the proposed action.

(c) Newspaper publication. Notice of the proposed action shall be published in the newspaper of largest circulation in the city or county of the proposed action, by one or more of the following methods: Display ad; legal notice; or any other appropriate format, as determined by the department.

(d) Other news media. Notice of the proposed action shall be mailed to any other news media ~~((which))~~ that the department determines to be appropriate. The department may consider how a medium compares with the newspaper of largest circulation in terms of: Audience reached; timeliness; adequacy in conveying the particular information in the notice; cost; or other relevant factors.

(e) Comment periods. All public notices shall indicate the public comment period on the proposed action. Unless stated otherwise, comment periods shall be for thirty days at a minimum. The department may extend the public comment period, as appropriate.

(f) Combining public comment requirements. Whenever reasonable, the department shall consolidate public notice and opportunities for public comment under this chapter with

public notice and comment requirements under other laws and regulations.

~~((4))~~ (g) Site-specific risk assessment. For public notices describing cleanup plans that use site-specific risk assessment or would restrict future site or resource use, the public notice shall specifically identify the restrictions and invite comments on these elements of the cleanup plan. This notice shall also include a statement indicating the availability of public participation grants and of the department's Citizen Technical Advisor for providing technical assistance to citizens on site-specific risk assessment and other issues related to site remediation.

(5) Public meetings. During any comment period announced by a public notice issued under this chapter, if ten or more persons request a public meeting on the subject of the public notice, the department shall hold a public meeting for the purpose of receiving comments.

~~((5))~~ (6) Additional methods. In addition to "public notice" required by chapter 70.105D RCW, or this chapter, the department may use any of the following methods to provide information to the public:

(a) Press releases;

(b) Fact sheets;

(c) Public meetings;

(d) Publications;

(e) Personal contact by department employees;

(f) Posting signs at the facility;

(g) Notice in the Site Register;

(h) Notice through the Internet;

(i) Any other methods as determined by the department.

~~((6))~~ (7) Site Register. The department shall regularly publish, make available electronically, and maintain a publication called the Site Register, ((giving)) which provides notice of the following:

(a) Determinations of no further action under WAC 173-340-320;

(b) Results of site hazard rankings;

(c) Availability of annual and biennial reports;

(d) Issuance of enforcement orders, agreed orders, or proposed consent decrees;

(e) Public meetings or hearings;

(f) Scoping notice of department-conducted ~~((state))~~ remedial investigation/feasibility study;

(g) Availability of ~~((state))~~ remedial investigation/feasibility study reports and draft and final cleanup plans;

(h) Change in site status or placing sites on or removing sites from the hazardous sites list under WAC 173-340-330;

(i) Availability of engineering design reports under WAC 173-340-400;

(j) Schedules developed under WAC 173-340-140;

(k) Reports of independent cleanup actions received under WAC 173-340-300;

(l) ~~((Commencement))~~ Beginning of negotiations or discussions under WAC 173-340-520 and 173-340-530;

(m) Deadline extensions or missed deadlines under WAC 173-340-140; ~~((and))~~

(n) A summary of any notices received under WAC 173-340-545 for cleanup actions and interim actions being conducted where a private right of action is anticipated;

(o) A list of available department publications, including guidance, technical reports and policies pertinent to remedial actions;

(p) The results of department review of reports on independent remedial actions submitted under WAC 173-340-515; and

(q) Any other notice that the department ((deems)) considers appropriate for inclusion.

~~((7))~~ (8) Evaluation. As part of requiring or conducting a remedial action at any facility, the department shall evaluate public participation needs at the facility~~((, including))~~. The evaluation shall include an identification of the potentially affected vicinity for the remedial action. For sites where site-specific risk assessment is used, the department shall also evaluate public interest in the site, significant public concerns regarding future site use, and public values to be addressed through the public participation plan.

~~((8))~~ (9) Public participation plans.

(a) Scope. The public participation plans required by this section are intended to encourage a coordinated and effective public involvement tailored to the public's needs at a particular facility. The scope of a plan shall be commensurate with the nature of the proposed remedial actions; the level of public concern; and the risks posed by the facility.

(b) Early planning encouraged. In order to develop an appropriate plan, the department or potentially liable person (if submitting a plan to the department) should engage in an early planning process to assess the public participation needs at the facility. This process may include identifying and conferring with individuals, community groups, local governments, tribes, public agencies, or any other organizations that may have an interest in or knowledge of the facility.

(c) Plan development. The department shall develop the plan, or work with the potentially liable person to develop the plan. If a plan already exists for a facility, the department shall consider whether the existing plan is still appropriate or whether the plan should be amended. For example, a plan originally developed to address a ~~((state))~~ remedial investigation/feasibility study may need to be amended to address implementation phases.

(d) Plans required. As part of requiring or conducting a remedial action, except emergency actions, at any site that has been assigned a hazard ranking score, the department shall ensure that a public participation plan is developed and implemented. The department may also require the development of a public participation plan ~~((for facilities which have not been assigned a hazard ranking score))~~ as part of an agreed order (see WAC 173-340-530) or consent decree ~~((with a potentially liable person))~~ (see WAC 173-340-520) for facilities that have not been assigned a hazard ranking score.

(e) If the variables proposed to be modified in a site-specific risk assessment or alternative reasonable maximum exposure scenario may affect the significant public concerns regarding future land uses and exposure scenarios, then the department shall assure appropriate public involvement and comment opportunities will occur as identified in the public participation plan.

(f) Plan as part of order or decree. A potentially liable person will ordinarily be required to submit a proposed pub-

lic participation plan as part of its request for an agreed order or a consent decree. If a plan already exists for the facility, the potentially liable person may either resubmit the existing plan with any proposed amendments or submit an entirely new proposed plan. The proposed plan may be revised during the course of discussions or negotiations on the agreed order (see WAC 173-340-530) or consent decree (see WAC 173-340-520).

The final public participation plan may become part of the agreed order or consent decree.

~~((f))~~ (g) Contents. The public participation plan shall include the following:

(i) Applicable public notice requirements and how these will be met, including: When public notice will occur; the length of the comment periods accompanying each notice; the potentially affected vicinity and any other areas to be provided notice, to the extent known.

(ii) Information repositories. The plan should identify at least one location where the public can review information about the remedial action. Multiple locations may be appropriate.

(iii) Methods of identifying the public's concerns. Such methods may include: Interviews; questionnaires; meetings; contacts with community groups or other organizations ~~((which))~~ that have an interest in the site; establishing citizen advisory groups for sites; or obtaining advice from the appropriate regional citizens' advisory committee.

(iv) Methods of addressing the public's concerns and conveying information to the public. These may include any of the methods listed in subsection ~~((5))~~ (6) of this section.

(v) Coordination of public participation requirements. The plan should identify any public participation requirements of other applicable federal, state or local laws, and address how such requirements can be coordinated. For example, if Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) applies to the proposed action, the plan should explain how CERCLA and this chapter's public comment periods will be coordinated.

(vi) Amendments to the plan. The plan should outline the process for amending the plan. Any amendments must be approved by the department.

(vii) Citizen technical advisor: A statement indicating the availability of the department's citizen technical advisor for providing technical assistance to citizens on issues related to the investigation and cleanup of the site.

(viii) Any other elements that the department determines to be appropriate for inclusion in the final public participation plan.

~~((g))~~ (h) Implementation. The department shall retain approval authority over the actions taken by a potentially liable person to implement the plan.

~~((9))~~ (10) Consent decrees. In addition to any other applicable public participation requirements, the following shall be required for consent decrees.

(a) Public participation plan. A ~~((public-participation))~~ plan ~~((which meets))~~ meeting the requirements of subsection ~~((8))~~ (9) of this section shall be developed when required by subsection ~~((8))~~ (9)(d) of this section.

(b) Notice of negotiations. When the department decides to proceed with negotiations it shall place a notice in the *Site Register* advising the public that negotiations have ~~((commenced))~~ begun. This notice shall include the name of the facility, a general description of the subject of the ~~((order))~~ consent decree and the deadlines for negotiations.

(c) Notice of proposed decree. The department shall provide or require public notice of proposed consent decree. The notice may be combined with notice of other documents under this chapter, such as a cleanup action plan, or under other laws. The notice shall briefly:

(i) Identify and generally describe the facility;

(ii) Identify the person(s) who are parties to the consent decree;

(iii) Generally describe the remedial action proposed in the proposed consent decree, including institutional controls and permit exemptions authorized under RCW 70.105D.090;

(iv) Indicate the date, place, and time of the public hearing on the proposed consent decree. Where a public hearing is not planned, indicate that a public hearing will only be held if at least ten persons request one and the procedures for requesting a public hearing; and

(v) Invite the public to comment at the public hearing (if applicable) or in writing. The public comment period shall run for at least thirty days from the date of the issuance of the notice.

(d) Public hearing. The department shall hold a public hearing on the proposed consent decree for the purpose of providing the public with an opportunity to comment whenever ten or more persons request a public hearing or whenever the department determines a public hearing is necessary.

(e) Revisions. If the state and the potentially liable person agree to substantial changes to the proposed consent decree, the department shall provide additional public notice and opportunity to comment.

(f) Extensions. The department shall publish in the next *Site Register* the extension of deadlines for designated high priority sites.

~~((10))~~ (11) Agreed orders. In addition to any other applicable public participation requirements, the following shall be required for agreed orders under WAC 173-340-530.

(a) Public participation plan. A plan meeting the requirements of subsection ~~((8))~~ (9) of this section shall be developed when required by subsection ~~((8))~~ (9)(d) of this section.

(b) Notice of discussions. When the department decides to proceed with discussions it shall place a notice in the *Site Register* advising the public that discussions have commenced. This notice shall include the name of the facility, a general description of the subject of the order and the deadlines for discussions.

(c) Notice of agreed orders. Public notice shall be provided by the department for any agreed order. For all agreed orders, notice shall be mailed no later than three days after the issuance of the agreed order. For all agreed orders ~~((covering a state remedial investigation/feasibility study))~~, the comment period shall be at least thirty days ~~((and shall be completed before the agreed order becomes effective))~~. ~~((For other agreed orders,))~~ The agreed order may be effective

before the comment period is over, unless the department determines it is in the public interest to complete the public comment period ~~((prior to))~~ before the effective date of the agreed order. The department may determine that it is in the public interest to provide public notice ~~((prior to))~~ before the effective date of any agreed order or to hold a public meeting or hearing on the agreed order. ~~((This))~~ Notice of agreed orders shall briefly:

(i) Identify and generally describe the facility;

(ii) Identify the person(s) who are parties to the agreed order;

(iii) Generally describe the remedial action proposed in the proposed agreed order, including institutional controls and permit exemptions authorized under RCW 70.105D.090; and

(iv) Invite the public to comment on the proposed agreed order.

(d) Revisions. If the department and the potentially liable person agree to substantial changes to the proposed agreed order, the department shall provide additional public notice and opportunity to comment.

(e) Extensions. The department shall publish in the next *Site Register* the extension of deadlines for designated high priority sites.

~~((11))~~ (12) Enforcement orders. In addition to any other applicable public participation requirements, the department shall provide public notice of all enforcement orders. Except in the case of emergencies, notice shall be mailed no later than three days after the date of the issuance of the order. In emergencies, notice shall be mailed no later than ten days after the issuance of the order.

(a) Contents of notice. All notices shall briefly:

(i) Identify and generally describe the facility;

(ii) Identify the person(s) who are parties to the order;

(iii) Generally describe the terms of the proposed order, including institutional controls and permit exemptions authorized under RCW 70.105D.090; and

(iv) Invite the public to comment on the proposed order.

(b) The department may amend the order on the basis of public comments. The department shall provide additional public notice and opportunity to comment if the order is substantially changed.

~~((12 State))~~ (13) Remedial investigation/feasibility study. In addition to any other applicable public participation requirements, the following shall be required during a ~~((state))~~ remedial investigation/feasibility study.

(a) Scoping. When the department elects to perform a ~~((state))~~ remedial investigation/feasibility study, the department shall provide public notice and an opportunity to comment on the scope of the ~~((state))~~ remedial investigation/feasibility study ~~((will be provided))~~.

(b) Extensions. The department shall publish in the next *Site Register* the extension of deadlines for designated high priority sites.

(c) Report. The department shall provide or require public notice of ~~((state))~~ remedial investigation/feasibility study reports prepared under WAC 173-340-350. This public notice may be combined with public notice of the draft

cleanup action plan. At a minimum, public notice shall briefly:

(i) Describe the site and ((state)) remedial investigation/feasibility study results;

(ii) If available, identify the department's ((selected)) proposed cleanup action and provide an explanation for its selection;

(iii) Invite public comment on the report. The public comment period shall extend for at least thirty days from the date of mailing of the notice.

~~((13))~~ (14) Selection of cleanup actions. In addition to any other applicable public participation requirements, the department shall:

(a) Provide a notice of availability of draft or final cleanup action plans and a brief description of the proposed or selected alternative in the *Site Register*;

(b) Provide public notice of the draft cleanup action plan. A notice of a draft cleanup plan may be combined with notice on the ((state)) remedial investigation/feasibility study. Notice of a draft cleanup action plan may be combined with notice on a draft consent decree or on an order. At a minimum, public notice shall briefly:

(i) Describe the site;

(ii) Identify the department's proposed cleanup action and provide an explanation for its selection;

(iii) Invite public comment on the draft cleanup action plan. The public comment period shall run for at least thirty days from the date of ((issuance)) publication of the public notice.

~~((14))~~ (c) Whenever the cleanup action plan proposes a restrictive covenant as part of the draft cleanup plan, provide notice to and seek comments from the city or county department with land use planning authority for real property subject to the restrictive covenant. The purpose of this notification is to solicit comment on whether the proposed restrictive covenant is consistent with any current or proposed land use plans.

(15) Cleanup action implementation. In addition to any other applicable public participation requirements, the following shall be required during cleanup action implementation.

(a) Public notice and opportunity to comment on any plans prepared under WAC 173-340-400 that represent a substantial change from the cleanup action plan.

(b) When the department conducts a cleanup action, public notice and an opportunity to comment shall be provided on the engineering design report and notice shall be given in the *Site Register*.

~~((15))~~ (16) Routine cleanup and interim actions. In addition to any other applicable public participation requirements, the following will be required for routine cleanup actions and interim actions.

(a) Public notice shall be provided for any proposed routine cleanup or interim actions (~~under WAC 173-340-130 or 173-340-430~~). This public notice shall be combined with public notice of an order or settlement whenever practicable.

(b) At a minimum, public notice shall briefly:

(i) Describe the site;

(ii) Identify the proposed action, including institutional controls and the permit exemptions authorized under RCW 70.105D.090;

(iii) Identify the likely or planned schedule for the action;

(iv) Reference any planning documents prepared for the action;

(v) Identify department staff who may be contacted for further information; and

(vi) Invite public comment on the routine cleanup or interim action. The public comment period shall extend for at least thirty days from the date of the mailing of notice.

(17) Public participation grants. RCW 70.105D.070(4) requires funds be allocated for public participation grants to persons, including groups who may be adversely affected by a release or threatened release of a hazardous substance. Persons interested in applying for such grants are encouraged to contact the department to learn about available funding, grant application procedures and deadlines. See chapter 173-321 WAC for additional information on public participation grants.

(18) Technical assistance. There is created within the department a citizen technical advisor office to provide independent technical assistance to citizens concerning the Model Toxics Control Act and remedial actions occurring under the act. This office will be established upon the effective date of this rule revision and continue for three years. Before the end of the three-year period, the department will work with citizen and business representatives to evaluate the effectiveness of this office and to determine whether the office should continue. The costs of this office shall be recovered by the department as provided for in WAC 173-340-550.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-610 Regional citizens' advisory committees. (1) The department shall establish regional citizens' advisory committees as part of a public participation program. The regional citizens' advisory committees are intended to promote meaningful and effective public involvement in the department's remedial action program under chapter 70.105D RCW. The committees will advise the department as to the concerns of citizens locally and regionally regarding the remedial actions within each committee's region, with emphasis on issues that affect the region as a whole, rather than site-specific concerns.

(2) Location. There shall be a regional citizens' advisory committee representing each geographic region of the state served by a regional office of the department.

(3) Membership. At any time, each committee shall have no fewer than five and no more than twelve members. The director shall, no later than July 1, 1990, appoint five members to each committee to represent citizens' interests in the region. These members shall serve three-year terms that may be renewed at the director's discretion. These members should represent citizen interests in the region.

(a) The director may appoint up to seven additional members to represent communities that may be affected by the remedial actions within each region. These members shall

serve two-year terms that may be renewed at the director's discretion.

(b) At no time shall more than twenty-five percent of the membership of any committee consist of persons who are elected or appointed public officials or their representatives.

(c) The department shall advise the public as to whether any vacancies exist on the committees, and shall accept applications from interested citizens.

(d) The following persons shall not be eligible to serve on any committee:

(i) Persons whom the department has found are potentially liable persons under WAC 173-340-500 with regard to any facility that is currently the subject of department investigative, remedial or enforcement actions, not including compliance monitoring;

(ii) Agents or employees of such potentially liable persons as described in (d)(i) of this subsection; and

(iii) Agents or employees of the department.

(e) A member shall refrain from participating in a committee matter if that member for any reason cannot act fairly and in the public interest with regard to that matter.

(f) The director may dismiss a member for cause in accordance with the terms of the regional citizens' advisory committee charter.

(4) Meetings. The committees shall meet at least twice a year at the regional offices or elsewhere as agreed upon by a committee and the department. Appropriate department staff may attend these meetings. The department shall brief the committees on the program's major planned and ongoing activities for the year.

(a) The department and the committees may agree to additional meetings.

(b) Each committee will designate one of its members to serve as chair. The committee chairs shall meet every year with the program manager or his/her designee.

(c) All committee meetings shall be open to the public. The department shall inform the public of committee meetings.

(5) Resources ~~((to be))~~ allocated to the committees.

(a) The department shall determine, after consulting with the committees, the amount of staff time and other department resources that shall be available to the committees for each biennium.

(b) The department shall designate staff to work with the committees.

(c) Members shall be reimbursed for travel expenses (as provided for in chapter 43.03 RCW) for any meetings approved by the department.

(6) Responsibilities. The committees are directed to:

(a) Meet at least twice annually;

(b) Inform citizens within each region as to the existence of the committees and their availability as a resource;

(c) Review the department's biennial program priorities, and advise the department of citizen concerns regarding the program priorities;

(d) Advise the department ~~((on a timely basis of citizen concerns regarding investigative or remedial activities within each region, and where possible, suggest ways in which the department can address those concerns))~~ of community concerns about the cleanup program's activities and develop pro-

posals for addressing these concerns. Committees may use issues at specific sites as a foundation for understanding regional issues;

(e) Annually prepare a brief report to the department describing:

(i) Major citizen concerns that have been brought to the committee's attention during the past year;

(ii) Any committee proposals or recommendations to address these concerns;

(iii) The committee's plans for the coming year; and

(iv) Any other information or issues which the committee believes appropriate for inclusion.

~~((7))~~ (f) The committees are encouraged to work with the department and the public to develop additional committee goals or responsibilities.

PART VII—CLEANUP STANDARDS

AMENDATORY SECTION (Amending Order 94-37, filed 1/26/96, effective 2/26/96)

WAC 173-340-700 Overview of cleanup standards.

(1) **Purpose.** This section provides an overview of the methods for establishing cleanup standards that apply to a release or threatened release of a hazardous substance at a site. If there are any inconsistencies between this section and any specifically referenced section, the referenced section shall govern.

(2) ~~((Cleanup standards versus selection of cleanup actions.))~~ **Explanation of term "cleanup level."** A cleanup level is the concentration of a hazardous substance in soil, water, air or sediment that is determined to be protective of human health and the environment under specified exposure conditions. Cleanup levels, in combination with points of compliance, typically define the area or volume of soil, water, air or sediment at a site that must be addressed by the cleanup action.

(3) **Explanation of term "cleanup standards."** Cleanup standards consist of the following:

(a) Cleanup levels for hazardous substances present at the site;

(b) The location where these cleanup levels must be met (point of compliance); and

(c) Other regulatory requirements that apply to the site because of the type of action and/or location of the site ("applicable state and federal laws").

(4) **Relationship between cleanup standards and cleanup actions.**

(a) Cleanup standards are identified for the particular hazardous substances at a site and the specific areas or pathways, such as land or water, where humans and the environment can become exposed to these substances. This part provides uniform methods state-wide for identifying cleanup standards and requires that all cleanups under the act meet these standards. The actual degree of cleanup may vary from site to site and will be determined by the cleanup action alternative selected under WAC ~~((173-340-360))~~ 173-340-350 through 173-340-390. ~~((Establishing cleanup standards for individual sites requires the specification of the following:~~

~~(i) Hazardous substance concentrations that protect human health and the environment ("cleanup levels");~~

~~(ii) The location on the site where those cleanup levels must be attained ("points of compliance"); and~~

~~(iii) Additional regulatory requirements that apply to a cleanup action because of the type of action and/or the location of the site. These requirements are specified in applicable state and federal laws and are generally established in conjunction with the selection of a specific cleanup action.)~~

(b) For most sites, there are several cleanup technologies or combinations of cleanup technologies ("cleanup action alternatives") that may be used to comply with cleanup standards at individual sites. Other parts of this rule govern the process for planning and deciding on the cleanup action to be taken at a site. ~~((For example:)) This may include establishing "remediation levels," or the concentrations of hazardous substances above which a particular cleanup technology will be applied. See WAC 173-340-350 ((State remedial investigation and feasibility study) (RI/FS) specifies the studies that are prepared to define the nature and extent of contamination ("RI") and to identify and evaluate cleanup action alternatives ("FS"). WAC 173-340-360 (Selection of cleanup actions) specifies the criteria for selecting the preferred alternative)) through 173-340-390. WAC 173-340-355 contains detailed information on establishing remediation levels. WAC 173-340-410 specifies the monitoring required to ((assure)) ensure that the remedy is effective.~~

~~(c) ((The department recognizes that cleanup actions selected under WAC 173-340-360 may involve)) Where a cleanup action involves containment of soils with hazardous substances((--In these cases)) above cleanup levels, the cleanup action may be determined to comply with cleanup standards, provided the compliance monitoring program is designed to ensure the long-term integrity of the containment system, and the other requirements for containment ((technologies in WAC 173-340-360(8))) in this chapter are met.~~

~~((3) Three basic methods for establishing cleanup levels:))~~

(5) Methods for setting cleanup levels. The first step in setting cleanup levels is to identify the nature of the contamination, the potentially contaminated media, the current and potential pathways of exposure, the current and potential receptors, and the current and potential land and resource uses. A conceptual site model may be developed as part of this scoping process. Cleanup levels may then be established for each media. Both the conceptual site model and cleanup levels may be refined as additional information is collected during the remedial investigation/feasibility study. See WAC 173-340-708(3) for additional information on how to determine current and potential future land and resource uses for the conceptual site model. These rules provide three approaches for establishing cleanup levels:

(a) **Method A: ARARs and Tables.** On some sites, the cleanup action may be routine (WAC ~~((173-340-130))~~ 173-340-200) or may involve relatively few hazardous substances. Under Method A, cleanup levels ~~((for hazardous substances are established))~~ at these sites are set at concentrations at least as stringent as concentrations specified in appli-

cable state and federal laws (ARARs) and Tables ~~((1, 2, or 3))~~ 720-1, 740-1, and 745-1 of this chapter.

Method A cleanup levels for hazardous substances ~~that are deemed indicator hazardous substances at the site under WAC 173-340-708(2) and are not addressed under applicable state and federal laws or Tables ((1, 2, or 3 are))~~ 720-1, 740-1, and 745-1 must be established at concentrations which do not exceed the natural background concentration or the practical quantitation limit ~~((for the substance in question)), whichever is higher.~~

For soil contamination, the potential impact of hazardous substances on terrestrial ecological receptors must be evaluated under WAC 173-340-7490 through 173-340-7494. Specifically, either an exclusion must be established for the site under WAC 173-340-7491 or a terrestrial ecological evaluation must be conducted under WAC 173-340-7492 or 173-340-7493. The terrestrial ecological evaluation may result in a more stringent Method A soil cleanup level than is required to protect human health.

Except where institutional controls are required by WAC 173-340-440(4), site cleanups that achieve Method A cleanup levels may be used without future restrictions on the property due to residual levels of contamination.

(b) **Method B: ((Standard)) Universal method.** Method B is the ~~((standard))~~ universal method for determining cleanup levels for ~~((ground water, surface water, soil, and air))~~ all media at all sites. Under Method B, cleanup levels for individual hazardous substances are established using applicable state and federal laws ~~((or))~~ and the risk equations and other requirements specified in WAC 173-340-720 through ~~((173-340-750))~~ 173-340-760.

Method B is divided into two tiers: Standard and modified. Standard Method B uses generic default assumptions to calculate cleanup levels. Modified Method B provides for the use of chemical-specific or site-specific information to change selected default assumptions, within the limitations allowed in WAC 173-340-708. Modified Method B may be used to establish cleanup levels.

Modified Method B may also be used in a quantitative risk assessment to help assess the protectiveness of a remedy by modifying input parameters as described in WAC 173-340-720 through 173-340-750 or by using other modifications that meet the requirements of WAC 173-340-702 and 173-340-708. See WAC 173-340-355 and 173-340-357 for more information on remediation levels and quantitative risk assessment.

For individual carcinogens, both standard and modified Method B cleanup levels are based upon the upper bound of the estimated excess lifetime cancer risk of one in one million (1×10^{-6}).

For individual noncarcinogenic substances, both standard and modified Method B cleanup levels are set at concentrations which are anticipated to result in no acute or chronic toxic effects on human health ~~((and the environment))~~ (that is, hazard quotient of one (1) or less) and no significant adverse effects on the propagation of aquatic and terrestrial organisms.

Where a hazardous waste site involves multiple hazardous substances and/or multiple pathways of exposure, then

standard and modified Method B cleanup levels for individual substances must be ((modified)) adjusted downward for additive health effects in accordance with the procedures in WAC 173-340-708((-Under this method,)) if the total excess lifetime cancer risk for a site ((shall not)) exceeds one in one hundred thousand (1×10^{-5}) ((and)) or the hazard index for substances with similar noncarcinogenic toxic effects ((shall not)) exceeds one (1).

For soil contamination, the potential impact of hazardous substances on terrestrial ecological receptors must be evaluated under WAC 173-340-7490 through 173-340-7494. Specifically, either an exclusion must be established for the site under WAC 173-340-7491 or a terrestrial ecological evaluation must be conducted under WAC 173-340-7492 or 173-340-7493. The terrestrial ecological evaluation may result in a more stringent Method B soil cleanup level for the site than is required to protect human health.

Except where institutional controls are required by WAC 173-340-440(4), site cleanups that achieve Method B cleanup levels may be used without future restrictions on the property due to residual levels of contamination.

(c) Method C: Conditional method. Compliance with cleanup levels developed under ((the)) Method A or B may be impossible to achieve or may cause greater environmental harm. In those situations, Method C cleanup levels for individual hazardous substances may be established ((on the basis of applicable state and federal laws and a site specific risk assessment)) for surface water, ground water, and air. Method C industrial soil and air cleanup levels may also be established at industrial properties ((which)) that meet the criteria in WAC 173-340-745.

Under Method C, cleanup levels for individual hazardous substances are established using applicable state and federal laws and the risk equations and other requirements specified in WAC 173-340-720 through 173-340-760. Method C is divided into two tiers: Standard and modified. Standard Method C uses generic default assumptions to calculate cleanup levels. Modified Method C provides for the use of chemical-specific or site-specific information to change selected default assumptions, within the limitations allowed in WAC 173-340-708. Modified Method C may be used to establish cleanup levels.

Modified Method C may also be used in a quantitative risk assessment to help assess the protectiveness of a remedy by modifying input parameters as described in WAC 173-340-720 through 173-340-750 or by using other modifications that meet the requirements of WAC 173-340-702 and 173-340-708. See WAC 173-340-355 and 173-340-357 for more information on remediation levels and quantitative risk assessment.

For individual carcinogens, both standard and modified Method C cleanup levels are based upon the upper bound of the estimated lifetime cancer risk of one in one hundred thousand (1×10^{-5}).

For individual noncarcinogenic substances, both standard and modified Method C cleanup levels are set at concentrations which are anticipated to result in no acute or chronic toxic effects on human health (that is, hazard quotient of one

(1) or less) and no significant adverse effects on the protection and propagation of aquatic and terrestrial organisms.

Where a hazardous waste site involves multiple hazardous substances and/or multiple pathways of exposure, then both standard and modified Method C cleanup levels for individual substances must be ((modified)) adjusted downward for additive health effects in accordance with the procedures in WAC 173-340-708((-Under this method,)) if the total excess lifetime cancer risk for a site ((shall not)) exceeds one in one hundred thousand (1×10^{-5}) ((and)) or the hazard index for substances with similar noncarcinogenic toxic effects ((shall not)) exceeds one (1).

((4- Additional)) For soil contamination, the potential impact of hazardous substances on terrestrial ecological receptors must be evaluated under WAC 173-340-7490 through 173-340-7494. Specifically, either an exclusion must be established for the site under WAC 173-340-7491 or a terrestrial ecological evaluation must be conducted under WAC 173-340-7492 or 173-340-7493. The terrestrial ecological evaluation may result in a more stringent Method C soil cleanup level for the site than is required to protect human health.

Site cleanups establishing Method C cleanup levels must have restrictions placed on the property (institutional controls) to ensure future protection of human health and the environment.

(6) Requirements for setting cleanup levels. Several requirements apply to cleanups under any of the three ((basic)) methods. Some of these requirements, such as the identification of applicable state and federal laws, describe analyses used along with Methods A, B or C in order to set cleanup levels for particular substances at a site. Others describe the technical procedures to be used.

(a) Applicable state and federal laws. RCW 70.105D.030 (2)(d) requires the cleanup standards in these rules to be "at least as stringent as all applicable state and federal laws." In addition to establishing minimum requirements for cleanup standards, applicable state and federal laws may also impose certain technical and procedural requirements for performing cleanup actions. These requirements are described in WAC 173-340-710 and are similar to the "ARAR" (applicable, relevant and appropriate requirements) approach of the federal superfund law. Sites that are cleaned up under an order or decree may be exempt from obtaining a permit under certain other laws but they must still meet the substantive requirements of these other laws. (See WAC 173-340-710(9).)

(b) Cross-media contamination. In some situations, migration of hazardous substances from one medium may cause contamination in a second media. For example, the release of hazardous substances in soil may cause ground water contamination. Under Methods A, B, and C, cleanup levels must be established at concentrations ((which)) that prevent violations of cleanup levels for other media ((following implementation of the cleanup action)).

(c) Risk assessment procedures. The analyses performed under Methods B and C use several ((factors)) default assumptions for defining cleanup levels for carcinogens and noncarcinogens. The individual ((factors)) default assump-

tions and procedures for modifying these ((factors)) assump-
tions based on ((new scientific)) site-specific information are
specified in WAC 173-340-708 and 173-340-720 through
173-340-750. WAC 173-340-708 also provides rules for use
of indicator hazardous substances. The standards for review
of new scientific information are described in WAC 173-340-
702 (14), (15) and (16).

(d) Natural background and analytical consider-
ations. ((Cleanup levels shall not exceed concentrations
established under methods A, B, or C except where the natu-
ral background concentration is greater than the cleanup level
established under those methods. In such)) In some cases,
cleanup levels calculated using the methods specified in this
chapter are less than natural background levels or levels that
can be reliably measured. In those situations, the cleanup
level shall be established at a concentration equal to the prac-
tical quantitation limit or natural background concentration,
whichever is higher. See WAC 173-340-707 and 173-340-
709 for additional information.

((5) Threshold criteria for all cleanup actions. WAC
173-340-360 specifies that all cleanup actions conducted
under this chapter shall protect human health and the envi-
ronment, comply with cleanup standards and applicable state
and federal laws, and provide for compliance monitoring.
These are the threshold criteria and all cleanup actions must
meet these criteria regardless of other factors such as cost or
technical limitations.

(6) Measuring compliance.) (7) Procedures for dem-
onstrating compliance with cleanup standards. Setting
cleanup standards also involves being able to demonstrate
that they have been met. This involves specifying where on
the site the cleanup levels must be met ("points of compli-
ance"), how long it takes for a site to meet cleanup levels
("restoration time frame"), and conducting sufficient moni-
toring to demonstrate that the cleanup standards have been
met and will continue to be met in the future. The provisions
for establishing points of compliance are in WAC 173-340-
720 through 173-340-750. The provisions for establishing
restoration time frames are in WAC 173-340-360. The com-
pliance monitoring plan prepared under WAC 173-340-410
specifies precisely how these are measured for each site.
((Where cleanup levels are below the practical quantitation
limit, compliance with cleanup standards will be based upon
the practical quantitation limit.

(7) Administrative principles for cleanup standards.

(a) Remedial actions under this chapter shall be con-
ducted in a manner that is consistent with this section. This
section shall be used in combination with WAC 173-340-
430, the more specific sections in Part VII of this chapter and
WAC 173-340-360.

(b) Establishing cleanup standards and selecting an
appropriate cleanup action involves many technical and pub-
lic policy decisions. This chapter is intended to constrain the
range of decisions needed to be made on individual sites to
promote expeditious cleanups.

(c) The act contains policies which state, in part, each
person has a fundamental and inalienable right to a healthful
environment and it is essential that sites be cleaned up well.
Consistent with these policies, cleanup standards under this

chapter shall be established which provide conservative esti-
mates of human health and environmental risks which protect
susceptible individuals as well as the general population.

(d) Cleanup standards under this chapter shall be estab-
lished which protect human health and the environment for
current and potential future site and resource uses.

(e) Cleanup actions that achieve cleanup levels under
methods A, B or C (as applicable) and comply with applica-
ble state and federal laws shall be presumed to be protective
of human health and the environment.

(f) Except as provided for in applicable state and federal
laws, cost shall not be a factor in determining what cleanup
level is protective of human health and the environment. In
addition, where specifically provided for in this chapter, cost
may be appropriate for certain other determinations related to
cleanup standards such as point of compliance. Cost shall,
however, be considered when selecting an appropriate
cleanup action.

(g) At most sites, there is more than one hazardous sub-
stance and more than one pathway for hazardous substances
to get into the environment. For many sites there is more than
one technology that could address each of these. When eval-
uating cleanup action alternatives it is appropriate to consider
a representative range of technologies that could address each
of these as well as different combinations of these technolo-
gies to accomplish the overall site cleanup.

(h) The cleanup of a particular media of a site will often
affect other media at the site. These cross media impacts
shall be considered when establishing cleanup standards and
selecting a cleanup action. Cleanup actions conducted under
this chapter shall use appropriate engineering controls or
other measures to minimize these cross media impacts.

(i) In general, cleanup levels must be met throughout a
site before the site will be considered to be clean. A remedy
that leaves hazardous substances on a site in excess of
cleanup levels may qualify as a cleanup action as long as the
remedy is protective of human health and the environment,
meets cleanup levels at specified points of compliance, com-
plies with applicable state and federal laws, provides for ade-
quate monitoring, and incorporates appropriate institutional
controls. However, these rules are intended to promote thor-
ough cleanups rather than long term partial cleanups or con-
tainment measures.) At sites where remediation levels are
used, the compliance monitoring plan will also need to
describe the performance monitoring to be conducted to dem-
onstrate the remediation levels have been achieved.

(8) Specific procedures for setting cleanup levels at
petroleum contaminated sites. In addition to the other
requirements in this section, this chapter provides for the fol-
lowing specific procedures to establish cleanup levels at sites
where there has been a release of total petroleum hydrocar-
bons (TPH) and hazardous substances associated with a
release of TPH.

(a) For soil contamination, the potential impact of TPH
on terrestrial ecological receptors must be evaluated under
WAC 173-340-7490 through 173-340-7494. Specifically,
either an exclusion must be established for the site under
WAC 173-340-7491 or a terrestrial ecological evaluation
must be conducted under WAC 173-340-7492 or 173-340-

7493. The terrestrial ecological evaluation may result in a more stringent soil cleanup level than is required to protect human health.

(b) It is necessary to analyze for and evaluate certain carcinogenic and noncarcinogenic hazardous substances that may be associated with a release of TPH. These are identified in Table 830-1. In cases where the cleanup level for one or more of these associated hazardous substances is exceeded but the TPH cleanup level is not, the cleanup level shall be based on the associated hazardous substance.

(i) Method A. Method A may be used to establish cleanup levels for TPH and associated hazardous substances at qualifying sites (see WAC 173-340-704). At these sites, the presence, location and concentration of TPH may be established by using the NWTPH method described under Method 6 (see WAC 173-340-830 (3)(a)(vi)). The NWTPH method is a simplified, and relatively inexpensive, analytical method for evaluating TPH. Method A cleanup levels have been determined for four common petroleum mixtures: Gasoline range organics (GRO), diesel range organics (DRO), heavy oils, and electrical insulating mineral oil, as well as many hazardous substances that may be associated with the TPH. A site owner may decide to use Method A for some substances or media and Method B or C for others, depending upon site conditions and qualifications.

(ii) Method B and Method C tiered approach. This chapter provides for a three-tiered approach for establishing Method B and Method C cleanup levels at sites that involve a release of TPH. These tiers are not required to be approached sequentially (that is, the process may be started at any tier). The tiered process allows one to calculate different cleanup levels for TPH and associated hazardous substances using progressively more complex and site-specific information, and also allows for basing the cleanup levels on the presence or absence of exposure pathways, determined as part of the conceptual site model. In establishing a TPH cleanup level using the tiered process, it is still necessary to comply with other requirements and procedures under WAC 173-340-700 through 173-340-750.

(A) Conceptual site model. The first step in setting Method B or C cleanup levels for TPH is to identify the nature of the contamination, the potentially contaminated media, the current and potential pathways of exposure, the current and potential receptors, and the current and potential land and resource uses. A conceptual site model should be developed as part of this scoping process. See WAC 173-340-708(3) for additional information on how to determine current and potential future land and resource uses for the conceptual site model.

(B) General description of the three tiers.

(I) Tier 1 consists of the standard Method B and Method C formulas and requirements under WAC 173-340-720 through 173-340-750 for each applicable pathway identified by the conceptual site model, including specific requirements set forth in those sections for petroleum mixtures.

(II) Tier 2 consists of the site-specific use of modified Method B and Method C formulas and requirements under WAC 173-340-720 through 173-340-750 for each applicable exposure pathway identified by the conceptual site model;

and inclusion and development of additional, site-specific exposure pathways not addressed in Method A or Tier 1.

(III) Tier 3 consists of the site-specific use of standard or modified Method B and Method C formulas and requirements for each applicable exposure pathway identified by the conceptual site model and the use of new scientific information to establish a cleanup level as provided under WAC 173-340-702 (14), (15) and (16). It is considered a more complex evaluation in terms of technical sophistication (such as the use of new fate and transport models), data needs, cost and time.

(IV) A single tier may be used for all exposure pathways or more than one tier may be used when there are multiple exposure pathways.

(C) Fractionated approach. Method B and Method C cleanup levels for TPH are determined using the fractionated analytical approach for petroleum as described under Method 6 (see WAC 173-340-830 (3)(a)(vi)). This approach divides the TPH mixture into equivalent carbon numbers. Use of the fractionated approach requires testing or knowledge to define product composition as described under subsection (8)(b)(ii)(D) of this section ("Determination of product composition"). Cleanup levels are then calculated using reference doses that have been determined by the department for each fraction. Cleanup levels also need to consider the measured or predicted ability of the fractions to migrate from one medium to other media. Where multiple pathways of exposure for a particular medium are identified in the conceptual site model, the most stringent of the concentrations calculated for the various pathways becomes the cleanup level. For example, for soil contamination, if the direct contact and leaching pathways are potential exposure pathways, then a soil concentration would be calculated for each pathway and the lowest calculated concentration would become the cleanup level.

(D) Determination of product composition. Product composition may be determined by analyzing each sample in accordance with the VPH/EPH method described under Method 6 (see WAC 173-340-830 (3)(a)(vi)). Alternatively, product composition may be determined by one of the following methods:

(I) Correlation. Where WTPH or NWTPH methods described in Method 6 are used to collect and analyze the presence, location and concentration of TPH, knowledge of the fraction-specific composition of the petroleum released at the site may be based on analysis and correlation of a portion of the site samples with both the VPH/EPH and WTPH/NWTPH methods.

(II) Retrofitting. Where WTPH or NWTPH methods were used to collect and analyze the presence, location and concentration of TPH before the effective date of this provision, knowledge of the fraction-specific composition of the petroleum released at the site may be based on the fraction-specific composition assumptions used by the department to calculate Method A cleanup levels, which the department shall publish in guidance. If the identity of the petroleum product released at the site is not known, or is a mixture of products, retrofitting under this provision shall be based on the composition that yields the lowest TPH cleanup level.

(E) Consultation with the department. Because of the complexity of the development of site-specific Method B and Method C petroleum cleanup levels using the second or third tiers described above, or the use of correlated or retrofitted data, persons planning on using these methods are encouraged to contact the department to obtain appropriate technical guidance.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-702 General policies. (1) **Purpose.** This section defines the general policies and principles that ~~((the department))~~ shall ~~((utilize to ensure that cleanup standards under this chapter are established and implemented in a scientifically and technically sound manner))~~ be followed when establishing and implementing cleanup standards. This section shall be used in combination with other sections of this chapter.

(2) **Policy on expediting cleanups.** Establishing cleanup standards and selecting an appropriate cleanup action involves many technical and public policy decisions. This chapter is intended to constrain the range of decisions made on individual sites to promote expeditious cleanups.

(3) **Goal for cleanups.** The Model Toxics Control Act contains policies that state, in part, each person has a fundamental and inalienable right to a healthful environment and it is essential that sites be cleaned up well. Consistent with these policies, cleanup standards and cleanup actions selected under this chapter shall be established that provide conservative estimates of human health and environmental risks that protect susceptible individuals as well as the general population.

(4) **Current and potential site and resource uses.** Cleanup standards and cleanup actions selected under this chapter shall be established that protect human health and the environment for current and potential future site and resource uses.

(5) **Presumption for cleanup actions.** Cleanup actions that achieve cleanup levels at the applicable point of compliance under Methods A, B, or C (as applicable) and comply with applicable state and federal laws shall be presumed to be protective of human health and the environment.

(6) **Cost considerations.** Except as provided for in applicable state and federal laws, cost shall not be a factor in determining what cleanup level is protective of human health and the environment. In addition, where specifically provided for in this chapter, cost may be appropriate for certain other determinations related to cleanup standards such as point of compliance. Cost shall, however, be considered when selecting an appropriate cleanup action.

(7) **Cleanup action alternatives.** At most sites, there is more than one hazardous substance and more than one pathway for hazardous substances to get into the environment. For many sites there is more than one method of cleanup (cleanup action component) that could address each of these. When evaluating cleanup action alternatives it is appropriate to consider a representative range of cleanup action components that could address each of these as well as different

combinations of these components to accomplish the overall site cleanup.

(8) **Cross-media impacts.** The cleanup of a particular medium at a site will often affect other media at the site. These cross-media impacts shall be considered when establishing cleanup standards and selecting a cleanup action. Cleanup actions conducted under this chapter shall use appropriate engineering controls or other measures to minimize these cross-media impacts.

(9) **Relationship between cleanup levels and cleanup actions.** In general, cleanup levels must be met throughout a site before the site will be considered clean. A cleanup action that leaves hazardous substances on a site in excess of cleanup levels may be acceptable as long as the cleanup action complies with WAC 173-340-350 through 173-340-390. However, these rules are intended to promote thorough cleanups rather than long-term partial cleanups or containment measures.

~~((2))~~ (10) **Relationship to federal cleanup law.** When evaluating cleanup actions performed under the federal cleanup law, the department shall consider WAC 173-340-350, 173-340-355, 173-340-357, 173-340-360 ~~((and)),~~ 173-340-410, 173-340-420, 173-340-440, 173-340-450, 173-340-700 through 173-340-760, and 173-340-830 to be ~~((a))~~ legally applicable requirements under Section 121(d) of the Federal Cleanup Law.

~~((3) Regulation update:))~~ (11) **Reviewing and updating cleanup standards.** The department shall review and, as appropriate, update WAC 173-340-700 through 173-340-760 ~~((no less frequently than))~~ at least once every five years.

~~((4))~~ (12) **Applicability of new cleanup levels.**

(a) For cleanup actions conducted by the department, or under an order or decree, the department shall determine the cleanup level that applies to a release based on the rules in effect under this chapter at the time the department issues a final cleanup action plan for that release.

(b) In reviewing the adequacy of independent remedial actions, the department shall determine the cleanup level that applies to a release based on the rules in effect at the time the final cleanup action for that release began or in effect when the department reviews the cleanup action, whichever is less stringent.

(c) A release cleaned up under the cleanup levels determined in (a) or (b) of this subsection shall not be subject to further cleanup action due solely to subsequent amendments to the provisions in this chapter on cleanup levels, unless the department determines, on a case-by-case basis, that the previous cleanup action is no longer sufficiently protective of human health and the environment.

(d) Nothing in this subsection constitutes a settlement or release of liability under the Model Toxics Control Act.

(13) **Institutional controls.** Institutional controls ~~((under WAC 173-340-440))~~ shall be required whenever ~~((a cleanup action results in residual concentrations of hazardous substances which exceed method A or method B cleanup levels, as applicable, or conditional points of compliance are approved by the department under WAC 173-340-720 through 173-340-760. Institutional controls shall also be required when cleanup levels are established under WAC~~

173-340-745)) any of the circumstances identified in WAC 173-340-440(4) are present at a site.

((5)) (14) **Burden of proof.** Any person responsible for undertaking a cleanup action under this chapter who proposes to:

(a) Use a reasonable maximum exposure scenario other than the default provided for each medium;

(b) Use assumptions other than the default values provided for in this chapter;

(c) Establish a cleanup level under Method C; or

(d) Use a conditional point of compliance, shall have the burden of demonstrating to the department that requirements in this ((part)) chapter have been met to ((assure)) ensure protection of human health and the environment. The department shall only approve ((cleanup levels under method C or conditional points of compliance)) of such proposals when it determines that ((that the person undertaking the cleanup actions met)) this burden of proof is met.

((6)) (15) **New scientific information.** The department shall consider new scientific information when establishing cleanup levels and remediation levels for individual sites. In making a determination on how to use this new information, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency. Any proposal to use new scientific information shall meet the quality of information requirements in subsection (16) of this section. To minimize delay in cleanups, any proposal to use new scientific information should be introduced as early in the cleanup process as possible. Proposals to use new scientific information may be considered up to the time of issuance of the final cleanup action plan governing the cleanup action for a site unless triggered as part of a periodic review under WAC 173-340-420 or through a reopener under RCW 70.105D.040 (4)(c).

(16) Criteria for quality of information.

(a) The intent of this subsection is to establish minimum criteria to be considered when evaluating information used by or submitted to the department proposing to modify the default methods or assumptions specified in this chapter or proposing methods or assumptions not specified in this chapter for calculating cleanup levels and remediation levels. This subsection does not establish a burden of proof or alter the burden of proof provided for elsewhere in this chapter.

(b) When deciding whether to approve or require modifications to the default methods or assumptions specified in this chapter for establishing cleanup levels and remediation levels or when deciding whether to approve or require alternative or additional methods or assumptions, the department shall consider information submitted by all interested persons and the quality of that information. When evaluating the quality of the information the department shall consider the following factors, as appropriate for the type of information submitted:

(i) Whether the information is based on a theory or technique that has widespread acceptance within the relevant scientific community;

(ii) Whether the information was derived using standard testing methods or other widely accepted scientific methods;

(iii) Whether a review of relevant available information, both in support of and not in support of the proposed modification, has been provided along with the rationale explaining the reasons for the proposed modification;

(iv) Whether the assumptions used in applying the information to the facility are valid and would ensure the proposed modification would err on behalf of protection of human health and the environment;

(v) Whether the information adequately addresses populations that are more highly exposed than the population as a whole and are reasonably likely to be present at the site; and

(vi) Whether adequate quality assurance and quality control procedures have been used, any significant anomalies are adequately explained, the limitations of the information are identified, and the known or potential rate of error is acceptable.

NEW SECTION

WAC 173-340-703 Selection of indicator hazardous substances. (1) **Purpose.** When defining cleanup requirements at a site that is contaminated with a large number of hazardous substances, the department may eliminate from consideration those hazardous substances that contribute a small percentage of the overall threat to human health and the environment. The remaining hazardous substances shall serve as indicator hazardous substances for purposes of defining site cleanup requirements.

(2) **Approach.** If the department considers this approach appropriate for a particular site, the factors evaluated when eliminating individual hazardous substances from further consideration shall include:

(a) The toxicological characteristics of the hazardous substance that influence its ability to adversely affect human health or the environment relative to the concentration of the hazardous substance at the site, including consideration of essential nutrient requirements;

(b) The chemical and physical characteristics of the hazardous substance which govern its tendency to persist in the environment;

(c) The chemical and physical characteristics of the hazardous substance which govern its tendency to move into and through environmental media;

(d) The natural background concentrations of the hazardous substance;

(e) The thoroughness of testing for the hazardous substance at the site;

(f) The frequency that the hazardous substance has been detected at the site; and

(g) Degradation by-products of the hazardous substance.

(3) When the department determines that the use of indicator hazardous substances is appropriate for a particular site, it may also require biological testing to address potential toxic effects associated with hazardous substances eliminated from consideration under this subsection.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-704 Use of Method A. (1) **Applicability.** Method A may be used to establish cleanup levels at ~~((the following types of))~~ sites that have few hazardous substances and that meet one of the following criteria:

(a) Sites undergoing a routine cleanup action~~(s)~~ as defined in WAC ~~((173-340-130))~~ 173-340-200; or

(b) Sites where numerical standards are available in this chapter or applicable state and federal laws for all indicator hazardous substances in ~~((at))~~ the media ~~((of concern))~~ for which the Method A cleanup level is being used.

(2) **Procedures.** Method A cleanup levels shall be established in accordance with the procedures in WAC 173-340-720 through 173-340-760. Method A cleanup levels shall be at least as stringent as all of the following:

(a) Concentrations of individual hazardous substances listed in ~~((the))~~ Tables ~~((in WAC 173-340-720, 173-340-740, or 173-340-745))~~ 720-1, 740-1, or 745-1 in this chapter;

(b) Concentrations of individual hazardous substances established under applicable state and federal laws; ~~((and))~~

(c) Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC 173-340-7490 through 173-340-7493, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and

(d) For individual hazardous substances deemed indicator hazardous substances for the medium of concern under WAC 173-340-708(2) and not addressed under (a) and (b) of this subsection, concentrations that do not exceed natural background levels or the practical quantitation limit, whichever is higher, for the substance in question.

(3) **More stringent cleanup levels.** The department may establish Method A cleanup levels more stringent than those required by subsection (2) of this section, when based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708.

(4) ~~((Caution on misusing method A tables. Method A tables have been developed for specific purposes. They are intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. The tables may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in these tables should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in these tables do not necessarily trigger requirements for cleanup action under this chapter.))~~ **Remediation levels.** Under Method A, the Method B formulas may be modified for the purpose of using a human health risk assessment to evaluate the protectiveness of a remedy. WAC 173-340-708 (3) and (10) describe the adjustments that can be made to the Method B formulas. Also see WAC 173-340-355 and 173-

340-357 for more detailed information on remediation levels and quantitative risk assessment.

(5) **Inconsistencies.** If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-705 Use of Method B. (1) **Applicability.** Method B is applicable to all sites. It shall be used to develop cleanup levels unless one or more of the conditions for using Method A or Method C are demonstrated to exist and the person conducting the cleanup action elects to ~~((utilize))~~ use that method.

(2) **Cleanup levels.** Method B consists of two approaches, standard and modified. Standard Method B uses default formulas, assumptions, and procedures to develop cleanup levels. Under modified Method B chemical-specific or site-specific information may be used to change certain assumptions to calculate different cleanup levels. When the term "Method B" is used in this chapter, it means both standard and modified Method B. Method B cleanup levels shall be established in accordance with the procedures in WAC 173-340-720 through 173-340-760. Method B cleanup levels shall be at least as stringent as all of the following:

(a) Concentrations of individual hazardous substances established under applicable state and federal laws;

(b) Concentrations ~~((which))~~ that are estimated to result in no adverse effects on the protection and propagation of aquatic ~~((and terrestrial))~~ life, and no significant adverse effects on terrestrial ecological receptors using the procedures specified in WAC 173-340-7490 through 173-340-7494;

(c) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health ~~((and the environment))~~ as determined by the following methods:

(i) Concentrations ~~((which))~~ that are estimated to result in no acute or chronic toxic effects on human health as determined using a hazard quotient of one (1) and the procedures specified in WAC 173-340-720 through 173-340-760;

(ii) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one million (1×10^{-6}) as determined using the procedures specified in WAC 173-340-720 through 173-340-760; and

(iii) Concentrations ~~((which))~~ that eliminate or minimize the potential for food chain contamination~~((; and))~~ as necessary to protect human health.

(3) **More stringent cleanup levels.** The department may establish Method B cleanup levels that are more stringent than those required by subsection (2) of this section, when based upon a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708.

(4) **Multiple hazardous substances or pathways.** Concentrations of individual hazardous substances established under subsections (2) and (3) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with the procedures in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}). ~~((These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.))~~

(5) **Adjustments to cleanup levels based on applicable laws.** Where a cleanup level is based on an applicable state or federal law, and the level of risk upon which the applicable state and federal law is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level must be adjusted downward so that the total excess cancer risk and hazard index at the site does not exceed the limits established in subsection (4) of this section.

(6) **Limitation on adjustments.** Cleanup levels determined using Method B, including cleanup levels adjusted under subsections (4) and (5) of this section, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements on practical quantitation limits and natural background.

(7) **Remediation levels.** Method B formulas may be modified for the purpose of using a human health risk assessment to evaluate the protectiveness of a remedy. WAC 173-340-708 (3) and (10) describe the adjustments that can be made to the Method B formulas. Also see WAC 173-340-355 and 173-340-357 for more detailed information on remediation levels and quantitative risk assessment.

(8) **Inconsistencies.** If there are any inconsistencies between this section and any specifically referenced sections, the referenced section shall govern.

AMENDATORY SECTION (Amending Order 94-37, filed 1/26/96, effective 2/26/96)

WAC 173-340-706 Use of Method C. (1) **Applicability.** Method C cleanup levels represent concentrations ((which)) that are protective of human health and the environment for specified site uses and conditions. A site (or portion of a site) that qualifies for a Method C cleanup level for one medium does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium. Method C cleanup levels may be used in the following situations:

(a) For surface water, ground water and air, Method C cleanup levels may be established where the person conducting the cleanup action can demonstrate that such levels comply with applicable state and federal laws, that all practicable methods of treatment are ((utilized)) used, that institutional controls are implemented in accordance with WAC 173-340-440, and that one or more of the following conditions exist:

(i) Where Method A or B cleanup levels are below area background concentrations, Method C cleanup levels may be established at concentrations that are equal to area background concentrations, but in no case greater than concentrations specified in subsection (2) of this section; ~~((or))~~

(ii) Where attainment of Method A or B cleanup levels has the potential for creating a significantly greater overall threat to human health or the environment than attainment of Method C cleanup levels established under this chapter, Method C cleanup levels may be established at concentrations ((which)) that minimize those overall threats, but in no case greater than concentrations specified in subsection (2) of this section. Factors that shall be considered in making this determination include:

- (A) Results of a site-specific risk assessment;
- (B) Duration of threats;
- (C) Reversibility of threats;
- (D) Magnitude of threats; and
- (E) Nature of affected population.

(iii) Where Method A or B cleanup levels are below technically possible concentrations, Method C cleanup levels may be established at the technically possible concentrations, but in no case greater than levels specified in subsection (2) of this section.

(b) ~~((For soil cleanup levels only.))~~ Method C soil cleanup levels may ~~((also))~~ only be established where the person conducting the cleanup action can demonstrate that the area under consideration is an industrial property and meets the criteria for establishing industrial soil cleanup levels under WAC 173-340-745.

(c) Method C air cleanup levels may also be established for facilities qualifying as industrial property under WAC 173-340-745 and for utility vaults and manholes. (See WAC 173-340-750.)

(2) **Cleanup levels.** Method C consists of two approaches, standard and modified. Standard Method C uses default formulas, assumptions, and procedures to develop cleanup levels. Under modified Method C, chemical-specific or site-specific information may be used to change certain assumptions to calculate different cleanup levels. When the term "Method C" is used in this chapter, it means both standard and modified Method C. Method C cleanup levels shall be established in accordance with the procedures in WAC 173-340-720 through 173-340-760. Method C cleanup levels shall be at least as stringent as all of the following:

(a) Concentrations established under applicable state and federal laws;

(b) Concentrations ((which)) that are estimated to result in no significant adverse effects on the protection and propagation of aquatic ~~((and terrestrial))~~ life, and no significant adverse effects on wildlife using the procedures specified in WAC 173-340-7490 through 173-340-7494;

(c) For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which are protective of human health (~~and the environment~~) as determined by the following methods:

(i) Concentrations (~~which~~) that are estimated to result in no significant adverse acute or chronic toxic effects on human health as estimated using a hazard quotient of one (1) and the procedures defined in WAC 173-340-720 through 173-340-760;

(ii) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one hundred thousand (1×10^{-5}) as determined using the procedures defined in WAC 173-340-720 through 173-340-760; and

(iii) Concentrations (~~which~~) that eliminate or minimize the potential for food chain contamination as necessary to protect human health.

(3) More stringent cleanup levels. The department may establish Method C cleanup levels that are more stringent than those required by subsection (2) of this section when based upon a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708.

(4) Multiple hazardous substances or pathways. Concentrations of individual hazardous substances established under subsections (2) and (3) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}). ~~((These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.))~~

(5) Adjustments to cleanup levels based on applicable laws. When a cleanup level is based on an applicable state or federal law and the level of risk upon which the applicable law is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level must be adjusted downward so that the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}) and the hazard index does not exceed one (1) at the site.

(6) Limitation on adjustments. Cleanup levels determined using Method C, including cleanup levels adjusted under subsections (4) and (5) of this section, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC 173-340-707

and 173-340-709 for additional requirements on practical quantitation limits and natural background.

(7) Remediation levels. Method C formulas may be modified for the purpose of using a human health risk assessment to evaluate the protectiveness of a remedy. WAC 173-340-708 (3) and (10) describe the adjustments that can be made to the Method C formulas. Also see WAC 173-340-355 and 173-340-357 for more detailed information on remediation levels and quantitative risk assessment.

(8) Inconsistencies. If there are any inconsistencies between this subsection and any specifically referenced sections, the referenced section shall govern.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-708 Human health risk assessment procedures. (1) **Purpose.** This section defines the risk assessment framework that ~~((the department will utilize))~~ shall be used to establish cleanup levels, and remediation levels using a quantitative risk assessment, under this chapter. As used in this section, cleanup levels and remediation levels means the human health risk assessment component of these levels. This chapter defines certain default values and methods to be used in calculating cleanup levels and remediation levels. This section allows varying from these default values and methods under certain circumstances. When deciding whether to approve alternate values and methods the department shall ensure that the use of alternative values and methods will not significantly delay site cleanups.

(2) **Selection of indicator hazardous substances.**

~~((a))~~ When defining cleanup requirements at a site that is contaminated with a large number of hazardous substances, the department may eliminate from consideration those hazardous substances that contribute a small percentage of the overall threat to human health and the environment. The remaining hazardous substances shall serve as indicator hazardous substances for purposes of defining site cleanup requirements. See WAC 173-340-703 for additional information on establishing indicator hazardous substances.

~~((b))~~ If the department considers this approach appropriate for a particular site, the factors evaluated when eliminating individual hazardous substances from further consideration shall include:

(i) ~~The toxicological characteristics of the hazardous substance that influence its ability to adversely affect human health or the environment relative to the concentration of the hazardous substance at the site;~~

(ii) ~~The chemical and physical characteristics of the hazardous substance which govern its tendency to persist in the environment;~~

(iii) ~~The chemical and physical characteristics of the hazardous substance which govern its tendency to move into and through environmental media;~~

(iv) ~~The natural background concentrations of the hazardous substance;~~

(v) ~~The thoroughness of testing for the hazardous substance at the site;~~

(vi) The frequency that the hazardous substance has been detected at the site; and

(vii) Degradation by products of the hazardous substance.

(e) When the department determines that the use of indicator hazardous substances is appropriate for a particular site, it may also require biological testing to address potential toxic effects associated with hazardous substances eliminated from consideration under this subsection.)

(3) Reasonable maximum exposure.

(a) Cleanup levels and remediation levels shall be based on estimates of current and future resource uses and reasonable maximum exposures expected to occur under both current and potential future site use conditions, as specified further in this chapter.

(b) The reasonable maximum exposure is defined as the highest exposure that is reasonably expected to occur at a site under current and potential future site use. WAC 173-340-720 through 173-340-760 define the reasonable maximum exposures for ground water, surface water, soil, and air. These reasonable maximum exposures will apply to most sites where individuals or groups of individuals are or could be exposed to hazardous substances. For example, the reasonable maximum exposure for most ground water is defined as exposure to hazardous substances in drinking water and other domestic uses.

(c) Persons performing cleanup actions under this chapter may ~~(utilize)~~ use the evaluation criteria in WAC 173-340-720 through 173-340-760, where allowed in those sections, to demonstrate that the reasonable maximum exposure scenarios specified in those sections are not appropriate for cleanup levels for a particular site. For example, the criteria in WAC 173-340-720(2) could be used to demonstrate that the reasonable maximum exposure for ground water beneath a site does not need to be based on drinking water use. The use of an alternate exposure scenario shall be documented by the person performing the cleanup action. Documentation for the use of alternate exposure scenarios under this provision shall be based on the results of investigations performed in accordance with WAC 173-340-350.

(d) Persons performing cleanup actions under this chapter may also use alternate reasonable maximum exposure scenarios to help assess the protectiveness to human health of a cleanup action alternative that incorporates remediation levels and uses engineered controls and/or institutional controls to limit exposure to the contamination remaining on the site.

(i) An alternate reasonable maximum exposure scenario shall reflect the highest exposure that is reasonably expected to occur under current and potential future site conditions considering, among other appropriate factors, the potential for institutional controls to fail and the extent of the time period of failure under these scenarios and the land uses at the site.

(ii) Land uses other than residential and industrial, such as agricultural, recreational, and commercial, shall not be used as the basis for a reasonable maximum exposure scenario for the purpose of establishing a cleanup level. However, these land uses may be used as a basis for an alternate reasonable maximum exposure scenario for the purpose of

assessing the protectiveness of a remedy. For example, if a cap (with appropriate institutional controls) is the proposed cleanup action at a commercial site, the reasonable maximum exposure scenario for assessing the protectiveness of the cap with regard to direct soil contact could be changed from a child living on the site to a construction or maintenance worker and child trespasser scenario.

(iii) The department expects that in evaluating the protectiveness of a remedy with regard to the soil direct contact pathway, many types of commercial sites may, where appropriate, qualify for alternative exposure scenarios under this provision since contaminated soil at these sites is typically characterized by a cover of buildings, pavement, and landscaped areas. Examples of these types of sites include:

(A) Commercial properties in a location removed from single family homes, duplexes or subdivided individual lots;

(B) Private and public recreational facilities where access to these facilities is physically controlled (e.g., a private golf course to which access is restricted by fencing);

(C) Urban residential sites (e.g., upper-story residential units over ground floor commercial businesses);

(D) Offices, restaurants, and other facilities primarily devoted to support administrative functions of a commercial/industrial nature (e.g., an employee credit union or cafeteria in a large office or industrial complex).

(e) A conceptual site model may be used to identify when individuals or groups of individuals may be exposed to hazardous substances through more than one exposure pathway. For example, a person may be exposed to hazardous substances from a site by drinking contaminated ground water, eating contaminated fish, and breathing contaminated air. At sites where the same individuals or groups of individuals are or could be consistently exposed through more than one pathway, the reasonable maximum exposure shall represent the total exposure through all of those pathways. At such sites, the cleanup levels and remediation levels derived for individual pathways under WAC 173-340-720 through 173-340-760 and WAC 173-340-350 through 173-340-390 shall be adjusted downward to take into account multiple exposure pathways.

(4) **Cleanup levels for individual hazardous substances.** Cleanup levels for individual hazardous substances will generally be based on a combination of requirements in applicable state and federal laws and risk assessment.

(5) Multiple hazardous substances.

(a) Cleanup levels for individual hazardous substances established under Methods B and C and remediation levels shall be adjusted downward to take into account exposure to multiple hazardous substances. This adjustment needs to be made only if, without this adjustment, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1 x 10⁻⁵).

(b) Adverse effects resulting from exposure to two or more hazardous substances with similar types of toxic response are assumed to be additive unless scientific evidence is available to demonstrate otherwise. ~~((b))~~ Cancer risks resulting from exposure to two or more carcinogens are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(c) For noncarcinogens, for purposes of establishing cleanup levels (~~for noncarcinogens~~) under Methods B and C, and for remediation levels, the health threats resulting from exposure to two or more hazardous substances with similar types of toxic response may be apportioned between those hazardous substances in any combination as long as the hazard index does not exceed one (1).

(d) For carcinogens, for purposes of establishing cleanup levels (~~for carcinogens~~) under Methods B and C, and for remediation levels, the cancer risks resulting from exposure to multiple hazardous substances may be apportioned between hazardous substances in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}).

(e) The department may require biological testing to assess the potential interactive effects associated with chemical mixtures.

(f) When making adjustments to cleanup levels and remediation levels for multiple hazardous substances, the concentration for individual hazardous substances shall not be adjusted downward to less than the practical quantitation limit or natural background.

(6) Multiple pathways of exposure.

(a) Estimated doses of individual hazardous substances resulting from more than one pathway of exposure are assumed to be additive unless scientific evidence is available to demonstrate otherwise.

(b) Cleanup levels and remediation levels based on one pathway of exposure shall be adjusted downward to take into account exposures from more than one exposure pathway. The number of exposure pathways considered at a given site shall be based on the reasonable maximum exposure scenario as defined in WAC 173-340-708(3). This adjustment needs to be made only if exposure through multiple pathways is likely to occur at a site and, without the adjustment, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}).

(c) For noncarcinogens, for purposes of establishing cleanup levels (~~for noncarcinogens~~) under Methods B and C, and remediation levels, the health threats associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the hazard index does not exceed one (1).

(d) For carcinogens, for purposes of establishing cleanup levels (~~for carcinogens~~) under Methods B and C, and for remediation levels, the cancer risks associated with exposure via multiple pathways may be apportioned between exposure pathways in any combination as long as the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}).

(e) When making adjustments to cleanup levels and remediation levels for multiple pathways of exposure, the concentration for individual hazardous substances shall not be adjusted downward to less than the practical quantitation limit or natural background.

(7) Reference doses.

(a) The chronic reference dose/reference concentration and the developmental reference dose/reference concentration shall be used to establish cleanup levels and remediation

levels under this chapter. Cleanup levels and remediation levels shall be established using the value which results in the most protective concentration.

(b) Inhalation reference doses/reference concentrations shall be used in WAC 173-340-750. Where the inhalation reference dose/reference concentration is reported as a concentration in air, that value shall be converted to a corresponding inhaled intake (mg/kg-day) using a human body weight of 70 kg and an inhalation rate of 20 m³/day, and take into account, where available, the respiratory deposition and absorption characteristics of the gases and inhaled particles.

(c) A subchronic reference dose/reference concentration may be (~~utilized~~) used to evaluate potential noncarcinogenic effects resulting from exposure to hazardous substances over short periods of time. This value may be used in place of the chronic reference dose/reference concentration where it can be demonstrated that a particular hazardous substance will degrade to negligible concentrations during the exposure period.

(d) For purposes of establishing cleanup levels and remediation levels for hazardous substances under this chapter, a reference dose/reference concentration established by the United States Environmental Protection Agency and available through the "integrated risk information system" (IRIS) data base shall be used. If a reference dose/reference concentration is not available through the IRIS data base, a reference dose/reference concentration from the U.S. EPA Health Effects Assessment Summary Table ("HEAST") database or, if more appropriate, the National Center for Environmental Assessment ("NCEA") shall be used.

(e) If a reference dose/reference concentration is available through IRIS, HEAST, or the NCEA, it shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.

((e)) (f) If a reference dose/reference concentration for a hazardous substance including petroleum fractions and petroleum constituents is not available through ((the "integrated risk information system")) IRIS, HEAST or the NCEA or is demonstrated to be inappropriate under ((e)) (e) of this subsection((g)) and the department determines that development of a reference dose/reference concentration is necessary for the hazardous substance at the site, then a reference dose/reference concentration shall be established ((utilizing)) on a case-by-case basis. When establishing a reference dose on a case-by-case basis, the methods described in ((Risk Assessment Guidance for Superfund, Human Health Evaluation Manual, Part A. (October 1989-))) "Reference Dose (RfD): Description and Use in Health Risk Assessment: Background Document 1A", USEPA, March 15, 1993, shall be used.

((f)) (g) In estimating a reference dose/reference concentration for a hazardous substance under (e) or (f) of this subsection, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency and may, as appropriate, consult with other qualified persons. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a reference dose/reference

concentration for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

~~((g))~~ (h) Where a reference dose/reference concentration other than those established under (d) or (g) of this subsection is used to establish a cleanup level or remediation level at individual sites, the department shall summarize the scientific rationale for the use of those values in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC ~~((173-340-360))~~ 173-340-380 and 173-340-600.

(8) Carcinogenic potency factor.

(a) For purposes of establishing cleanup levels and remediation levels for hazardous substances under this chapter, a carcinogenic potency factor established by the United States Environmental Protection Agency and available through the ~~((“integrated risk information system”))~~ IRIS data base shall be used. If a carcinogenic potency factor is not available from the IRIS data base, a carcinogenic potency factor from HEAST or, if more appropriate, from the NCEA shall be used.

(b) If a carcinogenic potency factor is available from the IRIS, HEAST or the NCEA, it shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of this value is inappropriate.

~~((b))~~ (c) If a carcinogenic potency factor is not available through ~~((the “integrated risk information system”))~~ IRIS, HEAST or the NCEA or is demonstrated to be inappropriate under ~~((a))~~ (b) of this subsection ~~((;))~~ and the department determines that development of a cancer potency factor is necessary for the hazardous substance at the site, then one of the following methods shall be ~~((utilized))~~ used to establish a carcinogenic potency factor:

(i) The carcinogenic potency factor may be derived from appropriate human epidemiology data on a case-by-case basis; or

(ii) The carcinogenic potency factor may be derived from animal bioassay data using the following procedures:

(A) All ~~((carcinogenesis))~~ carcinogenicity bioassays shall be reviewed and data of appropriate quality shall be used for establishing the carcinogenic potency factor.

(B) The linearized multistage extrapolation model shall be ~~((utilized))~~ used to estimate the slope of the dose-response curve unless the department determines that there is clear and convincing scientific data which demonstrates that the use of an alternate extrapolation model is more appropriate;

(C) All doses shall be adjusted to give an average daily dose over the study duration; and

(D) An interspecies scaling factor shall be used to take into account differences between animals and humans. For oral carcinogenic toxicity values this scaling factor shall be based on the assumption that milligrams per surface area is an equivalent dose between species unless the department determines there is clear and convincing scientific data which demonstrates that an alternate procedure is more appropriate. The slope of the dose response curve for the test species shall be multiplied by this scaling factor in order to obtain the car-

cinogenic potency factor, except where such scaling factors are incorporated into the extrapolation model under (B) of this subsection. The procedure to derive a human equivalent concentration of inhaled particles and gases shall take into account, where available, the respiratory deposition and absorption characteristics of the gases and inhaled particles. Where adequate pharmacokinetic and metabolism studies are available, data from these studies may be ~~((utilized))~~ used to adjust the interspecies scaling factor.

~~((e))~~ (d) When assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF) either of the following methods shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of these methods is inappropriate:

(i) The entire mixture is assumed to be as toxic as 2, 3, 7, 8 CDD or 2, 3, 7, 8 CDF, as applicable; or

(ii) The toxicity equivalency factors and methodology described in: EPA, 1989, “Interim procedures for estimating risks associated with exposure to mixtures of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs and CDFs) and 1989 update”, USEPA, Risk Assessment Forum, Washington, D.C., publication number EPA/625/3-89/016.

(e) When assessing the potential carcinogenic risk of mixtures of polycyclic aromatic hydrocarbons, either of the following methods shall be used unless the department determines that there is clear and convincing scientific data which demonstrates that the use of these methods is inappropriate:

(i) The entire mixture is assumed to be as toxic as benzo(a)pyrene; or

(ii) The toxicity equivalency factors and methodology described in “CalEPA, 1994, Benzo(a)pyrene as a toxic air contaminant, Part B: Health Assessment.” Published by the Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, Berkeley, CA. When using this methodology, at a minimum, the following compounds shall be analyzed for and included in the calculations: Benzo[a]pyrene, Benz[a]anthracene, Benzo[b]fluoranthene, Benzo[k]fluoranthene, Chrysene, Dibenz[a,h]anthracene, Indeno[1,2,3cd]pyrene. The department may require additional compounds from the CalEPA list to be included in the methodology should site testing data or information from other comparable sites or waste types indicate the additional compounds are potentially present at the site. NOTE: Many of the polycyclic aromatic hydrocarbons on the CalEPA list are found primarily in air emissions from combustion sources and may not be present in the soil or water at contaminated sites. Users should consult with the department for information on the need to test for these additional compounds.

(f) In estimating a carcinogenic potency factor for a hazardous substance under ~~((b))~~ (c) of this subsection, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency and may, as appropriate, consult with other qualified persons. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a carcinogenic potency factor for

a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

~~((d))~~ (g) Where a carcinogenic potency factor other than that established under (a), ~~(d)~~ and (e) of this subsection is used to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of that value in the cleanup action plan. The department shall provide the opportunity for public review and comment on this value in accordance with the requirements of WAC ~~((173-340-360))~~ 173-340-380 and 173-340-600.

(9) Bioconcentration factors.

(a) For purposes of establishing cleanup levels and remediation levels for a hazardous substance under WAC 173-340-730, a bioconcentration factor established by the United States Environmental Protection Agency and ~~((utilized))~~ used to establish the ambient water quality criterion for that substance under section 304 of the Clean Water Act shall be used. These values shall be used unless the department determines that there is ~~((clear and convincing))~~ adequate scientific data which demonstrates that the use of an alternate value is more appropriate. If the department determines that a bioconcentration factor is appropriate for a specific hazardous substance and no such factor has been established by USEPA, then other appropriate EPA documents, literature sources or empirical information may be used to determine a bioconcentration factor.

(b) When ~~((utilizing))~~ using a bioconcentration factor other than that ~~((utilized))~~ used to establish the ambient water quality criterion, the department shall, as appropriate, consult with the science advisory board, the department of health, and the United States Environmental Protection Agency. Scientific data supporting such a value shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16). Once the department has established a bioconcentration factor for a hazardous substance under this provision, the department is not required to consult again for the same hazardous substance.

(c) Where a bioconcentration factor other than that established under (a) of this subsection is used to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of that factor in the draft cleanup action plan. The department shall provide the opportunity for public review and comment on the value in accordance with the requirements of WAC ~~((173-340-360))~~ 173-340-380 and 173-340-600.

(10) Exposure parameters.

(a) As a matter of policy, the department has defined in WAC 173-340-720 through 173-340-760 the default values for exposure parameters to be used when establishing cleanup levels and remediation levels under this chapter. ~~((With the exception of the parameters identified))~~ Except as provided for in (b) and (c) of this subsection and in WAC 173-340-720 through 173-340-760, these ~~((parameters))~~ default values shall not be ~~((modified))~~ changed for individual hazardous substances or sites ~~((in a manner which results in a less stringent cleanup level. The scientific and technical~~

~~basis for these parameters shall be reviewed when updating this chapter under WAC 173-340-704(3).~~

~~(b) The department may approve the use of values other than those specified in WAC 173-340-720 through 173-340-760 where there is clear and convincing scientific data which demonstrates that one or more of the following parameters should be modified for an individual hazardous substance or site:~~

- ~~(i) Gastrointestinal absorption rate;~~
- ~~(ii) Inhalation correction factor;~~
- ~~(iii) Bioconcentration factor; or~~
- ~~(iv) Inhalation absorption rate).~~

~~((e))~~ (b) Exposure parameters that are primarily a function of the exposed population characteristics (such as body weight and lifetime) and those that are primarily a function of human behavior that cannot be controlled through an engineered or institutional control (such as: Fish consumption rate; soil ingestion rate; drinking water ingestion rate; and breathing rate) are not expected to vary on a site-by-site basis. The default values for these exposure parameters shall not be changed when calculating cleanup levels except when necessary to establish a more stringent cleanup level to protect human health. For remediation levels the default values for these exposure parameters may only be changed when an alternate reasonable maximum exposure scenario is used, as provided for in WAC 173-340-708 (3)(d), that reflects a different exposed population such as using an adult instead of a child exposure scenario. Other exposure parameters may be changed only as follows:

(i) For calculation of cleanup levels, the types of exposure parameters that may be changed are those that are:

(A) Primarily a function of reliably measurable characteristics of the hazardous substance, soil, hydrologic or hydrogeologic conditions at the site; and

(B) Not dependent on the success of engineered controls or institutional controls for controlling exposure of persons to the hazardous substances at the site.

The default values for these exposure parameters may be changed where there is adequate scientific data to demonstrate that use of an alternative or additional value would be more appropriate for the conditions present at the site. Examples of exposure parameters for which the default values may be changed under this provision are as follows: Contaminant leaching and transport variables (such as the soil organic carbon content, aquifer permeability and soil sorption coefficient); inhalation correction factor; fish bioconcentration factor; soil gastrointestinal absorption fraction; and inhalation absorption percentage.

(ii) For calculation of remediation levels, in addition to the exposure parameters that may be changed under (b)(i) of this subsection, the types of exposure parameters that may be changed from the default values are those where a demonstration can be made that the proposed cleanup action uses engineered controls and/or institutional controls that can be successfully relied on, for the reasonably foreseeable future, to control contaminant mobility and/or exposure to the contamination remaining on the site. In general, exposure parameters that may be changed under this provision are those that define the exposure frequency, exposure duration and exposure time. The default values for these exposure parameters

may be changed where there is adequate scientific data to demonstrate that use of an alternative or additional value would be more appropriate for the conditions present at the site. Examples of exposure parameters for which the default value may be changed under this provision are as follows: Infiltration rate; frequency of soil contact; duration of soil exposure; duration of drinking water exposure; duration of air exposure; drinking water fraction; and fish diet fraction.

(c) When the modifications provided for in (b) of this subsection result in significantly higher values for cleanup levels or remediation levels than would be calculated using the default values for exposure parameters, the risk from other potentially relevant pathways of exposure shall be addressed under the procedures provided for in WAC 173-340-720 through 173-340-760. For exposure pathways and parameters for which default values are not specified in this chapter, the framework provided for by this subsection, along with the quality of information requirements in WAC 173-340-702, shall be used to establish appropriate or additional assumptions for these parameters and pathways.

(d) Where the department approves the use of exposure parameters other than those established under WAC 173-340-720 through 173-340-760 ((are used to establish cleanup levels)) to establish cleanup levels or remediation levels at individual sites, the department shall summarize the scientific rationale for the use of those parameters in the cleanup action plan. The department shall provide the opportunity for public review and comment on those values in accordance with the requirements of WAC ((173-340-360)) 173-340-380 and 173-340-600. Scientific data supporting such a change shall be subject to the requirements under WAC 173-340-702 (14), (15) and (16).

(11) ~~((Methods for defining background concentrations:~~

~~(a) Sampling of hazardous substances in background areas may be conducted to distinguish site-related concentrations from nonsite-related concentrations of hazardous substances or to support the development of a method C cleanup level under the provisions of WAC 173-340-706. For purposes of this chapter, two types of background may be determined, natural background and area background concentrations:~~

~~(b) For purposes of defining background concentrations, samples shall be collected from areas that have the same basic characteristics as the medium of concern at the site, have not been influenced by releases from the site and, in the case of natural background concentrations, have not been influenced by releases from other localized human activities:~~

~~(c) The statistical method used to evaluate available data shall be appropriate for the distribution of each hazardous substance. If the distribution of the hazardous substance data is inappropriate for statistical methods based on a normal distribution, then the data may be transformed. If the distributions of individual hazardous substances differ, more than one statistical method may be required at a site. In general, appropriate statistical methods include the following:~~

~~(i) A tolerance interval procedure in which an interval for each hazardous substance is established from the distribu-~~

~~tion of background data and the cleanup level of each hazardous substance is compared to the lower tolerance limit; and~~

~~(ii) Other statistical methods proposed by the person undertaking the cleanup action and approved by the department:~~

~~(d) If a tolerance interval approach is used to evaluate natural background data, the tolerance interval shall have a coverage of ninety-five percent and a tolerance coefficient of ninety-five percent. When determining natural background concentrations, sample size of ten or more background soil samples shall be required. When determining area background concentrations, a sample size of twenty or more soil samples shall be required. The number of samples for other media shall be sufficient to provide a representative measure of background concentrations and shall be determined on a case-by-case basis:~~

~~(e) For purposes of estimating background concentrations, values below the method detection limit shall be assigned a value equal to one-half of the method detection limit. Measurements above the method detection limit, but below the practical quantitation limit shall be assigned a value equal to the method detection limit. The department may approve the use of alternate statistical procedures for handling data below the method detection limit or practical quantitation limit. Alternate statistical procedures may include probit analysis and regression analysis:~~

~~(12) Significant figures. Risk assessment results shall be presented using one significant figure.)) **Probabilistic risk assessment.** Probabilistic risk assessment methods may be used under this chapter only on an informational basis for evaluating alternative remedies. Such methods shall not be used to replace cleanup standards and remediation levels derived using deterministic methods under this chapter until the department has adopted rules describing adequate technical protocols and policies for the use of probabilistic risk assessment under this chapter.~~

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WAC 173-340-709 Methods for defining background concentrations. (1) **Purpose.** Sampling of hazardous substances in background areas may be conducted to distinguish site-related concentration from nonsite related concentrations of hazardous substances or to support the development of a Method C cleanup level under the provisions of WAC 173-340-706. For purposes of this chapter, two types of background may be determined, natural background and area background concentrations, as defined in WAC 173-340-200.

(2) **Background concentrations.** For purposes of defining background concentrations, samples shall be collected from areas that have the same basic characteristics as the medium of concern at the site, have not been influenced by releases from the site and, in the case of natural background concentrations, have not been influenced by releases from other localized human activities.

(3) **Statistical analysis.**

(a) The statistical methods used to evaluate data sets shall be appropriate for the distribution of each hazardous

substance. More than one statistical method may be required at a site.

(b) Background sampling data shall be assumed to be lognormally distributed unless it can be demonstrated that another distribution is more appropriate.

(c) For lognormally distributed data sets, background shall be defined as the true upper 90th percentile or four times the true 50th percentile, whichever is lower.

(d) For normally distributed data sets, background shall be defined as the true upper 80th percentile or four times the true 50th percentile, whichever is lower.

(e) Other statistical methods may be used if approved by the department.

(4) **Sample size.** When determining natural background concentrations for soil, a sample size of ten or more background soil samples shall be required. When determining area background concentrations for soil, a sample size of twenty or more soil samples shall be required. The number of samples for other media shall be sufficient to provide a representative measure of background concentrations and shall be determined on a case-by-case basis.

(5) **Procedures.** For the purposes of estimating background concentrations, the following procedures shall be used for measurements below the practical quantitation limit:

(a) Measurements below the method detection limit shall be assigned a value equal to one-half of the method detection limit.

(b) Measurements above the method detection limit, but below the practical quantitation limit shall be assigned a value equal to the method detection limit.

(c) The department may approve the use of alternate statistical procedures for handling data below the method detection limit or practical quantitation limit.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-710 Applicable local, state and federal laws. (1) **Applicable state and federal laws.**

~~((a))~~ All cleanup actions conducted under this chapter shall comply with applicable state and federal laws. For purposes of this chapter, the term "applicable state and federal laws" shall include legally applicable requirements and those requirements that the department determines, based on consideration of the criteria in subsection ~~((3))~~ (4) of this section, are relevant and appropriate requirements.

~~((b))~~ (2) **Department determination.** The person conducting a cleanup action shall identify all applicable state and federal laws. The department shall make the final interpretation on whether these requirements have been correctly identified and are legally applicable or relevant and appropriate.

~~((2))~~ (3) **Legally applicable requirements.** Legally applicable requirements include those cleanup standards, standards of control, and other environmental protection requirements, criteria, or limitations ~~((promulgated))~~ adopted under state or federal law that specifically address a hazardous substance, cleanup action, location or other circumstances at the site.

~~((3))~~ (4) **Relevant and appropriate requirements.**

Relevant and appropriate requirements include those cleanup standards, standards of control, and other environmental requirements, criteria, or limitations established under state or federal law that, while not legally applicable to the hazardous substance, cleanup action, location, or other circumstance at a site, address problems or situations sufficiently similar to those encountered at the site that their use is well suited to the particular site. WAC 173-340-710 through 173-340-760 identifies several requirements the department shall consider relevant and appropriate for establishing cleanup standards. For other regulatory requirements, the following criteria shall be evaluated, where pertinent, to determine whether such requirements are relevant and appropriate for a particular hazardous substance, remedial action, or site:

(a) Whether the purpose for which the statute or regulations under which the requirement was created is similar to the purpose of the cleanup action;

(b) Whether the media regulated or affected by the requirement is similar to the media contaminated or affected at the site;

(c) Whether the hazardous substance regulated by the requirement is similar to the hazardous substance found at the site;

(d) Whether the entities or interests affected or protected by the requirement are similar to the entities or interests affected by the site;

(e) Whether the actions or activities regulated by the requirement are similar to the cleanup action contemplated at the site;

(f) Whether any variance, waiver, or exemption to the requirements are available for the circumstances of the site;

(g) Whether the type of place regulated is similar to the site;

(h) Whether the type and size of structure or site regulated is similar to the type and size of structure or site affected by the release or contemplated by the cleanup action; and

(i) Whether any consideration of use or potential use of affected resources in the requirement is similar to the use or potential use of the resources affected by the site or contemplated cleanup action.

~~((4))~~ (5) **Variances.** For purposes of this chapter, a regulatory variance or waiver provision included in an applicable state and federal law shall be considered potentially applicable to interim actions and cleanup actions and the department may determine that a particular regulatory variance or waiver is appropriate if the substantive conditions for such a regulatory variance or waiver are met. In all such cases, interim actions and cleanup actions shall be protective of human health and the environment.

~~((5))~~ (6) **New requirements.** The department shall consider new applicable state and federal laws as part of the periodic review under WAC 173-340-420. Cleanup actions shall be evaluated in light of these new requirements to determine whether the cleanup action is still protective of human health and the environment.

~~((6))~~ (7) **Selection of cleanup actions.** To demonstrate compliance with WAC ~~((173-340-360))~~ 173-340-350 through 173-340-390, cleanup actions shall comply with all

applicable state and federal laws in addition to the other requirements of this chapter. The following, which is not a complete list, are selected applications of specific applicable state and federal laws to cleanup actions.

(a) **Water discharge requirements.** Hazardous substances (~~which~~) ~~that~~ are directly or indirectly released or proposed to be released to waters of the state shall be provided with all known, available and reasonable methods of treatment consistent with the requirements of chapters 90.48 and 90.54 RCW and the regulations that implement those statutes.

(b) **Air emission requirements.** Best available control technologies consistent with the requirements of chapter 70.94 RCW and the regulations that implement this statute shall be applied to releases of hazardous substances to the air resulting from cleanup actions at a site.

(c) **Solid waste landfill closure requirements.** For solid waste landfills, the solid waste closure requirements in chapter 173-304 WAC shall be minimum requirements for cleanup actions conducted under this chapter. In addition, when the department determines that the closure requirements in chapters 173-351 or 173-303 WAC are legally applicable or relevant and appropriate requirements, the more stringent closure requirements under (~~that~~) ~~those~~ laws shall also apply to cleanup actions conducted under this chapter.

(d) **Sediment management requirements.** Sediment cleanup actions conducted under this chapter shall comply with the sediment cleanup standards in chapter 173-204 WAC. In addition, a (~~state~~) remedial investigation/feasibility study conducted under WAC 173-340-350 shall also comply with the cleanup study plan requirements under chapter 173-204 WAC. The process for selecting sediment cleanup actions under this chapter shall comply with the requirements in WAC (~~173-340-360~~) 173-340-350 through 173-340-390.

(~~7~~) (8) **Interim actions.** Interim actions conducted under this chapter shall comply with legally applicable requirements. The department may also determine, based on the criteria in subsection (3) of this section, that other requirements, criteria, or limitations are relevant and appropriate for interim actions.

(9) Permits and exemptions.

(a) Independent remedial actions must obtain permits required by other federal, state and local laws.

(b) Under RCW 70.105D.090, remedial actions conducted under a consent decree, order, or agreed order, and the department when it conducts a remedial action are exempt from the procedural requirements of certain laws. This exemption shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law. This exemption applies to the following laws:

- (i) Chapter 70.94 RCW;
- (ii) Chapter 70.95 RCW;
- (iii) Chapter 70.105 RCW;
- (iv) Chapter 75.20 RCW;
- (v) Chapter 90.48 RCW;
- (vi) Chapter 90.58 RCW; and

(vii) Any laws requiring or authorizing local government permits or approvals for the remedial action.

(c) Remedial actions exempt from procedural requirements under (a) and (b) of this subsection still must comply with the substantive requirements of these laws.

(d) The department shall ensure compliance with substantive requirements and provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement these laws as follows:

(i) Before proposing any substantive requirements, the department or potentially liable persons, if directed to do so by the department, shall consult with the state agencies and local governments to identify potential permits and to obtain written documentation from the consulted agencies regarding the substantive requirements for permits exempted under RCW 70.105D.090.

(ii) The permit exemptions and the substantive requirements, to the extent they are known, shall be identified by the department in the order, decree, or if the cleanup is being conducted by the department, in the work plan prepared by the department.

(iii) A public notice of the order, decree or work plan shall be issued in accordance with WAC 173-340-600. The notice shall specifically identify the permits exempted under RCW 70.105D.090 and seek comment on the substantive requirements proposed to be applied to the remedial action. This notice shall be mailed to the state agencies and local governments that would otherwise implement these permits. This notice shall also be mailed to the same individuals that the state agencies and local government have identified that would normally be mailed notice to if a permit was being issued.

(iv) Substantive requirements, to the extent known and identified by the state agencies and local governments before issuing the order, decree or work plan and those identified by the state agencies and local government during the public comment period shall be incorporated into the order, decree or work plan if approved by the department.

(e) It shall be the continuing obligation of persons conducting remedial actions to determine whether additional permits or approvals or substantive requirements are required. In the event that either the person conducting the remedial action or the department becomes aware of additional permits or approvals or substantive requirements that apply to the remedial action, they shall promptly notify the other party of this knowledge. The department, or the potentially liable person at the department's request, shall consult with the state or local agency on these additional requirements. The department shall make the final determination on the application of any additional substantive requirements at the site.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-720 Ground water cleanup standards.

(1) General considerations.

(a) Ground water cleanup levels shall be based on estimates of the highest beneficial use and the reasonable maximum exposure expected to occur under both current and

potential future site use conditions. The department has determined that ~~((for))~~ at most sites use of ground water as a source of drinking water is the beneficial use requiring the highest quality of ground water and that exposure to hazardous substances ~~((via))~~ through ingestion of drinking water and other domestic uses represents the reasonable maximum exposure. Unless a site qualifies under subsection (2) of this section for a different ground water beneficial use, ground water cleanup levels shall be established using this presumed exposure scenario and be established in accordance with subsection (3), (4) or (5) of this section. If the site qualifies for a different ground water beneficial use, ground water cleanup levels shall be established under subsection (6) of this section.

~~((b))~~ In the event of a release of a hazardous substance at a site, ~~((treatment, removal, or containment measures))~~ a cleanup action complying with this chapter shall be conducted to ~~((reduce))~~ address all areas where the concentration of the hazardous substance in ground water ~~((to a concentration consistent with this use unless the following can be demonstrated:))~~ exceeds cleanup levels.

~~((c))~~ Ground water cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of surface water, sediments, soil, or air cleanup standards established under this chapter or other applicable state and federal laws. A site that qualifies for a Method C ground water cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(d) The department may require more stringent cleanup levels than specified in this section where necessary to protect other beneficial uses or otherwise protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708. The following are examples of situations that may require more stringent cleanup levels:

- (i) Concentrations that are necessary to protect sensitive subgroups;
- (ii) Concentrations that eliminate or minimize the potential for food chain contamination;
- (iii) Concentrations that eliminate or minimize the potential for damage to soils or biota in the soils which could impair the use of the soil for agricultural or silvicultural purposes;
- (iv) Concentrations that eliminate or minimize the potential for the accumulation of vapors in buildings or other structures to concentrations which pose a threat to human health or the environment; and
- (v) Concentrations that protect nearby surface waters.

(2) Potable ground water defined. Ground water shall be classified as potable to protect drinking water beneficial uses unless the following can be demonstrated:

- (a) The ground water does not serve as a current source of drinking water;
- ~~((b))~~ (b) The ground water is not a potential future source of drinking water for any of the following reasons:
 - ~~((A))~~ (i) The ground water is present in insufficient quantity to yield greater than 0.5 gallon per minute on a sus-

tainable basis to a well constructed in compliance with chapter 173-160 WAC and in accordance with normal domestic water well construction practices for the area in which the site is located;

~~((B))~~ (ii) The ground water contains natural background concentrations of organic or inorganic constituents ~~((which))~~ that make use of the water ~~((for))~~ as a drinking water source not practicable. Ground water containing total dissolved solids at concentrations greater than 10,000 mg/l shall normally be considered to have fulfilled this requirement; *(NOTE: The total dissolved solids concentration provided here is an example. There may be other situations where high natural background levels also meet this requirement.)* or

~~((C))~~ (iii) The ground water is situated at a great depth or location ~~((which))~~ that makes recovery of water for drinking water purposes technically impossible; and

~~((D))~~ (c) The department determines it is unlikely that hazardous substances will be transported from the contaminated ground water to ground water that is a current or potential future source of drinking water, as defined in ~~((a))~~ ~~((i))~~ and ~~((b))~~ of this subsection, at concentrations which exceed ground water quality criteria published in chapter 173-200 WAC ~~((; or~~

~~((iv))~~ More stringent concentrations are necessary to protect human health or the environment).

~~((b))~~ In making a determination under ~~((a))~~ ~~((iii))~~ of this ~~((subsection))~~ provision, the department shall consider site-specific factors including:

- (i) The extent of affected ground water;
- (ii) The distance to existing water supply wells;
- (iii) The likelihood of interconnection between the contaminated ground water and ground water that is a current or potential future source of drinking water due to well construction practices in the area of the state where the site is located;
- (iv) The physical and chemical characteristics of the hazardous substance;
- (v) The hydrogeologic characteristics of the site;
- (vi) The presence of discontinuities in the affected geologic stratum; and
- (vii) The degree of confidence in any predictive modeling performed.

~~((e))~~ The department recognizes that there may be sites where there is an extremely low probability that ground water classified as potential future source of drinking water under ~~((b))~~ of this subsection will actually be used for that purpose (i.e., the shallow ground waters on Harbor Island). At such sites, the department may approve ground water cleanup levels that are based on protecting beneficial uses of adjacent surface water if the person undertaking the cleanup action can demonstrate all of the following:

- (i) There are known or projected points of entry of the ground water into the surface water;
- (ii) The surface water is not classified as a suitable domestic water supply source under chapter 173-201 WAC;
- (iii) Ground water flows into surface waters will result in no exceedances of surface water cleanup levels at the point of

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entry or at any downstream location where it is reasonable to believe that hazardous substances may accumulate;

(iv) The cleanup action includes institutional controls that will prevent the use of contaminated ground water at any point between the source of hazardous substances and the point(s) of entry of the ground water into the surface water; and

(v) The department determines it is unlikely that hazardous substances will be transported from the contaminated ground water to ground water that is a current or potential future source of drinking water, as defined in (b) of this subsection, at concentrations which exceed ground water quality criteria published in chapter 173-200 WAC.

(d) Where more stringent cleanup levels are necessary to protect beneficial uses of ground water other than drinking water, the cleanup level shall be established by the department under methods B or C as appropriate.

(e) Releases of hazardous substances to ground waters of the state shall not directly or indirectly cause violations of surface water, sediments, soil, or air cleanup standards established under this chapter or other applicable state and federal laws:

(2) Method A cleanup levels.

(a) Where the ground water is a current or potential future source of drinking water,)) (d) Even if ground water is classified as a potential future source of drinking water under (b) of this subsection, the department recognizes that there may be sites where there is an extremely low probability that the ground water will be used for that purpose because of the site's proximity to surface water that is not suitable as a domestic water supply. An example of this situation would be shallow ground waters in close proximity to marine waters such as on Harbor Island in Seattle. At such sites, the department may allow ground water to be classified as nonpotable for the purposes of this section if each of the following conditions can be demonstrated. These determinations must be for reasons other than that the ground water or surface water has been contaminated by a release of a hazardous substance at the site.

(i) The conditions specified in (a) and (c) of this subsection are met;

(ii) There are known or projected points of entry of the ground water into the surface water;

(iii) The surface water is not classified as a suitable domestic water supply source under chapter 173-201A WAC; and

(iv) The ground water is sufficiently hydraulically connected to the surface water that the ground water is not practicable to use as a drinking water source.

(3) Method A cleanup levels for potable ground water.

(a) **Applicability.** Method A ground water cleanup levels may only be used at sites qualifying under WAC 173-340-704(1).

(b) **General requirements.** Method A cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations listed in Table ((1±)) 720-1 and compliance with the corresponding footnotes;

((Table 1

Method A Cleanup Levels—Ground Water^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	5.0 ug/liter ^b
Benzene	71-43-2	5.0 ug/liter ^c
Cadmium	7440-43-9	5.0 ug/liter ^d
Chromium (Total)	7440-47-3	50.0 ug/liter ^e
DDT—	50-29-3	0.1 ug/liter ^f
1,2-Dichloroethane	107-06-2	5.0 ug/liter ^g
Ethylbenzene	100-41-4	30.0 ug/liter ^h
Ethylene dibromide	106-93-4	0.01 ug/liter ⁱ
Gross Alpha Particle Activity		15.0 pCi/liter ^j
Gross Beta Particle Activity		4.0 mrem/yr ^k
Lead	7439-92-1	5.0 ug/liter ^l
Lindane	58-89-9	0.2 ug/liter ^m
Methylene chloride	75-09-2	5.0 ug/liter ⁿ
Mercury	7439-97-6	2.0 ug/liter ^o
PAHs (carcinogenic)		0.1 ug/liter ^p
PCB mixtures		0.1 ug/liter ^q
Radium-226 and-228		5.0 pCi/liter ^r
Radium-226		3.0 pCi/liter ^s
Tetrachloroethylene	127-18-4	5.0 ug/liter ^t
Toluene	108-88-3	40.0 ug/liter ^u
Total Petroleum Hydrocarbons		1000.0 ug/liter ^v
1,1,1-Trichloroethane	71-55-6	200.0 ug/liter ^w
Trichloroethylene	79-01-5	5.0 ug/liter ^x
Vinyl chloride	75-01-4	0.2 ug/liter ^y
Xylenes	1330-20-7	20.0 ug/liter ^z

^a— Caution on misusing method A tables. Method A tables have been developed for specific purposes. They are intended to provide conservative cleanup levels for sites undergoing routine cleanups or those sites with relatively few hazardous substances. The tables may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in these tables should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in these tables do not necessarily trigger requirements for cleanup action under this chapter.

^b— Arsenic. Cleanup level based on background concentrations for state of Washington.

^c— Benzene. Cleanup level based on applicable state and federal law.

^d— Cadmium. Cleanup level based on applicable state and federal law and concentration derived using procedures in subsection (3)(a)(ii)(A) of this section and a hazard quotient of 0.2.

^e— Chromium (Total). Cleanup level based on applicable state and federal law.

^f— DDT. Cleanup levels based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section.

^g— 1,2-Dichloroethane. Cleanup level based on applicable state and federal law.

^h— Ethylbenzene. Cleanup level based on applicable state and federal law and prevention of adverse aesthetic characteristics.

ⁱ— Ethylene dibromide. Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section and modified based on analytical considerations.

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- l. ~~Gross Alpha Particle Activity, excluding uranium. Cleanup level based on applicable state and federal law.~~
- k. ~~Gross Beta Particle Activity, including gamma activity. Cleanup level based on applicable state and federal law.~~
- l. ~~Lead. Cleanup level based on applicable state and federal law and prevention of unacceptable blood lead levels.~~
- m. ~~Lindane. Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section.~~
- n. ~~Methylene chloride. Cleanup level based on concentration derived using the procedures in subsection (3)(a)(ii)(B) of this section.~~
- o. ~~Mercury. Cleanup level based on applicable state and federal law.~~
- p. ~~PAHs (carcinogenic). Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section and modified based on analytical considerations.~~
- q. ~~PCB mixtures. Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section and modified based on analytical considerations.~~
- r. ~~Radium 226 and 228. Cleanup level based on applicable state and federal law.~~
- s. ~~Radium 226. Cleanup level based on applicable state and federal law.~~
- t. ~~Tetrachloroethylene. Cleanup level based on applicable state and federal law.~~
- u. ~~Toluene. Cleanup level based on applicable state and federal law and prevention of adverse aesthetic characteristics.~~
- v. ~~Total Petroleum Hydrocarbons. Cleanup level based on prevention of adverse aesthetic characteristics.~~
- w. ~~1,1,1-Trichloroethane. Cleanup level based on applicable state and federal law.~~
- x. ~~Trichloroethylene. Cleanup level based on applicable state and federal law.~~
- y. ~~Vinyl chloride. Cleanup level based on concentration derived using procedures in subsection (3)(a)(ii)(B) of this section and modified based on analytical considerations.~~
- z. ~~Xylenes. Cleanup level based on applicable state and federal law and prevention of adverse aesthetic characteristics; and))~~

(ii) Concentrations established under applicable state and federal laws, including the following requirements:

(A) Maximum contaminant levels established under the Safe Drinking Water Act and published in 40 C.F.R. 141(~~(, as amended)~~);

(B) Maximum contaminant level goals for noncarcinogens established under the Safe Drinking Water Act and published in 40 C.F.R. 141(~~(, as amended)~~);

(C) ~~((Secondary maximum contaminant levels established under the Safe Drinking Water Act and published in 40 C.F.R. 143, as amended; and~~

~~((D)))~~ Maximum contaminant levels established by the state board of health and published in chapter ~~((248-54 WAC, as amended))~~ 246-290 WAC.

~~((b) The department may establish method A cleanup levels more stringent than those required by (a) of this subsection when, based upon site-specific evaluations, the department determines that such levels are necessary to protect human health and the environment.~~

(e) Cleanup levels to protect beneficial uses of ground water other than drinking water shall be established by the department under methods B or C, as appropriate.

~~(3))~~ (iii) For hazardous substances deemed indicator hazardous substances for ground water under WAC 173-340-

708(2) and for which there is no value in Table 720-1 or applicable state and federal laws, concentrations that do not exceed natural background or the practical quantitation limit, subject to the limitations in this chapter.

(iv) **Protection of surface water beneficial uses.** Concentrations established in accordance with the methods specified in WAC 173-340-730 for protecting surface water beneficial uses, unless it can be demonstrated that the hazardous substances are not likely to reach surface water. This demonstration must be based on factors other than implementation of a cleanup action at the site.

(4) Method B cleanup levels for potable ground water.

(a) **Applicability.** Method B potable ground water cleanup levels consist of standard and modified cleanup levels determined using the procedures in this subsection. Either standard or modified Method B ground water cleanup levels based on drinking water beneficial uses may be used at any site.

(b) **Standard Method B potable ground water cleanup levels.** Where the ground water (~~is a current or potential future source of~~) cleanup level is based on a drinking water beneficial use, standard Method B cleanup levels shall be at least as stringent as all of the following:

(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws, including the requirements in subsection ~~((2)(a))~~ (3)(b)(ii) of this section;

(ii) **Protection of surface water beneficial uses.** Concentrations established in accordance with the methods specified in WAC 173-340-730 for protecting surface water beneficial uses, unless it can be demonstrated that the hazardous substances are not likely to reach surface water. This demonstration must be based on factors other than implementation of a cleanup action at the site.

(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health as determined by the following methods:

(A) **Noncarcinogens.** Concentrations (~~which~~) that are estimated to result in no acute or chronic toxic effects on human health as determined using ~~((the following equation and standard exposure assumptions:))~~ Equation 720-1.

[Equation 720-1]

$$\text{Ground water cleanup level (ug/l)} = \frac{\text{RfD} \times \text{ABW} \times \text{UCF} \times \text{HQ} \times \text{AT}}{\text{DWIR} \times \text{INH} \times \text{DWF} \times \text{ED}}$$

Where:

- RfD = Reference dose as specified in WAC 173-340-708(7) (mg/kg-day)
- ABW = Average body weight during the ~~((period of))~~ exposure duration (16 kg)
- UCF = Unit conversion factor (1,000 ug/mg)
- HQ = Hazard quotient (1) (unitless)
- AT = Averaging time (6 years)
- DWIR = Drinking water ingestion rate (1.0 liter/day)

INH = Inhalation correction factor ((as defined in WAC 173-340-720(7);)) (use value of 2 for volatile organic compounds and 1 for all other substances [unitless])

DWF = Drinking water fraction (1.0) (unitless)

ED = Exposure duration (1.0) (6 years)

(B) **Carcinogens.** For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to ~~((1 in 1,000,000))~~ one in one million (1 x 10⁻⁶) as determined using ~~((the following equation and standard exposure assumptions:))~~ Equation 720-2.

[Equation 720-2]

$$\text{Ground water cleanup level} = \frac{\text{RISK} \times \text{ABW} \times ((\text{LIFE})) \text{AT} \times \text{UCF}}{\text{CPF} \times \text{DWIR} \times ((\text{DUR})) \text{ED} \times \text{INH} \times \text{DWF}} \text{ (ug/l)}$$

Where:

RISK = Acceptable cancer risk level (1 in 1,000,000) (unitless)

ABW = Average body weight during the ((period of)) exposure duration (70 kg)

((LIFE = Lifetime (75 years)))

AT = Averaging time (75 years)

UCF = Unit conversion factor (1,000 ug/mg)

CPF = Carcinogenic potency factor as specified in WAC 173-340-708(8) (kg-day/mg)

DWIR = Drinking water ingestion rate (2.0 liters/day)

((DUR = Duration of exposure (30 years)))

ED = Exposure duration (30 years)

INH = Inhalation correction factor ((as defined in WAC 173-340-720(7);)) (use value of 2 for volatile organic compounds and 1 for all other substances [unitless])

DWF = Drinking water fraction (1.0) (unitless)

~~((b) The department may establish method B cleanup levels that are more stringent than those required by subsection (3)(a) of this section, when, based on site-specific evaluations, the department determines such levels are necessary to protect human health and the environment. This may include the following:~~

~~(i) Concentrations which are necessary to protect sensitive sub-groups;~~

~~(ii) Concentrations which eliminate or minimize the potential for food chain contamination;~~

~~(iii) Concentrations which eliminate or minimize the potential for damage to soils or biota in the soils which could impair the use of the soil for agricultural or silvicultural purposes;~~

~~(iv) Concentrations which eliminate or minimize the potential for the accumulation of vapors in buildings or other structures to concentrations which pose a threat to human health or the environment; and~~

~~(v) Concentrations which protect nearby surface waters. In general, these will be based on attaining surface water cleanup levels in the surface water as close as technically possible to the point or points where the ground water flows into the surface water.~~

~~(c) Method B cleanup levels to protect beneficial uses of ground water other than drinking water shall be established by the department on a case-by-case basis.~~

~~(4)) (C) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds present in the petroleum mixture. Equation 720-3 shall be used for this calculation. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 720-1 and 720-2. See Table 830-1 for the analyses required for various petroleum products to use this method. A total petroleum hydrocarbon cleanup level for petroleum mixtures derived using Equation 720-3 shall be adjusted when necessary so that biological degradation of the petroleum does not result in exceedances of the maximum contaminant levels in chapter 246-290 WAC or natural background, whichever is higher.~~

[Equation 720-3]

$$C_w = \frac{HI \times AT}{\left[\frac{DWIR \times DWF \times ED}{ABW \times UCF} \right] \times \sum_{i=1}^n \frac{F(i) \times INH(i)}{RfD(i)}}$$

AT and ED added to above equation

Where:

C_w = TPH ground water cleanup level (ug/l)

HI = Hazard index (1) (unitless)

AT = Averaging time (6 years)

DWIR = Drinking water intake rate (1.0 liter/day)

DWF = Drinking water fraction (1.0) (unitless)

ED = Exposure duration (6 years)

ABW = Average body weight during the exposure duration (16 kg)

UCF = Unit conversion factor (1,000 ug/mg)

F_i = Fraction by weight of petroleum component (i). (Unitless) (Use site-specific ground water composition data, provided the data is representative of present and future conditions at the site, or use the ground water composition predicted under WAC 173-340-747)

INH_i = Inhalation correction fraction for petroleum component (i) (use value of 2 for volatile organic compounds and 1 for all other components [unitless])

RfD_i = Reference dose of petroleum component (i) as specified in WAC 173-340-708(7) (mg/kg-day)

n = The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

~~(c) **Modified Method B potable ground water cleanup levels.** Modified Method B ground water cleanup levels for drinking water beneficial uses are standard Method B ground water cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws and health risk levels for standard Method B ground water cleanup levels. Changes to exposure assumptions must comply with WAC 173-340-708(10). The following adjustments may be made to the default assumptions in the standard~~

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Method B equations to derive modified Method B ground water cleanup levels for drinking water beneficial uses:

(i) The inhalation correction factor is an adjustment factor that takes into account exposure to hazardous substances that are volatilized and inhaled during showering and other domestic activities. When available, hazardous substance-specific information may be used to estimate this factor;

(ii) Where separate toxicity factors (reference doses and carcinogenic potency factors) are available for inhalation and oral exposures, the health hazards associated with the inhalation of hazardous substances in ground water during showering and other domestic activities may be evaluated separately from the health hazards associated with ingestion of drinking water. In these cases, the ground water cleanup level based on ingestion of drinking water shall be modified to take into account multiple exposure pathways in accordance with WAC 173-340-708(6);

(iii) The toxicity equivalency factor procedures described in WAC 173-340-708(8) may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons;

(iv) Adjustments to the reference dose and cancer potency factor may be made if the requirements in WAC 173-340-708 (7) and (8) are met; and

(v) Modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16).

(d) Using modified Method B to evaluate ground water remediation levels. In addition to the adjustments allowed under (c) of this subsection, other adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(5) Method C cleanup levels for potable ground water.

(a) ((Method C cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that such levels are consistent with applicable state and federal laws, that all practicable methods of treatment have been utilized, that institutional controls are implemented in accordance with WAC 173-340-440, and that one or more of the conditions in WAC 173-340-706(1) exist.

(b) Where the ground water is a current or potential future source of drinking water as defined in subsection (1)(a) of this section, method C cleanup levels for ground water shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws, including the requirements in subsection (2)(a)(ii) of this section;

(ii) For hazardous substances for which sufficiently protective, health-based standards or criteria have not been established under applicable state and federal laws, those concentrations that protect human health as determined using the following methods:

(A) Concentrations which are estimated to result in no significant acute or chronic toxic effects on human health and are estimated in accordance with WAC 173-340-720

(3)(a)(ii)(A) except that the average body weight shall be 70 kg and the drinking water intake rate shall be 2 liters/day;

(B) Concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 100,000 and are estimated in accordance with WAC 173-340-720 (3)(a)(ii)(B);

(c) The department may establish method C cleanup levels that are more stringent than those required by (b) of this subsection when, based on a site-specific evaluation, the department determines such levels are necessary to protect human health and the environment. This may include consideration of those factors listed in subsection (3)(b) of this section.

(d) Method C cleanup levels that protect beneficial uses of ground water other than drinking water shall be established by the department on a case-by-case basis.

(5) Multiple hazardous substances/multiple pathways of exposure.) Applicability. Method C potable ground water cleanup levels consist of standard and modified cleanup levels as described in this subsection.

The department may approve of both standard and modified Method C ground water cleanup levels based on drinking water beneficial uses only at sites qualifying under WAC 173-340-706(1).

(b) Standard Method C potable ground water cleanup levels. Where the ground water cleanup level is based on a drinking water beneficial use and the site qualifies for a Method C ground water cleanup level, the standard Method C cleanup levels for ground water shall be at least as stringent as all of the following:

(i) Applicable state and federal laws. Concentrations established under applicable state and federal laws, including the requirements in subsection (3)(b)(ii) of this section;

(ii) Protection of surface water beneficial uses. Concentrations established in accordance with the methods specified in WAC 173-340-730 for protecting surface water beneficial uses, unless it can be demonstrated that the hazardous substances are not likely to reach surface water. This demonstration must be based on factors other than implementation of a cleanup action at the site.

(iii) Human health protection. For hazardous substances for which sufficiently protective, health-based standards or criteria have not been established under applicable state and federal laws, those concentrations that protect human health as determined using the following methods:

(A) Noncarcinogens. Concentrations that are estimated to result in no significant acute or chronic toxic effects on human health and are estimated using Equation 720-1, except that the average body weight shall be 70 kg and the drinking water intake rate shall be 2 liters/day;

(B) Carcinogens. Concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one hundred thousand (1×10^{-5}), using Equation 720-2;

(C) Petroleum mixtures. Cleanup levels for petroleum mixtures shall be determined as specified in subsection (4)(b)(iii)(C) of this section except that the average body weight shall be 70 kg and the drinking water rate shall be 2 liters/day.

(c) Modified Method C potable ground water cleanup levels. Modified Method C ground water cleanup levels for drinking water beneficial uses are standard Method C ground water cleanup levels modified with chemical-specific or site-specific data. The same limitations and adjustments specified for modified Method B in subsection (4)(c) of this section apply to modified Method C ground water cleanup levels.

(d) Using Modified Method C to evaluate ground water remediation levels. In addition to the adjustments allowed under (c) of this subsection, other adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(6) Cleanup levels for nonpotable ground water.

(a) Applicability. Ground water cleanup levels may be established under this subsection only if the contaminated ground water is not classified as potable under subsection (2) of this section.

(b) Requirements. Cleanup levels shall be established in accordance with either of the following:

(i) The methods specified in subsections (3), (4) or (5) of this section, as applicable, for protection of drinking water beneficial uses; or

(ii) A site-specific risk assessment as provided for under (c) of this subsection for protection of other ground water beneficial uses.

(c) Site-specific risk assessment.

(i) Method B site-specific ground water cleanup levels. Where a site-specific risk assessment is used to establish a Method B ground water cleanup level under (b)(ii) of this subsection, the risk assessment shall conform to the requirements in WAC 173-340-702 and 173-340-708. The risk assessment shall evaluate all potential exposure pathways and ground water uses at the site, including potential impacts to persons engaged in site development or utility construction and maintenance activities. The risk assessment shall demonstrate the following:

(A) The cleanup levels will meet any applicable state and federal laws (drinking water standards are not applicable to these sites);

(B) The cleanup levels will result in no significant acute or chronic toxic effects on human health as demonstrated by not exceeding a hazard quotient of one (1) for individual hazardous substances;

(C) The cleanup levels will result in an upper bound on the estimated excess cancer risk that is less than or equal to one in one million (1×10^{-6}) for individual hazardous substances;

(D) For organic hazardous substances and petroleum products, the cleanup levels comply with the limitation on free product in subsection (7)(d) of this section;

(E) The cleanup levels will not exceed the surface water cleanup levels derived under WAC 173-340-730 at the ground water point of compliance or exceed the surface water or sediment quality standards at any point downstream, unless it can be demonstrated that the hazardous substances are not likely to reach surface water. This demonstration

must be based on factors other than implementation of a cleanup action at the site; and

(F) Where it is demonstrated that hazardous substances are not likely to reach surface water, the use of a ground water cleanup level less stringent than a surface water cleanup level will not pose a threat to surface water through pathways that could result in ground water affected by the site entering surface water (such as use of the water for irrigation or discharges from foundation drains or utility corridors).

(ii) Method C site-specific ground water cleanup levels.

(A) Applicability. The department may approve of a site-specific Method C ground water cleanup level derived under (b)(ii) of this subsection only at sites qualifying under WAC 173-340-706(1).

(B) Requirements. Where a site-specific risk assessment is used to establish a Method C ground water cleanup level under (b)(ii) of this subsection, the site-specific risk assessment shall comply with the requirements in (c)(i) of this subsection except that the level of risk for individual carcinogens shall be one in one hundred thousand (1×10^{-5}).

(iii) Limitations on the use of site-specific risk assessment. If the site-specific risk assessment results in a Method B or Method C ground water cleanup level that exceeds the applicable potable ground water cleanup level derived under (b)(i) of this subsection, then the potable ground water cleanup level shall be used unless the following conditions are met:

(A) All potentially affected property owners, local governments, tribes and water purveyors with jurisdiction in the area potentially affected by the ground water contamination have been mailed a notice of the proposal and provided an opportunity to comment. The notice shall specifically ask for information on existing and planned uses of the ground water. The notice shall be in addition to any notice provided under WAC 173-340-600. In determining whether it is appropriate to use a cleanup level less stringent than the potable ground water cleanup level, the department will give greater weight to information based on an adopted or pending plan or similar preexisting document.

(B) For sites where the ground water is classified as non-potable under WAC 173-340-720 (2)(d), the cleanup action includes institutional controls complying with WAC 173-340-440 that will prevent the use of contaminated ground water for drinking water purposes at any point between the source of hazardous substances and the point(s) of entry of ground water into the surface water.

(C) For sites where the risk assessment includes assumptions of restricted use or contact with the ground water (other than for the reason of being nonpotable), or restricted use of the land above the ground water, the cleanup action includes institutional controls complying with WAC 173-340-440 that will implement the restrictions.

(7) Adjustments to cleanup levels.

(a) Total site risk adjustments. Ground water cleanup levels for individual hazardous substances developed in accordance with subsection ~~(s-3) and~~ (4), (5) or (6) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account expo-

sure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with the procedures in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}).

~~(b) ((The overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.~~

(6)) Adjustments to applicable state and federal laws. Where a cleanup level developed under subsection (3), (4), (5), or (6) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level shall be adjusted downward so that the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}) and the hazard index does not exceed one (1) at the site.

(c) Natural background and POL considerations. Cleanup levels determined under subsection (3), (4), (5), or (6) of this section, including cleanup levels adjusted under subsection (7)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background concentrations, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements pertaining to practical quantitation limits and natural background.

(d) Nonaqueous phase liquid limitation. For organic hazardous substances and total petroleum hydrocarbons, the cleanup level determined under subsection (3), (4), (5), or (6) shall not exceed a concentration that would result in nonaqueous phase liquid being present in or on the ground water. Physical observations of ground water at or above the cleanup level, such as the lack of a film, sheen, or discoloration of the ground water or lack of sludge or emulsion in the ground water, may be used to determine compliance with this requirement.

(8) Point of compliance.

(a) Point of compliance defined. For ground water, the point of compliance is the point or points where the ground water cleanup levels established under subsection ~~((s-(2);))~~ (3), (4), ~~((and))~~ (5), or (6) of this section must be attained for a site to be in compliance with the cleanup standards. Ground water cleanup levels shall be attained in all ground waters from the point of compliance to the outer boundary of the hazardous substance plume.

(b) Standard point of compliance for all sites. The standard point of compliance shall be established throughout the site from the uppermost level of the saturated zone extending vertically to the lowest most depth which could potentially be affected by the site.

(c) ~~((Where hazardous substances remain on site as part of the cleanup action;))~~ Conditional point of compliance,

Where it can be demonstrated under WAC 173-340-350 through 173-340-390 that it is not practicable to meet the cleanup level throughout the site within a reasonable restoration time frame, the department may approve a conditional point of compliance ((which)) that shall be as close as practicable to the source of hazardous substances, and except as provided under (d) of this subsection, not to exceed the property boundary. Where a conditional point of compliance is proposed, the person responsible for undertaking the cleanup action shall demonstrate that all practicable methods of treatment are to be ((utilized)) used in the site cleanup;

~~(d) ((At sites where the affected ground water flows into nearby surface water, the cleanup level may be based on protection of the surface water. At these sites))~~ Off-property conditional point of compliance. A conditional point of compliance shall not exceed the property boundary except in the three situations described below. In each of these three situations the person responsible for undertaking the cleanup action shall demonstrate that, in addition to making the demonstration required by (c) of this subsection, the following requirements are met:

(i) Properties abutting surface water. Where the ground water cleanup level is based on protection of surface water beneficial uses under subsection (3), (4), (5), or (6) of this section, and the property containing the source of contamination directly abuts the surface water, the department may approve a conditional point of compliance that is located within the surface water as close as technically possible to the point or points where ground water flows into the surface water ~~((Conditional points of compliance may be approved only if the following requirements are met))~~ subject to the following conditions:

~~((+))~~ (A) It has been demonstrated that the contaminated ground water is entering the surface water and will continue to enter the surface water even after implementation of the selected cleanup action;

(B) It has been demonstrated under WAC 173-340-350 through 173-340-390 that it is not practicable to meet the cleanup level at a point within the ground water before entering the surface water, within a reasonable restoration time frame;

(C) Use of a ((dilution)) mixing zone under WAC ((173-201-035)) 173-201A-100 to demonstrate compliance with surface water cleanup levels shall not be allowed;

~~((+))~~ (D) Ground water discharges shall be provided with all known available and reasonable methods of treatment ~~((prior to release))~~ before being released into surface waters;

~~((+))~~ (E) Ground water discharges shall not result in violations of sediment quality values published in chapter 173-204 WAC; ~~((and~~

~~((+))~~ (F) Ground water and surface water monitoring shall be ~~((performed to estimate contaminant flux rates and to address))~~ conducted to assess the long-term performance of the selected cleanup action including potential bioaccumulation problems resulting from surface water concentrations below method detection limits ~~((-~~

(7) Inhalation correction factors.

(a) The inhalation correction factor is an adjustment factor which takes into account exposure to hazardous substances which are volatilized and inhaled during showering and other domestic activities. When available, hazardous substance specific information shall be used to estimate these values.

(b) Where hazardous substance specific information is not available, inhalation correction factors shall be one of the following:

(i) For volatile organic hazardous substances, 2; or

(ii) Other hazardous substances, 1.

(c) Where separate toxicity factors (reference doses and carcinogenic potency factors) are available for inhalation and oral exposures, the health hazards associated with the inhalation of hazardous substances in ground water during showering and other domestic activities may be evaluated separately from the health hazards associated with ingestion of drinking water. In these cases, the ground water cleanup level based on ingestion of drinking water shall be modified to take into account multiple exposure pathways in accordance with WAC 173-340-708(6).

(8)); and

(G) Before approving the conditional point of compliance, a notice of the proposal shall be mailed to the natural resource trustees, the Washington state department of natural resources and the United States Army Corps of Engineers. The notice shall be in addition to any notice provided under WAC 173-340-600 and invite comments on the proposal.

(ii) Properties near, but not abutting, surface water. Where the ground water cleanup level is based on protection of surface water beneficial uses under subsection (3), (4), (5), or (6) of this section and the property that is the source of the contamination is located near, but does not directly abut, a surface water body, the department may approve a conditional point of compliance that is located as close as practicable to the source, not to exceed the point or points where the ground water flows into the surface water.

For a conditional point of compliance to be approved under this provision the conditions specified in (d)(i) of this section must be met and the affected property owners between the source of contamination and the surface water body must agree in writing to the use of the conditional point of compliance. Also, if the ground water cleanup level is not exceeded in the ground water prior to its entry into the surface water, the conditional point of compliance cannot extend beyond the extent of ground water contamination above the cleanup level at the time the department approves the conditional point of compliance.

(iii) Area-wide conditional point of compliance. As part of remedy selection, the department may approve an area-wide conditional point of compliance to address an area-wide ground water contamination problem. The area-wide conditional point(s) of compliance shall be as close as practicable to each source of hazardous substances, not to exceed the extent of ground water contamination at the time the department approves an area-wide conditional point of compliance.

This provision may be applied only at areas that are affected by hazardous substances released from multiple

sources that have resulted in commingled plumes of contaminated ground water that are not practicable to address separately. A site may have more than one area-wide conditional point of compliance to address multiple sources and types of contaminants. An area-wide conditional point of compliance may be approved under this provision only if all of the following conditions have been met:

(A) The person conducting the cleanup action has complied with WAC 173-340-350 through 173-340-390, including a demonstration that it is not practicable to meet a point of compliance throughout the ground water contamination within a reasonable restoration time frame;

(B) A plan has been developed for implementation of the cleanup action, including a description of how any necessary access to the affected properties will be obtained;

(C) If the contaminated ground water is considered to be potable under WAC 173-340-720(2), current developments in the area encompassed by the area-wide conditional point of compliance and any other areas potentially affected by the ground water contamination are served by a public water system that obtains its water from an offsite source and it can be demonstrated that the water system has sufficient capacity to serve future development in these areas. This demonstration may be made by obtaining a written statement to this effect from the water system operator;

(D) All property owners, tribes, local governments, and water purveyors with jurisdiction in the area potentially affected by the ground water contamination, have been mailed a notice of the proposal to establish an area-wide conditional point of compliance and provided an opportunity to comment. The notice shall specifically ask for information on existing and planned uses of the ground water. The notice shall be in addition to any notice provided under WAC 173-340-600. The department will give greater weight to information based on an adopted or pending plan or similar preexisting document. When the department is providing technical assistance under WAC 173-340-515, the department shall also provide an opportunity to comment to the public through the *Site Register* before issuing a written opinion.

(E) Other conditions as determined by the department on a case-by-case basis.

(e) Monitoring wells and surface water compliance.

(i) The department may require or approve the use of upland monitoring wells located between the surface water and the source of contamination to establish compliance where a conditional point of compliance has been established under subsection (8)(d)(i) or (ii) of this section.

(ii) Where such monitoring wells are used, the department should consider an estimate of natural attenuation between the monitoring well and the point or points where ground water flows into the surface water in evaluating whether compliance has been achieved.

(iii) When evaluating how much, if any, natural attenuation will occur, the department shall consider site-specific factors including:

(A) Whether the ground water could reach the surface water in ways that would not provide for natural attenuation within the ground water flow system (such as short circuiting

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through high permeability zones, utility corridors or foundation drains); and

(B) Whether changes to the ground water chemistry due to natural attenuation processes would cause an exceedance of surface water or sediment quality standards.

(9) Compliance monitoring.

(a) When ground water cleanup levels have been established at a site, sampling of the ground water shall be conducted to determine if compliance with the ground water cleanup levels has been achieved. Compliance with ground water cleanup levels shall be determined by ((analyses of) analysis of ground water samples representative of the ground water. Surface water analysis, bioassays or other biomonitoring methods may also be required where the ground water cleanup level is based on protection of surface water. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data that are representative of the site.

(b) Analyses shall be conducted on unfiltered ground water samples, unless it can be demonstrated that a filtered sample provides a more representative measure of ground water quality. ((Ecology)) The department expects that filtering will generally be acceptable for iron and manganese and other naturally occurring inorganic substances where:

(i) A properly constructed monitoring well cannot be sufficiently developed to provide low turbidity water samples;

(ii) Due to the natural background concentration of hazardous substances in the aquifer material, unfiltered samples would not provide a representative measure of ground water quality; and

(iii) Filtering is performed in the field with all practicable measures taken to avoid exposing the ground water sample to the ambient air ((prior to)) before filtering.

((iv) Ecology expects that filtering will generally be allowed for hazardous substances such as iron and manganese.

(b) Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data which are representative of the site.))

(c) The data analysis and evaluation procedures used to evaluate compliance with ground water cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. These procedures shall meet the following general requirements:

(i) Methods of data analysis shall be consistent with the sampling design;

(ii) When cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those requirements shall be ((utilized)) used to evaluate compliance with cleanup levels unless those procedures conflict with the intent of this section;

(iii) Where procedures for evaluating compliance are not specified in an applicable state and federal law, statistical methods used shall be appropriate for the distribution of sampling data for each hazardous substance. ((If the distribution

of sampling data for a hazardous substance is inappropriate for statistical methods based on a normal distribution, then the data may be transformed.)) If the distributions for hazardous substances differ, more than one statistical method may be required;

(iv) Compliance with ground water cleanup levels shall be determined for each ground water monitoring well or other monitoring points such as a spring;

(v) The data analysis procedures identified in the compliance monitoring plan shall specify the statistical parameters to be used to determine compliance with ground water cleanup levels.

(A) For ((clean)) cleanup levels based on short-term or acute toxic effects on human health or the environment, an upper percentile concentration shall be used to evaluate compliance with ground water cleanup levels.

(B) For cleanup levels based on chronic or carcinogenic threats, the true mean concentration shall be used to evaluate compliance with ground water cleanup levels ((unless there are large variations in concentrations relative to the mean concentration or a large percentage of concentrations below the detection limit)).

(vi) When active ground water restoration is performed, or containment technologies are used that incorporate active pumping of ground water, compliance with ground water cleanup levels shall be determined when the ground water characteristics at the site are no longer influenced by the cleanup action.

(d) ((Appropriate statistical methods include the following:

(i) A procedure in which a confidence interval for each hazardous substance is established from ground water sampling data and the ground water cleanup level is compared to the upper confidence interval; and)) When data analysis procedures for evaluating compliance are not specified in an applicable state or federal law, the following procedures shall be used:

(i) A confidence interval approach that meets the following requirements:

(A) The upper one-sided ninety-five percent confidence limit on the true mean ground water concentration shall be less than the ground water cleanup level. For lognormally distributed data, the upper one-sided ninety-five percent confidence limit shall be calculated using Land's method; and

(B) Data shall be assumed to be lognormally distributed unless this assumption is rejected by a statistical test. If a lognormal distribution is inappropriate, data shall be assumed to be normally distributed unless this assumption is rejected by a statistical test. The W test, D'Agostino's test, or censored probability plots, as appropriate for the data, shall be the statistical methods used to determine whether the data is lognormally or normally distributed.

(ii) Evaluations conducted under subsection (9)(c)(v)(A) of this subsection may use a parametric test for percentiles based on tolerance intervals to test the proportion of ground water samples having concentrations less than the ground water cleanup level. When using this method, the true proportion of samples that do not exceed the ground water cleanup level shall not be less than ninety percent. Statistical tests shall be performed with a Type I error level of 0.05; or

(iii) Other statistical methods approved by the department.

~~(e) ((If a confidence interval approach is used to evaluate compliance with a ground water cleanup level, the decision rule is a one-tailed test of the null hypothesis that the true ground water concentration exceeds the ground water cleanup level. Compliance with a ground water cleanup level shall be determined using the following criteria:)) All data analysis methods used, including those specified in state or federal law, must meet the following requirements:~~

~~(i) ((The upper confidence limit on the true ground water concentration shall be less than the ground water cleanup level. Statistical tests shall be performed at a Type I error level of 0.05;~~

~~((ii)) No single sample concentration shall be greater than two times the ground water cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations; and~~

~~((((iii))) (ii) Less than ten percent of the sample concentrations shall exceed the ground water cleanup level during a representative sampling period. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations; and~~

~~(f) ((If a method to test the proportion of ground water samples is used to evaluate compliance with a ground water cleanup level, compliance shall be determined using the following criteria:~~

~~(i) The true proportion of samples that exceed the ground water cleanup level shall be less than fifty percent. Statistical tests shall be performed with a Type I error level of 0.05; and~~

~~(ii) No single sample concentration shall be greater than two times the ground water cleanup level; and~~

~~(iii) Less than ten percent of the sample concentrations shall exceed the ground water cleanup level during a representative sampling period.~~

~~(g) For purposes of demonstrating)) When using statistical methods to demonstrate compliance with ground water cleanup levels, the following procedures shall be used for measurements below the practical quantitation limit:~~

~~(i) Measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit when not more than fifteen percent of the measurements are below the practical quantitation limit.~~

~~(ii) Measurements above the method detection limit but below the practical quantitation limit shall be assigned a value equal to the method detection limit when not more than fifteen percent of the measurements are below the practical quantitation limit.~~

~~(iii) When between fifteen and fifty percent of the measurements are below the practical quantitation limit and the data are assumed to be lognormally or normally distributed, Cohen's method shall be used to calculate a corrected mean and standard deviation for use in calculating an upper confidence limit on the true mean ground water concentration.~~

~~(iv) If more than fifty percent of the measurements are below the practical quantitation limit, the largest value in the data set shall be used in place of an upper confidence limit on the true mean ground water calculation.~~

(v) If a hazardous substance or petroleum fraction has never been detected in any sample at a site and these substances are not suspected of being present at the site based on site history and other knowledge, that hazardous substance or petroleum fraction may be excluded from the statistical analysis.

~~(vi) The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit. ((Alternate procedures may include probit analysis and regression analysis:))~~

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

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-730 Surface water cleanup standards.

(1) General considerations.

(a) Surface water cleanup levels shall be based on estimates of the highest beneficial use and the reasonable maximum exposure expected to occur under both current and potential future site use conditions. The classification and the highest beneficial use of a surface water body ~~((shall be)),~~ determined in accordance with chapter ~~((173-201))~~ 173-201A WAC, ((as amended:)) shall be used to establish the reasonable maximum exposure for that water body. Surface water cleanup levels shall use this presumed exposure scenario and shall be established in accordance with this section.

(b) In the event of a release of a hazardous substance to surface water from a site, ~~((treatment, removal, or containment measures))~~ a cleanup action that complies with this chapter shall be conducted to ~~((reduce the level of hazardous substances in surface water to concentrations consistent with uses specified under this section and chapter 173-201 WAC, as amended))~~ address all areas of the site where the concentration of the hazardous substances in the surface water exceeds cleanup levels.

~~((b))~~ (c) Surface water cleanup levels established under this section apply to those surface waters of the state affected or potentially affected by releases of hazardous substances from sites addressed under this chapter. ~~((Ecology))~~ The department does not expect that cleanup standards will be applied to storm water runoff that is in the process of being conveyed to a treatment system.

~~((e) Releases of hazardous substances to))~~ (d) Surface water ~~((s of the state))~~ cleanup levels shall be established at concentrations that do not directly or indirectly cause violations of ground water, soil, sediment, or air cleanup standards established under this chapter or other applicable state and federal laws. A site that qualifies for a Method C surface water cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(e) The department may require more stringent cleanup levels than specified in this section where necessary to protect other beneficial uses or otherwise protect human health and the environment. Any imposition of more stringent

requirements under this provision shall comply with WAC 173-340-702 and 173-340-708.

(2) **Method A surface water cleanup levels.**

(a) **Applicability.** Method A surface water cleanup levels may only be used at sites that qualify under WAC 173-340-704(1).

(b) **General requirements.** Method A surface water cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws, including the following requirements:

((#)) (A) All water quality criteria published in the water quality standards for surface waters of the state of Washington, chapter 173-201A WAC, as amended;

((#)) (B) Water quality criteria based on the protection of aquatic organisms (acute and chronic criteria) and human health published ((pursuant to)) under section 304 of the Clean Water Act.

((b) The department may establish method A cleanup levels that are more stringent than those required under subsection (2)(a) of this section, when, based on site specific evaluations, the department determines that such levels are necessary to protect human health and the environment.) (C) National toxics rule (40 C.F.R. Part 131):

(ii) For surface waters that are classified as suitable for use as a domestic water supply under chapter 173-201A (excluding marine waters), concentrations derived using the methods specified in WAC 173-340-720 for drinking water beneficial uses; and

(iii) For a hazardous substance deemed an indicator hazardous substance for surface water under WAC 173-340-708(2) and for which there is no value in applicable state and federal laws, a concentration that does not exceed the natural background concentration or the practical quantitation limit, subject to the limitations in this chapter.

(3) **Method B surface water cleanup levels.**

(a) **Applicability.** Method B surface water cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method B surface water cleanup levels may be used at any site.

(b) **Standard Method B surface water cleanup levels.** Standard Method B cleanup levels for surface waters shall be at least as stringent as all of the following:

(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws, including the following requirements:

(A) All water quality criteria published in the water quality standards for surface waters of the state of Washington, chapter ((173-201)) 173-201A WAC((, as amended; and));

(B) Water quality criteria based on the protection of aquatic organisms (acute and chronic criteria) and human health published ((pursuant to)) under section 304 of the Clean Water Act unless it can be demonstrated that such criteria are not relevant and appropriate for a specific surface water body or hazardous substance((-)); and

(C) National toxics rule (40 C.F.R. Part 131);

(ii) **Environmental effects.** For hazardous substances for which environmental effects-based concentrations have

not been established under applicable state or federal laws, concentrations ((which)) that are estimated to result in no adverse effects on the protection and propagation of wildlife, fish, and other aquatic life. Whole effluent toxicity testing using the protocols described in chapter 173-205 WAC may be used to make this demonstration for fish and aquatic life;

(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations ((which)) that protect human health as determined by the following methods:

(A) **Noncarcinogens.** For surface waters ((which)) that support or have the potential to support fish or shellfish populations, concentrations which are ((anticipated)) estimated to result in no acute or chronic toxic effects on human health as determined using ((the following)) Equation((s and standard exposure assumptions:)) 730-1.

[Equation 730-1]

$$\text{Surface water cleanup level} = \frac{\text{RfD} \times \text{ABW} \times \text{UCF1} \times \text{UCF2} \times \text{HQ} \times \text{AT}}{\text{BCF} \times \text{FCR} \times \text{FDF} \times \text{ED}}$$

Where:

- RfD = Reference dose as specified in WAC 173-340-708(7) (mg/kg-day)
- ABW = Average body weight during the exposure ((period)) duration (70 kg)
- UCF1 = Unit conversion factor (1,000 ug/mg)
- UCF2 = Unit conversion factor (1,000 grams/liter)
- BCF = ((Fish)) Bioconcentration factor as defined in WAC 173-340-708(9) ((unitless)) (liters/kilogram)
- FCR = Fish consumption rate (54 grams/day)
- FDF = Fish diet fraction (0.5) (unitless)
- HQ = Hazard ((Index)) quotient (1) (unitless)
- AT = Averaging time (30 years)
- ED = Exposure duration (30 years)

(B) **Carcinogens.** For surface waters which support or have the potential to support fish or shellfish populations, concentrations ((which)) that are ((anticipated)) estimated to result in an excess cancer risk less than or equal to ((1 in 1,000,000)) one in one million (1 x 10⁻⁶) as determined using ((the following)) Equation ((and standard exposure assumptions:)) 730-2.

[Equation 730-2]

$$\text{Surface water cleanup level} = \frac{\text{RISK} \times \text{ABW} \times ((\text{LIFE})) \text{AT} \times \text{UCF1} \times \text{UCF2}}{\text{CPF} \times \text{BCF} \times \text{FCR} \times \text{FDF} \times ((\text{DUR})) \text{ED}}$$

Where:

- CPF = Carcinogenic potency factor as specified in WAC 173-340-708(8) (kg-day/mg)
- RISK = Acceptable cancer risk level (1 in 1,000,000) (unitless)
- ABW = Average body weight during the exposure ((period)) duration (70 kg)
- ((LIFE = Lifetime (75 years)))
- AT = Averaging time (75 years)
- UCF1 = Unit conversion factor (1,000 ug/mg)

PERMANENT

UCF2 = Unit conversion factor (1,000 grams/liter)

BCF = ~~((Fish))~~ Bioconcentration factor as defined in WAC 173-340-708(9) ~~((unitless))~~ (liters/kilogram)

FCR = Fish consumption rate (54 grams/day)

FDF = Fish diet fraction (0.5) (unitless)

~~((DUR = Duration of exposure (30 years);))~~

ED = Exposure duration (30 years)

(C) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated using Equation 730-1 and by taking into account the additive effects of the petroleum fractions and volatile hazardous substances present in the petroleum mixture. As an alternative to this calculation, the total petroleum hydrocarbon cleanup levels in Table 720-1 may be used. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 730-1 and 730-2. See Table 830-1 for the analyses required for various petroleum products to use this method; and

(iv) **Drinking water considerations.** For surface waters ~~((which represent a source or potential future source of drinking water))~~ that are classified as suitable for use as a domestic water supply under chapter 173-201A WAC, concentrations ~~((which are anticipated to result in no adverse impacts on human health as established in accordance with))~~ derived using the methods specified in WAC 173-340-720~~((3))~~ for drinking water beneficial uses.

(c) **Modified Method B surface water cleanup levels.** Modified Method B surface water cleanup levels are standard Method B surface water cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws and health risk levels required for standard Method B surface water cleanup levels. Changes to exposure assumptions must comply with WAC 173-340-708(10). The following adjustments may be made to the default assumptions in the standard Method B equations to derive modified Method B surface water cleanup levels:

(i) Adjustments to the reference dose and cancer potency factor may be made if the requirements in WAC 173-340-708(7) and (8) are met;

(ii) Adjustments to the bioconcentration factor may be made if the requirements in WAC 173-340-708(9) are met;

(iii) Where a numeric environmental effects-based water quality standard does not exist, bioassays that use methods other than those specified in chapter 173-205 WAC may be approved by the department to establish concentrations for the protection of fish and other aquatic life;

(iv) The toxicity equivalency factor procedures described in WAC 173-340-708(8) may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons; and

(v) Modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16).

(d) **Using modified Method B to evaluate surface water remediation levels.** In addition to the adjustments allowed under subsection (3)(c) of this section, adjustments

to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

~~((b) The department may establish method B cleanup levels more stringent than those required by subsection (3)(a) of this section, when, based on site specific evaluations, the department determines that such levels are necessary to protect human health and the environment.))~~

(4) **Method C surface water cleanup levels.**

(a) **Applicability.** Method C surface water cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method C cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that such levels are consistent with applicable state and federal laws, that all practicable methods of treatment have been ~~((utilized))~~ used, that institutional controls are implemented in accordance with WAC 173-340-440, and that one or more of the conditions in WAC 173-340-706(1) exist.

(b) **Standard Method C surface water cleanup levels.** Method C cleanup levels for surface waters shall be at least as stringent as all of the following:

(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws, including the requirements identified in subsection (3)~~((a))~~ (b)(i) of this section;

(ii) **Environmental effects.** For hazardous substances for which an environmental effects based concentration has not been established under applicable state or federal laws, those concentrations which are estimated to result in no significant adverse effects on the protection and propagation of wildlife, fish and other aquatic life. Whole effluent toxicity testing using the protocols described in chapter 173-205 WAC may be used to make this demonstration for fish and aquatic life;

(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health ~~((and the environment))~~ as determined by the following methods:

(A) **Noncarcinogens.** For surface waters ~~((which))~~ that support or have the potential to support fish or shellfish populations, concentrations ~~((which))~~ that are estimated to result in no significant acute or chronic toxic effects on human health ~~((or the environment))~~ and are estimated in accordance with ~~((WAC 173-340-730 (3)(a)(iii)(A)))~~ Equation 730-1 except that the fish diet fraction shall be twenty percent (0.2);

(B) **Carcinogens.** For surface waters ~~((which))~~ that support or have the potential to support fish or shellfish populations, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to ~~((1 in 100,000))~~ one in one hundred thousand (1×10^{-5}) and are estimated in accordance with ~~((WAC 173-340-730 (3)(a)(iii)(B)))~~ Equation 730-2 except that the fish diet fraction shall be twenty percent (0.2);

(C) **Petroleum mixtures.** Cleanup levels for petroleum mixtures shall be calculated as specified in subsection (3)(b)(iii)(C) of this section, except that the fish diet fraction shall be twenty percent (0.2); and

(iv) **Drinking water considerations.** For surface waters ((which represent a source or potential future source of drinking water)) that are classified as suitable for use as a domestic water supply under chapter 173-201A WAC, concentrations ((which are estimated to result in no adverse impacts on human health and are established in accordance with)) derived using the methods specified for drinking water beneficial uses in WAC 173-340-720((4); and

(e) The department may establish method C cleanup levels that are more stringent than those required by (b) of this subsection when, based on site-specific evaluations, the department determines that such levels are necessary to protect human health and the environment)).

(c) **Modified Method C surface water cleanup levels.** Modified Method C surface water cleanup levels are standard Method C surface water cleanup levels modified with chemical-specific or site-specific data. The same limitations and adjustments specified for modified Method B in subsection (3)(c) of this section apply to modified Method C surface water cleanup levels.

(d) **Using modified Method C to evaluate surface water remediation levels.** In addition to the adjustments allowed under subsection (4)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(5) ((Multiple hazardous substances/multiple pathways of exposure.)) **Adjustments to cleanup levels.**

(a) **Total site risk adjustments.** Surface water cleanup levels for individual hazardous substances developed in accordance with subsections (3) and (4) of this section, including those based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) and the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}).

(b) ((These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.)) **Adjustments to applicable state and federal laws.** Where a cleanup level developed under subsection (2), (3) or (4) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the

cleanup level shall be adjusted downward so that the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}) and the hazard index does not exceed one (1) at the site.

(c) **Natural background and POL considerations.** Cleanup levels determined under subsections (2), (3) and (4) of this section, including cleanup levels adjusted under subsection (5)(a) and (b) of this subsection, shall not be set at levels below the practical quantitation limit or natural background concentration, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements pertaining to practical quantitation limits and natural background concentrations.

(d) **Nonaqueous phase liquid limitation.** For organic hazardous substances and petroleum hydrocarbons, the cleanup level shall not exceed a concentration that would result in nonaqueous phase liquid being present in or on the surface water. Physical observations of surface water at or above the cleanup level, such as the lack of a film, sheen, discoloration, sludge or emulsion in the surface water or adjoining shoreline, may be used to determine compliance with this requirement.

(6) **Point of compliance.**

(a) The point of compliance for the surface water cleanup levels shall be the point or points at which hazardous substances are released to surface waters of the state unless the department has authorized a ((dilution)) mixing zone in accordance with chapter 173-201A WAC ((173-201-035)).

(b) Where hazardous substances are released to the surface water as a result of ground water flows, no ((dilution)) mixing zone shall be allowed to demonstrate compliance with surface water cleanup levels. See WAC 173-340-720 ((6)) (8)(d) for additional requirements for sites where contaminated ground water is flowing into surface water.

(c) As used in this subsection, "mixing zone" means that portion of a surface water body adjacent to an effluent outfall where mixing results in dilution of the effluent with the receiving water. See chapter 173-201A WAC for additional information on mixing zones.

(7) **Compliance monitoring.**

(a) When surface water cleanup levels have been established at a site, sampling of the surface water shall be conducted to determine if compliance with the surface water cleanup levels has been achieved. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data ((which)) that are representative of the site.

(b) The data analysis and evaluation procedures used to evaluate compliance with surface water cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410.

(c) Compliance with surface water cleanup standards shall be determined by analyses of unfiltered surface water samples, unless it can be demonstrated that a filtered sample provides a more representative measure of surface water quality.

(d) When surface water cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in

those requirements shall be ~~((utilized))~~ used to evaluate compliance with surface water cleanup levels unless ~~((these))~~ those procedures conflict with the intent of this section.

(e) Where procedures for evaluating compliance are not specified in an applicable state and federal law, compliance with surface water cleanup levels shall be evaluated using procedures approved by the department. Where statistical methods are used to evaluate compliance, the statistical methods ~~((used to evaluate compliance with surface water cleanup levels))~~ shall be appropriate for the distribution of the hazardous substance sampling data. If the distribution of the hazardous substance sampling data is inappropriate for statistical methods based on a normal distribution, then the data may be transformed. If the distributions of individual hazardous substances differ, more than one statistical method may be required.

(f) ~~((For purposes of demonstrating compliance, measurements below the method detection limit shall be assigned a value equal to one half of the method detection limit. Measurements above the method detection limit but below the practical quantitation limit shall generally be assigned a value equal to the method detection limit. The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit. Alternate statistical procedures may include probit analysis and regression analysis.~~

~~((g))~~ Sampling and analysis of fish tissue ~~((or)),~~ shellfish, or other aquatic organisms and sediments may be required to supplement water column sampling during compliance monitoring.

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

AMENDATORY SECTION (Amending Order 94-37, filed 1/26/96, effective 2/26/96)

WAC 173-340-740 Unrestricted land use soil cleanup standards. (1) General considerations.

(a) Presumed exposure scenario soil cleanup levels shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The department has determined that residential land use is generally the site use requiring the most protective cleanup levels and that exposure to hazardous substances under residential land use conditions represents the reasonable maximum exposure scenario. Unless a site qualifies for use of an industrial soil cleanup level under WAC 173-340-745, soil cleanup levels ~~((for this presumed exposure scenario))~~ shall use this presumed exposure scenario and be established in accordance with ~~((method A or method B cleanup levels described in subsections (2) and (3) of))~~ this section.

(b) In the event of a release of a hazardous substance ~~((; treatment, removal, and/or containment measures shall be implemented for those soils with hazardous substance concentrations which exceed soil cleanup levels based on this use unless the following can be demonstrated:~~

(i) The property does not serve as a current residential area;

(ii) The property does not have the potential to serve as a future residential area based on the consideration of zoning, statutory and regulatory restrictions, comprehensive plans, historical use, adjacent land uses, and other relevant factors; and

(iii) Appropriate use restrictions are implemented at the property; or

(iv) More stringent concentrations are necessary to protect human health and the environment.

(b) Industrial property soil cleanup levels. Soil cleanup levels for qualifying industrial properties may be established in accordance with the requirements in WAC 173-340-745.

(c) Commercial property soil cleanup levels. For industrial land uses not qualifying under WAC 173-340-745 and commercial land uses, the presumption is that soil cleanup levels shall be established in accordance with residential areas unless it can be clearly demonstrated that this is inappropriate.

(i) For a property to qualify under this subsection, it must be clearly demonstrated that:

(A) The property is currently zoned for or otherwise officially designated for industrial/commercial use;

(B) The property is currently used for industrial/commercial purposes or has a history of use for industrial/commercial purposes;

(C) Properties adjacent to and in the general vicinity of the property are used or are designated for use for industrial/commercial purposes; and

(D) The property and properties adjacent to and in the general vicinity are expected to be used for industrial/commercial purposes for the foreseeable future due to site zoning, statutory or regulatory restrictions, comprehensive plans, adjacent land use, and other relevant factors.

(ii) For industrial/commercial land uses qualifying under this subsection, soil cleanup levels shall be established as close as practicable to the method B soil cleanup levels established under subsection (3) of this section and shall be at least as stringent as the method C soil cleanup levels established under subsection (4) of this section. The overall limits on hazard index and total excess cancer risk specified in subsections (3) through (5) of this section shall apply to these sites.

(iii) Institutional controls under WAC 173-340-440 shall be required for industrial/commercial land uses qualifying under this subsection where soil cleanup levels are less stringent than method B soil cleanup levels established under subsection (3) of this section.

(iv) Soil cleanup levels for areas beyond the commercial/industrial property boundary that do not qualify for commercial soil cleanup levels under this subsection (including implementation of institutional controls and a covenant restricting use of the property to commercial or industrial use, as applicable) shall use method A or method B cleanup levels as described in subsections (2) or (3) of this section.

(v) The department expects that only industrial/commercial properties located in the interior portion of a large industrial/commercial area will qualify for other than method A or method B cleanup levels under this subsection.

(d) Other nonresidential properties soil cleanup levels.

(i) Soil cleanup levels for childcare facilities and schools shall be established in accordance with method A or method

B cleanup levels as described in subsections (2) and (3) of this section:

(ii) For other nonresidential land uses such as recreational or agricultural uses, soil cleanup levels shall be established on a case-by-case basis:

(A) The overall limits on the hazard index and cancer risk specified in subsections (3) through (5) of this section shall apply to these types of sites:

(B) Soil cleanup levels for these types of sites shall be at least as stringent as method C cleanup levels established under subsection (4) of this section:

(C) Where other than a method A (residential) or method B soil cleanup level is proposed at these properties, the cleanup action shall include appropriate institutional controls implemented in accordance with WAC 173-340-440 to limit potential exposure to residual contamination. This shall include, at a minimum, placement of a covenant on the property restricting use of the property to the land use(s) the cleanup level is based on)) to the soil at a site, a cleanup action complying with this chapter shall be conducted to address all areas where the concentration of hazardous substances in the soil exceeds cleanup levels at the relevant point of compliance.

((e)) (c) The department may require more stringent soil cleanup standards than required by this section where, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708. The following are examples of situations that may require more stringent cleanup levels.

(i) Concentrations that eliminate or substantially reduce the potential for food chain contamination;

(ii) Concentrations that eliminate or substantially reduce the potential for damage to soils or biota in the soils which could impair the use of soils for agricultural or silvicultural purposes;

(iii) Concentrations necessary to address the potential health risk posed by dust at a site;

(iv) Concentrations necessary to protect the ground water at a particular site;

(v) Concentrations necessary to protect nearby surface waters from hazardous substances in runoff from the site; and

(vi) Concentrations that eliminate or minimize the potential for the accumulation of vapors in buildings or other structures.

(d) Relationship between soil cleanup levels and other cleanup standards. Soil cleanup levels shall be established at concentrations ((which)) that do not directly or indirectly cause violations of ground water, surface water, sediment, or air cleanup standards established under this chapter or applicable state and federal laws. A property that qualifies for ((other than a method A or method B)) a Method C soil cleanup level under ((this subsection)) WAC 173-340-745 does not necessarily qualify for ((other than a method A or method B)) a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.

(2) Method A soil cleanup levels for unrestricted land use.

(a) Applicability. Method A soil cleanup levels may only be used at sites qualifying under WAC 173-340-704(1).

(b) General requirements. Method A soil cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations in ((the following)) Table 740-1 and compliance with the corresponding footnotes; ((and

Table 2
Method A Cleanup Levels—Soil^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20.0 mg/kg ^b
Benzene	71-43-2	0.5 mg/kg ^e
Cadmium	7440-43-9	2.0 mg/kg ^d
Chromium	7440-47-3	100.0 mg/kg ^e
DDT	50-29-3	1.0 mg/kg ^f
Ethylbenzene	100-41-4	20.0 mg/kg ^g
Ethylene dibromide	106-93-4	0.001 mg/kg ^h
Lead	7439-92-1	250.0 mg/kg ⁱ
Lindane	58-89-9	1.0 mg/kg ^j
Methylene chloride	75-09-2	0.5 mg/kg ^h
Mercury (inorganic)	7439-97-6	1.0 mg/kg ^j
PAHs (carcinogenic)		1.0 mg/kg ^m
PCB Mixtures		1.0 mg/kg ⁿ
Tetrachloroethylene	127-18-4	0.5 mg/kg ^o
Toluene	108-88-3	40.0 mg/kg ^p
TPH (gasoline)		100.0 mg/kg ^q
TPH (diesel)		200.0 mg/kg ^r
TPH (other)		200.0 mg/kg ^q
1,1,1 Trichloroethane	71-55-6	20.0 mg/kg ^s
Trichloroethylene	79-01-5	0.5 mg/kg ^o
Xylenes	1330-20-7	20.0 mg/kg ^v

- ^a Caution on misusing method A tables. Method A tables have been developed for specific purposes. They are intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. The tables may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in these tables should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in these tables do not necessarily trigger requirements for cleanup action under this chapter.
- ^b Arsenic. Cleanup level based on background concentrations in the state of Washington.
- ^c Benzene. Cleanup level based on protection of ground water.
- ^d Cadmium. Cleanup level based on plant protection.
- ^e Chromium. Cleanup level based on health risks associated with inhalation of resuspended dust.
- ^f DDT. Cleanup level based on concentrations derived using the procedures in subsection (3)(a)(iii)(B) of this section.
- ^g Ethylbenzene. Cleanup level based on protection of ground water.
- ^h Ethylene dibromide. Cleanup level based on protection of ground water.
- ⁱ Lead. Cleanup level based on preventing unacceptable blood lead levels.
- ^j Lindane. Cleanup level based on concentration derived using the procedures in subsection (3)(a)(iii)(B) of this section.

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- ~~Methylene chloride. Cleanup level based on protection of ground water.~~
- ~~Mercury. Cleanup level based on protection of ground water.~~
- ~~PAHs (carcinogenic). Cleanup level based on concentration derived using the procedures in subsection (3)(a)(iii)(B) of this section.~~
- ~~PCB Mixtures. Cleanup level based on concentration derived using the procedures in subsection (3)(a)(iii)(B) of this section.~~
- ~~Tetrachloroethylene. Cleanup level based on protection of ground water.~~
- ~~Toluene. Cleanup level based on protection of ground water.~~
- ~~Total Petroleum Hydrocarbons (gasoline). Cleanup level based on protection of ground water.~~
- ~~Total Petroleum Hydrocarbons (diesel). Cleanup level based on protection of ground water.~~
- ~~Total Petroleum Hydrocarbons (other). Cleanup level based on protection of ground water.~~
- ~~1,1,1 Trichloroethane. Cleanup level based on protection of ground water.~~
- ~~Trichloroethylene. Cleanup level based on protection of ground water.~~
- ~~Xylenes. Cleanup level based on protection of ground water.)~~

(ii) Concentrations established under applicable state and federal laws;

~~((b))~~ (iii) Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors using the procedures specified in WAC 173-340-7490 through 173-340-7493, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and

(iv) For ~~((sites with additional))~~ a hazardous substance~~((s which are))~~ that is deemed an indicator hazardous substance~~((s))~~ under WAC 173-340-708(2) and for which there is no value in Table ~~((2))~~ 740-1 or applicable state and federal laws, ~~((cleanup levels for these additional hazardous substances shall be established at))~~ a concentration that does not exceed the natural background concentration or the practical quantification limit, subject to the limitations in this chapter.

~~((e))~~ The department may establish method A cleanup levels that are more stringent than those required by subsection (2)(a) of this section, when based on a site-specific evaluation, the department determines that such levels are necessary to protect human health or environment.)

(3) Method B soil cleanup levels for unrestricted land use.

(a) **Applicability.** Method B soil cleanup levels consist of standard and modified cleanup levels determined using the procedures in this subsection. Either standard or modified Method B soil cleanup levels may be used at any site.

(b) **Standard Method B soil cleanup levels.** Standard Method B cleanup levels for soils shall be at least as stringent as all of the following:

(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws;

(ii) **Environmental protection.** Concentrations that result in no significant adverse effects on the protection and propagation of terrestrial ecological receptors established using the procedures specified in WAC 173-340-7490

through 173-340-7494 unless it is demonstrated under those sections that establishing a soil concentration is unnecessary.

(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations that protect human health as determined by evaluating the following exposure pathways:

(A) **Ground water protection.** Concentrations ~~((which))~~ that will not cause contamination of ground water at levels which exceed ~~((method B))~~ ground water cleanup levels established under WAC 173-340-720 as determined using the ~~((following criteria:~~

~~((A) For individual hazardous substances or mixtures, concentrations that are equal to or less than one hundred times the ground water cleanup level established in accordance with WAC 173-340-720 unless it can be demonstrated that a higher soil concentration is protective of ground water at the site;~~

~~((B) For total petroleum hydrocarbons, the person undertaking the cleanup may elect to make this demonstration on the basis of data on individual hazardous substances that comprise the total petroleum hydrocarbons.~~

~~((iii) For those hazardous substances for which health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:~~

~~((A) Concentrations which are estimated to result in no acute or chronic toxic effects on human health via direct contact with contaminated soil and are determined using the following equation and standard exposure assumptions:))~~ methods described in WAC 173-340-747.

(B) **Soil direct contact.** Concentrations that, due to direct contact with contaminated soil, are estimated to result in no acute or chronic noncarcinogenic toxic effects on human health using a hazard quotient of one (1) and concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one million (1 x 10⁻⁶). Equations 740-1 and 740-2 and the associated default assumptions shall be used to calculate the concentration for direct contact with contaminated soil.

(I) **Noncarcinogens.** For noncarcinogenic toxic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 740-1. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

Equation 740-1

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RfD} \times \text{ABW} \times \text{UCF}(\text{2}) \times \text{HQ} \times \text{AT}}{\text{SIR} \times \text{AB1} \times (\text{FOE}) \times \text{EF} \times \text{ED}}$$

Where:

- RfD = Reference dose as defined in WAC 173-340-708(7) (mg/kg-day)
- ABW = Average body weight over the ~~((period of))~~ exposure duration (16 kg)
- UCF(2) = Unit~~((s))~~ conversion factor (1,000,000 mg/kg)
- SIR = Soil ingestion rate (200 mg/day)

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- ABI = Gastrointestinal absorption ((rate)) fraction (1.0) (unitless)
- EF = Exposure frequency ((of contact)) (1.0) (unitless)
- HQ = Hazard quotient (1)((:)) (unitless)
- AT = Averaging time (6 years)
- ED = Exposure duration (6 years)

~~((B) Concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 1,000,000 via direct contact with contaminated soil and are determined using the following equation and standard exposure assumptions:))~~ **(II) Carcinogens.** For carcinogenic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 740-2. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

Equation 740-2

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RISK} \times \text{ABW} \times ((\text{LIFE})) \text{ AT} \times \text{UCF}((\dagger))}{\text{CPF} \times \text{SIR} \times \text{ABI} \times ((\text{DUR} \times \text{FOC})) \text{ ED} \times \text{EF}}$$

Where:

- RISK = Acceptable cancer risk level (1 in 1,000,000) (unitless)
- ABW = Average body weight over the ((period of)) exposure duration (16 kg)
- ((LIFE = Lifetime (75 years)))
- AT = Averaging time (75 years)
- UCF((†)) = Unit conversion factor (1,000,000 mg/kg)
- CPF = Carcinogenic potency factor as defined in WAC 173-340-708(8) (kg-day/mg)
- SIR = Soil ingestion rate (200 mg/day)
- ABI = Gastrointestinal absorption ((rate)) fraction (1.0) (unitless)
- ((DUR = Duration of exposure (6 years))
- FOC)) ED = Exposure duration (6 years)
- EF = Exposure frequency ((of contact)) (1.0)((:)) (unitless)

~~((iv) To assure that unacceptable risks do not result from inhalation of hazardous substances in or released from contaminated soils, soil concentrations which ensure that releases of hazardous substances shall not result in ambient air concentrations which exceed method B cleanup levels established under WAC 173-340-750.~~

(b) The department may establish method B cleanup levels that are more stringent than those required under (a) of this subsection, when, based on a site specific evaluation, the department determines that such levels are necessary to protect human health or environment, including the following:

- (i) Concentrations which eliminate or substantially reduce the potential for food chain contamination;
- (ii) Concentrations which eliminate or substantially reduce the potential for damage to soils or biota in the soils which could impair the use of soils for agricultural or silvicultural purposes;
- (iii) Concentrations which eliminate or substantially reduce the potential for adverse effects on vegetation or wildlife;

~~(iv) Concentrations more stringent than those in (b) of this subsection where the department determines that such levels are necessary to protect the ground water at a particular site;~~

~~(v) Concentrations necessary to protect nearby surface waters from hazardous substances in runoff from the site; and~~

~~(vi) Concentrations which eliminate or minimize the potential for the accumulation of vapors in buildings or other structures to concentrations which pose a threat to human health or the environment.~~

(4) Method C cleanup levels.

(a) Method C soil cleanup levels may be utilized if the person conducting the cleanup action can demonstrate that such levels are consistent with applicable state and federal laws, that all practicable methods of treatment have been utilized, that institutional controls are implemented in accordance with WAC 173-340-440, and that one or more of the conditions in WAC 173-340-706 (1)(a) exist.

(b) Method C cleanup levels for soils shall be at least as stringent as all of the following:

(i) Concentrations established under applicable state and federal laws;

(ii) Concentrations which will not cause contamination of ground water at levels which exceed ground water cleanup levels established under WAC 173-340-720 as determined using the following procedures:

(A) For individual hazardous substances or mixtures, concentrations that are equal to or less than one hundred times the ground water cleanup level established in accordance with WAC 173-340-720 unless it can be demonstrated that a higher soil concentration is protective of ground water at the site;

(B) For total petroleum hydrocarbons, the person undertaking the cleanup may elect to make this demonstration on the basis of data on individual hazardous substances that comprise the total petroleum hydrocarbons;

(iii) For those hazardous substances for which health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) Concentrations which are anticipated to result in no significant acute or chronic toxic effects on human health and estimated in accordance with WAC 173-340-740 (3)(a) (iii)(A) except that the frequency of contact shall be 0.5, the soil ingestion rate shall be 100 milligrams per day, and the average body weight shall be 16 kilograms;

(B) For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 100,000 and are estimated in accordance with WAC 173-340-740 (3)(a)(iii)(B) except that the frequency of contact shall be 0.5 and the soil ingestion rate shall be 100 milligrams per day; and

(iv) To assure that unacceptable risks do not result from inhalation of hazardous substances in or released from contaminated soils, soil concentrations which ensure that releases of hazardous substances shall not result in ambient air concentrations which exceed method C cleanup levels established under WAC 173-340-750.

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(C) The department may establish method C cleanup levels that are more stringent than those required by (a) through (e) of this subsection when, based on a site specific evaluation, the department determines that such levels are necessary to protect human health and the environment, including consideration of those factors listed in subsection (3)(b) of this section.

(5) Multiple hazardous substances/multiple pathways of exposure.

(a)) (III) **Petroleum mixtures.** For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds substances present in the petroleum mixture. Equation 740-3 shall be used for this calculation. This equation takes into account concurrent exposure due to ingestion and dermal contact with petroleum contaminated soils. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 740-4 and 740-5. See Table 830-1 for the analyses required for various petroleum products to use this method.

[Equation 740-3]

$$C_{soil} = \frac{HI \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1}{10^6 \text{ mg/kg}} \sum_{i=1}^n \frac{F(i)}{RfDo(i)} \right) + \left(\frac{SA \times AF}{10^6 \text{ mg/kg}} \sum_{i=1}^n \frac{F(i) \times ABS(i)}{RfDd(i)} \right) \right]}$$

Where:

- C_{soil} = TPH soil cleanup level (mg/kg)
- HI = Hazard index (1) (unitless)
- ABW = Average body weight over the exposure duration (16 kg)
- AT = Averaging time (6 years)
- EF = Exposure frequency (1.0) (unitless)
- ED = Exposure duration (6 years)
- SIR = Soil ingestion rate (200 mg/day)
- AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
- F(i) = Fraction (by weight) of petroleum component (i) (unitless)
- SA = Dermal surface area (2,200 cm²)
- AF = Adherence factor (0.2 mg/cm²-day)
- ABS = Dermal absorption fraction for petroleum component (i) (unitless). May use chemical-specific values or the following defaults:
 - 0.0005 for volatile petroleum components with vapor press >= benzene
 - 0.03 for volatile petroleum components with vapor press < benzene
 - 0.1 for other petroleum components
- RfDo(i) = Oral reference dose of petroleum component (i) as defined in WAC 173-340-708(7) (mg/kg-day)
- RfDd(i) = Dermal reference dose for petroleum component (i) (mg/kg-day) derived by RfDo x GI

- GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:
 - 0.8 for volatile petroleum components
 - 0.5 for other petroleum components
- n = The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

(C) **Soil vapors.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(II) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(III) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

See subsection (3)(c)(iv)(B) of this section for methods that may be used to evaluate the soil to vapor pathway.

(c) **Modified Method B soil cleanup levels.**

(i) **General.** Modified Method B soil cleanup levels are standard Method B soil cleanup levels, modified with chemical-specific or site-specific data. When making these modifications, the resultant cleanup levels shall meet applicable state and federal laws, meet health risk levels for standard Method B soil cleanup levels, and be demonstrated to be environmentally protective using the procedures specified in WAC 173-340-7490 through 173-340-7494. Changes to exposure assumptions must comply with WAC 173-340-708(10).

(ii) **Allowable modifications.** The following modifications can be made to the default assumptions in the standard Method B equations to derive modified Method B soil cleanup levels:

(A) For the protection of ground water, see WAC 173-340-747;

(B) For soil ingestion, the gastrointestinal absorption fraction, may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(C) For dermal contact, the adherence factor, dermal absorption fraction and gastrointestinal absorption conversion factor may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(D) Toxicity equivalent factors, as described in WAC 173-340-708(8), may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons;

(E) The reference dose and cancer potency factor may be modified if the requirements in WAC 173-340-708 (7) and (8) are met; and

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(F) Other modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16).

(iii) **Dermal contact.** For hazardous substances other than petroleum mixtures, dermal contact with the soil shall be evaluated whenever the proposed changes to Equations 740-1 or 740-2 would result in a significantly higher soil cleanup level than would be calculated without the proposed changes. When conducting this evaluation, the following equations and default assumptions shall be used.

(A) For noncarcinogens use Equation 740-4. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 740-4]

$$C_{soil} = \frac{EF \times ED \left[\left(\frac{1}{RfDo} \times \frac{SIR \times AB1}{10^6 \text{ mg/kg}} \right) + \left(\frac{1}{RfDd} \times \frac{SA \times AF \times ABS}{10^6 \text{ mg/kg}} \right) \right]}{HQ \times ABW \times AT}$$

Where:

- C_{soil} = Soil cleanup level (mg/kg)
- HQ = Hazard quotient (unitless)
- ABW = Average body weight over the exposure duration (16 kg)
- AT = Averaging time (6 years)
- EF = Exposure frequency (1.0) (unitless)
- ED = Exposure duration (6 years)
- SIR = Soil ingestion rate (200 mg/day)
- $AB1$ = Gastrointestinal absorption fraction (1.0) (unitless)
- SA = Dermal surface area (2,200 cm²)
- AF = Adherence factor (0.2 mg/cm²-day)
- ABS = Dermal absorption fraction (unitless).
May use chemical-specific values or the following defaults:
 - 0.01 for inorganic hazardous substances
 - 0.0005 for volatile organic compounds with vapor press \geq benzene
 - 0.03 for volatile organic compounds with vapor press $<$ benzene
 - 0.1 for other organic hazardous substances
- $RfDo$ = Oral reference dose as defined in WAC 173-340-708(7) (mg/kg-day)
- $RfDd$ = Dermal reference dose (mg/kg-day) derived by $RfDo \times GI$
- GI = Gastrointestinal absorption conversion factor (unitless).
May use chemical specific values or the following defaults:
 - 0.2 for inorganic hazardous substances
 - 0.8 for volatile organic compounds
 - 0.5 for other organic hazardous substances

(B) For carcinogens use Equation 740-5. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 740-5]

$$C_{soil} = \frac{EF \times ED \left[\left(\frac{SIR \times AB1 \times CPFo}{10^6 \text{ mg/kg}} \right) + \left(\frac{SA \times AF \times ABS \times CPFd}{10^6 \text{ mg/kg}} \right) \right]}{RISK \times ABW \times AT}$$

Where:

- C_{soil} = Soil cleanup level (mg/kg)
- $RISK$ = Acceptable cancer risk (1 in 1,000,000) (unitless)
- ABW = Average body weight over the exposure duration (16 kg)
- AT = Averaging time (75 years)
- EF = Exposure frequency (1.0) (unitless)
- ED = Exposure duration (6 years)
- SIR = Soil ingestion rate (200 mg/day)
- $AB1$ = Gastrointestinal absorption fraction (1.0) (unitless)
- $CPFo$ = Oral cancer potency factor as defined in WAC 173-340-708(8) (kg-day/mg)
- $CPFd$ = Dermal cancer potency factor (kg-day/mg) derived by $CPFo/GI$
- GI = Gastrointestinal absorption conversion factor (unitless).
May use chemical-specific values or the following defaults:
 - 0.2 for inorganic hazardous substances
 - 0.8 for volatile organic compounds
 - 0.5 for other organic hazardous substances
- SA = Dermal surface area (2,200 cm²)
- AF = Adherence factor (0.2 mg/cm²-day)
- ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:
 - 0.01 for inorganic hazardous substances
 - 0.0005 for volatile organic compounds with vapor press \geq benzene
 - 0.03 for volatile organic compounds with vapor press $<$ benzene
 - 0.1 for other organic hazardous substances

(C) Modifications may be made to Equations 740-4 and 740-5 as provided for in subsection (3)(c)(ii) of this section.

(iv) **Soil vapors.**

(A) **Applicability.** The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For other than petroleum hydrocarbon mixtures, the proposed changes to the standard Method B equations (Equations 740-1 and 740-2) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(II) For petroleum hydrocarbon mixtures, the proposed changes to the standard Method B equations (Equations 740-3, 740-4 and 740-5) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(III) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground

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water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions:

(IV) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg:

(V) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

(B) Evaluation methods. Soil cleanup levels that are protective of the indoor and ambient air shall be determined on a site-specific basis. Soil cleanup levels may be evaluated as being protective of air pathways using any of the following methods:

(I) Measurements of the soil vapor concentrations, using methods approved by the department, demonstrating vapors in the soil would not exceed air cleanup levels established under WAC 173-340-750.

(II) Measurements of ambient air concentrations and/or indoor air vapor concentrations throughout buildings, using methods approved by the department, demonstrating air does not exceed cleanup levels established under WAC 173-340-750. Such measurements must be representative of current and future site conditions when vapors are likely to enter and accumulate in structures. Measurement of ambient air may be excluded if it can be shown that indoor air is the most protective point of exposure.

(III) Use of modeling methods approved by the department to demonstrate the air cleanup standards established under WAC 173-340-750 will not be exceeded. When this method is used, the department may require soil vapor and/or air monitoring to be conducted to verify the calculations and compliance with air cleanup standards.

(IV) Other methods as approved by the department demonstrating the air cleanup standards established under WAC 173-340-750 will not be exceeded.

(d) Using modified Method B to evaluate soil remediation levels. In addition to the adjustments allowed under subsection (3)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(4) Method C soil cleanup levels. This section does not provide procedures for establishing Method C soil cleanup levels. Except for qualifying industrial properties, Method A and Method B, as described in this section, are the only methods available for establishing soil cleanup levels at sites. See WAC 173-340-745 for use of Method C soil cleanup levels at qualifying industrial properties. See also WAC 173-340-357 and 173-340-708 (3)(d) for how land use may be considered when selecting a cleanup action at a site.

(5) Adjustments to cleanup levels.

(a) Total site risk adjustments. Soil cleanup levels for individual hazardous substances developed in accordance with subsection((s)) (3) ((and (4))) of this section, including cleanup levels based on applicable state and federal laws,

shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}).

(b) ((These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.)) Adjustments to applicable state and federal laws. Where a cleanup level developed under subsection (2) or (3) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level must be adjusted downward so that the total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}) and the hazard index does not exceed one (1) at the site.

(c) Natural background and POL considerations. Cleanup levels determined under subsection (2) or (3) of this section, including cleanup levels adjusted under subsection (5)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements pertaining to practical quantitation limits and natural background.

(6) Point of compliance.

(a) The point of compliance is the point or points where the soil cleanup levels established under subsection((s)) (2)((;)) or (3)((, (4), and (5))) of this section shall be attained.

(b) For soil cleanup levels based on the protection of ground water, the point of compliance shall be established in the soils throughout the site.

(c) For soil cleanup levels based on protection from vapors, the point of compliance shall be established in the soils throughout the site from the ground surface to the uppermost ground water saturated zone (e.g., from the ground surface to the uppermost water table).

(d) For soil cleanup levels based on human exposure via direct contact or other exposure pathways where contact with the soil is required to complete the pathway, the point of compliance shall be established in the soils throughout the site from the ground surface to fifteen feet below the ground surface. This represents a reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities.

((d)) (e) For soil cleanup levels based on ecological considerations, see WAC 173-340-7490 for the point of compliance.

(f) The department recognizes that, for those cleanup actions selected under ((WAC 173-340-360)) this chapter that involve containment of hazardous substances, the soil cleanup levels will typically not be met at the points of com-

pliance specified in (b) ~~((and (e)))~~ through (e) of this subsection. In these cases, the cleanup action may be determined to comply with cleanup standards, provided ~~((the compliance monitoring program is designed to ensure the long-term integrity of the containment system, and the other requirements for containment technologies in WAC 173-340-360(8) are met))~~:

(i) The selected remedy is permanent to the maximum extent practicable using the procedures in WAC 173-340-360;

(ii) The cleanup action is protective of human health. The department may require a site-specific human health risk assessment conforming to the requirements of this chapter to demonstrate that the cleanup action is protective of human health;

(iii) The cleanup action is demonstrated to be protective of terrestrial ecological receptors under WAC 173-340-7490 through 173-340-7494;

(iv) Institutional controls are put in place under WAC 173-340-440 that prohibit or limit activities that could interfere with the long-term integrity of the containment system;

(v) Compliance monitoring under WAC 173-340-410 and periodic reviews under WAC 173-340-430 are designed to ensure the long-term integrity of the containment system; and

(vi) The types, levels and amount of hazardous substances remaining on-site and the measures that will be used to prevent migration and contact with those substances are specified in the draft cleanup action plan.

(7) Compliance monitoring.

(a) Compliance with soil cleanup levels shall be based on total analyses of the soil fraction less than two millimeters in size. When it is reasonable to expect that larger soil particles could be reduced to two millimeters or less during current or future site use and this reduction could cause an increase in the concentrations of hazardous substances in the soil, soil cleanup levels shall also apply to these larger soil particles. Compliance with soil cleanup levels shall be based on dry weight concentrations. The department may approve the use of alternate procedures for stabilized soils.

(b) When soil levels have been established at a site, sampling of the soil shall be conducted to determine if compliance with the soil cleanup levels has been achieved. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data ~~((which))~~ that are representative of the area where exposure to hazardous substances may occur.

(c) The data analysis and evaluation procedures used to evaluate compliance with soil cleanup levels shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. These procedures shall meet the following general requirements:

(i) Methods of data analysis shall be consistent with the sampling design. Separate methods may be specified for surface soils and deeper soils;

(ii) When cleanup levels are based on requirements specified in applicable state and federal laws, the procedures for evaluating compliance that are specified in those require-

ments shall be ~~((utilized))~~ used to evaluate compliance with cleanup levels unless those procedures conflict with the intent of this section;

(iii) Where procedures for evaluating compliance are not specified in an applicable state and federal law, statistical methods shall be appropriate for the distribution of sampling data for each hazardous substance. ~~((If the distribution of sampling data for a hazardous substance is inappropriate for statistical methods based on a normal distribution, then the data may be transformed.))~~ If the distributions for hazardous substances differ, more than one statistical method may be required; and

(iv) The data analysis plan shall specify which parameters are to be used to determine compliance with soil cleanup levels.

(A) For cleanup levels based on short-term or acute toxic effects on human health or the environment, an upper percentile soil concentration shall be used to evaluate compliance with cleanup levels.

(B) For cleanup levels based on chronic or carcinogenic threats, the true mean soil concentration shall be used to evaluate compliance with cleanup levels ~~((unless there are large variations in hazardous substance concentrations relative to the mean hazardous substance concentration or a large percentage of concentrations are below the detection limit)).~~

~~((Appropriate statistical methods include the following:~~

~~((i) A procedure in which a confidence interval for each hazardous substance is established from site sampling data and the soil cleanup level is compared to the upper confidence interval;))~~ When data analysis procedures for evaluating compliance are not specified in an applicable state or federal law the following procedures shall be used:

(i) A confidence interval approach that meets the following requirements:

(A) The upper one sided ninety-five percent confidence limit on the true mean soil concentration shall be less than the soil cleanup level. For lognormally distributed data, the upper one-sided ninety-five percent confidence limit shall be calculated using Land's method; and

(B) Data shall be assumed to be lognormally distributed unless this assumption is rejected by a statistical test. If a log-normal distribution is inappropriate, data shall be assumed to be normally distributed unless this assumption is rejected by a statistical test. The W test, D'Agostino's test, or, censored probability plots, as appropriate for the data, shall be the statistical methods used to determine whether the data are log-normally or normally distributed;

(ii) For an evaluation conducted under (c)(iv)(A) of this subsection, a parametric test for percentiles based on tolerance intervals to test the proportion of soil samples having concentrations less than the soil cleanup level. When using this method, the true proportion of samples that do not exceed the soil cleanup level shall not be less than ninety percent. Statistical tests shall be performed with a Type I error level of 0.05;

(iii) Direct comparison of soil sample concentrations with cleanup levels may be used to evaluate compliance with cleanup levels where selective sampling of soil can be reliably expected to find suspected soil contamination. There

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must be documented, reliable information that the soil samples have been taken from the appropriate locations. Persons using this method must demonstrate that the basis used for selecting the soil sample locations provides a high probability that any existing areas of soil contamination have been found; or

~~((iii))~~ (iv) Other statistical methods approved by the department.

~~(c) ((If a confidence interval approach is used to evaluate compliance with a soil cleanup level, the decision rule is a one-tailed test of the null hypothesis that the true soil concentration of a hazardous substance exceeds the soil cleanup level. Compliance with soil cleanup levels shall be determined using)) All data analysis methods used, including those specified in state and federal law, must meet the following ((criteria)) requirements:~~

~~(i) ((The upper confidence interval on the true soil concentration is less than the soil cleanup level. Statistical tests shall be performed at a Type I error level of 0.05;~~

~~(ii)) No single sample concentration shall be greater than two times the soil cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations; and~~

~~((iii)) (ii) Less than ten percent of the sample concentrations shall exceed the soil cleanup level. Higher exceedances to control false positive error rates at five percent may be approved by the department when the cleanup level is based on background concentrations.~~

~~(f) ((If a method to test the proportion of soil samples is used to evaluate compliance with a soil cleanup level, compliance shall be determined using the following criteria:~~

~~(i) No single sample concentrations shall be greater than two times the soil cleanup level; and~~

~~(ii) Less than ten percent of the sample concentrations shall exceed the soil cleanup level; and~~

~~(iii) The true proportion of samples that do not exceed the soil cleanup level shall not be less than ninety percent. Statistical tests shall be performed with a Type I error level of 0.05.~~

~~(g) For purposes of demonstrating compliance with soil cleanup levels, measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit. Detectable levels below the practical quantitation limit shall be assigned a value equal to the method detection limit. The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit. Alternate statistical procedures may include probit analysis and regression analysis.) When using statistical methods to demonstrate compliance with soil cleanup levels, the following procedures shall be used for measurements below the practical quantitation limit:~~

~~(i) Measurements below the method detection limit shall be assigned a value equal to one-half the method detection limit when not more than fifteen percent of the measurements are below the practical quantitation limit.~~

~~(ii) Measurements above the method detection limit but below the practical quantitation limit shall be assigned a value equal to the method detection limit when not more than~~

fifteen percent of the measurements are below the practical quantitation limit.

(iii) When between fifteen and fifty percent of the measurements are below the practical quantitation limit and the data are assumed to be lognormally or normally distributed, Cohen's method shall be used to calculate a corrected mean and standard deviation for use in calculating an upper confidence limit on the true mean soil concentration.

(iv) If more than fifty percent of the measurements are below the practical quantitation limit, the largest value in the data set shall be used in place of an upper confidence limit on the true mean soil concentration.

(v) The department may approve alternate statistical procedures for handling nondetected values or values below the practical quantitation limit.

(vi) If a hazardous substance or petroleum fraction has never been detected in any sample at a site and these substances are not suspected of being present at the site based on site history and other knowledge, that hazardous substance or petroleum fraction may be excluded from the statistical analysis.

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

AMENDATORY SECTION (Amending Order 94-37, filed 1/26/96, effective 2/26/96)

WAC 173-340-745 Soil cleanup standards for industrial properties. (1) ~~((General considerations:))~~ **Applicability.**

~~(a) ((Use of this section:))~~ **Criteria.** This section shall be used to establish soil cleanup levels where the department has determined that industrial land use represents the reasonable maximum exposure. Soil cleanup levels for this presumed exposure scenario shall be established in accordance with this section. To qualify as an industrial land use and to use an industrial soil cleanup level a site must meet the following criteria:

~~((b) Criteria. Cleanup levels shall not be based on industrial land use unless the following criteria can be demonstrated:))~~

(i) The area of the site where industrial property soil cleanup levels are proposed must meet ~~((s))~~ the definition of an industrial property under WAC 173-340-200;

Industrial soil cleanup levels are based on an adult worker exposure scenario. It is essential to evaluate land uses and zoning for compliance with this definition in the context of this exposure scenario. Local governments use a variety of zoning categories for industrial land uses so a property does not necessarily have to be in a zone called "industrial" to meet the definition of "industrial property." Also, there are land uses allowed in industrial zones that are actually commercial or residential, rather than industrial, land uses. Thus, an evaluation to determine compliance with this definition should include a review of the actual text in the comprehensive plan and zoning ordinance pertaining to the site and a visit to the site to observe land uses in the zone. When evaluating land uses to determine if a property use not specifically listed in the definition is a "traditional industrial use" or to determine

if the property is "zoned for industrial use," the following characteristics shall be considered:

((*) (A) People do not normally live on industrial property. The primary potential exposure is to adult employees of businesses located on the industrial property;

((*) (B) Access to industrial property by the general public is generally not allowed. If access is allowed, it is highly limited and controlled due to safety or security considerations;

((*) (C) Food is not normally grown/raised on industrial property. (However, food processing operations are commonly considered industrial facilities);

((*) (D) Operations at industrial properties are often (but not always) characterized by use and storage of chemicals, noise, odors and truck traffic;

((*) (E) The surface of the land at industrial properties is often (but not always) mostly covered by buildings or other structures, paved parking lots, paved access roads and material storage areas—minimizing potential exposure to the soil; and

((*) (F) Industrial properties may have support facilities consisting of offices, restaurants, and other facilities that are commercial in nature but are primarily devoted to administrative functions necessary for the industrial use and/or are primarily intended to serve the industrial facility employees and not the general public(;;).

(ii) The cleanup action provides for appropriate institutional controls implemented in accordance with WAC 173-340-440 to limit potential exposure to residual hazardous substances. This shall include, at a minimum, placement of a covenant on the property restricting use of the area of the site where industrial soil cleanup levels are proposed to industrial property uses; and

(iii) Hazardous substances remaining at the property after remedial action would not pose a threat to human health or the environment at the site or in adjacent nonindustrial areas. In evaluating compliance with this criterion, at a minimum the following factors shall be considered:

((*) (A) The potential for access to the industrial property by the general public, especially children. The proximity of the industrial property to residential areas, schools or childcare facilities shall be considered when evaluating access. In addition, the presence of natural features, man-made structures, arterial streets or intervening land uses that would limit or encourage access to the industrial property shall be considered. Fencing shall not be considered sufficient to limit access to an industrial property since this is insufficient to assure long term protection;

((*) (B) The degree of reduction of potential exposure to residual hazardous substances by the selected remedy. Where the residual hazardous substances are to be capped to reduce exposure, consideration shall be given to the thickness of the cap and the likelihood of future site maintenance activities, utility and drainage work, or building construction reexposing residual hazardous substances(-);

((*) (C) The potential for transport of residual hazardous substances to off-property areas, especially residential areas, schools and childcare facilities;

((*) (D) The potential for significant adverse effects on ~~((vegetation or))~~ wildlife caused by residual hazardous sub-

stances using the procedures in WAC 173-340-7490 through 173-340-7494; and

((*) (E) The likelihood that these factors would not change for the foreseeable future.

~~((e) Ecology expectations)) (b) Expectations.~~ In applying the criteria in ~~((WAC 173-340-745 (1)(b))) (a) of this subsection~~, the department expects the following results:

(i) The department expects that properties zoned for heavy industrial or high intensity industrial use and located within a city or county ~~((having))~~ that has completed a comprehensive plan and adopted implementing zoning regulations under the Growth Management Act (chapter 36.70A RCW) will meet the definition of industrial property. For cities and counties not planning under the Growth Management Act, the department expects that spot zoned industrial properties will not meet the definition of industrial property but that properties that are part of a larger area zoned for heavy industrial or high intensity industrial use will meet the definition of an industrial property;

(ii) For both GMA and non-GMA cities and counties, the department expects that light industrial and commercial zones and uses should meet the definition of industrial property where the land uses are comparable to those cited in the definition of industrial property or the land uses are an integral part of a qualifying industrial use (such as, ancillary or support facilities). This will require a site-by-site evaluation of the zoning text and land uses;

(iii) The department expects that for portions of industrial properties in close proximity to (generally, within a few hundred feet) residential areas, schools or childcare facilities, residential soil cleanup levels will be used unless:

(A) Access to the industrial property is very unlikely or, the hazardous substances that are not treated or removed are contained under a cap of clean soil (or other materials) of substantial thickness so that it is very unlikely the hazardous substances would be disturbed by future site maintenance and construction activities (depths of even shallow footings, utilities and drainage structures in industrial areas are typically three to six feet); and

(B) The hazardous substances are relatively immobile (or have other characteristics) or have been otherwise contained so that subsurface lateral migration or surficial transport via dust or runoff to these nearby areas or facilities is highly unlikely; and

(iv) Note that a change in the reasonable maximum exposure to industrial site use primarily affects the direct contact exposure pathway. Thus, for example, for sites where the soil cleanup level is based primarily on the potential for the hazardous substance to leach and cause ground water contamination, it is the department's expectation that an industrial land use will not affect the soil cleanup level. Similarly, where the soil cleanup level is based primarily on surface water protection~~((ecological))~~ or other pathways other than direct human contact, land use is not expected to affect the soil cleanup level.

~~((d) Calculating industrial property soil cleanup levels. Soil cleanup levels established under this section shall be determined as described in subsections (2) through (5) of this section.~~

(e) Soil cleanup levels for nearby properties.)) (2) General considerations.

(a) In the event of a release of a hazardous substance at a site qualifying as industrial property, a cleanup action that complies with this chapter shall be conducted to address those soils with hazardous substance concentrations which exceed industrial soil cleanup levels at the relevant point of compliance.

(b) Soil cleanup levels for areas beyond the industrial property boundary that do not qualify for industrial soil cleanup levels under this section (including implementation of institutional controls and a covenant restricting use of the property to industrial property uses) shall be established in accordance with WAC 173-340-740.

((f) Relationship between soil cleanup levels and other cleanup standards.)) (c) Industrial soil cleanup levels shall be established at concentrations ((which)) that do not directly or indirectly cause violations of ground water, surface water, sediment or air cleanup standards established under this chapter or under applicable state and federal laws. A property that qualifies for an industrial soil cleanup level under this section does not necessarily qualify for ((other than a Method A or Method B)) a Method C cleanup level in other media. Each medium must be evaluated separately ((utilizing)) using the criteria applicable to that medium.

((g) Other options. See WAC 173-340-740 (1)(e) for establishing cleanup levels for industrial land uses not qualifying under this section and for commercial land uses.

(2)) (d) The department may require more stringent soil cleanup standards than required by this section when, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment, including consideration of the factors in WAC 173-340-740 (1)(c). Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708.

(3) Method A industrial soil cleanup levels.

(a) Applicability. Method A industrial soil cleanup levels may be used only at any industrial property qualifying under WAC 173-340-704(1).

(b) General requirements. Method A industrial soil cleanup levels shall be at least as stringent as all of the following:

(i) Concentrations in ((the following)) Table((:)) 745-1 and compliance with the corresponding footnotes:

**((Table 3
Method A Cleanup Levels—Industrial Soil^a**

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	200.0 mg/kg ^b
Benzene	71-43-2	0.5 mg/kg ^e
Cadmium	7440-43-9	10.0 mg/kg ^d
Chromium (Total)	7440-47-3	500.0 mg/kg ^e
DDT	50-29-3	5.0 mg/kg ^f
Ethylbenzene	100-41-4	20.0 mg/kg ^g
Ethylene dibromide	106-93-4	0.001 mg/kg ^h
Lead	7439-92-1	1000.0 mg/kg ⁱ
Lindane	58-89-9	20.0 mg/kg ^j

Methylene chloride	75-09-2	0.5 mg/kg ^k
Mercury (inorganic)	7439-97-6	1.0 mg/kg ^l
PAHs (carcinogenic)		20.0 mg/kg ^m
PCB Mixtures		10.0 mg/kg ⁿ
Tetrachloroethylene	127-18-4	0.5 mg/kg ^o
Toluene	108-88-3	40.0 mg/kg ^p
TPH (gasoline)		100.0 mg/kg ^q
TPH (diesel)		200.0 mg/kg ^r
TPH (other)		200.0 mg/kg ^s
1,1,1-Trichloroethane	71-55-6	20.0 mg/kg ^t
Trichloroethylene	79-01-5	0.5 mg/kg ^u
Xylenes	1330-20-7	20.0 mg/kg ^v

- ^a Caution on misusing method A tables. Method A tables have been developed for specific purposes. They are intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. The tables may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in these tables should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in these tables do not necessarily trigger requirements for cleanup actions under this chapter.
- ^b Arsenic. Cleanup level based on concentration derived using the procedures in subsection (4)(a)(iii)(B) of this section.
- ^c Benzene. Cleanup level based on protection of ground water.
- ^d Cadmium. Cleanup level based on protection of ground water.
- ^e Chromium. Cleanup level based on inhalation exposure.
- ^f DDT. Cleanup level based on protection of ground water.
- ^g Ethylbenzene. Cleanup level based on protection of ground water.
- ^h Ethylene dibromide. Cleanup level based on protection of ground water.
- ⁱ Lead. Cleanup level based on direct contact.
- ^j Lindane. Cleanup level based on cleanup level based on concentration derived using the procedures in subsection (4)(a)(iii)(B)
- ^k Methylene chloride. Cleanup level based on protection of ground water.
- ^l Mercury. Cleanup level based on protection of ground water.
- ^m PAHs (carcinogenic). Cleanup level based on concentration derived using the procedures in subsection (4)(a)(iii)(B) of this section.
- ⁿ PCB Mixtures. Cleanup level based on concentration derived using the procedures in subsection (4)(a)(iii)(B) of this section.
- ^o Tetrachloroethylene. Cleanup level based on protection of ground water.
- ^p Toluene. Cleanup level based on protection of ground water.
- ^q Total Petroleum Hydrocarbons (gasoline). Cleanup level based on protection of ground water.
- ^r Total Petroleum Hydrocarbons (diesel). Cleanup level based on protection of ground water.
- ^s Total Petroleum Hydrocarbons (other). Cleanup level based on protection of ground water.
- ^t 1,1,1-Trichloroethane. Cleanup level based on protection of ground water.
- ^u Trichloroethylene. Cleanup level based on protection of ground water.
- ^v Xylenes. Cleanup level based on protection of ground water; and))

(ii) Concentrations established under applicable state and federal laws;

((f)) (iii) Concentrations that result in no significant adverse effects on the protection and propagation of terres-

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trial ecological receptors using the procedures specified in WAC 173-340-7490 through 173-340-7493, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary; and

~~(iv) For ((sites with additional)) a hazardous substance((s which are)) that is deemed an indicator hazardous substance((s)) under WAC 173-340-708(2) and for which there is no value in Table ((3)) 745-1 or applicable state and federal laws, ((cleanup levels for these additional hazardous substances shall be established at)) a concentration that does not exceed the natural background concentration or the practical quantification limit, subject to the limitations in this chapter.~~

~~((c) The department may establish method A cleanup levels that are more stringent than those required by (a) of this subsection when, based on site specific evaluations, the department determines that such levels are necessary to protect human health or environment, including consideration of the factors in WAC 173-340-740 (3)(b).~~

~~(3)) (4) Method B industrial soil cleanup levels. This section does not provide procedures for establishing Method B industrial soil cleanup levels. Method C is the standard method for establishing soil cleanup levels at industrial sites and its use is conditioned upon the continued use of the site for industrial purposes. The person conducting the cleanup action also has the option of establishing unrestricted land use soil cleanup levels under WAC 173-340-740 for qualifying industrial properties. This option may be desirable when the person wants to avoid restrictions on the future use of the property. When a site does not qualify for a Method A or Method C industrial soil cleanup level under this section, or the user chooses to establish unrestricted land use soil cleanup levels at a site, soil cleanup levels must be established using Methods A or B under WAC 173-340-740.~~

~~((4)) (5) Method C industrial soil cleanup levels.~~

~~(a) **Applicability.** Method C industrial soil cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method C soil cleanup levels may be used at any industrial property qualifying under subsection (1) of this section.~~

~~(b) **Standard Method C industrial soil cleanup levels.** Standard Method C industrial soil cleanup levels for industrial ((soils)) properties shall be at least as stringent as all of the following:~~

~~(i) **Applicable state and federal laws.** Concentrations established under applicable state and federal laws;~~

~~(ii) **Environmental protection.** Concentrations that result in no significant adverse effects on the protection and propagation of wildlife established using the procedures specified in WAC 173-340-7490 through 173-340-7494, unless it is demonstrated under those sections that establishing a soil concentration is unnecessary.~~

~~(iii) **Human health protection.** For hazardous substances for which sufficiently protective, health-based criteria or standards have not been established under applicable state and federal laws, those concentrations that protect human health as determined by evaluating the following exposure pathways:~~

~~(A) **Ground water protection.** Concentrations ((which)) that will not cause contamination of ground water to concentrations which exceed ground water cleanup levels established under WAC 173-340-720 as determined using the ((following procedures:~~

~~(A) For individual hazardous substances or mixtures, concentrations that are equal to or less than one hundred times the ground water cleanup level established in accordance with WAC 173-340-720 unless it can be demonstrated that higher soil concentrations are protective of ground water at the site;~~

~~(B) For total petroleum hydrocarbons, the person undertaking the cleanup action may elect to make this demonstration on the basis of data on individual hazardous substances that comprise the total petroleum hydrocarbons;~~

~~(iii) For those hazardous substances for which sufficiently protective health based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:~~

~~(A) Concentrations which are anticipated to result in no acute or chronic toxic effects on human health via direct contact with contaminated soil and are determined using the following equation and standard exposure assumptions:)) methods described in WAC 173-340-747.~~

~~(B) **Soil direct contact.** Concentrations that, due to direct contact with contaminated soil, are estimated to result in no acute or chronic noncarcinogenic toxic effects on human health using a hazardous quotient of one (1) and concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to one in one hundred thousand (1 x 10⁻⁵). Equations 745-1 and 745-2 and the associated default assumptions shall be used to conduct this calculation.~~

~~(I) **Noncarcinogens.** For noncarcinogenic toxic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 745-1. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.~~

[Equation 745-1]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RfD} \times \text{ABW} \times \text{UCF}((2)) \times \text{HQ} \times \text{AT}}{\text{SIR} \times \text{AB1} \times ((\text{FOE})) \text{EF} \times \text{ED}}$$

Where:

- RfD = Reference dose as specified in WAC 173-340-708(7) (mg/kg-day)
- ABW = Average body weight over the ((period of)) exposure duration (70 kg)
- UCF((2)) = Unit conversion factor (1,000,000 mg/kg)
- SIR = Soil ingestion rate (50 mg/day)
- AB1 = Gastrointestinal absorption ((rate)) fraction (1.0) (unitless)
- ((FOE)) EF = Exposure frequency ((of contact)) (0.4) (unitless)
- HQ = Hazard quotient (1)((:)) (unitless)
- AT = Averaging time (20 years)
- ED = Exposure duration (20 years)

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~~((B) Concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to 1 in 100,000 via direct contact with contaminated soil and are determined using the following equation and standard exposure assumptions:))~~ **(II) Carcinogens.** For carcinogenic effects of hazardous substances due to soil ingestion, concentrations shall be determined using Equation 745-2. For petroleum mixtures and components of such mixtures, see (b)(iii)(B)(III) of this subsection.

[Equation 745-2]

$$\text{Soil Cleanup Level (mg/kg)} = \frac{\text{RISK} \times \text{ABW} \times \text{((LIFE))} \text{ AT} \times \text{UCF}(\text{+})}{\text{CPF} \times \text{SIR} \times \text{ABI} \times \text{((DUR} \times \text{FOE))} \frac{\text{ED} \times \text{EF}}{\text{EF}}}$$

Where:

- RISK = Acceptable cancer risk level (1 in 100,000) (unitless)
- ABW = Average body weight over the ~~((period of))~~ exposure duration (70 kg)
- ~~((LIFE~~ = Lifetime (75 years))
- AT = Averaging time (75 years)
- UCF(+)) = Unit(s) conversion factor (1,000,000 mg/kg)
- CPF = Carcinogenic Potency Factor as specified in WAC 173-340-708(8) (kg-day/mg)
- SIR = Soil ingestion rate (50 mg/day)
- ABI = Gastrointestinal absorption ~~((rate))~~ fraction (1.0) (unitless)
- ED = Exposure duration (20 years)
- ~~((DUR~~ = Duration of exposure (20 years)
- ~~FOE))~~ EF = Exposure frequency ~~((of contact))~~ (0.4)(s) (unitless)

~~((b) The department may establish method C cleanup levels that are more stringent than those required by (a) of this subsection when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.~~

~~(5) Multiple hazardous substances/multiple pathways of exposure.~~

~~(a)) (III) Petroleum mixtures.~~ For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated taking into account the additive effects of the petroleum fractions and volatile organic compounds present in the petroleum mixture. Equation 745-3 shall be used for this calculation. This equation takes into account concurrent exposure due to ingestion and dermal contact with petroleum contaminated soils. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 745-4 and 745-5. See Table 830-1 for the analyses required for various petroleum products to use this method.

$$C_{\text{soil}} = \frac{\text{HI} \times \text{ABW} \times \text{AT}}{\text{EF} \times \text{ED} \left[\left(\frac{\text{SIR} \times \text{ABI}}{10^6 \text{ mg/kg}} \sum_{i=1}^n \frac{\text{F}(i)}{\text{RfDo}(i)} \right) + \left(\frac{\text{SA} \times \text{AF}}{10^6 \text{ mg/kg}} \sum_{i=1}^n \frac{\text{F}(i) \times \text{ABS}(i)}{\text{RfDd}(i)} \right) \right]}$$

Where:

- C_{soil} = TPH soil cleanup level (mg/kg)
- HI = Hazard index (1) (unitless)

- ABW = Average body weight over the exposure duration (70 kg)
- AT = Averaging time (20 years)
- EF = Exposure frequency (0.7) (unitless)
- ED = Exposure duration (20 years)
- SIR = Soil ingestion rate (50 mg/day)
- ABI = Gastrointestinal absorption fraction (1.0) (unitless)
- F(i) = Fraction (by weight) of petroleum component (i) (unitless)
- SA = Dermal surface area (2,500 cm²)
- AF = Adherence factor (0.2 mg/cm²-day)
- ABS = Dermal absorption fraction for petroleum component (i) (unitless). May use chemical-specific values or the following defaults:
 - 0.0005 for volatile petroleum components with vapor press >= benzene
 - 0.03 for volatile petroleum components with vapor press < benzene
 - 0.1 for other petroleum components
- RfDo(i) = Oral reference dose of petroleum component (i) as defined in WAC 173-340-708(7) (mg/kg-day)
- RfDd(i) = Dermal reference dose for petroleum component (i) (mg/kg-day) derived by RfDo x GI
- GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:
 - 0.8 for volatile petroleum components
 - 0.5 for other petroleum components
- n = The number of petroleum components (petroleum fractions plus volatile organic compounds with an RfD) present in the petroleum mixture. (See Table 830-1.)

(C) Soil vapors. The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(II) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(III) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

See subsection (5)(c)(iv)(B) of this section for methods that may be used to evaluate the soil to vapor pathway.

(c) Modified Method C soil cleanup levels.

(i) General. Modified Method C soil cleanup levels are standard Method C soil cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws, meet health risk levels for standard Method C soil cleanup levels, and be demonstrated to be environmentally protective using the procedures specified in WAC 173-340-7490 through 173-340-7494. Changes to exposure assumptions must comply with WAC 173-340-708(10).

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(ii) **Allowable modifications.** The following modifications may be made to the default assumptions in the standard Method C equations to derive modified Method C soil cleanup levels:

(A) For the protection of ground water see WAC 173-340-747;

(B) For soil ingestion, the gastrointestinal absorption fraction may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(C) For dermal contact, the adherence factor, dermal absorption fraction and gastrointestinal absorption conversion factor may be modified if the requirements of WAC 173-340-702 (14), (15), (16), and 173-340-708(10) are met;

(D) Toxicity equivalent factors, as described in WAC 173-340-708(8), may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons;

(E) The reference dose and cancer potency factor may be modified if the requirements in WAC 173-340-708 (7) and (8) are met; and

(F) Modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16).

(iii) **Dermal contact.** For hazardous substances other than petroleum mixtures, dermal contact with the soil shall be evaluated whenever the proposed changes to Equations 745-1 and 745-2 would result in a significantly higher soil cleanup level than would be calculated without the proposed changes. When conducting this evaluation, the following equations and default assumptions shall be used:

(A) For noncarcinogens use Equation 745-4. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 745-4]

$$C_{soil} = \frac{HQ \times ABW \times AT}{EF \times ED \left[\left(\frac{1}{RfDo} \times \frac{SIR \times AB1}{10^6 \text{ mg / kg}} \right) + \left(\frac{1}{RfDd} \times \frac{SA \times AF \times ABS}{10^6 \text{ mg / kg}} \right) \right]}$$

Where:

- C_{soil} = Soil cleanup level (mg/kg)
- HQ = Hazard quotient (unitless)
- ABW = Average body weight over the exposure duration (70 kg)
- AT = Averaging time (20 years)
- EF = Exposure frequency (0.7) (unitless)
- ED = Exposure duration (20 years)
- SIR = Soil ingestion rate (50 mg/day)
- AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
- SA = Dermal surface area (2,500 cm²)
- AF = Adherence factor (0.2 mg/cm²-day)
- ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:
 - 0.01 for inorganic hazardous substances.

- 0.0005 for volatile organic compounds with vapor press ≥ benzene
- 0.03 for volatile organic compounds with vapor press < benzene
- 0.1 for other organic hazardous substances
- RfDo = Oral reference dose as defined in WAC 173-340-708(7) (mg/kg-day)
- RfDd = Dermal reference dose (mg/kg-day) derived by RfDo x GI
- GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:
 - 0.2 for inorganic hazardous substances
 - 0.8 for volatile organic compounds
 - 0.5 for other organic hazardous substances

(B) For carcinogens use Equation 745-5. This equation takes into account concurrent exposure due to ingestion and dermal contact with soil.

[Equation 745-5]

$$C_{soil} = \frac{RISK \times ABW \times AT}{EF \times ED \left[\left(\frac{SIR \times AB1 \times CPFo}{10^6 \text{ mg / kg}} \right) + \left(\frac{SA \times AF \times ABS \times CPFd}{10^6 \text{ mg / kg}} \right) \right]}$$

Where:

- C_{soil} = Soil cleanup level (mg/kg)
- RISK = Acceptable cancer risk (1 in 100,000) (unitless)
- ABW = Average body weight over the exposure duration (70 kg)
- AT = Averaging time (75 years)
- EF = Exposure frequency (0.7) (unitless)
- ED = Exposure duration (20 years)
- SIR = Soil ingestion rate (50 mg/day)
- AB1 = Gastrointestinal absorption fraction (1.0) (unitless)
- CPFo = Oral cancer potency factor as defined in WAC 173-340-708(8) (kg-day/mg)
- CPFd = Dermal cancer potency factor (kg-day/mg) derived by CPFo/GI
- GI = Gastrointestinal absorption conversion factor (unitless). May use chemical-specific values or the following defaults:
 - 0.2 for inorganic hazardous substances
 - 0.8 for volatile organic compounds
 - 0.5 for other organic hazardous substances
- SA = Dermal surface area (2,500 cm²)
- AF = Adherence factor (0.2 mg/cm²-day)
- ABS = Dermal absorption fraction (unitless). May use chemical-specific values or the following defaults:
 - 0.01 for inorganic hazardous substances
 - 0.0005 for volatile organic compounds with vapor press ≥ benzene
 - 0.03 for volatile organic compounds substances with vapor press < benzene
 - 0.1 for other organic hazardous substances

(C) Modifications may be made to Equations 745-4 and 745-5 as provided for in subsection (5)(c)(ii) of this section.

(iv) Soil vapors.

(A) Applicability. The soil to vapor pathway shall be evaluated for volatile organic compounds whenever any of the following conditions exist:

(I) For other than petroleum hydrocarbon mixtures, the proposed changes to the standard Method C equations (Equations 745-1 and 745-2) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(II) For petroleum hydrocarbon mixtures, the proposed changes to the standard Method C equations (Equations 745-3, 745-4 and 745-5) or default values would result in a significantly higher soil cleanup level than would be calculated without the proposed changes;

(III) For gasoline range organics, whenever the total petroleum hydrocarbon (TPH) concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(6) using the default assumptions;

(IV) For diesel range organics, whenever the total petroleum hydrocarbon (TPH) concentration is greater than 10,000 mg/kg;

(V) For other volatile organic compounds, including petroleum components, whenever the concentration is significantly higher than a concentration derived for protection of ground water for drinking water beneficial use under WAC 173-340-747(4).

(B) Evaluation methods. Soil cleanup levels that are protective of the indoor and ambient air shall be determined on a site-specific basis. Soil cleanup levels may be evaluated as being protective of air pathways using any of the following methods:

(I) Measurements of the soil vapor concentrations, using methods approved by the department, demonstrating vapors in the soil would not exceed air cleanup levels established under WAC 173-340-750.

(II) Measurements of ambient air concentrations and/or indoor air vapor concentrations throughout buildings, using methods approved by the department, demonstrating air does not exceed cleanup levels established under WAC 173-340-750. Such measurements must be representative of current and future site conditions when vapors are likely to enter and accumulate in structures. Measurement of ambient air may be excluded if it can be shown that indoor air is the most protective point of exposure.

(III) Use of modeling methods approved by the department to demonstrate the air cleanup standards established under WAC 173-340-750 will not be exceeded. When this method is used, the department may require soil vapor and/or air monitoring to be conducted to verify the calculations and compliance with air cleanup standards.

(IV) Other methods as approved by the department demonstrating the air cleanup standards established under WAC 173-340-750 will not be exceeded.

(d) Using modified Method C to evaluate industrial soil remediation levels. In addition to the adjustments allowed under subsection (5)(c) of this section, other adjust-

ments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357, and 173-340-708 (3)(d) and (10)(b).

(6) Adjustments to industrial soil cleanup levels.

(a) Total site risk adjustments. Soil cleanup levels for individual hazardous substances developed in accordance with subsection ~~((4))~~ (5) of this section, including cleanup levels based on state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1×10^{-5}). These adjustments shall be made in accordance with the procedures specified in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1×10^{-5}).

~~(b) ((These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including cleanup levels based on applicable state and federal laws.~~

~~(6))~~ Adjustments to applicable state and federal laws. Where a cleanup level developed under subsection (3) or (5) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand (1×10^{-5}) or a hazard index of one (1), the cleanup level shall be adjusted downward so that total excess cancer risk does not exceed one in one hundred thousand (1×10^{-5}) and the hazard index does not exceed one (1) at the site.

(c) Natural background and analytical considerations. Cleanup levels determined under subsection (3) or (5) of this section, including cleanup levels adjusted under subsection (6)(a) and (b) of this section, shall not be set at levels below the practical quantitation limit or natural background concentration, whichever is higher. See WAC 173-340-707 and 173-340-709 for additional requirements pertaining to practical quantitation limits and natural background.

(7) Point of compliance. The point of compliance for industrial property soil cleanup levels shall be established in accordance with WAC 173-340-740(6).

~~((7))~~ (8) Compliance monitoring. Compliance monitoring and data analysis and evaluation for industrial property soil cleanup levels shall be performed in accordance with WAC 173-340-410 and 173-340-740(7).

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

NEW SECTION

WAC 173-340-747 Deriving soil concentrations for ground water protection. (1) Purpose. The purpose of this

section is to establish soil concentrations that will not cause contamination of ground water at levels that exceed the ground water cleanup levels established under WAC 173-340-720. Soil concentrations established under this section are used to establish either Method B soil cleanup levels (see WAC 173-340-740 (3)(b)(iii)(A) or Method C soil cleanup levels (see WAC 173-340-745 (5)(b)(iii)(A)).

For the purposes of this section, "soil concentration" means the concentration in the soil that will not cause an exceedance of the ground water cleanup level established under WAC 173-340-720.

(2) **General requirements.** The soil concentration established under this section for each hazardous substance shall meet the following two criteria:

(a) The soil concentration shall not cause an exceedance of the ground water cleanup level established under WAC 173-340-720. To determine if this criterion is met, one of the methodologies specified in subsections (4) through (9) of this section shall be used; and

(b) To ensure that the criterion in (a) of this subsection is met, the soil concentration shall not result in the accumulation of nonaqueous phase liquid on or in ground water. To determine if this criterion is met, one of the methodologies specified in subsection (10) of this section shall be used.

(3) **Overview of methods.** This subsection provides an overview of the methods specified in subsections (4) through (10) of this section for deriving soil concentrations that meet the criteria specified in subsection (2) of this section. Certain methods are tailored for particular types of hazardous substances or sites. Certain methods are more complex than others and certain methods require the use of site-specific data. The specific requirements for deriving a soil concentration under a particular method may also depend on the hazardous substance.

(a) **Fixed parameter three-phase partitioning model.** The three-phase partitioning model with fixed input parameters may be used to establish a soil concentration for any hazardous substance. Site-specific data are not required for use of this model. See subsection (4) of this section.

(b) **Variable parameter three-phase partitioning model.** The three-phase partitioning model with variable input parameters may be used to establish a soil concentration for any hazardous substance. Site-specific data are required for use of this model. See subsection (5) of this section.

(c) **Four-phase partitioning model.** The four-phase partitioning model may be used to derive soil concentrations for any site where hazardous substances are present in the soil as a nonaqueous phase liquid (NAPL). The department expects that this model will be used at sites contaminated with petroleum hydrocarbons. Site-specific data are required for use of this model. See subsection (6) of this section.

(d) **Leaching tests.** Leaching tests may be used to establish soil concentrations for certain metals. Leaching tests may also be used to establish soil concentrations for other hazardous substances, including petroleum hydrocarbons, provided sufficient information is available to demonstrate that the leaching test can accurately predict ground water

impacts. Testing of soil samples from the site is required for use of this method. See subsection (7) of this section.

(e) **Alternative fate and transport models.** Fate and transport models other than those specified in subsections (4) through (6) of this section may be used to establish a soil concentration for any hazardous substance. Site-specific data are required for use of such models. See subsection (8) of this section.

(f) **Empirical demonstration.** An empirical demonstration may be used to show that measured soil concentrations will not cause an exceedance of the applicable ground water cleanup levels established under WAC 173-340-720. This empirical demonstration may be used for any hazardous substance. Site-specific data (e.g., ground water samples and soil samples) are required under this method. If the required demonstrations cannot be made, then a protective soil concentration shall be established under one of the methods specified in subsections (4) through (8) of this section. See subsection (9) of this section.

(g) **Residual saturation.** To ensure that the soil concentration established under one of the methods specified in subsections (4) through (9) of this section will not cause an exceedance of the ground water cleanup level established under WAC 173-340-720, the soil concentration must not result in the accumulation of nonaqueous phase liquid (NAPL) on or in ground water. The methodologies and procedures specified in subsection (10) of this section shall be used to determine if this criterion is met.

(4) **Fixed parameter three-phase partitioning model.**

(a) **Overview.** This subsection specifies the procedures and requirements for establishing soil concentrations through the use of the fixed parameter three-phase partitioning model. The model may be used to establish soil concentrations for any hazardous substance. The model may be used to calculate both unsaturated and saturated zone soil concentrations.

This method provides default or fixed input parameters for the three-phase partitioning model that are intended to be protective under most circumstances and conditions; site-specific measurements are not required. In some cases it may be appropriate to use site-specific measurements for the input parameters. Subsection (5) of this section specifies the procedures and requirements to establish site-specific input parameters for use in the three-phase partitioning model.

(b) **Description of the model.** The three-phase partitioning model is described by the following equation:

[Equation 747-1]

$$C_s = C_w (UCF) DF \left[K_d + \frac{(\theta_w + \theta_a H_{cc})}{\rho_b} \right]$$

Where:

C_s = Soil concentration (mg/kg)

C_w = Ground water cleanup level established under WAC 173-340-720 (ug/l)

UCF = Unit conversion factor (1mg/1,000 ug)

- DF = Dilution factor (dimensionless: 20 for unsaturated zone soil; see (e) of this subsection for saturated zone soil)
- K_d = Distribution coefficient (L/kg; see (c) of this subsection)
- θ_w = Water-filled soil porosity (ml water/ml soil: 0.3 for unsaturated zone soil; see (e) of this subsection for saturated zone soil)
- θ_a = Air-filled soil porosity (ml air/ml soil: 0.13 for unsaturated zone soil; see (e) of this subsection for saturated zone soil)
- H_{oc} = Henry's law constant (dimensionless; see (d) of this subsection)
- ρ_b = Dry soil bulk density (1.5 kg/L)

(c) **Distribution coefficient (K_d).** The default K_d values for organics and metals used in Equation 747-1 are as follows:

(i) **Organics.** For organic hazardous substances, the K_d value shall be derived using Equation 747-2. The K_{oc} (soil organic carbon-water partition coefficient) parameter specified in Equation 747-2 shall be derived as follows:

(A) **Nonionic organics.** For individual nonionic hydrophobic organic hazardous substances (e.g., benzene and naphthalene), the K_{oc} values in Table 747-1 shall be used. For hazardous substances not listed in Table 747-1, K_d values may be developed as provided in subsection (5) of this section (variable three-phase partitioning model).

(B) **Ionizing organics.** For ionizing organic hazardous substances (e.g., pentachlorophenol and benzoic acid), the K_{oc} values in Table 747-2 shall be used. Table 747-2 provides K_{oc} values for three different pHs. To select the appropriate K_{oc} value, the soil pH must be measured. The K_{oc} value for the corresponding soil pH shall be used. If the soil pH falls between the pH values provided, an appropriate K_{oc} value shall be selected by interpolation between the listed K_{oc} values.

[Equation 747-2]

$$K_d = K_{oc} \times f_{oc}$$

Where:

- K_d = Distribution coefficient (L/kg)
- K_{oc} = Soil organic carbon-water partitioning coefficient (ml/g).
See (c)(i) of this subsection.
- f_{oc} = Soil fraction of organic carbon (0.1% or 0.001 g/g)

(ii) **Metals.** For metals, the K_d values in Table 747-3 shall be used. For metals not listed in Table 747-3, K_d values may be developed as provided in subsection (5) of this section (variable three-phase partitioning model).

(d) **Henry's law constant.** For petroleum fractions, the values for Henry's law constant in Table 747-4 shall be used in Equation 747-1. For individual organic hazardous substances, the value shall be based on values in the scientific literature. For all metals present as inorganic compounds except mercury, zero shall be used. For mercury, either 0.47 or a value derived from the scientific literature shall be used. Derivation of Henry's law constant from the scientific literature shall comply with WAC 173-340-702 (14), (15) and (16).

(e) **Saturated zone soil concentrations.** Equation 747-1 may also be used to derive concentrations for soil that is located at or below the ground water table (the saturated zone). The following input parameters shall be changed if Equation 747-1 is used to derive saturated zone soil concentrations:

- (i) The dilution factor shall be changed from 20 to 1;
- (ii) The water-filled soil porosity value shall be changed from 0.3 ml water/ml soil to 0.43 ml water/ml soil; and
- (iii) The air-filled soil porosity value shall be changed from 0.13 ml air/ml soil to zero.

(5) **Variable parameter three-phase partitioning model.**

(a) **Overview.** This section specifies the procedures and requirements to derive site-specific input parameters for use in the three-phase partitioning model. This method may be used to establish soil concentrations for any hazardous substance. This method may be used to calculate both unsaturated and saturated zone soil concentrations.

This method allows for the substitution of site-specific values for the default values in Equation 747-1 for one or more of the following five input parameters: Distribution coefficient, soil bulk density, soil volumetric water content, soil air content, and dilution factor. The methods that may be used and the requirements that shall be met to derive site-specific values for each of the five input parameters are specified in (b) through (f) of this subsection.

(b) **Methods for deriving a distribution coefficient (K_d).** To derive a site-specific distribution coefficient, one of the following methods shall be used:

(i) **Deriving K_d from soil fraction of organic carbon (foc) measurements.** Site-specific measurements of soil organic carbon may be used to derive distribution coefficients for nonionic hydrophobic organics using Equation 747-2. Soil organic carbon measurements shall be based on uncontaminated soil below the root zone (i.e., soil greater than one meter in depth) that is representative of site conditions or in areas through which contaminants are likely to migrate.

The laboratory protocols for measuring soil organic carbon in the Puget Sound Estuary Program (March, 1986) may be used. Other methods may also be used if approved by the department. All laboratory measurements of soil organic carbon shall be based on methods that do not include inorganic carbon in the measurements.

(ii) **Deriving K_d from site data.** Site-specific measurements of the hazardous substance concentrations in the soil and the soil pore water or ground water may be used, subject to department approval, to derive a distribution coefficient. Distribution coefficients that have been derived from site data shall be based on measurements of soil and ground water hazardous substance concentrations from the same depth and location. Soil and ground water samples that have hazardous substances present as a nonaqueous phase liquid (NAPL) shall not be used to derive a distribution coefficient and measures shall be taken to minimize biodegradation and volatilization during sampling, transport and analysis of these samples.

(iii) **Deriving K_d from batch tests.** A site-specific distribution coefficient may be derived by using batch equilibrium tests, subject to department approval, to measure hazardous substance adsorption and desorption. The results from the batch test may be used to derive K_d from the sorption/desorption relationship between hazardous substance concentrations in the soil and water. Samples that have hazardous substances present as a nonaqueous phase liquid (NAPL) shall not be used to derive a distribution coefficient and measures shall be taken to minimize biodegradation and volatilization during testing.

(iv) **Deriving K_d from the scientific literature.** The scientific literature may be used to derive a site-specific distribution coefficient (K_d) for any hazardous substance, provided the requirements in WAC 173-340-702 (14), (15) and (16) are met.

(c) **Deriving soil bulk density.** ASTM Method 2049 or other methods approved by the department may be used to derive soil bulk density values.

(d) **Deriving soil volumetric water content using laboratory methods.** ASTM Method 2216 or other methods approved by the department may be used to derive soil volumetric water content values.

(e) **Estimating soil air content.** An estimate of soil air content may be determined by calculating soil porosity and subtracting the volumetric water content.

(f) **Deriving a dilution factor from site-specific estimates of infiltration and ground water flow volume.** Site-specific estimates of infiltration and ground water flow volume may be used in the following equation to derive a site-specific dilution factor:

[Equation 747-3]

$$DF = (Q_p + Q_a)/Q_p$$

Where:

DF = Dilution factor (dimensionless)

Q_p = Volume of water infiltrating (m^3/yr)

Q_a = Ground water flow (m^3/yr)

(i) **Calculating ground water flow volume.** The following equation shall be used under this method to calculate the volume of ground water flow (Q_a):

[Equation 747-4]

$$Q_a = K \times A \times I$$

Where:

Q_a = Ground water flow volume ($m^3/year$)

K = Hydraulic conductivity ($m/year$). Site-specific measurements shall be used to derive this parameter.

A = Aquifer mixing zone (m^2). The aquifer mixing zone thickness shall not exceed 5 meters in depth and be equal to a unit width of 1 meter, unless it can be demonstrated empirically that the mixing zone thickness exceeds 5 meters.

I = Gradient (m/m). Site-specific measurements shall be used to derive this parameter.

(A) Equation 747-4 assumes the ground water concentrations of hazardous substances of concern upgradient of the

site are not detectable. If this assumption is not true, the dilution factor may need to be adjusted downward in proportion to the upgradient concentration.

(B) Direct measurement of the flow velocity of ground water using methods approved by the department may be used as a substitute for measuring the ground water hydraulic conductivity and gradient.

(ii) **Calculating or estimating infiltration.** The following equation shall be used under this method to calculate the volume of water infiltrating (Q_p):

[Equation 747-5]

$$Q_p = L \times W \times Inf$$

Where:

Q_p = Volume of water infiltrating ($m^3/year$)

L = Estimated length of contaminant source area parallel to ground water flow (m)

W = Unit width of contaminant source area (1 meter)

Inf = Infiltration ($m/year$)

(A) If a default annual infiltration value (Inf) is used, the value shall meet the following requirements. For sites west of the Cascade Mountains, the default annual infiltration value shall be 70 percent of the average annual precipitation amount. For sites east of the Cascade Mountains, the default annual infiltration value shall be 25 percent of the average annual precipitation amount.

(B) If a site-specific measurement or estimate of infiltration (Inf) is made, it shall be based on site conditions without surface caps (e.g., pavement) or other structures that would control or impede infiltration. The presence of a cover or cap may be considered when evaluating the protectiveness of a remedy under WAC 173-340-350 through 173-340-360. If a site-specific measurement or estimate of infiltration is made, then it must comply with WAC 173-340-702 (14), (15) and (16).

(6) Four-phase partitioning model.

(a) **Overview.** This subsection specifies the procedures and requirements for establishing soil concentrations through the use of the four-phase partitioning model. This model may be used to derive soil concentrations for any site where hazardous substances are present in the soil as a nonaqueous phase liquid (NAPL). The model is described in (c) of this subsection. Instructions on how to use the model to establish protective soil concentrations are provided in (d) of this subsection.

(b) **Restrictions on use of the model for alcohol enhanced fuels.** The four-phase partitioning model may be used on a case-by-case basis for soil containing fuels (e.g., gasoline) that have been enhanced with alcohol. If the model is used for alcohol enhanced fuels, then it shall be demonstrated that the effects of cosolvency have been adequately considered and, where necessary, taken into account when applying the model. Use of the model for alcohol enhanced fuels without considering the effects of cosolvency and increased ground water contamination is prohibited.

(c) **Description of the model.** The four-phase partitioning model is based on the following three equations:

(i) **Conservation of volume equation.**

[Equation 747-6]

$$n = \theta_w + \theta_a + \theta_{NAPL}$$

Where:

n = Total soil porosity (ml total pore space/ml total soil volume). Use a default value of 0.43 ml/ml or use a value determined from site-specific measurements.

θ_w = Volumetric water content (ml water/ml soil). For unsaturated soil use a default value of 0.3 or a value determined from site-specific measurements. For saturated soil this value is unknown and must be solved for. Volumetric water content equals the total soil porosity minus volume occupied by the NAPL.

θ_a = Volumetric air content (ml air volume/ml total soil volume). For unsaturated soil this value is unknown and must be solved for. Volumetric air content equals the total soil porosity minus the volume occupied by the water and NAPL. For saturated soil this value is zero.

θ_{NAPL} = Volumetric NAPL content (ml NAPL volume/ml total soil volume). For both unsaturated and saturated soil this value is unknown and must be solved for.

(ii) **Four-phase partitioning equation.**

[Equation 747-7]

$$\frac{M'_T}{m_{soil}} = \frac{x_i S_i}{\rho_b} \left[\theta_w + K'_{oc} f_{oc} \rho_b + H'_{cc} \theta_a + \frac{GFW_i}{S_i} \rho_{NAPL} \theta_{NAPL} \right]$$

Where:

M'_T = Total mass of each component in the system (mg). This value is derived from site-specific measurements.

m_{soil} = Total soil mass (kg).

x_i = Mole fraction (at equilibrium) of each component (dimensionless). This value is unknown and must be solved for.

S_i = Solubility of each component (mg/l). See Table 747-4 for petroleum hydrocarbons; see the scientific literature for other hazardous substances.

ρ_b = Dry soil bulk density (1.5 kg/l).

K'_{oc} = Soil organic carbon-water partitioning coefficient for each component (l/kg). See Table 747-4 for petroleum hydrocarbons; see subsection (4)(b) of this section for other hazardous substances.

f_{oc} = Mass fraction of soil natural organic carbon (0.001 g soil organic/g soil).

H'_{cc} = Henry's law constant for each component (dimensionless). See Table 747-4 for petroleum hydrocarbons; see subsection (4)(c) of this section for other hazardous substances.

GFW_i = Gram formula weight, or molecular weight of each component (mg/mol). See Table 747-4 for petroleum hydrocarbons; see the scientific literature for other hazardous substances.

ρ_{NAPL} = Molar density of the mixture (mol/l). See Equation 747-8.

Component = For petroleum mixtures, this means the petroleum fractions, and organic hazardous substances with a reference dose; for other hazardous substances, this means each organic hazardous substance that is found in the NAPL.

(iii) **Molar density equation.**

$$\rho_{NAPL} = \frac{\left[\frac{\sum x_i GFW_i}{\sum x_i GFW_i / \rho_i} \right]}{\sum x_i GFW_i} = \frac{1}{\sum (x_i GFW_i / \rho_i)}$$

Where:

GFW_i = Gram formula weight, or molecular weight of each component (mg/mol). See Table 747-4 for petroleum hydrocarbons; see the scientific literature for other hazardous substances.

x_i = Mole fraction (at equilibrium) of each component (dimensionless). This value is unknown and must be solved for.

ρ_i = Density of each component (mg/l). See Table 747-4 for petroleum hydrocarbons; see the scientific literature for other hazardous substances.

Component = For petroleum mixtures, this means the petroleum fractions plus organic hazardous substances with a reference dose; for other hazardous substances, this means each organic hazardous substance that is found in the NAPL.

(d) **Instructions for using the model.** This subsection provides instructions for using the four-phase partitioning model to predict ground water concentrations and to establish protective soil concentrations. The model uses an iterative process to simultaneously solve multiple equations for several unknowns (see step 4 for the number of equations). To predict a ground water concentration, the mole fraction of each component (at equilibrium) must be known. The predicted ground water concentration is obtained by multiplying the water solubility of each component by the equilibrated mole fraction (Equation 747-7).

(i) **Step 1: Measure hazardous substance soil concentrations.** Collect and analyze soil samples and, if appropriate, samples of the product released, for each component. For petroleum hydrocarbons, see Table 830-1 for a description of what to analyze for.

(ii) **Step 2: Derive physical/chemical data.** For each of the components, determine the Henry's law constant, water solubility, soil organic carbon-water partitioning coefficient, density and molecular weight values. For petroleum hydrocarbons, see Table 747-4.

(iii) **Step 3: Derive soil parameters.** Derive a value for each of the following soil parameters as follows:

(A) **Soil organic carbon content.** Use the default value (0.001 g soil organic/g soil) or a site-specific value derived under subsection (5)(b)(i) of this section.

(B) **Soil volumetric water content.** Use the default value (0.43 minus the volume of NAPL and air) or a site-specific value derived under subsection (5)(d) of this section.

(C) **Soil volumetric air content.** Use the default value (0.13 ml/ml for unsaturated zone soil; zero for saturated zone soil) or a site-specific value derived under subsection (5)(e) of this section.

(D) **Soil bulk density and porosity.** Use the default values of 1.5 kg/l for soil bulk density and 0.43 for soil porosity or use site-specific values. If a site-specific value for bulk density is used, the method specified in subsection (5)(c) of this subsection shall be used. If a site-specific bulk density value is used, a site-specific porosity value shall also be used. The site-specific soil porosity value may be calculated using a default soil specific gravity of 2.65 g/ml or measuring the soil specific gravity using ASTM Method D 854.

(iv) **Step 4: Predict a soil pore water concentration.** Equation 747-7 shall be used to predict the soil pore water concentration for each component. To do this, multiple versions of Equation 747-7 shall be constructed, one for each of the components using the associated parameter inputs for K_{oc} , H_{oc} , GFW, and S. These equations shall then be combined with Equations 747-6 and 747-8 and the condition that $\sum x_i = 1$ and solved simultaneously for the unknowns in the equations (mole fraction of each component (X_i), volumetric NAPL content (θ_{NAPL}), and either the volumetric water content (θ_w) or the volumetric air content (θ_a).

(v) **Step 5: Derive a dilution factor.** Derive a dilution factor using one of the following two methods:

(A) Use the default value of 20 for unsaturated soils and 1 for saturated soils; or

(B) Derive a site-specific value using site-specific estimates of infiltration and ground water flow volume under subsection (5)(f) of this section.

(vi) **Step 6: Calculate a predicted ground water concentration.** Calculate a predicted ground water concentration for each component by dividing the predicted soil pore water concentration for each component by a dilution factor to account for the dilution that occurs once the component enters ground water.

(vii) **Step 7: Establishing protective soil concentrations.**

(A) **Petroleum mixtures.** For petroleum mixtures, compare the predicted ground water concentration for each component and for the total petroleum hydrocarbon mixture (sum of the petroleum components in the NAPL) with the applicable ground water cleanup level established under WAC 173-340-720.

(I) If the predicted ground water concentration for each of the components and for the total petroleum hydrocarbon mixture is less than or equal to the applicable ground water cleanup level, then the soil concentrations measured at the site are protective.

(II) If the condition in (d)(vii)(A)(I) of this subsection is not met, then the soil concentrations measured at the site are not protective. In this situation, the four-phase partitioning model can be used in an iterative process to calculate protective soil concentrations.

(B) **Other mixtures.** For mixtures that do not include petroleum hydrocarbons, compare the predicted ground water concentration for each hazardous substance in the mixture with the applicable ground water cleanup level established under WAC 173-340-720.

(I) If the predicted ground water concentration for each of the hazardous substances in the mixture is less than or equal to the applicable ground water cleanup level, then the soil concentrations measured at the site are protective.

(II) If the condition in (d)(vii)(B)(I) of this subsection is not met, then the soil concentrations measured at the site are not protective. In this situation, the four-phase partitioning model can be used in an iterative process to calculate protective soil concentrations.

(7) Leaching tests.

(a) **Overview.** This subsection specifies the procedures and requirements for deriving soil concentrations through the use of leaching tests. Leaching tests may be used to establish soil concentrations for the following specified metals: Arsenic, cadmium, total chromium, hexavalent chromium, copper, lead, mercury, nickel, selenium, and zinc (see (b) and (c) of this subsection). Leaching tests may also be used to establish soil concentrations for other hazardous substances, including petroleum hydrocarbons, provided sufficient information is available to correlate leaching test results with ground water impacts (see (d) of this subsection). Testing of soil samples from the site is required for use of this method.

(b) **Leaching tests for specified metals.** If leaching tests are used to establish soil concentrations for the specified metals, the following two leaching tests may be used:

(i) EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP). Fluid #3 (pH = 5.0), representing acid rain in the western United States, shall be used when conducting this test. This test may underestimate ground water impacts when acidic conditions exist due to significant biological degradation or for other reasons. Underestimation of ground water impacts may occur, for example, when soils contaminated with metals are located in wood waste, in municipal solid waste landfills, in high sulfur content mining wastes, or in other situations with a pH <6. Consequently, this test shall not be used in these situations and the TCLP test should be used instead.

(ii) EPA Method 1311, Toxicity Characteristic Leaching Procedure (TCLP). Fluid #1 (pH = 4.93), representing organic acids generated by biological degradation processes, shall be used when conducting this test. This test is intended to represent situations where acidic conditions are present due to biological degradation such as in municipal solid waste landfills. Thus, it may underestimate ground water impacts where this is not the case and the metals of interest are more soluble under alkaline conditions. An example of this would be arsenic occurring in alkaline (pH >8) waste or soils. Consequently, this test shall not be used in these situations and the SPLP test should be used instead.

(c) **Criteria for specified metals.** When using either EPA Method 1312 or 1311, the analytical methods used for analysis of the leaching test effluent shall be sufficiently sensitive to quantify hazardous substances at concentrations at the ground water cleanup level established under WAC 173-340-720. For a soil metals concentration derived under (b) of this subsection to be considered protective of ground water, the leaching test effluent concentration shall meet the following criteria:

(i) For cadmium, lead and zinc, the leaching test effluent concentration shall be less than or equal to ten (10) times the applicable ground water cleanup level established under WAC 173-340-720.

(ii) For arsenic, total chromium, hexavalent chromium, copper, mercury, nickel and selenium, the leaching test effluent concentration shall be less than or equal to the applicable ground water cleanup level established under WAC 173-340-720.

(d) **Leaching tests for other hazardous substances.** Leaching tests using the methods specified in this subsection may also be used for hazardous substances other than the metals specifically identified in this subsection, including petroleum hydrocarbons. Alternative leaching test methods may also be used for any hazardous substance, including the metals specifically identified in this subsection. Use of the leaching tests specified in (b) and (c) of this subsection for other hazardous substances or in a manner not specified in (b) and (c) of this subsection, or use of alternative leaching tests for any hazardous substance, is subject to department approval and the user must demonstrate with site-specific field or laboratory data or other empirical data that the leaching test can accurately predict ground water impacts. The department will use the criteria in WAC 173-340-702 (14), (15) and (16) to evaluate the appropriateness of these alternative methods under WAC 173-340-702 (14), (15) and (16).

(8) Alternative fate and transport models.

(a) **Overview.** This subsection specifies the procedures and requirements for establishing soil concentrations through the use of fate and transport models other than those specified in subsections (4) through (6) of this section. These alternative models may be used to establish a soil concentration for any hazardous substance. Site-specific data are required for use of these models.

(b) **Assumptions.** When using alternative models, chemical partitioning and advective flow may be coupled with other processes to predict contaminant fate and transport, provided the following conditions are met:

(i) **Sorption.** Sorption values shall be derived in accordance with either subsection (4)(c) of this section or the methods specified in subsection (5)(b) of this section.

(ii) **Vapor phase partitioning.** If Henry's law constant is used to establish vapor phase partitioning, then the constant shall be derived in accordance with subsection (4)(d) of this section.

(iii) **Natural biodegradation.** Rates of natural biodegradation shall be derived from site-specific measurements.

(iv) **Dispersion.** Estimates of dispersion shall be derived from either site-specific measurements or literature values.

(v) **Decaying source.** Fate and transport algorithms may be used that account for decay over time.

(vi) **Dilution.** Dilution shall be based on site-specific measurements or estimated using a model incorporating site-specific characteristics. If detectable concentrations of hazardous substances are present in upgradient ground water, then the dilution factor may need to be adjusted downward in proportion to the background (upgradient) concentration.

(vii) **Infiltration.** Infiltration shall be derived in accordance with subsection (5)(f)(ii)(A) or (B) of this section.

(c) **Evaluation criteria.** Proposed fate and transport models, input parameters, and assumptions shall comply with WAC 173-340-702 (14), (15) and (16).

(9) Empirical demonstration.

(a) **Overview.** This subsection specifies the procedures and requirements for demonstrating empirically that soil concentrations measured at the site will not cause an exceedance of the applicable ground water cleanup levels established under WAC 173-340-720. This empirical demonstration may be used for any hazardous substance. Site-specific data (e.g., ground water and soil samples) are required under this method. If the demonstrations required under (b) of this subsection cannot be made, then a protective soil concentration shall be established under one of the methods specified in subsections (4) through (8) of this section.

(b) **Requirements.** To demonstrate empirically that measured soil concentrations will not cause an exceedance of the applicable ground water cleanup levels established under WAC 173-340-720, the following shall be demonstrated:

(i) The measured ground water concentration is less than or equal to the applicable ground water cleanup level established under WAC 173-340-720; and

(ii) The measured soil concentration will not cause an exceedance of the applicable ground water cleanup level established under WAC 173-340-720 at any time in the future. Specifically, it must be demonstrated that a sufficient amount of time has elapsed for migration of hazardous substances from soil into ground water to occur and that the characteristics of the site (e.g., depth to ground water and infiltration) are representative of future site conditions. This demonstration may also include a measurement or calculation of the attenuating capacity of soil between the source of the hazardous substance and the ground water table using site-specific data.

(c) **Evaluation criteria.** Empirical demonstrations shall be based on methods approved by the department. Those methods shall comply with WAC 173-340-702 (14), (15) and (16).

(10) Residual saturation.

(a) **Overview.** To ensure the soil concentrations established under one of the methods specified in subsections (4) through (9) of this section will not cause an exceedance of the ground water cleanup level established under WAC 173-340-720, the soil concentrations must not result in the accumulation of nonaqueous phase liquid on or in ground water (see subsection (2)(b) of this section). To determine if this criterion is met, either an empirical demonstration must be made (see (c) of this subsection) or residual saturation screening levels must be established and compared with the

soil concentrations established under one of the methods specified in subsections (4) through (9) of this section (see (d) and (e) of this subsection). This subsection applies to any site where hazardous substances are present as a nonaqueous phase liquid (NAPL), including sites contaminated with petroleum hydrocarbons.

(b) **Definition of residual saturation.** When a nonaqueous phase liquid (NAPL) is released to the soil, some of the NAPL will be held in the soil pores or void spaces by capillary force. For the purpose of this subsection, the concentration of hazardous substances in the soil at equilibrium conditions is called residual saturation. At concentrations above residual saturation, the NAPL will continue to migrate due to gravimetric and capillary forces and may eventually reach the ground water, provided a sufficient volume of NAPL is released.

(c) **Empirical demonstration.** An empirical demonstration may be used to show that soil concentrations measured at the site will not result in the accumulation of nonaqueous phase liquid on or in ground water. An empirical demonstration may be used for any hazardous substance. Site-specific data (e.g., ground water and soil samples) are required under this method. If the demonstrations required under (c)(i) of this subsection cannot be made, then a protective soil concentration shall be established under (d) and (e) of this subsection.

(i) **Requirements.** To demonstrate empirically that measured soil concentrations will not result in the accumulation of nonaqueous phase liquid on or in ground water, the following shall be demonstrated:

(A) Nonaqueous phase liquid has not accumulated on or in ground water; and

(B) The measured soil concentration will not result in nonaqueous phase liquid accumulating on or in ground water at any time in the future. Specifically, it must be demonstrated that a sufficient amount of time has elapsed for migration of hazardous substances from soil into ground water to occur and that the characteristics of the site (e.g., depth to ground water and infiltration) are representative of future site conditions. This demonstration may also include a measurement or calculation of the attenuating capacity of soil between the source of the hazardous substance and the ground water table using site-specific data.

(iii) **Evaluation criteria.** Empirical demonstrations shall be based on methods approved by the department. Those methods shall comply with WAC 173-340-702 (14), (15) and (16).

(d) **Deriving residual saturation screening levels.** Unless an empirical demonstration is made under (c) of this subsection, residual saturation screening levels shall be derived and compared with the soil concentrations derived under the methods specified in subsections (4) through (9) of this subsection to ensure that those soil concentrations will not result in the accumulation of nonaqueous phase liquid on or in ground water. Residual saturation screening levels shall be derived using one of the following methods.

(i) **Default screening levels for petroleum hydrocarbons.** Residual saturation screening levels for petroleum

hydrocarbons may be obtained from the values specified in Table 747-5.

(ii) **Site-specific screening levels.** Residual saturation screening levels for petroleum hydrocarbons and other hazardous substances may be derived from site-specific measurements. Site-specific measurements of residual saturation shall be based on methods approved by the department. Laboratory measurements or theoretical estimates (i.e., those that are not based on site-specific measurements) of residual saturation shall be supported and verified by site data. This may include an assessment of ground water monitoring data and soil concentration data with depth and an analysis of the soil's texture (grain size), porosity and volumetric water content.

(e) **Adjustment to the derived soil concentrations.** After residual saturation screening levels have been derived under (d) of this subsection, the screening levels shall be compared with the soil concentrations derived under one of the methods specified in subsections (4) through (9) of this subsection. If the residual saturation screening level is greater than or equal to the soil concentration derived using these methods, then no adjustment for residual saturation is necessary. If the residual saturation screening level is less than the soil concentration derived using these methods, then the soil concentration shall be adjusted downward to the residual saturation screening level.

(11) **Ground water monitoring requirements.** The department may, on a case-by-case basis, require ground water monitoring to confirm that hazardous substance soil concentrations derived under this section meet the criterion specified in subsection (2) of this section.

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

NEW SECTION

WAC 173-340-7490 Terrestrial ecological evaluation procedures. (1) Purpose.

(a) WAC 173-340-7490 through 173-340-7494 define the goals and procedures the department will use for:

(i) Determining whether a release of hazardous substances to soil may pose a threat to the terrestrial environment;

(ii) Characterizing existing or potential threats to terrestrial plants or animals exposed to hazardous substances in soil; and

(iii) Establishing site-specific cleanup standards for the protection of terrestrial plants and animals.

(b) Information collected during a terrestrial ecological evaluation shall also be used in developing and evaluating cleanup action alternatives and in selecting a cleanup action under WAC 173-340-350 through 173-340-390. WAC 173-340-7490 through 173-340-7494 do not necessarily require a cleanup action for terrestrial ecological protection separate from a human health-based cleanup action. Where appropriate, a terrestrial ecological evaluation may be conducted so as to avoid duplicative studies of soil contamination that will be remediated to address other concerns, as provided in WAC 173-340-350 (7)(c)(iii)(F)(II).

(c) These procedures are not intended to be used to evaluate potential threats to ecological receptors in sediments, surface water, or wetlands. Procedures for sediment evaluations are described in WAC 173-340-760, and for surface water evaluations in WAC 173-340-730. Procedures for wetland evaluations shall be determined by the department on a case-by-case basis.

(2) **Requirements.** In the event of a release of a hazardous substance to the soil at a site, one of the following actions shall be taken:

(a) Document an exclusion from any further terrestrial ecological evaluation using the criteria in WAC 173-340-7491;

(b) Conduct a simplified terrestrial ecological evaluation as set forth in WAC 173-340-7492; or

(c) Conduct a site-specific terrestrial ecological evaluation as set forth in WAC 173-340-7493.

(3) **Goal.** The goal of the terrestrial ecological evaluation process is the protection of terrestrial ecological receptors from exposure to contaminated soil with the potential to cause significant adverse effects. For species protected under the Endangered Species Act or other applicable laws that extend protection to individuals of a species, a significant adverse effect means an impact that would significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering. For all other species, significant adverse effects are effects that impair reproduction, growth or survival.

(a) The simplified terrestrial ecological evaluation process has been developed to be protective of terrestrial ecological receptors at most qualifying sites, while the site-specific terrestrial ecological evaluation process is intended to be highly likely to be protective at any site.

(b) The following policy on terrestrial ecological receptors to be protected applies to all terrestrial ecological evaluations. For land uses other than industrial or commercial, protectiveness is evaluated relative to terrestrial plants, wildlife, and ecologically important functions of soil biota that affect plants or wildlife.

For industrial or commercial properties, current or future potential for exposure to soil contamination need only be evaluated for terrestrial wildlife protection. Plants and soil biota need not be considered unless:

(i) The species is protected under the federal Endangered Species Act; or

(ii) The soil contamination is located on an area of an industrial or commercial property where vegetation must be maintained to comply with local government land use regulations.

(c) For the purposes of this section, "industrial property" means properties meeting the definition in WAC 173-340-200. "Commercial property" means properties that are currently zoned for commercial or industrial property use and that are characterized by or are committed to traditional commercial uses such as offices, retail and wholesale sales, professional services, consumer services, and, warehousing.

(d) Any terrestrial remedy, including exclusions, based at least in part on future land use assumptions shall include a

completion date for such future development acceptable to the department.

(4) **Point of compliance.**

(a) **Conditional point of compliance.** For sites with institutional controls to prevent excavation of deeper soil, a conditional point of compliance may be set at the biologically active soil zone. This zone is assumed to extend to a depth of six feet. The department may approve a site-specific depth based on a demonstration that an alternative depth is more appropriate for the site. In making this demonstration, the following shall be considered:

(i) Depth to which soil macro-invertebrates are likely to occur;

(ii) Depth to which soil turnover (bioturbation) is likely to occur due to the activities of soil invertebrates;

(iii) Depth to which animals likely to occur at the site are expected to burrow; and

(iv) Depth to which plant roots are likely to extend.

(b) **Standard point of compliance.** An institutional control is not required for soil contamination that is at least fifteen feet below the ground surface. This represents a reasonable estimate of the depth of soil that could be excavated and distributed at the soil surface as a result of site development activities, resulting in exposure by ecological receptors.

(5) **Additional measures.** The department may require additional measures to evaluate potential threats to terrestrial ecological receptors notwithstanding the provisions in this and the following sections, when based upon a site-specific review, the department determines that such measures are necessary to protect the environment.

NEW SECTION

WAC 173-340-7491 Exclusions from a terrestrial ecological evaluation. (1) **Criteria for determining that no further evaluation is required.** No further evaluation is required if the department determines that a site meets any of the criteria in (a) through (d) of this subsection:

(a) All soil contaminated with hazardous substances is, or will be, located below the point of compliance established under WAC 173-340-7490(4). To qualify for this exclusion, an institutional control shall be required by the department under WAC 173-340-440. An institutional control is not required if the contamination is at least fifteen feet below the ground surface (WAC 173-340-7490 (4)(b)). An exclusion based on planned future land use shall include a completion date for such future development that is acceptable to the department.

(b) All soil contaminated with hazardous substances is, or will be, covered by buildings, paved roads, pavement, or other physical barriers that will prevent plants or wildlife from being exposed to the soil contamination. To qualify for this exclusion, an institutional control shall be required by the department under WAC 173-340-440. An exclusion based on planned future land use shall include a completion date for such future development that is acceptable to the department;

(c) Where the site conditions are related or connected to undeveloped land in the following manner:

(i) For sites contaminated with hazardous substances other than those specified in (c)(ii) of this subsection, there is less than 1.5 acres of contiguous undeveloped land on the site or within 500 feet of any area of the site; and

(ii) For sites contaminated with any of the following hazardous substances: Chlorinated dioxins or furans, PCB mixtures, DDT, DDE, DDD, aldrin, chlordane, dieldrin, endosulfan, endrin, heptachlor or heptachlor epoxide, benzene hexachloride, toxaphene, hexachlorobenzene, pentachlorophenol, or pentachlorobenzene, there is less than 1/4 acre of contiguous undeveloped land on or within 500 feet of any area of the site affected by these hazardous substances. This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site; and

(iii) For the purposes of (c)(i) and (ii) of this subsection, and Table 749-1, "undeveloped land" shall mean land that is not covered by buildings, roads, paved areas or other barriers that would prevent wildlife from feeding on plants, earthworms, insects or other food in or on the soil. "Contiguous" undeveloped land means an area of undeveloped land that is not divided into smaller areas by highways, extensive paving or similar structures that are likely to reduce the potential use of the overall area by wildlife. Roads, sidewalks and other structures that are unlikely to reduce potential use of the area by wildlife shall not be considered to divide a contiguous area into smaller areas.

(d) Concentrations of hazardous substances in soil do not exceed natural background levels, as determined under WAC 173-340-709.

(2) Procedure for a site that does not qualify for an exclusion.

(a) Sites that do not qualify for an exclusion under subsection (1) of this section shall conduct a site-specific terrestrial ecological evaluation if any of the following criteria apply:

(i) The site is located on, or directly adjacent to, an area where management or land use plans will maintain or restore native or seminative vegetation (e.g., green-belts, protected wetlands, forestlands, locally designated environmentally sensitive areas, open space areas managed for wildlife, and some parks or outdoor recreation areas. This does not include park areas used for intensive sport activities such as baseball or football).

(ii) The site is used by a threatened or endangered species; a wildlife species classified by the Washington state department of fish and wildlife as a "priority species" or "species of concern" under Title 77 RCW; or a plant species classified by the Washington state department of natural resources natural heritage program as "endangered," "threatened," or "sensitive" under Title 79 RCW. For plants, "used" means that a plant species grows at the site or has been found growing at the site. For animals, "used" means that individuals of a species have been observed to live, feed or breed at the site.

(iii) The site is located on a property that contains at least ten acres of native vegetation within 500 feet of the site, not including vegetation beyond the property boundaries.

(iv) The department determines that the site may present a risk to significant wildlife populations.

(b) If none of the criteria in (a) of this subsection apply to the site, either a simplified terrestrial ecological evaluation described under WAC 173-340-7492 or a site-specific terrestrial ecological evaluation described under WAC 173-340-7493 shall be conducted.

(c) For the purposes of this section, the following definitions shall apply.

(i) "Native vegetation" means any plant community native to the state of Washington. The following sources shall be used in making this determination: *Natural Vegetation of Oregon and Washington*, J.F. Franklin and C.T. Dyrness, Oregon State University Press, 1988, and L.C. Hitchcock, C.L. Hitchcock, J.W. Thompson and A. Cronquist, 1955-1969, *Vascular Plants of the Pacific Northwest* (5 volumes). Areas planted with native species for ornamental or landscaping purposes shall not be considered to be native vegetation.

(ii) "Seminative vegetation" means a plant community that includes at least some vascular plant species native to the state of Washington. The following shall not be considered seminative vegetation: Areas planted for ornamental or landscaping purposes, cultivated crops, and areas significantly disturbed and predominantly covered by noxious, introduced plant species or weeds (e.g., Scotch broom, Himalayan blackberry or knap-weed).

NEW SECTION

WAC 173-340-7492 Simplified terrestrial ecological evaluation procedures. (1) Purpose.

(a) The simplified terrestrial ecological evaluation process is intended to identify those sites which do not have a substantial potential for posing a threat of significant adverse effects to terrestrial ecological receptors, and thus may be removed from further ecological consideration during the remedial investigation and cleanup process. For remaining sites, the process provides several options, including chemical concentrations that may be used as cleanup levels, and the choice of developing site-specific concentrations using bioassays or conducting a site-specific terrestrial ecological evaluation under WAC 173-340-7493.

(b) The process is structured with an intent to protect terrestrial wildlife at industrial or commercial sites, and terrestrial plants, soil biota and terrestrial wildlife at other sites, as provided under WAC 173-340-7490 (3)(b).

(c) The simplified terrestrial ecological evaluation procedures in subsection (2) of this section are organized to focus upon the extent of exposure, exposure pathways, and particular contaminants as key factors in evaluating ecological risk. The steps need not be followed in order, and any one step may be used to determine that no further evaluation is necessary to conclude that a site does not pose a substantial threat of significant adverse effects to terrestrial ecological receptors.

(d) If none of the simplified terrestrial ecological evaluation screening step conditions are met, the person conducting the evaluation may use the chemical concentration numbers listed in Table 749-2 as cleanup levels, or shall conduct a site-specific terrestrial ecological evaluation under WAC 173-340-7493.

(2) Process for conducting a simplified terrestrial ecological evaluation.

(a) Exposure analysis. The evaluation may be ended at a site where:

(i) The total area of soil contamination at the site is not more than 350 square feet; or

(ii) Land use at the site and surrounding area makes substantial wildlife exposure unlikely. Table 749-1 shall be used to make this evaluation.

(b) Pathways analysis. The evaluation may be ended if there are no potential exposure pathways from soil contamination to soil biota, plants or wildlife. For a commercial or industrial property, only potential exposure pathways to wildlife (e.g., small mammals, birds) need be considered. Only exposure pathways for priority chemicals of ecological concern listed in Table 749-2 at or above the concentrations provided must be considered. Incomplete pathways may be due to the presence of man-made physical barriers, either currently existing or to be placed (within a time frame acceptable to the department) as part of a remedy or land use. To ensure that such man-made barriers are maintained, a restrictive covenant shall be required by the department under WAC 173-340-440 under a consent decree, agreed order or enforcement order, or as a condition to a written opinion regarding the adequacy of an independent remedial action under WAC 173-340-515(3).

(c) Contaminants analysis. The evaluation may be ended if either of the following are true:

(i) No hazardous substance listed in Table 749-2 for which a value is listed is, or will be, present in the soil at a depth not exceeding the point of compliance established under WAC 173-340-7490(4) and at concentrations higher than the values provided in Table 749-2, using the statistical compliance methods described in WAC 173-340-740(7). An institutional control is required if the contamination is within fifteen feet of the ground surface (see WAC 173-340-7490(4)(b)). If a hazardous substance listed in Table 749-2 does not have a value listed, then the requirements of (c)(ii) of this subsection must be met; or

(ii) No hazardous substance listed in Table 749-2 is, or will be, present in the soil within six feet of the ground surface at concentrations likely to be toxic, or with the potential to bioaccumulate, based on bioassays using methods approved by the department. An institutional control is required if the contaminant is within fifteen feet of the ground surface. If a hazardous substance listed in Table 749-2 does not have a value listed, then this subparagraph applies.

(3) Institutional controls. If any of the conditions listed above in subsection (2)(a)(ii) through (c) of this section are used to end the simplified terrestrial ecological evaluation, institutional controls may be needed to ensure that the condition will continue to be met in the future. Cleanup remedies that rely on chemical concentrations for industrial or com-

mmercial sites in Table 749-2 shall include appropriate institutional controls to prevent future exposure to plants or soil biota in the event of a change in land use.

NEW SECTION

WAC 173-340-7493 Site-specific terrestrial ecological evaluation procedures. (1) Purpose.

(a) This section sets forth the procedures for conducting a site-specific terrestrial ecological evaluation if any of the conditions specified in WAC 173-340-7491 (2)(a) apply to the site, or if the person conducting the evaluation elects to conduct a site-specific terrestrial ecological evaluation under this section, whether or not a simplified terrestrial ecological evaluation has been conducted under WAC 173-340-7492.

(b) In addition to the purposes specified in WAC 173-340-7490 (1)(a), the site-specific terrestrial ecological evaluation is intended to facilitate selection of a cleanup action by developing information necessary to conduct evaluations of cleanup action alternatives in the feasibility study.

(c) There are two elements in planning a site-specific terrestrial ecological evaluation. Both elements shall be done in consultation with the department and must be approved by the department. The two elements are:

(i) Completing the problem formulation step as required under subsection (2) of this section; and

(ii) Selecting one or more methods under subsection (3) of this section for addressing issues identified in the problem formulation step.

(d) After reviewing information developed in the problem formulation step, the department may at its discretion determine that selection of one or more methods for proceeding with the evaluation is not necessary by making either of the following decisions:

(i) No further site-specific terrestrial ecological evaluation is necessary because the cleanup action plans developed for the protection of human health will eliminate exposure pathways of concern to all of the soil contamination.

(ii) A simplified terrestrial ecological evaluation may be conducted under WAC 173-340-7492 because this evaluation will adequately identify and address any existing or potential threats to ecological receptors.

(2) Problem formulation step.

(a) To define the focus of the site-specific terrestrial ecological evaluation, identify issues to be addressed in the evaluation, specifying:

(i) **The chemicals of ecological concern.** The person conducting the evaluation may eliminate hazardous substances from further consideration where the maximum or the upper ninety-five percent confidence limit soil concentration found at the site does not exceed ecological indicator concentrations described in Table 749-3. For industrial or commercial land uses, only the wildlife values need to be considered. Any chemical that exceeds the ecological indicator concentrations shall be included as a chemical of ecological concern in the evaluation unless it can be eliminated based on the factors listed in WAC 173-340-708 (2)(b). (*Caution on the use of ecological indicator concentrations: These numbers are*

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not cleanup levels, and concentrations that exceed the number do not necessarily require remediation.)

(ii) **Exposure pathways.** Identify any complete potential pathways for exposure of plants or animals to the chemicals of concern. If there are no complete exposure pathways then no further evaluation is necessary. Incomplete pathways may be due to the presence of man-made physical barriers, either currently existing or to be placed (within a time frame acceptable to the department) as part of a remedy or land use.

To ensure that such man-made barriers are maintained, a restrictive covenant shall be required by the department under WAC 173-340-440 under a consent decree, agreed order or enforcement order, or as a condition to a written opinion regarding the adequacy of an independent remedial action under WAC 173-340-515(3).

(iii) **Terrestrial ecological receptors of concern.** Identify current or potential future terrestrial species groups reasonably likely to live or feed at the site. Groupings should represent taxonomically related species with similar exposure characteristics. Examples of potential terrestrial species groups include: Vascular plants, ground-feeding birds, ground-feeding small mammal predators, and herbivorous small mammals.

(A) From these terrestrial species groups, select those groups to be included in the evaluation. If appropriate, individual terrestrial receptor species may also be included. In selecting species groups or individual species, the following shall be considered:

(I) Receptors that may be most at risk for significant adverse effects based on the toxicological characteristics of the chemicals of concern, the sensitivity of the receptor, and on the likely degree of exposure.

(II) Public comments.

(III) Species protected under applicable state or federal laws that may potentially be exposed to soil contaminants at the site.

(IV) Receptors to be considered under different land uses, described under WAC 173-340-7490 (3)(b).

(B) Surrogate species for which greater information is available, or that are more suitable for site-specific studies, may be used in the analysis when appropriate for addressing issues raised in the problem formulation step.

(iv) **Toxicological assessment.** Identify significant adverse effects in the receptors of concern that may result from exposure to the chemicals of concern, based on information from the toxicological literature.

(b) The following is an example of a site-specific issue developed in this step: Is dieldrin contamination a potential threat to reproduction in birds feeding on invertebrates and ingesting soil at the site? If so, what measures will eliminate any significant adverse effects?

(c) If there are identified information needs for remedy selection or remedial design, these should also be developed as issues for the problem formulation process.

(d) The use of assessment and measurement endpoints, as defined in USEPA *Ecological Risk Assessment Guidance for Superfund*, 1997, should be considered to clarify the logical structure of the site-specific terrestrial ecological evaluation under this chapter. Assessment endpoints shall be con-

sistent with the policy objectives described in WAC 173-340-7490 (3)(b).

(3) **Selection of appropriate terrestrial ecological evaluation methods.** If it is determined during the problem formulation step that further evaluation is necessary, the soil concentrations listed in Table 749-3 may be used as the cleanup level at the discretion of the person conducting the evaluation. Alternatively, one or more of the following methods listed in (a) through (g) of this subsection that are relevant to the issues identified in the problem formulation step and that meet the requirements of WAC 173-340-7490 (1)(a) shall be conducted. The alternative methods available for conducting a site-specific terrestrial ecological evaluation include the following:

(a) **Literature survey.** An analysis based on a literature survey shall be conducted in accordance with subsection (4) of this section and may be used for purposes including the following:

(i) Developing a soil concentration for chemicals not listed in Table 749-3.

(ii) Identifying a soil concentration for the protection of plants or soil biota more relevant to site-specific conditions than the value listed in Table 749-3.

(iii) Obtaining a value for any of the wildlife exposure model variables listed in Table 749-5 to calculate a soil concentration for the protection of wildlife more relevant to site-specific conditions than the values listed in Table 749-3.

(b) **Soil bioassays.**

(i) Bioassays may use sensitive surrogate organisms not necessarily found at the site provided that the test adequately addresses the issues raised in the problem formulation step. For issues where existing or potential threats to plant life are a concern, the test described in *Early Seedling Growth Protocol for Soil Toxicity Screening*. Ecology Publication No. 96-324 may be used. For sites where risks to soil biota are a concern, the test described in *Earthworm Bioassay Protocol for Soil Toxicity Screening*. Ecology Publication No. 96-327 may be used. Other bioassay tests approved by the department may also be used.

(ii) Soil concentrations protective of soil biota or plants may also be established with soil bioassays that use species ecologically relevant to the site rather than standard test species. Species that do or could occur at the site are considered ecologically relevant.

(c) **Wildlife exposure model.** Equations and exposure parameters to be used in calculating soil concentrations protective of terrestrial wildlife are provided in Tables 749-4 and 749-5. Changes to this model may be approved by the department under the following conditions:

(i) Alternative values for parameters listed in Table 749-5 may be used if they can be demonstrated to be more relevant to site-specific conditions (for example, the value is based on a chemical form of a hazardous substance actually present at the site). An alternative value obtained from the literature shall be supported by a literature survey conducted in accordance with subsection (4) of this section.

(ii) Receptor species of concern or exposure pathways identified in the problem formulation step may be added to the model if appropriate on a site-specific basis.

(iii) A substitution for one or more of the receptor species listed in Table 749-4 may be made under subsection (7) of this section.

(d) **Biomarkers.** Biomarker methods may be used if the measurements have clear relevance to issues raised in the problem formulation and the approach has a high probability of detecting a significant adverse effect if it is occurring at the site. The person conducting the evaluation may elect to use criteria such as biomarker effects that serve as a sensitive surrogate for significant adverse effects.

(e) **Site-specific field studies.** Site-specific empirical studies that involve hypothesis testing should use a conventional "no difference" null hypothesis (e.g., H_0 : Earthworm densities are the same in the contaminated area and the reference (control) area. H_A : Earthworm densities are higher in the reference area than in the contaminated area). In preparing a work plan, consideration shall be given to the adequacy of the proposed study to detect an ongoing adverse effect and this issue shall be addressed in reporting results from the study.

(f) **Weight of evidence.** A weight of evidence approach shall include a balance in the application of literature, field, and laboratory data, recognizing that each has particular strengths and weaknesses. Site-specific data shall be given greater weight than default values or assumptions where appropriate.

(g) **Other methods approved by the department.** This may include a qualitative evaluation if relevant toxicological data are not available and cannot be otherwise developed (e.g., through soil bioassay testing).

(4) Literature surveys.

(a) Toxicity reference values or soil concentrations established from the literature shall represent the lowest relevant LOAEL found in the literature. Bioaccumulation factor values shall represent a reasonable maximum value from relevant information found in the literature. In assessing relevance, the following principles shall be considered:

(i) Literature benchmark values should be obtained from studies that have test conditions as similar as possible to site conditions.

(ii) The literature benchmark values or toxicity reference values should correspond to the exposure route being assessed.

(iii) The toxicity reference value or bioaccumulation factor value shall be as appropriate as possible for the receptor being assessed. The toxicity reference value should be based on a significant endpoint, as described in subsection (2) of this section.

(iv) The literature benchmark value or toxicity reference value should preferably be based on chronic exposure.

(v) The literature benchmark value, toxicity reference value, or bioaccumulation factor should preferably correspond to the chemical form being assessed. Exceptions may apply for toxicity reference values where documented biological transformations occur following uptake of the chemical or where chemical transformations are known to occur in the environment under conditions appropriate to the site.

(b) A list of relevant journals and other literature consulted in the survey shall be provided to the department. A

table summarizing information from all relevant studies shall be provided to the department in a report, and the studies used to select a proposed value shall be identified. Copies of literature cited in the table that are not in the possession of the department shall be provided with the report. The department may identify relevant articles, books or other documents that shall be included in the survey.

(5) **Uncertainty analysis.** If a site-specific terrestrial ecological evaluation includes an uncertainty analysis, the discussion of uncertainty shall identify and differentiate between uncertainties that can and cannot be quantified, and natural variability. The discussion shall describe the range of potential ecological risks from the hazardous substances present at the site, based on the toxicological characteristics of the hazardous substances present, and evaluate the uncertainty regarding these risks. Potential methods for reducing uncertainty shall also be discussed, such as additional studies or post-remedial monitoring. If multiple lines of independent evidence have been developed, a weight of evidence approach may be used in characterizing uncertainty.

(6) **New scientific information.** The department shall consider proposals for modifications to default values provided in this section based on new scientific information in accordance with WAC 173-340-702 (14), (15) and (16).

(7) **Substitute receptor species.** Substitutions of receptor species and the associated values in the wildlife exposure model described in Table 749-4 may be made subject to the following conditions:

(a) There is scientifically supportable evidence that a receptor identified in Table 749-4 is not characteristic or a reasonable surrogate for a receptor that is characteristic of the ecoregion where the site is located. "Ecoregions" are defined using EPA's *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

(b) The proposed substitute receptor is characteristic of the ecoregion where the site is located and will serve as a surrogate for wildlife species that are, or may become exposed to soil contaminants at the site. The selected surrogate shall be a species that is expected to be vulnerable to the effects of soil contamination relative to the current default species because of high exposure or known sensitivity to hazardous substances found in soil at the site.

(c) Scientific studies concerning the proposed substitute receptor species are available in the literature to select reasonable maximum exposure estimates for variables listed in Table 749-4.

(d) In choosing among potential substitute receptor species that meet the criteria in (b) and (c) of this subsection, preference shall be given to the species most ecologically similar to the default receptor being replaced.

(e) Unless there is clear and convincing evidence that they are not characteristic of the ecoregion where the site is located, the following groups shall be included in the wildlife exposure model: A small mammalian predator on soil-associated invertebrates, a small avian predator on soil-associated invertebrates, and a small mammalian herbivore.

(f) To account for uncertainties in the level of protection provided to substitute receptor species and toxicologically

sensitive species, the department may require any of the following:

- (i) Use of toxicity reference values based on no observed adverse effects levels.
- (ii) Use of uncertainty factors to account for extrapolations between species in toxicity or exposure parameter values; or
- (iii) Use of a hazard index approach for multiple contaminants to account for additive toxic effects.

NEW SECTION

WAC 173-340-7494 Priority contaminants of ecological concern. When the department determines that such measures are necessary to protect the environment, the department may revise the hazardous substances and corresponding concentrations included in Table 749-2, subject to the following:

- (1) The data indicate a significant tendency of the hazardous substance to persist, bioaccumulate, or be highly toxic to terrestrial ecological receptors;
- (2) The concentrations for hazardous substances listed in Table 749-2 shall be based on protection of wildlife for industrial and commercial land uses, and upon protection of plants and animals for other land uses.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-750 Cleanup standards to protect air quality. (1) General considerations.

(a) This section applies whenever it is necessary to establish air cleanup standards to determine if air emissions at a site pose a threat to human health or the environment. It applies to ambient (outdoor) air and air within any building, utility vault, manhole or other structure large enough for a person to fit into. This section does not apply to concentrations of hazardous substances in the air originating from an industrial or commercial process or operation or to hazardous substances in the air originating from an off-site source. This section does apply to concentrations of hazardous substances in the air originating from other contaminated media or a remedial action at the site. Air cleanup standards shall be established at the following sites:

- (i) Where a nonpotable ground water cleanup level is being established for volatile organic compounds using a site-specific risk assessment under WAC 173-340-720(6).
- (ii) Where a soil cleanup level that addresses vapors or dust is being established under WAC 173-340-740 or 173-340-745.
- (iii) Where it is necessary to establish air emission limits for a remedial action.
- (iv) At other sites as determined by the department.

(b) Cleanup levels to protect air quality shall be based on estimates of the reasonable maximum exposure expected to occur under both current and future site use conditions. The department has determined that residential site use will generally require the most protective ((ambient)) air cleanup levels and that exposure to hazardous substances under these conditions represents the reasonable maximum exposure.

Air cleanup levels shall use this presumed exposure scenario and be established in accordance with subsection (3) of this section unless the site qualifies for a Method C air cleanup level. If a site qualifies for a Method C air cleanup level, subsection (4) of this section shall be used to establish air cleanup levels.

(c) ~~In the event of a release or potential release of hazardous substances into the ((ambient)) air at a site at which this section applies under (a) of this subsection, ((treatment, removal, or containment measures shall be conducted to reduce the levels of hazardous substances in the ambient air to levels consistent with this use unless all of the following can be demonstrated:~~

- ~~(i) The site does not serve as a current residential area;~~
- ~~(ii) The site is not likely to become a residential area in the future based on a review of site zoning, statutory or regulatory restrictions, comprehensive plans, historic site use, adjacent land uses, and other relevant factors;~~
- ~~(iii) Appropriate institutional controls are implemented at the site to prohibit residential use; and~~
- ~~(iv) Air emissions from the site will not reduce the air quality in adjacent residential areas; or~~
- ~~(v) More stringent concentrations are necessary to protect human health and the environment.~~

~~(b) Ambient air cleanup levels for nonresidential site uses shall be established on a case-by-case basis. The overall limits on the hazard index and total excess cancer risk specified in subsections (3) through (5) of this section shall apply to these sites. Cleanup levels for these types of sites shall be at least as stringent as method C cleanup levels established under subsection (4) of this section)) a cleanup action that complies with this chapter shall be conducted to address all areas of the site where the concentration of the hazardous substances in the air exceeds cleanup levels.~~

~~((e) Ambient)) (d) Air cleanup levels shall be established at concentrations ((which)) that do not directly or indirectly cause violations of ground water, surface water, or soil cleanup standards established under this chapter or applicable state and federal laws. A site that qualifies for a Method C air cleanup level under this section does not necessarily qualify for a Method C cleanup level in other media. Each medium must be evaluated separately using the criteria applicable to that medium.~~

~~(e) The department may require more stringent air cleanup standards than required by this section where, based on a site-specific evaluation, the department determines that this is necessary to protect human health and the environment. Any imposition of more stringent requirements under this provision shall comply with WAC 173-340-702 and 173-340-708.~~

(2) Method A air cleanup levels.

~~((a) Method A cleanup levels for ambient air shall be at least as stringent as concentrations established under applicable state and federal laws;~~

~~(b) The department may establish method A cleanup levels that are more stringent than those required by (a) of this subsection when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.) This section does not provide procedures for establishing Method A cleanup~~

levels. Method B or C, as appropriate, shall be used to establish air cleanup levels.

(3) Method B air cleanup levels.

(a) Applicability. Method B air cleanup levels consist of standard and modified cleanup levels as described in this subsection. Either standard or modified Method B air cleanup levels may be used at any site.

(b) Standard Method B air cleanup levels. Standard Method B cleanup levels for ((ambient)) air shall be at least as stringent as all of the following:

(i) Applicable state and federal laws. Concentrations established under applicable state and federal laws; and

(ii) Human health protection. For hazardous substances for which sufficiently protective health-based criteria or standards have not been established under applicable state and federal laws, those concentrations which protect human health and the environment as determined by the following methods:

(A) Noncarcinogens. Concentrations ((which)) that are estimated to result in no acute or chronic toxic effects on human health and are determined using the following equation and standard exposure assumptions:

[Equation 750-1]

$$\text{((Ambient)) Air cleanup level (ug/m}^3\text{)} = \frac{\text{RfD} \times \text{ABW} \times \text{UCF} \times \text{HQ} \times \text{AT}}{\text{BR} \times \text{ABS} \times \text{ED} \times \text{EF}}$$

Where:

- RfD = Reference dose as specified in WAC 173-340-708(7) (mg/kg-day)
- ABW = Average body weight over the exposure duration (16 kg)
- UCF = Unit(s) conversion factor (1,000 ug/mg)
- BR = Breathing rate (10 m³/day)
- ABS = Inhalation absorption ((percentage)) fraction (1.0) (unitless)
- HQ = Hazard quotient (1)((:)) (unitless)
- AT = Averaging time (6 years)
- ED = Exposure duration (6 years)
- EF = Exposure frequency (1.0) (unitless)

(B) Carcinogens. For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to ((1 in 1,000,000)) one in one million (1 x 10⁻⁶) and are determined using the following equation and standard exposure assumptions:

[Equation 750-2]

$$\text{((Ambient)) Air cleanup level (ug/m}^3\text{)} = \frac{\text{RISK} \times \text{ABW} \times \text{((LIFE)) AT} \times \text{UCF}}{\text{CPF} \times \text{BR} \times \text{ABS} \times \text{((DUR)) ED} \times \text{EF}}$$

Where:

- RISK = Acceptable cancer risk level (1 in 1,000,000) (unitless)
- ABW = Average body weight over the exposure duration (70 kg)
- ((LIFE = Lifetime (75 years)))
- AT = Averaging time (75 years)
- UCF = Unit(s) conversion factor (1,000 ug/mg)

- CPF = Carcinogenic potency factor as specified in WAC 173-340-708(8) (kg-day/mg)
- BR = Breathing rate (20 m³/day)
- ABS = Inhalation absorption ((percentage)) fraction (1.0) (unitless)
- ((DUR = Duration of exposure (30 years);))
- ED = Exposure duration (30 years)
- EF = Exposure frequency (1.0) (unitless)

~~((b) The department may establish method B cleanup levels that are more stringent than those required by (a) of this subsection, when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.))~~

(C) Petroleum mixtures. For noncarcinogenic effects of petroleum mixtures, a total petroleum hydrocarbon cleanup level shall be calculated using Equation 750-1 and by taking into account the additive effects of the petroleum fractions and volatile organic compounds present in the petroleum mixture. Cleanup levels for other noncarcinogens and known or suspected carcinogens within the petroleum mixture shall be calculated using Equations 750-1 and 750-2. See Table 830-1 for the analyses required for various petroleum products to use this method.

(ii) Lower explosive limit limitation. Standard Method B air cleanup levels shall not exceed ten percent (10%) of the lower explosive limit for any hazardous substance or mixture of hazardous substances.

(c) Modified Method B air cleanup levels. Modified Method B air cleanup levels are standard Method B air cleanup levels modified with chemical-specific or site-specific data. When making these adjustments, the resultant cleanup levels shall meet applicable state and federal laws, health risk levels and explosive limit limitations required for standard Method B air cleanup levels. Changes to exposure assumptions must comply with WAC 173-340-708(10). The following adjustments may be made to the default assumptions in the standard Method B equations to derive modified Method B cleanup levels:

(i) The inhalation absorption percentage may be modified if the requirements of WAC 173-340-702 (14), (15), (16) and WAC 173-340-708(10) are met;

(ii) Adjustments to the reference dose and cancer potency factor may be made if the requirements in WAC 173-340-708 (7) and (8) are met;

(iii) The toxicity equivalency factor procedures described in WAC 173-340-708(8) may be used for assessing the potential carcinogenic risk of mixtures of chlorinated dibenzo-p-dioxins, chlorinated dibenzofurans and polycyclic aromatic hydrocarbons;

(iv) Modifications incorporating new science as provided for in WAC 173-340-702 (14), (15) and (16); and

(d) Using modified Method B to evaluate air remediation levels. In addition to the adjustments allowed under subsection (3)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assessment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357 and 173-340-708 (3)(d) and (10)(b).

PERMANENT

(4) Method C air cleanup levels.

(a) Applicability. Method C air cleanup levels consist of standard and modified cleanup levels as described in this subsection. Method C air cleanup levels may be approved by the department if the person undertaking the cleanup action can demonstrate that ~~((such levels are consistent with applicable state and federal laws, that best available control technology has been utilized, and that one or more of the conditions in WAC 173-340-707(1) exist))~~ the site qualifies for use of Method C under WAC 173-340-706(1).

(b) Standard Method C air cleanup levels. Standard Method C air cleanup levels for ambient air shall be at least as stringent as all of the following:

(i) Applicable state and federal laws. Concentrations established under applicable state and federal laws; ~~((and))~~

(ii) Human health protection. For hazardous substances for which sufficiently protective health-based criteria or standards have not been established under applicable state and federal laws, ~~((those))~~ concentrations ~~((which))~~ that protect human health and the environment as determined by the following methods:

(A) Noncancerogens. Concentrations ~~((which))~~ that are anticipated to result in no significant acute or chronic effects on human health and are estimated in accordance with ~~((WAC 173-340-750 (3)(a)(ii)(A)))~~ Equation 750-1 except that the average body weight shall be 70 kg and the estimated breathing rate shall be 20 m³/day; ~~((and))~~

(B) Carcinogens. For known or suspected carcinogens, concentrations for which the upper bound on the estimated excess cancer risk is less than or equal to ~~((1 in 100,000))~~ one in one hundred thousand (1 x 10⁻⁵) and are determined in accordance with ~~((WAC 173-340-750 (3)(a)(ii)(B)))~~ Equation 750-2.

~~((e))~~ The department may establish method C cleanup levels that are more stringent than those required by (b) of this subsection, when, based on a site-specific evaluation, the department determines that such levels are necessary to protect human health and the environment.

(5) Multiple hazardous substances/multiple pathways of exposure:

~~((a))~~ (C) Petroleum mixtures. Cleanup levels for petroleum mixtures shall be calculated as specified in subsection (3)(b)(ii)(C) of this section, except that the average body weight shall be 70 kg and the estimated breathing rate shall be 20m³/day.

(iii) Lower explosive limit limitation. Standard Method C air cleanup levels shall not exceed ten percent (10%) of the lower explosive limit for any hazardous substance or mixture of hazardous substances.

(c) Modified Method C air cleanup levels. Modified Method C air cleanup levels are standard Method C air cleanup levels modified with chemical-specific or site-specific data. The same limitations and adjustments specified in subsection (3)(c) of this section apply to modified Method C cleanup levels.

(d) Using modified Method C to evaluate air remediation levels. In addition to the adjustments allowed under subsection (4)(c) of this section, adjustments to the reasonable maximum exposure scenario or default exposure assumptions are allowed when using a quantitative site-specific risk assess-

ment to evaluate the protectiveness of a remedy. See WAC 173-340-355, 173-340-357 and 173-340-708 (3)(d) and (10)(b).

(5) Adjustments to air cleanup levels.

(a) Total site risk adjustments. Air cleanup levels for individual hazardous substances developed in accordance with subsections (3) and (4) of this section, including cleanup levels based on applicable state and federal laws, shall be adjusted downward to take into account exposure to multiple hazardous substances and/or exposure resulting from more than one pathway of exposure. These adjustments need to be made only if, without these adjustments, the hazard index would exceed one (1) or the total excess cancer risk would exceed one in one hundred thousand (1 x 10⁻⁵). These adjustments shall be made in accordance with the procedures in WAC 173-340-708 (5) and (6). In making these adjustments, the hazard index shall not exceed one (1) and the total excess cancer risk shall not exceed one in one hundred thousand (1 x 10⁻⁵).

(b) ~~((These overall limits on the hazard index and total excess cancer risk shall also apply to sites where there is exposure to a single hazardous substance by one exposure pathway, including those cleanup levels based on applicable state and federal laws.))~~ Adjustments to applicable state and federal laws. Where a cleanup level developed under subsection (3) or (4) of this section is based on an applicable state or federal law and the level of risk upon which the standard is based exceeds an excess cancer risk of one in one hundred thousand (1 x 10⁻⁵) or a hazard index of one (1), the cleanup level must be adjusted downward so that the total excess cancer risk does not exceed one in one hundred thousand (1 x 10⁻⁵) and the hazard index does not exceed one (1) at the site.

(c) Natural background and PQL considerations. Cleanup levels determined under subsection (3) or (4) of this section, including cleanup levels adjusted under (a) or (b) of this subsection, shall not be set at levels below the practical quantitation limit or natural background, whichever is higher. See WAC 173-340-709 and 173-340-707 for additional requirements pertaining to practical quantitation limits and natural background.

(6) Points of compliance. Cleanup levels established under ~~((subsections (2), (3), (4), and (5) of))~~ this section shall be attained in the ambient air throughout the site. For sites determined to be industrial sites under the criteria in WAC 173-340-745, the department may approve a conditional point of compliance not to exceed the property boundary. A conditional point of compliance shall not be approved if use of a conditional point of compliance would pose a threat to human health or the environment.

(7) Compliance monitoring.

(a) Where air cleanup levels have been established at a site, monitoring may be required to be conducted to determine if compliance with the air cleanup levels has been achieved. Sampling and analytical procedures shall be defined in a compliance monitoring plan prepared under WAC 173-340-410. The sample design shall provide data ~~((which))~~ that are representative of the site.

(b) Data analysis and evaluation procedures used to evaluate compliance with ~~((ambient))~~ air cleanup levels shall be

defined in a compliance monitoring plan prepared under WAC 173-340-410.

(c) Averaging times specified in applicable state and federal laws shall be used to demonstrate compliance with those requirements.

(d) When cleanup levels are not based on applicable state and federal laws, the following averaging times shall be used:

(i) Compliance with ~~((ambient))~~ air cleanup levels for noncarcinogens shall be based on twenty-four-hour time weighted averages except where the cleanup level is based upon an inhalation reference dose which specifies an alternate averaging time;

(ii) Compliance with ~~((ambient))~~ air cleanup levels for carcinogens shall be based on annual average concentrations.

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

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-760 Sediment cleanup standards. ~~((Reserved:))~~ In addition to complying with the requirements in this chapter, sediment cleanup actions conducted under this chapter must comply with the requirements of chapter 173-204 WAC.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-800 Property access. (1) Normal entry procedures. Whenever there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents or contractors may, after reasonable notice, enter upon any real property, public or private, to conduct investigations or remedial actions. The notice shall briefly describe the reason for requesting access. For the purpose of this subsection, unless earlier access is granted, reasonable notice shall mean:

(a) Written notice to the site owner and operator to the extent known to the department, sent through the United States Postal Service at least three days ~~((prior to))~~ before entry; or

(b) Notice to the site owner and operator to the extent known to the department, in person or by telephone at least twenty-four hours ~~((prior to))~~ before entry.

(2) Notification of property owner. The department ~~((with))~~ shall ask a resident, occupant, or other persons in custody of the site to identify the name and address of owners of the property. If an owner is identified who has not been previously notified, the department ~~((with))~~ shall make a prompt and reasonable effort to notify such owners of remedial actions planned or conducted.

(3) Orders and consent decrees. Whenever investigations or remedial actions are conducted under a ~~((consent))~~ decree or order, a potentially liable person shall not deny access to the department's authorized employees, agents, or contractors to enter and move freely about the property to oversee and verify investigations and remedial actions being performed.

(4) Ongoing operations. Persons gaining access under this section shall take all reasonable precautions to avoid disrupting the ongoing operations on a site. Such persons shall comply with all state and federal safety and health requirements ~~((which))~~ that the department determines to be applicable.

(5) Access to documents. The department's authorized employees, agents or contractors may, after reasonable notice, enter property for the purpose of inspecting documents relating to a release or threatened release at the facility. Persons maintaining such documents shall:

(a) Provide access during normal business hours and allow the department to copy these documents; or

(b) At the department's request, provide legible copies of the requested documents to the department.

(6) Emergency entry. Notice by the department's authorized employees, agents, or contractors is not required for entry onto property to investigate, mitigate, or abate an emergency posed by the release or threatened release of a hazardous substance. The department will make efforts ~~((which))~~ that are reasonable under the circumstances to promptly notify those owners and operators to the extent known to the department of the actions taken.

(7) Other authorities. Where consent has not been obtained for entry, the department shall secure access in a manner consistent with state and federal law, including compliance with any warrant requirements. Nothing in this chapter shall affect site access authority granted under other state laws and regulations.

(8) Access by potentially liable persons. The department shall make reasonable efforts to facilitate access to real property and documents for persons who are conducting remedial actions under either an order or decree.

(9) Information sharing. The department will provide the documents and factual information on releases or threatened releases obtained through this section to persons who request such in accordance with chapter 42.17 RCW and chapter 173-03 WAC. The department does not intend application of these authorities to limit its sharing of such factual information.

(10) Split samples. Whenever the department intends to perform sampling at a site, it shall indicate in its notification under subsection (1) of this section whether sampling may occur. The person receiving notice may take split samples, provided this does not interfere with the department's sampling.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-810 Worker safety and health. (1) General provisions. Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 651 et seq.) and the Washington Industrial Safety and Health Act (chapter 49.17 RCW), and regulations promulgated pursuant thereto shall be applicable to remedial actions taken under this chapter. These requirements are subject to enforcement by the designated federal and state agencies. All governmental agencies and private employers are directly responsible for the safety and health of their own employees and compliance

with those requirements. Actions taken by the department under this chapter do not constitute an exercise of statutory authority within the meaning of section (4)(b)(1) of the Occupational Safety and Health Act.

(2) Safety and health plan. ~~((Potentially liable))~~ Persons responsible for undertaking remedial actions under ~~((WAC 173-340-520 through 173-340-540;))~~ this chapter shall ((submit a safety and health plan)) prepare a health and safety plan when required by chapter 296-62 WAC. Plans prepared under an order or decree shall be submitted for the department's review and comment. The safety and health plan must be consistent with chapter 49.17 RCW and regulations ~~((promulgated pursuant thereto))~~ adopted under that authority.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-820 Sampling and analysis plans. (1) ~~((General;))~~ Purpose. A sampling and analysis plan ~~((shall be prepared for all sampling activities which are part of investigation and remedial actions unless otherwise directed by the department and except for emergencies. The level of detail required in the sampling and analysis plan may vary with the scope and purpose of the sampling activity. Sampling and analysis plans prepared under an order or decree shall be submitted to the department for review and approval))~~ is a document that describes the sample collection, handling, and analysis procedures to be used at a site.

(2) ~~((Contents. The))~~ General requirements. A sampling and analysis plan shall ~~((specify procedures which ensure that sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the site. Additionally, information necessary to insure proper planning and implementation of sampling activities shall be included. References to standard protocols or procedures manuals may be used provided the information referenced is readily available to the department. The sampling and analysis plan shall contain:~~

~~((a) A statement on the purpose and objectives of the data collection, including quality assurance and quality control requirements;~~

~~((b) Organization and responsibilities for the sampling and analysis activities;~~

~~((c) Requirements for sampling activities including:~~

~~((i) Project schedule;~~

~~((ii) Identification and justification of location and frequency of sampling;~~

~~((iii) Identification and justification of parameters to be sampled and analyzed;~~

~~((iv) Procedures for installation of sampling devices;~~

~~((v) Procedures for sample collection and handling, including procedures for personnel and equipment decontamination;~~

~~((vi) Procedures for the management of waste materials generated by sampling activities, including installation of monitoring devices, in a manner that is protective of human health and the environment;~~

~~((vii) Description and number of quality assurance and quality control samples, including blanks and spikes;~~

~~((viii) Protocols for sample labeling and chain of custody; and~~

~~((ix) Provisions for splitting samples, where appropriate.~~

~~((d) Procedures for analysis of samples and reporting of results, including:~~

~~((i) Detection or quantification limits;~~

~~((ii) Analytical techniques and procedures;~~

~~((iii) Quality assurance and quality control procedures; and~~

~~((iv) Data reporting procedures, and where appropriate, validation procedures))~~ be prepared for all sampling activities that are part of an investigation or a remedial action unless otherwise directed by the department and except for emergencies. The level of detail required in the sampling and analysis plan may vary with the scope and purpose of the sampling activity. Sampling and analysis plans prepared under an order or decree shall be submitted to the department for review and approval.

(3) ~~((Available guidance. The department shall make available guidance for preparation of sampling and analysis plans;))~~ Contents. The sampling and analysis plan shall specify procedures that ensure sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the site. Additionally, information necessary to ensure proper planning and implementation of sampling activities shall be included. References to standard protocols or procedures manuals may be used provided the information referenced is readily available to the department. The sampling and analysis plan shall contain:

~~((a) A statement on the purpose and objectives of the data collection, including quality assurance and quality control requirements;~~

~~((b) Organization and responsibilities for the sampling and analysis activities;~~

~~((c) Requirements for sampling activities including:~~

~~((i) Project schedule;~~

~~((ii) Identification and justification of location and frequency of sampling;~~

~~((iii) Identification and justification of parameters to be sampled and analyzed;~~

~~((iv) Procedures for installation of sampling devices;~~

~~((v) Procedures for sample collection and handling, including procedures for personnel and equipment decontamination;~~

~~((vi) Procedures for the management of waste materials generated by sampling activities, including installation of monitoring devices, in a manner that is protective of human health and the environment;~~

~~((vii) Description and number of quality assurance and quality control samples, including blanks and spikes;~~

~~((viii) Protocols for sample labeling and chain of custody; and~~

~~((ix) Provisions for splitting samples, where appropriate.~~

~~((d) Procedures for analysis of samples and reporting of results, including:~~

~~((i) Detection or quantitation limits;~~

~~((ii) Analytical techniques and procedures;~~

~~((iii) Quality assurance and quality control procedures; and~~

(iv) Data reporting procedures, and where appropriate, validation procedures.

The department shall make available guidance for preparation of sampling and analysis plans.

AMENDATORY SECTION (Amending WSR 91-04-019, filed 1/28/91, effective 2/28/91)

WAC 173-340-830 Analytical procedures. (1) Purpose. This section specifies acceptable analytical methods and other testing requirements for sites where remedial action is being conducted under this chapter.

(2) General requirements.

(a) All hazardous substance analyses shall be conducted by a laboratory accredited under chapter 173-50 WAC, unless otherwise approved by the department.

(b) All analytical procedures used shall be ~~((done))~~ conducted in accordance with a sampling and analysis plan prepared under WAC 173-340-820.

(c) Tests for which methods have not been specified in this section shall be performed using standard methods or procedures such as those specified by the American Society for Testing of Materials, when available, unless otherwise approved by the department.

(d) Samples shall be analyzed consistent with methods appropriate for the site, the media being analyzed, the hazardous substances being analyzed for, and the anticipated use of the data.

(e) The department may require or approve modifications to the standard analytical methods identified in subsection ~~((4))~~ (3) of this section to provide lower quantitation limits, improved accuracy, greater precision, or to address the factors in (d) of this subsection.

(f) Limits of quantitation. Laboratories shall achieve the lowest practical quantitation limits consistent with the selected method and WAC 173-340-707.

~~((3)) Multiple methods.~~

~~((a))~~ (g) Where there is more than one method specified in subsection ~~((4))~~ (3) of this section with a practical quantitation limit less than the cleanup standard, any of the methods may be selected. In these situations, considerations in selecting a particular method may include confidence in the data, analytical costs, and considerations relating to quality assurance or analysis efficiencies.

~~((b))~~ (h) The department may require an analysis to be conducted by more than one method in order to provide higher data quality. For example, the department may require that different separation and detection techniques be used to verify the presence of a hazardous substance ("qualification") and determine the concentration of the hazardous substance ("quantitation").

~~((4))~~ (i) The minimum testing requirements for petroleum contaminated sites are identified in Table 830-1.

(3) Analytical methods.

(a) The methods used for sample collection, sample preservation, transportation, allowable time before analysis, sample preparation, analysis, method detection limits, practical quantitation limits, quality control, quality assurance and other technical requirements and specifications shall comply with the following requirements, as applicable:

(i) Method 1. Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, U.S. EPA, SW-846 ~~((and any revisions or amendments thereto)), fourth update (2000);~~

(ii) Method 2. ~~((Methods for Chemical Analysis of Water and Wastes, U.S. EPA, EPA-600/4-79-020 and any revisions or amendments thereto;~~

~~((iii) Method 3.))~~ Guidelines Establishing Test Procedures for the Analysis of Pollutants ((Under the Clean Water Act)), 40 ((CFR)) C.F.R. Chapter 1, Part 136, and ((Appendix A, B, and C, U.S. EPA and any revisions or amendments thereto)) Appendices A, B, C, and D, U.S. EPA, July 1, 1999;

~~((iv))~~ (iii) Method ((4.)) 3. Standard Methods for the Examination of Water and Wastewater, American Public Health Association, American Water Works Association, and Water Pollution Control Federation ~~((and any revisions or amendments thereto)), 20th edition, 1998;~~

~~((v))~~ (iv) Method ((5.)) 4. Recommended Protocols for Measuring Selected Environmental Variables in Puget Sound, Puget Sound Estuary Program/Tetra Tech, ~~((1986 and any revisions or amendments thereto)) 1996 edition;~~

~~((vi))~~ (v) Method ((6.)) 5. Quality Assurance Interim Guidelines for Water Quality Sampling and Analysis, Ground Water Management Areas Program, Washington Department of Ecology, Water Quality Investigations Section, December 1986 ~~((and any revisions or amendments thereto; or));~~

~~((vii))~~ (vi) Method 6. Analytical Methods for Petroleum Hydrocarbons, Ecology publication #ECY 97-602, June 1997; or

(vii) Equivalent methods subject to approval by the department.

(b) The methods used for a particular hazardous substance at a site shall be selected in consideration of the factors in subsection (2) of this section.

(c) Ground water. Methods 1, 2, 3 and 4, as described in (a) of this subsection, may be used to determine compliance with WAC 173-340-720.

(d) Surface water. Methods 1, 2, 3, 4 and 5 as described in (a) of this subsection, may be used to determine compliance with WAC 173-340-730.

(e) Soil. Method 1, as described in (a) of this subsection, may be used to determine compliance with WAC 173-340-740 and 173-340-745.

(f) Air. Appropriate methods for determining compliance with WAC 173-340-750 shall be selected on a case-by-case basis, in consideration of the factors in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-840 General submittal requirements. Unless otherwise specified by the department, all reports, plans, specifications, and similar information submitted under this chapter shall meet the following requirements:

(1) Cover letter. Include a letter describing the submittal and specifying the desired department action or response.

(2) Number of copies. Three copies of the plan or report shall be submitted to the department's office responsible for the facility. The department may require additional copies to meet public participation and interagency coordination needs.

(3) Certification. Except as otherwise provided for in RCW 18.43.130, all engineering work submitted under this chapter shall be under the seal of a professional engineer registered with the state of Washington.

(4) Visuals. Maps, figures, photographs, and tables to clarify information or conclusions shall be legible. All maps, plan sheets, drawings, and cross-sections shall meet the following requirements:

(a) To facilitate filing and handling, be on paper no larger than 24 x 36 inches and no smaller than 8 1/2 x 11 inches. Photo-reduced copies of plan sheets may be submitted provided at least one full-sized copy of the photo-reduced sheets are included in the submittal.

(b) Identify and use appropriate and consistent scales to show all required details in sufficient clarity.

(c) Be numbered, titled, have a legend of all symbols used, and specify drafting or origination dates.

(d) Contain a north arrow.

(e) Use United States Geological Survey datum as a basis for all elevations.

(f) For planimetric views, show a survey grid based on monuments established in the field and referenced to state plane coordinates. This requirement does not apply to conceptual diagrams or sketches when the exact location of items shown is not needed to convey the necessary information.

(g) Where grades are to be changed, show original topography in addition to showing the changed site topography. This requirement does not apply to conceptual diagrams or sketches where before and after topography is not needed to convey the necessary information.

(h) For cross-sections, identify the location and be cross-referenced to the appropriate planimetric view. A reduced diagram of a cross-section location map shall be included on the sheets with the cross-sections.

(5) Sampling data. All sampling data shall be submitted consistent with procedures specified by the department. Unless otherwise specified by the department, all such sampling data shall be submitted in both printed form and an electronic form capable of being transferred into the department's data management system.

(6) Appendix. An appendix providing the principal information relied upon in preparation of the submittal. This should include, for example: A complete citation of references; applicable raw data; a description of, or where readily available, reference to testing and sampling procedures used; relevant calculations; and any other information needed to facilitate review.

AMENDATORY SECTION (Amending WSR 90-08-086, filed 4/3/90, effective 5/4/90)

WAC 173-340-850 Recordkeeping requirements. (1) Any remedial actions at a facility must be documented with

adequate records. Such records may include: Factual information or data; relevant decision documents; and any other relevant, site-specific documents or information.

(2) Unless otherwise required by the department, records shall be retained for at least ten years from the date of completion of compliance monitoring or as long as any institutional controls (including land use restrictions) remain in effect, whichever is longer.

(3) Records shall be retained by the person taking remedial action, unless the department requires that person to submit the records to the department.

(4) The department shall maintain its records in accordance with chapter 42.17 RCW.

NEW SECTION

WAC 173-340-900 Tables.

**Table 720-1
Method A Cleanup Levels for Ground Water.^a**

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	5 ug/liter ^b
Benzene	71-43-2	5 ug/liter ^c
Benzo(a)pyrene	50-32-8	0.1 ug/liter ^d
Cadmium	7440-43-9	5 ug/liter ^e
Chromium (Total)	7440-47-3	50 ug/liter ^f
DDT	50-29-3	0.3 ug/liter ^g
1,2 Dichloroethane (EDC)	107-06-2	5 ug/liter ^h
Ethylbenzene	100-41-4	700 ug/liter ⁱ
Ethylene dibromide (EDB)	106-93-4	0.01 ug/liter ^j
Gross Alpha Particle Activity		15 pCi/liter ^k
Gross Beta Particle Activity		4 mrem/yr ^l
Lead	7439-92-1	15 ug/liter ^m
Lindane	58-89-9	0.2 ug/liter ⁿ
Methylene chloride	75-09-2	5 ug/liter ^o
Mercury	7439-97-6	2 ug/liter ^p
MTBE	1634-04-4	20 ug/liter ^q
Naphthalenes	91-20-3	160 ug/liter ^r
PAHs (carcinogenic)		See benzo(a)pyrene ^d
PCB mixtures		0.1 ug/liter ^s
Radium 226 and 228		5 pCi/liter ^t
Radium 226		3 pCi/liter ^u
Tetrachloroethylene	127-18-4	5 ug/liter ^v
Toluene	108-88-3	1,000 ug/liter ^w
Total Petroleum Hydrocarbons ^x		
[Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!]		
Gasoline Range Organics		
Benzene present in ground water		800 ug/liter
No detectable benzene in ground water		1,000 ug/liter
Diesel Range Organics		500 ug/liter
Heavy Oils		500 ug/liter
Mineral Oil		500 ug/liter
1,1,1 Trichloroethane	71-55-6	200 ug/liter ^y

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Hazardous Substance	CAS Number	Cleanup Level
Trichloroethylene	79-01-6	5 ug/liter ^z
Vinyl chloride	75-01-4	0.2 ug/liter ^{aa}
Xylenes	1330-20-7	1,000 ug/liter ^{bb}

Footnotes:

- a Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for drinking water beneficial uses at sites undergoing routine cleanup actions or those sites with relatively few hazardous substances. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the ground water must be restored to those levels at all sites. The level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.
- b Arsenic.** Cleanup level based on background concentrations for state of Washington.
- c Benzene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- d Benzo(a)pyrene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61), adjusted to a 1×10^{-5} risk. If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).
- e Cadmium.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.62).
- f Chromium (Total).** Cleanup level based on concentration derived using Equation 720-1 for hexavalent chromium. This is a total value for chromium III and chromium VI. If just chromium III is present at the site, a cleanup level of 100 ug/l may be used (based on WAC 246-290-310 and 40 C.F.R. 141.62).
- g DDT (dichlorodiphenyltrichloroethane).** Cleanup levels based on concentration derived using Equation 720-2.
- h 1,2 Dichloroethane (ethylene dichloride or EDC).** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- i Ethylbenzene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- j Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on concentration derived using Equation 720-2, adjusted for the practical quantitation limit.
- k Gross Alpha Particle Activity, excluding uranium.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).
- l Gross Beta Particle Activity, including gamma activity.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).
- m Lead.** Cleanup level based on applicable state and federal law (40 C.F.R. 141.80).
- n Lindane.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- o Methylene chloride (dichloromethane).** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- p Mercury.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.62).
- q Methyl tertiary-butyl ether (MTBE).** Cleanup level based on federal drinking water advisory level (EPA-822-F-97-009, December 1997).
- r Naphthalenes.** Cleanup level based on concentration derived using Equation 720-1. This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.
- s PCB mixtures.** Cleanup level based on concentration derived using Equation 720-2, adjusted for the practical quantitation limit. This cleanup level is a total value for all PCBs.
- t Radium 226 and 228.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.15).

- u Radium 226.** Cleanup level based on applicable state law (WAC 246-290-310).
- v Tetrachloroethylene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- w Toluene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- x Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.
- Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use. Two cleanup levels are provided. The higher value is based on the assumption that no benzene is present in the ground water sample. If any detectable amount of benzene is present in the ground water sample, then the lower TPH cleanup level must be used. No interpolation between these cleanup levels is allowed. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene, EDB and EDC] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and MTBE], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for gasoline releases.
 - Diesel range organics** means organic compounds measured using NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on protection from noncarcinogenic effects during drinking water use. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene and PAHs] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and naphthalenes], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for diesel releases.
 - Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on protection from noncarcinogenic effects during drinking water use, assuming a product composition similar to diesel fuel. The ground water cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs] and any noncarcinogenic components [such as ethylbenzene, toluene, xylenes and naphthalenes], if present at the site, must also be met. See Table 830-1 for the minimum testing requirements for heavy oil releases.
 - Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors measured using NWTPH-Dx. The cleanup level is based on protection from noncarcinogenic effects during drinking water use. Sites using this cleanup level must analyze ground water samples for PCBs and meet the PCB cleanup level in this table unless it can be demonstrated that: (1) The release originated from an electrical device manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B (or Method C, if applicable) must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.
- y 1,1,1 Trichloroethane.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- z Trichloroethylene.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61).
- aa Vinyl chloride.** Cleanup level based on applicable state and federal law (WAC 246-290-310 and 40 C.F.R. 141.61), adjusted to a 1×10^{-5} risk.
- bb Xylenes.** Cleanup level based on xylene not exceeding the maximum allowed cleanup level in this table for total petroleum hydrocarbons and on prevention of adverse aesthetic characteristics. This is a total value for all xylenes.

Table 740-1

Method A Soil Cleanup Levels for Unrestricted Land Uses.^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20 mg/kg ^b
Benzene	71-43-2	0.03 mg/kg ^c
Benzo(a)pyrene	50-32-8	0.1 mg/kg ^d
Cadmium	7440-43-9	2 mg/kg ^e
Chromium		
Chromium VI	18540-29-9	19 mg/kg ^{fl}
Chromium III	16065-83-1	2,000 mg/kg ^{f2}
DDT	50-29-3	3 mg/kg ^g
Ethylbenzene	100-41-4	6 mg/kg ^h
Ethylene dibromide (EDB)	106-93-4	0.005 mg/kg ⁱ
Lead	7439-92-1	250 mg/kg ^j
Lindane	58-89-9	0.01 mg/kg ^k
Methylene chloride	75-09-2	0.02 mg/kg ^l
Mercury (inorganic)	7439-97-6	2 mg/kg ^m
MTBE	1634-04-4	0.1 mg/kg ⁿ
Naphthalenes	91-20-3	5 mg/kg ^o
PAHs (carcinogenic)		See benzo(a)pyrene ^d
PCB Mixtures		1 mg/kg ^p
Tetrachloroethylene	127-18-4	0.05 mg/kg ^q
Toluene	108-88-3	7 mg/kg ^r
Total Petroleum Hydrocarbons ^s		
[Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!]		
Gasoline Range Organics		
Gasoline mixtures without benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture		100 mg/kg
All other gasoline mixtures		30 mg/kg
Diesel Range Organics		
Heavy Oils		2,000 mg/kg
Mineral Oil		4,000 mg/kg
1,1,1 Trichloroethane	71-55-6	2 mg/kg ^t
Trichloroethylene	79-01-6	0.03 mg/kg ^u
Xylenes	1330-20-7	9 mg/kg ^v

Footnotes:

a Caution on misusing this table. This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or for sites with relatively few hazardous substances, and the site qualifies under WAC 173-340-7491 for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or it can be demonstrated using a terrestrial ecological evaluation under WAC 173-340-7492 or 173-340-7493 that the values in this table are ecologically protective for the site. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the soil must be restored to these levels at a site.

The level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.

b Arsenic. Cleanup level based on direct contact using Equation 740-2 and protection of ground water for drinking water use using the procedures in WAC 173-340-747(4), adjusted for natural background for soil.

c Benzene. Cleanup level based on protection of ground water for drinking water use, using the procedures in WAC 173-340-747(4) and (6).

d Benzo(a)pyrene. Cleanup level based on direct contact using Equation 740-2. If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).

e Cadmium. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

fl Chromium VI. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

f2 Chromium III. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). Chromium VI must also be tested for and the cleanup level met when present at a site.

g DDT (dichlorodiphenyltrichloroethane). Cleanup level based on direct contact using Equation 740-2.

h Ethylbenzene. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

i Ethylene dibromide (1,2 dibromoethane or EDB). Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.

j Lead. Cleanup level based on preventing unacceptable blood lead levels.

k Lindane. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit.

l Methylene chloride (dichloromethane). Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

m Mercury. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

n Methyl tertiary-butyl ether (MTBE). Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

o Naphthalenes. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.

p PCB Mixtures. Cleanup level based on applicable federal law (40 C.F.R. 761.61). This is a total value for all PCBs.

q Tetrachloroethylene. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

r Toluene. Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).

s Total Petroleum Hydrocarbons (TPH). TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.

Gasoline range organics means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use using the procedures described in WAC 173-340-747(6). Two cleanup levels are provided. The lower value of 30 mg/kg can be used at any site. When using this lower value, the soil must also be tested for and meet the benzene soil cleanup level. The higher

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value of 100 mg/kg can only be used if the soil is tested and found to contain no benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture. No interpolation between these cleanup levels is allowed. In both cases, the soil cleanup level for any other carcinogenic components of the petroleum [such as EDB and EDC], if present at the site, must also be met. Also, in both cases, soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes, naphthalene, and MTBE], also must be met if these substances are found to exceed ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for gasoline releases.

- **Diesel range organics** means organic compounds measured using method NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). The soil cleanup level for any carcinogenic components of the petroleum [such as benzene and PAHs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if these substances are found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10) and assuming a product composition similar to diesel fuel. The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors, measured using NWTPH-Dx. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). Sites using this cleanup level must also analyze soil samples and meet the soil cleanup level for PCBs, unless it can be demonstrated that:
 - (1) The release originated from an electrical device that was manufactured after July 1, 1979; or
 - (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or
 - (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.
- t **1,1,1 Trichloroethane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- u **Trichloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- v **Xylenes.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for all xylenes.

DDT	50-29-3	4 mg/kg ^g
Ethylbenzene	100-41-4	6 mg/kg ^h
Ethylene dibromide (EDB)	106-93-4	0.005 mg/kg ⁱ
Lead	7439-92-1	1,000 mg/kg ^j
Lindane	58-89-9	0.01 mg/kg ^k
Methylene chloride	75-09-2	0.02 mg/kg ^l
Mercury (inorganic)	7439-97-6	2 mg/kg ^m
MTBE	1634-04-4	0.1 mg/kg ⁿ
Naphthalene	91-20-3	5 mg/kg ^o
PAHs (carcinogenic)		See benzo(a)pyrene ^d
PCB Mixtures		10 mg/kg ^p
Tetrachloroethylene	127-18-4	0.05 mg/kg ^q
Toluene	108-88-3	7 mg/kg ^r
Total Petroleum Hydrocarbons ^s		
[Note: Must also test for and meet cleanup levels for other petroleum components—see footnotes!]		
Gasoline Range Organics		
Gasoline mixtures without benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture		100 mg/kg
All other gasoline mixtures		30 mg/kg
Diesel Range Organics		
Heavy Oils		2,000 mg/kg
Mineral Oil		4,000 mg/kg
1,1,1 Trichloroethane	71-55-6	2 mg/kg ^t
Trichloroethylene	79-01-6	0.03 mg/kg ^u
Xylenes	1330-20-7	9 mg/kg ^v

Footnotes:

- a **Caution on misusing this table.** This table has been developed for specific purposes. It is intended to provide conservative cleanup levels for sites undergoing routine cleanup actions or for industrial properties with relatively few hazardous substances, and the site qualifies under WAC 173-340-7491 for an exclusion from conducting a simplified or site-specific terrestrial ecological evaluation, or it can be demonstrated using a terrestrial ecological evaluation under WAC 173-340-7492 or 173-340-7493 that the values in this table are ecologically protective for the site. This table may not be appropriate for defining cleanup levels at other sites. For these reasons, the values in this table should not automatically be used to define cleanup levels that must be met for financial, real estate, insurance coverage or placement, or similar transactions or purposes. Exceedances of the values in this table do not necessarily mean the soil must be restored to these levels at a site. The level of restoration depends on the remedy selected under WAC 173-340-350 through 173-340-390.
- b **Arsenic.** Cleanup level based on protection of ground water for drinking water use, using the procedures in WAC 173-340-747(4), adjusted for natural background for soil.
- c **Benzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747 (4) and (6).
- d **Benzo(a)pyrene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). If other carcinogenic PAHs are suspected of being present at the site, test for them and use this value as the total concentration that all carcinogenic PAHs must meet using the toxicity equivalency methodology in WAC 173-340-708(8).
- e **Cadmium.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC

Table 745-1

Method A Soil Cleanup Levels for Industrial Properties.^a

Hazardous Substance	CAS Number	Cleanup Level
Arsenic	7440-38-2	20 mg/kg ^b
Benzene	71-43-2	0.03 mg/kg ^c
Benzo(a)pyrene	50-32-8	2 mg/kg ^d
Cadmium	7440-43-9	2 mg/kg ^e
Chromium		
Chromium VI	18540-29-9	19 mg/kg ^{f1}
Chromium III	16065-83-1	2,000 mg/kg ^{f2}

173-340-747(4), adjusted for the practical quantitation limit for soil.

- f1 **Chromium VI.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- f2 **Chromium III.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). Chromium VI must also be tested for and the cleanup level met when present at a site.
- g **DDT (dichlorodiphenyltrichloroethane).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- h **Ethylbenzene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- i **Ethylene dibromide (1,2 dibromoethane or EDB).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit for soil.
- j **Lead.** Cleanup level based on direct contact.
- k **Lindane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4), adjusted for the practical quantitation limit.
- l **Methylene chloride (dichloromethane).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- m **Mercury.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- n **Methyl tertiary-butyl ether (MTBE).** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- o **Naphthalenes.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4). This is a total value for naphthalene, 1-methyl naphthalene and 2-methyl naphthalene.
- p **PCB Mixtures.** Cleanup level based on applicable federal law (40 C.F.R. 761.61). This is a total value for all PCBs. This value may be used only if the PCB contaminated soils are capped and the cap maintained as required by 40 C.F.R. 761.61. If this condition cannot be met, the value in Table 740-1 must be used.
- q **Tetrachloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- r **Toluene.** Cleanup level based on protection of ground water for drinking water use, using the procedure described in WAC 173-340-747(4).
- s **Total Petroleum Hydrocarbons (TPH).** TPH cleanup values have been provided for the most common petroleum products encountered at contaminated sites. Where there is a mixture of products or the product composition is unknown, samples must be tested using both the NWTPH-Gx and NWTPH-Dx methods and the lowest applicable TPH cleanup level must be met.
- **Gasoline range organics** means organic compounds measured using method NWTPH-Gx. Examples are aviation and automotive gasoline. The cleanup level is based on protection of ground water for noncarcinogenic effects during drinking water use using the procedures described in WAC 173-340-747(6). Two cleanup levels are provided. The lower value of 30 mg/kg can be used at any site. When using this lower value, the soil must also be tested for and meet the benzene soil cleanup level. The higher value of 100 mg/kg can only be used if the soil is tested and found to contain no benzene and the total of ethylbenzene, toluene and xylene are less than 1% of the gasoline mixture. No interpolation between these cleanup levels is allowed. In both cases, the soil cleanup level for any other carcinogenic components of the petroleum [such as EDB and EDC], if present at the site, must also be met. Also, in both cases, soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes, naphthalene, and MTBE], also must be met if these substances are found to exceed ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for gasoline releases.

- **Diesel range organics** means organic compounds measured using method NWTPH-Dx. Examples are diesel, kerosene, and #1 and #2 heating oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, and PAHs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if these substances are found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for diesel releases.
- **Heavy oils** means organic compounds measured using NWTPH-Dx. Examples are #6 fuel oil, bunker C oil, hydraulic oil and waste oil. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10) and assuming a product composition similar to diesel fuel. The soil cleanup level for any carcinogenic components of the petroleum [such as benzene, PAHs and PCBs], if present at the site, must also be met. Soil cleanup levels for any noncarcinogenic components [such as toluene, ethylbenzene, xylenes and naphthalenes], also must be met if found to exceed the ground water cleanup levels at the site. See Table 830-1 for the minimum testing requirements for heavy oil releases.
- **Mineral oil** means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors, measured using NWTPH-Dx. The cleanup level is based on preventing the accumulation of free product on the ground water, as described in WAC 173-340-747(10). Sites using this cleanup level must also analyze soil samples and meet the soil cleanup level for PCBs, unless it can be demonstrated that: (1) The release originated from an electrical device that was manufactured after July 1, 1979; or (2) oil containing PCBs was never used in the equipment suspected as the source of the release; or (3) it can be documented that the oil released was recently tested and did not contain PCBs. Method B or C must be used for releases of oils containing greater than 50 ppm PCBs. See Table 830-1 for the minimum testing requirements for mineral oil releases.
- t **1,1,1 Trichloroethane.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- u **Trichloroethylene.** Cleanup level based on protection of ground water for drinking water use, using the procedures described in WAC 173-340-747(4).
- v **Xylenes.** Cleanup level based on protection of ground water for drinking water use, using the procedure in WAC 173-340-747(4). This is a total value for all xylenes.

Table 747-1

Soil Organic Carbon-Water Partitioning Coefficient (K_{oc})
Values: Nonionizing Organics.

Hazardous Substance	K_{oc} (ml/g)
ACENAPHTHENE	4,898
ALDRIN	48,685
ANTHRACENE	23,493
BENZ(a)ANTHRACENE	357,537
BENZENE	62
BENZO(a)PYRENE	968,774
BIS(2-CHLOROETHYL)ETHER	76
BIS(2-ETHYLHEXYL)PHTHALATE	111,123
BROMOFORM	126
BUTYL BENZYL PHTHALATE	13,746
CARBON TETRACHLORIDE	152
CHLORDANE	51,310

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CHLORO BENZENE	224
CHLOROFORM	53
DDD	45,800
DDE	86,405
DDT	677,934
DIBENZO(a,h)ANTHRACENE	1,789,101
1,2-DICHLORO BENZENE (o)	379
1,4-DICHLORO BENZENE (p)	616
DICHLOROETHANE-1,1	53
DICHLOROETHANE-1,2	38
DICHLOROETHYLENE-1,1	65
trans-1,2 DICHLOROETHYLENE	38
DICHLOROPROPANE-1,2	47
DICHLOROPROPENE-1,3	27
DIELDRIN	25,546
DIETHYL PHTHALATE	82
DI-N-BUTYLPHTHALATE	1,567
EDB	66
ENDRIN	10,811
ENDOSULFAN	2,040
ETHYL BENZENE	204
FLUORANTHENE	49,096
FLUORENE	7,707
HEPTACHLOR	9,528
HEXACHLORO BENZENE	80,000
α -HCH (α -BHC)	1,762
β -HCH (β -BHC)	2,139
γ -HCH (LINDANE)	1,352
MTBE	11
METHOXYCHLOR	80,000
METHYL BROMIDE	9
METHYL CHLORIDE	6
METHYLENE CHLORIDE	10
NAPHTHALENE	1,191
NITROBENZENE	119
PCB-Arochlor 1016	107,285
PCB-Arochlor 1260	822,422
PENTACHLORO BENZENE	32,148
PYRENE	67,992
STYRENE	912
1,1,2,2,-TETRACHLOROETHANE	79
TETRACHLOROETHYLENE	265
TOLUENE	140
TOXAPHENE	95,816
1,2,4-TRICHLORO BENZENE	1,659
TRICHLOROETHANE -1,1,1	135
TRICHLOROETHANE-1,1,2	75

TRICHLOROETHYLENE	94
o-XYLENE	241
m-XYLENE	196
p-XYLENE	311

Sources: Except as noted below, the source of the K_{oc} values is the 1996 EPA Soil Screening Guidance: Technical Background Document. The values obtained from this document represent the geometric mean of a survey of values published in the scientific literature. Sample populations ranged from 1-65. EDB value from ATSDR Toxicological Profile (TP 91/13). MTBE value from USGS Final Draft Report on Fuel Oxygenates (March 1996). PCB-Arochlor values from 1994 EPA Draft Soil Screening Guidance.

Table 747-2

Predicted Soil Organic Carbon-Water Partitioning Coefficient (K_{oc}) as a Function of pH: Ionizing Organics.

Hazardous Substance	K_{oc} Value (ml/g)		
	pH = 4.9	pH = 6.8	pH = 8.0
Benzoic acid	5.5	0.6	0.5
2-Chlorophenol	398	388	286
2-4-Dichlorophenol	159	147	72
2-4-Dinitrophenol	0.03	0.01	0.01
Pentachlorophenol	9,055	592	410
2,3,4,5-Tetrachlorophenol	17,304	4,742	458
2,3,4,6-Tetrachlorophenol	4,454	280	105
2,4,5-Trichlorophenol	2,385	1,597	298
2,4,6-Trichlorophenol	1,040	381	131

Source: 1996 EPA Soil Screening Guidance: Technical Background Document. The predicted K_{oc} values in this table were derived using a relationship from thermodynamic equilibrium considerations to predict the total sorption of an ionizable organic compound from the partitioning of its ionized and neutral forms.

Table 747-3

Metals Distribution Coefficients (K_d).

Hazardous Substance	K_d (L/kg)
Arsenic	29
Cadmium	6.7
Total Chromium	1,000
Chromium VI	19
Copper	22
Mercury	52
Nickel	65
Lead	10,000
Selenium	5
Zinc	62

Source: Multiple sources compiled by the department of ecology.

Table 747-4
Petroleum EC Fraction Physical/Chemical Values.

Fuel Fraction	Equivalent Carbon Number ¹	Water Solubility ² (mg/L)	Mol. Wt. ³ (g/mol)	Henry's Constant ⁴ (cc/cc)	GFW ⁵ (mg/mol)	Density ⁶ (mg/l)	Soil Organic Carbon-Water Partitioning Coefficient K _{oc} ⁷ (L/kg)
ALIPHATICS							
EC 5 - 6	5.5	36.0	81.0	33.0	81,000	670,000	800
EC > 6 - 8	7.0	5.4	100.0	50.0	100,000	700,000	3,800
EC > 8 - 10	9.0	0.43	130.0	80.0	130,000	730,000	30,200
EC > 10 - 12	11.0	0.034	160.0	120.0	160,000	750,000	234,000
EC > 12 - 16	14.0	7.6E-04	200.0	520.0	200,000	770,000	5.37E+06
EC > 16 - 21	19.0	1.3E-06	270.0	4,900	270,000	780,000	9.55E+09
EC > 21 - 34	28.0	1.5E-11	400.0	100,000	400,000	790,000	1.07E+10
AROMATICS							
EC > 8 - 10	9.0	65.0	120.0	0.48	120,000	870,000	1,580
EC > 10 - 12	11.0	25.0	130.0	0.14	130,000	900,000	2,510
EC > 12 - 16	14.0	5.8	150.0	0.053	150,000	1,000,000	5,010
EC > 16 - 21	19.0	0.51	190.0	0.013	190,000	1,160,000	15,800
EC > 21 - 34	28.0	6.6E-03	240.0	6.7E-04	240,000	1,300,000	126,000
TPH COMPONENTS							
Benzene	6.5	1,750	78.0	0.228	78,000	876,500	62.0
Toluene	7.6	526.0	92.0	0.272	92,000	866,900	140.0
Ethylbenzene	8.5	169.0	106.0	0.323	106,000	867,000	204.0
Total Xylenes ⁸ (average of 3)	8.67	171.0	106.0	0.279	106,000	875,170	233.0
n-Hexane ⁹	6.0	9.5	86.0	74.0	86,000	659,370	3,410
MTBE ¹⁰		50,000	88.0	0.018	88,000	744,000	10.9
Naphthalenes	11.69	31.0	128.0	0.0198	128,000	1,145,000	1,191

Sources:

- Equivalent Carbon Number.** Gustafson, J.B. et al., *Selection of Representative TPH Fractions Based on Fate and Transport Considerations. Total Petroleum Hydrocarbon Criteria Working Group Series, Volume 3* (1997) [hereinafter *Criteria Working Group*].
- Water Solubility.** For aliphatics and aromatics EC groups, *Criteria Working Group*. For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.
- Molecular Weight.** *Criteria Working Group*.
- Henry's Constant.** For aliphatics and aromatics EC groups, *Criteria Working Group*. For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.
- Gram Formula Weight (GFW).** Based on 1000 x Molecular Weight.
- Density.** For aliphatics and aromatics EC groups, based on correlation between equivalent carbon number and data on densities of individual hazardous substances provided in *Criteria Working Group*. For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.
- Soil Organic Carbon-Water Partitioning Coefficient.** For aliphatics and aromatics EC groups, *Criteria Working Group*. For TPH components except n-hexane and MTBE, *1996 EPA Soil Screening Guidance: Technical Background Document*.
- Total Xylenes.** Values for total xylenes are a weighted average of m, o and p xylene based on gasoline composition data from the *Criteria Working Group* (m= 51% of total xylene; o= 28% of total xylene; and p=21% of total xylene).

- n-Hexane.** For values other than density, *Criteria Working Group*. For the density value, *Hawley's Condensed Chemical Dictionary*, 11th ed., revised by N. Irving Sax and Richard J. Lewis (1987).
- MTBE.** *USGS Final Report on Fuel Oxygenates* (March 1996).

Table 747-5
Residual Saturation Screening Levels for TPH.

Fuel	Screening Level (mg/kg)
Weathered Gasoline	1,000
Middle Distillates (e.g., Diesel No. 2 Fuel Oil)	2,000
Heavy Fuel Oils (e.g., No. 6 Fuel Oil)	2,000
Mineral Oil	4,000
Unknown Composition or Type	1,000

Note: The residual saturation screening levels for petroleum hydrocarbons specified in Table 747-5 are based on coarse sand and gravelly soils; however, they may be used for any soil type. Screening levels are based on the presumption that there are no preferential pathways for NAPL to flow downward to ground water. If such pathways exist, more stringent residual saturation screening levels may need to be established.

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Table 749-1

Simplified Terrestrial Ecological Evaluation - Exposure Analysis Procedure under WAC 173-340-7492 (2)(a)(ii).^a

Estimate the area of contiguous (connected) undeveloped land on the site or within 500 feet of any area of the site to the nearest 1/2 acre (1/4 acre if the area is less than 0.5 acre). "Undeveloped land" means land that is not covered by existing buildings, roads, paved areas or other barriers that will prevent wildlife from feeding on plants, earthworms, insects or other food in or on the soil.

1) From the table below, find the number of points corresponding to the area and enter this number in the box to the right.

Area (acres)	Points
0.25 or less	4
0.5	5
1.0	6
1.5	7
2.0	8
2.5	9
3.0	10
3.5	11
4.0 or more	12

2) Is this an industrial or commercial property? See WAC 173-340-7490 (3)(c). If yes, enter a score of 3 in the box to the right. If no, enter a score of 1.

3) Enter a score in the box to the right for the habitat quality of the site, using the rating system shown below^b. (High = 1, Intermediate = 2, Low = 3)

4) Is the undeveloped land likely to attract wildlife? If yes, enter a score of 1 in the box to the right. If no, enter a score of 2. See footnote c.

5) Are there any of the following soil contaminants present: Chlorinated dioxins/furans, PCB mixtures, DDT, DDE, DDD, aldrin, chlordane, dieldrin, endosulfan, endrin, heptachlor, benzene hexachloride, toxaphene, hexachlorobenzene, pentachlorophenol, pentachlorobenzene? If yes, enter a score of 1 in the box to the right. If no, enter a score of 4.

6) Add the numbers in the boxes on lines 2 through 5 and enter this number in the box to the right. If this number is larger than the number in the box on line 1, the simplified terrestrial ecological evaluation may be ended under WAC 173-340-7492 (2)(a)(ii).

Footnotes:

- a** It is expected that this habitat evaluation will be undertaken by an experienced field biologist. If this is not the case, enter a conservative score (1) for questions 3 and 4.
- b** Habitat rating system. Rate the quality of the habitat as high, intermediate or low based on your professional judgment as a

field biologist. The following are suggested factors to consider in making this evaluation:

Low: Early successional vegetative stands; vegetation predominantly noxious, nonnative, exotic plant species or weeds. Areas severely disturbed by human activity, including intensively cultivated croplands. Areas isolated from other habitat used by wildlife.

High: Area is ecologically significant for one or more of the following reasons: Late-successional native plant communities present; relatively high species diversity; used by an uncommon or rare species; priority habitat (as defined by the Washington department of fish and wildlife); part of a larger area of habitat where size or fragmentation may be important for the retention of some species.

Intermediate: Area does not rate as either high or low.

- c** Indicate "yes" if the area attracts wildlife or is likely to do so. Examples: Birds frequently visit the area to feed; evidence of high use by mammals (tracks, scat, etc.); habitat "island" in an industrial area; unusual features of an area that make it important for feeding animals; heavy use during seasonal migrations.

Table 749-2

Priority Contaminants of Ecological Concern for Sites that Qualify for the Simplified Terrestrial Ecological Evaluation Procedure.^a

Priority contaminant	Soil concentration (mg/kg)	
	Unrestricted land use ^b	Industrial or commercial site
METALS^c		
Antimony	See note d	See note d
Arsenic III	20 mg/kg	20 mg/kg
Arsenic V	95 mg/kg	260 mg/kg
Barium	1,250 mg/kg	1,320 mg/kg
Beryllium	25 mg/kg	See note d
Cadmium	25 mg/kg	36 mg/kg
Chromium (total)	42 mg/kg	135 mg/kg
Cobalt	See note d	See note d
Copper	100 mg/kg	550 mg/kg
Lead	220 mg/kg	220 mg/kg
Magnesium	See note d	See note d
Manganese	See note d	23,500 mg/kg
Mercury, inorganic	9 mg/kg	9 mg/kg
Mercury, organic	0.7 mg/kg	0.7 mg/kg
Molybdenum	See note d	71 mg/kg
Nickel	100 mg/kg	1,850 mg/kg
Selenium	0.8 mg/kg	0.8 mg/kg
Silver	See note d	See note d
Tin	275 mg/kg	See note d
Vanadium	26 mg/kg	See note d
Zinc	270 mg/kg	570 mg/kg
PESTICIDES		
Aldicarb/aldicarb sulfone (total)	See note d	See note d
Aldrin	0.17 mg/kg	0.17 mg/kg
Benzene hexachloride (including lindane)	10 mg/kg	10 mg/kg
Carbofuran	See note d	See note d
Chlordane	1 mg/kg	7 mg/kg
Chlorpyrifos/chlorpyrifos-methyl (total)	See note d	See note d
DDT/DDD/DDE (total)	1 mg/kg	1 mg/kg
Dieldrin	0.17 mg/kg	0.17 mg/kg
Endosulfan	See note d	See note d
Endrin	0.4 mg/kg	0.4 mg/kg

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Priority contaminant	Soil concentration (mg/kg)	
	Unrestricted land use ^b	Industrial or commercial site
Heptachlor/heptachlor epoxide (total)	0.6 mg/kg	0.6 mg/kg
Hexachlorobenzene	31 mg/kg	31 mg/kg
Parathion/methyl parathion (total)	See note d	See note d
Pentachlorophenol	11 mg/kg	11 mg/kg
Toxaphene	See note d	See note d
OTHER CHLORINATED ORGANICS		
Chlorinated dibenzofurans (total)	3E-06 mg/kg	3E-06 mg/kg
Dioxins (total)	5E-06 mg/kg	5E-06 mg/kg
Hexachlorophene	See note d	See note d
PCB mixtures (total)	2 mg/kg	2 mg/kg
Pentachlorobenzene	168 mg/kg	See note d
OTHER NONCHLORINATED ORGANICS		
Acenaphthene	See note d	See note d
Benzo(a)pyrene	30 mg/kg	300 mg/kg
Bis (2-ethylhexyl) phthalate	See note d	See note d
Di-n-butyl phthalate	200 mg/kg	See note d
PETROLEUM		
Gasoline Range Organics	200 mg/kg	12,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.

Priority contaminant	Soil concentration (mg/kg)	
	Unrestricted land use ^b	Industrial or commercial site
Diesel Range Organics	460 mg/kg	15,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.

Footnotes:

- a Caution on misusing these chemical concentration numbers. These values have been developed for use at sites where a site-specific terrestrial ecological evaluation is not required. They are not intended to be protective of terrestrial ecological receptors at every site. Exceedances of the values in this table do not necessarily trigger requirements for cleanup action under this chapter. The table is not intended for purposes such as evaluating sludges or wastes.
This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site.
- b Applies to any site that does not meet the definition of industrial or commercial.
- c For arsenic, use the valence state most likely to be appropriate for site conditions, unless laboratory information is available. Where soil conditions alternate between saturated, anaerobic and unsaturated, aerobic states, resulting in the alternating presence of arsenic III and arsenic V, the arsenic III concentrations shall apply.
- d Safe concentration has not yet been established. See WAC 173-340-7492 (2)(c).

Table 749-3

Ecological Indicator Soil Concentrations (mg/kg) for Protection of Terrestrial Plants and Animals^a. For chemicals where a value is not provided, see footnote b.			
Note: These values represent soil concentrations that are expected to be protective at any MTCA site and are provided for use in eliminating hazardous substances from further consideration under WAC 173-340-7493 (2)(a)(i). Where these values are exceeded, various options are provided for demonstrating that the hazardous substance does not pose a threat to ecological receptors at a site, or for developing site-specific remedial standards for eliminating threats to ecological receptors. See WAC 173-340-7493 (1)(b)(i), 173-340-7493 (2)(a)(ii) and 173-340-7493(3).			
Hazardous Substance^b	Plants^c	Soil biota^d	Wildlife^e
METALS^f:			
Aluminum (soluble salts)	50		
Antimony	5		
Arsenic III			7
Arsenic V	10	60	132
Barium	500		102
Beryllium	10		
Boron	0.5		
Bromine	10		
Cadmium	4	20	14
Chromium (total)	42 ^g	42 ^g	67

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Cobalt	20		
Copper	100	50	217
Fluorine	200		
Iodine	4		
Lead	50	500	118
Lithium	35 ^a		
Manganese	1,100 ^a		1,500
Mercury, inorganic	0.3	0.1	5.5
Mercury, organic			0.4
Molybdenum	2		7
Nickel	30	200	980
Selenium	1	70	0.3
Silver	2		
Technetium	0.2		
Thallium	1		
Tin	50		
Uranium	5		
Vanadium	2		
Zinc	86 ^a	200	360
PESTICIDES:			
Aldrin			0.1
Benzene hexachloride (including lindane)			6
Chlordane		1	2.7
DDT/DDD/DDE (total)			0.75
Dieldrin			0.07
Endrin			0.2
Hexachlorobenzene			17
Heptachlor/heptachlor epoxide (total)			0.4
Pentachlorophenol	3	6	4.5
OTHER CHLORINATED ORGANICS:			
1,2,3,4-Tetrachlorobenzene		10	
1,2,3-Trichlorobenzene		20	
1,2,4-Trichlorobenzene		20	
1,2-Dichloropropane		700	
1,4-Dichlorobenzene		20	
2,3,4,5-Tetrachlorophenol		20	
2,3,5,6-Tetrachloroaniline	20	20	
2,4,5-Trichloroaniline	20	20	
2,4,5-Trichlorophenol	4	9	
2,4,6-Trichlorophenol		10	
2,4-Dichloroaniline		100	
3,4-Dichloroaniline		20	
3,4-Dichlorophenol	20	20	
3-Chloroaniline	20	30	
3-Chlorophenol	7	10	
Chlorinated dibenzofurans (total)			2E-06
Chloroacetamide		2	

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Chlorobenzene		40	
Dioxins			2E-06
Hexachlorocyclopentadiene	10		
PCB mixtures (total)	40		0.65
Pentachloroaniline		100	
Pentachlorobenzene		20	
OTHER NONCHLORINATED ORGANICS:			
2,4-Dinitrophenol	20		
4-Nitrophenol		7	
Acenaphthene	20		
Benzo(a)pyrene			12
Biphenyl	60		
Diethylphthalate	100		
Dimethylphthalate		200	
Di-n-butyl phthalate	200		
Fluorene		30	
Furan	600		
Nitrobenzene		40	
N-nitrosodiphenylamine		20	
Phenol	70	30	
Styrene	300		
Toluene	200		
PETROLEUM:			
Gasoline Range Organics		100	5,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.
Diesel Range Organics		200	6,000 mg/kg except that the concentration shall not exceed residual saturation at the soil surface.

Footnotes:

- a Caution on misusing ecological indicator concentrations. Exceedances of the values in this table do not necessarily trigger requirements for cleanup action under this chapter. Natural background concentrations may be substituted for ecological indicator concentrations provided in this table. The table is not intended for purposes such as evaluating sludges or wastes.
This list does not imply that sampling must be conducted for each of these chemicals at every site. Sampling should be conducted for those chemicals that might be present based on available information, such as current and past uses of chemicals at the site.
- b For hazardous substances where a value is not provided, plant and soil biota indicator concentrations shall be based on a literature survey conducted in accordance with WAC 173-340-7493(4) and calculated using methods described in the publications listed below in footnotes c and d. Methods to be used for developing wildlife indicator concentrations are described in Tables 749-4 and 749-5.
- c Based on benchmarks published in *Toxicological Benchmarks for Screening Potential Contaminants of Concern for Effects on Terrestrial Plants: 1997 Revision*, Oak Ridge National Laboratory, 1997.
- d Based on benchmarks published in *Toxicological Benchmarks for Potential Contaminants of Concern for Effects on Soil and Litter Invertebrates and Heterotrophic Process*, Oak Ridge National Laboratory, 1997.

- e Calculated using the exposure model provided in Table 749-4 and chemical-specific values provided in Table 749-5. Where both avian and mammalian values are available, the wildlife value is the lower of the two.
- f For arsenic, use the valence state most likely to be appropriate for site conditions, unless laboratory information is available. Where soil conditions alternate between saturated, anaerobic and unsaturated, aerobic states, resulting in the alternating presence of arsenic III and arsenic V, the arsenic III concentrations shall apply.
- g Benchmark replaced by Washington state natural background concentration.

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**Table 749-4
Wildlife Exposure Model for Site-specific Evaluations.***

Plant	
K _{Plant}	Plant uptake coefficient (dry weight basis)
	Units: mg/kg plant/mg/kg soil
	Value: chemical-specific (see Table 749-5)
Soil biota	
Surrogate receptor: Earthworm	
BAF _{Worm}	Earthworm bioaccumulation factor (dry weight basis)
	Units: mg/kg worm/mg/kg soil
	Value: chemical-specific (see Table 749-5)
Mammalian predator	
Surrogate receptor: Shrew (<i>Sorex</i>)	
P _{SB (shrew)}	Proportion of contaminated food (earthworms) in shrew diet
	Units: unitless
	Value: 0.50
FIR _{Shrew,DW}	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight - day
	Value: 0.45
SIR _{Shrew,DW}	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight - day
	Value: 0.0045
RGAF _{Soil, shrew}	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)
T _{Shrew}	Toxicity reference value for shrew
	Units: mg/kg - day
	Value: chemical-specific (see Table 749-5)
Home range	0.1 Acres
Avian predator	
Surrogate receptor: American robin (<i>Turdus migratorius</i>)	
P _{SB (Robin)}	Proportion of contaminated food (soil biota) in robin diet
	Unit: unitless
	Value: 0.52
FIR _{Robin,DW}	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight - day
	Value: 0.207
SIR _{Robin,DW}	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight - day
	Value: 0.0215
RGAF _{Soil, robin}	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)
T _{Robin}	Toxicity reference value for robin
	Units: mg/kg - day

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	Value: chemical-specific (see Table 749-5)
Home range	0.6 Acres
Mammalian herbivore	
Surrogate receptor: Vole (<i>Microtus</i>)	
$P_{Plant, vole}$	Proportion of contaminated food (plants) in vole diet
	Units: unitless
	Value: 1.0
$FIR_{Vole, DW}$	Food ingestion rate (dry weight basis)
	Units: kg dry food/kg body weight - day
	Value: 0.315
$SIR_{Vole, DW}$	Soil ingestion rate (dry weight basis)
	Units: kg dry soil/kg body weight - day
	Value: 0.0079
$RGAF_{Soil, vole}$	Gut absorption factor for a hazardous substance in soil expressed relative to the gut absorption factor for the hazardous substance in food.
	Units: unitless
	Value: chemical-specific (see Table 749-5)
T_{Vole}	Toxicity reference value for vole
	Units: mg/kg - day
	Value: chemical-specific (see Table 749-5)
Home range	0.08 Acres
Soil concentrations for wildlife protection^b	
(1) Mammalian predator:	
$SC_{MP} = (T_{Shrew}) / [(FIR_{Shrew, DW} \times P_{SB (shrew)} \times BAF_{Worm}) + (SIR_{Shrew, DW} \times RGAF_{Soil, shrew})]$	
(2) Avian predator:	
$SC_{AP} = (T_{Robin}) / [(FIR_{Robin, DW} \times P_{SB (Robin)} \times BAF_{Worm}) + (SIR_{Robin, DW} \times RGAF_{Soil, robin})]$	
(3) Mammalian herbivore:	
$SC_{MH} = (T_{Vole}) / [(FIR_{Vole, DW} \times P_{Plant, vole} \times K_{Plant}) + (SIR_{Vole, DW} \times RGAF_{Soil, vole})]$	

Footnotes:

- a Substitutions for default receptors may be made as provided for in WAC 173-340-7493(7). If a substitute species is used, the values for food and soil ingestion rates, and proportion of contaminated food in the diet, may be modified to reasonable maximum exposure estimates for the substitute species based on a literature search conducted in accordance with WAC 173-340-7493(4). Additional species may be added on a site-specific basis as provided in WAC 173-340-7493 (2)(a). The department shall consider proposals for modifications to default values provided in this table based on new scientific information in accordance with WAC 173-340-702(14).
- b Use the lowest of the three concentrations calculated as the wildlife value.

Table 749-5
Default Values for Selected Hazardous Substances for use with the Wildlife Exposure Model in Table 749-4.^a

Hazardous Substance	Toxicity reference value (mg/kg - d)				
	BAF_{Worm}	K_{Plant}	Shrew	Vole	Robin
METALS:					
Arsenic III	1.16	0.06	1.89	1.15	
Arsenic V	1.16	0.06	35	35	22
Barium	0.36		43.5	33.3	
Cadmium	4.6	0.14	15	15	20
Chromium	0.49		35.2	29.6	5
Copper	0.88	0.020	44	33.6	61.7
Lead	0.69	0.0047	20	20	11.3
Manganese	0.29		624	477	
Mercury, inorganic	1.32	0.0854	2.86	2.18	0.9
Mercury, organic	1.32		0.352	0.27	0.064

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Hazardous Substance	Toxicity reference value (mg/kg - d)				
	BAF _{Worm}	K _{Plant}	Shrew	Vole	Robin
Molybdenum	0.48	1.01	3.09	2.36	35.3
Nickel	0.78	0.047	175.8	134.4	107
Selenium	10.5	0.0065	0.725	0.55	1
Zinc	3.19	0.095	703.3	537.4	131
PESTICIDES:					
Aldrine	4.77	0.007 ^b	2.198	1.68	0.06
Benzene hexachloride (including lindane)	10.1				7
Chlordane	17.8	0.011 ^b	10.9	8.36	10.7
DDT/DDD/DDE	10.6	0.004 ^b	8.79	6.72	0.87
Dieldrin	28.8	0.029 ^b	0.44	0.34	4.37
Endrin	3.6	0.038 ^b	1.094	0.836	0.1
Heptachlor/heptachlor epoxide	10.9	0.027 ^b	2.857	2.18	0.48
Hexachlorobenzene	1.08				2.4
Pentachlorophenol	5.18	0.043 ^b	5.275	4.03	
OTHER CHLORINATED ORGANICS:					
Chlorinated dibenzofurans	48				1.0E-05
Dioxins	48	0.005 ^b	2.2E-05	1.7E-05	1.4E-04
PCB mixtures	4.58	0.087 ^b	0.668	0.51	1.8
OTHER NONCHLORINATED ORGANICS:					
Benzo(a)pyrene	0.43	0.011	1.19	0.91	

Footnotes:

a For hazardous substances not shown in this table, use the following default values. Alternatively, use values established from a literature survey conducted in accordance with WAC 173-340-7493(4) and approved by the department.

K_{Plant}: Metals (including metalloid elements): 1.01
 Organic chemicals: $K_{Plant} = 10^{(1.588 - (0.578 \log K_{ow}))}$, where log K_{ow} is the logarithm of the octanol-water partition coefficient.

BAF_{Worm}: Metals (including metalloid elements): 4.6
 Nonchlorinated organic chemicals:
 log K_{ow} < 5: 0.7
 log K_{ow} ≥ 5: 0.9
 Chlorinated organic chemicals:
 log K_{ow} < 5: 4.7
 log K_{ow} ≥ 5: 11.8

RGAF_{Soil} (all receptors): 1.0

Toxicity reference values (all receptors): Values established from a literature survey conducted in accordance with WAC 173-340-7493(4).

Site-specific values may be substituted for default values, as described below:

K_{Plant} Value from a literature survey conducted in accordance with WAC 173-340-7493(4) or from empirical studies at the site.

BAF_{Worm} Value from a literature survey conducted in accordance with WAC 173-340-7493(4) or from empirical studies at the site.

RGAF_{Soil} (all receptors): Value established from a literature survey conducted in accordance with WAC 173-340-7493(4).

Toxicity reference values (all receptors): Default toxicity reference values provided in this table may be replaced by a value established from a literature survey conducted in accordance with WAC 173-340-7493(4).

b Calculated from log K_{ow} using formula in footnote a.

**Table 830-1
 Required Testing for Petroleum Releases.**

	Gasoline Range Organics (GRO) (1)	Diesel Range Organics (DRO) (2)	Heavy Oils (DRO) (3)	Mineral Oils (4)	Waste Oils and Unknown Oils (5)
Volatile Petroleum Compounds					
Benzene	X ⁽⁶⁾	X ⁽⁷⁾			X ⁽⁸⁾
Toluene	X ⁽⁶⁾	X ⁽⁷⁾			X ⁽⁸⁾
Ethyl benzene	X ⁽⁶⁾	X ⁽⁷⁾			X ⁽⁸⁾
Xylenes	X ⁽⁶⁾	X ⁽⁷⁾			X ⁽⁸⁾
n-Hexane	X ⁽⁹⁾				

**Table 830-1
Required Testing for Petroleum Releases.**

Fuel Additives and Blending Compounds					
Dibromoethane, 1-2 (EDB); and Dichloroethane, 1-2 (EDC)	X ⁽¹⁰⁾				X ⁽⁸⁾
Methyl tertiary-butyl ether (MTBE)	X ⁽¹¹⁾				X ⁽⁸⁾
Total lead & other additives	X ⁽¹²⁾				X ⁽⁸⁾
Other Petroleum Components					
Carcinogenic PAHs		X ⁽¹³⁾	X ⁽¹³⁾		X ⁽⁸⁾
Naphthalenes	X ⁽¹⁴⁾	X ⁽¹⁴⁾	X ⁽¹⁴⁾		X ⁽¹⁴⁾
Other Compounds					
Polychlorinated Biphenyls (PCBs)			X ⁽¹⁵⁾	X ⁽¹⁵⁾	X ⁽⁸⁾
Halogenated Volatile Organic Compounds (VOCs)					X ⁽⁸⁾
Other	X ⁽¹⁶⁾	X ⁽¹⁶⁾	X ⁽¹⁶⁾	X ⁽¹⁶⁾	X ⁽¹⁶⁾
Total Petroleum Hydrocarbons Methods					
TPH Analytical Method for Total TPH (Method A Cleanup Levels) (17)	NWTPH-Gx	NWTPH-Dx	NWTPH-Dx	NWTPH-Dx	NWTPH-Gx & NWTPH-Dx
TPH Analytical Methods for TPH fractions (Methods B or C) (17)	VPH	EPH	EPH	EPH	VPH and EPH

Use of Table 830-1: An "X" in the box means that the testing requirement applies to ground water and soil if a release is known or suspected to have occurred to that medium, unless otherwise specified in the footnotes. A box with no "X" indicates (except in the last two rows) that, for the type of petroleum product release indicated in the top row, analyses for the hazardous substance(s) named in the far-left column corresponding to the empty box are not typically required as part of the testing for petroleum releases. However, such analyses may be required based on other site-specific information. Note that testing for Total Petroleum Hydrocarbons (TPH) is required for every type of petroleum release, as indicated in the bottom two rows of the table. The testing method for TPH depends on the type of petroleum product released and whether Method A or Method B or C is being used to determine TPH cleanup levels. See WAC 173-340-830 for analytical procedures. **The footnotes to this table are important for understanding the specific analytical requirements for petroleum releases.**

Footnotes:

- (1) The following petroleum products are common examples of GRO: automotive and aviation gasolines, mineral spirits, stoddard solvents, and naphtha. To be in this range, 90 percent of the petroleum components need to be quantifiable using the NWTPH-Gx; if NWTPH-HCID results are used for this determination, then 90 percent of the "area under the TPH curve" must be quantifiable using NWTPH-Gx. Products such as jet fuel, diesel No. 1, kerosene, and heating oil may

require analysis as both GRO and DRO depending on the range of petroleum components present (range can be measured by NWTPH-HCID). (See footnote 17 on analytical methods.)

- (2) The following petroleum products are common examples of DRO: Diesel No. 2, fuel oil No. 2, light oil (including some bunker oils). To be in this range, 90 percent of the petroleum components need to be quantifiable using the NWTPH-Dx quantified against a diesel standard. Products such as jet fuel, diesel No. 1, kerosene, and heating oil may require analysis as both GRO and DRO depending on the range of petroleum components present as measured in NWTPH-HCID.
- (3) The following petroleum products are common examples of the heavy oil group: Motor oils, lube oils, hydraulic fluids, etc. Heavier oils may require the addition of an appropriate oil range standard for quantification.
- (4) Mineral oil means non-PCB mineral oil, typically used as an insulator and coolant in electrical devices such as transformers and capacitors.
- (5) The waste oil category applies to waste oil, oily wastes, and unknown petroleum products and mixtures of petroleum and nonpetroleum substances. Analysis of other chemical components (such as solvents) than those listed may be required based on site-specific information. Mixtures of identifiable petroleum products (such as gasoline and diesel, or diesel and

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- motor oil) may be analyzed based on the presence of the individual products, and need not be treated as waste and unknown oils.
- (6) When using Method A, testing soil for benzene is required. Furthermore, testing ground water for BTEX is necessary when a petroleum release to ground water is known or suspected. If the ground water is tested and toluene, ethyl benzene or xylene is in the ground water above its respective Method A cleanup level, the soil must also be tested for that chemical. When using Method B or C, testing the soil for BTEX is required and testing for BTEX in ground water is required when a release to ground water is known or suspected.
- (7)(a) For DRO releases from other than home heating oil systems, follow the instructions for GRO releases in Footnote (6).
- (b) For DRO releases from typical home heating oil systems (systems of 1,100 gallons or less storing heating oil for residential consumptive use on the premises where stored), testing for BTEX is not usually required for either ground water or soil. Testing of the ground water is also not usually required for these systems; however, if the ground water is tested and benzene is found in the ground water, the soil must be tested for benzene.
- (8) Testing is required in a sufficient number of samples to determine whether this chemical is present at concentrations of concern. If the chemical is found to be at levels below the applicable cleanup level, then no further analysis is required.
- (9) Testing for n-hexane is required when VPH analysis is performed for Method B or C. In this case, the concentration of n-hexane should be deleted from its respective fraction to avoid double-counting its concentration. n-Hexane's contribution to overall toxicity is then evaluated using its own reference dose.
- (10) Volatile fuel additives (such as dibromoethane, 1 - 2 (EDB) (CAS# 106-93-4) and dichloroethane, 1 - 2 (EDC) (CAS# 107-06-2)) must be part of a volatile organics analysis (VOA) of GRO contaminated ground water. If any is found in ground water, then the contaminated soil must also be tested for these chemicals.
- (11) Methyl tertiary-butyl ether (MTBE) (CAS# 1634-04-4) must be analyzed in GRO contaminated ground water. If any is found in ground water, then the contaminated soil must also be tested for MTBE.
- (12)(a) For automotive gasoline where the release occurred prior to 1996 (when "leaded gasoline" was used), testing for lead is required unless it can be demonstrated that lead was not part of the release. If this demonstration cannot be made, testing is required in a sufficient number of samples to determine whether lead is present at concentrations of concern. Other additives and blending compounds of potential environmental significance may need to be considered for testing, including: tertiary-butyl alcohol (TBA); tertiary-amyl methyl ether (TAME); ethyl tertiary-butyl ether (ETBE); ethanol; and methanol. Contact the department for additional testing recommendations regarding these and other additives and blending compounds.
- (b) For aviation gasoline, racing fuels and similar products, testing is required for likely fuel additives (especially lead) and likely blending compounds, no matter when the release occurred.
- (13) Testing for carcinogenic PAHs is required for DRO and heavy oils, except for the following products for which adequate information exists to indicate their absence: Diesel No. 1 and 2, home heating oil, kerosene, jet fuels, and electrical insulating mineral oils. The carcinogenic PAHs include benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, benzo(k)fluoranthene, benzo(a)anthracene, and benzo(b)fluoranthene.
- (14)(a) Except as noted in (b) and (c), testing for the non-carcinogenic PAHs, including the "naphthalenes" (naphthalene, 1-methyl-naphthalene, and 2-methyl-naphthalene) is not required when using Method A cleanup levels, because they are included in the TPH cleanup level.
- (b) Testing of soil for naphthalenes is required under Methods B and C when the inhalation exposure pathway is evaluated.
- (c) If naphthalenes are found in ground water, then the soil must also be tested for naphthalenes.
- (15) Testing for PCBs is required unless it can be demonstrated that: (1) the release originated from an electrical device manufactured for use in the United States after July 1, 1979; (2) oil containing PCBs was never used in the equipment suspected as the source of the release (examples of equipment where PCBs are likely to be found include transformers, electric motors, hydraulic systems, heat transfer systems, electromagnets, compressors, capacitors, switches and miscellaneous other electrical devices); or, (3) the oil released was recently tested and did not contain PCBs.
- (16) Testing for other possible chemical contaminants may be required based on site-specific information.
- (17) The analytical methods NWTPH-Gx, NWTPH-Dx, NWTPH-HCID, VPH, and EPH are methods published by the department of ecology and available on the department's Internet web site: <http://www.ecy.wa.gov/programs/tcp/cleanup.html>.

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

AMENDATORY SECTION (Amending Order 89-26, filed 10/17/89, effective 11/17/89)

WAC 173-321-010 Purpose and authority. (1) The department is directed by the Model Toxics Control Act to provide grants up to ((fifty)) sixty thousand dollars to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest groups. These grants shall be used to facilitate public participation in the investigation and remediation of a release or threatened release of a hazardous substance and to facilitate public participation in the implementation of the state's solid and hazardous waste management priorities.

(2) The purpose of this chapter is to set forth eligibility criteria and funding requirements for grant projects.

AMENDATORY SECTION (Amending Order 89-26, filed 10/17/89, effective 11/17/89)

WAC 173-321-020 Definitions. As used in this chapter:

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or such person authorized to act for the director.

(3) "Emergency" means an occurrence warranting public participation which occurs after the deadline for grant applications and before the opening of a new grant application period, such as:

(a) An unforeseen release of a hazardous substance at an existing site or a newly discovered site;

(b) An unanticipated decision by the department concerning remedial action at a site or publication of a remedial investigation, feasibility study or risk assessment; or

(c) Discovery of a technical assistance need which could not have been foreseen before the grant application deadline.

(4) "Emergency grant" means a public participation grant in the hazardous substance release category for an emergency as defined in this section.

(5) "Expendable personal property" means all tangible personal property other than nonexpendable personal property.

~~((4))~~ (6) "Facility" means:

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, waste pile, pond, lagoon, impoundment, ditch, landfill, tank, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

(b) Any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

~~((5))~~ (7) "Grant applicant" means any person requesting a public participation grant.

~~((6))~~ (8) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6) or any dangerous or extremely hazardous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under 101 (14) of the Federal Cleanup Law, 42 U.S.C. Sec. 960(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment. Except that:

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local laws.

~~((7))~~ (9) "Hazardous waste management priorities" as defined in RCW 70.105.150 are the priorities in the management of hazardous waste which should be followed in descending order as applicable:

- (a) Waste reduction;
- (b) Waste recycling;
- (c) Physical, chemical, and biological treatment;
- (d) Incineration;
- (e) Solidification/stabilization treatment;
- (f) Landfill.

~~((8))~~ (10) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars or more per unit.

~~((9))~~ (11) "Not-for-profit public interest organization" means any corporation, trust, association, cooperative, or other organization which:

- (a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (b) Is not organized primarily for profit; and
- (c) Uses its net proceeds to maintain, improve, and/or expand its operations.

~~((10))~~ (12) "Owner/operator" means:

(a) ~~Any person with any ownership interest in the facility or who exercises any control over the facility; or~~

~~(b) In the case of an abandoned facility, any person who had owned, operated, or exercised control over the facility any time before its abandonment;~~

~~The term does not include:~~

~~(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title, unless that agency of the state or unit of local government has caused or contributed to the release or threatened release of hazardous substances from the facility; or~~

~~(ii) A person who, without participation in the management of a facility, holds identification of ownership primarily to protect the person's security interest in the facility)) any person defined as an owner or operator under RCW 70.105D.020(12).~~

~~((11))~~ (13) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

~~((12))~~ (14) "Personal property" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence), such as patents, inventions, and copyrights.

~~((13))~~ (15) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under ~~(section 4 of the Model Toxics Control Act))~~ RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

~~((14))~~ (16) "Real property" means land, land improvements, structures, and appurtenances thereto, excluding moveable machinery and equipment.

~~((15))~~ (17) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

~~((16))~~ (18) "Remedy, remediation, or remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

~~((17))~~ (19) "Solid waste management priorities" as defined in chapter 70.95 RCW are the priorities in the management of solid waste which should be followed in order of descending priority as applicable:

- (a) Waste reduction;
- (b) Recycling with source separation of recyclable materials as the preferred method;
- (c) Energy recovery, incineration, or landfill of separated waste;
- (d) Energy recovery, incineration, or landfill of mixed waste.

AMENDATORY SECTION (Amending Order 90-20, filed 9/4/90, effective 10/5/90)

WAC 173-321-040 Applicant eligibility. (1) Public participation grants may only be awarded to groups of three or more unrelated persons or to not-for-profit public interest organizations.

(2) All applicants must demonstrate their ability to appropriately administer grant funds.

(3) Applications for a hazardous substance release grant, including emergency grants, must include information on:

(a) The nature of the release or threatened release of the hazardous substance;

(b) The location of the release or threatened release of the hazardous substance;

(c) How the applicant group may be adversely affected by the release or threatened release of the hazardous substance;

(d) How the applicant group will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance;

(e) A complete project description;

(f) How the applicant group represents the environmental, health, and economic interests of individuals affected by the release or threatened release of the hazardous substance;

(g) The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;

(h) For emergency grants, a description of why an emergency exists, as defined in WAC 173-321-020(3); and

(i) Any other information specified by the department as needed to award a grant.

(4) Applications for a waste management priorities grant must include information on:

(a) How the applicant group will promote or implement the state solid or hazardous waste management priorities;

(b) How the applicant group will promote public participation in the grant project described in the application;

(c) A complete project description;

(d) The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;

(e) Any other information specified by the department as needed to award a grant.

(5) The following persons or groups of persons shall be ineligible for grant funding:

(a) Any person potentially liable, as defined under RCW 70.105D.040;

(b) Local governments including any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county;

(c) Federal and state governments, or agencies thereof;

(d) Federally recognized Indian tribes, as a governing body. Individual tribe members of three or more persons are eligible to apply for a public participation grant;

(e) Organizations sustained by public funding;

(f) Public and private universities; and

(g) Any organization located outside of Washington state boundaries.

(6) Grant applications failing to qualify may be resubmitted.

AMENDATORY SECTION (Amending Order 90-20, filed 9/4/90, effective 10/5/90)

WAC 173-321-050 Application evaluation criteria.

(1) Except for emergency grants which will be reviewed and evaluated by the department within twenty working days of receipt of the application, all other grant applications received will be reviewed and evaluated by the department within thirty working days after the close of the regular grant application period. Incomplete applications will not be evaluated. Applications will be ranked according to how each application meets the criteria set forth below. Grants will be awarded, within the limits of available funds, to the highest ranking applications. The department may fund all or portions of eligible grant applications.

(2) Priority consideration for public participation grant funding will be given to:

(a) Applicants requesting a hazardous substance release grant;

(b) New applicants; and

(c) Applicants that demonstrate the ability to provide accurate technical information on complex waste management issues.

(3) General criteria. All public participation grants will be evaluated against the following criteria:

(a) The type and extent of the applicant group's past history and experience conducting activities similar to those described in the grant application;

(b) The group's basic funding, with consideration given to groups with limited resources;

(c) The group's ability to appropriately manage grant funds;

(d) Except for emergency grants, if more than one group is interested in the same project, priority consideration will be given to groups who consolidate;

(e) Availability of funding sources for the project;

(f) Past performance under a public participation grant;

(g) The group's ability to define the environmental issue and identify what changes will occur in the problem as a result of the project; and

(h) Demonstration of the use of Bennett's hierarchy or similar methodology with a focus on outcome and clear commitment to follow through to end results.

(4) Special criteria.

(a) Hazardous substance release grants. Hazardous substance release grants, including emergency grants, will be evaluated against the following criteria:

(i) The degree to which the applicant group may be adversely or potentially adversely impacted by the release or threatened release of the hazardous substance, including but not limited to adverse or potential adverse impacts to surface and drinking waters, soils, flora or fauna, species diversity, air quality, property values, marketability of agricultural crops, and recreational areas;

(ii) The degree to which the applicant group represents the environmental, health, and economic interests of individual group members;

(iii) The degree to which the proposed project will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance.

(b) Waste management priorities grants. Waste management priorities grants will be evaluated against the following criteria:

(i) The degree to which the proposed public participation activity will promote or implement the state solid or hazardous waste management priorities;

(ii) The degree to which the proposed project will facilitate public understanding of the state solid and hazardous waste management priorities;

(iii) The degree to which the proposed public participation activities are consistent with or improve upon existing solid or hazardous waste management plans.

AMENDATORY SECTION (Amending Order 89-26, filed 10/17/89, effective 11/17/89)

WAC 173-321-060 Eligible project costs. (1) Eligible project costs for substance release grants shall include but not be limited to:

(a) Hiring technical assistants to review and interpret documents;

(b) Public involvement and public education activities;

(c) Reviewing specific plans for environmental testing and analysis, reviewing reports summarizing the results of such plans and making recommendations for modifications to such plans.

(d) Expendable personal property;

(e) Other public participation activities as determined by the department on a case-by-case basis.

(2) Eligible project costs for waste management priority grants shall include but not be limited to:

(a) Assisting in developing and implementing programs that promote or improve state or local solid or hazardous waste management plans;

(b) Assisting in developing programs or activities that promote and are consistent with the state solid or hazardous waste management priorities;

(c) Expendable personal property;

(d) Other public participation activities as determined by the department on a case-by-case basis.

(3) Ineligible projects and grant costs shall include but not be limited to:

(a) Independently collecting or analyzing samples at facility sites;

(b) Hiring attorneys for legal actions against potentially liable persons, facility owners, or the department. Applicants who receive a grant award shall notify the department if legal action is intended or taken on the subject of the grant project or application;

(c) Legislative lobbying activities;

(d) Real property;

(e) Nonexpendable personal property.

AMENDATORY SECTION (Amending Order 89-26, filed 10/17/89, effective 11/17/89)

WAC 173-321-070 Grant funding. (1) The department may fund up to one hundred percent of eligible project costs.

(2) The maximum grant allowance shall be ~~((fifty))~~ sixty thousand dollars.

(3) Public participation grants may be renewed annually. A new grant application must be submitted ~~((each year))~~ to be evaluated and ranked for additional funding.

(4) The department reserves the right to refuse funding to any and all applications failing to meet the grant eligibility criteria and may reopen the application period for additional applications.

AMENDATORY SECTION (Amending Order 89-26, filed 10/17/89, effective 11/17/89)

WAC 173-321-080 Grant administration. (1) The department shall establish grant application funding cycles each year.

(2) Public notice of application funding cycles shall be published state-wide.

(3) A grant application package will be sent to all persons interested in applying for public participation grants. Grant application packages will include notice of grant application deadlines, grant guidelines, and application forms.

(4) Grant applications will be evaluated by the department. To be funded, applications must include all required elements as outlined in the guidelines.

(5) The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation, and such other conditions not reasonably foreseeable which may preclude awarding such grants.

(6) The department, on at least a biennial basis, will determine the amount of funding available for public participation grants and establish an application and funding cycle. The minimum amount of money available for public participation grants established by the Model Toxics Control Act shall be one percent of the moneys deposited into the state and the local toxics control accounts.

(7) The department shall not be held responsible for payment of salaries, consultant fees, or other costs related to a contract of the grantee.

(8) To the extent that the Constitution and laws of the state of Washington permit, the grantee shall indemnify and hold the department harmless, from and against, any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee arising out of a grant contract.

(9) All grants under this chapter shall be consistent with ~~((the provisions of "Financial Guidelines for Grant Management" WDOE 80-6, May 1980, Reprinted March 1982, or such subsequent guidelines))~~ "Administrative Requirements for Ecology Grants and Loans" WDOE publication No. 91-18, revised October 2000.

Chapter 173-322 WAC

REMEDIAL ACTION GRANTS AND LOANS

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-020 Definitions. Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200.

"Act" means the "Model Toxics Control Act," chapter 70.105D RCW.

"Agreed order" means an order issued under WAC 173-340-530.

"Area-wide ground water contamination" means multiple adjacent properties with different ownership affected by hazardous substances from multiple sources that have resulted in commingled plumes of contaminated ground water that are not practicable to address separately.

"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup standards, utilizes permanent solutions to the maximum extent practicable, and includes adequate monitoring to ensure the effectiveness of the cleanup action.

"Consent order" means an order issued under chapter 90.48 or 70.105B RCW.

"Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns and sets forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.

"Decree" means a consent decree under WAC 173-340-520. "Consent decree" is synonymous with decree.

"Department" means the department of ecology.

"Disposal" means a remedial action which removes hazardous substances from the site and places the hazardous substances in an engineered, regulatory-complaint facility as a final destination.

"Enforcement order" means an order issued under WAC 173-340-540.

"Grant agreement" means a binding agreement between the local government and the department that authorizes the transfer of funds to the local government to reimburse it for a portion of expenditures in support of a specified scope of services.

"Hazard ranking" means the ranking for hazardous waste sites used by the department pursuant to chapter 70.105D RCW.

"Hazardous substances" means any substances as defined in WAC 173-340-200.

"Hazardous waste site" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

"Independent remedial actions" means remedial actions conducted without department oversight or approval and not under an order or decree.

"Interim action" means a remedial action conducted under WAC 173-340-430 that partially addresses the cleanup of a site.

"Local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

"Minimum functional standards" means the requirements of chapters 173-304 and 173-351 WAC, the minimum functional standards for solid waste handling.

"National Priorities List (NPL)" means a list of hazardous waste sites at which the United States Environmental Protection Agency intends to proceed with enforcement or cleanup action.

"No further action (NFA) determination" means an opinion issued by the department under WAC 173-340-515 (5)(b).

"Oversight costs" are remedial action costs of the department or the United States Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at a hazardous waste site.

"Pilot study" means an experiment in remedial action method, with the purpose of testing the suitability of a particular cleanup technology or process for remedial action at a particular site.

"Potentially liable person (PLP)" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system and collection or pre-treatment storage facilities not under control of the purveyor but primarily used in connection with such system.

"Purveyor" means an agency or subdivision of the state or a municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that owns or operates a public water system, or the authorized agent of such entities.

"Recycling" means a remedial action which permanently removes hazardous substances from the site and successfully directs the material into a new product suitable for further industrial or consumer use.

"Remedial action" means any action or expenditure to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

"Remedial design (RD)" means an engineering study during which technical plans and specifications are developed to guide subsequent cleanup action at a hazardous waste site.

"Remedial investigation/feasibility study (RI/FS)" means a study intended to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action.

"Safe drinking water" means water meeting drinking water quality standards set by chapter 246-290 WAC.

"Safe drinking water action" means an action by a local government purveyor or other purveyor to provide safe drinking water through public water systems to areas contaminated by or threatened by contamination from hazardous waste sites.

"Site hazard assessment" means a remedial action that consists of an investigation performed under WAC 173-340-320.

"Site study and remediation" means remedial investigation, feasibility study, pilot study, remedial design, interim action or cleanup action at hazardous waste sites ~~((at which a local government is a potentially liable person (PLP) identified by the department))~~.

"Treatment" means a remedial action which permanently destroys, detoxifies, or recycles hazardous substances.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-030 Relation to other legislation and administrative rules. (1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous waste investigation and cleanup.

(2) Nothing in this chapter shall modify the legal settlements and ~~((enforcement))~~ orders the department has secured with potentially liable persons for remedial action. The execution of remedies pursuant to court order or decree shall in no way be contingent upon the availability of grant funding.

(3) All grants shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grant funds.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-040 Applicant eligibility. (1) All applicants must be local governments as defined in this chapter.

(2) Site study and remediation grants. Eligibility for site study and remediation grants is limited to applicants that meet the following standards:

(a) The applicant must be a local government ~~((which))~~ that is a potentially liable person (PLP) at a hazardous waste site; or owns a site but is not a PLP; or applies for a remediation grant for area-wide ground water contamination. The local government may be the sole PLP, or there may be other PLPs at the site.

(b) The local government must meet one of the following standards:

(i) The department must have required the local government to perform some phase of remedial action, or have approved or reviewed a completed remedial action. That requirement ~~((may)),~~ approval or review shall take ((any))

one of the following forms ((, hereinafter referred to as "order or decree")):

(A) A consent decree under chapter 70.105D or 70.105B RCW requiring remedial action at the site; or

(B) An enforcement order or an agreed order under chapter 70.105D or 70.105B RCW prior to March 1, 1989, requiring remedial action at the site; or

(C) An enforcement order ~~((or a)),~~ consent order or consent decree under chapter 90.48 RCW requiring remedial action at the site or an amendment to such an order subsequent to March 1, 1989; or

(D) An underground storage tank (UST) compliance order; or

(E) A no further action (NFA) determination issued after completion of an independent remedial action.

(ii) The local government which is also a potentially responsible party under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) must have entered into a decree requiring remedial action at a hazardous waste site with the United States Environmental Protection Agency, provided that such agreement has been signed or acknowledged by the department in writing as a sufficient basis for remedial action grant funding.

(iii) The local government must have signed an agreement with the department requiring another PLP to perform remedial action at a landfill site and that agreement must take one of the forms specified in (b)(i) of this subsection. The local government must also have entered into an agreement with that PLP to reimburse the PLP for a portion of incurred remedial action costs with the sole purpose of providing relief to ratepayers and/or taxpayers from some remedial action costs.

(3) Safe drinking water action grants. Eligibility for safe drinking water action grants is limited to applicants who meet the following standards:

(a) The applicant must be a local government purveyor as defined in WAC 173-322-020 or be a local government applying on behalf of a purveyor.

(b) The subject water system must be in an area determined by the department of ecology to be a hazardous waste site or threatened by contamination from a hazardous waste site.

(c) The subject water system must exhibit levels of contamination which exceed the primary maximum contaminant levels (MCLs) set by WAC 246-290-310 or EPA standards as determined by the department of health, or exhibit levels of contamination which exceed the standards set by WAC 173-340-700 through 173-340-760 as determined by the department of ecology, or be certified by the state department of health that a contaminant threatens the safety and reliability of a public water system which cannot be remedied solely by operational solutions. Contaminants must include at least one hazardous substance. If the contaminant is a nitrate or a trihalomethane, it must be determined to have originated from a hazardous waste site.

(d) An order or decree must be issued to the identified potentially liable persons requiring that safe drinking water be provided to the contaminated area as part of a remedial

action. The department may waive this requirement if it has determined that no viable potentially liable persons exist, or if public health would be threatened from unreasonable delays associated with the search for potentially liable persons, or the order or decree process.

(e) If water line extensions are included in the proposed projects, such extensions must be consistent with the coordinated water system plan and growth management plan for the geographic area containing the affected water supplies.

(f) The applicant must be in substantial compliance, as determined by the department of health, with applicable rules of the Washington state board of health or the department of health, as contained in chapter 246-290 WAC (Public water supplies), chapter 246-292 WAC (Water works operator certification), chapter 246-293 WAC (Water System Coordination Act), and chapter 246-294 WAC (Drinking water operating permits).

(4) Site hazard assessment grants. The purpose of site hazard assessment grants is to involve local health districts and departments in assessing the degree of contamination at suspected hazardous waste sites according to WAC 173-340-320. While enabling local health districts or departments to participate in the scoring and ranking process, the department retains the authority to review and verify the results of a site hazard assessment and to establish the hazard ranking of the site. Eligibility for site hazard assessment grants is limited to applications that meet the following standards:

(a) The applicant must be a local health district or department.

(b) The scope of work for a site hazard assessment must conform to WAC 173-340-320 and prescribed guidelines issued by the department.

(c) The assessment must be for sites agreed to by the department.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-050 Project and cost eligibility. (1) Costs for site study and remediation.

(a) Eligible costs include reasonable costs, including sales tax, incurred in performing:

- (i) Remedial investigations((-));
- (ii) Feasibility studies((-));
- (iii) Remedial designs((-));
- (iv) Pilot studies((-);
- (v) Interim actions((-);
- (vi) Landfill closures as required by chapters 173-304 and 173-351 WAC if included in the order or decree for remedial action(~~(- and as limited by WAC 173-322-090);~~);

(vii) Other remedial action included in the order or decree for remedial action((-), or included as part of the independent remedial action for which a no further action (NFA) determination is issued;

(viii) Capital costs of long-term monitoring systems((-); and

(ix) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed.

(b) Ineligible costs:

(i) Retroactive costs except as limited by WAC 173-322-100((-);

(ii) Legal fees and penalties((-);

(iii) Oversight costs((-);

(iv) Operating and maintenance costs after the first year of accomplishing the remedial action((-);

(v) Operating and maintenance costs of long-term monitoring((-); and

(vi) ~~(Costs incurred in conducting independent remedial actions;~~

~~(vii))~~ At sites other than landfills, additional ineligible costs will include costs incurred to meet departmental requirements for source control and prevention.

(2) Costs for safe drinking water actions.

(a) Eligible costs include reasonable costs, including sales tax, incurred for:

(i) Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances((-);

(ii) Transmission lines between major system components, including inter-ties with other water systems((-);

(iii) Treatment equipment and facilities((-);

(iv) Distribution lines from major system components to system customers or service connections((-);

(v) Fire hydrants((-);

(vi) Service meters((-);

(vii) Project inspection, engineering, and administration((-);

(viii) Other costs identified by the state department of health as necessary to provide a system that operates in compliance with federal and state standards, or by the coordinated water system plan as necessary to meet required standards((-);

(ix) Other costs identified by the department of ecology as necessary to protect a public water system from contamination from a hazardous waste site or to determine the source of such contamination((-);

(x) Individual service connections, including any fees and charges, provided that property owners substantially participate in financing the cost of such connections((-);

(xi) Drinking water well abandonment for wells identified by the department as an environmental safety or health hazard according to WAC 173-160-415((-); and

(xii) Interim financing where necessary as a prerequisite to local government issuance of revenue bonds.

(b) Ineligible costs include:

(i) Legal fees and penalties((-);

(ii) Ecology oversight costs((-);

(iii) Operating and maintenance costs((-);

(iv) Retroactive costs except as limited by WAC 173-322-100;

(v) Natural resource damage assessment; and

(vi) Costs for source control or pollution prevention activities at sites other than landfills.

(3) Costs for site hazard assessments. Eligible costs include costs for activities performed pursuant to WAC 173-340-320 and enabling local health districts or departments to participate in the department's site ranking and priority-setting process.

(4) Costs must be eligible under this section and must be approved by the department in order to be eligible for reimbursement.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-060 Application process. (1) Application period. The department shall determine appropriate application periods.

(2) Grant applications must:

(a) Include a commitment by the applicant for local funds to match grant funds according to the requirements of WAC 173-322-090.

(b) For site study and remediation projects include a scope of work which accomplishes the requirements of an order or decree.

(c) For safe drinking water action projects, include a scope of work necessary to provide safe drinking water to the area threatened or contaminated.

(d) For site hazard assessment projects, include a scope of work which conforms to the requirements of WAC 173-340-320(4).

(e) For independent remedial actions, include a description of the remedial action for which a no further action (NFA) determination was issued and include a copy of the NFA determination document.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-070 Application evaluation and prioritization. (1) When pending grant applications or anticipated demand for site study and remediation grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on ~~((criteria identified in grant guidelines, including))~~ the following:

(a) Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the United States Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority.

(b) Evidence that the grant will expedite cleanup.

(c) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(2) When pending grant applications or anticipated demand for safe drinking water action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on ~~((criteria identified in grant guidelines, including))~~ the following:

(a) Relative risk to human health as jointly determined by the department of ecology, in accordance with WAC 173-340-330, and the department of health, in accordance with WAC 246-290-310. Sites with greater risk will receive higher funding priority.

(b) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(c) Ownership of the water system to be extended or improved. Local government-owned systems will receive higher funding priority than other systems.

(d) Number of people served by the water system and per capita cost of remediation.

(3) When pending grant applications or anticipated demand for site hazard assessment grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on ~~((criteria identified in grant guidelines, including))~~ the following:

(a) Potential public health or environmental threat from the sites.

(b) Ownership of the sites. Publicly-owned sites will receive priority over privately-owned sites.

(c) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-090 State assistance share, local cash match, economic disadvantage, and role of potentially liable persons. (1) Except as otherwise provided in this section, costs eligible for site study and remediation and safe drinking water action grants will be considered for grant funding at up to fifty percent, except ((that local governments that do not qualify as economically disadvantaged shall receive no more than five hundred thousand dollars for the minimum landfill closure requirements of chapter 173-304 WAC)) in the case of site study and remediation grants with eligible costs of over two hundred thousand dollars, local governments who utilize treatment, recycling and/or disposal as part or all of the cleanup action shall be eligible to receive an additional fifteen percent. Independent remedial action grant funds are available only for projects with eligible costs of less than two hundred thousand. The additional fifteen percent funds do not apply to independent remedial actions.

(2) Costs for site hazard assessments which are eligible under WAC 173-322-050(3) will be considered for grant funding of up to one hundred percent. ~~((No grant for site hazard assessment shall exceed two hundred thousand dollars per health district or department per biennium.))~~

(3) Costs for area-wide ground water contamination remediation grants will be considered for grant funding of more than fifty percent. Local governments shall be required to obtain partial reimbursement from PLPs. Reasonable measures shall be taken by local governments to maximize reimbursement. The amount of grant funds and how much to pay back will be determined by the department on a case-by-case basis.

(4) Grant funding for economically disadvantaged local governments.

(a) In addition to grant funding under subsection (1) of this section, economically disadvantaged local governments may apply for up to twenty-five percent supplemental funding ~~((, not to exceed seventy-five percent of eligible costs)).~~ This additional funding will be contingent on satisfactory demonstration of extraordinary financial need.

(b) A local government is considered economically disadvantaged if it is a county, or a local government within a county, which meets both of the following criteria:

(i) Per capita income, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and

(ii) It is economically distressed as defined by chapter 43.165 RCW.

(c) The department will include a list of counties which are economically disadvantaged as defined herein in the guidelines for remedial action grants to be published on a biennial basis.

~~((4))~~ (5) For applicants eligible for site study and remediation grants, if a decree or order requires a potentially liable person (PLP) other than a local government to conduct remedial action, the financial contribution of that PLP will be deducted from the amount eligible for grant funding to the local government.

~~((5))~~ (6) For applicants eligible for safe drinking water action grants, funding from either the local government or the PLP may be used to match remedial action grant funds.

~~((6))~~ (7) As established by the Model Toxics Control Act, chapter 70.105D RCW, and implementing regulations, the potentially liable persons bear financial responsibility for remedial action costs. The remedial action grant program may not be used to circumvent the PLP responsibility.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-100 Fiscal controls. (1) The department will establish reasonable costs for all grants, require applicants to manage projects in a cost effective manner, and ensure that all potentially liable persons (PLPs) assume responsibility for remedial action.

(2) The department retains the authority to issue grants which reimburse the recipient for less than the maximum percentage allowable under WAC 173-322-090.

(3) Cap on site funding. Except for independent remedial actions where a no further action (NFA) determination is issued after cleanup has been completed, after the remedial investigation and feasibility study have been completed and a final remedial action plan has been developed by an eligible applicant, the department and the applicant will establish a final cleanup budget and negotiate a grant agreement. The grant amount in this agreement will be the final department remedial action grant fund commitment for cleanup at that hazardous waste site. Grant agreements may be amended, but requests to increase the remedial action grant budget at that site will receive a lower priority than other applications.

(4) Retroactive funding. Grant funding of costs already incurred prior to the date of the grant agreement may be allowed to local governments ~~((PLPs))~~ where the order or decree with the department, if any, postdates March 1, 1989, and under one or more of the following circumstances:

(a) If the grant application period is closed when the order or decree becomes effective;

(b) If the department unreasonably delays the processing of a remedial action grant application;

(c) If there are inadequate funds in the local toxics control account to cover the entire scope of work required by decree or order; and/or

(d) If remedial actions not required by decree or order have proceeded, grants for this work may be made if the department later formally includes such work items in a decree or order, or for independent remedial actions conducted no earlier than five years before the date of application if a no further action (NFA) determination is given for that independent remedial action.

(5) Reimbursement of grant funds. If the department awards remedial action funds to a local government that successfully pursues a ~~((successful settlement))~~ private right of action against a PLP who has not settled with the department or successfully pursues a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the ~~((settlement))~~ moneys received, after the local government's legal fees in pursuing such ~~((contribution))~~ actions have been deducted.

(6) Repayment of grant funds. Where the department provides a remediation grant for area-wide ground water contamination to a local government, the grant amount shall be partially repaid to the department where ownership of property affected by the grant is held by private parties. The terms and amount of repayment will be included in the grant agreement between the local government and the department.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-110 Grant administration. (1) Local governments will be periodically informed of the availability of remedial action grant funding.

(2) A grant application package will be sent to all parties expressing interest in remedial action grants and to all local governments that have been required by decree or order to perform remedial actions. Grant application packages will include grant guidelines and application forms.

(3) Application must be made within sixty days after the date that a decree or order becomes effective or for independent remedial actions, within sixty days of receipt of a no further action (NFA) determination.

(4) The department will prepare a guidance manual on a biennial basis to assist grant applicants and to facilitate compliance with this regulation.

(5) Appropriation and allocation of funds. Grants will be awarded within the limits of available funds. The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant crosses over bienniums, the obligation of the department is contingent upon the legislative appropriation of funds for the next biennium.

(6) Remedial action grants shall be used to supplement local government funding and funding from other sources to carry out required remedial action.

(7) The department may fund all or portions of eligible grant applications.

(8) To the extent that the Constitution and laws of the state of Washington permit, the grantee shall indemnify and hold the department harmless, from and against, any liability for any or all injuries to persons or property arising from the

negligent act or omission of the grantee arising out of a grant contract.

(9) All grants under this chapter shall be consistent with "Administrative Requirements for Ecology Grants and Loans" WDOE publication No. 91-18, revised October 2000.

AMENDATORY SECTION (Amending Order 89-45, filed 5/1/90, effective 6/1/90)

WAC 173-322-120 (~~(Grant administration.)~~) **Loans.**
~~((1) Local governments will be periodically informed of the availability of remedial action grant funding.~~

~~(2) A grant application package will be sent to all parties expressing interest in remedial action grants and to all local governments that have been required by decree or order to perform remedial actions. Grant application packages will include grant guidelines and application forms.~~

~~(3) Application must be made within sixty days after the date that a decree or order becomes effective, or within sixty days of the effective date of this rule for local governments which meet the requirements of WAC 173-322-050, but which have not submitted an application for remedial action grant funding.~~

~~(4) The department will prepare a guidance manual on a biennial basis to assist grant applicants and to facilitate compliance with this regulation.) The department may award a loan or combination loan and grant to a grant applicant. Loan terms and the repayment provisions of a loan shall be established on a case-by-case basis under an agreement between the local government and the department.~~

WSR 01-05-035

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 00-22—Filed February 13, 2001, 4:31 p.m.]

Date of Adoption: February 12, 2001.

Purpose: Chapter 173-09 WAC necessitates repeal because the state statute on which chapter 173-09 WAC was based (i.e., chapter 90.60 RCW, Environmental Permit Assistance Act) was repealed June 30, 2000, per the provisions of RCW 43.131.388.

Citation of Existing Rules Affected by this Order: Repealing chapter 173-09 WAC.

Statutory Authority for Adoption: Chapter 43.21A RCW, Department of Ecology.

Adopted under preproposal statement of inquiry filed as WSR 00-18-083 on September 5, 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 4.

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 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0; Amended 0, Repealed 4.

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

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

February 12, 2001

Tom Fitzsimmons

Director

WSR 01-05-036

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 00-23—Filed February 13, 2001, 4:33 p.m.]

Date of Adoption: February 12, 2001.

Purpose: To repeal rules inconsistent with the holding of the United States Supreme Court in *United States v. Locke, et al.*, 529 U.S. ___, 120 S.Ct. 1135 (2000).

Citation of Existing Rules Affected by this Order: Repealing WAC 317-21-010 Purpose, 317-21-020 Application, 317-21-030 Duties, 317-21-040 Information protected from public disclosure, 317-21-050 Language, 317-21-060 Definitions, 317-21-070 Plan submission, 317-21-100 Format, 317-21-110 Units of measure, 317-21-120 Submittal agreement, 317-21-140 Vessel specific information and documentation, 317-21-300 Operating procedures—Watch procedures, 317-21-305 Operating procedures—Navigation procedures, 317-21-310 Operating procedures—Emergency procedures, 317-21-315 Personnel policies—Crewing, 317-21-320 Personnel policies—Training, 317-21-325 Personnel policies—Illicit drug and alcohol use, 317-21-330 Personnel policies—Work hours, 317-21-335 Personnel policies—Record keeping, 317-21-340 Management, 317-21-345 Technology, 317-21-400 Review process, 317-21-410 Plan approval, 317-21-500 Administrative actions, 317-21-510 Administrative review, 317-21-520 Waivers, 317-21-530 Plan updates, 317-21-550 Inspections and investigations, 317-21-560 Exceptional compliance, 317-21-900 Severability, and 317-21-910 Effective date.

Statutory Authority for Adoption: RCW 34.05.354.

Other Authority: RCW 43.211.030.

Adopted under notice filed as WSR 00-23-104 on November 21, 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 31; 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 31.

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 12, 2001

Tom Fitzsimmons

Director

WSR 01-05-040
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed February 14, 2001, 3:25 p.m.]

Date of Adoption: February 14, 2001.

Purpose: WAC 388-551-3000 Private duty nursing services for clients seventeen years of age and younger, this rule explains private duty nursing services available for clients seventeen years of age and younger. Private duty nursing services for clients over seventeen years of age will be adopted by the DSHS Aging and Adult Services Administration (AASA). AASA will repeal WAC 388-86-071, which currently covers services available for adults and children, when they adopt their new rule(s) in chapter 388-71 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-86-071 Private duty nursing services.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.520.

Adopted under notice filed as WSR 00-17-079 on August 14, 2000.

Changes Other than Editing from Proposed to Adopted Version: (2) To be eligible for private duty nursing services, a client must meet all the following:

(a) Be seventeen years of age or younger (see chapter 388-71 WAC for information about private duty nursing services for clients eighteen years of age and older);

(b) Be eligible for Categorically Needy (CN) or Medically Needy (MN) scope of care (see WAC 388-529-~~0100~~ 0200 for client eligibility);

(c) Need continuous skilled nursing care that can be provided safely outside an institution; and

(e) Have prior authorization from the department.

(5) The department approves requests for private duty nursing services for eligible clients on a case-by-case basis when:

(a) The information submitted by the provider is complete;

(b) The care ~~will be provided~~ will be based in the client's home;

(c) ~~The cost of private duty nursing does not exceed the cost to the department for institutional care~~ will be provided in the most cost-effective setting;

(d) An adult family member, ~~or guardian,~~ or other designated adult has been trained and is capable of providing the skilled nursing care;

(e) A registered or licensed practical nurse will provide the care under the direction of a physician; and

(f) Based on the referral submitted by the provider, the department determines:

(i) The services are medically necessary for the client because of a complex medical need that requires continuous skilled nursing care which can be provided safely in the client's home; and

(ii) The client requires more nursing care than is available through home health services program; and

(iii) The home care plan is safe for the client.

(9) Any hours of nursing care in excess of those authorized by the department ~~must be provided by a trained family member or guardian, or paid for by~~ are the responsibility of the client, family or guardian.

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 1, Amended 0, Repealed 1.

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

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

February 14, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

NEW SECTION

WAC 388-551-3000 Private duty nursing services for clients seventeen years of age and younger. This section applies to private duty nursing services for eligible clients on fee-for-service programs. Managed care clients receive private duty nursing services through their plans (see chapter 388-538 WAC).

(1) "**Private duty nursing**" means four hours or more of continuous skilled nursing services provided in the home to eligible clients with complex medical needs that cannot be managed within the scope of intermittent home health services. Skilled nursing service is the management and administration of the treatment and care of the client, and may include, but is not limited to:

(a) Assessments (e.g., respiratory assessment, patency of airway, vital signs, feeding assessment, seizure activity, hydration, level of consciousness, constant observation for comfort and pain management);

(b) Administration of treatment related to technological dependence (e.g., ventilator, tracheotomy, bilevel positive airway pressure, intravenous (IV) administration of medications and fluids, feeding pumps, nasal stints, central lines);

(c) Monitoring and maintaining parameters/machinery (e.g., oximetry, blood pressure, lab draws, end tidal CO₂s, ventilator settings, humidification systems, fluid balance, etc.); and

(d) Interventions (e.g., medications, suctioning, IV's, hyperalimentation, enteral feeds, ostomy care, and tracheostomy care).

(2) To be eligible for private duty nursing services, a client must meet all the following:

(a) Be seventeen years of age or younger (see chapter 388-71 WAC for information about private duty nursing services for clients eighteen years of age and older);

(b) Be eligible for categorically needy (CN) or medically needy (MN) scope of care (see WAC 388-529-0100 and 388-529-0200 for client eligibility);

(c) Need continuous skilled nursing care that can be provided safely outside an institution; and

(d) Have prior authorization from the department.

(3) The department contracts only with home health agencies licensed by Washington state to provide private duty nursing services and pays a rate established by the department according to current funding levels.

(4) A provider must coordinate with a division of developmental disabilities case manager and request prior authorization by submitting a complete referral to the department, which includes all of the following:

(a) The client's age, medical history, diagnosis, and current prescribed treatment plan, as developed by the individual's physician;

(b) Current nursing care plan that may include copies of current daily nursing notes that describe nursing care activities;

(c) An emergency medical plan which includes notification of electric, gas and telephone companies as well as local fire department;

(d) Psycho-social history/summary which provides the following information:

(i) Family constellation and current situation;

(ii) Available personal support systems;

(iii) Presence of other stresses within and upon the family; and

(iv) Projected number of nursing hours needed in the home, after discussion with the family or guardian.

(e) A written request from the client or the client's legally authorized representative for home care.

(5) The department approves requests for private duty nursing services for eligible clients on a case-by-case basis when:

(a) The information submitted by the provider is complete;

(b) The care provided will be based in the client's home;

(c) Private duty nursing will be provided in the most cost-effective setting;

(d) An adult family member, guardian, or other designated adult has been trained and is capable of providing the skilled nursing care;

(e) A registered or licensed practical nurse will provide the care under the direction of a physician; and

(f) Based on the referral submitted by the provider, the department determines:

(i) The services are medically necessary for the client because of a complex medical need that requires continuous skilled nursing care which can be provided safely in the client's home;

(ii) The client requires more nursing care than is available through the home health services program; and

(iii) The home care plan is safe for the client.

(6) Upon approval, the department will authorize private duty nursing services up to a maximum of sixteen hours per day except as provided in subsection (7) of this section, restricted to the least costly equally effective amount of care.

(7) The department may authorize additional hours:

(a) For a maximum of thirty days if any of the following apply:

(i) The family or guardian is being trained in care and procedures;

(ii) There is an acute episode that would otherwise require hospitalization, and the treating physician determines that noninstitutionalized care is still safe for the client;

(iii) The family or guardian caregiver is ill or temporarily unable to provide care;

(iv) There is a family emergency; or

(v) The department determines it is medically necessary.

(b) If the department determines it is medically necessary according to the process explained in WAC 388-501-0165, Determination process for coverage of medical equipment and medical or dental services.

(8) The department adjusts the number of authorized hours when the client's condition or situation changes.

(9) Any hours of nursing care in excess of those authorized by the department are the responsibility of the client, family or guardian.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-86-071

Private duty nursing services.

WSR 01-05-041

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed February 14, 2001, 3:26 p.m.]

Date of Adoption: February 14, 2001.

Purpose: The amendment allows the department to include nursing facility and COPEs client population as meeting the emergent medical condition criteria for the alien emergency medical program and ensure coverage for them under this program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-438-0110.

Statutory Authority for Adoption: RCW 74.08.090 and C.F.R. 436.128, 436.406(c) and 440.255.

Adopted under notice filed as WSR 01-01-077 on December 13, 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

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

February 14, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 99-23-082, filed 11/16/99, effective 12/17/99)

WAC 388-438-0110 The alien emergency medical (AEM) program. (1) The alien emergency medical (AEM) program is a federally-funded program. It is for aliens who are ineligible for other Medicaid programs, due to citizenship or alien status requirements described in WAC 388-424-0005 and 388-424-0010.

(2) Except for the Social Security Number, citizenship, or alien status requirements, ~~((the))~~ an alien must meet categorical Medicaid eligibility requirements as described in:

(a) WAC 388-505-0110, for an SSI-related person;

(b) WAC 388-505-0220, for family medical programs;

(c) WAC 388-505-0210, for a child under the age of nineteen; or

(d) WAC 388-523-0100, for medical extensions.

(3) When an alien has monthly income which exceeds the CN medical standards, the department will consider AEM medically needy coverage for children or for adults who are age sixty-five or over or who meet SSI disability criteria. See WAC 388-519-0100.

(4) To qualify for the AEM program, the alien must have:

(a) An emergency medical condition as described in WAC 388-500-0005; or

(b) Been approved by the department as requiring nursing facility or COPES level of care.

(5) The alien's date of arrival in the United States is not used when determining eligibility for the AEM program.

WSR 01-05-047

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed February 15, 2001, 8:37 a.m.]

Date of Adoption: February 15, 2001.

Purpose: This rule provides for the annual assessment of blueberries established to support the purposes and objectives of the Washington Blueberry Commission provided for in the commission's marketing order. This adoption will reduce the assessment on all varieties of blueberries from three-quarters of a cent per affected unit (pound) to four-tenths of a cent per affected unit (pound).

Citation of Existing Rules Affected by this Order: Amending WAC 16-550-040.

Statutory Authority for Adoption: Chapter 15.65 RCW.

Adopted under notice filed as WSR 00-21-078 on October 17, 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 1, Repealed 0.

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

February 15, 2001

Jim Jesernig

Director

AMENDATORY SECTION (Amending WSR 91-01-054 (Order 2068), filed 12/13/90, effective 1/13/91)

WAC 16-550-040 Assessments and collections. (1) **Assessments.**

(a) The annual assessment on all varieties of blueberries shall be ~~((three-quarters))~~ four-tenths of a cent per affected unit (pound).

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment.

(c) Subsequent to the first sale no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

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(2) Collections. Any moneys collected or received by the board pursuant to the provisions of the order during or with respect to any season or year, may be refunded on a prorata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of such marketing agreement or order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) Penalties. Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized, to add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 01-05-055

PERMANENT RULES

SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:04 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to make editorial changes to reflect a name change for the agency, to revise the definitions of Volatile Organic Compound, and to update adoption of existing and new Federal New Source Performance Standards.

Citation of Existing Rules Affected by this Order: Amending SWCAA 400-010, 400-020, 400-030, 400-035, 400-040, 400-050, 400-052, 400-060, 400-070, 400-075, 400-076, 400-080, 400-081, 400-090, 400-091, 400-099, and 400-100.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-082 on December 5, 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 17, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 17, 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 17, Repealed 0.

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

February 9, 2001

Robert D. Elliott

Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-06 issue of the Register.

WSR 01-05-056

PERMANENT RULES

SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:06 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency, provide additional details for new source review fees, to change the reporting date for emission inventory submittals from April 15 to March 15, and make administrative clarifications.

Citation of Existing Rules Affected by this Order: Amending SWCAA 400-101, 400-105, 400-106, 400-107, 400-109, 400-110, 400-111, 400-112, 400-113, and 400-114.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-083 on December 5, 2000.

Changes Other than Editing from Proposed to Adopted Version: One clarification was added to 400-105 in regards to requiring all emissions to be reported to the agency no later than March 15. This clarification, based on public comment, provides the executive director with discretion to extend the date based on a written request and a demonstrated need.

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 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, 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 10, Repealed 0.

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

February 9, 2001

Robert D. Elliott

Executive Director

PERMANENT

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-06 issue of the Register.

WSR 01-05-057
PERMANENT RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:09 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency, to update the adoption date for the Federal New Source Performance Standards and adopt new standards, and to provide administrative clarifications.

Citation of Existing Rules Affected by this Order: Amending SWCAA 400-115, 400-116, 400-120, 400-130, 400-131, 400-135, 400-136, 400-141, 400-150, 400-151, 400-160, 400-161, 400-170, 400-171, 400-172, 400-180, 400-190, 400-200, 400-205, 400-210, 400-220, 400-230, 400-240, 400-250, 400-260, 400-270, 400-280, 400-290, and Appendix A.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-084 on December 5, 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 29, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 29, 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 29, Repealed 0.

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

February 9, 2001

Robert D. Elliott
 Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-06 issue of the Register.

WSR 01-05-058
PERMANENT RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:10 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose for adding Appendix B was to formally document the carbon monoxide and ozone mainte-

nance plan boundary. The previous descriptions have not been formally adopted.

Citation of Existing Rules Affected by this Order: Amending SWCAA 400 Appendix B.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-085 on December 5, 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 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

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

February 9, 2001

Robert D. Elliott
 Executive Director

NEW SECTION

APPENDIX B

DESCRIPTION OF VANCOUVER OZONE AND
 CARBON MONOXIDE MAINTENANCE AREA BOUNDARY

The ozone and carbon monoxide maintenance area boundary description begins at the northwest corner at the intersection of the section line on the south side of Section 36 of T4N.R1W and the north side of Section 1 of T3N.R1W. The boundary turns southward following the east shores of Lake River, until it would intersect with the 14900 block NW, then easterly to join with NW 149th Street. This boundary runs until it meets the western edge of Interstate 5, then north to 159th Street and east on 159th Street to the east side of NE 50th Avenue. On 50th Avenue the boundary runs south until it joins the south bank of Salmon Creek, following the south branch of the creek until it reaches NE Caples Road, then southerly on the west side of Caples Road (currently SR-502) until it intersects with NE 144th Street. The boundary continues eastward along the south side of NE 144th Street following the 14400 block plane to where it would join with the west side of NE 212 Avenue, then southward to the south side of NE 109th Street. The boundary continues east on NE 109th Street, then southerly along the west side of NE 232 Avenue to where the 23200 block joins with the northern edge of NE 58th Street. The boundary continues east on NE 58th Street until the 5800 block intersects with the western edge of Livingston Road. The boundary follows Livingston Road South until it turns into NE 292nd Avenue. Staying on the plane of the 29200 block, the boundary proceeds south

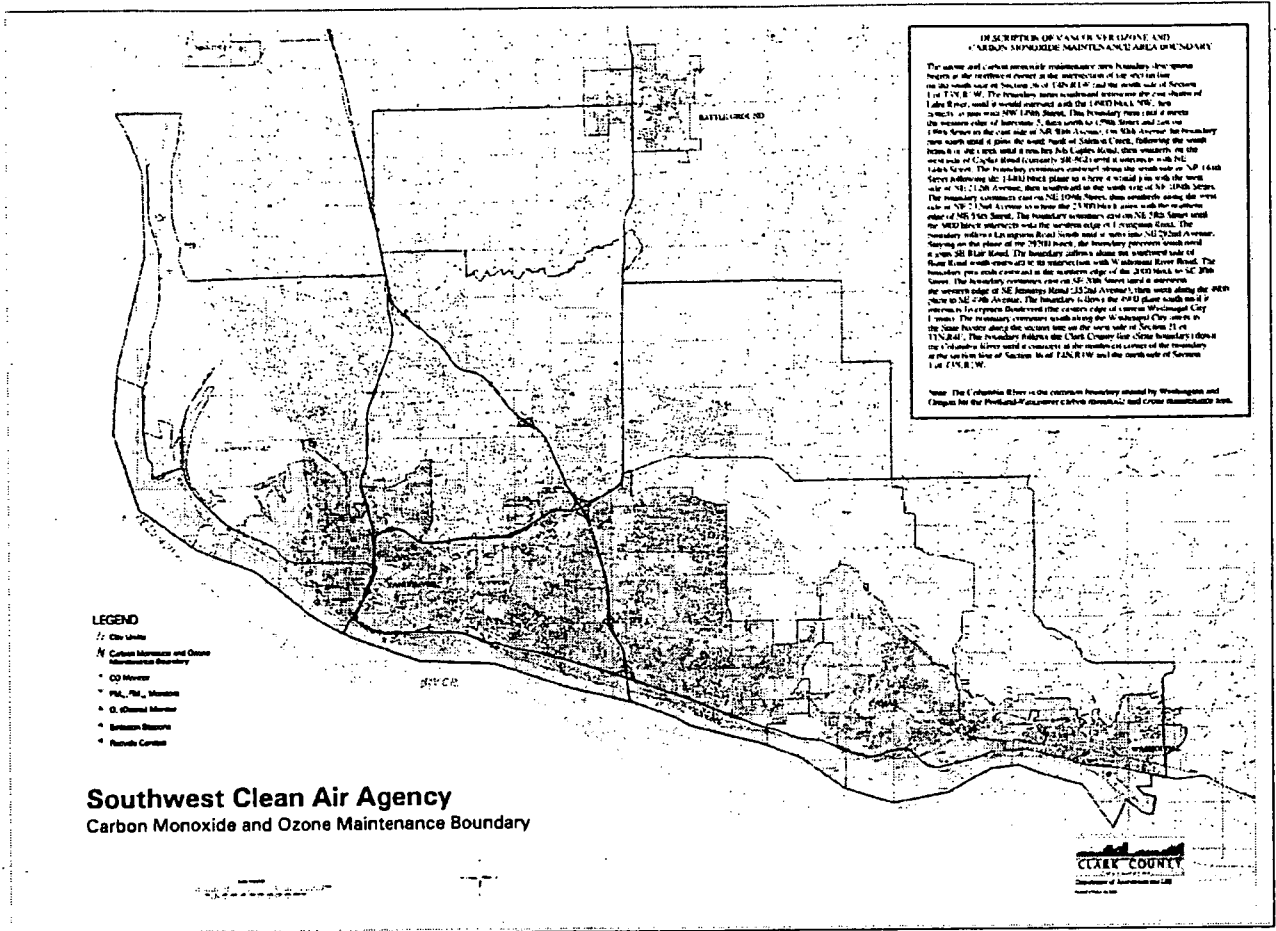
PERMANENT

until it joins SE Blair Road. The boundary follows along the south-west side of Blair Road south-eastward to its intersection with Washougal River Road. The boundary proceeds eastward at the northern edge of the 2000 block to SE 20th Street. The boundary continues east on SE 20th Street until it intersects the western edge of SE Jennings Road (352nd Avenue), then south along the 4900 plane to SE 49th Avenue. The boundary follows the 4900 plane south until it intersects Evergreen Boulevard (the eastern edge of current Washougal City limits). The boundary continues south along the Wash-

ougal City limits to the State border along the section line on the west side of Section 21 of T1N.R4E. The boundary follows the Clark County line (State boundary) down the Columbia River until it connects at the northwest corner of the boundary at the section line of Section 36 of T4N.R1W and the north side of Section 1 of T3N.R1W.

Note: The Columbia River is the common boundary shared by Washington and Oregon for the Portland-Vancouver carbon monoxide and ozone non-attainment area.

MAP OF VANCOUVER OZONE AND CARBON MONOXIDE MAINTENANCE AREA BOUNDARY



PERMANENT

WSR 01-05-059**PERMANENT RULES****SOUTHWEST CLEAN AIR AGENCY**

[Filed February 15, 2001, 10:11 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency. All changes were administrative in nature.

Citation of Existing Rules Affected by this Order: Amending SWCAA 433 Solid Fuel Burning Device.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-086 on December 5, 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 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.

February 9, 2001

Robert D. Elliott

Executive Director

((SWAPCA)) SWCAA 433**SOLID FUEL BURNING DEVICE**

AMENDATORY SECTION (Amending WSR 93-16-011, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 433 Solid Fuel Burning Device

Section 173-433 of the Washington Administrative Code is hereby adopted by reference as part of this regulation in all respects as though the sections were set forth herein in full.

WSR 01-05-060**PERMANENT RULES****SOUTHWEST CLEAN AIR AGENCY**

[Filed February 15, 2001, 10:12 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency. All changes were administrative in nature.

Citation of Existing Rules Affected by this Order: Amending SWCAA 435 Emergency Episode Plan.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-087 on December 5, 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 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.

February 9, 2001

Robert D. Elliott

Executive Director

((SWAPCA)) SWCAA 435**EMERGENCY EPISODE PLAN**

AMENDATORY SECTION (Amending WSR 93-16-011, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 435 Emergency Episode Plan

Section 173-435 of the Washington Administrative Code is hereby adopted by reference as part of this regulation in all respects as though the sections were set forth herein in full.

WSR 01-05-061**PERMANENT RULES****SOUTHWEST CLEAN AIR AGENCY**

[Filed February 15, 2001, 10:13 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency. All changes were administrative in nature.

Citation of Existing Rules Affected by this Order: Amending SWCAA 460 Controls for New Sources of Toxic Air Pollutants.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-088 on December 5, 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 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.
February 9, 2001
Robert D. Elliott
Executive Director

((SWAPCA)) SWCAA 460

CONTROLS FOR NEW SOURCES OF TOXIC AIR POLLUTANTS

AMENDATORY SECTION (Amending WSR 93-16-011, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 460 Controls for New Sources of Toxic Air Pollutants

Section 173-460 of the Washington Administrative Code is hereby adopted by reference as part of this regulation in all respects as though the sections were set forth herein in full.

WSR 01-05-062

PERMANENT RULES

SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:14 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of this rule making was to repeal the agency rule. This rule is unnecessary for SWCAA as the authority for establishment of ambient air quality standards rests with the Department of Ecology as provided in RCW 70.94.331.

Citation of Existing Rules Affected by this Order: Repealing SWAPCA 470 Ambient Air Quality Standards for Particulate Matter.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-089 on December 5, 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 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, 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 0, Amended 0, Repealed 7.

Effective Date of Rule: Thirty-one days after filing.
February 9, 2001
Robert D. Elliott
Executive Director

SWAPCA 470

AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

REPEALER (Amending WSR 93-16-011, filed 7/22/93, effective 8/22/93)

SWAPCA 470 Ambient Air Quality Standards for Particulate Matter

SWAPCA 470 is hereby repealed in full.

WSR 01-05-063

PERMANENT RULES

SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:15 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose for this rule making was to repeal the agency rule. This rule is unnecessary for SWCAA as the authority for establishment of ambient air quality standards rests with the Department of Ecology as provided under RCW 70.94.331.

Citation of Existing Rules Affected by this Order: Repealing SWAPCA 474 Ambient Air Quality Standards for Sulfur Oxides.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-090 on December 5, 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 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 5.

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 5.

Effective Date of Rule: Thirty-one days after filing.
February 9, 2001
Robert D. Elliott
Executive Director

PERMANENT

SWAPCA 474
 AMBIENT AIR QUALITY STANDARDS FOR SULFUR
 OXIDES

REPEALER (Amending WSR 93-16-011, filed 7/22/93, effective 8/22/93)

SWAPCA 474 Ambient Air Quality Standards for Sulfur Oxides

SWAPCA 474 is hereby repealed in full.

WSR 01-05-064

PERMANENT RULES

SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:16 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of this rule making was to repeal the agency rule. This rule is unnecessary for SWCAA as the authority for establishment of ambient air quality standards rests with the Department of Ecology as provided under RCW 70.94.331.

Citation of Existing Rules Affected by this Order: Repealing SWAPCA 475 Ambient Air Quality Standards for Carbon Monoxide, Ozone and Nitrogen Dioxide.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-091 on December 5, 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 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 5.

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 5.

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

February 9, 2001

Robert D. Elliott
 Executive Director

SWAPCA 475
 AMBIENT AIR QUALITY STANDARDS FOR CARBON
 MONOXIDE, OZONE, AND NITROGEN DIOXIDE

REPEALER (Amending WSR 93-16-011, filed 7/22/93, effective 8/22/93)

SWAPCA 475 Ambient Air Quality Standards for Carbon Monoxide, Ozone, and Nitrogen Dioxide

SWAPCA 475 is hereby repealed in full.

WSR 01-05-065

PERMANENT RULES

SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:17 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency. All changes were administrative in nature.

Citation of Existing Rules Affected by this Order: Amending SWCAA 476 Standards for Asbestos Control, Demolition, and Renovation.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-092 on December 5, 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 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.

February 9, 2001

Robert D. Elliott
 Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-06 issue of the Register.

WSR 01-05-066

PERMANENT RULES

SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:18 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency. All changes were administrative in nature.

Citation of Existing Rules Affected by this Order: Amending SWCAA 490 Emission Standards and Controls for Sources Emitting Volatile Organic Compounds (VOC).

Statutory Authority for Adoption: RCW 70.94.141.

PERMANENT

Adopted under notice filed as WSR 00-24-093 on December 5, 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 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.
February 9, 2001
Robert D. Elliott
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-06 issue of the Register.

WSR 01-05-067
PERMANENT RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:19 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency. All changes were administrative in nature.

Citation of Existing Rules Affected by this Order: Amending SWCAA 491 Emission Standards and Controls for Sources Emitting Gasoline Vapors.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-094 on December 5, 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 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.
February 9, 2001
Robert D. Elliott
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-06 issue of the Register.

WSR 01-05-068
PERMANENT RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed February 15, 2001, 10:20 a.m.]

Date of Adoption: February 1, 2001.

Purpose: The purpose of the proposed changes was to reflect a name change for the agency. All changes were administrative in nature.

Citation of Existing Rules Affected by this Order: Amending SWCAA 492 Oxygenated Fuels.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 00-24-095 on December 5, 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 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.
February 9, 2001
Robert D. Elliott
Executive Director

((SWAPCA)) SWCAA 492

OXYGENATED FUELS

- 492-010 Policy and purpose
- 492-020 Applicability
- 492-030 Definitions
- 492-040 Compliance requirements
- 492-050 Registration requirements
- 492-060 Labeling requirements
- 492-070 Control area and control period
- 492-080 Enforcement and compliance
- 492-090 Unplanned conditions
- 492-100 Severability

PERMANENT

AMENDATORY SECTION (Amending WSR 93-16-010, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 492-010 Policy and Purpose

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93]

The purpose of this regulation is to reduce carbon monoxide emissions from gasoline powered motor vehicles, through the wintertime use of oxygenated gasolines in areas that are either known or expected to exceed health-based air quality standards for carbon monoxide.

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

AMENDATORY SECTION (Amending WSR 96-21-103, filed 10/21/96, effective 11/21/96)

((SWAPCA)) SWCAA 492-020 Applicability

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93; WSR 96-21-103, filed 10/21/96, effective 11/21/96]

This regulation is only applicable to Clark County when the Carbon Monoxide Maintenance Plan Contingency Measure is triggered as a result of a confirmed violation of the carbon monoxide National Ambient Air Quality Standard (NAAQS) in the Vancouver air quality management area (AQMA). The Vancouver AQMA is described in the Carbon Monoxide Maintenance Plan. When triggered, this regulation shall apply to all gasoline offered for sale in the control area and over the control period defined in section ~~((SWAPCA)) SWCAA 492-070~~. This regulation and the discontinuance of the oxygenated fuel requirements shall be effective upon EPA approval of the Vancouver Carbon Monoxide Maintenance Plan.

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

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

AMENDATORY SECTION (Amending WSR 96-21-103, filed 10/21/96, effective 11/21/96)

((SWAPCA)) SWCAA 492-030 Definitions

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93; WSR 96-21-103, filed 10/21/96, effective 11/21/96]

The following words and phrases shall have the following meanings:

(1) ~~("Authority")~~ **"Agency"** means the Southwest Clean Air ~~((Pollution Control Authority))~~ Agency.

(2) "Blender" means a person who owns oxygenated gasoline which is sold or dispensed from an oxygenate blending facility for use in a control area during a control period.

(3) "Control area" means an area in which only oxygenated gasoline under the oxygenated gasoline program may be sold or dispensed. Each control area is a county or group of counties administered by the Authority.

(4) "Control period" means the period during which oxygenated gasoline must be sold or dispensed within the control area which is November 1 through February 29.

(5) "Ecology" or "WDOE" means the Washington State Department of Ecology.

(6) "Gasoline" means any fuel sold for use in motor vehicles equipped with internal combustion engines, and commonly known or sold as gasoline. Blended and oxygenated fuels are considered gasoline.

(7) "Large Volume Blender" means blenders that blend and offer for sale or sell one million gallons or more, but less than 15 million gallons, of oxygenated gasoline per month, on average, during a control period within a control area.

(8) "Medium Volume Blender" means blenders that blend and offer for sale or sell 100 thousand gallons or more, but less than one million gallons, of oxygenated gasoline per month, on average, during a control period within a control area.

(9) "Oxygenate" means any substance which, when added to gasoline, increases the amount of oxygen in the gasoline blend. Lawful use of any combination of these substances requires that they be substantially similar under section 211 (f)(1) of the Federal Clean Air Act (CAA), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of section 211 (f)(4) of the CAA.

(10) "Oxygenated gasoline" means gasoline ~~((which))~~ **that** contains a measurable amount of oxygenate, generally an alcohol or ether.

(11) "Small Volume Blender" means blenders that blend and offer for sale or sell less than 100 thousand gallons of oxygenated gasoline per month, on average, during a control period within a control area.

(12) ~~"Southwest Clean Air ((Pollution Control Authority)) Agency ((SWAPCA)) SWCAA"~~ means the regional agency empowered to enforce and implement the Federal Clean Air Act (42 U.S.C. 7410, et seq.) and the Clean Air Washington Act (RCW 70.94) in Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties of Washington State.

(13) "Very Large Volume Blender" means blenders that blend and offer for sale or sell 15 million gallons or more of oxygenated gasoline per month, on average, during a control period within a control area.

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

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

AMENDATORY SECTION (Amending WSR 93-16-010, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 492-040 Compliance Requirements

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93]

(1) Retail Sales. No gasoline intended as a final product for fueling of motor vehicles within the control area and control period defined in ~~((SWAPCA)) SWCAA 492-070~~ shall

be offered for sale, sold or dispensed by any person unless the gasoline has at least 2.0% oxygen content by weight.

(2) Average Blend Requirements. Over each two-month interval during the control period, gasoline intended as a final product for fueling of motor vehicles within the Authority's control area defined in ((SWAPCA)) SWCAA 492-070 supplied by blenders to purchasers within the Authority's control area defined in ((SWAPCA)) SWCAA 492-070 shall average at least 2.7% oxygen by weight, and in no case be less than 2.0% oxygen content by weight.

(3) Reports. Blenders shall provide periodic reports, as stipulated in the blenders registration, to the Authority summarizing how the requirements of ((SWAPCA)) SWCAA 492-040(2) were met. With prior approval from the Authority, a credit trading program may be used to comply with these requirements. Such reports shall be on forms provided by the Authority.

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

AMENDATORY SECTION (Amending WSR 95-10-003, filed 4/20/95, effective 5/21/95)

((SWAPCA)) SWCAA 492-050 Registration Requirements

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93; WSR 95-10-003 filed 4/20/95, effective 5/21/95]

((a))1) Each blender who offers for sale, sells, or dispenses gasoline in the Authority's control area shall register with the Authority each year. Each request for registration shall be on forms supplied by the Authority and shall be accompanied by a fee to compensate for the cost of administering the registration program, including on-site inspections necessary to verify compliance with these requirements. The location of each blender facility shall be included in the information provided by the blender at registration. The fee for a control area shall be based on the volume of oxygenated gasoline sold or offered for sale by the blender in that control area to comply with the provisions of ((SWAPCA)) SWCAA 492-040. Applicable fees are required to be paid in full by October 1 of each year or within 30 days after becoming a blender, whichever occurs later. The following fee table shall apply to blenders:

Small Volume Blender	\$	500
Medium Volume Blender	\$	1,000
Large Volume Blender	\$	10,000
Very Large Volume Blender	\$	25,000

((b))2) The total annual oxygenated fuel fees collected and retained by the Authority under this program shall not exceed \$40,000. When the total fees submitted by all blenders on October 1 of each year exceeds \$40,000, there shall be a refunding of the excess fees collected by the Authority. The refund provided to each blender shall be derived by prorating the excess fees based on that company's ratio of it's volume of oxygenate blended to the total volume of all oxygenate blended. Such refund shall be issued by the Authority by

December 1 of each year and is applicable to all types of oxygenates.

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

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

AMENDATORY SECTION (Amending WSR 93-16-010, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 492-060 Labeling Requirements

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93]

In addition to other labeling requirements, fuel dispensing systems delivering oxygenated gasoline shall be conspicuously labeled during the control period and in the control area stated in ((SWAPCA)) SWCAA 492-070 as follows:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

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

AMENDATORY SECTION (Amending WSR 96-21-103, filed 10/21/96, effective 11/21/96)

((SWAPCA)) SWCAA 492-070 Control Area and Control Period

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93; WSR 96-21-103, filed 10/21/96, effective 11/21/96]

The oxygenated gasoline requirements of this regulation shall apply to the following control area during the minimum following control period. The control period may begin earlier if there is a violation of the ambient air quality standard outside of the control period:

CONTROL AREA	COUNTIES	CONTROL PERIOD	
		BEGINNING	ENDING
Southwest	Clark	November 1	February 29

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

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

AMENDATORY SECTION (Amending WSR 93-16-010, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 492-080 Enforcement and Compliance

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93]

(1) Compliance with the requirements of this regulation shall be monitored and enforced by the Authority. Non-compliance shall be subject to the penalties and other remedies provided in 70.94 RCW.

PERMANENT

(2) The Authority may designate any appropriate agency of the State to assist in the compliance monitoring of this regulation.

(3) Compliance with the standards set forth in this regulation shall be determined by use of testing methods approved by Ecology or the Authority. The maximum accuracy tolerance of this method shall be limited to +/- 0.3% oxygen by weight, or an equivalent tolerance when measured by volume.

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

AMENDATORY SECTION (Amending WSR 93-16-010, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 492-090 Unplanned Conditions

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93]

An unplanned condition, such as an unforeseen emergency or "act of God", which may interfere with compliance to this regulation, shall be reported to the Authority as soon as possible. The responsible party shall also submit a full written report within ten days to the Authority, including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence. Compliance with the requirements of ((SWAPCA)) SWCAA 492-090 does not relieve the responsible party from the responsibility to maintain continuous compliance with all the requirements of this regulation nor from the resulting liabilities for failure to comply. The Authority shall consider the circumstances of the unplanned condition, and may use the circumstances when determining enforcement.

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

AMENDATORY SECTION (Amending WSR 93-16-010, filed 7/22/93, effective 8/22/93)

((SWAPCA)) SWCAA 492-100 Severability

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption WSR 93-16-010 filed 7/22/93, effective 8/22/93]

The provisions of this regulation are severable and if any provision is held invalid, the application of such provision to the other circumstances and the remainder of this regulation shall not be affected.

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

WSR 01-05-087

PERMANENT RULES

YAKIMA REGIONAL

CLEAN AIR AUTHORITY

[Filed February 20, 2001, 11:19 a.m., effective May 1, 2001]

Date of Adoption: February 14, 2001.

Purpose: To demonstrate to the United States Environmental Protection Agency (EPA). The future maintenance of the carbon monoxide national ambient air quality standard in the Yakima carbon monoxide nonattainment area and request attainment status.

Statutory Authority for Adoption: Federal Clean Air Act Amendments (FCAAA) of 1990, Section 110.

Adopted under notice filed as WSR 00-24-075 on December 4, 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: May 1, 2001.

February 16, 2001

Les Ornelas

Air Pollution Control Officer

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-07 issue of the Register.

WSR 01-05-098

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed February 20, 2001, 2:04 p.m.]

Date of Adoption: February 16, 2001.

Purpose: To allow individuals who loaned their vehicle to retrieve it when the individual to whom they loaned their vehicle has been arrested for driving with a suspended license under limited circumstances.

Citation of Existing Rules Affected by this Order: Amending WAC 204-96-010.

Statutory Authority for Adoption: RCW 46.55.113 and 46.55.120.

Adopted under notice filed as WSR 00-24-108 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 0.

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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.

February 9, 2001

R. M. Leichner

Chief

AMENDATORY SECTION (Amending WSR 00-18-006, filed 8/24/00, effective 8/24/00)

WAC 204-96-010 Vehicle impounds. When a driver of a vehicle is arrested for a violation of:

RCW 46.61.502	Driving under the influence,
RCW 46.61.504	Physical control of vehicle under the influence,
RCW 46.20.342	Driving while license suspended or revoked,
	Operation of motor vehicle under other license/permit prohibited while suspended or revoked,

the arresting officer shall cause the vehicle to be impounded.

If the driver is arrested for a violation of RCW 46.20.342 (1)(c) (3rd degree suspended/revoked) and has no convictions for violations of RCW 46.20.342 in the past five years, the vehicle shall be impounded, but no suspended driver hold shall be placed on the vehicle. If the driver is also the registered owner then the vehicle shall be held until all outstanding penalties, fines, and forfeitures owed by him/her are satisfied. The driver/registered owner must present proof from a court of law that he/she has no outstanding penalties, fines, or forfeitures.

If the driver is arrested for a violation of RCW 46.20.342 (1)(c) (3rd degree suspended/revoked) and has any prior convictions for violations of RCW 46.20.342 in the past five years, the vehicle shall be held for thirty days.

If the driver of the vehicle is arrested for a violation of RCW 46.20.342 (1)(a) or (b) (1st or 2nd degree suspended/revoked) and has no convictions for violations of RCW 46.20.342 in the past five years, the vehicle shall be held for thirty days.

If the driver of the vehicle is arrested for a violation of RCW 46.20.342 (1)(a) or (b) (1st or 2nd degree suspended/revoked) and has been convicted of a violation of RCW 46.20.342 (1)(a) or (b) in the past five years, the vehicle shall be held for sixty days.

If the driver of the vehicle is arrested for a violation of RCW 46.20.342 (1)(a) or (b) (1st or 2nd degree suspended/revoked) and has been convicted of a violation of RCW 46.20.342 (1)(a) or (b) two or more times in the past five years, the vehicle shall be held for ninety days.

The release of all vehicles impounded under this WAC shall be governed by RCW 46.55.120. Commercially rented vehicles may be impounded, however no suspended driver holds shall be placed upon the vehicle. The rental company shall be notified by phone.

A vehicle may be released prior to the mandated hold period if the employer or spouse of the arrested driver establishes significant economic or personal hardship with the district commander of the district in which the vehicle was impounded. In making a hardship determination, the district commander shall consider public safety factors, including the driver's criminal history and driving record. All hardship release requests shall be in writing. Any denial or approval of a hardship release shall be in writing and shall include factors considered by the district commander in reaching the decision.

A vehicle may be released prior to the mandated hold period if the registered owner of a vehicle loaned to another person is able to demonstrate to the district commander of the district in which the vehicle was impounded that he/she had no knowledge that the person to whom the vehicle was loaned did not have valid driving privileges within the state of Washington, is willing to swear to this lack of knowledge under penalty of the perjury laws of the state of Washington and further agrees that this hardship determination, if allowed, is available only one time in the state of Washington. The registered owner of the loaned vehicle also agrees that he/she shall pay any and all towing fees, storage fees and administrative fees to the towing company before the vehicle is released. In addition, in the event a hardship is granted, the registered owner of the loaned vehicle agrees that he/she will comply with the conditions set forth on the form(s) provided by the Washington state patrol prior to loaning the vehicle to any individual in the future.

WSR 01-05-100

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed February 20, 2001, 3:29 p.m.]

Date of Adoption: February 20, 2001.

Purpose: To clarify requirements under which MAA allows a contracted provider to bill a medical assistance client directly.

Citation of Existing Rules Affected by this Order: Amending WAC 388-502-0160 Billing the client.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 00-24-055 on November 30, 2000.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-502-0160 Billing a client.**

(1) A provider may not bill, demand, collect or accept payment from a client or anyone on the client's behalf for a covered service. The client is not responsible to pay for a covered service even if MAA does not pay the provider because the provider failed to satisfy the conditions of pay-

ment in MAA billing instructions, this chapter, and other chapters regulating the specific type of service provided.

(2) The provider is responsible for verifying whether the client has medical coverage for the date of service and to check the limitations of the client's medical program.

(3) A provider may bill a client only if one of the following situations apply:

(a) The client is enrolled in medical assistance managed care and the client and provider comply with the requirements in WAC 388-538-095;

(b) The client is not enrolled in medical assistance managed care, and the client and provider sign an agreement regarding payment for the service. The agreement must be translated or interpreted into the client's primary language and signed before the service is rendered. The provider must give the client a copy and maintain the original in the client's file for department review upon request. The agreement must include each of the following elements to be valid:

(i) A statement listing the specific service to be provided;

(ii) A statement that the service is not covered by MAA;

(iii) A statement that the client chooses to receive and pay for the specific service; and

(iv) The client is not obligated to pay for the service if it is later found that the service was covered by MAA at the time it was provided, even if MAA did not pay the provider for the service because the provider did not satisfy MAA's billing requirements;

(c) The client or the client's legal guardian was reimbursed for the service directly by a third party (see WAC 388-501-0200);

(d) The client refuses to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill insurance for the service

(e) The provider has documentation that the client represented himself/herself as a private pay patient client and not receiving medical assistance when the patient client was already eligible for and receiving benefits under a DSHS MAA medical program. The This documentation (~~declaration of self-pay~~) must be signed and dated by the patient client or the patient client's representative. The provider must give a copy to the patient client and maintain the original documentation in the patient client's file for department review upon request. In this case, the provider may bill the client without fulfilling the requirements in subsection (3)(b) of this section regarding the agreement to pay. However, if the patient client later becomes eligible for a ~~medical assistance program that covers the service, and the patient's (client's) eligibility is effective for the date of service, MAA coverage of a provided service,~~ the provider must comply with subsection (4) of this section for that service. ~~If the client becomes eligible for a medical assistance program, but the service received is not covered by the program, the patient (client) is responsible for payment;~~

or

(f) The bill counts toward a spenddown liability, emergency medical expense requirement, deductible, or copayment required by MAA.

(4) If a client becomes eligible for a covered service that has already been provided because the client:

(a) Applied to the department for medical services later in the same month the service was provided (and is made eligible from the first day of the month), the provider must:

(i) Not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf, and then bill MAA for the service;

(b) Receives a delayed certification as defined in WAC 388-500-00505, the provider:

(i) Not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf, and then bill MAA for the service; or

(c) Receives a retroactive certification as defined in WAC 388-500-00505, the provider:

(i) Must not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf, and then bill MAA for the service.

(5) Hospitals may not bill, demand, collect, or accept payment from a medically indigent, GA-U, or ADATSA client, or anyone on the client's behalf, for inpatient or outpatient hospital services during a period of eligibility, except for spenddown.

(6) A provider may not bill, demand, collect, or accept payment from a client, anyone on the client's behalf, or MAA for copying or otherwise transferring health care information, as that term is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

(a) Medical charts;

(b) Radiological or imaging films; and

(c) Laboratory or other diagnostic test results.

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

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

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

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

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

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

February 20, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

PERMANENT

AMENDATORY SECTION (Amending WSR 00-14-069, filed 7/5/00, effective 8/5/00)

WAC 388-502-0160 Billing a client. (1) A provider may not bill, demand, collect, or accept payment from a client or anyone on the client's behalf for a covered service. The client is not responsible to pay for a covered service even if MAA does not pay ~~((for))~~ the ~~((service))~~ provider because the provider failed to satisfy the conditions of payment in MAA billing instructions, this chapter, and other chapters regulating the specific type of service provided.

(2) The provider is responsible ~~((to verify))~~ for verifying whether the client has medical coverage for the date of service and to check the limitations of the client's medical program.

(3) A provider may bill a client only if one of the following situations apply:

(a) The client is enrolled in ~~((a))~~ medical assistance managed care ~~((plan))~~ and the client and provider comply with the requirements in WAC 388-538-095;

(b) The client is not enrolled in ~~((a program other than))~~ medical assistance managed care, and the client and provider sign an agreement regarding payment for the service. ~~((It))~~ The agreement must be translated or interpreted into the client's primary language and signed before the service is rendered. The provider must give the client a copy and maintain the original in the client's file for department review upon request. The agreement must include each of the following elements to be valid:

(i) A statement listing the specific service to be provided;
 (ii) A statement that the service is not covered by MAA;
 (iii) A statement that the client chooses to receive and pay for the specific service; and

(iv) The client is not obligated to pay for the service if it is later found that the service was covered by MAA at the time it was provided, even if MAA did not pay the provider for the service because the provider did not satisfy MAA's billing requirements~~((;))~~.

(c) The client or the client's legal guardian was reimbursed for the service directly by a third party (see WAC 388-501-0200);

(d) The client refuses to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill insurance for the service. This provision does not apply to coverage provided by MAA;

(e) The provider has documentation that the client represented himself/herself as a private pay ~~((patient))~~ client and not receiving medical assistance when the client was already eligible for and receiving benefits under a MAA medical program. ~~((The))~~ This documentation must be signed and dated by the client or the client's representative. The provider must give a copy to the client and maintain the original documentation in the ~~((patient's))~~ client's file for department review upon request. In this case, the provider may bill the client without fulfilling the requirements in subsection (3)(b) of this section regarding the agreement to pay. However, if the patient later becomes eligible for ~~((the service due to delayed or retroactive eligibility))~~ MAA coverage of a provided service, the provider must comply with subsection (4) of this section for that service;

~~((e))~~ The client refuses to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill insurance for the service. Medical Assistance is not insurance;) or

(f) The bill counts toward a spenddown liability, emergency medical expense requirement, deductible, or copayment required by MAA.

(4) If a client becomes eligible for a covered service that has already been provided ~~((due to))~~ because the client:

(a) ~~((Delayed eligibility))~~ Applied to the department for medical services later in the same month the service was provided (and is made eligible from the first day of the month), the provider must:

(i) Not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf, and then bill MAA for the service~~((;))~~;

(b) Receives a delayed certification as defined in WAC 388-500-0005, the provider:

(i) Not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for the service; and

(ii) Promptly refund the total payment received from the client or anyone on the client's behalf; and then bill MAA for the service; or

(c) Receives a retroactive ~~((eligibility))~~ certification as defined in WAC 388-500-0005, the provider:

(i) Must not bill, demand, collect, or accept payment from the client or anyone on the client's behalf for any unpaid charges for the service; and

(ii) May refund any payment received from the client or anyone on the client's behalf, and ~~((then))~~ after refunding the payment, the provider may bill MAA for the service.

(5) Hospitals may not bill, demand, collect, or accept payment from a medically indigent, GA-U, or ADATSA client, or anyone on the client's behalf, for inpatient or outpatient hospital services during a period of eligibility, except for spenddown.

(6) A provider may not bill, demand, collect, or accept payment from a client, anyone on the client's behalf, or MAA for copying or otherwise transferring health care information, as that term is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

(a) Medical charts;

(b) Radiological or imaging films; and

(c) Laboratory or other diagnostic test results.

WSR 01-05-110

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 21, 2001, 10:11 a.m.]

Date of Adoption: February 7, 2001.

Purpose: To bring radiation protection regulations into conformance with the United States Nuclear Regulatory Commission rules in use of respiratory protection equipment and to make minor corrections and clarifying changes in a

number of areas including monitoring criteria for minors and for declared pregnant women.

Citation of Existing Rules Affected by this Order: Amending chapters 246-220, 246-221, and 246-244 WAC.

Statutory Authority for Adoption: RCW 70.98.050.

Adopted under notice filed as WSR 01-02-087 on January 3, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 15, 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 15, Repealed 0.

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

February 15, 2001

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 00-08-013, filed 3/24/00, effective 4/24/00)

WAC 246-220-010 Definitions. As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain part will be found in that part.

(1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) "Accelerator produced material" means any material made radioactive by exposing it in a particle accelerator.

(3) "Act" means Nuclear energy and radiation, chapter 70.98 RCW.

(4) "Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

(5) "Adult" means an individual eighteen or more years of age.

(6) "Agreement state" means any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(7) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of particulates, dusts, fumes, mists, vapors, or gases.

(8) "Airborne radioactivity area" means a room, enclosure, or operating area in which airborne radioactive material exists in concentrations (a) in excess of the derived air concentration (DAC) specified in WAC 246-221-290, Appendix A, or (b) to such a degree that an individual present in the area

without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or twelve DAC-hours.

(9) "Air purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(10) "Alert" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by offsite response organizations to protect persons offsite.

~~((10))~~ (11) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in WAC 246-221-290.

~~((11))~~ (12) "Assigned protection factor" (APF) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(13) "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(14) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the department.

~~((12))~~ (15) "Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to 1 disintegration or transformation per second (s⁻¹).

~~((13))~~ (16) "Bioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these regulations, "radiobioassay" is an equivalent term.

~~((14))~~ (17) "Byproduct material" means: (a) Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including

discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

((15)) (18) "Calendar quarter" means not less than twelve consecutive weeks nor more than fourteen consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method of determining calendar quarters for purposes of these regulations except at the beginning of a calendar year.

((16)) (19) "Calibration" means the determination of (a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or (b) the strength of a source of radiation relative to a standard.

((17)) (20) "CFR" means Code of Federal Regulations.

((18)) (21) "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: For Class D, Days, of less than ten days, for Class W, Weeks, from ten to one hundred days, and for Class Y, Years, of greater than one hundred days. For purposes of these regulations, "lung class" and "inhalation class" are equivalent terms. For "class of waste" see WAC 246-249-040.

((19)) (22) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

((20)) (23) "Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty-year period following the intake.

((21)) (24) "Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = \sum w_T H_{T,50}$).

((22)) (25) "Constraint" or dose constraint means a value above which specified licensee actions are required.

((23)) (26) "Controlled area." See "Restricted area."

((24)) (27) "Curie" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} transformations per second (tps).

((25)) (28) "Declared pregnant woman" means a woman who has voluntarily informed ~~(her employer)~~ the licensee or registrant, in writing, of her pregnancy, and ~~(her)~~ the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

((26)) (29) "Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm^2).

~~((27))~~ (30) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(31) "Department" means the department of health, division of radiation protection, which has been designated as the state radiation control agency.

~~((28))~~ (32) "Depleted uranium" means the source material uranium in which the isotope Uranium-235 is less than 0.711 percent by weight of the total uranium present. Depleted uranium does not include special nuclear material.

~~((29))~~ (33) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of two thousand hours under conditions of light work, results in an intake of one ALI. For purposes of these regulations, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for two thousand hours in a year. DAC values are given in WAC 246-221-290.

~~((30))~~ (34) "Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take two thousand DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

~~((31))~~ (35) "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(36) "Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these regulations, "radiation dose" is an equivalent term.

~~((32))~~ (37) "Dose commitment" means the total radiation dose to a part of the body that will result from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material will not exceed fifty years.

~~((33))~~ (38) "Dose equivalent" (H_T)($^{(2)}$) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

~~((34))~~ (39) "Dose limits" means the permissible upper bounds of radiation doses established in accordance with these regulations. For purposes of these regulations, "limits" is an equivalent term.

~~((35))~~ (40) "Dosimetry processor" means a person that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

~~((36))~~ (41) "dpm" means disintegrations per minute. See also "curie."

~~((37))~~ (42) "Effective dose equivalent" (H_E) means the sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \sum w_T H_T$).

~~((38))~~ (43) "Embryo/fetus" means the developing human organism from conception until the time of birth.

~~((39))~~ (44) "Entrance or access point" means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, without respect to their intended use.

~~((40))~~ (45) "Exposure" means (a) ~~(, when used as a verb,)~~ being exposed to ionizing radiation or to radioactive material, or (b) ~~(, when used as a noun,)~~ the quotient of ΔQ by Δm where " ΔQ " is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass " Δm " are completely stopped in air. The special unit of exposure is the roentgen (R) and the SI equivalent is the coulomb per kilogram. One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

~~((41))~~ (46) "Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

~~((42))~~ (47) "External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

~~((43))~~ (48) "Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

~~((44))~~ "Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 mg/cm^2).

~~((45))~~ (49) "Filtering facepiece" (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(50) "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(51) "Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(52) "Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

~~((46))~~ (53) "Generally applicable environmental radiation standards" means standards issued by the United States Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment

outside the boundaries of locations under the control of persons possessing or using radioactive material.

~~((47))~~ (54) "Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule/kilogram (100 rad).

~~((48))~~ (55) "Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, podiatry, and veterinary medicine.

~~((49))~~ (56) "Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

(57) "High radiation area" means any area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from any source of radiation or 30 centimeters from any surface that the radiation penetrates. For purposes of these regulations, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

~~((50))~~ (58) "Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(59) "Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

~~((51))~~ (60) "Immediate" or "immediately" means as soon as possible but no later than four hours after the initiating condition.

~~((52))~~ (61) "IND" means investigatory new drug for which an exemption has been claimed under the United States Food, Drug and Cosmetic Act (Title 21 CFR).

~~((53))~~ (62) "Individual" means any human being.

~~((54))~~ (63) "Individual monitoring" means the assessment of:

(a) Dose equivalent (i) by the use of individual monitoring devices or (ii) by the use of survey data; or

(b) Committed effective dose equivalent (i) by bioassay or (ii) by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

~~((55))~~ (64) "Individual monitoring devices" (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these regulations, individual monitoring equipment, personnel monitoring device, personnel dosimeter, and dosimeter are equivalent terms. Examples of individual monitoring devices are) such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

~~((56))~~ (65) "Inspection" means an official examination or observation by the department including but not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the department.

~~((57))~~ (66) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

~~((58))~~ (67) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

~~((59))~~ (68) "Irretrievable source" means any sealed source containing licensed material which is pulled off or not connected to the wireline downhole and for which all reasonable effort at recovery, as determined by the department, has been expended.

~~((60))~~ (69) "Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm²).

(70) "License" means a license issued by the department in accordance with the regulations adopted by the department.

~~((61))~~ (71) "Licensed material" means radioactive material received, possessed, used, transferred, or disposed under a general or specific license issued by the department.

~~((62))~~ (72) "Licensee" means any person who is licensed by the department in accordance with these regulations and the act.

~~((63))~~ (73) "Licensing state" means any state with regulations equivalent to the suggested state regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM and which has been granted final designation by the Conference of Radiation Control Program Directors, Inc.

~~((64))~~ (74) "Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

(75) "Lost or missing licensed material" means licensed material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

~~((65))~~ (76) "Member of the public" means an individual except when the individual is receiving an occupational dose.

~~((66))~~ (77) "Minor" means an individual less than eighteen years of age.

~~((67))~~ (78) "Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these regulations, radiation monitoring and radiation protection monitoring are equivalent terms.

~~((68))~~ (79) "NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include by-product, source, or special nuclear material. For the purpose of meeting the definition of a Licensing State by the Conference of Radiation Control Program Directors, Inc. (CRCPD), NARM refers only to discrete sources of NARM. Diffuse sources of NARM are excluded from consideration by the CRCPD for Licensing State designation purposes.

~~((69))~~ (80) "Natural radioactivity" means radioactivity of naturally occurring nuclides.

~~((70))~~ (81) "NDA" means a new drug application which has been submitted to the United States Food and Drug Administration.

~~((71))~~ (82) "Negative pressure respirator" (tight-fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(83) "Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these regulations, a "deterministic effect" is an equivalent term.

~~((72))~~ (84) "Nuclear Regulatory Commission" (NRC) means the United States Nuclear Regulatory Commission or its duly authorized representatives.

~~((73))~~ (85) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received: From background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released pursuant to chapters 246-239 and 246-240 WAC, from voluntary participation in medical research programs, or as a member of the public.

~~((74))~~ (86) "Ore refineries" means all processors of a radioactive material ore.

~~((75))~~ (87) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV.

~~((76))~~ (88) "Permittee" means a person who has applied for, and received, a valid site use permit for use of the low-level waste disposal facility at Hanford, Washington.

~~((77))~~ (89) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, but shall not include federal government agencies.

~~((78))~~ (90) "Personal supervision" means supervision such that the supervisor is physically present at the facility and in such proximity that contact can be maintained and immediate assistance given as required.

~~((79))~~ (91) "Personnel monitoring equipment." See individual monitoring devices.

~~((80))~~ (92) "Pharmacist" means an individual licensed by this state to compound and dispense drugs, and poisons.

~~((81))~~ (93) "Physician" means an individual licensed by this state to prescribe and dispense drugs in the practice of medicine.

~~((82))~~ (94) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

~~((83))~~ (95) "Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(96) "Powered air-purifying respirator" (PAPR) means an air-purifying respirator that uses a blower to force the

ambient air through air-purifying elements to the inlet covering.

(97) "Practitioner" means an individual licensed by the state in the practice of a healing art (i.e., physician, dentist, podiatrist, chiropractor, etc.).

(84)) (98) "Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(99) "Public dose" means the dose received by a member of the public from exposure to sources of radiation under the licensee's or registrant's control or to radiation or radioactive material released by the licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released pursuant to chapters 246-239 and 246-240 WAC, or from voluntary participation in medical research programs.

((85)) (100) "Qualified expert" means an individual who has demonstrated to the satisfaction of the department he/she has the knowledge, training, and experience to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. The department reserves the right to recognize the qualifications of an individual in specific areas of radiation protection.

((86)) (101) "Qualitative fit test" (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(102) "Quality factor" (Q) means the modifying factor, listed in Tables I and II, that is used to derive dose equivalent from absorbed dose.

TABLE I
QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to A Unit Dose Equivalent ^a
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

^a Absorbed dose in rad equal to 1 rem or the absorbed dose in gray equal to 1 Sv.

If it is more convenient to measure the neutron fluence rate rather than to determine the neutron dose equivalent rate in sievert per hour or rem per hour as required for Table I, then 0.01 Sv (1 rem) of neutron radiation of unknown energies may, for purposes of these regulations, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table II

to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE II
MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
(thermal) 2.5 x 10 ⁻⁸	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁷	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁶	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁵	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁴	2	840 x 10 ⁶	840 x 10 ⁸
1 x 10 ⁻³	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻²	2.5	1010 x 10 ⁶	1010 x 10 ⁸
1 x 10 ⁻¹	7.5	170 x 10 ⁶	170 x 10 ⁸
5 x 10 ⁻¹	11	39 x 10 ⁶	39 x 10 ⁸
1	11	27 x 10 ⁶	27 x 10 ⁸
2.5	9	29 x 10 ⁶	29 x 10 ⁸
5	8	23 x 10 ⁶	23 x 10 ⁸
7	7	24 x 10 ⁶	24 x 10 ⁸
10	6.5	24 x 10 ⁶	24 x 10 ⁸
14	7.5	17 x 10 ⁶	17 x 10 ⁸
20	8	16 x 10 ⁶	16 x 10 ⁸
40	7	14 x 10 ⁶	14 x 10 ⁸
60	5.5	16 x 10 ⁶	16 x 10 ⁸
1 x 10 ²	4	20 x 10 ⁶	20 x 10 ⁸
2 x 10 ²	3.5	19 x 10 ⁶	19 x 10 ⁸
3 x 10 ²	3.5	16 x 10 ⁶	16 x 10 ⁸
4 x 10 ²	3.5	14 x 10 ⁶	14 x 10 ⁸

^a Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

^b Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

((87)) (103) "Quantitative fit test" (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(104) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately thirteen consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

((88)) (105) "Rad" means the special unit of absorbed dose. One rad equals one-hundredth of a joule per kilogram of material; for example, if tissue is the material of interest, then 1 rad equals 100 ergs per gram of tissue. One rad is equal to an absorbed dose of 100 erg/gram or 0.01 joule/kilogram (0.01 gray).

((89)) (106) "Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these regulations, ionizing radiation is an equivalent term. Radiation, as used in these regulations, does not include magnetic fields or nonionizing

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radiation, such as radiowaves or microwaves, visible, infrared, or ultraviolet light.

((99)) (107) "Radiation area" means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at thirty centimeters from the source of radiation or from any surface that the radiation penetrates.

((94)) (108) "Radiation machine" means any device capable of producing ionizing radiation except those devices with radioactive materials as the only source of radiation.

((92)) (109) "Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection regulations and has been assigned such responsibility by the licensee or registrant.

((93)) (110) "Radiation source." See "Source of radiation."

((94)) (111) "Radioactive material" means any material (solid, liquid, or gas) which emits radiation spontaneously.

((95)) (112) "Radioactive waste" means any radioactive material which is no longer of use and intended for disposal or treatment for the purposes of disposal.

((96)) (113) "Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

((97)) (114) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

((98)) (115) "Registrable item" means any radiation machine except those exempted by RCW 70.98.180 or exempted by the department pursuant to the authority of RCW 70.98.080.

((99)) (116) "Registrant" means any person who is registered by the department or is legally obligated to register with the department in accordance with these regulations and the act.

((100)) (117) "Registration" means registration with the department in accordance with the regulations adopted by the department.

((101)) (118) "Regulations of the United States Department of Transportation" means the regulations in 49 CFR Parts 170-189, 14 CFR Part 103, and 46 CFR Part 146.

((102)) (119) "Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 Sv).

((103)) (120) "Research and development" means: (a) Theoretical analysis, exploration, or experimentation; or (b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

((104)) (121) "Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

((105)) (122) "Restricted area" means any area to which access is limited by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive material. "Restricted area" shall not include any areas used for residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

((106)) (123) "Roentgen" (R) means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulombs/kilogram of air.

((107)) (124) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

((108)) (125) "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or the escape of the radioactive material.

((109)) (126) "Self-contained breathing apparatus" (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(127) "Shallow dose equivalent" (H_s), which applies to the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²) averaged over an area of 1 square centimeter.

((110)) (128) "SI" means an abbreviation of the International System of Units.

((111)) (129) "Sievert" means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

((112)) (130) "Site area emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

((113)) (131) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

((114)) (132) "Source container" means a device in which radioactive material is transported or stored.

((115)) (133) "Source material" means: (a) Uranium or thorium, or any combination thereof, in any physical or chemical form, or (b) ores which contain by weight one-twentieth of one percent (0.05 percent) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Source material does not include special nuclear material.

((116)) (134) "Source material milling" means the extraction or concentration of uranium or thorium from any ore processing primarily for its source material content.

((117)) (135) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

((118)) (136) "Special nuclear material" means:

(a) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the United States Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) Any material artificially enriched in any of the foregoing, but does not include source material.

~~((119))~~ (137) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding three hundred fifty grams of contained U-235; Uranium-233 in quantities not exceeding two hundred grams; Plutonium in quantities not exceeding two hundred grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175 \text{ (grams contained U-235)}}{350} + \frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} < 1$$

~~((120))~~ (138) "Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these regulations, probabilistic effect is an equivalent term.

~~((121))~~ (139) "Supplied-air respirator (SAR) or airline respirator" means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(140) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations, calculations and measurements of levels of radiation or concentration of radioactive material present.

~~((122))~~ (141) "Test" means (a) the process of verifying compliance with an applicable regulation, or (b) a method for determining the characteristics or condition of sources of radiation or components thereof.

~~((123))~~ (142) "These regulations" mean all parts of the rules for radiation protection of the state of Washington.

~~((124))~~ (143) "Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

(144) "Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

~~((125))~~ (145) "Total organ dose equivalent" (TODE)(^(c)) means the sum of the deep dose equivalent and the committed dose equivalent to the organ or tissue receiving the highest dose.

~~((126))~~ (146) "United States Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the department exercises functions formerly vested in the United States Atomic Energy Commission, its chairman, members, officers and components and transferred to the United States Energy Research and Development Administration and to the administrator thereof pursuant to sections 104 (b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814 effective January 19, 1975) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

~~((127))~~ (147) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

~~((128))~~ (148) "Unrestricted area" (uncontrolled area) means any area which is not a restricted area. Areas where the external dose exceeds 2 mrem in any one hour or where the public dose, taking into account occupancy factors, will exceed 100 mrem total effective dose equivalent in any one year must be restricted.

~~((129))~~ (149) "User seal check (fit check)" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(150) "Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 5 Gy (500 rad) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

~~((130))~~ (151) "Waste handling licensees" mean persons licensed to receive and store radioactive wastes prior to disposal and/or persons licensed to dispose of radioactive waste.

~~((131))~~ (152) "Week" means seven consecutive days starting on Sunday.

~~((132))~~ (153) "Weighting factor" w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS	
Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^a
Whole Body	1.00 ^b

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- ^a 0.30 results form 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
- ^b For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T=1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

((+133)) (154) "Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

((+134)) (155) "Worker" means an individual engaged in activities under a license or registration issued by the department and controlled by a licensee or registrant but does not include the licensee or registrant. Where the licensee or registrant is an individual rather than one of the other legal entities defined under "person," the radiation exposure limits for the worker also apply to the individual who is the licensee or registrant. If students of age eighteen years or older are subjected routinely to work involving radiation, then the students are considered to be workers. Individuals of less than eighteen years of age shall meet the requirements of WAC 246-221-050.

((+135)) (156) "Working level" (WL) means any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are — for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

((+136)) (157) "Working level month" (WLM) means an exposure to one working level for one hundred seventy hours — two thousand working hours per year divided by twelve months per year is approximately equal to one hundred seventy hours per month.

((+137)) (158) "Year" means the period of time beginning in January used to determine compliance with the provisions of these regulations. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

AMENDATORY SECTION (Amending WSR 99-15-105, filed 7/21/99, effective 8/21/99)

WAC 246-221-005 Radiation protection programs.

(1) Each specific licensee shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of this chapter.

(2) The licensee shall use, to the extent ((practicable)) practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).

(3) The licensee shall review the radiation protection program content and implementation at the frequency specified in the license.

(4) To implement the ALARA requirements of subsection (2) of this section, and notwithstanding the requirements of WAC 246-221-060, a constraint on air emission of radioactive material to the environment, excluding radon-220,

radon-222 and their daughters, shall be established by licensees such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 0.1 mSv (10 mrem) per year from these emissions. This dose constraint does not apply to sealed sources or to accelerators less than 200MeV. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as provided in WAC 246-221-260 and promptly take appropriate corrective action to ensure against recurrence.

(5) Each licensee shall maintain records of the radiation protection program, including:

- (a) The provisions of the program; and
- (b) Audits, where required, and other reviews of program content and implementation.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-010 Occupational dose limits for adults. (1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to WAC 246-221-030, to the following dose limits:

- (a) An annual limit, which is the more limiting of:
 - (i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or
 - (ii) The sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).
- (b) The annual limits to the lens of the eye, to the skin, and to the extremities which are:
 - (i) ((An eye)) A lens dose equivalent of 0.15 Sv (15 rem); and
 - (ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, must be subtracted from the limits specified in WAC 246-221-030 for planned special exposures that the individual may receive during the current year and during the individual's lifetime.

(3) The assigned deep dose equivalent and shallow dose equivalent shall be for the portion of the body receiving the highest exposure. The deep dose equivalent, ((eye)) lens dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in WAC 246-221-290 and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by

the amount of occupational dose received while employed by any other person during the current year as determined in accordance with WAC 246-221-020.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-015 Compliance with requirements for summation of external and internal doses. (1) If the licensee is required to monitor ~~((pursuant to))~~ under both WAC 246-221-090 and 246-221-100, the licensee shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee is required to monitor only ~~((pursuant to))~~ under WAC 246-221-090 or only ~~((pursuant to))~~ under WAC 246-221-100, then summation is not required to demonstrate compliance with the dose limits. The licensee may demonstrate compliance with the requirements for summation of external and internal doses ~~((pursuant to))~~ under subsections (2), (3), and (4) of this section. The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) **Intake by inhalation.** If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(a) The sum of the fractions of the inhalation ALI for each radionuclide; or

(b) The total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by two thousand; or

(c) The sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T , and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than ten percent of the maximum weighted value of H_{50} , that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) **Intake by oral ingestion.** If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than ten percent of the applicable oral ALI, the licensee shall account for this intake and include it in demonstrating compliance with the limits.

(4) **Intake through wounds or absorption through skin.** The licensee shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to this section.

(5) **External dose from airborne radioactive material.** Licensees shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, ~~((eye))~~ lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. Airborne radioactivity measurements and DAC values shall

not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-030 Requirements for planned special exposures. A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in WAC 246-221-010 provided that each of the following conditions is satisfied:

(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the ~~((higher))~~ dose estimated to result from the planned special exposure are unavailable or impractical.

(2) The licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee or registrant ensures that each individual involved is:

(a) Informed of the purpose of the planned operation; and

(b) Informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(c) Instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by WAC 246-221-020(2) during the lifetime of the individual for each individual involved.

(5) Subject to WAC 246-221-010(2), the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(a) The numerical values of any of the dose limits in WAC 246-221-010(1) in any year; and

(b) Five times the annual dose limits in WAC 246-221-010(1) during the individual's lifetime.

(6) The licensee or registrant maintains records that describe:

(a) The exceptional circumstances requiring the use of a planned special exposure; ~~((and))~~

(b) The name of the management official who authorized the planned special exposure and a copy of the signed authorization; ~~((and))~~

(c) What actions were necessary; ~~((and))~~

(d) Why the actions were necessary; ~~((and))~~

(e) What precautions were taken to assure that doses were maintained ALARA; and

(f) What individual and collective doses were expected to result.

(7) The licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within thirty days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual (~~(pursuant to)~~) under WAC 246-221-010(1) but shall be included in evaluations required by subsections (4) and (5) of this section.

(8) The licensee or registrant submits a written report in accordance with WAC 246-221-265.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-055 Dose equivalent to an embryo/fetus. (1) The licensee or registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 5 mSv (0.5 rem).

(2) Once pregnancy has been declared, the licensee or registrant shall make every effort to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman (~~(so as)~~) in order to satisfy the limit in subsection (1) of this section.

(3) If by the time the woman declares pregnancy to the licensee or registrant, the dose equivalent to the embryo/fetus has exceeded 4.5 mSv (0.45 rem), the licensee or registrant shall be deemed to be in compliance with subsection (1) of this section if the additional dose equivalent to the embryo/fetus does not exceed 0.50 mSv (0.05 rem) during the remainder of the pregnancy.

(4) The dose equivalent to an embryo/fetus shall be taken as the sum of:

(a) The ~~((calculated dose equivalent to the embryo/fetus resulting from external exposure of the declared pregnant woman or, in the absence of this information, the))~~ deep dose equivalent to the declared pregnant woman; and

(b) The dose equivalent to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(5) The licensee or registrant shall maintain the records of dose equivalent to an embryo/fetus with the records of dose equivalent to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-090 Personnel monitoring for external dose. Each licensee or registrant shall monitor occupational exposure from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of WAC 246-221-010, 246-221-030, 246-221-050 and 246-221-055.

(1) Each licensee or registrant shall monitor occupational exposure to radiation from licensed (or registered) and unlicensed (or unregistered) radiation sources under the control of the licensee or registrant and shall supply and shall require the use of individual monitoring devices by:

(a) Each adult likely to receive, in one year from sources external to the body, a dose in excess of ten percent of the applicable limits specified in WAC 246-221-010(1).

(b) Each minor (~~(or declared pregnant woman)~~) likely to receive, in one year from sources external to the body, a ~~((dose in excess of ten percent of the applicable limits specified in WAC 246-221-050 or 246-221-055))~~ deep dose equivalent in excess of 1 mSv (0.1 rem), a lens dose equivalent in excess of 1.5 mSv (0.15 rem), or a shallow dose equivalent to the skin or to the extremities in excess of 5 mSv (0.5 rem).

(c) Each declared pregnant woman likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 1 mSv (0.1 rem). All of the occupational dose limits specified in WAC 246-221-010 continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded.

(d) Each individual who enters a high or very high radiation area.

(2) Personnel monitoring devices assigned to an individual:

(a) Shall not intentionally be exposed to give a false or erroneous reading;

(b) Shall be assigned to one individual per exposure interval (i.e., weekly, monthly) and used to determine exposure for that individual only;

(c) Shall not be worn by any individual other than that individual originally assigned to the device;

(d) Personnel monitoring devices that are exposed while not being worn by the assigned individual shall be processed and recorded as soon as possible. A replacement monitoring device shall be assigned to the individual immediately. A record of the circumstances of the exposure shall be retained.

(3) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremities, that require processing to determine the radiation dose and that are utilized by licensees or registrants to comply with subsection (1) of this section, with other applicable provisions of chapters 246-220 through 246-255 WAC, or with conditions specified in a licensee's license must be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from either the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology (formerly known as the National Bureau of Standards) or the United States Department of Energy Laboratory Accreditation Program for Personnel Dosimetry Systems (DOELAP); and

(b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP or DOELAP program that most closely approximate the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) For the purposes of this section "dosimetry processor" means an individual or an organization that processes and evaluates personnel monitoring devices in order to determine the radiation dose delivered to the device.

(5) Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required ~~((pursuant to))~~ under subsection (1) of this section, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The deep dose equivalent to the whole body, ~~((eye))~~ lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities; and

(b) The total effective dose equivalent when required by WAC 246-221-015; and

(c) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose (total organ dose equivalent).

(6) The licensee or registrant shall maintain the records specified in subsection (5) of this section on department Form RHF-5A, in accordance with the instructions provided ~~((thereon))~~ on the form, or in clear and legible records containing all the information required by Form RHF-5A; and shall update the information at least annually.

(7) Each licensee or registrant shall ensure that individuals, for whom they are required to monitor occupational doses in accordance with subsection (1) of this section, wear individual monitoring devices as follows:

(a) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded or least shielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(b) Any additional individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to WAC 246-221-055(1), shall be located at the waist under any protective apron being worn by the woman.

(c) An individual monitoring device used for monitoring the ~~((eye))~~ lens dose equivalent, to demonstrate compliance with WAC 246-221-010 (1)(b)(i), shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye.

(d) An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with WAC 246-221-010 (1)(b)(ii), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-100 Personnel monitoring for internal dose. (1) Each licensee shall monitor, to determine compliance with WAC 246-221-040, the occupational intake of

radioactive material by and assess the committed effective dose equivalent to:

(a) Adults likely to receive, in 1 year, an intake in excess of ten percent of the applicable ALI in Table I, Columns 1 and 2, of WAC 246-221-290; ~~((and))~~

(b) Minors ~~((and declared pregnant women))~~ likely to receive, in one year, a committed effective dose equivalent in excess of ~~((0.50))~~ 1 mSv ~~((0.05))~~ 0.1 rem; and

(c) Declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 1 mSv (0.1 rem).

(2) Where necessary or desirable in order to aid in determining the extent of an individual's exposure to concentrations of radioactive material, the department may incorporate license provisions or issue an order requiring a licensee or registrant to make available to the individual appropriate bioassay services and to furnish a copy of the reports of such services to the department.

(3) Each licensee shall maintain records of doses received by all individuals for whom monitoring was required pursuant to subsections (1) and (2) of this section, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(a) The estimated intake or body burden of radionuclides; ~~((and))~~

(b) The committed effective dose equivalent assigned to the intake or body burden of radionuclides; ~~((and))~~

(c) The specific information used to calculate the committed effective dose equivalent pursuant to WAC 246-221-040; ~~((and))~~

(d) The total effective dose equivalent when required by WAC 246-221-015; and

(e) The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose (total organ dose equivalent).

(4) The licensee or registrant shall maintain the records specified in subsection (3) of this section on department Form RHF-5A, in accordance with the instructions provided ~~((thereon))~~ on the form, or in clear and legible records containing all the information required by Form RHF-5A; and shall update the information at least annually.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-110 Surveys. (1) Each licensee or registrant shall make or cause to be made such surveys, as defined in WAC 246-220-010, as may be necessary for the licensee or registrant to establish compliance with these regulations and are reasonable under the circumstances to evaluate the magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and ~~((the extent of))~~ potential radiation hazards ~~((that may be present))~~. Records of such surveys shall be preserved as specified in WAC 246-221-230. Information on performing surveys may be found in the United States Nuclear Regulatory Commission's Regulatory Guide 8.23.

(2) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated annually at intervals not to exceed thirteen months for the radiation measured.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-113 Use of process, engineering or other controls. (1) The licensee shall use, to the extent ~~((practicable))~~ practical, process or other engineering controls, such as, containment, decontamination, or ventilation, to control the concentrations of radioactive material in air.

(2) When it is not ~~((practicable))~~ practical to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

- (a) Control of access; ~~((or))~~
- (b) Limitation of exposure times; ~~((or))~~
- (c) Use of respiratory protection equipment; or
- (d) Other controls.

(3) If the licensee performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee should also consider the impact of respirator use on workers' industrial health and safety.

AMENDATORY SECTION (Amending WSR 98-13-034, filed 6/8/98, effective 7/9/98)

WAC 246-221-117 Use of individual respiratory protection equipment. ~~((+))~~ If the licensee ~~((uses))~~ assigns or permits the use of respiratory protection equipment to limit ~~((intakes pursuant to WAC 246-221-113))~~ the intake of radioactive material:

~~((a))~~ (1) The licensee shall use only respiratory protection equipment that is:

~~((+))~~ (a) Tested and certified ~~((or had certification extended))~~ by the National Institute for Occupational Safety and Health ~~((and the Mine Safety and Health Administration))~~ (NIOSH); or

~~((+))~~ (b) Approved by the department on the basis of the licensee's submittal of an application for authorized use of other respiratory protection equipment, including a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

~~((b))~~ (2) The licensee shall implement and maintain a respiratory protection program that includes:

~~((+))~~ (a) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures; ~~((and~~

~~((+))~~ (b) Surveys and bioassays, as appropriate, to evaluate actual intakes; ~~((and~~

~~((+))~~ (c) Testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use; ~~((and~~

~~((+))~~ (d) Written procedures regarding ~~((selection, fitting, issuance, maintenance, cleaning, repair, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and record-keeping))~~;

(i) Monitoring, including air sampling and bioassays;

(ii) Supervision and training of respirator users;

(iii) Fit testing;

(iv) Respirator selection;

(v) Breathing air quality;

(vi) Inventory and control;

(vii) Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(viii) Recordkeeping; and

(ix) Limitations on periods of respirator use and relief from respirator use; ~~((and~~

~~((+))~~ (e) Determination by a physician ~~((prior to initial fitting of respirators, and either every twelve months thereafter or periodically at a frequency determined by a physician,))~~ that the individual user is medically fit to use ~~((the))~~ respiratory protection equipment;

(i) Before the initial fitting of a face sealing respirator;

(ii) Before the first field use of nonface sealing respirators; and

(iii) Either every twelve months thereafter, or periodically at a frequency determined by a physician; and

(f) Fit testing, with a fit factor greater than or equal to ten times the APF for negative pressure devices, and a fit factor greater than or equal to five hundred for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face sealing respirators, and periodically thereafter at a frequency not to exceed one year. Fit testing must be performed with the facepiece operating in the negative pressure mode.

~~((e))~~ The licensee shall issue a written policy statement on respirator usage covering:

~~((i))~~ The use of process or other engineering controls, instead of respirators; and

~~((ii))~~ The routine, nonroutine, and emergency use of respirators; and

~~((iii))~~ The length of periods of respirator use and relief from respirator use.

~~((d))~~ (3) The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require ~~((such))~~ relief.

~~((e))~~ The licensee shall use equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed.

(2) When estimating exposure of individuals to airborne radioactive materials, the licensee may make allowance for respiratory protection equipment used to limit intakes pursu-

ant to WAC 246-221-113, provided that the following conditions, in addition to those in subsection (1) of this section, are satisfied:

(a) The licensee selects respiratory protection equipment that provides a protection factor, specified in WAC 246-221-285, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in WAC 246-221-290, Table I, Column 3. However, if the selection of respiratory protection equipment with a protection factor greater than the peak concentration is inconsistent with the goal specified in WAC 246-221-113 of keeping the total effective dose equivalent ALARA, the licensee may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used.

(b) The licensee shall obtain authorization from the department before assigning respiratory protection factors in excess of those specified in WAC 246-221-285. The department may authorize a licensee to use higher protection factors on receipt of an application that:

(i) Describes the situation for which a need exists for higher protection factors, and
 (ii) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(3) In an emergency, the licensee shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.

(4) Unless already authorized by license condition, the licensee shall notify the department in writing at least thirty days before the date that respiratory protection equipment is first used pursuant to either subsection (1) or (2) of this section.))

(4) The licensee shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(5) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise

maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(6) Atmosphere-supplying respirators must be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of the Occupational Safety and Health Administration (29 CFR 1910.134 (i)(1)(ii)(A) through (E)). Grade D quality air criteria include:

(a) Oxygen content (v/v) of 19.5-23.5%;

(b) Hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;

(c) Carbon monoxide (CO) content of 10 ppm or less;

(d) Carbon dioxide content of 1,000 ppm or less; and

(e) Lack of noticeable odor.

(7) The licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face-to-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(8) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

(9) The department may impose restrictions in addition to the provisions of this section, WAC 246-221-113 and 246-221-285, in order to:

(a) Ensure that the respiratory protection program of the licensee is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(b) Limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls.

(10) The licensee shall obtain authorization from the department before using assigned protection factors in excess of those specified in WAC 246-221-285. The department may authorize a licensee to use higher assigned protection factors on receipt of an application that:

(a) Describes the situation for which a need exists for higher protection factors; and

(b) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-230 Records important to radiation safety. (1) Each licensee or registrant shall make and retain records of activities, program reviews, measurements, and calculations which may be necessary to determine the extent of occupational and public exposure from sources of radiation under the control of the licensee or registrant.

(2) Each record required by this section shall be legible throughout the specified retention period.

(3) Each licensee or registrant shall use the SI units: Becquerel, gray, sievert and coulomb per kilogram, or the special units: Curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by these regulations.

(4) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by these regulations such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, ((eye)) lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

(5) Records which must be maintained ((pursuant to)) under this part shall be the original or a reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by department regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Electronic media data storage systems shall incorporate standard or universally recognized security measures. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures.

(6) The licensee shall maintain adequate safeguards against tampering with and loss of records.

(7) The licensee or registrant shall retain the following required records until the department terminates each pertinent license or registration requiring the record, and upon termination of the license or registration, the licensee or registrant shall store for at least thirty years:

(a) Records of prior occupational dose and exposure history as recorded on department Form RHF-4 or RHF-4A, or equivalent;

(b) Records on department Form RHF-5 or RHF-5A, or equivalent, of doses received by all individuals for whom monitoring was required pursuant to WAC 246-221-090 and 246-221-100;

(c) Records of doses received during planned special exposures, accidents, and emergency conditions;

(d) The specific information used to calculate the committed effective dose equivalent pursuant to WAC 246-221-040(3);

(e) Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents;

(f) Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose;

(g) Records showing the results of air sampling, surveys, and bioassays required pursuant to WAC 246-221-117 (1)(b)(i) and (ii);

(h) Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

(8) The licensee or registrant shall retain the following records until the department terminates the pertinent license or registration requiring the record:

(a) Records of waste disposal made under the provisions of WAC 246-221-180, 246-221-190, 246-221-210 and 246-221-220, chapter 246-249 WAC, and any burials in soil as previously authorized;

(b) Records of dose to individual members of the public as required by WAC 246-221-060(4);

(c) Records of the provisions of the radiation protection program as required by WAC 246-221-005.

(9) The licensee or registrant shall retain the following records for three years after the record is made:

(a) Records of testing entry control devices for very high radiation areas as required by WAC 246-221-106(3);

(b) Records used in preparing department Form RHF-4 or RHF-4A;

(c) Records showing the results of general surveys required by WAC 246-221-110 and package surveys required by WAC 246-221-160;

(d) Records of calibrations required by WAC 246-221-110;

(e) Records of program audits and other reviews of the content and implementation of the radiation protection program required by WAC 246-221-005;

(f) Records of waste disposal by decay in storage.

(10) If there is a conflict between the department's regulations in this part, license condition, or other written department approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the regulations in this part for such records shall apply unless the department, ((pursuant to)) under WAC 246-220-050, has granted a specific exemption from the record retention requirements specified in the regulations in this part.

(11) The discontinuance or curtailment of activities does not relieve the licensee or registrant of responsibility for retaining all records required by this section.

AMENDATORY SECTION (Amending WSR 98-13-037, filed 6/8/98, effective 7/9/98)

WAC 246-221-250 Notification of incidents. (1) **Immediate notification.** Notwithstanding other requirements for notification, each licensee and/or registrant shall immediately (as soon as possible but no later than four hours after discovery of an incident) notify the State Department of Health, Division of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827, by telephone (206/682-5327) and confirming letter, telegram, mailgram, or facsimile of any incident involving any radiation source which may have caused or threatens to cause:

(a) An individual to receive:

- (i) A total effective dose equivalent of 0.25 Sv (25 rem) or more; ~~((☞))~~
- (ii) ~~((An eye))~~ A lens dose equivalent of 0.75 Sv (75 rem) or more; or
- (iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Sv (250 rem) or more; ~~((☞))~~

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures; or

(c) The loss of ability to take immediate protective actions necessary to avoid exposure to sources of radiation or releases of radioactive material that could exceed regulatory limits. Events which could cause such a loss of ability include fires, explosions, toxic gas releases, etc.

(2) **Twenty-four hour notification.** Each licensee and/or registrant shall within twenty-four hours of discovery of the event, notify the State Department of Health, Division of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827, by telephone (206/682-5327) and confirming letter, telegram, mailgram, or facsimile of any incident involving any radiation source possessed which may have caused or threatens to cause:

- (a) An individual to receive, in a period of twenty-four hours:
 - (i) A total effective dose equivalent exceeding 0.05 Sv (5 rem); ~~((☞))~~
 - (ii) ~~((An eye))~~ A lens dose equivalent exceeding 0.15 Sv (15 rem); or
 - (iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem); ~~((☞))~~

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures; ~~((☞))~~

(c) An unplanned contamination incident that:

- (i) Requires access to the contaminated area, by workers or the general public, to be restricted for more than twenty-four hours by imposing additional radiological controls or by prohibiting entry into the area;
- (ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in WAC 246-221-290; and
- (iii) Has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than twenty-four hours to decay prior to decontamination; ~~((☞))~~

(d) Equipment failure or inability to function as designed when:

- (i) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to

prevent exposures to radiation and radioactive material exceeding regulatory limits or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable at the time it becomes disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety functions; ~~((☞))~~

(e) An unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(f) An unplanned fire or explosion damaging any radioactive material or any device, container or equipment containing radioactive material when:

(i) The quantity of radioactive material involved is greater than five times the lowest annual limit on intake specified in WAC 246-221-290; and

(ii) The damage affects the integrity of the radioactive material or its container.

(3) For each occurrence requiring notification pursuant to this section, a prompt investigation of the situation shall be initiated by the licensee/registrant. A written report of the findings of the investigation shall be sent to the department within thirty days.

(4) The licensee or registrant shall prepare each report filed with the department ~~((pursuant to))~~ under this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

Any report filed with the department ~~((pursuant to))~~ under this section shall contain the information described in WAC 246-221-260 (2) and (3).

(5) The provisions of this section do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to WAC 246-221-265.

(6) Telephone notifications that do not involve immediate or twenty-four hour notification ~~((shall not be made to the emergency number (Seattle 206/682-5327). Routine calls))~~ should be made to the Olympia office (360 236-3300).

(7) Telephone notification required under this section shall include, to the extent that the information is available at the time of notification:

- (a) The caller's name and call-back telephone number;
- (b) A description of the incident including date and time;
- (c) The exact location of the incident;
- (d) The radionuclides, quantities, and chemical and physical forms of the radioactive materials involved; and
- (e) Any personnel radiation exposure data available.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-285 Assigned protection factors for respirators. ~~((1) The licensee may use the following information in the selection of respiratory protective equipment to be used only where the contaminants have been identified and the concentration, or possible concentrations, are known.~~

Description ²	Protection Factors ¹		Tested & Certified Equipment	
	Modes ³	Particu- lates only	Particu- lates, gases, vapors ⁵	NIOSH & MSHA ⁴ tests for permissibility

I. AIR PURIFYING RESPIRATORS⁶

Facepiece, half mask ⁷	NP	10		30 CFR 11,
Facepiece, full	NP	50		Subpart K.
Facepiece, half mask, full, or hood	PP	1000		

II. ATMOSPHERE-SUPPLYING RESPIRATORS

1. Air line respirator

Facepiece, half mask	CF		1000	
Facepiece, half mask	D		5	
Facepiece, full	CF		2000	
Facepiece, full	D		5	30 CFR 11,
Facepiece, full	PD		2000	Subpart J.
Hood ⁸	CF			
Suit ^{9,10}	CF			

2. Self contained

—breathing apparatus
—(SCBA)

Facepiece, full	D		50	
Facepiece, full	PD		10,000 ¹¹	30 CFR 11,
Facepiece, full	RD		50	Subpart H.
Facepiece, full	RP		5000 ¹²	

III. COMBINATION RESPIRATORS

Any combination of air purifying and atmosphere supplying respirators	Protection- factor for type and mode of operation as- listed above			30 CFR 11, Sec. 11.63(b)
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FOOTNOTES

1. The protection factor is a measure of the degree of protection afforded by a respirator, defined as the ratio of the concentration of airborne radioactive material outside the respiratory protective equipment to that inside the equipment, usually inside the facepiece, under conditions of use. It is applied to the ambient airborne concentration to estimate the concentrations inhaled by the wearer according to the following formula:

$$\text{Concentration inhaled} = \frac{\text{Ambient airborne concentration}}{\text{Protection factor}}$$

The protection factors apply:

- a. Only for individuals trained in using respirators and wearing properly fitted respirators that are used and maintained under supervision in a well planned respiratory protective program.
- b. For air purifying respirators only when high efficiency particulate filters, above 99.97% removal efficiency by thermally generated 0.3 µm dioctyl phthalate (DOP) test or equivalent, are used in atmospheres not deficient in oxygen and not containing radioactive gas or vapor respiratory hazards.

- e. No adjustment is to be made for the use of sorbents against radioactive material in the form of gases or vapors.
- d. For atmosphere supplying respirators only when supplied with adequate respirable air. Respirable air shall be provided of the quality and quantity required in accordance with the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration certification described in 30 CFR 11. Oxygen and air shall not be used in the same apparatus.
2. Only for shaven faces and where nothing interferes with the seal of tight fitting facepieces against the skin. Hoods and suits are excepted.
3. The mode symbols are defined as follows:
CF = continuous flow
D = demand
NP = negative pressure, that is, negative phase during inhalation
PD = pressure demand, that is, always positive pressure
PP = positive pressure
RD = demand, recirculating or closed circuit
RP = pressure demand, recirculating or closed circuit
4. NIOSH & MSHA are the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration.
5. Excluding radioactive contaminants that present an absorption or submersion hazard. For tritium oxide, approximately one third of the intake occurs by absorption through the skin so that an overall protection factor of less than two is appropriate when atmosphere supplying respirators are used to protect against tritium oxide. If the protection factor for respiratory protective equipment is five, the effective protection factor for tritium is about 1.4; with protection factors of ten, the effective factor for tritium oxide is about 1.7; and with protection factors of one hundred or more, the effective factor for tritium oxide is about 1.9. Air purifying respirators are not suitable for protection against tritium oxide. See also footnote 9 concerning supplied air suits.
6. Canisters and cartridges shall not be used beyond service life limitations.
7. Under chin type only. This type of respirator is not satisfactory for use where it might be possible, if an accident or emergency were to occur, for the ambient airborne concentrations to reach instantaneous values greater than ten times the pertinent values in Table I, Column 3 of WAC 246-221-290. This type of respirator is not suitable for protection against plutonium or other high toxicity materials. The mask is to be tested for fit prior to use, each time it is donned.
8. Equipment shall be operated in a manner that ensures that proper air flow rates are maintained. A protection factor of no more than one thousand may be utilized for tested and certified supplied air hoods when a minimum air flow of six cubic feet per minute (0.17 m³/min) is maintained and calibrated air line pressure gauges or flow measuring devices are used. A protection factor of up to two thousand may be used for tested and certified hoods only when the air flow is maintained at the manufacturer's recommended maximum rate for the equipment, this rate is greater than six cubic feet per minute (0.17 m³/min) and calibrated air line pressure gauges or flow measuring devices are used. The design of the supplied air hood or helmet, with a minimum flow of six cubic feet per minute (0.17 m³/min) of air, may determine its overall efficiency and the protection it provides. For example, some hoods aspirate contaminated air into the breathing zone when the wearer works with hands over head. This aspiration may be overcome if a short cape-like extension to the hood is worn under a coat or overalls. Other limitations specified by the approval agency shall be considered before using a hood in certain types of atmospheres. See footnote 9.
9. Appropriate protection factors shall be determined, taking into account the design of the suit and its permeability to the contaminant under conditions of use. There shall be a standby rescue person equipped with a respirator or other apparatus

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- 10. appropriate for the potential hazards and communications equipment whenever supplied air suits are used. No approval schedules are currently available for this equipment. Equipment is to be evaluated by testing or on the basis of reliable test information.
- 11. This type of respirator may provide greater protection and be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure, such as skin absorption, must be taken into account in such circumstances.
- 12. Quantitative fit testing shall be performed on each individual, and no more than 0.02% leakage is allowed with this type of apparatus. Perceptible outward leakage of gas from this or any positive pressure self-contained breathing apparatus is unacceptable because service life will be reduced substantially. Special training in the use of this type of apparatus shall be provided to the wearer.

(2) The licensee may use protection factors for respirators approved by the United States Bureau of Mines and the National Institute for Occupational Safety and Health, according to applicable approvals for respirators for type and

mode of use to protect against airborne radionuclides, to the extent that they do not exceed the protection factors listed in the table given in subsection (1) of this section. The protection factors listed in this table may not be appropriate to circumstances where chemical or other respiratory hazards exist in addition to radioactive hazards. The selection and use of respirators for such circumstances should take into account applicable approvals of the United States Bureau of Mines and the National Institute for Occupational Safety and Health.

(3) The licensee should also be aware that the concentration values in Table I, Column 3 of WAC 246-221-290 are based on internal dose due to inhalation, and that radioactive contaminants may present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.)

	<u>Operating mode</u>	<u>Assigned Protection Factors</u>
I. <u>Air-Purifying Respirators (Particulate ^b only) ^c:</u>		
<u>Filtering facepiece disposable ^d</u>	<u>Negative Pressure.</u>	<u>(4)</u>
<u>Facepiece, half ^e.</u>	<u>Negative Pressure.</u>	<u>10</u>
<u>Facepiece, full.</u>	<u>Negative Pressure.</u>	<u>100</u>
<u>Facepiece, half.</u>	<u>Powered air-purifying respirators</u>	<u>50</u>
<u>Facepiece, full.</u>	<u>Powered air-purifying respirators</u>	<u>1000</u>
<u>Helmet/hood.</u>	<u>Powered air-purifying respirators</u>	<u>1000</u>
<u>Facepiece, loose-fitting.</u>	<u>Powered air-purifying respirators</u>	<u>25</u>
II. <u>Atmosphere-Supplying Respirators (Particulate, gases and vapors ^f):</u>		
<u>1. Air-line respirator:</u>		
<u>Facepiece, half.</u>	<u>Demand.</u>	<u>10</u>
<u>Facepiece, half.</u>	<u>Continuous Flow.</u>	<u>50</u>
<u>Facepiece, half.</u>	<u>Pressure Demand.</u>	<u>50</u>
<u>Facepiece, full.</u>	<u>Demand.</u>	<u>100</u>
<u>Facepiece, full.</u>	<u>Continuous Flow.</u>	<u>1000</u>
<u>Facepiece, full.</u>	<u>Pressure Demand.</u>	<u>1000</u>
<u>Helmet/hood.</u>	<u>Continuous Flow.</u>	<u>1000</u>
<u>Facepiece, loose-fitting.</u>	<u>Continuous Flow.</u>	<u>25</u>
<u>Suit.</u>	<u>Continuous Flow.</u>	<u>(4)</u>
<u>2. Self-contained breathing apparatus (SCBA):</u>		
<u>Facepiece, full.</u>	<u>Demand.</u>	<u>^b100</u>
<u>Facepiece, full.</u>	<u>Pressure Demand.</u>	<u>^b1000</u>
<u>Facepiece, full.</u>	<u>Demand, Recirculating.</u>	<u>^b100</u>
<u>Facepiece, full.</u>	<u>Positive Pressure Recirculating.</u>	<u>^b1000</u>
III. <u>Combination Respirators:</u>		
<u>Any combination of air-purifying and atmosphere-supplying respirators.</u>	<u>Assigned protection factor for type and mode of operation as listed above.</u>	

^a These assigned protection factors apply only in a respiratory protection program that meets the requirements of this chapter. They are applicable only to airborne radiological hazards and may not be appropriate to circumstances when chemical or other respira-

tory hazards exist instead of, or in addition to, radioactive hazards. Selection and use of respirators for these circumstances must also comply with Department of Labor regulations. Radioactive contaminants for which the concentration values in Table I, Column 3 of WAC 246-221-290, Appendix A, are based

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on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

- b Air-purifying respirators with APF <100 must be equipped with particulate filters that are at least 95 percent efficient. Air-purifying respirators with APF = 100 must be equipped with particulate filters that are at least 99 percent efficient. Air-purifying respirators with APFs >100 must be equipped with particulate filters that are at least 99.97 percent efficient.
- c The licensee may apply to the department for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radioiodine).
- d Licensees may permit individuals to use this type of respirator who have not been medically screened or fit tested on the device provided that no credit be taken for their use in estimating intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure preuse user seal check on this type of device. All other respiratory protection program requirements listed in WAC 246-221-117 apply. An assigned protection factor has not been assigned for these devices. However, an APF equal to 10 may be used if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.
- e Under-chin type only. No distinction is made in this section between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the facepiece (e.g., disposable or reusable disposable). Both types are acceptable so long as the seal area of the latter contains some substantial type of seal-enhancing material such as rubber or plastic, the two or more suspension straps are adjustable, the filter medium is at least 95 percent efficient and all other requirements of this part are met.
- f The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.
- g No NIOSH approval schedule is currently available for atmosphere-supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met (i.e., WAC 246-221-117).
- b The licensee should implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health (IDLH).
- i This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

(2) Each radiation survey instrument shall be calibrated:
(a) At intervals not to exceed six months and after each instrument servicing;

(b) At energies and radiation levels appropriate for use;

(c) At two points located approximately one-third and two-thirds at full scale on each scale (for logarithmic scale, at midrange of each decade, and at two points of at least one decade); and

(d) Such that accuracy within ± 20 percent of the true radiation levels can be demonstrated on each scale.

(3) Each licensee shall have available additional calibrated and operable radiation detection instruments capable of detecting radiation and contamination levels that could be encountered during well-logging operations or during the event of an accident, e.g., an alpha meter in case of Am-241 source rupture, a contamination meter and probe, and a high level meter capable of detecting radiation levels up to at least one roentgen per hour. The licensee may own such instruments or may make prior arrangements to obtain them expeditiously from a second party as necessary.

(4) Calibration records shall be maintained for a period of at least three years for inspection by the department.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-244-070 Radiation survey instruments. (1)

The licensee or registrant shall maintain and use sufficient calibrated and operable radiation survey instruments at each field station and temporary job site to make physical radiation surveys as required. Instrumentation shall be capable of measuring (~~(0.1 milliroentgen)~~) 0.001 mSv (0.1 millirem) per hour through at least (~~(100 milliroentgens)~~) 0.5 mSv (50 millirem) per hour.

**WSR 01-05-003
EMERGENCY RULES
DEPARTMENT OF AGRICULTURE**

[Filed February 7, 2001, 2:57 p.m.]

Date of Adoption: February 7, 2001.

Purpose: Reinstate grain inspection program rules and fees for inspection services.

Statutory Authority for Adoption: RCW 22.09.790.

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: 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. This emergency filing will reinstate the fees while the department initiates rule-making proceedings.

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.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The United States Department of Agriculture has oversight on fees charged under the federal Grain Inspection Packers and Stock Yards Administration Act.

Effective Date of Rule: Immediately.

February 7, 2001

William E. Brookreson

Deputy Director

Chapter 16-238

WSDA Grain Inspection Program - Fee Schedule

NEW SECTION

WAC 16-238-010 Definitions. (1) "Department" means the Washington state department of agriculture.

(2) "Ton" means two thousand pounds avoirdupois.

(3) "Overtime" means any time worked on Saturdays, Sundays, or holidays and all time worked before or after the regularly scheduled working hours, Monday through Friday,

unless alternative work schedules have been established at inspection sites.

(4) "Fees" means any charge made by the department for inspection and handling of any commodity or for services related to weighing or storage of grains or commodities.

(5) "Occasional work stoppage" means the union stop work meetings usually held once per month.

NEW SECTION

WAC 16-238-020 Grain and commodity inspection points. The following cities in the state of Washington are hereby designated as inspection points for the purpose of inspecting and weighing standardized grains, beans, peas, lentils and other commodities: Clarkston, Colfax, Kalama, Pasco, Seattle, Spokane, Tacoma and Vancouver.

NEW SECTION

WAC 16-238-030 General provisions for hourly charges.

(1) Straight time, per hour. \$26.34

This hourly rate will be applied in any situation where the fees generated are not sufficient to provide revenue equivalent to the published hourly rate, per employee, including applicable supervisory and clerical hours, and where no other hourly rate, fee, guarantee of expenses or contractual agreement exists or is specified in this schedule of fees and charges. Whenever the lot size or workload is not of sufficient size to generate revenue equivalent to the published hourly rate, per employee, an additional fee shall be assessed so that total revenue generated is equal to the published hourly rate, per employee: Provided, That such revenue insufficiency may be established on the basis of the average hourly revenue generated at the worksite over the Monday through Sunday work week, upon written request of the applicant for service. In the absence of such request, fees shall be assessed on a daily basis.

(2) Overtime, and night shift rate per hour. \$6.87

Whenever a service is requested before or after regularly scheduled working hours, Monday through Friday, or anytime on Saturdays, Sundays or holidays, a fee of \$6.87 per hour, per employee, including applicable supervisory and clerical hours, shall be charged in addition to the regular inspection and weighing fees.

(a) Requests for service on Saturdays, Sundays, or holidays, or for work shifts other than the inspection office's established standard workday hours, Monday through Friday, must be received by the inspection office no later than two hours prior to the inspection office's established daily closing time of the last regularly scheduled working day prior to the requested service. When the request is not received within the established time frames, service will be provided where personnel are available, but an additional fee of \$4.57 per hour, per employee, will be assessed for the hours of the requested service.

(b) Requests for service which are beyond the scope or volume normally provided at an inspection site must be received by the inspection office no later than two hours prior to the inspection office's established daily closing time of the

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last regularly scheduled working day prior to the date of the requested service in order for the department to guarantee to have adequate staff available to perform the service.

(c) Whenever an employee is notified after leaving the worksite to return to a worksite after the inspection office's established standard workday hours, or on a Saturday, Sunday or holiday, two additional hours per employee, will be charged at the rate of \$11.47 per hour and added to other fees charged.

(d) Scheduled night shifts.

(i) The department must be given at least seven calendar days notice, in writing, to establish a scheduled night shift. If the full seven-day notice is not given, a fee of \$6.87 per hour, per employee, will be assessed until the seven-day notice period has elapsed.

(ii) The department shall be given at least twenty-one calendar days' notice, in writing, of cancellation of any scheduled night shift operation. If the full twenty-one day notice is not given, a fee of \$6.87 per hour, per employee, will be assessed for each hour under the regular night shift schedule that would have been worked until the twenty-one day notice period has elapsed.

(3) Standby rate per hour \$28.77

Whenever a service is requested before or after the inspection office's established standard workday, Monday through Friday or anytime on Saturdays, Sundays or holidays, and service cannot be performed through no fault of the department, four hours at the standby rate of \$28.77 per hour, per employee, shall be charged. Additional charges at the standby rate per hour, per employee shall be assessed for all hours over four that continue to be staffed at the request of the applicant. Whenever a service is requested before or after working hours, Monday through Friday or anytime on a Saturday, Sunday or holiday, and a cancellation of the request is not received two hours prior to the inspection office's established daily closing time of the last regularly scheduled working day prior to the requested service, the four hour standby charge per employee, will be assessed.

(4) Guarantee of expense. When a service is requested that requires assignment of personnel at a facility where the volume of work at the established fees is not adequate to pay the cost of providing the service, a guarantee of the expense of providing the service is required. These facilities may enter into agreement with the department at guaranteed staffing levels and negotiated minimum hours and unit fees.

(5) Official commercial inspection services may be provided, on-site, at the applicant's request. When appropriate space, equipment and security can be provided, the program is able to provide appropriate licensed personnel, and a guarantee of expense can be negotiated.

NEW SECTION

WAC 16-238-060 Official inspection and/or weighing fees under the United States Grain Standards Act. (1)

Combination inspection and weighing fees. Ships, barges, unit trains and transfers of bulk grain.

- (a) From vessel to elevator, per ton \$0.128
- (b) Bin transfers, per ton \$0.128
- (c) From elevator to vessel, per ton\$ \$0.128

(d) From railcars of a unit train, sampled by diverter samplers, batch weighed and inspected under the subplot inspection plan in units of not less than five cars, per ton \$0.128

(2) Inspection only of railroad boxcars, open hopper-type cars, original inspection. Sampling only services are available at the inspection only rates shown in this fee schedule.

(a) Carlots sampled by United States Department of Agriculture approved diverter type mechanical samplers, per car \$15.50

Batch grades may contain up to the maximum number of cars allowable under Federal Grain Inspection Service regulations/instructions. The per car sampling charge will be assessed for each car included in the batch grade.

(b) When sampled by United States Department of Agriculture approved grain trier, original and subsequent original inspections, per car. \$24.00

(3) Inspection only of trucks, per truck. \$15.00

(4) Reinspections of railroad boxcars, open-type cars, covered hopper-type cars, ship subplot samples, barge lots, truck lots, and submitted samples.

(a) When based on an official file sample, per reinspection \$9.00

(b) When based on a new sample, for railcars only, per reinspection \$24.00

(c) When based on a new sample, for trucks only, per reinspection \$15.00

(d) FGIS approved per factor reinspections will be provided at the applicable file sample or new sample rate listed in this section.

(5) Submitted samples,

(a) Standardized grains, except canola per inspection \$7.75

(b) Canola, per inspection. \$14.20

(6) Fees for laboratory determination of erucic acid, and/or glucosinolate, and/or oil content of canola, identical to the fees assessed by the Federal Grain Inspection Service.

(7) Factor analysis and/or certification.

(a) Nongrade determining factors added to existing certificates, or requested on ship subplot analyses, that do not affect the grade: per factor \$2.50

Submitted sample certificates of grade for barley may show, on request, dockage to the nearest one-tenth percent without additional charge. Submitted sample certificates of grade for wheat may show, on request, foreign material when it is not a grade determining factor, without additional charge.

(b) Factor certification only (maximum of one factor), per certificate \$ 2.50

(i) Additional factors added to a factor certificate, per factor \$2.50

(A maximum of \$7.50 will be charged for factor only certification.)

(ii) When submitted samples are not of sufficient size to provide official grade analysis, obtainable factors will be provided, upon request of the applicant, at the factor only rate.

(8) Official analysis of constituents (protein, oil, etc.) by near-infrared transmittance.

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(a) Official constituent analysis of wheat, soybeans, or other FGIS approved commodities when in conjunction with official inspection for grade, per test \$6.25

(b) Official constituent analysis of wheat, soybeans, or other FGIS approved commodities when not in conjunction with official inspection for grade, per test \$8.50

When based on official sample (including new sample reinspection) add the applicable sampling charges.

(c) Official constituent analysis of wheat, soybeans, or other FGIS approved commodities: Submitted sample or reinspection based on official file sample \$8.50

(9) Inspection of bagged grain, per cwt \$0.065

(10) Checkloading bagged grain, per hour, per employee \$26.34

(11) Waxy corn determination, on request, per determination \$12.75

(12) FGIS approved mycotoxin testing.

(a) Screening or quantitative testing determinations, based on official sample, except thin layer chromatography, per test \$37.50

(b) Submitted samples, screening or quantitative determinations, except thin layer chromatography, per test \$26.34

(c) Reinspection, based on official file, screening or quantitative, except thin layer chromatography, per test \$26.34

(d) Reinspection, based on a new sample, screening or quantitative, except thin layer chromatography, per test \$37.50

(e) Thin layer chromatography determinations will be assessed at a rate identical with the fees charged by the Federal Grain Inspection Service.

(13) Stowage examinations - ships, barges, or vessels.

(a) Per stowage space or tank, or return to stowage space or tank, per examination. \$24.00

(b) Initial inspection, minimum charge. \$120.00

(c) Subsequent inspections, minimum charge . . \$72.00

(d) Travel time, two hour minimum, per hour, per employee \$26.34

Note: Stowage examinations may be conducted on vessels at anchor, at the convenience of the designated grain inspection area office, on request. Inspections at anchor will be made during daylight hours only, and only under safe working and weather conditions. The applicant is responsible for providing safe transportation to and from the vessel by licensed tug or water taxi. Two vessel or ship's agent representatives will be provided to accompany each inspector providing stowage exam services. Tanker inspections may require additional inspection personnel. When appropriate, hourly and/or minimum charges listed in the fee schedule will be assessed to the inspection and travel time charges shown in this section.

(e) A minimum of four hours per inspector at the applicable overtime rate shall also be assessed on Saturdays, Sundays, or holidays.

(14) Other stowage examinations.

(a) Sea van-type containers (when checkloading is not required) \$8.10

(b) Railroad cars, trucks and other containers, not in conjunction with loading, per container \$8.10

(15) Diverter-type samples, per hour, per employee \$26.34

(16) Ship samples:

(a) Ship composite samples

(i) Initial set of samples to applicant (maximum of three samples) no charge

(ii) Additional samples or samples at the request of other interested parties, per sample (two sample minimum when not requested with initial set) \$5.25

(17) Weighing services.

(a) Class X weighing services.

(i) From railroad boxcars, open or covered hopper-type cars (without inspection required) or vessels to elevator (grain only), per ton \$0.107

(ii) From elevator to boxcars, open or covered hopper-type cars, barges (without inspection required) or vessels (without inspection, grain only), per ton \$0.107

(iii) Bin transfers (grain only), per ton \$0.107

(iv) Trucks, per truck or weight lot. \$7.50

(b) Class Y weighing services, per hour, per employee \$26.34

(c) Checkweighing of bagged grain, per hour, per employee \$26.34

(d) Scale certification/checktesting of official weighing scales.

(i) Weights and measures scale specialist, per employee-hour \$34.87

(ii) Grain inspection personnel, per hour, per employee \$26.34

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

NEW SECTION

WAC 16-238-070 Official services under the Agricultural Marketing Act of 1946. (1) Inspection or analysis of graded and non-graded commodities.

(a) Inspection of bagged commodities at inspection points, per cwt \$0.065

(b) Bulk commodity inspection at inspection points, per ton \$0.30

(c) Minimum charge for bulk or bagged commodities (one hour) \$26.34

(d) Submitted sample inspection, per sample . . \$14.20

(2) Weighing and combination inspection/weighing services for bulk commodities.

(a) Weighing only, other than grain, per ton. . . \$0.117

(b) Combination inspection/weighing of bulk commodities under federal grade standards, state standards, or for factor determinations, per ton \$0.128

(c) Weigh grain by-products into portable containers including fitness examination of the container, weigh and sample the by-product (thirty ton maximum) \$15.00

(3) Factor analysis.

(a) Moisture only. \$5.25

(b) Additional factors, the determination of which are not required to establish grade, or otherwise not required by

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regulation, added to an existing certificate, per factor \$2.50

(c) Certification, factor only (maximum two factors), per certificate \$3.00

(d) Additional factors added to a factor certificate, per factor \$2.50

(A maximum of \$13.75 will be charged for grading factors only.)

(e) Analysis of rapeseed, mustard seed, confectionary sunflower seed, safflower seed, or other commodities with established FGIS factor only inspection procedures, per certificate. \$14.20

(f) Sampling only fees identified in subsection (4)(a) and (b) of this section will be assessed in addition to the factor analysis fees for rapeseed, mustard seed, confectionary sunflower seed, safflower seed, or other commodities with established FGIS factor only inspection procedures when official sampling is requested.

(4) Sampling only, bulk commodities.

(a) Trucks or containers, per carrier \$15.00

(b) Boxcars, open or covered hopper-type cars, per car \$24.00

(5) Processed commodity and defense personnel support center (DPSC) inspection fees.

(a) Per hour per employee, two hour minimum . \$26.34

(b) In addition to the charges, if any, for sampling and other requested service, a fee will be assessed for each laboratory analysis or test identical with the amount charged by the Federal Grain Inspection Service for laboratory tests performed under authority of the Agricultural Marketing Act and for any postage or other costs of mailing not included in these fees.

(6) Sanitation inspections.

(a) Initial inspection no charge

(b) Reinspections, four hour minimum, per hour, per employee \$26.34

(7) Stowage examinations under the Agricultural Marketing Act will be provided as per WAC 16-238-060 (13) and (14).

(8) Mycotoxin testing fees.

(a) Screening or quantitative testing determinations, except thin layer chromatography, per test \$37.50

(b) Thin layer chromatography determinations will be assessed at a rate identical with the fees charged by the Federal Grain Inspection Service.

(9) Falling numbers determinations, per determination \$12.75

Liquefaction number, per determination. \$0.50

NEW SECTION

WAC 16-238-080 Miscellaneous fees. (1) Mailing of samples shall be charged at the actual mailing costs, minimum charge \$2.00

(2) Fees for pickup of samples on routes established by the department, per sample \$0.60

(3) Fees for services performed at places other than established grain and commodity inspection points.

(a) Travel time, per employee, will be charged at the applicable straight time or overtime rate from office to inspection point and return.

(b) Mileage will be charged at the current general administration private vehicle mileage reimbursement rate, except where suitable transportation is provided by the applicant. Mileage is assessed on a per call, door to door basis and will be charged in addition to all other inspection fees, hourly rates and applicable charges.

(c) If the travel is of sufficient duration to require payment of subsistence or per diem to the employee, an amount equal to the established subsistence and/or per diem rate (WAC 82-28-040 and 82-28-050) shall be assessed, except where applicable subsistence and lodging are furnished, or paid, by the applicant.

(d) Incidental costs of telephone, mailing, etc. shall be at the actual cost.

(e) Facsimile transmissions, per page \$1.00

(4) Certificate charges for certificates under the United States Grain Standards Act or the Agricultural Marketing Act of 1946.

(a) Divided original certificates, per certificate .. \$1.50

(b) Extra copies of inspection, protein, weight, falling number, commodity or aflatoxin certificates, per copy \$3.00

(5) Phytosanitary certificates.

(a) When performed in conjunction with official inspection, per certificate \$6.75

(b) When performed without official inspection, add sampling fee, per hour, per employee \$26.34

(6) Timely payment. Payment of fees and charges is due within thirty days after the date of the statement.

(a) If payment is not received within thirty days, service may be withheld until the delinquent account is paid; or

(b) In the case of such delinquent accounts, cash payment for subsequent service may be required; and

(c) A penalty of twelve percent per annum shall be assessed on the delinquent account balance.

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.

NEW SECTION

WAC 16-238-082 Fees for services performed under state regulation. (1) Inspection of commodities under state of Washington standards or other state, national, or international standards or criteria specified by the applicant, except as noted in this section.

(a) Cultivated buckwheat, safflower, submitted sample inspection for factors or grade, per sample \$7.50

(b) Rapeseed (except Canola), other commodities not listed above; inspection under Washington state standards or other specified standards or criteria, submitted sample inspection for factors or grade, per sample \$13.95

(c) Sampling only fees will be assessed at the rates shown in WAC 16-238-070 (4)(a) and (b) and will be assessed in addition to the sample inspection fee when lot inspection is requested.

(d) Inspection of bagged commodities per cwt. . \$0.065

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(e) Combination inspection and weighing fees assessed at the rates shown in WAC 16-238-060 (1)(a), (b), (c), and (d).

(2) Cracked corn, corn screenings, and mixed grain screenings will be inspected and/or weighed at applicable rates shown in WAC 16-238-060.

(3) Unofficial analysis of constituents (protein, oil, etc.) by near-infrared transmittance provided at the applicable rates shown in WAC 16-238-060.

(4) Fees for laboratory analysis of commodities covered by this section, or for the analysis of constituents or conditions of grains or commodities inspected under WAC 16-238-060 or 16-212-070 not provided for in the official standards will be assessed at the current rates established by the federal, state or private laboratory providing the analysis. These fees will be assessed in addition to all other inspection and sampling fees, hourly rates and applicable charges.

Note: This fee is applied in addition to the inspection fee for grading under state standards.

(5) For other laboratory analysis not identified herein, a fee will be assessed for each test or analysis identical with the amount charged by USDA or Washington state agency laboratories.

NEW SECTION

WAC 16-238-090 Covered commodities. Commodities covered under chapter 22.09 RCW in respect to storage and/or merchandising shall include wheat, barley, oats, field corn, popcorn, rye, triticale, grain sorghum, soybeans, sunflowers, flax, buckwheat, rapeseed, safflower, millet, mustard, dry peas, dry beans, lentils, malt, and the by-products resulting for conditioning the above commodities.

NEW SECTION

WAC 16-238-100 Grades and standards. The grades and standards established by the United States Department of Agriculture as of August 1, 1984, for all grains and commodities included within the provisions of this chapter are hereby adopted. In addition, the procedures to sample, grade, test and weigh grains and commodities, established by the regulations and instructions under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, are hereby adopted for this state.

NEW SECTION

WAC 16-238-110 Scales. All scales used by warehousemen and dealers must be certified for accuracy annually by the department of agriculture. Scale testing for certification may be performed by the department or by an approved scale company. When scales are tested by the department a seal shall be placed on the scales. The seal shall be dated and shall indicate approval or rejection. When scales are tested by an approved scale company, a copy of a scale test report shall be forwarded to the department and a copy shall be maintained in the warehouseman's file.

WSR 01-05-007
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed February 7, 2001, 4:45 p.m.]

Date of Adoption: February 7, 2001.

Purpose: Amend WAC 388-310-1300 to extend sponsorship of community jobs positions to private businesses.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-1300(3).

Statutory Authority for Adoption: RCW 74.08A.320, 74.08A.330.

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: Approximately 22,000 adult recipients of temporary assistance for needy families (TANF) are at risk of using up all sixty months of TANF available to them without having developed the means of self-support. Many of these recipients will qualify for the community jobs program, which is a form of protected employment designed to get customers ready to compete in the general labor market. Community jobs placements are currently restricted to government (including tribal) and nonprofit agencies, and we are running out of placements. If we do not open community jobs to private businesses as soon as possible, customers will have to wait up to nine months for vacant placements, wasting several of their limited remaining TANF months.

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

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

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

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

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

Effective Date of Rule: Immediately.

February 7, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 99-08-051, filed 4/1/99, effective 5/2/99)

WAC 388-310-1300 Community jobs program. (1)
What is the community jobs program?

The community jobs program helps you gain work skills and experience by enrolling you in a temporary, subsidized job. You will also receive other services and support to help you move into unsubsidized employment as quickly as possible.

(a) The state department of community, trade and economic development (DCTED) administers the community jobs program.

(b) DCTED selects community jobs contractors (CJC) by using a competitive "requests for proposal" process. DCTED, based upon the successful proposals, develops contracts specific to each selected community jobs contractor.

(c) The CJs develop and manage the community jobs positions, pay the wages, provide support services and act as the "employer of record" while you are enrolled in a subsidized community job.

(d) Employers at the community jobs work sites must take actions to help participants move into unsubsidized employment. If they do not meet this requirement, they will not be considered for additional community jobs employees.

(e) The department of social and health services funds the community jobs program and reimburses your wages to the CJs.

(2) How will I be affected if I am enrolled in the community jobs program?

If you are enrolled in the community jobs program:

(a) Your case manager will assign you to a community job position for no more than nine months.

(b) You may be assigned to a community job position when:

(i) You have gone through job search without finding a job; and/or

(ii) You and your case manager decide you need a supportive work environment to help you become more employable.

(c) You may not be enrolled in any community jobs position that requires you to do work related to religious, electoral or partisan political activities.

(d) You, your case manager and the CJC will review the appropriateness of your community jobs position every ninety days during your nine-month placement, looking at:

(i) Your continued TANF/SFA eligibility;

(ii) Any earned or unearned income received by you or another member of your assistance unit (that is, you and other people in your household who are included on your cash grant)(:); and

(iii) Whether the community jobs position is actually helping you become more employable.

(e) You may work twenty or more hours per week in the community jobs position and will be paid the federal or state minimum wage, whichever is higher.

(f) You will earn sick leave and annual leave at the rate agreed upon by DCTED and the CJC for community jobs participants.

(g) The amount of your TANF/SFA monthly grant will be determined by following the rules in WAC 388-450-0050 and 388-450-0215 (1), (3), (4), (5) and (6). WAC 388-450-0215 (2), does not apply to your community jobs wages.

(3) What kind of employers provide community jobs work sites?

The CJC may ask the following categories of employers to provide you with a community job work site:

(a) Federal, state or local governmental agencies and tribal governments; (~~and~~)

(b) Private and tribal nonprofit businesses, organizations and educational institutions; and

(c) Private businesses.

**WSR 01-05-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-17—Filed February 8, 2001, 3:46 p.m.]

Date of Adoption: February 8, 2001.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Q; 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: There has been a strong recreational fishery in the Grande Ronde and Snake rivers this season. Excess Wallowa steelhead stock, well above hatchery propagation needs are projected to return to the WDFW Cottonwood facility on the Grande Ronde this year. This regulation increases the daily limit from two hatchery steelhead to three. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Effective Date of Rule: Immediately.

February 8, 2001
J. P. Koenings
Director
by Larry Peck

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NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Grande Ronde River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. February 10, 2001 through April 15, 2001 in those waters of the Grande Ronde River from the Asotin County road bridge (approximately 2 1/2 miles upstream from the mouth of the Grande Ronde River) to Oregon State line the daily limit on hatchery steelhead is three fish.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. April 15, 2001:

WAC 232-28-61900Q Exceptions to statewide rules—Grande Ronde River.

**WSR 01-05-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-19—Filed February 8, 2001, 3:49 p.m.]

Date of Adoption: February 8, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300H; 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. Red urchin fishing will be closed in the San Juan area because the non-Indian share has been taken. 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: Immediately.

February 8, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-52-07300I 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 12, 2001. Marine Fish/Shellfish Management and Catch Reporting Areas 26B, 26C, 26D, and 28A are open only on February 12, 13, and 14, 2001. The minimum size for green sea urchins is 2.25 inches in diameter exclusive of the spines.

(2) 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300H Sea urchins. (01-14)

**WSR 01-05-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-22—Filed February 14, 2001, 4:03 p.m., effective February 15, 2001, 12:01 a.m.]

Date of Adoption: February 13, 2001.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900N.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is necessary to reopen river sections to steelhead fishing. The winter steelhead egg take needs have been secured for the Puget Sound hatchery program.

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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 0, Repealed 0.

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

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

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

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

Effective Date of Rule: February 15, 2001, 12:01 a.m.

February 13, 2001

J. P. Koenings

Director

by Larry Peck

REPEALER

The following section of the Washington Administrative code is repealed effective 12:01 a.m. February 15, 2001:

WAC 232-28-61900N Exceptions to statewide rules. (01-05)

**WSR 01-05-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-23—Filed February 14, 2001, 4:05 p.m., effective February 15, 2001, 10:00 a.m.]

Date of Adoption: February 13, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000X, 220-52-04600M and 220-52-04000Y; 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 4.

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 15, 2001, 10:00 a.m.

February 13, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-52-04000Y Commercial crab fishery—
Exceptions to permanent rules for pot limits. Notwithstanding the provisions of WAC 220-52-040, effective 10:00 a.m. February 15 until 4:00 p.m. February 25, 2001 it is unlawful for any persons 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 220-52-04600N 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 a.m. February 15 to 4 p.m. February 25, 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,

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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 15, 2001:

WAC 220-52-04600M Commercial crab fishery— Allocation closure. (01-18)

WAC 220-52-04000X Commercial crab fishery— Exceptions to permanent rules for pot limits (01-18)

The following sections of the Washington Administrative Code are repealed effective 4:01 p.m. February 25, 2001:

WAC 220-52-04000Y Commercial crab fishery— Exceptions to permanent rules for pot limits

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 01-05-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-21—Filed February 15, 2001, 10:34 a.m., effective February 19, 2001, 7:00 p.m.]

Date of Adoption: February 16 [15], 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Q; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The select area fisheries in Blind Slough/Knappa Slough and Tongue Point/South Channel are part of an on-going BPA funded study to design fisheries in areas outside of the mainstem Columbia River. Several stocks of salmon have been released from net pens in these select areas to provide for fisheries. All salmon returning to these net pens are harvestable. Impacts to ESA-listed stocks in these fisheries through February "will not make any irreversible or irretrievable commitment of resources that would foreclose the formulation or implementation of any reasonable and prudent alternative which would not violate subsection 7 (a)(2)" (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. This rule is consistent with actions of the Columbia River Compact hearings of January 25, 2001, and conforms Washington and Oregon state rules. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 19, 2001, 7:00 p.m.

February 16 [15], 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-33-01000Q Columbia River gillnet seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad, taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E except during the times and conditions listed:

1) Blind Slough/Knappa Slough Select Area

Area: Open waters of Blind Slough extend from markers at the mouth of Gnat Creek located approximately 1/2 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent Washington/Oregon waters extend downstream of the railroad bridge.

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Knappa Slough is open to fishing in all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

- a) Blind Slough only
Gear: 8-inch minimum mesh
Dates:
7 PM February 19 to 7 AM February 20, 2001
7 PM February 26 to 7 AM February 27, 2001
7 PM March 5 to 7 AM March 6, 2001

Blind Slough only
Gear: 8-inch maximum mesh
Dates:
7 PM April 2 to 7 AM April 3, 2001
7 PM April 9 to 7 AM April 10, 2001

- b) Blind Slough and Knappa Slough
Gear: 8-inch maximum mesh
Dates:
7 PM April 16 to 7 AM April 17, 2001
7 PM April 23 to 7 AM April 24, 2001
7 PM April 30 to 7 AM May 1, 2001
7 PM May 2 to 7 AM May 3, 2001
7 PM May 7 to 7 AM May 8, 2001
7 PM May 9 to 7 AM May 10, 2001
7 PM May 14 to 7 AM May 15, 2001
7 PM May 16 to 7 AM May 17, 2001
7 PM May 21 to 7 AM May 22, 2001
7 PM May 23 to 7 AM May 24, 2001
7 PM May 28 to 7 AM May 29, 2001
7 PM May 30 to 7 AM May 31, 2001
7 PM June 4 to 7 AM June 5, 2001
7 PM June 6 to 7 AM June 7, 2001
7 PM June 11 to 7 AM June 12, 2001
7 PM June 13 to 7 AM June 14, 2001

Gear: Nets restricted to 100 fathoms in length with no weight restriction on leadline.

Allowable Sale: Salmon, sturgeon, shad

3) Tongue Point/South Channel Select Area

Area: Tongue Point Basin is open to fishing in all waters bounded by a line from the red light at Tongue Point to the flashing green light at Tongue Point to the flashing green light at the rock jetty on the northwesterly tip of Mott Island, a line from a marker at the south end of Mott Island easterly to a marker on the northwest bank on Lois Island, and a line from a marker on the southwest end of Lois Island due westerly to a marker on the opposite bank.

South Channel is open to fishing in all waters bounded by a line from a marker on John Day Point through the green buoy "7" thence to a marker on the southwest end of Lois Island upstream to an

upper boundary line from a marker on Settler Point northwesterly to flashing red marker "10".

All open waters are under concurrent jurisdiction.

- a) Tongue Point only:
Gear: 8-inch minimum mesh
Dates:
7 PM February 20 to 7 AM February 21, 2001
7 PM February 27 to 7 AM February 28, 2001
7 PM March 6 to 7 AM March 7, 2001

- b) Tongue Point and South Channel
Gear: 8-inch maximum mesh
Dates:
7 PM April 17 to 5 AM April 18, 2001
7 PM April 24 to 5 AM April 25, 2001
7 PM May 1 to 5 AM May 2, 2001
7 PM May 3 to 5 AM May 4, 2001
7 PM May 8 to 5 AM May 9, 2001
7 PM May 10 to 5 AM May 11, 2001
7 PM May 15 to 5 AM May 16, 2001
7 PM May 17 to 5 AM May 18, 2001
7 PM May 22 to 5 AM May 23, 2001
7 PM May 24 to 5 AM May 25, 2001
7 PM May 29 to 5 AM May 30, 2001
7 PM May 31 to 5 AM June 1, 2001
7 PM June 5 to 5 AM June 6, 2001
7 PM June 7 to 5 AM June 8, 2001
7 PM June 12 to 5 AM June 13, 2001

Gear: Legal gear restricted to a maximum length of 250 fathoms and weight on leadline not to exceed 2 pounds on any one fathom within Tongue Point Basin.

In South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the leadline. Fishers participating in the Tongue Point Basin fishery may have stored on board their boats, gill nets with leadline in excess of 2 pounds per fathom.

Allowable Sale: Salmon, sturgeon and shad.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 a.m. June 14, 2001:

WAC 220-33-01000Q Columbia River gillnet seasons above Bonneville.

EMERGENCY

WSR 01-05-071
EMERGENCY RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed February 15, 2001, 12:57 p.m.]

Date of Adoption: February 14, 2001.

Purpose: To adopt new regulations clarifying provisions of SHB 3077, which provides for the payment of additional unemployment benefits for qualified dislocated workers enrolled in approved training. The regulations define terms, clarify eligibility requirements, and establish policies and procedures related to the approval and funding of training plans. The rules also clarify requalification requirements for individuals who have been disqualified from benefits.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-16-011 and 192-16-017.

Statutory Authority for Adoption: RCW 50.12.010, 50.20.010, and 50.22.150(10).

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: Rules are necessary to clarify several provisions of SHB 3077, and to ensure that it is implemented consistently state wide. The department has held several meetings with stakeholders regarding the content of the final rules. A hearing on the proposed rules developed as a result of these meetings has been scheduled. Emergency rules are needed until permanent 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 17, Amended 0, Repealed 2.

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 14, 2001
 Annette M. Copeland
 Assistant Commissioner

NEW SECTION

WAC 192-150-050 Leaving work to accept bona fide job offer—RCW 50.20.050 (2)(a). If you leave work to accept a bona fide offer of employment, you will have good cause within the meaning of RCW 50.20.050(1) if you satisfactorily demonstrate that:

- (1) Prior to leaving work, you received a definite offer of employment; and
- (2) You had a reasonable basis for believing that the person making the offer had the authority to do so; and
- (3) A specific starting date and the terms and conditions of the employment were mutually agreed upon; and
- (4) You continued in your previous employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job; and
- (5) The new job is in employment covered by Title 50 RCW or the comparable laws of another state.

NEW SECTION

WAC 192-150-065 What constitutes an employer-initiated mandatory transfer under RCW 50.20.050 (2)(c)? If your spouse's employer requires your spouse to relocate to another labor market area to retain a current job or to accept another job with that employer, the relocation will be considered an employer-initiated mandatory transfer. Examples of employer-initiated mandatory transfers include, but are not limited to:

- (a) A plant closure where employees must move to another labor market area to continue employment with that employer;
- (b) A change in job responsibilities, such as a promotion, with that same employer where the employer requires a move to another labor market area; and
- (c) A restructuring of business operations by the employer requiring employees to move to another labor market area if they want to continue doing the same job.

NEW SECTION

WAC 192-150-085 How to qualify after benefits have been denied. Benefits may be denied under RCW 50.20.050(1) for voluntarily leaving work, RCW 50.20.060 for being discharged for misconduct, and RCW 50.20.080 for refusing an offer of suitable work or job referral. The denial of benefits will continue indefinitely until you show that:

- (1) At least seven calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits;
- (2) You have obtained bona fide work and earned wages of at least seven times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state.

Chapter 192-270

Training Benefits for Dislocated Workers

NEW SECTION

WAC 192-270-005 Definitions. The definitions below apply to this chapter and RCW 50.22.150:

- (1) "Labor market" means the geographic area in which workers in your particular occupation or with your particular set of skills have customarily found work. For the purpose of

determining whether you are a dislocated worker, "labor market" is based on your place of residence at the time you separated from employment. You will not be eligible for training benefits if, following your separation from work, you move from a labor market area where your skills are in demand to an area where they are declining.

(2) "NAICS" means the North American industry classification system code.

(3) "Plurality of wages" means the largest proportion of wages earned within a particular occupation or skill set. These wages must be earned in:

(a) Your base year, and

(b) At least two of the four twelve-month periods preceding your base year.

(4) "SIC" means the standard industrial classification code. (5) "Skill set" means the work-related knowledge and abilities needed to produce a particular product or provide a particular service.

(6) "Training benefits" means the additional benefits paid under RCW 50.22.150 to eligible dislocated workers enrolled in and making satisfactory progress in a training program approved by the commissioner.

(7) "Wages" means remuneration earned in employment as defined in Title 50 RCW or the comparable laws of another state. This means that only wages in covered employment can be considered in determining whether you have sufficient tenure in an occupation or in work with a particular skill set.

NEW SECTION

WAC 192-270-010 Employment separations. You must have been terminated or received a notice of termination from your employer to be eligible for training benefits. Training benefits are not available if you left work voluntarily as provided in RCW 50.20.050, regardless of whether you had good cause for leaving, or if you are disqualified from benefits for work-related misconduct under RCW 50.20.060, and have not requalified for benefits.

When determining whether your separation from employment makes you eligible for training benefits, the department will look at the last job you held for a period of at least seven weeks that was in employment covered by Title 50 RCW or the comparable laws of another state.

NEW SECTION

WAC 192-270-015 Unlikely to return to employment. Except as provided in RCW 50.22.150(3), you are unlikely to return to employment if:

(1) You have:

(a) Become unemployed due to a permanent plant closure;

(b) Received a federal WARN act notice; or

(c) Received a notice of indefinite layoff as a result of a permanent reduction of operations at your place of employment; and

(2) Suitable work for individuals with your skills is in diminishing demand within your labor market.

NEW SECTION

WAC 192-270-020 Employment in the aerospace industry. (1) Employment in the following SIC codes is considered employment in the aerospace industry:

- 3721 Aircraft
- 3724 Aircraft engines and engine parts
- 3728 Aircraft parts and auxiliary equipment

(2) Employment in the following NAICS code is considered employment in the aerospace industry:

- 336411 Aircraft manufacturing

NEW SECTION

WAC 192-270-025 Employment in the forest products industry. (1) As provided in RCW 50.22.150(2)(b), the department has determined that employment in industries assigned the following SIC or NAICS codes is considered employment in the forest products industry:

(a) SIC codes:

- 24 Lumber and wood products, except furniture
- 26 Paper and allied products
- 08 Forestry
- 2861 Gum and wood chemicals
- 3553 Woodworking machinery
- 3554 Paper industry machinery manufacturing
- 5031 Lumber, plywood, millwork and wood panels

(b) NAICS codes:

- 321 Wood product manufacturing
- 322 Paper manufacturing
- 113110 Timber tract operations
- 113210 Forest nurseries and gathering of forest products
- 113310 Logging
- 115310 Support activities for forestry
- 325191 Gum and wood chemical manufacturing
- 333210 Sawmill and woodworking machinery manufacturing
- 333291 Paper industry machinery manufacturing
- 337110 Wood kitchen cabinet and countertop manufacturing
- 421310 Lumber, plywood, millwork and wood panel wholesalers

(2) The department further determines that employment reported in industries assigned the following SIC or NAICS codes may be employment in the forest products industry. The department may review the specific nature of the employer's business to determine whether it represents employment in the forest products industry:

(a) SIC codes:

- 2823 Cellulosic manmade fibers
- 3425 Saw blades and handsaws
- 4212 Local trucking without storage (log trucking; trucking timber)

4449 Water transportation of freight, NEC (log rafting and towing)

5113 Industrial and personal service paper

(b) NAICS codes:

325221 Cellulosic organic fiber manufacturing

332213 Saw blade and handsaw manufacturing

337215 Showcase, partition, shelving and locker manufacturing

422130 Industrial and personal service paper wholesalers

(3) Other employment may be considered to be employment in the forest products industry if it involves:

(a) The planting and/or cultivation of trees for eventual harvest for lumber or paper manufacturing;

(b) The harvest of logs for lumber or pulp production;

(c) Hauling or shipping logs;

(d) Hauling or shipping lumber or paper products from point of manufacture;

(e) Scaling logs;

(f) Repair of logging trucks or equipment;

(g) Manufacture of wood processing, logging or forestry equipment, including but not limited to logging trucks, log splitters, draglines, or chippers;

(i) Sale, rental or leasing of wood processing or logging equipment; or

(j) Other activities clearly involved in the forest products industry, even if performed for an employer whose primary business is not in the forest products industry.

NEW SECTION

WAC 192-270-030 Employment in the fishing industry. Employment reported in industries assigned SIC code 0912, Finfish (commercial fishing), or NAICS code 114111, Fishing (finfish), is considered to be employment in the fishing industry.

NEW SECTION

WAC 192-270-035 Timeframes. Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010).

(1) **Submitting a training plan.** You have 60 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 65 calendar days from the date your application for benefits is filed, which represents 60 days plus five days for the booklet to reach you by mail.

(2) **Enrollment in training.** You must be enrolled in training within 90 calendar days, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

(3) If you return to work, and subsequently become unemployed, the timeframes described in subsections (1) and (2) begin with the date you file your additional claim for benefits.

NEW SECTION

WAC 192-270-040 Enrollment in training. To receive training benefits, you must be enrolled in an approved training program on a full-time basis as determined by the educational institution. You are enrolled in training if:

(1) You have preregistered for classes or are on a waiting list; and

(2) You have a starting date of training; and

(3) The starting date is not more than one quarter or term away.

NEW SECTION

WAC 192-270-045 Requirements for applying for training benefits. The following information must be included in your application for training benefits:

(1) Your name and Social Security account number;

(2) The name of the educational institution;

(3) The address of the educational institution;

(4) The department of the educational institution, if applicable;

(5) The name of the training program;

(6) A description of the training program, including remedial requirements if necessary;

(7) Your enrollment date or your place on the waiting list and expected enrollment date;

(8) The duration of the training program, including the dates you plan to begin and complete training;

(9) The occupation(s) trained for;

(10) A verification of your enrollment provided by the educational institution;

(11) A release of information form authorizing the educational institution to release grades, attendance, and other measures of program progress to the department; and

(12) Your signature.

NEW SECTION

WAC 192-270-050 Criteria for approving training plans. (1) The department will consider the following factors when reviewing your application for training benefits:

(a) Whether you have a current benefit year as required by RCW 50.22.010(9);

(b) Whether suitable employment is available in your labor market;

(c) Your plan for completion of the training including, but not limited to, what financial resources you intend to use to fund the complete training plan when training benefits run out;

(d) Whether you have the qualifications and aptitudes to successfully complete the training;

(e) Whether the training relates to a high demand occupation, meaning that the number of job openings in the labor

market for the occupation or with that skill set exceeds the supply of qualified workers;

(f) Whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your employment prospects would be if training were not approved; and

(g) Effective July 1, 2001, whether the educational institution meets the performance criteria established by the workforce training and education coordinating board. Until June 30, 2001, a vocational training program at an educational institution is presumed to meet the performance criteria if it is a:

- (i) Public community or technical college;
- (ii) Public university;
- (iii) Registered apprenticeship program;
- (iv) Private vocational school licensed by the workforce training and education board, the higher education coordinating board, the department of licensing, or a comparable agency in another state;
- (v) Private college or university that is eligible to receive federal funds under Title IV of the Higher Education Act of 1965; or
- (vi) Private provider of vocational training services currently authorized by a private industry council in accordance with P.L. 97-300, Section 107, Selection of Service Providers.

(2) Academic training may be approved if it meets the criteria of subsection (1) and it meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(3) The department may approve educational training that has been identified as necessary by the training facility as a prerequisite to a vocational training program that meets the criteria of subsection (1).

(4) In the case of individuals with physical or sensory disabilities, or in other unusual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

NEW SECTION

WAC 192-270-055 Funding—Waiting lists. Payment of training benefits is contingent upon the availability of funding. Training will not be approved under RCW 50.22.150 unless the department has determined that funds are available to support your training plan.

(1) The amount of funds obligated will be the amount necessary to complete your training plan or the maximum amount authorized by RCW 50.22.150 (5)(a), whichever is less.

(2) If you have been denied training benefits due to lack of funds, the department will consider whether you are eligible for commissioner approved training under WAC 192-200-020.

(3) Funds will be obligated in the following order:

(a) First, otherwise eligible dislocated workers who are enrolled in training approved by the department as of February 13, 2000;

(b) Second, other eligible dislocated workers on a first-come, first-served basis, determined by the date the completed training application is received by the department.

(4) Once all available funds have been obligated, individuals who have been denied training benefits due solely to the lack of funds will be placed on a waiting list. Priority on the waiting list will be determined by the date the claimant's completed training application was received by the department. As additional funds become available, this date will be used when obligating funds to claimants on the waiting list. In the event two or more claimants on the waiting list have the same date, priority will be given to that person who is closest to exhausting regular unemployment benefits.

(5) An individual's name may be removed from the waiting list, upon written notice, when the department determines it is appropriate. Examples include, but are not limited to:

(a) Written correspondence to the claimant from the department is returned by the U.S. postal service for lack of a current address, and the claimant has not filed a change of address with the department;

(b) The claimant fails to respond to written correspondence from the department by the date indicated in the correspondence;

(c) The claimant is not enrolled in or making satisfactory progress in full-time training; or

(d) Implementation of the approved training program would result in benefits being paid more than two years beyond the end of the claimant's benefit year.

NEW SECTION

WAC 192-270-060 Occupation in high demand outside labor market. A training plan may be approved in an occupation not in demand in your local labor market if:

(1) The occupation is in high demand in another labor market; and

(2) You are willing and able to relocate to that labor market when the training is completed; and

(3) There is not a current demand for workers with your present skills in that labor market. The demand for workers in that labor market must be at wages comparable to those paid in your current labor market, based on any differences in the cost of living between the two areas.

NEW SECTION

WAC 192-270-065 Certification of satisfactory progress. (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in full-time training must be signed by the registrar or an equivalent person designated by your educational institution.

(2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:

(a) Your grade point average does not fall below 2.0 for more than one quarter;

(b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and

(c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

NEW SECTION

WAC 192-270-070 Modifying a training plan. (1) You must notify the department prior to making a significant modification to your approved training plan. A significant modification is one that impacts any of the approval criteria listed in WAC 192-270-050 and includes, but is not limited to, changes in:

- (a) Your course of study or major;
- (b) The educational institution;
- (c) The projected start or end dates for the training; or
- (d) Your enrolled credit hours.

(2) The department must determine your continued eligibility for training benefits any time you make a significant modification to your training plan, using the criteria listed in WAC 192-270-050 (1)(b)-(g). Approval of a modification that increases the projected cost of the training is subject to the availability of funding. The department will conditionally pay benefits on a modified training plan until the modification is approved or denied.

(3) In general, you may make a significant modification to your plan one time. Subsequent modifications will not be approved except in unusual individual circumstances. However, this restriction does not apply while you are enrolled in educational courses that are a prerequisite to vocational training.

(4) If you modified your training plan without approval by the department, and that modification is subsequently disapproved, you are ineligible for training benefits for at least five years.

(5) Any benefits paid for a modified training plan that is not approved by the department constitute an overpayment and shall be subject to recovery under RCW 50.20.190.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 192-16-011 Interpretative regulations—Leaving work to accept bona fide job offer—RCW 50.20.050 (2)(a)
- WAC 192-16-017 Interpretative regulations—Satisfying disqualifications under RCW 50.20.050 (1) and (4), 50.20.060 and 50.20.080

**WSR 01-05-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-16—Filed February 16, 2001, 4:34 p.m., effective March 1, 2001, 12:01 a.m.]

Date of Adoption: February 16, 2001.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: 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 2000/2001 wild winter steelhead runs for the Skagit, Snohomish, Stillaguamish, and Puyallup River systems are forecasted to be well below escapement needs. Predicted wild steelhead run sizes for the river systems are anticipated to be between 41 and 71% of wild steelhead escapement requirements. Closures will eliminate potential hooking mortality and disturbance of spawning fish. 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 10, 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: March 1, 2001, 12:01 a.m.

February 16, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Snohomish River, Snoqualmie River, Skykomish River (mainstem), Tokul Creek, Stillaguamish River (mainstem), North Fork Stillaguamish River, Puyallup River, Carbon River, Skagit River, Sauk River and Fisher Slough. Notwithstanding the provisions of WAC 232-28-619, effective March 1, 2001:

EMERGENCY

Snohomish River From mouth including all channels, sloughs and inter-connected waterways upstream to the U.S. Highway 2 bridge: Open March 1, 2001 through March 31, 2001, release all steelhead.
 From U.S. Highway 2 bridge, including all channels, sloughs and inter-connected waterways upstream to the confluence of the Skykomish and Snoqualmie rivers, all channels: Closed to fishing March 1, 2001 through May 31, 2001.

Snoqualmie River From mouth to Snoqualmie Falls: Closed to fishing March 1, 2001 through May 31, 2001.

Skykomish River (Mainstem) From mouth to the forks: Closed to fishing March 1, 2001 through May 31, 2001.

Tokul Creek From mouth to posted cable boundary marker approximately 700 feet upstream of the mouth: Closed to fishing March 1, 2001 until further notice.

Stillaguamish River (Mainstem) All sloughs downstream of Warm Beach-Stanwood Highway: Release all steelhead March 1, 2001 through May 31, 2001.

Stillaguamish River (North Fork) From mouth to Swede Heaven Bridge: Closed to fishing March 1, 2001 through May 31, 2001.

Puyallup River From 11th Street Bridge upstream to Soldier's Home Bridge in Orting: Closed to fishing March 1, 2001 through May 31, 2001.

Carbon River From mouth to Highway 162 Bridge: Closed to fishing March 1, 2001 through May 31, 2001.

Skagit River From mouth to Memorial Highway Bridge, Hwy. 536 at Mt. Vernon: Closed to fishing March 1, 2001 through March 31, 2001.
 From mouth to Memorial Highway Bridge, Hwy. 536 at Mt. Vernon: Release all steelhead April 1, 2001 through May 31, 2001.

From Memorial Highway Bridge, Hwy. 536 at Mt. Vernon to Gorge Powerhouse at Newhalem: Closed to fishing March 1, 2001 through May 31, 2001.
 Fisher Slough: From mouth to Highway 530 Bridge: Closed to fishing March 1, 2001 through March 31, 2001.
 From mouth to Highway 530 Bridge: Release all steelhead April 1, 2001 through May 31, 2001.

Sauk River From mouth to Whitechuck River: Closed to fishing March 1, 2001 through May 31, 2001.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 1, 2001:

WAC 232-28-61900R Exceptions to statewide rules—Snohomish River, Snoqualmie River, Skykomish River (mainstem), Tokul Creek, Stillaguamish River (mainstem), North Fork Stillaguamish River, Puyallup River, Carbon River, Skagit River, Sauk River and Fisher Slough.

WSR 01-05-101
EMERGENCY RULES
REDISTRICTING COMMISSION

[Filed February 20, 2001, 4:05 p.m.]

Date of Adoption: February 20, 2001.

Purpose: To update contact and meeting schedule information for the Washington State Redistricting Commission. More specifically, to delete inaccurate address and telephone information for the commission; to replace inaccurate address information for the commission with current contact information; to indicate an expiration period of the new contact information and to direct future inquiries to the secretary of state; to add a new section directing communications and request to the commission offices; to replace inaccurate regular meeting information for the commission with a reference to the publication of current regular meeting information in the WSR; and to specify that notices of special meetings will be distributed at least twenty-four hours prior to a special meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 417-01-105, 417-01-125, and 417-01-150.

EMERGENCY

Statutory Authority for Adoption: RCW 44.05.080(1).

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 limited duration of the commission, which was just reconvened in January 2001, the critical due dates established in the state constitution and state law for a redistricting plan, and the importance of public input on such plans, require the public to be able to contact the agency to monitor and participate in its activities. As such, the commission finds that an immediate amendment to the rules is required to update the address and other agency contact information and to update the information on commission meetings. The commission finds that these emergency amendments are immediately required for the general welfare and that waiting to adopt a permanent rule before advising the public of how to contact the commission, and that regular meetings will be scheduled, would be contrary to the public interest.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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 20, 2001

Ethan Moreno

Executive Director

AMENDATORY SECTION (Amending WSR 91-20-006, filed 9/19/91, effective 10/20/91)

WAC 417-01-105 Description of organization. The Washington state redistricting commission is a five member commission appointed in accordance with article 2, section 43 of the state constitution and chapter 44.05 RCW. The membership consists of four voting members appointed by the leaders of the two largest political caucuses in the senate and house of representatives. The commission chair is selected by the voting members. ~~((The administrative office of the commission is located at the Washington State Redistricting Commission, Suite 306, 1110 Capitol Way South, Olympia, Washington 98504. The commission's phone number is (360) 786-7935.))~~

AMENDATORY SECTION (Amending WSR 91-20-006, filed 9/19/91, effective 10/20/91)

WAC 417-01-125 Offices. ~~((The offices of the commission, and its mailing address, shall be Suite 306, 1110 Capitol Way South, Olympia, Washington 98504.))~~ (1) The commission office is located at 505 East Union Avenue, Third Floor, Olympia, Washington. The mailing address is: Washington State Redistricting Commission, P.O. Box 40948, Olympia, WA 98504-0948. Telephone number: (360) 586-9000. Facsimile number: (360) 586-8995. Internet address: www.redistricting.wa.gov. Electronic mail address: contact@redistricting.wa.gov. Office hours for the commission shall be from 8 a.m. to 5 p.m. on all normal business days. Office hours for inspection and copying of public records shall be as provided in chapter two hereof.

(2) The commission address and contact information shall remain in effect for the duration of the 2001-2002 commission. Inquiries after that date shall be directed to the secretary of state.

NEW SECTION

WAC 417-01-127 Communications, inquiries and requests. Communications, inquiries and requests to the commission and staff concerning commission rules, meetings, or other matters may be made in person, by letter, by telephone, by telefax or by electronic means to the offices listed in WAC 417-01-125(1). Requests for public records must be made in writing.

AMENDATORY SECTION (Amending WSR 91-20-006, filed 9/19/91, effective 10/20/91)

WAC 417-01-150 ((Schedule of)) Meetings. (1) Regular meetings: The commission shall meet ~~((monthly))~~ regularly during the months of April ~~((1991))~~ through December ~~((1991 on the second Thursday of the month))~~ in each year ending in one, at the commission's offices in Olympia, ~~((at 4 p.m., unless they shall appoint a different day, time or place))~~ as published in the Washington State Register.

(2) Special meetings: The commission shall meet at other times and places, at the call of the chair or of a majority of the commissioners. Notice of special meetings shall be given ~~((as far in advance as may be practical))~~ at least twenty-four hours before the time of such meeting as specified in the notice, to the press and to all others who have requested notice of commission meetings.

(3) Agenda: The chair, or the commission majority calling a special meeting, shall propose an agenda for the meeting, which shall be distributed to commissioners, to the press, and to others who have requested notice, at the earliest practical date prior to the meeting.



WSR 01-05-005
NOTICE OF PUBLIC MEETINGS
SEATTLE COMMUNITY COLLEGES
 [Memorandum—February 2, 2001]

The Seattle Community College District VI board of trustees will be holding a special meeting on March 10, 2001, from 9 a.m. to 4 p.m., at GM Nameplate, 2040 15th Avenue West, Seattle, WA.

WSR 01-05-012
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 [Filed February 8, 2001, 4:36 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 01-01 MAA.
 Subject: Updated interpreter services agency list and training dates.

Effective Date: February 1, 2001.

Document Description: The purpose of this memorandum is to provide an update to the Interpreter Service Agency list AND give providers a list of scheduled training dates for information and updates on MAA's interpreter services program.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45530, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

February 7, 2001
 Ann Myers, Acting Manager
 Regulatory Improvement Project

WSR 01-05-013
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 [Filed February 8, 2001, 4:38 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 01-04 MAA.
 Subject: Updated interpreter services exception request form.

Effective Date: February 1, 2001.

Document Description: The purpose of this memorandum is to provide federally qualified health centers with the updated interpreter services exception request form.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of

Program Support, P.O. Box 45530, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail mailto:sullikm@dshs.wa.gov.

February 7, 2001
 Ann Myers, Acting Manager
 Regulatory Improvement Project

WSR 01-05-014
RULES OF COURT
STATE SUPREME COURT
 [February 8, 2001]

IN THE MATTER OF THE ADOPTION) ORDER
 OF NEW RULE GR 22) NO. 25700-A-699

The JIS Committee having recommended the adoption of proposed new rule GR 22, and the Court having approved the proposed new rule for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(f), the proposed new rule as attached hereto is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Office of the Administrator for the Court's websites expeditiously.

(b) The purpose statement as required by GR 9(d), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2001. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Lisa.Bausch@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 8 day of February 2001.

Gary L. Alexander
 Chief Justice

GR 9 COVER SHEET
 New Suggested Rule
GR 22

Access to Family Law Court Records

Purpose: This suggested court rule governs access to family law case records, whether the records are maintained in paper or electronic form.

GENERAL RULE 22. ACCESS TO FAMILY LAW COURT RECORDS

(a) **Purpose and Scope of this Rule.** This rule governs access to family law case records, whether the records are maintained in paper or electronic form. The policy of the courts is to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or infor-

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mation defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be unduly burdensome to the ongoing business of the courts.

(b) Definition and Construction of Terms.

(1) "Case record" means any record pertaining to a particular case or controversy maintained by the court in paper or electronic format.

(2) "Family law case" means any case filed under Chapters 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, 26.27, 26.50, and 26.52 RCW.

(3) "Personal Privacy" is unreasonably invaded only if disclosure of information about the person or the family would (a) be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

(4) "Public access" means unrestricted access to view or copy a requested document filed in a court case.

(5) "Restricted personal identifiers" means a party's social security number, a party's driver's license number, a party's telephone number, social security number of a child and date of birth of a child.

COMMENT

A party shall not be required to provide a residence address in the publicly available case record. Pattern forms shall be modified, as necessary, to reflect the intent of this rule. Parties to a family law case must provide a service or contact address that will be publicly available.

(6) "Sealed financial source documents" means income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, check registers, as well as other financial information sealed by court order.

(c) Access to Family Law Case Records.

(1) *General Policy.* Except as provided in RCW 26.26.200 and subsections (c)(2) and (c)(3) below, all case records shall be open to the public for inspection and copying upon request. The Clerk of the court may assess fees, as may be authorized by law, for the production of such records. Individual documents may be requested electronically.

COMMENT

This rule shall not prohibit making an index of family law case records generally available to the public in electronic form. Electronic access to family law case records is limited to responses to specific requests. However, JIS Data Dissemination Policy prohibits the release of information, which will have the effect of providing access to lists of individuals, which will be used for the purpose of facilitating a profit making activity.

(2) *Restricted Access.* The Confidential Information Form, Sealed Financial Source Documents, Domestic Violence Information Form, and any Personal Information Sheet necessary for Judicial Information System purposes shall only be accessible as provided in sections (f) and (g) herein.

(3) *Excluded Records.* This section (c) does not apply to records, documents, or papers that are sealed as provided in

GR15 (c)(2)(B), or to which access is otherwise restricted by law.

(d) Restricted Personal Identifiers Not Required-Except. Parties to a family law case shall not be required to provide restricted personal identifiers in any document filed with the court or required to be provided upon filing a family law case, except:

(1) "Sealed financial source documents" filed in accordance with GR ___(e)(1) below:

(2) The following forms: Confidential Information Form, Domestic Violence Information Form, Vital Statistics Form, Law Enforcement Information Form, Foreign Protection Order Information Form, and any Personal Information Sheet necessary for Judicial Information System purposes.

(3) Court requested documents that contain restricted personal identifiers.

COMMENT

Documents not meeting the definition of "Sealed Financial Source Documents" or that otherwise meet the definition but have not been submitted in accordance with (e)(1) are not automatically sealed. Section (e)(3) provides authority for the court to seal documents containing restricted personal identifiers upon motion of a party, or on the court's own motion during a hearing or trial.

(e) Sealing Financial Source Documents-Cover Sheet.

(1) Financial source documents shall be submitted to the clerk under a cover sheet designated "SEALED FINANCIAL SOURCE DOCUMENTS" for filing in the case record of family law cases.

(2) All financial source documents so submitted shall be automatically sealed by the clerk. The coversheet or a copy thereof shall remain part of the public court file.

(3) The court may order that any financial source documents containing restricted personal identifiers be sealed if they have not previously automatically been sealed pursuant to this rule.

COMMENT

See comment to (d)(3) above.

(f) Access by Courts, Agencies and Parties to Restricted Documents.

(1) Unless otherwise provided by statute or court order, the following persons shall have access to all records and files in family law cases:

(A) Judges, commissioners, and other court personnel carrying out the business of the court.

(B) Any state administrative agency of any state that administers programs under Title IV-A, IV-D, or IV-E of the federal Social Security Act.

(2) Except as otherwise provided by statute or court order, the following persons shall have access to all documents filed in a family law case, except the Personal Information Sheet, Vital Statistics Form, Confidential Information Form, Domestic Violence Information Form, Law Enforcement Information Form, and Foreign Protection Order Form.

(A) Parties of record as to their case.

(B) Attorney as to cases where they are attorneys of record.

(g) Public Access to Restricted Case Records.

(1) Information filed by a party in any file or record, that is not a sealed financial source document as defined by (b)(6), shall be available to the public unless sealed by the court under section (e)(3).

COMMENT

If a party files documents containing "restricted personal identifiers" without following the procedure for sealing those documents provided in section (e), such documents shall be publicly available in the case record.

(2) The parties may stipulate in writing to allow access to the public to any files or records otherwise restricted under section (c)(2) above.

(3) Any person may file a motion, supported by an affidavit showing good cause, for access to any document otherwise restricted under section (c)(2) above, or to be granted access to such documents with specified information deleted. Written notice of the motion shall be provided to all parties in the manner required by the Superior Court Civil Rules. If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(4) The court shall allow access to restricted documents, or relevant portions of restricted documents, if the court finds that the public interests in granting access or the personal interest of the person seeking access outweigh the privacy interests of the parties or dependent children. If the court grants access to restricted documents, the court may enter such orders necessary to balance the personal privacy interests of the parties or dependent children with the public interest or the personal interest of the party seeking access, consistent with this rule.

**WSR 01-05-015
RULES OF COURT
STATE SUPREME COURT
[February 8, 2001]**

IN THE MATTER OF THE ADOPTION) ORDER
OF NEW RULE GR 25) NO. 25700-A-700

The Washington State Bar Association having recommended the adoption of proposed new rule GR 25, and the Court having approved the proposed new rule for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(f), the proposed new rule as attached hereto is to be published for com-

ment in the Washington Reports, the Washington Register, Washington State Bar Association and Office of the Administrator for the Court's websites expeditiously.

(b) The purpose statement as required by GR 9(d), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2001. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Lisa.Bausch@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 8 day of February 2001.

Gary L. Alexander
CHIEF JUSTICE

**GR 9 COVER SHEET
Suggested Amendment
GENERAL RULES (GR)
GR 25 PRACTICE OF LAW BOARD
(new rule)**

Purpose: The Mission of the Washington State Bar Association is "to promote justice and serve its members and the public." As stated in connection with proposed GR 24 (previously published for comment as GR 22), definition of the practice of law, "Defining 'the practice of law' lies at the heart of any effort to protect the public from untrained and unregulated persons who hold themselves out as able to offer advice and counsel in matters customarily performed by lawyers that affect individuals' legal rights, property, and life."

In order to implement and make meaningful the adoption of a rule defining the practice of law previously submitted in September 1999 and slightly modified in response to comments forwarded by the Court to WSBA. The Washington State Bar Association proposes another rule that establishes a Practice of Law Board which would serve (1) to consider issues relating to the unlicensed or unauthorized practice of law and issue advisory opinions and make appropriate referrals to prosecution authorities; and (2) to regulate the practice of law by recommending to the Supreme Court any future limited licensing of nonlawyers to practice law.

The Board would be similar in structure to the Disciplinary Board and the Board of Continuing Legal Education in that it would be appointed by the Supreme Court from nominations forwarded by the WSBA and administered by the Washington State Bar Association. It would consist of both lawyers and nonlawyers. It would be empowered to recommend to the Supreme Court amendment to the Admission to Practice Rules to authorize certification of limited practice by nonlawyers pursuant to criteria set out in the rule and developed by the WSBA Board of Governors and the Supreme Court. It would also have the authority to adopt regulations subject to the approval of the WSBA Board of Governors and the Supreme Court.

This rule would not authorize anyone to practice law. Nor would it empower the Practice of Law Board to authorize anyone to practice law. Rather, it establishes a mechanism by

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which complaints of unauthorized practice of law may be investigated and resolved or reported to an appropriate enforcement agency. It also establishes a mechanism and criteria for consideration of any recommendation to the Supreme Court that it adopt court rules pursuant to GR 9 to authorize the limited licensing of nonlawyers to engage in the regulated practice of law. Limited licensing of nonlawyers to practice law is currently authorized by APR 9, law student legal interns, and APR 12, limited practice for closing officers. Whether similar limited licensing of nonlawyers to engage in regulated practice of law should be extended has been the subject of study and debate (see, *Final Report*, WSBA Task Force on Nonlawyer Practice of Law (1995)). Adoption of this rule would provide a framework to consider the issue in the context of the definition of the practice of law pursuant to proposed GR 24.

Proposed GR 25 was drafted at the direction of the Board of Governors by an expanded version of the committee that drafted the definition of the practice of law, GR 24. In addition to the members listed in the GR 9 Cover Sheet for GR 24, this expanded committee included representatives from the Superior Court Judges Association, the Washington Association of County Clerks, the Access to Justice Institute of the Seattle University School of Law, lawyers and nonlawyers from the Access to Justice Board, and former citizen members of the Disciplinary Board. An initial draft of this proposed rule was circulated for comment to the same parties and organizations who had been involved in the drafting of GR 24. The limited responses were considered by the Committee.

The Board of Governors of the Washington State Bar Association by a unanimous vote recommends that the Supreme Court adopt GR 24 and GR 25.

SUGGESTED AMENDMENT

GENERAL RULES (GR)

GR 25 PRACTICE OF LAW BOARD

(new rule)

Submitted by the Board of Governors of the Washington State Bar Association

(a) Purpose. The purpose of this rule is to create a Practice of Law Board in order to promote expanded access to affordable and reliable legal and law-related services, expand public confidence in the administration of justice, make recommendations regarding the circumstances under which nonlawyers may be involved in the delivery of certain types of legal and law-related services, enforce rules prohibiting individuals and organizations from engaging in unauthorized legal and law-related services that pose a threat to the general public, and to ensure that those engaged in the delivery of legal services in the state of Washington have the requisite skills and competencies necessary to serve the public.

(b) Appointment. The Practice of Law Board shall consist of 13 members, at least four of whom shall be non-lawyers. The appointments shall be made by the Supreme Court after considering nominations from the Board of Governors of the Washington State Bar Association and other interested people and organizations. The members shall be appointed to

staggered 3-year terms of 3 years and no member may serve more than 2 consecutive full 3-year terms. Any vacancy shall be filled for the unexpired term. The Supreme Court shall annually designate a chair and vice-chair, who shall be members of the Board.

(c) Powers of the Practice of Law Board.

(1) Advisory Opinions. On request of any person, or in connection with the consideration of any complaint or any investigation made on its own initiative, the Board may render advisory opinions relating to the authority of non-lawyers to perform legal and law-related services and arrange for their publication. No opinion shall be rendered if, to the Board's knowledge, the subject matter either involves or might affect a case or controversy pending in any court. An advisory opinion shall be issued by the Board in writing and shall be transmitted to the person making the inquiry. At the direction of the Board, an opinion may be published in the *Washington State Bar News*. Published opinions shall not, insofar as practicable, identify the party or parties making an inquiry, or the complainant or respondent.

(2) Complaints. The Board shall have jurisdiction over and shall inquire into and consider complaints alleging the unauthorized practice of law by any person or entity in accordance with the procedures outlined in this rule.

(3) Investigation. The Board may, on its own initiative, and without any complaint being made to it, investigate any condition or situation of which it becomes aware that may involve the unauthorized practice of law.

(4) Recommendations to the Supreme Court Regarding the Provision of Legal and Law-Related Services by Non-Lawyers. On request of the Supreme Court or any person or organization, or on its own initiative, the Board may recommend that non-lawyers be authorized to engage in certain defined activities that otherwise constitute the practice of law as defined in GR XX. In forwarding a recommendation that non-lawyers be authorized to engage in certain legal or law-related activities that constitute the practice of law as defined in GR XX, the Board shall determine whether regulation under authority of the Supreme Court (including the establishment of minimum and uniform standards of competency, conduct, and continuing education) is necessary to protect the public interest. Any recommendation that non-lawyers be authorized to engage in the limited provision of legal or law-related services shall be accompanied by a determination:

(A) that access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by permitting non-lawyers to engage in the defined activities set forth in the recommendation;

(B) that the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained non-lawyers;

(C) if the public interest requires regulation under authority of the Supreme Court, such regulation is tailored to promote access to affordable legal and law-related services while ensuring that those whose important rights are at stake can reasonably rely on the quality, skill and ability of those non-lawyers who will provide such services;

(D) that, to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with RPC 1.14 and APR 12.1, including the requirement that such funds be placed in interest bearing accounts, with interest paid to the Legal Foundation of Washington; and

(E) that the costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime.

Recommendations to authorize non-lawyers to engage in the limited practice of law pursuant to this section shall be forwarded to the Washington State Board of Governors for consideration and comment before transmission to the Supreme Court. Upon approval of such recommendations by the Supreme Court pursuant to the procedures set out in GR 9, those who meet the requirements and comply with applicable regulatory and licensing provisions shall be deemed to be engaged in the authorized practice of law.

(d) Expenses of the Practice of Law Board. The Practice of Law Board shall be supported through annual commitments from the Washington State Bar Association and through a portion of other licensing fees established by the Supreme Court for nonlawyers authorized to engage in the regulated practice of law. The Board shall be administered and staffed by the Washington State Bar which shall pay all expenses reasonably and necessarily incurred by the Board, pursuant to a budget approved by the Board of Governors. Members of the Board shall not be compensated for their services, but shall be reimbursed for their necessary expenses incurred in connection with the Board in a manner consistent with the Association's reimbursement policies.

(e) Records. All records of the Board shall be filed and maintained at the principal office of the Association.

(f) Procedure.

(1) Committees. The Board may establish such committees as the membership may deem necessary and appropriate to the performance of its assigned tasks.

(2) Quorum. A majority of the Board shall constitute a quorum. The chairperson of the Board may appoint temporary members of the Board or a committee when a member is disqualified or unable to function on a specific matter for good cause.

(3) Action by Board. The full jurisdiction and authority of the Board, as provided in this rule, may be exercised by a committee, except that (1) no advisory opinion may be given without the approval of a majority of the Board; (2) no determination of the unauthorized practice of law by a respondent and referral of a matter to a law enforcement or other agency may be made without the approval of a majority of the Board; and (3) the action of a committee on any matter shall be subject to review and the approval or disapproval of the Board.

(4) Formal Complaint Procedure.

(A) Preliminary Investigation. The investigation or review of a complaint shall be promptly instituted by the Board or by a member thereof designated by the chair of the Board. If a complaint has been filed, the investigating member shall interview the complainant and respondent and shall conduct such further investigation as is deemed appropriate.

(B) Report and Written Agreement. Upon the conclusion of an investigation of a complaint, a report shall be made to the Board. If, after consideration of the report, the Board concludes that there has been no unauthorized practice of law, the complaint shall be dismissed and the Board shall so notify the complainant and the respondent in writing and shall close the file in the matter. If the Board concludes that there has been unauthorized practice of law, the Board shall attempt to persuade the respondent to enter into a written agreement to refrain from such conduct in the future. The written agreement may include a stipulation to penalties in the event of continued violation.

(C) Pending Controversy. The Board may defer investigation if, to the Board's knowledge, the conduct complained of is the subject matter of or might affect a case or controversy pending in any court.

(D) Informal Disposition. The Board may attempt to arrive at an amicable disposition of any matter within its jurisdiction with the respondent. At any time during the pendency of a matter before it, the Board may conduct an informal conference with the respondent. At the Board's discretion, an electronic recording or written transcription of the proceeding may be made. A respondent subject to an informal conference may be represented by counsel. After a finding by the Board of the unauthorized practice of law, the Board shall endeavor to have the respondent enter into a written agreement to refrain in the future from such conduct. If the respondent declines to enter into a written agreement pursuant to this rule, the Board shall refer the matter to an appropriate law enforcement or other agency in accordance with this rule.

(g) Petitions for Review.

(1) Notice. Within 20 days after an opinion is published, or within 30 days after any final action of the Board other than the publication of any opinion, any aggrieved member of the bar, bar association, person or entity may seek review thereof by serving on the Board a notice of petition for review by the Supreme Court and by filing the original notice with the Clerk of the Supreme Court. The notice shall set forth the petitioner's name and address and, if represented, the name and address of counsel. The notice shall designate the action of the Board sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved.

(2) Procedure. Petitions for review to the Supreme Court shall comply with the Rules for Appellate Procedure.

(3) Final Determination. The final determination of a petition for review may be either by written opinion or by order of the Supreme Court and shall state whether the opinion or the action of the Board is affirmed, reversed or modified or shall provide for such other final disposition as is appropriate.

(h) Referral to Enforcement Agency.

(1) Referral. When the Board concludes from its preliminary investigation, or from the failure of an informal conference as provided these rules, that an amicable disposition of any matter within its jurisdiction cannot be effected with the respondent, it shall, based upon the nature of the complaint, the relief sought, and the facts as then known, refer the matter to the law enforcement or other agency the Board

determines is best suited to conduct an investigation and any prosecution of such matter.

(2) **Contents of File.** Upon making a determination that an amicable disposition of a matter cannot be effected, and that the matter should be referred to a particular law enforcement or other agency, the Board shall send such agency the original complaint, response, evidence or other proof, investigative report and, if an informal conference has been conducted, a transcript of such proceedings. The Board shall retain copies of all such documents for its file.

(3) **Notice to Complainant.** Upon referring a matter to a law enforcement or other agency, the shall notify the complainant of such action in writing.

(i) **Immunity from Suit.**

(1) The members and staff of the Board shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties.

(2) Persons who bring allegations concerning any individual or entity to the Board shall be immune from suit, whether legal or equitable in nature, for all communications to the Board or to its staff.

(j) **Regulations.**

The Board may adopt regulations pertinent to these powers subject to the approval of the Supreme Court.

Reviser's note: The typographical error in the above material occurred in the copy filed by the State Supreme Court and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 01-05-016

**NOTICE OF PUBLIC MEETINGS
STATE BOARD OF EDUCATION**

[Memorandum—January 31, 2001]

Revised State Board of Education Meeting Schedule for 2001

The State Board of Education will meet for regular business at the locations listed on the following dates:

January 10-12, 2001

Board Room
North Thurston School District
305 College Street N.E.
Lacey, WA 98516
(360) 412-4400

March 28-30, 2001

Board Room
North Thurston School District
305 College Street N.E.
Lacey, WA 98516
(360) 412-4400

May 9-11, 2001

Location to be Determined

June 15, 2001

SeaTac Area

August 22-24, 2001

Mount Baker School District
P.O. Box 95
Deming, WA 98244-0095
(360) 383-2000

October 24-26, 2001

Olympia Area

WSR 01-05-017

**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
NATURAL RESOURCES**

(Board of Natural Resources)

[Memorandum—February 9, 2001]

Special Meeting for the Board of Natural Resources

Date	Time	Location
April 17, 2001	9:00 a.m.	NRB-Room 175A/B

WSR 01-05-023

OFFICE OF THE GOVERNOR

[Filed February 12, 2001, 12:07 p.m.]

NOTICE OF APPEAL

(RCW 34.05.330(3))

On February 2, 2001 the Governor received an appeal to the denial by Department of Ecology Director, Tom Fitzsimmons, of a request for an amendment to WAC 173-430-045 (a)(iii), (iv) and (v), which would extend the number of years a grower can request an exception for burning grass fields, dated January 31, 2001, filed by Arthur J. Schultheis, Diamond-S Farms, Inc.

DATED: February 12, 2001

Everett H. Billingslea
General Counsel to the Governor

WSR 01-05-025

**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
GENERAL ADMINISTRATION**

(Capitol Campus Design Advisory Committee)

[Memorandum—February 9, 2001]

Please publish notice of cancellation for the February 15, 2001, Capitol Campus Design Advisory Committee (CCDAC).

If you have questions, call 902-0970.

MISC.

WSR 01-05-026

**NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON**
[Memorandum—February 7, 2001]

The University of Washington is providing the following meetings schedules for governing bodies of schools, colleges, departments and programs at the university that maintain regular meeting schedules at the University of Washington Office of Public Records and Open Public Meetings.

The following represent the remainder of the regular meeting schedules received by this office.

Board's Facilities Ad Hoc Committee

The board of trustees' new Facilities Ad Hoc Committee will begin to meet in March. The standing meeting time is the first Friday of each month at 8:00 a.m. in the board room. Agendas will be sent out one week prior to the meetings. Membership on the committee is: A. J. Culver, chair, Kristin Houser, Patricia McInturff, Tom Ranken, and David McDonald (alternate).

School of Music Graduate Faculty

Date	Location	Time
October 18	126 Music/Brechemin Auditorium	12:30
November 29	same	same

Neurosurgery Faculty Meeting

Date	Location	Time
March 12, 2001	HMC EH-15	5-6:30 p.m.
June 18, 2001	HMC EH-15	5-6:30 p.m.
September 17, 2001	HMC EH-15	5-6:30 p.m.
December 10, 2001	HMC EH-15	5-6:30 p.m.

**Speech and Hearing Sciences
Executive**

Date	Location	Time
January 10	EGL 111-112	9:00 - 10:00
February 14	EGL 111-112	9:00 - 10:00
March 7	EGL 111-112	9:00 - 10:00
April 11	EGL 111-112	9:00 - 10:00
May 2	EGL 111-112	9:00 - 10:00
June 6	EGL 111-112	9:00 - 10:00
September 25	EGL 111-112	9:00 - 10:00
October 3	EGL 111-112	9:00 - 10:00
November 7	EGL 111-112	9:00 - 10:00
December 5	EGL 111-112	9:00 - 10:00

**Speech and Hearing Sciences
Faculty**

Date	Location	Time
January 10	EGL RM 211	3:00 - 5:00
February 14	EGL RM 211	3:00 - 5:00
March 7	EGL RM 211	3:00 - 5:00
April 11	EGL RM 211	3:00 - 5:00

May 2	EGL RM 211	3:00 - 5:00
June 6	EGL RM 211	3:00 - 5:00
September 26	EGL RM 211	11:45 - 1:45
October 3	EGL RM 211	3:00 - 5:00
November 7	EGL RM 211	3:00 - 5:00
December 5	EGL RM 211	3:00 - 5:00

Faculty Meetings - Department of Statistics

Date	Location	Time
Weekly, Monday	C301 Padelford	12:30 p.m.

WSR 01-05-032

**NOTICE OF PUBLIC MEETINGS
WESTERN WASHINGTON UNIVERSITY**
[Memorandum—February 7, 2001]

The Western Washington University board of trustees will hold a regular meeting at 10:45 a.m., March 28, 2001, at the offices of Preston, Gates and Ellis, 701 Fifth Avenue, 5000 Columbia Center, Conference Room 9, Seattle, WA.

If you have any questions, please contact Penny Glover, Secretary to the board of trustees, at (360) 650-3117.

WSR 01-05-037

**NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE**
[Memorandum—February 12, 2001]

The board of trustees of Bates Technical College has rescheduled its regularly scheduled meeting of February 28, 2001. It will begin at 1:30 p.m. in the Clyde Hupp Board Room at Bates Technical College, 1101 South Yakima Avenue, Tacoma, WA 98405.

WSR 01-05-038

**NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE**
[Memorandum—February 12, 2001]

The board of trustees of Bates Technical College will meet in special session on February 28, 2001, from 8:00 a.m. to approximately 9:30 a.m. in the Clyde Hupp Board Room, 1101 South Yakima Avenue, Tacoma. The trustees will go immediately into executive session for the purpose of considering award, denial or extension of tenure. The board will reconvene the regular public meeting prior to taking any action.

WSR 01-05-039
NOTICE OF PUBLIC MEETINGS
CENTRALIA COLLEGE
 [Memorandum—February 12, 2001]

meeting originally scheduled for **April 12, 2001, to April 19, 2001**. The time and location remain as originally scheduled.

This is to notify you that the Community College District Twelve board of trustees has changed the date of their regular

WSR 01-05-042
AGENDA
DEPARTMENT OF ECOLOGY
 [Filed February 14, 2001, 3:45 p.m.]

Department of Ecology

Semiannual Rule Agenda
January 2001 - June 2001

WAC Chapter	Chapter Title	Contact Person	CR-101 Filing Date	CR-102 Filing Date	CR-103 Filing Date	Scope of Changes/ Sections to Amend
173-400, 173-405, 173-410, 173-433, 173-434, AO 99-07, 7/96	Emissions standards for solid waste incinerators; General regulation for air pollution sources; Kraft pulping mills; Sulfite pulping mills; Solid fuel burning device standards.	Peter Lyon (360) 407-7530, plyo461@ecy.wa.gov, and Tom Todd, (360) 407-7528, ttod461@ecy.wa.gov.	Mar-99	Jun-01	Dec-01	Hog Fuel Boiler RACT; define terms related to wood derived fuels; reorganize state incinerator rule.
173-400, AO 99-06, 7/98	General regulation for air pollution sources.	Elena Guilfoil, (360) 407-6855, egui461@ecy.wa.gov.	Apr-99	Feb-01	Aug-01	This action focuses on 2 air quality programs located in chapter 173-400 WAC: The prevention of significant deterioration or PSD program which addresses major new air pollution sources; and the best available retrofit technology provisions.
Shorelands and Environmental Assistance						
173-700, AO 98-26, 1/99	Compensatory wetland mitigation banks.	Lauren Driscoll, (360) 407-6861, ldri461@ecy.wa.gov.	Jan-99	Feb-01	Jul-01	Develop procedures for the operation, monitoring and implementation of wetland banks.
173-158, 7/99	Floodplain management.	Ted Olson, (509) 456-2862, tols461@ecy.wa.gov.	Jul-00	?	?	Amend WAC to implement ESHB 1963 which allows reconstruction in floodways under certain circumstances.
197-11	SEPA rules.	Marv Vialle, (360) 407-6938, mvia461@ecy.wa.gov.	Mar-00	May-01	Aug-01	Revise Environmental Checklists (Non-project).
Solid Waste and Financial Assistance						
173-304, AO 99-24, 7/97	Minimum functional standards for solid waste handling.	Brian Farmer, (509) 456-6386, bfar461@ecy.wa.gov.	Nov-99	Apr-01	Jul-01	Update approaches to nonmunicipal solid waste management. Respond to state legislation aimed at removing impediments to recycling.
Spill Prevention, Preparedness and Response						
317-10, 173-181, AO 00-03, 7/99	Oil spill contingency plans and response contractor standards.	Roy Robertson, (360) 407-7202, rrob461@ecy.wa.gov.	Feb-00	Jul-01	Jan-01	Update plan requirements, mandate incident command systems, incorporate planning standards, and update primary response contractor standards.
xxx-xx, AO 00-23, 9/00	Tank vessel rule.	Jeff Fishel, (360) 407-7504, jfis461@ecy.wa.gov.	Sep-00	Sep-01	Mar-01	Develop rules for tank vessels that address peculiarities of Washington waters.

MISC.

WAC Chapter	Chapter Title	Contact Person	CR-101 Filing Date	CR-102 Filing Date	CR-103 Filing Date	Scope of Changes/ Sections to Amend
Water Resources						
173-537, 1/00	Water resources management for the Yakima River basin.	Bob Barwin, (509) 457-7107, bbar461@ecy.wa.gov.	Oct-99	Jun-01	Dec-01	Withdraw ground water from further appropriation, per MOA with BoR and Yakama Nation.
508-64, AO 00-01, 1/00	Water use metering.	Jeff Marti, (360) 407-6636, jema461@ecy.wa.gov.	Feb-00	Mar-01	Sep-01	Amend or replace rule to address metering requirements (RCW 90.03.360).
173-503, AO 99-05, 7/97	Instream resource protection program—Lower skagit.	Rod Sakrison, (425) 649-4447, rsak461@ecy.wa.gov.	Jul-99	Oct-00	Mar-01	Adoption of instream flow rules under HB 2514.
173-151, AO 00-25	Water right administration, Phase I of several phases.	Steve Hirschey, (425) 649-7066, shir461@ecy.wa.gov.	Oct-00	?	?	Set forth statutory provisions and common law holding and interpretation for the administration of water rights.
Water Quality						
173-201A, AO 98-20, 7/98	Surface water quality standards for the state of Washington.	Mark Hicks, (360) 407-6477, mhic461@ecy.wa.gov.	Feb-99	Jun-01	Sep-01	A. Develop regulatory language to guide the implementation of a water quality antidegradation policy. This would focus on protecting water quality standards, implementing technology-based pollution control requirements, and ensuring degradation that is allowed is in the overriding public interest. It would also include provisions to set aside waters constituting an outstanding national resource from all degradation. B. Look at the way beneficial uses are assigned for protection to waterbodies under the water quality standards.

WSR 01-05-048

DEPARTMENT OF AGRICULTURE

[Filed February 15, 2001, 8:41 a.m.]

OFFICIAL NOTICE ON REFERENDUM TO DECREASE THE BLUEBERRY ASSESSMENT

Pursuant to chapter 15.65 RCW, I, Jim Jesernig, Director of Agriculture for the State of Washington, hereby give notice that a referendum of blueberry producers was conducted on the following matter:

"Shall the annual assessment on all varieties of blueberries be decreased from three-quarters of a cent per affected unit (pound) to four-tenths of a cent per affected unit (pound)?"

The referendum, as certified on January 31, 2001, was approved by 100 percent of the blueberry producers with 100 percent of the production. A total of 49.4 percent of the eligible producers voted in the referendum.

The Washington Blueberry Commission requested the reduction in assessment because a national blueberry program was recently adopted. The national program will be

funded by an assessment of \$12 per ton on domestic cultivated blueberries beginning with the 2001-growing season.

Dated this 12th day of February 2001.

James M. Jesernig
Director of Agriculture

WSR 01-05-049

DEPARTMENT OF AGRICULTURE

[Filed February 15, 2001, 8:43 a.m.]

BEFORE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE STATE OF WASHINGTON

In the matter of the Washington Asparagus Commission's request)
 To amend the marketing order established in WAC 16-557) **FINDINGS OF FACT,**
 By increasing District 2's representation from two to three positions) **CONCLUSIONS OF**
 And decreasing District 3's representation from two to one position effective January 1, 2002) **LAW AND FINAL DECISION**

MISC.

The above titled matter came to public hearing at the Franklin PUD Auditorium, 1411 W. Clark, Pasco, WA on February 7, 2001, beginning at 1:00 p.m. The hearing officer was William E. Brookreson, Deputy Director, Washington State Department of Agriculture. There were nineteen persons in attendance including the Administrator for the Asparagus Commission, Margaret Webring.

FINDINGS OF FACT

The Director, having reviewed the complete record, hereby adopts the following Findings of Fact:

1. The Washington Asparagus Commission submitted a request to the Director of Agriculture to amend the asparagus marketing order in chapter 16-557 WAC. The proposed amendment would increase District 2's representation from two to three positions and decrease District 3's representation from two to one position effective January 1, 2002.

2. As presented by the Washington Asparagus Commission, the change would reflect the change in patterns of production. According to the information provided, the acreage and production by district are as follows:

District 1	7,100 acres producing 24,500,000 pounds annually
District 2	14,300 acres producing 42,200,000 pounds annually
District 3	1,400 acres producing 4,300,000 pounds annually

3. A notice of the hearing was published in the Washington State Register on January 17, 2001, and was sent to all asparagus growers in District 2 and District 3 who were on a list maintained by the Washington Asparagus Commission. Notice was also published in the Yakima Herald Republic on January 26 and January 27, 2001.

4. Those in attendance at the public hearing were in support of the proposed change in representation in District 2 and District 3. One note of support was presented at the hearing.

5. All those in attendance at the hearing waived the 10-day period to file objections to a recommended decision of the Director and accept the Director's decision as final as provided in RCW 15.65.110.

CONCLUSIONS OF LAW

The Director adopts the following conclusions:

1. The procedures to amend the marketing order follow the provisions and terms of chapter 15.65 RCW, Washington State Agricultural Enabling Act of 1961.

2. The proposed amendment to increase District 2's representation from two to three positions and decrease District 3's representation from two to one position effective January 1, 2002 will tend to effectuate one or more of the declared policies of chapter 15.65 RCW, Washington State Agricultural Enabling Act of 1961, with respect to the Asparagus Commission.

3. Through the public hearing process it was determined that there is sufficient support for the proposed amendment to

increase District 2's representation from two to three positions and decrease District 3's representation from two to one position effective January 1, 2002, and to submit the proposal to a referendum vote of the growers.

4. In accordance with RCW 15.65.110, the Director may in his discretion waive the 10-day period to file objections to a recommended decision and issue a final decision.

FINAL DECISION

It is hereby the Director's final decision that the request to amend the Asparagus Commission's marketing order established in WAC 16-557, by increasing District 2's representation from two to three positions and decreasing District 3's representation from two to one position effective January 1, 2002, be accepted and submitted to a referendum of the growers for final approval.

DATED at Olympia, Washington this 12th day of February 2001.

James M. Jesernig, Director
Washington State Department of Agriculture

WSR 01-05-050
NOTICE OF PUBLIC MEETINGS
PUBLIC EMPLOYEES
BENEFITS BOARD

[Memorandum—February 15, 2001]

February 20, 2001

1:00 p.m.

Lacey Community Center

IMPORTANT NOTICE

PEBB meeting information—The 2001 meeting schedule, agendas, approved minutes, and location map—is now available on the worldwide web at <http://www.wa.gov/hca/PEBB/pebbmtg.htm>.

We will no longer mail this information.

Approved meeting minutes from July and August are available online now!

Approved meeting minutes from November will be available by February 27, 2001.

If you do not have access to the Internet and wish to continue receiving meeting information in the mail or via e-mail, please contact Donna Walter at the Health Care Authority, P.O. Box 42700, Olympia, WA 98504-2700, (360) 923-2830.

WSR 01-05-051
NOTICE OF PUBLIC MEETINGS
LAKE WASHINGTON
TECHNICAL COLLEGE
 [Memorandum—February 12, 2001]

Revised Board Meeting Dates for 2001

Pursuant to RCW 42.30.075, we are hereby notifying you of the following dates when the Lake Washington Technical College board of trustees are scheduled to hold regular meetings during 2001. This is a revision to the original letter sent to you on December 21, 2000. We have moved our meetings back to the first Monday of the month unless otherwise noted below:

- January 11-13 (board retreat)
- February 5 (rescheduled to 2/14 because of ACCT Meeting in D.C.)
- February 14 (cancelled—no quorum due to trustees' schedule conflicts and unable to find a mutually available day in February to reschedule)
- March 5
- April 2
- May 7
- June 4
- July 9 (2nd Monday)
- August 6
- September 10 (2nd Monday)
- October 1
- November 5
- December 3

Work sessions begin at 6:00 p.m. in Room W302E at the college; the regular meeting agenda begins at 7:00 p.m. in Room W305A at the college.

In the event it is necessary to change any of these meeting dates appropriate advertising will take place.

WSR 01-05-052
NOTICE OF PUBLIC MEETINGS
SEATTLE COMMUNITY COLLEGES
 [Memorandum—February 12, 2001]

The Seattle Community College District VI board of trustees will be holding a special meeting on:

February 12, 2001	Seattle Public Schools 815 4th Avenue North Seattle	3:30-5:30 p.m.
May 1, 2001	Seattle Public Schools 815 4th Avenue North Seattle	3:30-5:30 p.m.

In addition, the following revision has been made to the meeting schedule:

March 13, 2001	Seattle Central Community College 1701 Broadway Seattle	12:00 noon
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WSR 01-05-053
NOTICE OF PUBLIC MEETINGS
EDMONDS COMMUNITY COLLEGE
 [Memorandum—February 13, 2001]

Resolution No. 01-1-1 was approved January 18, 2001, by the Edmonds Community College board of trustees for the 2001 schedule of meetings. In January, a copy of the resolution was inadvertently sent listing an incorrect date for the May meeting.

2001 Schedule of Board of Trustees Meetings

The board of trustees of Edmonds Community College adopt 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.	<u>Wednesday</u>
*	March 27	4:00 p.m.	<u>Tuesday</u>
	April 19	4:00 p.m.	Thursday
*	May 24	4:00 p.m.	Thursday
	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 01-05-054
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE
CENTER
 [Memorandum—February 14, 2001]

A regular meeting of the Washington State Convention and Trade Center board of directors will be held on Wednesday, February 21, 2001, at 1:30 p.m. in Room 204 of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call (206) 694-5000.

MISC.

WSR 01-05-073
OFFICE OF THE GOVERNOR

[Filed February 15, 2001, 3:00 p.m.]

NOTICE OF APPEAL
(RCW 34.05.330(3))

On February 14, 2001 the Governor received an appeal to the denial by the Department of Fish and Wildlife of a request to adopt, amend or repeal WACs 220-77-040(3), 040(4)(c), 040(5) and 220-77-020(11), relating to aquatic species, dated February 13, 2001, filed by Francis J. Walker on behalf of the Association for the Protection of Hammersly, Eld and Totten Inlets (APHETI).

DATED: February 15, 2001

Everett H. Billingslea
 General Counsel to the Governor

Subject: Update to the oxygen and respiratory therapy billing instructions fee schedule.

Effective Date: January 1, 2001.

Document Description: The purpose of this memorandum is to let providers know that effective for dates of service on and after January 1, 2001, MAA began using a new fee schedule for the oxygen and respiratory therapy program. The new fee schedule is attached to the memo.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45530, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail mailto:sullikm@dshs.wa.gov.

February 8, 2001
 Ann Myers, Acting Manager
 Regulatory Improvement Project

WSR 01-05-081
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed February 20, 2001, 8:09 a.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 00-81 MAA.
 Subject: Replacement pages for nondurable medical equipment and medical supplies billing instructions, dated July 2000.

Effective Date: July 1, 2000; October 1, 2000.

Document Description: The purpose of this memorandum is to let providers know that MAA made changes to the nondurable medical equipment and medical supplies fee schedule. The changes are listed in the memo with billing instruction page replacements attached.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45530, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail mailto:sullikm@dshs.wa.gov.

February 8, 2001
 Ann Myers, Acting Manager
 Regulatory Improvement Project

WSR 01-05-083
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed February 20, 2001, 8:11 a.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 00-75 MAA.
 Subject: Revised fee schedule for "other" DME.
 Effective Date: November 1, 2000.

Document Description: The purpose of this memorandum is to let providers know that MAA made changes to codes in the "other" DME fee schedule. The changes are listed in the memo with billing instruction page replacements attached.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45530, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail mailto:sullikm@dshs.wa.gov.

February 8, 2001
 Ann Myers, Acting Manager
 Regulatory Improvement Project

WSR 01-05-082
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed February 20, 2001, 8:10 a.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 00-76 MAA.

WSR 01-05-084**INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed February 20, 2001, 8:12 a.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 00-72 MAA.

Subject: Year 2001 Healthy Options, Basic Health Plus, Primary Care Case Management, and Children's Health Insurance Program updates.

Effective Date: January 1, 2001.

Document Description: The purpose of this memorandum is to let providers know that effective with dates of service on and after January 1, 2001, MAA made changes to the following programs: Healthy Options, Basic Health Plus, Primary Care Case Management, and Children's Health Insurance Program updates. The changes are outlined in the memo.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45530, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-848-5429, fax (360) 586-9727, e-mail <mailto:sullikm@dshs.wa.gov>.

February 8, 2001

Ann Myers, Acting Manager
Regulatory Improvement Project**WSR 01-05-085****INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed February 20, 2001, 8:13 a.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 00-71 MAA.

Subject: Updated billing and reimbursement requirements for the diabetes education program.

Effective Date: July 1, 2000.

Document Description: The purpose of this memorandum is to let providers know that effective with dates of service on and after July 1, 2000, MAA changed the following areas of the diabetes education program:

- Who can apply to be a diabetes education provider;
- Maximum allowable rates; and
- Frequency of reimbursement for core modules per client.

To receive a copy of the interpretive or policy statement, contact Kevin Sullivan, Regulatory Improvement Coordinator, DSHS, Medical Assistance Administration, Division of Program Support, P.O. Box 45530, Olympia, WA 98504, phone (360) 725-1344 or go to website <http://maa.dshs.wa.gov> (click on Numbered Memorandum link), TDD 1-800-

848-5429, fax (360) 586-9727, e-mail mailto:sullikm@dshs.wa.gov.

February 8, 2001

Ann Myers, Acting Manager
Regulatory Improvement Project**WSR 01-05-099****INTERPRETIVE STATEMENT
DEPARTMENT OF REVENUE**

[Filed February 20, 2001, 3:28 p.m.]

CANCELLATION OF INTERPRETIVE STATEMENTS

This announcement of the cancellation of interpretive statements is being published in the Washington State Register pursuant to the requirements of RCW 34.05.230(4).

The Department of Revenue has cancelled the following excise tax advisories effective February 15, 2001.

ETA 183.16.179 Gross income of public utility districts - Local taxes included - this document explains that taxes imposed under chapter 54.28 RCW, Privilege taxes are included in the measure of tax for the purposes of chapter 82.16 RCW, Public utility tax. The latest revision of WAC 458-20-195 Taxes, deductibility, effective August 21, 2000, specifically lists this tax as an example of a tax that is not deductible when determining the measure of tax.

ETA 186.08.239 Sales to nonresident farmers and the machinery and implements exemption - RCW 82.08.0268 (cited as RCW 82.08.030(17) in this document) provides a retail sales tax exemption for sales to nonresidents of machinery and implements for use in a farming activity outside Washington. This document explains that the prefabricated buildings are not "machinery and implements" for the purposes of this exemption. While the result is correct, this information is no longer needed.

ETA 291.04.239 Parts and repairs for farm machinery of nonresidents - this document explains how the exemption discussed in WAC 458-20-239 Sales to nonresidents of farm machinery and implements, applies to sales of parts and repair services. The instructions are incorrect with respect to repair services due to the statutory changes of chapter 167, Laws of 1998. The latest revision of WAC 458-20-239, effective May 20, 2000, provides correct and comprehensive tax-reporting instructions in this area.

ETA 314.12.178 Inventory donated to charity subject to use tax - this document explains that a person donating inventory items to charitable organizations is subject to the use tax. This information is no longer correct. Chapter 182, Laws of 1998, provided a use tax exemption for the donation of inventory items to nonprofit charitable organizations.

ETA 381.04.161 Wholesale sales of rye and milo - this document explains that the lower B&O tax rate provided by then RCW 82.04.260(1) does not apply to sales of rye and milo. This information is out of date. Subsequent legislation added rye to the list of products identified in the statute being discussed. Later legislation replaced the lower B&O tax rate described in this document with an exemption. The docu-

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ment provides an incorrect statutory citation and incorrect tax rates.

ETA 434.04.169 Business and occupation - Sales tax: Nonprofit organization's retailing magazines - this document explains that nonprofit organizations must remit business and occupation tax and collect and remit retail sales tax on sales of religious magazines. This document fails to recognize subsequent legislation (chapter 336, Laws of 1998) that provides B&O and retail sales tax exemptions for certain fund-raising sales. It also provides an incorrect definition of "newspaper," which is defined in RCW 82.04.214.

ETA 502.40.181 Suitable records - timber harvesters - this document explains that timber harvesters are required to record and preserve scaling slips that include grading details as described by the Puget Sound Log Scaling and Grading Bureau to fulfil their record-keeping requirements under RCW 82.32.070 as explained in WAC 458-40-181. This information is out of date and no longer needed. WAC 458-40-181 no longer exists, and the latest revision of chapter 458-40 WAC, effective January 1, 2001, sufficiently addresses this issue.

ETA 504.08.504 Sales to or by Indians - this document was issued to outline procedures to implement WAC 458-20-192 Indians—Indian reservations, as revised November 12, 1976, and to clarify certain provisions of that rule. This document is out of date and no longer needed. The latest revision of Rule 192, effective January 1, 2001, provides current information on sales to or by Indians. Many of the Department of Revenue field office addresses provided in ETA 504 are incorrect.

ETA 2005.84.33 Timber tax - Personal use of timber by landowner - this document clarifies how to distinguish between a landowner cutting timber for personal use and a landowner harvesting timber for commercial or industrial use for the purpose of determining whether the timber excise tax applies. This document is no longer needed as this issue is addressed in the latest revision of WAC 458-40-626 Timber excise tax—Tax liability—Private timber, tax due when harvested, which became effective January 1, 2001.

Questions regarding the repeal of these advisories may be directed to: Alan R. Lynn, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 570-6125, fax (360) 664-0693, Internet alanl@dor.wa.gov.

Claire Hesselholt
Policy Counsel

WSR 01-05-103

**NOTICE OF PUBLIC MEETINGS
REDISTRICTING COMMISSION**

[Memorandum—February 20, 2001]

In accordance with the Open Public Meetings Act, chapter 42.30 RCW, the 2001-2002 Redistricting Commission will hold regular meetings on the first Thursday of every month from April until December 2001. The specific meeting dates are as follows:

- April 5, 2001
- May 3, 2001
- June 7, 2001
- July 5, 2001
- August 2, 2001
- September 6, 2001
- October 4, 2001
- November 1, 2001
- December 6, 2001

The meetings will begin at 1:00 p.m. and will be held in the commission's offices in Olympia unless otherwise specified. In addition, the commission may schedule special meetings.

For more information regarding commission meetings or specific directions to the commission's offices, please call (360) 586-9000 or visit our website at www.redistricting.wa.gov.

WSR 01-05-104

**RULES COORDINATOR
REDISTRICTING COMMISSION**

[Filed February 20, 2001, 4:07 p.m.]

In accordance with RCW 34.05.312, the Washington State Redistricting Commission has designated Darleen Muhly as the agency's rules coordinator. She can be contacted at the Washington State Redistricting Commission, 505 East Union Avenue, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 586-9000, fax (360) 586-8995, e-mail muhly_da.redistricting.wa.gov.

If you have any questions regarding this notice, please contact (360) 586-9000.

Ethan Moreno
Executive Director

WSR 01-05-105

**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
GENERAL ADMINISTRATION**

(State Capitol Committee)
[Memorandum—February 16, 2001]

Please record the following State Capitol Committee meeting dates, time and location in the Washington State Register:

Tuesday	March 20	10:00 a.m. to 12:00 p.m.
Tuesday	June 19	9:00 a.m. to 11:00 a.m.
Tuesday	October 16	9:00 a.m. to 11:00 a.m.
Tuesday	December 4	10:00 a.m. to 12:00 p.m.

The SCC meetings will be held in the Washington State Legislative Building, Senate Rules Room.

If you have any questions, please contact 902-0970.

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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.

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
3-20-100	NEW-P	01-05-034	51-11-0628	AMD	01-03-010	51-11-1701	REP	01-03-010
4-25-626	AMD	01-03-012	51-11-0630	AMD	01-03-010	51-11-2000	REP	01-03-010
4-25-730	AMD	01-03-011	51-11-0701	AMD	01-03-010	51-11-2001	REP	01-03-010
16-143-005	NEW	01-03-049	51-11-1001	AMD	01-03-010	51-11-2002	REP	01-03-010
16-228-1155	NEW-W	01-02-080	51-11-1002	AMD	01-03-010	51-11-2003	REP	01-03-010
16-238-010	NEW-E	01-05-003	51-11-1003	AMD	01-03-010	51-11-2004	REP	01-03-010
16-238-020	NEW-E	01-05-003	51-11-1004	AMD	01-03-010	51-11-2005	REP	01-03-010
16-238-030	NEW-E	01-05-003	51-11-1005	AMD	01-03-010	51-11-2007	REP	01-03-010
16-238-060	NEW-E	01-05-003	51-11-1006	AMD	01-03-010	51-11-2008	REP	01-03-010
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16-238-082	NEW-E	01-05-003	51-11-1009	AMD	01-03-010	51-11-99903	AMD	01-03-010
16-238-090	NEW-E	01-05-003	51-11-1132	AMD	01-03-010	51-11-99904	AMD	01-03-010
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16-238-110	NEW-E	01-05-003	51-11-1210	REP	01-03-010	51-13-301	AMD	01-02-099
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16-401	PREP	01-02-101	51-11-1322	AMD	01-03-010	51-13-304	AMD	01-02-099
16-403	PREP	01-03-133	51-11-1323	AMD	01-03-010	51-13-503	AMD	01-02-099
16-403	PREP	01-04-093	51-11-1331	AMD	01-03-010	51-40-0200	AMD	01-02-095
16-470	PREP	01-02-100	51-11-1334	AMD	01-03-010	51-40-0310	AMD	01-02-095
16-516-100	NEW-P	01-04-088	51-11-1410	AMD	01-03-010	51-40-0313	AMD	01-02-095
16-516-170	NEW-P	01-04-088	51-11-1411	AMD	01-03-010	51-40-0403	AMD-W	01-05-028
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16-557-020	AMD-P	01-02-094	51-11-1415	AMD	01-03-010	51-40-1003	AMD	01-02-095
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51-11-0503	AMD	01-03-010	51-11-1438	AMD	01-03-010	51-40-1106	AMD	01-02-095
51-11-0504	AMD	01-03-010	51-11-1439	NEW	01-03-010	51-40-1202	NEW	01-02-095
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51-11-0605	AMD	01-03-010	51-11-1521	AMD	01-03-010	51-40-1700	NEW-W	01-05-028
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51-11-0626	AMD	01-03-010	51-11-1531	AMD	01-03-010	51-40-1900	NEW-W	01-05-028
51-11-0627	AMD	01-03-010	51-11-1532	AMD	01-03-010	51-40-2000	NEW-W	01-05-028

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
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51-40-2106	NEW-W	01-05-028	51-46-0316	REP-W	01-05-029	51-46-97126	REP-W	01-05-029
51-40-2200	NEW-W	01-05-028	51-46-0392	REP-W	01-05-029	51-46-97127	REP-W	01-05-029
51-40-2300	NEW-W	01-05-028	51-46-0400	REP-W	01-05-029	51-46-97128	REP-W	01-05-029
51-40-2900	AMD	01-02-095	51-46-0402	REP-W	01-05-029	51-46-97129	REP-W	01-05-029
51-40-2929	AMD-W	01-05-028	51-46-0412	REP-W	01-05-029	51-47-001	REP-W	01-05-029
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51-42-1110	NEW	01-02-098	51-46-0512	REP-W	01-05-029	51-56-007	NEW-W	01-05-029
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51-44-1102	NEW	01-02-096	51-46-0701	REP-W	01-05-029	51-57-895000	NEW-W	01-05-029
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51-46-0215	REP-W	01-05-029	51-46-1401	REP-W	01-05-029	132W-108-001	REP-P	01-04-004
51-46-0218	REP-W	01-05-029	51-46-1491	REP-W	01-05-029	132W-108-005	REP-P	01-04-004
51-46-0300	REP-W	01-05-029	51-46-97120	REP-W	01-05-029	132W-108-010	REP-P	01-04-004
51-46-0301	REP-W	01-05-029	51-46-97121	REP-W	01-05-029	132W-108-080	REP-P	01-04-004
51-46-0310	REP-W	01-05-029	51-46-97122	REP-W	01-05-029	132W-108-090	REP-P	01-04-004
51-46-0311	REP-W	01-05-029	51-46-97123	REP-W	01-05-029	132W-108-100	REP-P	01-04-004
51-46-0313	REP-W	01-05-029	51-46-97124	REP-W	01-05-029	132W-108-110	REP-P	01-04-004

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132W-108-130	REP-P	01-04-004	136-161-020	AMD	01-05-009	173-340-440	AMD	01-05-024
132W-108-140	REP-P	01-04-004	136-161-030	AMD	01-05-009	173-340-450	AMD	01-05-024
132W-108-230	REP-P	01-04-004	136-161-040	AMD	01-05-009	173-340-510	AMD	01-05-024
132W-108-240	REP-P	01-04-004	136-161-050	AMD	01-05-009	173-340-515	NEW	01-05-024
132W-108-250	REP-P	01-04-004	136-161-070	AMD	01-05-009	173-340-520	AMD	01-05-024
132W-108-260	REP-P	01-04-004	136-163-050	AMD	01-05-009	173-340-530	AMD	01-05-024
132W-108-270	REP-P	01-04-004	136-170-030	AMD	01-05-008	173-340-545	NEW	01-05-024
132W-108-280	REP-P	01-04-004	137- 04-010	AMD	01-03-079	173-340-550	AMD	01-05-024
132W-108-290	REP-P	01-04-004	137- 04-020	AMD	01-03-079	173-340-600	AMD	01-05-024
132W-108-300	REP-P	01-04-004	137- 52-010	AMD	01-04-001	173-340-610	AMD	01-05-024
132W-108-310	REP-P	01-04-004	137-104-010	NEW	01-04-044	173-340-700	AMD	01-05-024
132W-108-320	REP-P	01-04-004	137-104-020	NEW	01-04-044	173-340-702	AMD	01-05-024
132W-108-330	REP-P	01-04-004	137-104-030	NEW	01-04-044	173-340-703	NEW	01-05-024
132W-108-340	REP-P	01-04-004	137-104-040	NEW	01-04-044	173-340-704	AMD	01-05-024
132W-108-350	REP-P	01-04-004	137-104-050	NEW	01-04-044	173-340-705	AMD	01-05-024
132W-108-360	REP-P	01-04-004	137-104-060	NEW	01-04-044	173-340-706	AMD	01-05-024
132W-108-400	REP-P	01-04-004	137-104-070	NEW	01-04-044	173-340-708	AMD	01-05-024
132W-108-410	REP-P	01-04-004	137-104-080	NEW	01-04-044	173-340-709	NEW	01-05-024
132W-108-420	REP-P	01-04-004	173- 09-010	REP	01-05-035	173-340-710	AMD	01-05-024
132W-108-430	REP-P	01-04-004	173- 09-020	REP	01-05-035	173-340-720	AMD	01-05-024
132W-108-440	REP-P	01-04-004	173- 09-030	REP	01-05-035	173-340-730	AMD	01-05-024
132W-108-450	REP-P	01-04-004	173- 09-040	REP	01-05-035	173-340-740	AMD	01-05-024
132W-108-460	REP-P	01-04-004	173-321-010	AMD	01-05-024	173-340-745	AMD	01-05-024
132W-108-470	REP-P	01-04-004	173-321-020	AMD	01-05-024	173-340-747	NEW	01-05-024
132W-108-480	REP-P	01-04-004	173-321-040	AMD	01-05-024	173-340-7490	NEW	01-05-024
132W-112	PREP	01-03-103	173-321-050	AMD	01-05-024	173-340-7491	NEW	01-05-024
132W-115	PREP	01-03-103	173-321-060	AMD	01-05-024	173-340-7492	NEW	01-05-024
132W-116	PREP	01-03-103	173-321-070	AMD	01-05-024	173-340-7493	NEW	01-05-024
132W-116-010	REP-P	01-04-004	173-321-080	AMD	01-05-024	173-340-7494	NEW	01-05-024
132W-116-020	REP-P	01-04-004	173-322	AMD	01-05-024	173-340-750	AMD	01-05-024
132W-116-040	REP-P	01-04-004	173-322-020	AMD	01-05-024	173-340-760	AMD	01-05-024
132W-116-050	REP-P	01-04-004	173-322-030	AMD	01-05-024	173-340-760	AMD	01-05-024
132W-116-065	REP-P	01-04-004	173-322-040	AMD	01-05-024	173-340-800	AMD	01-05-024
132W-120-010	REP-P	01-04-004	173-322-050	AMD	01-05-024	173-340-810	AMD	01-05-024
132W-120-030	REP-P	01-04-004	173-322-060	AMD	01-05-024	173-340-820	AMD	01-05-024
132W-120-040	REP-P	01-04-004	173-322-070	AMD	01-05-024	173-340-830	AMD	01-05-024
132W-120-050	REP-P	01-04-004	173-322-090	AMD	01-05-024	173-340-840	AMD	01-05-024
132W-120-060	REP-P	01-04-004	173-322-100	AMD	01-05-024	173-340-850	AMD	01-05-024
132W-120-070	REP-P	01-04-004	173-322-110	AMD	01-05-024	173-340-900	NEW	01-05-024
132W-120-100	REP-P	01-04-004	173-322-120	AMD	01-05-024	173-400-030	AMD-P	01-04-072
132W-120-130	REP-P	01-04-004	173-340-100	AMD	01-05-024	173-400-035	NEW-P	01-04-072
132W-120-300	REP-P	01-04-004	173-340-120	AMD	01-05-024	173-400-040	AMD-P	01-04-072
132W-120-310	REP-P	01-04-004	173-340-130	AMD	01-05-024	173-400-050	AMD-P	01-04-072
132W-120-320	REP-P	01-04-004	173-340-140	AMD	01-05-024	173-400-060	AMD-P	01-04-072
132W-120-330	REP-P	01-04-004	173-340-200	AMD	01-05-024	173-400-070	AMD-P	01-04-072
132W-120-400	REP-P	01-04-004	173-340-210	AMD	01-05-024	173-400-075	AMD-P	01-04-072
132W-135-010	REP-P	01-04-004	173-340-300	AMD	01-05-024	173-400-100	AMD-P	01-04-072
132W-276	PREP	01-03-103	173-340-310	AMD	01-05-024	173-400-102	AMD-P	01-04-072
132W-276-001	REP-P	01-04-004	173-340-320	AMD	01-05-024	173-400-105	AMD-P	01-04-072
132W-276-005	REP-P	01-04-004	173-340-330	AMD	01-05-024	173-400-110	AMD-P	01-04-072
132W-276-010	REP-P	01-04-004	173-340-340	AMD	01-05-024	173-400-112	AMD-P	01-04-072
132W-276-060	REP-P	01-04-004	173-340-350	AMD	01-05-024	173-400-113	AMD-P	01-04-072
132W-276-070	REP-P	01-04-004	173-340-355	NEW	01-05-024	173-400-114	AMD-P	01-04-072
132W-276-080	REP-P	01-04-004	173-340-357	NEW	01-05-024	173-400-115	AMD-P	01-04-072
132W-276-090	REP-P	01-04-004	173-340-360	AMD	01-05-024	173-400-116	AMD-P	01-04-072
132W-276-100	REP-P	01-04-004	173-340-370	NEW	01-05-024	173-400-117	NEW-P	01-04-072
132W-276-110	REP-P	01-04-004	173-340-380	NEW	01-05-024	173-400-118	NEW-P	01-04-072
132W-325	PREP	01-03-103	173-340-390	NEW	01-05-024	173-400-131	AMD-P	01-04-072
136-130-030	AMD	01-05-009	173-340-400	AMD	01-05-024	173-400-136	AMD-P	01-04-072
136-130-050	AMD	01-05-009	173-340-410	AMD	01-05-024	173-400-141	AMD-P	01-04-072
136-130-060	AMD	01-05-009	173-340-420	AMD	01-05-024	173-400-151	AMD-P	01-04-072
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173-401-615	AMD-P	01-04-072	183- 04-110	NEW-P	01-04-033	204- 96-010	AMD	01-05-098
180- 27-070	AMD-P	01-05-089	183- 06-010	NEW-P	01-04-033	208-460-010	NEW-P	01-05-072
180- 33-023	AMD-P	01-05-088	183- 06-020	NEW-P	01-04-033	208-460-020	NEW-P	01-05-072
180- 33-042	PREP	01-05-130	183- 06-030	NEW-P	01-04-033	208-460-030	NEW-P	01-05-072
180- 51-060	PREP	01-05-124	192- 16-011	REP-E	01-05-071	208-460-040	NEW-P	01-05-072
180- 51-061	PREP	01-05-125	192- 16-011	REP-P	01-05-118	208-460-050	NEW-P	01-05-072
180- 51-063	PREP	01-05-092	192- 16-017	REP-E	01-05-071	208-460-060	NEW-P	01-05-072
180- 51-075	AMD-W	01-04-025	192- 16-017	REP-P	01-05-118	208-460-070	NEW-P	01-05-072
180- 52	PREP	01-05-123	192- 16-021	REP-P	01-05-117	208-460-080	NEW-P	01-05-072
180- 52-041	PREP	01-05-122	192- 16-061	REP	01-03-009	208-460-090	NEW-P	01-05-072
180- 57-005	AMD-W	01-04-024	192- 16-070	REP-P	01-04-082	208-460-100	NEW-P	01-05-072
180- 57-010	REP-W	01-04-024	192-150-050	NEW-E	01-05-071	208-460-110	NEW-P	01-05-072
180- 57-020	AMD-W	01-04-024	192-150-050	NEW-P	01-05-118	208-460-120	NEW-P	01-05-072
180- 57-030	REP-W	01-04-024	192-150-060	NEW-P	01-05-117	208-460-130	NEW-P	01-05-072
180- 57-040	REP-W	01-04-024	192-150-065	NEW-E	01-05-071	208-460-140	NEW-P	01-05-072
180- 57-050	AMD-W	01-04-024	192-150-065	NEW-P	01-05-118	208-460-150	NEW-P	01-05-072
180- 57-055	AMD-W	01-04-024	192-150-085	NEW-E	01-05-071	208-460-160	NEW-P	01-05-072
180- 57-070	AMD-P	01-05-090	192-150-085	NEW-P	01-05-118	208-460-170	NEW-P	01-05-072
180- 57-080	REP-W	01-04-024	192-150-100	NEW-P	01-04-082	208-512	PREP-W	01-03-106
180- 78A-015	REP	01-04-021	192-170-050	NEW-P	01-05-117	208-512-045	AMD-P	01-03-107
180- 78A-209	AMD	01-03-151	192-180-012	NEW-P	01-05-117	208-512-110	AMD-P	01-03-107
180- 78A-264	AMD	01-03-153	192-270-005	NEW-E	01-05-071	208-512-115	AMD-P	01-03-107
180- 78A-535	AMD-P	01-04-019	192-270-005	NEW-P	01-05-118	208-512-116	AMD-P	01-03-107
180- 78A-545	REP	01-04-021	192-270-010	NEW-E	01-05-071	208-512-117	AMD-P	01-03-107
180- 78A-550	REP	01-04-021	192-270-010	NEW-P	01-05-118	208-512-240	AMD-P	01-03-107
180- 78A-555	REP	01-04-021	192-270-015	NEW-E	01-05-071	208-512-280	AMD-P	01-03-107
180- 78A-560	REP	01-04-021	192-270-015	NEW-P	01-05-118	208-512-300	AMD-P	01-03-107
180- 78A-565	REP	01-04-021	192-270-020	NEW-E	01-05-071	208-514-140	AMD-P	01-03-107
180- 79A	PREP	01-04-018	192-270-020	NEW-P	01-05-118	208-528-040	AMD-P	01-03-107
180- 79A-030	AMD	01-03-153	192-270-025	NEW-E	01-05-071	208-532-050	AMD-P	01-03-107
180- 79A-124	AMD	01-03-153	192-270-025	NEW-P	01-05-118	208-544-025	AMD-P	01-03-107
180- 79A-130	AMD-P	01-05-093	192-270-030	NEW-E	01-05-071	208-544-037	AMD-P	01-03-107
180- 79A-145	AMD-P	01-04-019	192-270-030	NEW-P	01-05-118	208-544-039	AMD-P	01-03-107
180- 79A-155	AMD-P	01-04-022	192-270-035	NEW-E	01-05-071	208-556-080	AMD-P	01-03-107
180- 79A-206	AMD	01-03-153	192-270-035	NEW-P	01-05-118	208-586-135	AMD-P	01-03-107
180- 79A-211	AMD	01-03-152	192-270-040	NEW-E	01-05-071	208-586-140	AMD-P	01-03-107
180- 79A-250	AMD-P	01-04-019	192-270-040	NEW-P	01-05-118	220- 16-260	AMD	01-03-016
180- 79A-257	PREP	01-05-126	192-270-045	NEW-E	01-05-071	220- 16-270	AMD	01-03-016
180- 79A-265	PREP	01-05-147	192-270-045	NEW-P	01-05-118	220- 20-016	AMD-P	01-02-085
180- 82-130	AMD-P	01-05-091	192-270-050	NEW-E	01-05-071	220- 32-05100	NEW-E	01-04-042
180- 82-135	NEW	01-04-020	192-270-050	NEW-P	01-05-118	220- 32-05100	REP-E	01-04-042
180- 82-202	PREP	01-05-127	192-270-055	NEW-E	01-05-071	220- 33-01000Q	NEW-E	01-05-069
180- 82-204	PREP	01-05-128	192-270-055	NEW-P	01-05-118	220- 33-01000Q	REP-E	01-05-069
180- 82-210	PREP	01-05-129	192-270-060	NEW-E	01-05-071	220- 33-040	AMD-W	01-03-015
180- 85-075	AMD-P	01-04-019	192-270-060	NEW-P	01-05-118	220- 33-060	AMD-S	01-02-082
182- 20-001	AMD	01-04-080	192-270-065	NEW-E	01-05-071	220- 44-020	AMD-S	01-02-082
182- 20-010	AMD	01-04-080	192-270-065	NEW-P	01-05-118	220- 44-05000C	NEW-E	01-03-088
182- 20-100	AMD	01-04-080	192-270-070	NEW-E	01-05-071	220- 47-301	AMD-P	01-02-085
182- 20-160	AMD	01-04-080	192-270-070	NEW-P	01-05-118	220- 48-015	AMD-P	01-05-070
182- 20-200	AMD	01-04-080	192-320-075	NEW-P	01-05-117	220- 52-04000V	NEW-E	01-04-009
182- 20-400	AMD	01-04-080	196- 12-030	AMD-P	01-04-094	220- 52-04000	NEW-E	01-04-030
182- 25-010	AMD-P	01-05-107	196- 12-035	NEW-P	01-04-094	220- 52-04000	REP-E	01-04-030
183- 04-010	NEW-P	01-04-033	196- 23-070	NEW-P	01-04-050	220- 52-04000	REP-E	01-04-076
183- 04-020	NEW-P	01-04-033	196- 33-100	NEW-P	01-05-033	220- 52-04000X	NEW-E	01-04-076
183- 04-030	NEW-P	01-04-033	196- 33-200	NEW-P	01-05-033	220- 52-04000X	REP-E	01-05-044
183- 04-040	NEW-P	01-04-033	196- 33-300	NEW-P	01-05-033	220- 52-04000Y	NEW-E	01-05-044
183- 04-050	NEW-P	01-04-033	196- 33-400	NEW-P	01-05-033	220- 52-04000Y	REP-E	01-05-044
183- 04-060	NEW-P	01-04-033	196- 33-500	NEW-P	01-05-033	220- 52-04600I	REP-E	01-04-030
183- 04-070	NEW-P	01-04-033	204- 38-030	AMD-P	01-05-097	220- 52-04600K	NEW-E	01-04-030
183- 04-080	NEW-P	01-04-033	204- 38-040	AMD-P	01-05-097	220- 52-04600K	REP-E	01-04-076
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220- 52-04600N	NEW-E	01-05-044	232- 12-131	REP-P	01-05-146	246-221-055	AMD-P	01-02-087
220- 52-051	AMD	01-03-016	232- 12-141	AMD-P	01-05-135	246-221-055	AMD	01-05-110
220- 52-071	AMD-P	01-02-086	232- 12-142	NEW-P	01-05-111	246-221-090	AMD-P	01-02-087
220- 52-073	AMD-P	01-02-086	232- 12-271	AMD-P	01-05-144	246-221-090	AMD	01-05-110
220- 52-07300B	REP-E	01-03-014	232- 28-02203	AMD	01-04-037	246-221-100	AMD-P	01-02-087
220- 52-07300C	NEW-E	01-03-014	232- 28-02203	AMD-P	01-05-136	246-221-100	AMD	01-05-110
220- 52-07300C	REP-E	01-03-043	232- 28-02204	AMD	01-04-037	246-221-110	AMD-P	01-02-087
220- 52-07300D	NEW-E	01-03-043	232- 28-02205	AMD-P	01-05-136	246-221-110	AMD	01-05-110
220- 52-07300D	REP-E	01-03-062	232- 28-02206	AMD	01-04-037	246-221-113	AMD-P	01-02-087
220- 52-07300E	NEW-E	01-03-062	232- 28-02220	AMD-P	01-05-143	246-221-113	AMD	01-05-110
220- 52-07300E	REP-E	01-03-093	232- 28-02240	AMD-P	01-05-143	246-221-117	AMD-P	01-02-087
220- 52-07300F	NEW-E	01-03-093	232- 28-248	AMD-P	01-05-142	246-221-117	AMD	01-05-110
220- 52-07300F	REP-E	01-04-010	232- 28-258	REP-P	01-05-140	246-221-230	AMD-P	01-02-087
220- 52-07300G	NEW-E	01-04-010	232- 28-260	AMD	01-04-037	246-221-230	AMD	01-05-110
220- 52-07300G	REP-E	01-04-049	232- 28-260	REP-P	01-05-140	246-221-250	AMD-P	01-02-087
220- 52-07300H	NEW-E	01-04-049	232- 28-271	AMD	01-04-037	246-221-250	AMD	01-05-110
220- 52-07300H	REP-E	01-05-011	232- 28-272	AMD-P	01-05-134	246-221-285	AMD-P	01-02-087
220- 52-07300I	NEW-E	01-05-011	232- 28-273	AMD-P	01-05-137	246-221-285	AMD	01-05-110
220- 55-115	AMD-P	01-05-112	232- 28-274	REP-W	01-03-077	246-244-070	AMD-P	01-02-087
220- 56-24000E	NEW-E	01-03-044	232- 28-274	REP-P	01-05-146	246-244-070	AMD	01-05-110
220- 56-36000G	NEW-E	01-04-046	232- 28-275	AMD	01-04-037	246-282-001	AMD	01-04-054
220- 56-36000G	REP-E	01-04-046	232- 28-276	AMD-P	01-05-141	246-282-005	AMD	01-04-054
220- 69-240	AMD-P	01-02-085	232- 28-277	AMD	01-04-037	246-282-010	AMD	01-04-054
220- 69-240	AMD-P	01-02-086	232- 28-278	AMD-P	01-05-139	246-282-012	NEW	01-04-054
220- 88C-010	NEW-S	01-02-082	232- 28-279	AMD-P	01-05-145	246-282-014	NEW	01-04-054
220- 88C-020	NEW-S	01-02-082	232- 28-280	REP-P	01-05-146	246-282-016	NEW	01-04-054
220- 88C-030	NEW-S	01-02-082	232- 28-281	REP-P	01-05-146	246-282-020	AMD	01-04-054
220- 88C-040	NEW-S	01-02-082	232- 28-290	NEW-P	01-05-140	246-282-030	REP	01-04-054
220- 88C-050	NEW-S	01-02-082	232- 28-291	NEW-P	01-05-140	246-282-032	NEW	01-04-054
220- 95-013	AMD-P	01-05-120	232- 28-292	NEW-P	01-05-140	246-282-034	NEW	01-04-054
220- 95-018	AMD-P	01-05-120	232- 28-293	NEW-P	01-05-140	246-282-036	NEW	01-04-054
220- 95-022	AMD-P	01-05-120	232- 28-299	NEW-P	01-05-134	246-282-040	REP	01-04-054
220- 95-027	AMD-P	01-05-120	232- 28-42400C	NEW-E	01-03-013	246-282-042	NEW	01-04-054
220- 95-032	AMD-P	01-05-120	232- 28-42400C	REP-E	01-03-013	246-282-050	AMD	01-04-054
220- 95-034	NEW-P	01-05-120	232- 28-515	AMD-P	01-05-135	246-282-060	AMD	01-04-054
230- 02-138	REP-XR	01-05-119	232- 28-61900N	NEW-E	01-03-061	246-282-070	AMD	01-04-054
230- 02-362	REP	01-05-020	232- 28-61900N	REP-E	01-03-061	246-282-080	AMD	01-04-054
230- 02-364	REP	01-05-020	232- 28-61900N	REP-E	01-05-043	246-282-082	NEW	01-04-054
230- 02-366	REP	01-05-020	232- 28-61900P	NEW-E	01-04-011	246-282-090	REP	01-04-054
230- 02-530	REP	01-05-020	232- 28-61900P	REP-E	01-04-011	246-282-092	NEW	01-04-054
230- 02-535	REP	01-05-020	232- 28-61900Q	NEW-E	01-05-010	246-282-100	AMD	01-04-054
230- 02-540	REP	01-05-020	232- 28-61900Q	REP-E	01-05-010	246-282-102	NEW	01-04-054
230- 04-140	AMD	01-05-021	232- 28-61900R	NEW-E	01-05-080	246-282-104	NEW	01-04-054
230- 04-142	AMD	01-05-021	232- 28-61900R	REP-E	01-05-080	246-282-110	AMD	01-04-054
230- 04-202	AMD	01-05-019	246-102-001	NEW	01-04-086	246-282-120	AMD	01-04-054
230- 04-203	AMD	01-05-019	246-102-010	NEW	01-04-086	246-282-130	AMD	01-04-054
230- 04-204	AMD	01-05-019	246-102-020	NEW	01-04-086	246-282-990	AMD	01-04-054
230- 04-260	AMD	01-05-020	246-102-030	NEW	01-04-086	246-430-001	REP	01-04-086
230- 20-058	REP	01-05-020	246-102-040	NEW	01-04-086	246-430-010	REP	01-04-086
230- 20-059	AMD	01-05-020	246-102-050	NEW	01-04-086	246-430-020	REP	01-04-086
230- 20-060	REP	01-05-020	246-102-060	NEW	01-04-086	246-430-030	REP	01-04-086
230- 20-062	REP	01-05-020	246-102-070	NEW	01-04-086	246-430-040	REP	01-04-086
230- 30-033	NEW	01-05-018	246-220-010	AMD-P	01-02-087	246-430-050	REP	01-04-086
230- 30-034	NEW	01-05-018	246-220-010	AMD	01-05-110	246-430-060	REP	01-04-086
230- 30-052	AMD	01-05-020	246-221-005	AMD-P	01-02-087	246-843-072	REP	01-03-114
230- 50-010	AMD	01-05-020	246-221-005	AMD	01-05-110	246-843-074	REP	01-03-114
232- 12-001	AMD-P	01-05-135	246-221-010	AMD-P	01-02-087	246-869-220	AMD	01-04-055
232- 12-004	AMD-P	01-05-144	246-221-010	AMD	01-05-110	246-887-100	AMD	01-03-108
232- 12-007	AMD-P	01-05-144	246-221-015	AMD-P	01-02-087	246-907	PREP	01-05-109
232- 12-027	AMD-P	01-05-144	246-221-015	AMD	01-05-110	246-919-475	NEW	01-03-115
232- 12-068	AMD-P	01-05-138	246-221-030	AMD-P	01-02-087	262- 01-110	PREP	01-03-144

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262- 01-130	PREP	01-03-144	296-150F	PREP	01-03-070	308- 78-020	AMD-P	01-03-083
284- 04-120	NEW	01-03-034	296-150F	PREP	01-05-116	308- 78-030	AMD-P	01-03-083
284- 04-200	NEW	01-03-034	296-150M	PREP	01-03-070	308- 78-035	NEW-P	01-03-083
284- 04-205	NEW	01-03-034	296-150M	PREP	01-05-116	308- 78-040	AMD-P	01-03-083
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284- 04-220	NEW	01-03-034	296-150R	PREP	01-03-070	308- 78-060	REP-P	01-03-083
284- 04-225	NEW	01-03-034	296-150R	PREP	01-05-116	308- 78-070	AMD-P	01-03-083
284- 04-300	NEW	01-03-034	296-150T	PREP	01-03-070	308- 78-075	NEW-P	01-03-083
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284- 04-400	NEW	01-03-034	296-155-200	PREP	01-05-115	308- 93	PREP	01-05-076
284- 04-405	NEW	01-03-034	296-155-205	AMD	01-04-015	308- 93-010	AMD	01-03-128
284- 04-410	NEW	01-03-034	296-155-305	AMD	01-04-015	308- 93-030	AMD	01-03-128
284- 04-500	NEW	01-03-034	296-155-605	PREP	01-05-115	308- 93-050	AMD	01-03-128
284- 04-505	NEW	01-03-034	296-155-615	PREP	01-05-115	308- 93-055	AMD	01-03-128
284- 04-510	NEW	01-03-034	296-155-625	AMD	01-04-015	308- 93-056	AMD	01-03-128
284- 04-515	NEW	01-03-034	296-155-655	PREP	01-05-115	308- 93-060	AMD-P	01-03-017
284- 04-520	NEW	01-03-034	296-200A	PREP	01-05-116	308- 93-069	AMD-P	01-03-017
284- 04-525	NEW	01-03-034	296-400A	PREP	01-05-116	308- 93-070	AMD-P	01-03-017
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284- 04-605	NEW	01-03-034	308- 08-085	AMD	01-03-129	308- 93-073	REP-P	01-03-017
284- 04-610	NEW	01-03-034	308- 13-150	AMD	01-04-002	308- 93-078	AMD-P	01-03-017
284- 04-615	NEW	01-03-034	308- 29-010	AMD-P	01-03-130	308- 93-079	AMD	01-03-128
284- 04-620	NEW	01-03-034	308- 29-020	AMD-P	01-03-130	308- 93-090	AMD	01-03-128
284- 04-900	NEW	01-03-034	308- 29-025	NEW-P	01-03-130	308- 93-145	PREP	01-05-076
284- 43-130	AMD	01-03-032	308- 29-030	AMD-P	01-03-130	308- 93-160	AMD	01-03-128
284- 43-130	AMD	01-03-033	308- 29-045	AMD-P	01-03-130	308- 93-285	AMD-P	01-03-017
284- 43-200	AMD	01-03-033	308- 29-050	AMD-P	01-03-130	308- 93-350	AMD-P	01-03-017
284- 43-251	NEW	01-03-033	308- 29-060	AMD-P	01-03-130	308- 93-360	AMD-P	01-03-017
284- 43-410	NEW	01-03-033	308- 29-070	AMD-P	01-03-130	308- 93-390	AMD-P	01-03-072
284- 43-610	REP	01-03-033	308- 29-080	AMD-P	01-03-130	308- 93-640	AMD-P	01-03-017
284- 43-615	NEW	01-03-033	308- 29-090	NEW-P	01-03-130	308- 96A-065	AMD-P	01-04-017
284- 43-620	AMD	01-03-033	308- 29-100	NEW-P	01-03-130	308- 96A-066	REP-P	01-04-017
284- 43-630	NEW	01-03-033	308- 29-110	NEW-P	01-03-130	308- 96A-067	REP-P	01-04-017
284- 43-815	NEW	01-03-032	308- 29-120	NEW-P	01-03-130	308- 96A-068	REP-P	01-04-017
284- 43-820	NEW	01-03-033	308- 32-100	REP	01-03-065	308- 96A-070	AMD-P	01-04-017
284- 43-821	NEW	01-03-035	308- 32-110	REP	01-03-065	308- 96A-071	AMD-P	01-04-017
284- 43-823	NEW	01-03-035	308- 32-120	REP	01-03-065	308- 96A-072	AMD-P	01-04-017
284- 43-824	NEW	01-03-035	308- 56A-021	AMD-P	01-03-072	308- 96A-073	AMD-P	01-04-017
284- 43-824	AMD-E	01-04-087	308- 56A-065	AMD-P	01-03-072	308- 96A-074	AMD-P	01-04-017
284- 43-899	NEW	01-03-033	308- 56A-310	AMD-P	01-03-072	308- 96A-099	AMD-P	01-05-106
286- 06	PREP	01-02-090	308- 56A-335	AMD	01-03-002	308- 96A-099	AMD-P	01-05-106
286- 13-040	PREP	01-02-090	308- 56A-355	REP	01-03-002	308- 96A-135	REP-P	01-05-106
296- 17	PREP	01-03-157	308- 57-005	AMD-P	01-05-106	308- 96A-145	AMD-P	01-05-106
296- 20	PREP	01-02-091	308- 57-010	AMD-P	01-05-106	308- 96A-175	AMD-P	01-04-017
296- 20-135	AMD-P	01-05-113	308- 57-020	AMD-P	01-05-106	308- 96A-176	AMD-P	01-04-017
296- 23	PREP	01-02-091	308- 57-030	AMD-P	01-05-106	308- 96A-177	NEW-P	01-04-017
296- 23-220	AMD-P	01-05-113	308- 57-110	AMD-P	01-05-106	308- 96A-202	AMD-P	01-05-106
296- 23-230	AMD-P	01-05-113	308- 57-120	REP-P	01-05-106	308- 96A-203	AMD-P	01-05-106
296- 30-130	PREP	01-03-156	308- 57-130	REP-P	01-05-106	308- 96A-295	AMD-P	01-04-062
296- 32-240	AMD-E	01-04-090	308- 57-135	REP-P	01-05-106	308- 96A-400	AMD-P	01-05-106
296- 32-240	AMD-P	01-04-091	308- 57-140	AMD-P	01-05-106	308- 96A-410	REP-P	01-05-106
296- 45-52530	AMD-E	01-04-090	308- 57-210	A/R-P	01-05-106	308- 96A-550	AMD-P	01-04-017
296- 45-52530	AMD-P	01-04-091	308- 57-230	AMD-P	01-05-106	308- 96A-560	AMD-P	01-04-017
296- 46A	PREP	01-05-116	308- 57-240	AMD-P	01-05-106	308- 97-230	AMD-P	01-05-106
296- 62	PREP	01-04-089	308- 57-500	REP-P	01-05-106	308-100-140	AMD-P	01-04-075
296- 96	PREP	01-05-116	308- 63-010	AMD	01-03-141	314- 04-005	REP	01-03-086
296-104	PREP	01-05-131	308- 63-040	AMD	01-03-141	314- 04-006	REP	01-03-086
296-131	PREP	01-05-114	308- 63-070	AMD	01-03-141	314- 04-007	REP	01-03-086
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314-12-020	AMD	01-03-087	317-21-330	REP	01-05-036	388-11-280	REP	01-03-089
314-14-010	REP	01-03-085	317-21-335	REP	01-05-036	388-11-300	REP	01-03-089
314-14-020	REP	01-03-085	317-21-340	REP	01-05-036	388-11-305	REP	01-03-089
314-14-030	REP	01-03-085	317-21-345	REP	01-05-036	388-11-310	REP	01-03-089
314-14-040	REP	01-03-085	317-21-400	REP	01-05-036	388-11-320	REP	01-03-089
314-14-050	REP	01-03-085	317-21-410	REP	01-05-036	388-11-325	REP	01-03-089
314-14-060	REP	01-03-085	317-21-500	REP	01-05-036	388-11-330	REP	01-03-089
314-14-070	REP	01-03-085	317-21-510	REP	01-05-036	388-11-335	REP	01-03-089
314-14-080	REP	01-03-085	317-21-520	REP	01-05-036	388-11-340	REP	01-03-089
314-14-090	REP	01-03-085	317-21-530	REP	01-05-036	388-13-010	REP	01-03-089
314-14-100	REP	01-03-085	317-21-550	REP	01-05-036	388-13-020	REP	01-03-089
314-14-110	REP	01-03-085	317-21-560	REP	01-05-036	388-13-030	REP	01-03-089
314-14-120	REP	01-03-085	317-21-900	REP	01-05-036	388-13-040	REP	01-03-089
314-14-130	REP	01-03-085	317-21-910	REP	01-05-036	388-13-050	REP	01-03-089
314-14-140	REP	01-03-085	332-10-020	AMD-P	01-04-061	388-13-060	REP	01-03-089
314-14-150	REP	01-03-085	332-10-040	AMD-P	01-04-061	388-13-070	REP	01-03-089
314-14-160	REP	01-03-085	356-06-045	AMD-C	01-02-088	388-13-085	REP	01-03-089
314-14-165	REP	01-03-085	356-10-040	AMD-C	01-02-089	388-13-090	REP	01-03-089
314-14-170	REP	01-03-085	356-14-067	AMD-C	01-02-089	388-13-100	REP	01-03-089
314-17-005	NEW	01-03-085	356-14-075	AMD-C	01-02-089	388-13-110	REP	01-03-089
314-17-010	NEW	01-03-085	356-14-085	AMD-C	01-02-089	388-13-120	REP	01-03-089
314-17-015	NEW	01-03-085	356-14-110	AMD-C	01-02-089	388-14-010	REP	01-03-089
314-17-020	NEW	01-03-085	356-14-120	AMD-C	01-02-089	388-14-020	REP	01-03-089
314-17-025	NEW	01-03-085	356-15-125	AMD-E	01-04-051	388-14-030	REP	01-03-089
314-17-030	NEW	01-03-085	356-15-125	AMD-P	01-04-079	388-14-035	REP	01-03-089
314-17-035	NEW	01-03-085	356-15-140	AMD-C	01-02-089	388-14-040	REP	01-03-089
314-17-040	NEW	01-03-085	356-18-140	AMD-C	01-02-089	388-14-045	REP	01-03-089
314-17-045	NEW	01-03-085	356-18-220	AMD-C	01-02-089	388-14-050	REP	01-03-089
314-17-050	NEW	01-03-085	356-30-320	AMD-C	01-02-088	388-14-100	REP	01-03-089
314-17-055	NEW	01-03-085	356-30-331	AMD-C	01-02-088	388-14-200	REP	01-03-089
314-17-060	NEW	01-03-085	356-49-040	AMD-C	01-02-089	388-14-201	REP	01-03-089
314-17-065	NEW	01-03-085	356-56-210	AMD	01-03-003	388-14-202	REP	01-03-089
314-17-070	NEW	01-03-085	356-56-220	AMD	01-03-003	388-14-203	REP	01-03-089
314-17-075	NEW	01-03-085	365-195-900	AMD-P	01-03-166	388-14-205	REP	01-03-089
314-17-080	NEW	01-03-085	365-197-010	NEW-P	01-03-165	388-14-210	REP	01-03-089
314-17-085	NEW	01-03-085	365-197-020	NEW-P	01-03-165	388-14-220	REP	01-03-089
314-17-090	NEW	01-03-085	365-197-030	NEW-P	01-03-165	388-14-250	REP	01-03-089
314-17-095	NEW	01-03-085	365-197-040	NEW-P	01-03-165	388-14-260	REP	01-03-089
314-17-100	NEW	01-03-085	365-197-050	NEW-P	01-03-165	388-14-270	REP	01-03-089
314-17-105	NEW	01-03-085	365-197-060	NEW-P	01-03-165	388-14-271	REP	01-03-089
314-17-110	NEW	01-03-085	365-197-070	NEW-P	01-03-165	388-14-272	REP	01-03-089
314-17-115	NEW	01-03-085	365-197-080	NEW-P	01-03-165	388-14-273	REP	01-03-089
314-29-005	NEW	01-03-086	388-11-011	REP	01-03-089	388-14-274	REP	01-03-089
314-29-010	NEW	01-03-086	388-11-015	REP	01-03-089	388-14-276	REP	01-03-089
315-06-040	PREP	01-04-040	388-11-045	REP	01-03-089	388-14-300	REP	01-03-089
317-21-010	REP	01-05-036	388-11-048	REP	01-03-089	388-14-310	REP	01-03-089
317-21-020	REP	01-05-036	388-11-065	REP	01-03-089	388-14-350	REP	01-03-089
317-21-030	REP	01-05-036	388-11-067	REP	01-03-089	388-14-360	REP	01-03-089
317-21-040	REP	01-05-036	388-11-100	REP	01-03-089	388-14-365	REP	01-03-089
317-21-050	REP	01-05-036	388-11-120	REP	01-03-089	388-14-370	REP	01-03-089
317-21-060	REP	01-05-036	388-11-135	REP	01-03-089	388-14-376	REP	01-03-089
317-21-070	REP	01-05-036	388-11-140	REP	01-03-089	388-14-385	REP	01-03-089
317-21-100	REP	01-05-036	388-11-143	REP	01-03-089	388-14-386	REP	01-03-089
317-21-110	REP	01-05-036	388-11-145	REP	01-03-089	388-14-387	REP	01-03-089
317-21-120	REP	01-05-036	388-11-150	REP	01-03-089	388-14-388	REP	01-03-089
317-21-140	REP	01-05-036	388-11-155	REP	01-03-089	388-14-390	REP	01-03-089
317-21-300	REP	01-05-036	388-11-170	REP	01-03-089	388-14-395	REP	01-03-089
317-21-305	REP	01-05-036	388-11-180	REP	01-03-089	388-14-410	REP	01-03-089
317-21-310	REP	01-05-036	388-11-205	REP	01-03-089	388-14-415	REP	01-03-089
317-21-315	REP	01-05-036	388-11-210	REP	01-03-089	388-14-420	REP	01-03-089
317-21-320	REP	01-05-036	388-11-215	REP	01-03-089	388-14-421	REP	01-03-089

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388- 14-423	REP	01-03-089	388- 14A-2125	NEW	01-03-089	388- 14A-5006	NEW	01-03-089
388- 14-424	REP	01-03-089	388- 14A-2150	NEW	01-03-089	388- 14A-5007	NEW	01-03-089
388- 14-427	REP	01-03-089	388- 14A-2155	NEW	01-03-089	388- 14A-5008	NEW	01-03-089
388- 14-435	REP	01-03-089	388- 14A-2160	NEW	01-03-089	388- 14A-5050	NEW	01-03-089
388- 14-440	REP	01-03-089	388- 14A-3275	NEW	01-03-089	388- 14A-5100	NEW	01-03-089
388- 14-450	REP	01-03-089	388- 14A-3300	NEW	01-03-089	388- 14A-5200	NEW	01-03-089
388- 14-460	REP	01-03-089	388- 14A-3304	NEW	01-03-089	388- 14A-5300	NEW	01-03-089
388- 14-480	REP	01-03-089	388- 14A-3310	NEW	01-03-089	388- 14A-5400	NEW	01-03-089
388- 14-490	REP	01-03-089	388- 14A-3315	NEW	01-03-089	388- 14A-5500	NEW	01-03-089
388- 14-495	REP	01-03-089	388- 14A-3320	NEW	01-03-089	388- 14A-5505	NEW	01-03-089
388- 14-496	REP	01-03-089	388- 14A-3350	NEW	01-03-089	388- 14A-5510	NEW	01-03-089
388- 14-500	REP	01-03-089	388- 14A-3370	NEW	01-03-089	388- 14A-5515	NEW	01-03-089
388- 14-510	REP	01-03-089	388- 14A-3375	NEW	01-03-089	388- 14A-5520	NEW	01-03-089
388- 14-520	REP	01-03-089	388- 14A-3400	NEW	01-03-089	388- 14A-5525	NEW	01-03-089
388- 14-530	REP	01-03-089	388- 14A-3500	NEW	01-03-089	388- 14A-5530	NEW	01-03-089
388- 14-540	REP	01-03-089	388- 14A-3600	NEW	01-03-089	388- 14A-5535	NEW	01-03-089
388- 14-550	REP	01-03-089	388- 14A-3700	NEW	01-03-089	388- 14A-5540	NEW	01-03-089
388- 14-560	REP	01-03-089	388- 14A-3800	NEW	01-03-089	388- 14A-6000	NEW	01-03-089
388- 14-570	REP	01-03-089	388- 14A-3810	NEW	01-03-089	388- 14A-6100	NEW	01-03-089
388- 14A-1000	NEW	01-03-089	388- 14A-3900	NEW	01-03-089	388- 14A-6200	NEW	01-03-089
388- 14A-1005	NEW	01-03-089	388- 14A-3901	NEW	01-03-089	388- 14A-6300	NEW	01-03-089
388- 14A-1010	NEW	01-03-089	388- 14A-3902	NEW	01-03-089	388- 14A-6400	NEW	01-03-089
388- 14A-1015	NEW	01-03-089	388- 14A-3903	NEW	01-03-089	388- 14A-6405	NEW	01-03-089
388- 14A-1020	NEW	01-03-089	388- 14A-3904	NEW	01-03-089	388- 14A-6410	NEW	01-03-089
388- 14A-1025	NEW	01-03-089	388- 14A-3905	NEW	01-03-089	388- 14A-6415	NEW	01-03-089
388- 14A-1030	NEW	01-03-089	388- 14A-3906	NEW	01-03-089	388- 14A-6500	NEW	01-03-089
388- 14A-1035	NEW	01-03-089	388- 14A-3907	NEW	01-03-089	388- 14A-7100	NEW	01-03-089
388- 14A-1036	NEW	01-03-089	388- 14A-3925	NEW	01-03-089	388- 14A-7200	NEW	01-03-089
388- 14A-1040	NEW	01-03-089	388- 14A-4000	NEW	01-03-089	388- 14A-8100	NEW	01-03-089
388- 14A-1045	NEW	01-03-089	388- 14A-4010	NEW	01-03-089	388- 14A-8105	NEW	01-03-089
388- 14A-1050	NEW	01-03-089	388- 14A-4020	NEW	01-03-089	388- 14A-8110	NEW	01-03-089
388- 14A-1055	NEW	01-03-089	388- 14A-4030	NEW	01-03-089	388- 14A-8120	NEW	01-03-089
388- 14A-1060	NEW	01-03-089	388- 14A-4040	NEW	01-03-089	388- 14A-8200	NEW	01-03-089
388- 14A-2000	NEW	01-03-089	388- 14A-4100	NEW	01-03-089	388- 14A-8300	NEW	01-03-089
388- 14A-2005	NEW	01-03-089	388- 14A-4110	NEW	01-03-089	388- 14A-8400	NEW	01-03-089
388- 14A-2010	NEW	01-03-089	388- 14A-4115	NEW	01-03-089	388- 14A-8500	NEW	01-03-089
388- 14A-2015	NEW	01-03-089	388- 14A-4120	NEW	01-03-089	388- 31-010	REP-P	01-04-070
388- 14A-2020	NEW	01-03-089	388- 14A-4130	NEW	01-03-089	388- 31-015	REP-P	01-04-070
388- 14A-2025	NEW	01-03-089	388- 14A-4200	NEW	01-03-089	388- 31-020	REP-P	01-04-070
388- 14A-2030	NEW	01-03-089	388- 14A-4300	NEW	01-03-089	388- 31-025	REP-P	01-04-070
388- 14A-2035	NEW	01-03-089	388- 14A-4301	NEW	01-03-089	388- 31-030	REP-P	01-04-070
388- 14A-2036	NEW	01-03-089	388- 14A-4302	NEW	01-03-089	388- 31-035	REP-P	01-04-070
388- 14A-2037	NEW	01-03-089	388- 14A-4303	NEW	01-03-089	388- 71-0605	AMD-P	01-03-155
388- 14A-2038	NEW	01-03-089	388- 14A-4304	NEW	01-03-089	388- 71-0613	NEW-P	01-03-155
388- 14A-2040	NEW	01-03-089	388- 14A-4500	NEW	01-03-089	388- 86-071	REP	01-05-040
388- 14A-2041	NEW	01-03-089	388- 14A-4505	NEW	01-03-089	388- 86-086	REP	01-03-084
388- 14A-2045	NEW	01-03-089	388- 14A-4510	NEW	01-03-089	388- 86-100	REP-W	01-03-001
388- 14A-2050	NEW	01-03-089	388- 14A-4515	NEW	01-03-089	388- 87-036	REP	01-03-084
388- 14A-2060	NEW	01-03-089	388- 14A-4520	NEW	01-03-089	388-222-001	REP	01-03-066
388- 14A-2065	NEW	01-03-089	388- 14A-4525	NEW	01-03-089	388-222-010	REP	01-03-066
388- 14A-2070	NEW	01-03-089	388- 14A-4530	NEW	01-03-089	388-222-020	REP	01-03-066
388- 14A-2075	NEW	01-03-089	388- 14A-4600	NEW	01-03-089	388-273-0010	NEW-P	01-04-070
388- 14A-2080	NEW	01-03-089	388- 14A-4605	NEW	01-03-089	388-273-0020	NEW-P	01-04-070
388- 14A-2085	NEW	01-03-089	388- 14A-4610	NEW	01-03-089	388-273-0025	NEW-P	01-04-070
388- 14A-2090	NEW	01-03-089	388- 14A-4615	NEW	01-03-089	388-273-0030	NEW-P	01-04-070
388- 14A-2095	NEW	01-03-089	388- 14A-4620	NEW	01-03-089	388-273-0035	NEW-P	01-04-070
388- 14A-2097	NEW	01-03-089	388- 14A-5000	NEW	01-03-089	388-310-0900	AMD-P	01-03-060
388- 14A-2099	NEW	01-03-089	388- 14A-5001	NEW	01-03-089	388-310-0900	AMD-E	01-03-132
388- 14A-2105	NEW	01-03-089	388- 14A-5002	NEW	01-03-089	388-310-1000	AMD-P	01-03-060
388- 14A-2110	NEW	01-03-089	388- 14A-5003	NEW	01-03-089	388-310-1000	AMD-E	01-03-132
388- 14A-2115	NEW	01-03-089	388- 14A-5004	NEW	01-03-089	388-310-1050	AMD-P	01-03-060

TABLE

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-310-1050	AMD-E	01-03-132	392-122-322	PREP	01-03-099	420- 04-100	NEW	01-04-052
388-310-1300	AMD-E	01-05-007	392-122-900	PREP	01-03-099	420- 12-010	NEW	01-04-052
388-310-2000	NEW	01-03-042	392-125-080	AMD-E	01-03-098	420- 12-020	NEW	01-04-052
388-400-0005	AMD	01-03-121	392-140-600	AMD	01-04-023	420- 12-030	NEW	01-04-052
388-400-0015	REP	01-03-121	392-140-605	AMD	01-04-023	420- 12-040	NEW	01-04-052
388-400-0020	REP-P	01-03-120	392-140-609	AMD	01-04-023	420- 12-050	NEW	01-04-052
388-400-0030	AMD-P	01-03-040	392-140-613	AMD	01-04-023	420- 12-060	NEW	01-04-052
388-400-0030	AMD-E	01-03-041	392-140-616	AMD	01-04-023	420- 12-070	NEW	01-04-052
388-404-0005	AMD	01-03-121	392-140-625	AMD	01-04-023	420- 12-075	NEW	01-04-052
388-408-0005	AMD	01-03-121	392-140-626	AMD	01-04-023	420- 12-080	NEW	01-04-052
388-408-0010	AMD	01-03-121	392-140-660	AMD	01-04-023	420- 12-085	NEW	01-04-052
388-408-0015	AMD	01-03-121	392-140-675	AMD	01-04-023	420- 12-090	NEW	01-04-052
388-408-0020	AMD	01-03-121	392-141-200	PREP	01-03-099	458- 20-169	AMD-P	01-03-091
388-408-0025	AMD	01-03-121	392-151-090	AMD-P	01-03-097	458- 20-228	AMD	01-05-022
388-408-0030	AMD	01-03-121	392-151-095	AMD-P	01-03-097	458- 20-22802	AMD-P	01-03-105
388-414-0001	AMD-P	01-04-074	399- 10-010	AMD-P	01-03-143	458- 20-247	AMD-P	01-04-048
388-432-0005	NEW	01-03-066	399- 30-030	AMD-P	01-03-143	468-300-010	AMD-P	01-04-078
388-438-0110	AMD	01-05-041	399- 30-040	AMD-P	01-03-143	468-300-020	AMD-P	01-04-078
388-444-0075	AMD	01-05-006	399- 30-042	AMD-P	01-03-143	468-300-040	AMD-P	01-04-078
388-448	PREP	01-04-069	399- 50-040	AMD-P	01-03-143	468-300-220	AMD-P	01-04-078
388-450-0190	AMD-P	01-03-038	415- 02-030	PREP	01-05-074	478-355-010	AMD-P	01-03-122
388-450-0190	AMD-E	01-03-039	415- 02-060	AMD-P	01-05-096	478-355-030	AMD-P	01-03-122
388-454-0005	AMD	01-03-121	415-100-055	PREP	01-05-094	478-355-040	AMD-P	01-03-122
388-454-0010	AMD	01-03-121	415-108-467	AMD-P	01-05-077	480- 62-010	REP	01-04-026
388-472-0005	PREP	01-03-119	415-110-467	AMD-P	01-05-077	480- 62-020	REP	01-04-026
388-478-0055	AMD-P	01-04-068	415-112	PREP	01-05-075	480- 62-030	REP	01-04-026
388-478-0056	REP-P	01-04-068	415-210	PREP	01-05-075	480- 62-040	REP	01-04-026
388-484-0005	AMD	01-04-016	415-610	PREP	01-04-028	480- 62-050	REP	01-04-026
388-484-0010	NEW	01-04-016	415-620	PREP	01-04-028	480- 62-060	REP	01-04-026
388-488	PREP	01-03-024	415-630	PREP	01-04-028	480- 62-070	REP	01-04-026
388-502-0160	AMD	01-05-100	415-630-030	PREP	01-04-028	480- 62-080	REP	01-04-026
388-535-1230	AMD-P	01-03-154	415-630-030	AMD-E	01-04-029	480- 62-085	REP	01-04-026
388-543-1150	PREP	01-05-027	415-640	PREP	01-04-028	480- 62-090	REP	01-04-026
388-543-2800	PREP	01-05-027	415-650	PREP	01-04-028	480- 62-100	REP	01-04-026
388-546-0001	NEW	01-03-084	415-660	PREP	01-04-028	480- 62-120	REP	01-04-026
388-546-0100	NEW	01-03-084	415-670	PREP	01-04-028	480- 62-125	NEW	01-04-026
388-546-0150	NEW	01-03-084	415-680	PREP	01-04-028	480- 62-130	NEW	01-04-026
388-546-0200	NEW	01-03-084	415-690	PREP	01-04-028	480- 62-135	NEW	01-04-026
388-546-0250	NEW	01-03-084	415-695	PREP	01-04-028	480- 62-140	NEW	01-04-026
388-546-0300	NEW	01-03-084	417- 01-105	AMD-E	01-05-101	480- 62-145	NEW	01-04-026
388-546-0400	NEW	01-03-084	417- 01-105	PREP	01-05-102	480- 62-150	NEW	01-04-026
388-546-0450	NEW	01-03-084	417- 01-110	PREP	01-05-102	480- 62-155	NEW	01-04-026
388-546-0500	NEW	01-03-084	417- 01-115	PREP	01-05-102	480- 62-160	NEW	01-04-026
388-546-0600	NEW	01-03-084	417- 01-125	AMD-E	01-05-101	480- 62-165	NEW	01-04-026
388-546-0700	NEW	01-03-084	417- 01-125	PREP	01-05-102	480- 62-170	NEW	01-04-026
388-546-0800	NEW	01-03-084	417- 01-127	NEW-E	01-05-101	480- 62-200	NEW	01-04-026
388-546-1000	NEW	01-03-084	417- 01-130	PREP	01-05-102	480- 62-205	NEW	01-04-026
388-551	PREP	01-03-095	417- 01-135	PREP	01-05-102	480- 62-210	NEW	01-04-026
388-551	PREP	01-03-096	417- 01-150	AMD-E	01-05-101	480- 62-215	NEW	01-04-026
388-551-3000	NEW	01-05-040	417- 01-150	PREP	01-05-102	480- 62-220	NEW	01-04-026
388-825-020	PREP	01-03-059	417- 01-155	PREP	01-05-102	480- 62-225	NEW	01-04-026
388-825-205	PREP	01-03-059	417- 06	PREP	01-05-102	480- 62-230	NEW	01-04-026
390- 16-011	PREP	01-03-164	420- 04-010	NEW	01-04-052	480- 62-235	NEW	01-04-026
390- 16-012	PREP	01-03-163	420- 04-015	NEW	01-04-052	480- 62-240	NEW	01-04-026
390- 16-105	PREP	01-03-161	420- 04-020	NEW	01-04-052	480- 62-245	NEW	01-04-026
390- 16-111	PREP	01-03-159	420- 04-030	NEW	01-04-052	480- 62-250	NEW	01-04-026
390- 16-150	PREP	01-03-162	420- 04-040	NEW	01-04-052	480- 62-300	NEW	01-04-026
390- 16-309	PREP	01-03-081	420- 04-050	NEW	01-04-052	480- 62-305	NEW	01-04-026
390- 16-311	PREP	01-03-082	420- 04-060	NEW	01-04-052	480- 62-310	NEW	01-04-026
390- 24-200	PREP	01-03-160	420- 04-070	NEW	01-04-052	480- 62-315	NEW	01-04-026
391- 25	PREP	01-04-073	420- 04-080	NEW	01-04-052	480- 62-320	NEW	01-04-026
391- 35	PREP	01-04-073	420- 04-085	NEW	01-04-052	480- 62-325	NEW	01-04-026

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Table of WAC Sections Affected

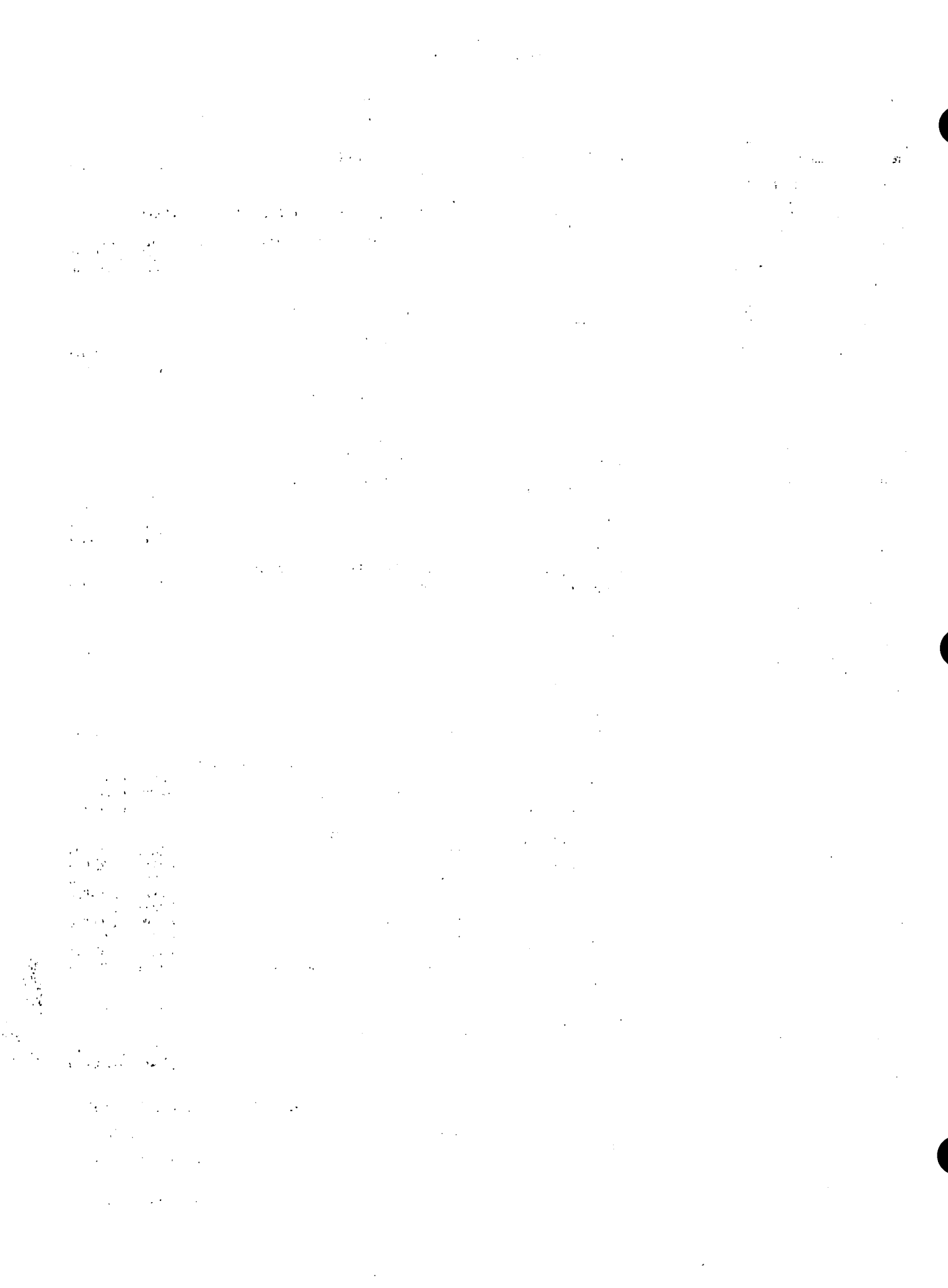
WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
480-62-999	NEW	01-04-026	480-90-161	REP-P	01-02-084	480-100-101	REP-P	01-02-083
480-80-010	AMD-P	01-02-102	480-90-163	NEW-P	01-02-084	480-100-103	NEW-P	01-02-083
480-80-035	NEW-P	01-02-102	480-90-166	REP-P	01-02-084	480-100-108	NEW-P	01-02-083
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
480-90-032	REP-P	01-02-084	480-90-303	NEW-P	01-02-084	480-100-161	REP-P	01-02-083
480-90-033	NEW-P	01-02-084	480-90-308	NEW-P	01-02-084	480-100-163	NEW-P	01-02-083
480-90-036	REP-P	01-02-084	480-90-313	NEW-P	01-02-084	480-100-166	REP-P	01-02-083
480-90-041	REP-P	01-02-084	480-90-323	NEW-P	01-02-084	480-100-168	NEW-P	01-02-083
480-90-043	REP-P	01-02-084	480-90-328	NEW-P	01-02-084	480-100-171	REP-P	01-02-083
480-90-046	REP-P	01-02-084	480-90-333	NEW-P	01-02-084	480-100-173	NEW-P	01-02-083
480-90-051	REP-P	01-02-084	480-90-338	NEW-P	01-02-084	480-100-176	REP-P	01-02-083
480-90-056	REP-P	01-02-084	480-90-343	NEW-P	01-02-084	480-100-178	NEW-P	01-02-083
480-90-061	REP-P	01-02-102	480-90-348	NEW-P	01-02-084	480-100-181	REP-P	01-02-083
480-90-066	REP-P	01-02-084	480-90-353	NEW-P	01-02-084	480-100-183	NEW-P	01-02-083
480-90-071	REP-P	01-02-084	480-90-999	NEW-P	01-02-084	480-100-186	REP-P	01-02-083
480-90-072	REP-P	01-02-084	480-100-001	NEW-P	01-02-083	480-100-188	NEW-P	01-02-083
480-90-076	REP-P	01-02-084	480-100-003	NEW-P	01-02-083	480-100-191	REP-P	01-02-083
480-90-081	REP-P	01-02-084	480-100-008	NEW-P	01-02-083	480-100-193	NEW-P	01-02-102
480-90-086	REP-P	01-02-084	480-100-011	REP-P	01-02-083	480-100-201	REP-P	01-02-083
480-90-091	REP-P	01-02-084	480-100-013	NEW-P	01-02-083	480-100-203	NEW-P	01-02-083
480-90-096	REP-P	01-02-084	480-100-016	REP-P	01-02-083	480-100-206	REP-P	01-02-083
480-90-101	REP-P	01-02-084	480-100-018	NEW-P	01-02-083	480-100-208	NEW-P	01-02-083
480-90-103	NEW-P	01-02-084	480-100-021	REP-P	01-02-083	480-100-211	REP-P	01-02-083
480-90-106	REP-P	01-02-084	480-100-023	NEW-P	01-02-083	480-100-213	NEW-P	01-02-083
480-90-108	NEW-P	01-02-084	480-100-026	REP-P	01-02-083	480-100-218	NEW-P	01-02-083
480-90-113	NEW-P	01-02-084	480-100-028	NEW-P	01-02-083	480-100-223	NEW-P	01-02-083
480-90-116	REP-P	01-02-084	480-100-031	REP-P	01-02-083	480-100-228	NEW-P	01-02-083
480-90-118	NEW-P	01-02-084	480-100-032	REP-P	01-02-083	480-100-233	NEW-P	01-02-083
480-90-121	REP-P	01-02-084	480-100-033	NEW-P	01-02-083	480-100-251	REP-P	01-02-083
480-90-123	NEW-P	01-02-084	480-100-036	REP-P	01-02-083	480-100-308	NEW-P	01-02-083
480-90-126	REP-P	01-02-084	480-100-041	REP-P	01-02-083	480-100-311	REP-P	01-02-083
480-90-128	NEW-P	01-02-084	480-100-043	REP-P	01-02-083	480-100-313	NEW-P	01-02-083
480-90-131	REP-P	01-02-084	480-100-046	REP-P	01-02-083	480-100-318	NEW-P	01-02-083
480-90-133	NEW-P	01-02-084	480-100-051	REP-P	01-02-083	480-100-328	NEW-P	01-02-083
480-90-136	REP-P	01-02-084	480-100-056	REP-P	01-02-083	480-100-333	NEW-P	01-02-083
480-90-138	NEW-P	01-02-084	480-100-061	REP-P	01-02-102	480-100-338	NEW-P	01-02-083
480-90-141	REP-P	01-02-084	480-100-066	REP-P	01-02-083	480-100-343	NEW-P	01-02-083
480-90-143	NEW-P	01-02-084	480-100-071	REP-P	01-02-083	480-100-353	NEW-P	01-02-083
480-90-146	REP-P	01-02-084	480-100-072	REP-P	01-02-083	480-100-358	NEW-P	01-02-083
480-90-148	NEW-P	01-02-084	480-100-076	REP-P	01-02-083	480-100-363	NEW-P	01-02-083
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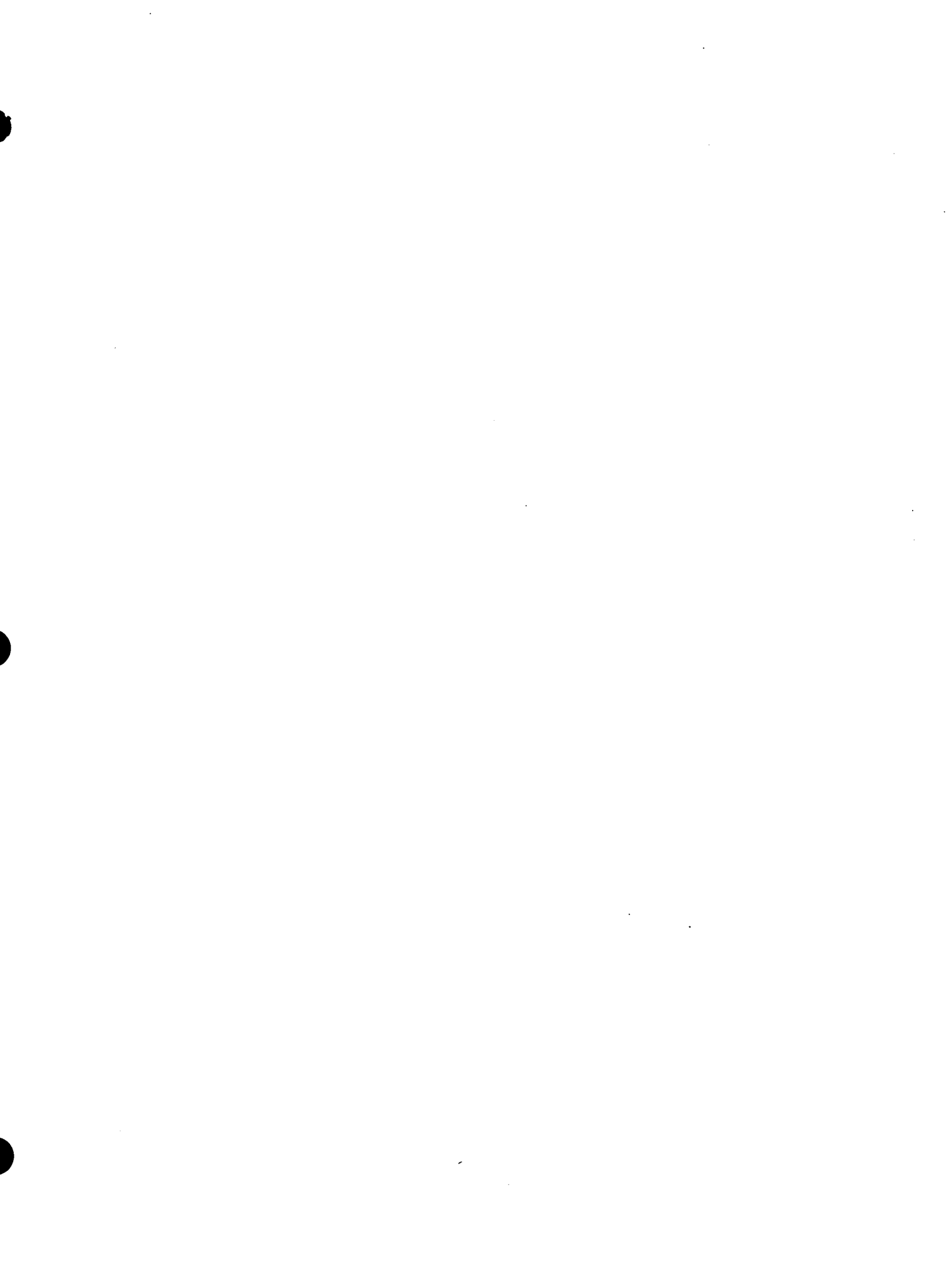
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